



**United States
Department of
Agriculture**

**Office of the
Assistant Secretary
for Administration**

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JUL 30 2008

TO: Agency Freedom of Information Act (FOIA) Officers

FROM: Boyd K. Rutherford
Assistant Secretary
for Administration

A handwritten signature in black ink, appearing to read "Boyd K. Rutherford".

SUBJECT: Section 1619 of the Food, Conservation, and Energy Act of 2008

The Food, Conservation, and Energy Act of 2008 (FCEA) contains Section 1619, that falls within Freedom of Information Act (FOIA) exemption 3, 5 U.S.C. 552 (b)(3). Generally, Section 1619 of the FCEA prohibits the Department of Agriculture (USDA), its contractors, and its cooperators from disclosing information provided by agricultural producers or owners of agriculture land concerning agricultural operations, farming or conservation practices, or the land itself, in order to participate in USDA programs. In addition, Section 1619 prohibits disclosure of geospatial information about agricultural land or operations otherwise maintained by the Secretary. Also, it contains explicit exceptions and authorized disclosures.

Information covered by Section 1619 is broad. It covers information provided in order to participate in USDA programs that provide loans, grants, subsidies, payments, or other benefits. Furthermore, "geospatial information" includes photographs when they contain, or are associated with, other data depicting or identifying attributes of the land, such as common land unit boundaries, but it does not include aerial photographs themselves. It also covers information collected by cooperators from agricultural producers or landowners in carrying out USDA programs, while covering information shared by USDA with cooperators under the same program.

Section 1619 does not apply to all information gathered from agricultural producers or landowners. It does not apply to USDA regulatory programs where participation by the agricultural producer or landowner is required by law as a condition of participation in the marketplace. In addition, Section 1619 does not apply to payment information, including name and addresses, to aggregate statistical information, or to information for which the agricultural producer or landowner has consented to disclosure.

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Section 1619 also affects the sharing of covered information. It does not impede the sharing of information between and among USDA agencies. However, covered information may only be shared with Federal agencies outside USDA for specific purposes under a cooperative program, but not for general regulatory or enforcement purposes. Disclosure is authorized to Federal and other cooperators, when they are:

1. providing technical or financial assistance regarding the agricultural operation, agricultural land, or farming or conservation practices, **or**
2. responding to a disease or pest threat.

However, Section 1619, prohibits the further disclosure of any shared information and requires the termination of information-sharing with a cooperator that fails to ensure that the information is not shared further. Agency program officials must advise agency cooperators of their legal obligation not to further disclose shared information that is subject to Section 1619.

We interpret Section 1619 to be a statute that falls within the parameters of FOIA, Exemption 3. Its language specifically exempts matters from disclosure and describes the information that should be withheld. Thus, USDA FOIA Officers should determine the specific information covered by Section 1619 and should cite to the statute when withholding covered information.

If you have questions or concerns, including how Section 1619 relates to other USDA confidentiality statutes, please contact Ms. Rita Morgan Departmental FOIA Officer at (202) 720-8164.

cc: Rita Morgan, Departmental Administration