VIA ELECTRONIC SUBMISSION
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August 10, 2026

Mr. Matt Allen
Director, USDA Office of Homeland Security
1400 Independence Avenue SW,
1457–S Washington, DC 20250

Re: Docket No. USDA–2026–0001; RIN 0560–AI70 — Comments Opposing the Inclusion of NAICS Code Series 486 (Pipeline Transportation) in the Proposed Definition of "Agricultural Land" under the Agricultural Foreign Investment Disclosure Act

Dear Mr. Allen:

The American Petroleum Institute ("API"), the Interstate Natural Gas Association of America ("INGAA"), and the GPA Midstream Association ("GPA Midstream") respectfully submit these comments in response to the Proposed Rule published in the Federal Register on June 25, 2026 (91 Fed. Reg. 38315), proposing updates to USDA regulations implementing the Agricultural Foreign Investment Disclosure Act of 1978 ("AFIDA" or the "Act"). We appreciate the opportunity to provide input during this public comment period.

About the Comment Authors. API is the national trade association representing all facets of the U.S. natural gas and oil industry, which supports more than 11 million American jobs and nearly eight percent of the U.S. economy. Our more than 600 member companies include producers, refiners, suppliers, pipeline operators, marine transporters, and service and supply firms. They provide most of the nation's energy. INGAA is the trade association representing the interstate natural gas pipeline industry in North America. INGAA's 28 member companies transport more than 95 percent of the nation's natural gas through approximately 200,000 miles of interstate natural gas pipelines. Across the United States, INGAA member companies operate over 1,300 compressor stations and storage facilities along with pipelines to transport natural gas to local gas distribution companies, industrial end-users, gas marketers, and gas-fired electric generators.

Industry participants own and operate roughly 524,000 miles of crude oil, refined product, and natural gas *transmission* pipelines, and several times that in *distribution* pipelines, that serve communities across the United States.[1]Across this industry, according to the U.S. Department of Transportation's Pipeline and Hazardous Material Safety Administration ("PHMSA"), 14 percent

[1] Generally, a transmission pipeline moves large volumes of product over long distances, while distribution pipelines branch out from the transmission line to deliver product to end users. The industry also operates pipelines that transport chemicals that, too, are subject to the Proposed Rule because NAICS code 486 is not restricted to oil and natural gas pipeline transportation (see NAICS Code 486990 "All Other Pipeline Transportation").

of all oil and natural gas pipeline mileage is held by companies with 10 percent or greater foreign investment.[2]

GPA Midstream has served the U.S. energy industry since 1921 and represents approximately 45 domestic corporate members that directly employ more than 57,000 employees engaged in the gathering, transporting, processing, treating, storage, and marketing of natural gas, natural gas liquids, crude oil and refined products, commonly referred to as "midstream activities." In 2024, GPA Midstream members had an economic impact of $191 billion through operating 502,900 miles of gas gathering pipelines, gathering nearly 91 billion cubic feet per day of natural gas, and operating approximately 342 natural gas processing facilities that delivered pipeline quality gas into markets across a majority of the U.S. interstate and intrastate pipeline systems.

About the Industry. The oil and gas pipeline industry has three principal federal regulators: the Federal Energy Regulatory Commission ("FERC") governs the economic regulation and permitting and siting of natural gas pipelines, while PHMSA governs pipeline safety standards, and the U.S. Transportation Security Administration ("TSA") regulates pipeline cyber and physical security. The Environmental Protection Agency, Department of Interior, and a host of other federal, state, and local agencies likewise regulate pipeline transportation.[3] These agencies oversee various requirements for oil and natural gas pipeline operations and have developed the institutional expertise to match their broad jurisdiction over this critical national infrastructure. API, INGAA and GPA Midstream members, wholly separate from the USDA's Proposed Rule, spend significant time and expense complying with FERC, PHMSA, TSA, other federal and nonfederal government regulations.

While we support USDA's general objective of strengthening national security, we write to express our strong opposition to the inclusion of NAICS code 486 (Pipeline Transportation) in the expanded definition of "agricultural land" under proposed 7 C.F.R. § 5100.2(b). This inclusion exceeds AFIDA's statutory purpose, conflicts with longstanding distinctions between agricultural and non-agricultural property interests, creates significant legal uncertainty, and would impose substantial costs without advancing the objectives Congress enacted AFIDA to protect. Deeming pipeline transportation's industrial activity as an agricultural use would also create severe physical security risks and operational disruptions for an industry critical to the nation's energy security. This proposal is unnecessary given the wealth of information collected over the last century by other federal agencies.

Subjecting dozens of oil and gas pipeline operators' in this non-agricultural industry to AFIDA disclosure will strain their resources. The Proposed Rule's overly complicated disclosure requirements (e.g., establishing "foreign person" status, disclosing beneficial owners and holding companies or disregarded entities deemed "shell companies," etc.) would impose further burdens on this industry, which has complex ownership structures due to the nature of its industrial, capital-

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[2] See PHMSA compilations of annual reports that 49 C.F.R. Parts 191 and 195 require operators of gas distribution, gas gathering, gas transmission, hazardous liquid, liquid natural gas (LNG), and underground natural gas storage (UNGS) to file with PHMSA, at https://www.phmsa.dot.gov/data-and-statistics/pipeline/gas-distribution-gas-gathering-gas-transmission-hazardous-liquids.

[3] *E.g.,* the U.S. Department of Transportation has jurisdiction "relating to prevention of damage to pipeline facilities." 49 U.S.C. § 60117(a).

intensive, and highly regulated operations. But the most troubling unintended consequence of the Proposed Rule is the mandatory disclosure of pipeline maps in publicly available geospatial data.

I. THE INCLUSION OF PIPELINE TRANSPORTATION EXCEEDS AFIDA'S STATUTORY MANDATE

Congress enacted AFIDA in 1978 to monitor foreign investment in U.S. "agricultural land," that is, land used for farming, ranching, forestry, or timber production. The statute's plain language and legislative history demonstrate that Congress intended AFIDA to address the economic impacts of foreign control of U.S. agricultural production, not to serve as a general-purpose foreign investment surveillance mechanism for all activities that may physically co-exist with farmland.[4]

Pipeline transportation is an industrial activity unrelated to agricultural production. The Proposed Rule acknowledges this distinction implicitly, noting only that "[p]ipelines span long distances across rural areas and frequently cross private farmland" and that "[c]ompanies usually secure easements from farmers and design pipelines to allow for continued agricultural use around them."[5] This rationale conflates geographic proximity with functional agricultural use. The mere fact that pipelines cross farmland does not transform pipeline infrastructure into agricultural activity any more than an electric transmission line crossing a farm equates to farming.

