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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

RELEASED

B-196874

DECEMBER 18, 1979

The Honorable Charles E. Grassley
House of Representatives

Dear Mr. Grassley:

Subject: Implementation of the Agricultural Foreign Investment Disclosure Act of 1978 (CED-80-38)

In a letter dated August 2, 1979, you asked us to determine how many foreign investors identified in our July 30, 1979, report 1/ had registered with the Department of Agriculture as required by the Agricultural Foreign Investment Disclosure Act of 1978 (Public Law 95-460). You also asked us to determine the adequacy of Agriculture's policies and procedures for implementing and administering the act.

We briefed you and your staff on our review results on November 7, 1979. A copy of our briefing outline is enclosed.

Essentially, all but 47 (21 percent) of the 224 transactions identified in our report had been registered or otherwise properly accounted for as of October 22, 1979. These 47 transactions represented 8,669 acres (3 percent) of the total acreage (248,146) we identified in our report. All but 1 of the 47 unregistered transactions were in three of the four States (California, Georgia, Kansas, and Washington) we selected for further checking!

We contacted or wrote to foreign investors or agents covering all 47 unregistered transactions as well as some that were registered. Some foreign investors had registered between the time we began our review and the time we contacted them, or they had already filed with the county office but the forms had not been forwarded to Washington, D.C. Explanations received on the unregistered 47 transactions are listed on page 7 of the enclosure.

We noted a number of problems and potential problems with the act's implementation, as discussed in the enclosure. The more significant problems and some other observations on the program are summarized below.

1/"Foreign Investment in U.S. Agricultural Land--How It Shapes Up," (CED-79-114), July 30, 1979.

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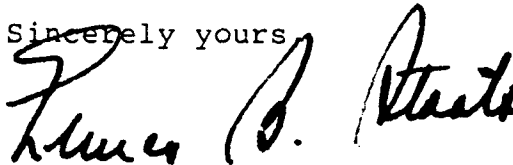
- In the case of at least half of the 47 unregistered transactions, the owners or agents said they were unaware of the act and its requirements.
- The required Department of Agriculture report to the Congress analyzing the registration information is late and, because of the need for a cutoff date, will not include an analysis of all the information that has been received.
- It would be extremely difficult and costly, and perhaps not feasible, to determine to what extent foreign owners of U.S. agricultural land have registered.
- There is no systematic, cost-effective way of ensuring that the information on the registration forms is accurate.
- Certain program procedures and regulations are vague and may be hindering effective implementation of the act. This may be partly due to the fact that the act was passed in October 1978, which left only a short time for implementation. (The regulations and instructions had to be hurriedly assembled so that the program could be implemented in time to meet the act's requirements.) Agriculture plans to simplify and/or clarify the registration form and instructions.
- According to some Agriculture officials, the availability to the public of the investors' names and addresses may be a deterrent to filing. Under present law, Agriculture cannot keep such information confidential.
- This is a permanent program. Continuing publicity is essential to help ensure that foreign investors involved in transactions which require a form to be filed are kept aware of the act's requirements. Agriculture agrees and has initiated action to do this.
- Agriculture is preparing to start penalizing late filers. It may be possible to encourage more foreign investors to file, and thereby get a better overall picture of foreign investment in U.S. agricultural land, by allowing a formal grace period before assessing penalties. Agriculture stated that this would require a change in the law.

B-196874

We met with Agriculture officials to obtain their comments on the matters discussed above and in the enclosure. They generally agreed with our observations, and their comments have been incorporated where appropriate.

As arranged with your office, we will make this report available to other interested parties 2 days after issuance.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James O. Stute". The signature is written in a cursive style with a large initial "J" and "S".

Comptroller General
of the United States

Enclosure

GAO BRIEFING OUTLINE

Pursuant to a request dated August 2, 1979, from Congressman Charles E. Grassley, we agreed to

- determine how many of the foreign investors we identified in our recently completed study of foreign investment in U.S. agricultural land have reported their agricultural land purchases to the Department of Agriculture (USDA) as required under the Agricultural Foreign Investment Disclosure Act of 1978;
- select the States where nonregistration seemed the most prevalent and contact the foreign owners or their agents to ask why the landownership had not been registered as required;
- visit about two of the counties involved in each of the selected States to assess how well USDA has publicized the registration requirement and enlisted the help and cooperation of county officials and employees, realtors, local news media, and others for this purpose; and
- evaluate pertinent USDA regulations and operations for implementing the act.

