

Talking Points

USDA View of Section 1619 of the Food, Conservation, and Energy Act of 2008

Section 1619 prohibits USDA, its contractors, and cooperators, from disclosing information provided by an agricultural producer or owner of agricultural land concerning the agricultural operation, farming or conservation practices, or the land itself, in order to participate in a USDA program, as well as geospatial information maintained by USDA with respect to such agricultural land or operations, subject to certain exceptions and authorized disclosures. In brief, the general conclusions in the memorandum related to this prohibition are as follows:

- Information covered by Section 1619 is exempt from disclosure under FOIA.
- Section 1619 covers information provided to participate in USDA programs that provide loans, grants, subsidies, payments, or other benefits; it does not apply to USDA regulatory programs where participation by the producer or landowner is required by law as a condition of participation in the marketplace.
- “Geospatial information” does not include aerial photographs themselves, but does include photographs when they include, or are associated with, additional data depicting or identifying attributes of the land, such as common land unit (CLU) boundaries.
- Section 1619 does not inhibit disclosure of covered information between and among USDA agencies; however, covered information may only be shared with other Federal agencies outside USDA for specific purposes under a cooperative program, i.e., not for general regulatory or enforcement purposes.
- The specific allowable purposes for authorized disclosure are to cooperators when they are (1) providing technical or financial assistance with respect to the agricultural operation, agricultural land or farming or conservation practices, or (2) responding to a disease or pest threat.
- Cooperative programs are a two-way street: information collected by cooperators from agricultural producers or landowners in carrying out USDA programs is covered, as is information shared by USDA with cooperators under the same program. If a cooperator concludes that Section 1619 does not prohibit its disclosure of information shared by USDA, or collected by it on behalf of USDA, then USDA may no longer share information with that cooperator.
- Section 1619 does not apply to, and thus does not prohibit, the disclosure of payment information (including names and addresses), aggregate or statistical information, or information to which the agricultural producer or landowner consents to disclosure.
- Section 1619 does not pose a conflict with other USDA confidentiality statutes; in particular, information provided under the Federal Crop Insurance Act will continue to be governed by the specific confidentiality provision in that Act instead of Section 1619, and conservation programs under Title XII of the Food Security Act will not be covered by Section 1619 until October 1, 2008.