USDA offers no reasoned explanation for including pipeline transportation while excluding other forms of non-agricultural infrastructure that similarly traverse agricultural land through easements and rights-of-way such as railroads, electric transmission corridors, telecommunications infrastructure, carbon sequestration, water systems, and the like. The Proposed Rule provides no basis for treating pipeline transportation differently from these analogous non-agricultural uses.

The Administrative Procedure Act ("APA") requires agencies to address the "important aspect[s] of the problem" before them.[6] One glaring omission here is USDA's failure to justify why pipeline transportation alone has been singled out for inclusion while functionally identical non-agricultural infrastructure – railroads, electric transmission lines, telecommunications cables,

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[4] *E.g.*, U.S. Agricultural Foreign Investment Disclosure Act of 1978 ("AFIDA) (Pub. L. No. 95-460), *codified at* 7 U.S.C. §§ 3501-3508; STAFF OF U.S. SENATE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY, 95TH CONG. FOREIGN INVESTMENT IN UNITED STATES AGRICULTURAL LAND 8 (Comm. Print 1979) (specifically identifying the following questions Congress enacted AFIDA to solve: "What is the trend with respect to foreign investment in U.S. farmland? How many acres of U.S. farmland were owned by foreign interests before January 1, 1977? Are foreign purchases unevenly distributed within each state? What effects do foreign purchases have on farmland prices, the viability of rural communities, and the family farm?").

[5] USDA Docket No. USDA–2026–0001; RIN 0560–AI70 (June 24, 2026), 91 Fed. Reg. 38315, at 38320 (the "Proposed Rule"). We note that USDA's explanatory text regarding its inclusion of NAICS code 486 within the expanded "agricultural land" definition discusses "pipeline transportation activities that occur *overtop of* land," which suggests exempting those buried underground, yet pipeline operators would nonetheless appear required to disclose agreements that convey sub-surface easements because the revised "any interest" term would eliminate the current exemption of that use in § 781.2(c)(5). Proposed Rule at 38320 (emphasis added), 38330 (redefining "any interest" in new § 5100(2)(c)).

[6] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.* Co., 463 U.S. 29, 43 (1983).

water conveyance systems – remains exempt. Each of these industries traverses agricultural land via easements and rights-of-way without influencing crop selection, stocking rates, or timber harvest. USDA has offered no reasoned distinction, nor has it considered the comparative costs of its selective approach.[7] Singling out one industry without explaining the exclusion of its analogues is the textbook definition of arbitrary agency action.

The plain text of the Act forecloses USDA's proposed expansion. Section 3508(1) limits AFIDA's reach to land "used for agricultural, forestry, or timber production purposes," activities that share a distinctly agricultural character: each involves cultivating, managing, or harvesting biological resources from the soil.[8] The Supreme Court has instructed that statutory terms must be read in light of their neighbors.[9] Pipeline transportation – the movement of hydrocarbons through steel conduits – is not remotely of the same kind as growing crops or raising cattle. To read "agricultural land" as reaching pipeline corridors would deprive the word "agricultural" of independent meaning, a result the rule against surplusage forbids.[10] So too, the *ejusdem generis* principle confirms that any unenumerated category the statute might accommodate is limited to activities of a like agricultural nature, not the industrial movement of oil and gas.

USDA's proposed expansion exceeds the scope of congressional authority delegated to it under AFIDA by converting a statute focused on agricultural economy into a broad national security surveillance tool applied to unrelated industries. Congress did not authorize USDA to regulate pipeline transportation merely because it traverses agricultural land. Nor did Congress authorize USDA to regulate industrial activities based on geographic coincidence.

This proposed expansion also runs headlong into the major questions doctrine. The Supreme Court has made clear that when an agency claims power to regulate an industry of "vast economic and political significance," it must point to "clear congressional authorization" for that authority.[11] No such authorization exists here. The domestic pipeline network exceeds three million miles,[12] underpins hundreds of billions of dollars in capital investment and is the subject of its own comprehensive federal regulatory framework administered by FERC, PHMSA, TSA, and many more federal and nonfederal agencies.

Our members' pipelines touch and/or fuel millions, if not billions, of dollars of economic activity in the United States (and through LNG exports, trillions globally). Further, the President's priority of domestic energy security and reliability is implicated here as well. Congress never directed, hinted, or contemplated that a 1978 farmland-disclosure statute would extend to this

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[7] *See Chamber of Commerce v. SEC*, 412 F.3d 133, 144 (D.C. Cir. 2005) (agencies must evaluate costs and consider reasonable alternatives).

[8] 7 U.S.C. § 3508(1).

[9] *Yates v. United States*, 574 U.S. 528, 543 (2015) (declaring "a word is known by the company it keeps").

[10] See *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001).

[11] *West Virginia v. EPA*, 597 U.S. 697, 716 (2022).

[12] U.S. Dept. of Transportation, Pipeline and Hazardous Materials Safety Administration, *Pipeline Basics*, at https://primis.phmsa.dot.gov/stakeholder-comms/pipelinebasics/#:~:text=The%20energy%20transportation%20network%20of%20the%20United%20States%20consists%20of%20over%203.3%20million%20miles%20of%20pipelines%20that.

sector. Shoehorning NAICS code 486 into the definition of “agricultural land” is precisely the kind of “transformative expansion” that the major questions doctrine forbids.[13]

The United States Supreme Court recently abrogated the doctrine of *Chevron* deference, determining instead that agencies may only act within the specific authorizations granted in the statute.[14] Thus, an agency, when promulgating new regulations, must demonstrate that “the statute authorizes the … agency action”[15] and must ensure that the agency’s regulation matches the single, best meaning of the statute. Nothing in AFIDA indicates that pipeline transportation should be included in the definition of “agricultural land” or that Congress ever contemplated including it when enacting that statute. For these reasons, NAICS code 486 (Pipeline Transportation), should not be included in the definition of “agricultural land” under proposed 7 C.F.R. § 5100.2(b).