A similar request was received September 13, 1979, from the Chairman, Senate Committee on Agriculture, Nutrition, and Forestry. The results of our review are summarized below.

USDA IMPLEMENTATION OF THE ACT

1. Responsibility for implementing the registration aspects of the act was assigned to USDA's Agricultural Stabilization and Conservation Service (ASCS). The Economics, Statistics, and Cooperatives Service (ESCS) was given responsibility for preparing the required periodic analyses and reports to the Congress. Officials of these agencies, with assistance from USDA's Office of General Counsel, developed the program regulations. ESCS and ASCS developed the registration form ASCS-153, and ASCS issued instructions to the ASCS State and county offices.

2. USDA's instructions to the field established a system in which a nonresident foreign owner of U.S. agricultural land (or the owner's agent) files a form ASCS-153 with the ASCS county office, where it is to be reviewed for completeness and accuracy. If the form is considered incomplete or inaccurate,

it is sent back to the person who filed it with an appropriate explanation. If considered complete and accurate, it is sent to ASCS headquarters in Washington, D.C.

3. In Washington, the form is reviewed again for completeness and accuracy. If incomplete or inaccurate, it is returned to the ASCS county office (through the ASCS State office) and from there back to the person who filed it. If the form is complete, a copy is put in a public file and a copy is sent to ESCS for analysis and inclusion in the information to be reported to the Congress.

4. The act requires all registrations filed with the ASCS county offices to be available for public inspection at USDA headquarters in Washington no later than 10 days after receipt in the county office.

5. USDA's instructions also require the ASCS county offices to try to identify foreign owners. Local ASCS personnel were required to review their farm records and send copies of the registration form to operators of farms suspected of being foreign owned. ASCS county offices also were to develop a list of businesses, agencies, and individuals within the counties having knowledge of landownership and/or land transactions and use these sources to help identify foreign investment in the county.

6. The actions taken by ASCS in the counties to publicize the act's requirements were generally similar in each county. They included

- having posters notifying foreigners of the act's requirements posted in local county offices--generally the court house and tax assessor's office,
- having pamphlets explaining the act and its requirements on hand at local ASCS offices,
- having articles placed in the local newspapers and monthly ASCS newsletters, and
- notifying local real estate people about the act's requirements.

7. There was also a good deal of publicity that was not initiated by USDA but was generated by newspapers, television, and radio. Stories about foreign investment in U.S. agricultural land were considered to be newsworthy by the media.

8. It was the general feeling of ASCS staff at the county level that, if people did not register, it was not

because they were unaware of the law and its requirements.

9. Generally, it seemed that the larger investors and real estate agents, whose business it is to know about these things, were aware of the law and its requirements. However, some of the foreign investors we contacted said that they did not know about the act and its registration requirements.

OVERALL STATISTICS

1. The approximate numbers of ASCS-153s received at USDA headquarters near the beginning and end of our review are shown below.

	<u>August 23, 1979</u>	<u>October 22, 1979</u>
Public file	3,500	5,300
Suspense file	<u>unknown</u>	<u>1,400</u>
Total	<u>unknown</u>	<u>6,700</u>

The public file consists of forms received in Washington, D.C.; reviewed; found to be complete; and put into organized files available for public inspection. The suspense file consists of forms received but found to be incomplete and returned (or scheduled to be returned) for completion by the persons who filed them.

2. The USDA report to the Congress is late. (Due date was November 2, 1979.) Plans are to have the report include an analysis of about 3,800 registration forms (generally, those in the public file as of August 24, 1979) and to include all the acreage data that can be compiled from both the public and the suspense files. Registration forms continue to arrive at USDA, but the rate has decreased.

FOLLOWUP ON GAO-IDENTIFIED FOREIGN INVESTORS

1. Our July 30, 1979, report (CED-79-114) showed:

Number of foreign purchases of agricultural land	224
Number of purchasers	173
Acres purchased	248,146
Number of States in our study	10
Number of counties reviewed	148

Number of counties in which
foreign investors were
identified

55

2. Of the 224 foreign purchases we identified, the following were included in USDA's public file of registrations as of August 23, 1979.

