

US EPA ARCHIVE DOCUMENT

# Available Data and Constraints for Sharing

- Any data that the USDA NRCS has is releasable unless.
- Protected under one or more of the 9 Exemptions of the Freedom Of Information Act (FOIA)
- Protected under the Privacy Act.

## **SECTION 1619 OF THE FOOD, CONSERVATION, AND ENERGY ACT OF 2008 (2008 Farm Bill)**

- Section 1619 prohibits the Secretary of Agriculture, and USDA employees, contractors, and cooperators from disclosing certain categories of information provided by producers to participate in Department programs.

# SECTION 1619

- How does Section 1619 relate to the FOIA?
- Exemption 3 of the FOIA, 5 U.S.C. § 552(b)(3), exempts from disclosure those records that are specifically prohibited by another statute from being disclosed to the public.
- Section 1619 is an Exemption 3 statute

# Section 1619

- Why does Section 1619 exist?
  - At least in part, because of the D.C. Circuit decision *Multi Ag Media LLC v. Department of Agriculture*, which held that the public interest in disclosing certain information outweighed the privacy interests of agricultural producers under FOIA Exemption 6

# Section 1619

- Prohibition
- 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 programs of the Department; or
- Geospatial information otherwise maintained by the Secretary about such agricultural land or operation

# Section 1619

- Prohibition
- What does this mean?
- The language leaves **NO DISCRETION** to release:
- Information concerns agricultural operation, farming or conservation practices, or the land itself
- Information was provided by producer to participate in Department programs
- Geospatial includes identifying natural or manmade boundaries or traits of the earth

# SECTION 1619

- Prohibition
- Geospatial information does not include plain, unmarked aerial photos of land
- Includes geographic information system (GIS) information maintained about the land



# SECTION 1619

- Does not cover
  - USDA regulatory programs where participation (and submission of information) is required by law
  - Plain photographs with no attributes of the land
  - Information not provided by program participants
  - Easement boundaries held by the United States

# SECTION 1619

- What does the Department do if Section 1619 does not cover requested information when you have a FOIA request?
  - Apply the Privacy Act and the FOIA Exemptions and analyze to determine what is releasable

# SECTION 1619

- Exceptions to the prohibition on disclosure
- Payment information (including names and addresses of recipients of payments)
- Statistical and aggregate information
- Consent of producer or owner

# Statistical or Aggregate Information

- Must be sufficiently aggregated so as to not identify section 1619-covered information
- Decided on a case-by-case basis

# SECTION 1619

- Authorized disclosures
- The Secretary may release information to Federal, State, local, or tribal agencies working in cooperation with USDA when
- providing technical or financial assistance; or
- responding to a disease or pest threat

# Cooperators

- Cooperators under section 1619 are not *any* Department cooperators
- To be a cooperator under section 1619, the entity must be assisting a Department agency in carrying out technical or financial assistance
- There may be a legitimate Department cooperator who does not qualify as a section 1619 cooperator.

# SECTION 1619

- Sharing data
  - Among USDA agencies permissible
  - Among partners if a legitimate section 1619 cooperator (and such partners are required to sign an Acknowledgment of Section 1619 Compliance Certification)

# Other Federal Agencies

- Section 1619 does not provide any general exemption from the prohibition of disclosure to provide covered information to non-USDA federal agencies
- Therefore, such agencies generally would have to qualify as section 1619 cooperators to obtain such information



# REFERENCES

- FOIA, 5 U.S.C. § 552
- PA, 5 U.S.C. § 552a
- 7 C.F.R. § 1.1
- [www.usdoj.gov](http://www.usdoj.gov)

# Questions

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