The Court's decision in *Loper Bright* eliminates any basis for USDA to rely upon agency discretion to expand AFIDA beyond its statutory boundaries. Courts must now exercise independent judgment regarding statutory meaning, and agencies may not adopt interpretations merely because the statute arguably permits them. Here, the best reading of AFIDA's reference to land used for farming, ranching, forestry, or timber production excludes pipeline transportation. USDA therefore bears the burden of demonstrating affirmative statutory authority for its proposed expansion. Because no such authority exists, the proposal should be withdrawn.

USDA must recognize that AFIDA historically distinguishes between interests capable of influencing agricultural production and those that merely coexist with agricultural land. A pipeline easement or right-of-way belongs to the latter category. Unlike fee ownership or leasehold possession, a pipeline easement or right-of-way confers no authority to determine crop selection, livestock operations, timber production,[16] or any other agricultural use. The landowner remains in possession of the agricultural enterprise and retains operational control over agricultural production. Accordingly, a pipeline easement or right-of-way cannot reasonably be treated as the type of agricultural investment Congress intended AFIDA to monitor.

II. PUBLIC DISCLOSURE OF PIPELINE LOCATION DATA WOULD CREATE A NATIONAL SECURITY VULNERABILITY

The Proposed Rule requires U.S. pipeline operators with foreign investment, deemed “foreign persons,” to submit geospatial maps with property boundaries and pipeline locations, mandating that USDA publish this sensitive information in a publicly accessible internet database. Paradoxically, a rule ostensibly aimed at enhancing national security would undermine it by broadcasting the precise locations of pipeline assets to anyone with an internet connection. While USDA may intend for the database to facilitate monitoring of foreign investment, the practical effect would be to arm hostile actors – foreign and domestic – with targeting information for

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[13] See *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159–60 (2000).

[14] *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

[15] 603 U.S. at 406.

[16] We note, however, that certain right-of-way agreements may prohibit vegetation that could restrict visibility or damage pipeline equipment.

sabotage, terrorism, and other attacks on the U.S. energy grid. This threat is not hypothetical. The following list is just a brief sample of numerous incidents:

- A 2021 Department of Justice press release detailed the conviction of an activist who used an oxyacetylene torch to damage the Dakota Access Pipeline in South Dakota in multiple locations.[17]

- In December 2022, unknown suspects fired multiple gunshots at two electrical substations in Moore County, North Carolina, causing widespread power outages affecting 45,000 customers.[18]

- In February 2023, a Texas man was sentenced to five years in prison under domestic terrorism charges for attempting to damage or destroy a portion of the Permian Highway Pipeline using an improvised explosive device.[19]

- In September 2025, a man pled guilty to attempting to use a weapon of mass destruction and attempting to destroy an energy facility near Nashville, Tennessee.[20]

- In May 2026, a Tennessee man was sentenced for attempting to destroy an interstate gas pipeline facility, causing an immediate, high-pressure emergency release of large quantities of gas which caused the ground to shake.[21]

These incidents underscore the real-world danger of consolidating and publicizing detailed location data for critical infrastructure in an easily accessible format.

A rule that manufactures the very threat it claims to guard against cannot satisfy the APA rationality requirements. The Supreme Court has long demanded a "rational connection between the facts found and the choice made."[22] Consolidating precise pipeline coordinates in a publicly accessible database – at a time when physical attacks on energy infrastructure are escalating – does

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[17] Press Release, U.S. Department of Justice, S.D. of Ia., *Des Moines Woman Sentenced to Eight Years in Prison for Conspiracy to Damage the Dakota Access Pipeline* (June 30, 2021), at https://www.justice.gov/usao-sdia/pr/des-moines-woman-sentenced-eight-years-prison-conspiracy-damage-dakota-access-pipeline.

[18] FEDERAL BUREAU OF INVESTIGATION, *Most Wanted – Shooting of Electrical Substations* (Dec. 3, 2022), at https://www.fbi.gov/wanted/seeking-info/shooting-of-electrical-substations.

[19] Press Release, U.S. Department of Justice, U.S. Att'y's Off., W.D. of Tex., *Attempted Pipeline Bomber Sentenced to Five Years in Federal Prison* (Feb. 2, 2023), at www.justice.gov/usao-wdtx/pr/attempted-pipeline-bomber-sentenced-five-years-federal-prison.

[20] Press Release, U.S. Dep't of Justice, Off. of Pub. Affairs, *Man Pleads Guilty to Attempting to Use a Weapon of Mass Destruction and Attempting to Destroy an Energy Facility in Nashville* (Sept. 9, 2025), https://www.justice.gov/opa/pr/man-pleads-guilty-attempting-use-weapon-mass-destruction-and-attempting-destroy-energy [https://perma.cc/[ARCHIVE-ID]].

[21] Press Release, U.S. Dep't of Justice, U.S. Att'y's Off., E.D. Tenn., *Maryville Man Sentenced to Prison for Attempting to Destroy an Interstate Gas Pipeline Facility* (May 29, 2026), https://www.justice.gov/usao-edtn/pr/maryville-man-sentenced-prison-attempting-destroy-interstate-gas-pipeline-facility [https://perma.cc/[ARCHIVE-ID]].

[22] *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962).

the opposite: it arms the adversaries USDA professes to monitor with the targeting data they currently lack. That outcome "runs counter to the evidence before the agency" and independently renders this aspect of the Proposed Rule arbitrary and capricious.[23]

API, INGAA and GPA Midstream members work closely with FERC, TSA, PHMSA and other regulators to protect pipeline security. The Proposed Rule's inclusion of NAICS code 486 would draw resources from this critical effort, indeed undermine it through disclosing pipeline infrastructure in detail, with no national security benefit. The TSA, the lead federal agency for pipeline security, publishes security guidelines the pipeline operators must follow. **Among other security protocols, TSA guidance urges pipeline operators to notify the TSA Operations Center immediately if the following occurs: "Theft or loss of sensitive secure information (detailed pipeline maps, security plans, etc.)."**[24] Complying with the proposal to disclose pipeline infrastructure in publicly available maps would contradict TSA guidance.