<u>State</u>	<u>Number</u>		<u>Acres</u>
	<u>Purchasers</u>	<u>Transactions</u>	
Arkansas	1	1	960
California	12	17	6,400
Georgia	9	11	17,160
Illinois	-	-	-
Iowa	3	4	727
Kansas	-	-	-
Montana	10	12	92,407
Pennsylvania	2	3	1,302
Texas	2	2	5,858
Washington	6	6	524
Total	<u>45</u>	<u>56</u>	<u>125,338</u>
Percentage registered	26	25	51
Percentage not registered	74	75	49

3. By October 22, 1979, the cutoff date for our last count, the number of registrations (for our 224 transactions) received by USDA headquarters had increased (from 56) to 145, as shown below.

<u>State</u>	<u>Number registered</u>			<u>Total number identified by GAO</u>		
	<u>Pur- chasers</u>	<u>Trans- actions</u>	<u>Acres</u>	<u>Pur- chasers</u>	<u>Trans- actions</u>	<u>Acres</u>
Arkansas	7	9	12,301	7	9	12,301
California	37	50	35,162	72	91	45,620
Georgia	22	33	39,921	24	40	43,265
Illinois	2	3	908	3	4	1,455
Iowa	3	4	727	3	4	727
Kansas	5	6	7,129	6	12	8,169
Montana	11	13	96,199	12	14	96,229
Pennsylvania	3	4	4,314	4	5	4,441
Texas	4	4	14,376	5	5	16,633
Washington	19	19	5,839	37	40	19,306
Total	<u>113</u>	<u>145</u>	<u>216,876</u>	<u>173</u>	<u>224</u>	<u>248,146</u>
Percentage	65	65	87	100	100	100

Of the 145 transactions registered with USDA, about one-third (55) were in the suspense file.

4. The difference (79) between the transactions we identified in our study (224) and those accounted for at USDA headquarters (145) consisted of the following:

	<u>Number of transactions</u>
On file in ASCS county offices but not yet received at USDA headquarters	20
Registration not required because the land was sold before February 1, 1979, or there was a change in land use or alien status	12
Not registered with USDA as of October 22, 1979	<u>47</u>
Total	<u><u>79</u></u>

5. The 47 transactions not registered as of October 22, 1979, were in the following States.

<u>State</u>	<u>Number</u>		<u>Acres</u>
	<u>Purchasers</u>	<u>Transactions</u>	
California	20	27	5,245
Georgia	2	5	1,599
Pennsylvania	1	1	127
Washington	<u>14</u>	<u>14</u>	<u>1,698</u>
Total	<u>37</u>	<u>47</u>	<u>8,669</u>
Percentage of total GAO identified in all 10 States	21	21	3

CONTACTS WITH INVESTORS OR AGENTS

1. Of the 168 transactions that were not registered in Washington headquarters as of August 23, 1979, 149 were in four States.

-California	74 of 91 purchases not registered
-Georgia	29 of 40 purchases not registered
-Kansas	all 12 purchases not registered
-Washington	34 of 40 purchases not registered

We selected these four States for field checks.

2. On the basis of our field contacts, the status of these 149 transactions as of October 22, 1979, was as follows.

	<u>All four States</u>	<u>Calif.</u>	<u>Ga.</u>	<u>Kans.</u>	<u>Wash.</u>
Received at head- quarters before start of fieldwork	15	4	6	2	3
Received at headquarters during fieldwork	55	29	16	4	6
Registered at head- quarters after our contact but before October 22, 1979	6	-	-	-	6
Registration filed at ASCS county office but not received at headquarters	<u>17</u>	<u>11</u>	<u>1</u>	<u>5</u>	<u>-</u>
Number of additional registrations	93	44	23	11	15
Not required to register because of change in ownership, land use, or alien status	10	3	1	1	5
Should have registered but no form ASCS-153 on file	<u>46</u>	<u>27</u>	<u>5</u>	<u>-</u>	<u>14</u>
Total	<u>149</u>	<u>74</u>	<u>29</u>	<u>12</u>	<u>34</u>

3. We interviewed or sent letters to foreign investors or agents regarding the 46 unregistered transactions noted above, one unregistered transaction in Pennsylvania, and some transactions that were registered.

