

**For:** FSA Offices

**Section 1619 of the Food, Conservation, and Energy Act of 2008 (Section 1619) Cooperator MOU  
and Pending FOIA Lawsuit**

**Approved by:** Acting Associate Administrator for Operations and Management



**1 Overview**

**A Background**

FSA is currently in litigation over a FOIA request for geospatial crop and land use records. Section 1619 (7 U.S.C. 8791) expressly prohibits release of geospatial records, but does authorize limited release of this type of information to cooperators who provide technical or financial assistance with administering USDA’s programs.

Individual MOU’s are executed between FSA and persons or Federal, State, local, or tribal agencies who work in cooperation with USDA. Such MOU’s establish FSA’s agreement to share information and the cooperator’s commitment to provide technical or financial assistance in administering a particular USDA program, as well as responsibility for safeguarding the protected FSA-provided information.

**B Purpose**

This notice provides the following:

- contact information for inquiries about MOU’s and the FOIA lawsuit
- information about the prohibition on disclosure and authorized limited disclosure provisions within Section 1619
- general information about the current FOIA lawsuit
- instructions for handling proposed MOU’s that involve the sharing of information otherwise prohibited from disclosure by Section 1619 (Section 1619 Cooperator MOU).

<b>Disposal Date</b>	<b>Distribution</b>
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### 1 Overview (Continued)

#### C Contact

Direct questions about the handling of proposed Section 1619 Cooperator MOU's to Sue Ellen Sloca, FOIA Officer, Public Affairs Staff, by 1 of the following:

- e-mail at [sueellen.sloca@wdc.usda.gov](mailto:sueellen.sloca@wdc.usda.gov)
- telephone at 202-720-1598
- FAX at 202-690-2828.

Direct questions about the FOIA lawsuit to Robin Wieland, Appeals and Litigation Staff, by either of the following:

- e-mail at [robin.wieland@wdc.usda.gov](mailto:robin.wieland@wdc.usda.gov)
- telephone at 202-690-2814.

### 2 General Information About Section 1619

#### A Disclosure Prohibition (7 U.S.C. § 8791(b)(2)(A) and (B))

In effect since May 22, 2008, Section 1619 provides that the Secretary, any officer, or employee of USDA, or any contractor or cooperator of USDA shall **not** disclose:

- information provided by an agricultural producer or owner of agricultural land to participate in USDA programs that concerns the agricultural operation, farming or conservation practices, or the land itself
- geospatial information about agricultural land or operations that is provided by agricultural producers or landowners in order to participate in USDA programs.

#### B Authorized Limited Disclosures of Information (7 U.S.C. § 8791(b)(3)(A)(i))

Section 1619 allows FSA to release information subject to the disclosure prohibition to a person or Federal, State, local, or tribal agency that is working in cooperation with USDA or 1 of its agencies when that cooperator is providing technical or financial assistance with respect to the agricultural operation, agricultural land, or farming or conservation practices. However, disclosure of the information FSA releases to an approved cooperator is contingent on the cooperator not further releasing it, except in aggregated or statistical format.

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### 3 General Information About the FOIA Lawsuit

#### A *Central Platte Natural Resources District (CPNRD) v. USDA/FSA*

FOIA provides that a requester has the right to seek judicial review of a Federal agency's final FOIA decision to deny the release of records.

CPNRD is a Nebraska State agency and a recognized cooperator with CREP in Nebraska. CPNRD filed a written FOIA request for certain crop reporting information provided by individual agricultural producers and landowners and maintained by FSA in geospatial format. In response to the FOIA request and appeal, FSA determined that, while CPNRD was a cooperator, for this particular request, Section 1619 and Exemption 3 of FOIA prohibited releasing the geospatial crop and land use information. On September 22, 2009, CPNRD filed a FOIA lawsuit alleging that FSA improperly withheld this information.

### 4 Action by FSA Offices Involved In Developing Section 1619 Cooperator MOU's

#### A Forwarding MOU Documentation to FOIA Officer for Review and Concurrence

Effective immediately, any proposed Section 1619 Cooperator MOU, any supporting documents, and sufficient background information which will enable the FSA FOIA Officer to conduct a thorough review and provide concurrence shall be forwarded to the Public Affairs Staff by e-mail or FAX. See subparagraph 1 C for Public Affairs Staff contact information.

The FSA FOIA Officer's review and concurrence will help maintain consistency throughout FSA as it pertains to the authorized release of data subject to the Section 1619 prohibition to FSA cooperators.

Most importantly, review and concurrence by the FOIA Officer will ensure that FSA employees do not take any action about established cooperators or proposed cooperators that could jeopardize FSA's position in the pending FOIA lawsuit.

#### B Time Period

This policy shall remain in effect until further notice.