Another federal agency, PHMSA, requires pipeline operators to submit geospatial data via the National Pipeline Mapping System ("NPMS").[25] PHMSA maintains maps of all pipelines under its jurisdiction through the NPMS. The NPMS dataset has a public-facing view that does not disclose the precise location of pipelines and a distinct view for government officials that require more sensitive information for emergency response. Should USDA require this sensitive national infrastructure location data, it may simply ask the federal agency charged with its collection and administration.

NPMS pipeline location data is available online today; however, the general public may view it only at large scale, zoomed no closer than at 1:20,000,000.[26] That scale restriction means that a four foot-diameter pipeline crossing a 20-acre tract would be invisible. So would the entire 20-acre tract. The view permissible to unvetted users (i.e., all USDA AFIDA website users and unvetted USDA personnel) goes no further than a generalized regional context to protect this sensitive secure information as a matter of national security. To see any more detail, a government official or a pipeline operator *may apply for* access to more detailed pipeline maps.[27] The public, under the Freedom of Information Act ("FOIA"), cannot access this material; FOIA Exemption 4 (for confidential commercial information submitted by pipeline operators) and the confidentiality provision at 49 U.S.C. § 60117(e) protect it from disclosure.

Additionally, there exists a long history of FERC-regulated companies, including natural gas pipeline companies, filing their facilities information, operating details, and any other data points that could be used to locate and potentially harm pipeline assets and operations as "CUI/CEII/PRIV" representing their importance as sensitive information containing Critical

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[23] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

[24] U.S. TRANSPORTATION SECURITY ADMINISTRATION, *Pipeline Security* Guidelines (rev'd Apr. 2021), Appx. B TSA Notification Criteria, at https://www.tsa.gov/sites/default/files/pipeline_security_guidelines.pdf.

[25] 49 C.F.R. §§ 195.61 (requiring hazardous liquid pipeline operators to annually submit and maintain accurate pipeline mapping and operator contact information).

[26] U.S. PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION, *National Pipeline Mapping System – Learn about the Public Map Viewer*, at https://www.npms.phmsa.dot.gov/AboutPublicViewer.aspx.

[27] *Id.* (emphasis added).

Energy Infrastructure Information.[28] This Proposed Rule threatens to unwind a large amount of those efforts to protect and secure that information and, as stated elsewhere, causing the opposite effect of stated intent to protect national security.

Together, these federal agencies charged with managing the security and safety of pipeline systems from a host of foreign and domestic bad actors restrict access to detailed oil and gas pipeline maps. This fact alone should be dispositive. USDA cannot arrogate to itself other federal agencies' jurisdiction over the disclosure of this information in AFIDA reports any more than PHMSA permits unvetted internet users to see more than vague, regional approximations of pipeline locations. The federal government has long recognized this vulnerability, which is why detailed pipeline location data is treated as sensitive security information under longstanding regulatory frameworks.[29] USDA's proposal to publish such data in a public database runs directly counter to these established security protocols. USDA has shown no regulatory gap these agencies cannot fill.

At a minimum, USDA should coordinate with TSA, PHMSA, CISA, DOE, and other federal agencies responsible for critical infrastructure protection before requiring submission, retention, or public dissemination of geospatial information associated with pipeline assets. Any final rule should expressly exempt detailed critical infrastructure mapping information from public disclosure. To the extent USDA requires this information, it should rely on existing federal infrastructure data sources and comply with their restrictions on the disclosure of information regarding critical national infrastructure.

The Proposed Rule is particularly irrational because it would require public disclosure of information that other federal agencies deliberately protect from public dissemination. Congress has entrusted TSA, PHMSA, and other agencies with safeguarding critical infrastructure information. USDA has provided no explanation for why an agency with no pipeline security responsibilities should disclose, let alone collect and put at risk of improper disclosure, information that the agencies charged with pipeline security restrict. An agency acts arbitrarily when it fails to reconcile its regulatory approach with contrary federal policies addressing the same subject matter.

III. THE PROPOSED RULE IMPOSES DISPROPORTIONATE BURDENS ON THE PETROLEUM INDUSTRY

Given the Proposed Rule's inclusion of NAICS code 486, expansion of the "foreign person" definition, and elimination of the easement and right-of-way exemption, USDA should expect its current inventory of active, reported land agreements to overwhelm USDA staff at enormous cost with no appreciable benefit. The most current, publicly available underlying AFIDA data report, as of December 31, 2024, is a spreadsheet containing 49,548 rows of data from the same number of FSA 153 reports, reports that actually pertain to agricultural use.

Just one of our members has for its liquids and gas *transportation* systems – excluding its gas *distribution* systems – roughly 12,500 miles of pipeline that crosses more than 60,000 tracts

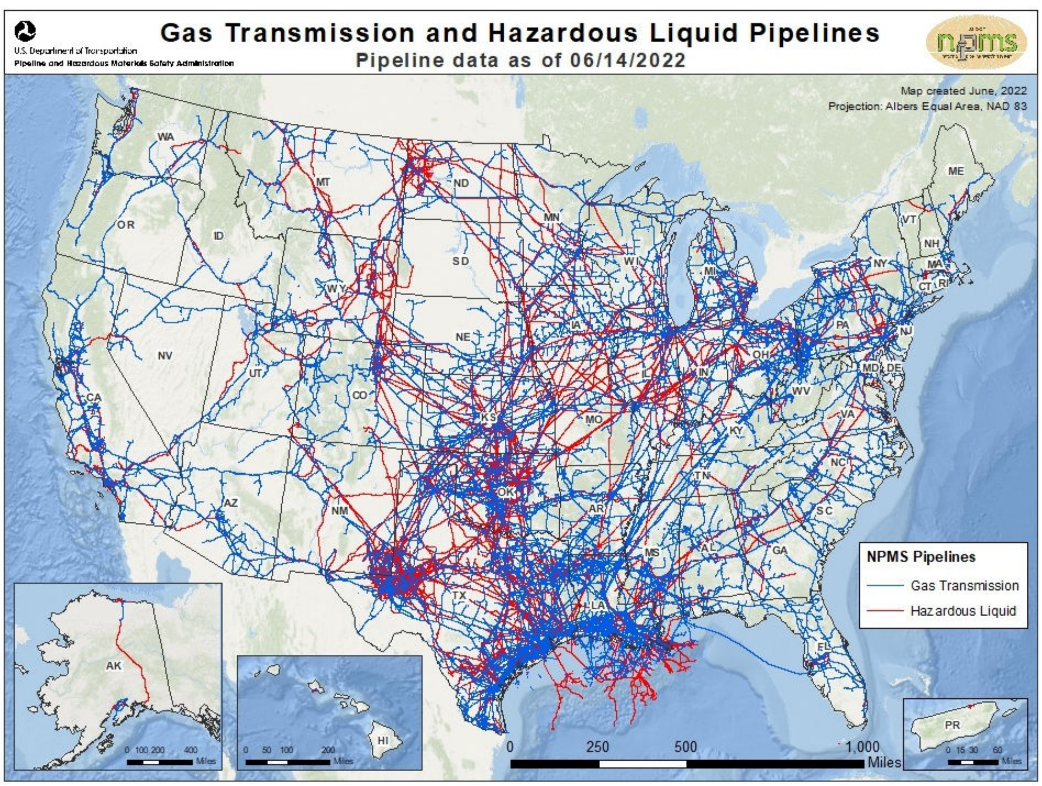
[28] 18 C.F.R. § 388.113. *See also* 49 C.F.R. Part 1520.