4. Explanations received regarding the 47 unregistered transactions were as follows.

	<u>Number</u>	<u>Percent</u> (note a)
Unaware of act and its requirements	24	11
Investors or agents said that the land had been registered but we found no record at USDA	6	3
Believed they were not required to register	5	2
We were unable to interview so we sent letters	<u>12</u>	<u>5</u>
Total	<u>47</u>	<u>21</u>

a/ Percent of total of 224 GAO-identified transactions.

5. Most of the investors or agents we interviewed said they would register (or reregister in some cases) with USDA.

6. Six responses to our 12 letters were received. Three included a completed registration form which we turned over to USDA. Five of the six respondents said they previously were unaware of the act and its requirements.

PROBLEMS AND OBSERVATIONS

1. Foreign owners with relatively small tracts of land appear most likely to have been unaware of the act. As shown above, the owners or agents we interviewed in 24 of the 47 cases said that they were unaware of the act's requirements. The average acreage for these 24 unregistered transactions was less than 200 acres compared with an average of about 1,100 acres for all 224 transactions we had identified.

2. The act requires a continuing registration program. If USDA does not continue to publicize the act, new foreign investors may not be aware of its requirements and may not file when a reportable transaction takes place.

3. It will be very difficult and costly to identify a foreign investor who does not want to be identified and does not file voluntarily. USDA officials said that neither people nor funds are available for a large-scale search of this type. We have no suggestions at present as to a realistic approach for such a search.

4. There is no systematic, cost-effective way to ensure that the information on the form ASCS-153 is accurate. USDA is relying on the knowledge of its ASCS county office staffs to ensure that the information is correct. There are no plans for an indepth check of this information.

5. Large numbers of registration forms are being returned to the field after they have been sent to Washington headquarters from the ASCS county offices. This indicates inadequate screening of the forms at ASCS county offices, which could be caused by unclear program instructions from Washington. It also may indicate that the registration form needs to be simplified. USDA agreed and is planning to simplify and/or clarify the form and instructions.

6. Some of the information most commonly filled out incompletely or incorrectly on the registration form is item E3, describing the organization type and requesting the names of foreign persons who hold interests in this land; item 7, showing land value including purchase price and market value; and item 8, showing date of land acquisition or transfer.

7. In addition to the screening problem, some clarification is needed in the instructions about ASCS county office handling of the registration forms. The instructions require the county offices to send the forms to Washington in time to comply with the 10-day requirement in the law. Some counties receive the registration forms but keep them until they can be reviewed by the respective county committee. (We do not know how widespread this practice is.) These committees meet as infrequently as once a month or, in some cases, even less often (as was the case in one county we visited during the harvesting season). This practice could keep the forms from getting on public file within the prescribed 10-day period.

8. Program staffing at headquarters seemed to have been somewhat of a problem during certain periods of the initial phase of the program. As of October 22, 1979, ASCS headquarters had received about 7,000 registration forms which required review, return in some cases, and processing and distribution. This task was performed primarily by three people and created severe backlogs that ASCS was still trying to overcome at the time we completed our review. Although the public file had been well kept and forms were easily accessible, the suspense file and incoming forms were generally stacked in piles around the office in no particular order. We believe that most of the forms probably have been received now, and the available staff should be able to handle the program in the future.

9. Another problem is that the law does not require an investor to file when the land use changes from agricultural

to nonagricultural. Although instructions on the form ASCS-153 require reporting of all land use changes, that requirement is not included in the act or applicable Federal regulations. USDA stated that the act does not allow the issuance of regulations requiring reporting of land use changes from agricultural to nonagricultural.

10. USDA is considering changing the 5-percent ownership criterion for measuring significant ownership interest in a firm to a higher percentage.

11. USDA has interpreted the act as limiting the tracing of ownership to the third tier. Although USDA believes this to be adequate in most instances, it believes it may be necessary to search beyond the third tier in some instances.

12. Some USDA officials believe that public access to the registration forms may be a deterrent to registrations. Some foreign owners may not want their names and addresses made available to the public. However, under present law, USDA cannot keep such information confidential.

13. USDA could do more to publicize the act and its requirements through the assistance of national real estate associations.

14. The establishment of a formal grace period before penalties are imposed for nonregistration might encourage additional foreign owners to register. USDA stated that it lacks authority under present legislation to grant such a grace period.

15. USDA had only a short time to implement the act after it was passed in October 1978. The regulations and instructions had to be hurriedly assembled so that the program could be implemented in time to meet the act's requirements. This may be partly responsible for some of the procedural problems we noted.