[29] 49 U.S.C. §§ 60117, 60132(d)(1), (f).

of private land under rights-of-way negotiated with the landowners. That is just one member. The cost of filing just this one pipeline operator's rights-of-way agreements – exceeding what all other filers have incurred over decades – would be astronomical, with an ongoing duty to maintain under threat of punitive fines. Multiply that by a significant number of other pipeline operators that would need to disclose many multiples of the life-of-AFIDA filings inventory. Recent press reports disclose USDA staff buyouts and relocations to regional offices over the next year.[30] Both developments appear likely to hamper USDA's institutional capability to analyze grossly expanded coverage under a new disclosure regime.

A. Scope of Impact

API, INGAA and GPA Midstream's members own and operate several hundred thousand miles of crude oil, refined product, and natural gas pipelines that serve communities across the United States. These pipelines' placement and maintenance overwhelmingly require easements and rights-of-way across privately owned land, including agricultural land. Subjecting this industrial use to new "agricultural" disclosure solely because it crosses over or under agricultural land would impose new costs without appreciable benefit. The sheer volume of potentially reportable oil and gas pipeline interests is staggering. A single pipeline system may cross tens of thousands of individual tracts of agricultural land across multiple states, as shown below.



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30 POLITICOPRO, Rachel Shin, *The Fate of NRCS* (July 29, 2026).

31 PHMSA NPMS, Gas Transmission and Hazardous Liquid Pipelines (data as of 6/14/2022), at https://pipeline101.org/wp-content/uploads/2023/09/NPMS_allPipelines_wPR_BM.jpg

Requiring AFIDA disclosure reports for each such interest, complete with geospatial mapping, acreage reporting, landowners' specific agricultural or other uses of their land, and ownership diagrams would impose extraordinary compliance costs on an industry that does not control agricultural production. But American farmers rely on this industry for their predominant agricultural input – fuel. They cannot plant, fertilize, harvest, or transport product to market without it. Increasing these compliance burdens and associated costs will impact agricultural production and the prices everyday Americans pay for food, driving, and heating their homes.

Additionally, this Administration has made it clear that ensuring domestic energy security and dominance is a priority.[32] However, the actions in this Proposed Rule would serve to substantially weaken domestic oil and natural gas pipeline infrastructure and limit the resources available to safely, securely, and affordably transport and deliver oil and natural gas to American consumers. USDA failed to explain how this Proposed Rule would advance those priorities to unleash American energy and ensure energy dominance instead of limiting oil and gas pipeline companies' ability to provide reliable, secure, and affordable energy.

B. Special Considerations for Public Companies

The Proposed Rule provides insufficient guidance regarding how publicly traded companies are expected to determine whether they meet the proposed "foreign person" thresholds. Many API, INGAA and GPA Midstream members are publicly traded entities with shares held through public markets, nominee accounts, custodians, pension funds, mutual funds, exchange-traded funds, and other indirect ownership structures. The Proposed Rule expands reporting obligations through revised definitions of significant interest, substantial control, beneficial ownership, and aggregate ownership by country, yet does not explain how these concepts should be applied to publicly traded companies beyond eliminating the current regulation's public company exemptions in 7 C.F.R. § 781.3(h).

USDA does not explain how publicly traded companies should determine how indirect interests should be analyzed through investment intermediaries, or whether shareholders beyond those ordinarily disclosed through securities law reporting mechanisms must be identified. Absent such guidance, publicly traded companies cannot reasonably determine whether they are subject to AFIDA reporting obligations or accurately assess the scope of required disclosures. Shares traded by foreign persons outside the public company's knowledge or control and equity positions change frequently. Accepting for the moment that a publicly traded company would have sufficient visibility in this regard, trading on the open market could cause the company to file thousands of reports as a "foreign person" and then update them when its cap table changes. That would strain our members' resources and provide zero benefit to the public.

Before applying these requirements to publicly traded companies, USDA should provide clear guidance regarding ownership attribution methodologies, treatment of indirect ownership interests, and the extent of shareholder information expected to be reported.

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[32] *E.g.,* Executive Order 14154, *Unleashing American Energy* (Jan. 20, 2025); Executive Order 14260, *Protecting American Energy From State Overreach* (April 8, 2025).

Eliminating the current regulation's public company exemptions from the "foreign person" definition, as proposed,[33] would further strain these public companies' resources to make and maintain this public disclosure.

The unintended result would be to put public companies at risk of AFIDA penalties. Anyone may buy and sell public companies' stock. Millions of shares trade every day and a publicly traded company's foreign ownership may fluctuate above or below 10 percent frequently with no material change in the control of the company. We urge USDA to provide a specific exemption from the "foreign person" definition for any public company whose shares, or whose ultimate parent company's shares, are traded on the NYSE or NASDAQ.

C. Compliance Costs

While we acknowledge that USDA may not have intended to capture all land touching a pipeline, the language presented in the Proposed Rule's new 7 C.F.R. § 5100(b) is overly broad. It does not limit NAICS code 486 pipeline transportation activities to those connected to otherwise "agricultural land," nor does it establish a minimum area of such land use.[34]:

> (b) *Agricultural land.* Agricultural land means land in the United States currently used for, or last used within the past 5 years, for farming, ranching, forestry, or timber production; and land currently in conservation in the United States 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 North American Industry Classification System Codes… 486 (Pipeline Transportation)…[35]

This formulation is untethered to land used for farming, ranching, forestry, or timber production. It defines all pipeline transportation as "farming, ranching, forestry or timber production" when it clearly is none of those agricultural activities. The result, if this omission is

[33] Proposed Rule at 38324 (omitting current provisions in 7 C.F.R. § 781.3(h)).

[34] The proposed § 5100(c) definition of "any interest" would eliminate the current exemption for tracts of less than 10 acres. The inclusion of NAICS code 486 burdens all pipeline operation, not just oil and gas. According to the NAICS Association, code 486990 covers "All Other Pipeline Transportation" beyond crude oil, natural gas, refined petroleum products and covering 178 U.S. businesses beyond oil (889 businesses), natural gas (1,721 businesses), and refined petroleum products (438 businesses). NAICS Association, NAICS Code Description 486 – Pipeline Transportation, at https://www.naics.com/naics-code-description/?code=486.

[35] Proposed 7 C.F.R. § 5100(b) (incorporating the enumerated NAICS codes within the meaning of "farming, ranching, forestry, or timber production), 91 Fed. Reg. 38329-30.

intentional, will be nonsensical. It would require disclosing every inch of land a pipeline touches, even under city roads, to its terminal at a municipal power station.

Under proposed 7 C.F.R. § 5100.3(e), each report must include, among other things: legal descriptions and current acreage, geospatial maps with property boundary delineations, purchase price or consideration information, intended use, and ownership diagrams. For API, INGAA and GPA Midstream member companies holding easements across many hundreds of thousands of parcels, the administrative burden and cost of compiling and maintaining this information would be enormous and strain their resources. Many of our members hold legacy easements that predate modern geospatial mapping systems,[36] meaning compliance would require costly resurveying and digitization of decades-old records if USDA indeed proposes to cover all existing agreements retroactively.

Moreover, proposed 7 C.F.R. § 5100.4(a)(2) requires foreign persons to "maintain a submitted report with accurate information," meaning any change in the underlying land, even a farmer's decision to convert a portion of cropland to pasture, could trigger a reporting obligation for the pipeline operator despite such use change occurring without its knowledge or control. Expanding the definition of "agricultural land" to include industrial uses further magnifies the compliance risk inherent in requiring filers to maintain and update agricultural and other uses filed in prior reports.[37] The Proposed Rule's ongoing maintenance obligation is wholly impractical for industrial infrastructure companies whose only connection to the agricultural land is a metal pipe.

USDA must recognize that leases and easements convey completely different property rights. Under a lease, the lessee may take possession of the land and exclude others. But under an easement, the parties establish very clear and limited rights for the grantee. Whether a pipeline operator has the right to open gates and cross over the property, or to bury a pipeline below it, the landowner (grantor) retains control over the land's use. A pipeline right-of-way does not give a pipeline operator control over agricultural production, crop decisions, grazing, timber, or other farming activity. Operators' uses are limited to those needed to install, operate, inspect, maintain, and access the pipeline. That is the core disconnect; the Proposed Rule appears to treat a limited infrastructure easement as if it were control over agricultural land, which it plainly is not.

Purchasing or leasing land can impact production, but an easement or right-of-way does not displace landowners or their agricultural production. For this reason, redefining "any interest" to eliminate the non-agricultural easement and right-of-way exemption both exceeds the Act's mission to monitor economic impacts on U.S. agricultural production and imposes unjustifiable costs on an industry that complements U.S. agricultural production through payments to American farmers. As the Supreme Court held in *Loper Bright* and as discussed above, agencies must act within the specific authority granted by Congress.

The Proposed Rule demands perfection in the name of national security and promises steep penalties for failing to meet that standard. Raising operating costs will increase wholesale fuel

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[36] We note that some members with geospatial data may need to have it converted to the format specified by the Proposed Rule, increasing compliance costs and time spent to submit reports.

[37] We note here that the FSA-created online reporting platform, https://afida.landmark.usda.gov/, provides no functionality to associate new reports with those filed previously.

prices and those costs could be transferred to consumers. That means American farmers, drivers, and every U.S. business reliant on transportation could pay this rule's additional costs. To the extent the Proposed Rule's purpose is to provide meaningful information on agricultural production or national security threats, it fails both at the expense of the American consumer.

D. Penalty Exposure

The Proposed Rule's penalty regime abruptly increases the consequences of noncompliance. Under proposed 7 C.F.R. § 5100.4(b), late-filed reports trigger a new, initial $250 civil penalty followed by recurring penalties of 1.5 percent (or 2.5 percent for foreign adversaries) of the fair market value of the foreign person's interest every seven days, up to the Act's 25 percent maximum. USDA's change of direction regarding enforcement philosophy in the Proposed Rule is even more troubling. This abrupt policy change, and its elimination of the current regulations' "downward adjustments," contradicts decades of USDA penalty decisions.

The Act's penalty language further constrains USDA. Section 3502(b) measures penalties against "the fair market value … of the interest in agricultural land with respect to which such violation occurred."[38] Congress wrote "interest," not "land." In property law, these are materially different concepts: a pipeline easement – a non-possessory right to occupy a narrow corridor for a defined industrial purpose – is valued by the diminution it imposes on the servient estate, not by the fee simple value of the parcel it traverses. Any proposal to assess penalties against the full land value would read the word "interest" out of the statute. That would violate the cardinal rule that every statutory term must be given operative effect.[39] And because Section 3502(b) imposes civil penalties, any residual ambiguity must be construed narrowly in favor of the regulated party.[40]

Equally problematic is USDA's elimination of all downward adjustment authority. The Act caps penalties at "25 per centum" of the relevant interest's fair market value – language that, by its terms, contemplates a range from zero to twenty-five percent within which the agency exercises informed discretion.[41] Stripping away every mechanism for calibrating penalties within that range and accelerating weekly penalty accrual by 15 to 25 times the current accrual rate of 0.1 percent collapses the statutory ceiling into a *de facto* mandatory assessment, an outcome Congress plainly did not intend.[42] The current regulatory framework has provided for downward adjustments since USDA's original 1984 rulemaking,[43] and the agency has consistently exercised that

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[38] 7 U.S.C. § 3502(b).

[39] See *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001).

[40] *See Crandon v. United States*, 494 U.S. 152, 168 (1990).

[41] 7 U.S.C. § 3502(b).

[42] *See Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) (agencies must supply "adequate reasons" and demonstrate "a rational connection between the facts found and the choice made").

[43] 49 Fed. Reg. 35,074 (Sept. 6, 1984).

discretion for over four decades.[44] An abrupt reversal of such an entrenched practice demands, at minimum, a thorough explanation of what has changed.[45] USDA has supplied none.

Given the high value of pipeline infrastructure and associated easements, even inadvertent noncompliance could expose pipeline companies to ruinous penalties that are grossly disproportionate to any conceivable harm or safety risk. Take the example of a pipeline operator with foreign investment and 1,000 miles of pipeline. That may, conservatively, involve 10,000 easements or rights-of-way. The new $250 administrative penalties alone would reach $2,500,000 before the 1.5 percent per week penalties accrue, reaching truly astronomical figures that would defund necessary maintenance and could bankrupt the company. Imposing these ruinous penalties does not incentivize compliance, it would destroy critical national infrastructure and dis-incentivize direct foreign investment, undermining two of the Administration's top priorities.

USDA assesses penalties under the Act on the value of the "interest in agricultural land." How one values such an interest is clear only when it is a fee in real property, where the filer owns an asset with an objectively ascertainable market value. When that interest is anything else, whether lease or easement for example, the Proposed Rule posits no objective valuation criterion that can survive judicial scrutiny. That uncertainty magnifies penalty risk because the penalty amount, untethered to objective valuation criteria, is unknown and unknowable before USDA issues a penalty notice. Such penalty can only be arbitrary and capricious when the agency is free to establish some ersatz market value in the absence of objective standards.

We urge USDA to adopt a reasonable-diligence standard and safe harbor for filers making good-faith efforts to identify, reconstruct, and report information that may not be readily available. Many legacy agreements predate modern GIS systems, digital property records, and current ownership databases. Filers should not be subject to penalties where required information cannot reasonably be obtained through diligent efforts. The 90-day deadline is woefully inadequate for pipeline operators, given the expanse of their holdings. Just one pipeline operator, discussed above, would more than double the sum total of all reports filed under AFIDA between 1978 and 2024 just to disclose its pre-final rule rights-of-way.

The Proposed Rule appears to qualify as a "major rule" under the Congressional Review Act, 5 U.S.C. § 804(2) (the "CRA"), which covers any rule likely to result in "an annual effect on the economy of $100,000,000 or more" or "significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises." Given the Proposed Rule's potential impact on billions of dollars in pipeline infrastructure investment and the compliance costs it would impose across an industry operating over 3 million miles of pipeline, a strong argument exists that this rule qualifies as a major rule subject to CRA requirements, including a 60-day delayed effective date and submission to Congress.

[44] The full 1988-2025 AFIDA penalty is available for detailed review. See USDA, Foreign Holdings of U.S. Agricultural Land through December 31, 2024 ed., Report 12, at https://www.fsa.usda.gov/documents/foreign-holdings-us-agricultural-land.

[45] *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

Additionally, under the Regulatory Flexibility Act, USDA must prepare an Initial Regulatory Flexibility Analysis assessing the impact of the Proposed Rule on small entities unless it certifies the rule will not have a significant economic impact on a substantial number of small entities.[46] USDA determined incorrectly that the Proposed Rule "will not have a significant impact on a substantial number of small entities,"[47] failing to account for the Proposed Rule's impact on large numbers of land owners, pipeline operators, and the associated businesses and communities that rely on them.

IV. PIPELINE EASEMENTS AND RIGHTS-OF-WAY PRESENT NO MEANINGFUL AGRICULTURAL SECURITY RISK

USDA's stated rationale for including NAICS code 486 – that pipelines cross farmland – articulates no national security threat to agriculture. Pipeline easements are narrowly defined property interests that grant the right to install, maintain, and operate a pipeline, often below the surface. The farmer or rancher remains fully in control of his or her agricultural production. Pipeline operators do not direct, control, or influence agricultural production on the land.

If USDA's concern is that a foreign person could use a pipeline easement to gain physical access to agricultural land, this concern is better addressed through existing federal authorities. The Committee on Foreign Investment in the United States ("CFIUS") has the authority, jurisdiction and expertise to perform this national security function. The Treasury Department, in particular, has extensive reach and jurisdiction here.[48] Section 721 of the Defense Production Act authorizes the President to block a transaction that threatens national security.[49] This regulation includes "interstate oil pipelines" as "covered investment critical infrastructure."[50] USDA has no such authority, jurisdiction, or expertise.

V. THE INCLUSION OF NAICS CODE 486 WOULD CREATE LEGAL UNCERTAINTY REGARDING THE MINERAL RIGHTS EXEMPTION

Proposed 7 C.F.R. § 5100.2(c)(5) retains an exemption from the term, "any interest" for interests "solely in mineral rights." However, pipeline operations are inextricably linked to mineral extraction and transportation. Including NAICS code 486 in the definition of "agricultural land" while retaining the mineral rights exemption creates an ambiguity: if a foreign person holds mineral rights and an associated pipeline easement to transport extracted resources, is the pipeline interest exempt as part of an interest in mineral rights, or independently reportable because it falls under NAICS code 486? This ambiguity will generate significant compliance, uncertainty and litigation risk.

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[46] 5 U.S.C. § 605(b).

[47] Proposed Rule at 38328.

[48] U.S. Dept of the Treasury, Office of Investment Security, *Provisions Pertaining to Certain Investments in the United States by Foreign Persons*, 85 Fed. Reg. 3124 (Jan. 17, 2020), codified at 31 C.F.R. § 800.

[49] 31 C.F.R. § 800.101(a).

[50] 31 C.F.R. § 800.232, Appx A Col.1.

VI. THE INCLUSION WOULD UNDERMINE U.S. ENERGY SECURITY

At a time when the United States is seeking to strengthen its energy independence and expand domestic energy infrastructure, imposing new foreign investment disclosure burdens on pipeline transportation would be counterproductive. API, INGAA and GPA Midstream's members are at the forefront of building and maintaining the pipeline infrastructure that delivers affordable, reliable energy to American consumers, businesses, and military installations. Foreign investment is critical to financing this capital-intensive infrastructure and a leading priority of the Trump Administration.[51] Subjecting this investment to new and extensive AFIDA reporting obligations, with their attendant penalties and public disclosure through the internet database, will chill foreign investment in U.S. energy infrastructure and increase the cost of capital for pipeline projects with no benefit to national security.

Pipeline companies and their foreign investors have committed billions of dollars in infrastructure capital on the reasonable expectation that non-agricultural easements and rights-of-way would remain outside AFIDA's scope – an expectation grounded in an exemption that has been in place for more than forty years. The Supreme Court has recognized that when an agency abandons a settled regulatory framework, it cannot ignore the "serious reliance interests" that accrued under the prior policy.[52] USDA's Proposed Rule contains no acknowledgment of these reliance interests, let alone the "detailed justification" that their disruption requires.[53] Nor has USDA assessed whether the prospect of newly imposed AFIDA burdens and penalties will deter the very foreign capital that finances pipeline construction – a failure that, standing alone, constitutes a refusal to grapple with an "important aspect of the problem" the agency is obligated to consider.[54]

The inclusion of NAICS code 486 is particularly incongruous given that pipeline infrastructure is already subject to extensive federal oversight by the FERC, PHMSA, TSA, and, where national security is implicated, CFIUS itself. Adding duplicative AFIDA reporting serves no incremental security purpose while imposing significant costs.

The pipeline industry's contribution to national security through reliable energy supply should not be undermined by an overbroad regulatory expansion that treats pipeline infrastructure as though it were a farm.

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[51] *See, e.g.,* Presidential Action, The White House, *America First Investment Policy* (Feb. 21, 2025), at https://www.whitehouse.gov/presidential-actions/2025/02/america-first-investment-policy/, reading in pertinent part:

> Section 1. Principles and Objectives. America's investment policy is critical to our national and economic security. Welcoming foreign investment and strengthening the United States' world-leading private and public capital markets will be a key part of America's Golden Age. The United States has the world's most attractive assets, in technology and across our economy, and we will make it easier for our overseas allies to support United States jobs, United States innovators, and United States economic growth with their capital.

[52] *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020).

[53] *Id.*

[54] *State Farm*, 463 U.S. at 43.

VII. USDA SHOULD RETAIN CURRENT EXEMPTION OF PIPELINE EASEMENTS AND RIGHTS-OF-WAY

Under current regulations in 7 C.F.R. § 781.2, the term "any interest" exempts "surface and subsurface easements and rights of way used for purposes unrelated to agriculture." This exemption properly recognizes that not every property interest touching agricultural land constitutes an agricultural investment. The Proposed Rule eliminates this exemption, which represents a dramatic expansion of AFIDA's reach that is unjustified by any evidence that foreign persons have used pipeline easements or rights-of-way to circumvent disclosure or threaten agricultural security.

We strongly urge USDA to retain the existing exemption for easements and rights-of-way used for non-agricultural purposes, or, at minimum, to create a specific exemption for pipeline easements and rights-of-way under NAICS code 486. Other federal agencies better suited to regulate oil and gas pipeline operations have extensive data that USDA may access.

VIII. RECOMMENDATIONS

For the foregoing reasons, we respectfully request that USDA:

1. **Remove NAICS code 486** (Pipeline Transportation) from the proposed definition of "agricultural land" in 7 C.F.R. § 5100.2(b), as pipeline transportation bears no functional relationship to agricultural production and its inclusion exceeds AFIDA's statutory scope.

2. **Retain the current exemption for surface and subsurface easements and rights-of-way** used for purposes unrelated to agriculture, which properly limits AFIDA reporting to interests that affect agricultural production.

3. **Conduct a Regulatory Impact Analysis** assessing the compliance costs that the inclusion of pipeline transportation would impose on the petroleum industry, including the number of affected entities and estimated reporting burden, before finalizing any rule that includes NAICS code 486.

4. **Clarify application to publicly traded companies**, including the methodology for determining foreign-person status, aggregate ownership by country, treatment of indirect ownership interests, and the extent of beneficial ownership reporting required for entities whose securities trade U.S. security exchanges (e.g., NYSE, NASDAQ, etc.).

5. **Exempt U.S. ally and partner nations-related investment** from the "significant interest or substantial control" definition.

6. **In the alternative, if USDA retains NAICS code 486:**

    a. **Provide a reasonable-diligence safe harbor and extended implementation period** for legacy easements, rights-of-way, and historical land records where required information is not reasonably available despite good-faith efforts to obtain it.

b. **Create an explicit exemption** for pipeline easements and rights-of-way that do not confer operational control over agricultural activities on the underlying land.

c. **Exempt pipeline geospatial data** from the publicly accessible internet database, data that USDA may obtain upon request from PHMSA for national security purposes, to prevent the creation of a publicly available targeting guide for attacks on critical energy infrastructure.

d. **Exempt publicly traded companies** from the "foreign person" definition when their, or their parent companies', shares are traded on the NYSE or NASDAQ.

e. **Clarify the interaction between NAICS code 486 and the mineral rights exemption** to eliminate compliance uncertainty for petroleum companies holding both mineral interests and pipeline infrastructure.

IX. CONCLUSION

The proposed inclusion of NAICS Code 486 would fundamentally transform AFIDA from a statute focused on agricultural production into a reporting regime that captures transportation infrastructure merely because it crosses agricultural land. Congress authorized USDA to monitor foreign investment affecting agricultural production and agricultural resources, not non-agricultural easements that neither confer control over agricultural operations nor influence agricultural output. Because pipeline easements do not constitute the type of agricultural interest Congress enacted AFIDA to monitor, because USDA has identified no evidence that they threaten agricultural production or agricultural security, and because existing federal agencies already regulate the security and operation of pipeline infrastructure, USDA should remove NAICS Code 486 from the final rule and retain the longstanding exemption for non-agricultural easements and rights-of-way.

We appreciate the opportunity to comment and welcome further dialogue with USDA on this important issue.

Respectfully submitted,

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