

MEMORANDUM

TO: Programs, Projects and Operations Subcommittee

SUBJECT: NRCS request for approval of ACKNOWLEDGEMENT OF SECTION 1619 COMPLIANCE

DATE: January 28, 2010

FROM: Ralph Puls, Land/Water Programs Coordinator

The P-MRNRD in its cooperative efforts with the Natural Resources Conservation Service (NRCS) has access to information about landowners/cooperators that must remain confidential per NRCS requirements. The NRCS has requested that the P-MRNRD acknowledges these requirements and agree to maintain this confidentiality through the attached "ACKNOWLEDGEMENT OF SECTION 1619 COMPLIANCE". The 2008 Farm Bill provides that the USDA, or any other "contractor or cooperator" of the USDA, which in this case would be the P-MRNRD, not disclose (A) 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 the programs of the Department. The ACKNOWLEDGEMENT OF SECTION 1619 COMPLIANCE continues with a lengthy description of other stipulations; stipulations that the P-MRNRD must agree to in order to continue to provide assistance to District cooperators.

The most common cooperative efforts of the P-MRNRD and NRCS that would apply to Section 1619 would be the planning, design and implementation of conservation measures, e.g. terrace systems, erosion control dams and other conservation practices. The P-MRNRD Field Office staff including the Field Representatives and Program Assistants must have access to the farmer/landowner information in order to do the required work. Therefore it is essential that the P-MRNRD agrees to acknowledge these requirements in order to implement these programs that are very important to the P-MRNRD.

- **It is recommended that the Programs, Projects and Operations Subcommittee recommend to the P-MRNRD Board of Directors that the SECTION 1619 COMPLIANCE agreement between the Natural Resources Conservation Service and the P-MRNRD be approved.**

**NATURAL RESOURCES CONSERVATION SERVICE (NRCS)
UNITED STATES DEPARTMENT OF AGRICULTURE (USDA)**

ACKNOWLEDGMENT OF SECTION 1619 COMPLIANCE

Purpose and Background

The purpose of this Acknowledgment of Section 1619 compliance (hereinafter "Acknowledgment") is to require acknowledgment by The Papio-Missouri River Natural Resources District of the requirements of Section 1619 of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill), which prohibits disclosure of certain information by the Department of Agriculture (USDA) and its cooperators. The Papio-Missouri Natural Resources District assists NRCS in the delivery of conservation-related services (for example, services that sustain agricultural productivity, improve environmental quality, reduce soil erosion, enhance water supplies, improve water quality, increase wildlife habitat, and reduce damages caused by floods and other natural disasters) or with monitoring, assessing, or evaluating of conservation benefits from USDA conservation programs under a Cooperative Working Agreement and A Memorandum of Understanding. Those individuals or organizations (governmental or nongovernmental) that assist NRCS with providing conservation-related services are known as NRCS Conservation Cooperators.

NRCS Conservation Cooperator

As an NRCS Conservation Cooperator, The Papio-Missouri River Natural Resources District is authorized access to otherwise-protected agricultural information. Such protected information must be strictly limited to only that information necessary for The Papio-Missouri River Natural Resources District to provide conservation related services. Disclosure to The Papio-Missouri River Natural Resources District can include receiving the protected information either 1) directly from NRCS; 2) directly from the producer or owner as part of the process required to enable a producer or owner to participate in a USDA program; or 3) in another manner with the producer's permission.

Section 1619 of the 2008 Farm Bill

Section 1619 of the Food, Conservation, and Energy Act of 2008 (Exhibit 1) (hereinafter "section 1619" provides that USDA, or any "contractor or cooperator" of USDA, "shall not disclose—(A) 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 the programs of the Department; or (B) geospatial information otherwise maintained by the Secretary about agricultural land or operations for which information described in subparagraph (A) is provided." USDA may disclose protected information to a USDA cooperator when such cooperator is "providing technical or financial assistance with respect to the agricultural operation, agricultural land, or farming or conservation practices" if USDA determines that the

protected information will not be subsequently disclosed, except in accordance with the exceptions contained in Section 1619. The Papio-Missouri River Natural Resources District is a "contractor or cooperator" of USDA within the meaning of Section 1619. Accordingly, The Papio-Missouri River Natural Resources District may not subsequently disclose any information protected by section 1619. By signature on this Acknowledgment, The Papio-Missouri River Natural Resources District is certifying future compliance with the statutory obligations under Section 1619. Upon execution of this Acknowledgment, NRCS may continue to provide to The Papio-Missouri River Natural Resources District the protected information provided under The Cooperative Working Agreement and A Memorandum of Understanding.

Responsibilities

The Papio-Missouri River Natural Resources District (hereinafter the "Conservation Cooperator") certifies that:

- Signature on this Acknowledgment indicates acknowledgment and understanding that the Conservation Cooperator is legally bound by Federal statute to comply with the provisions of Section 1619 and that the Conservation Cooperator will not subsequently disclose information protected by section 1619 to any individual or organization that is not directly covered by this Acknowledgment. Any such subsequent disclosure of the protected information (except as permitted under Section 1619) will be considered a violation of Section 1619. The Conservation Cooperator will be held responsible should disclosure of the protected information occur.
- Signature on this Acknowledgment legally binds every owner, manager, supervisor, employee, contractor, agent, and representative of the Conservation Cooperator to comply with the provisions in Section 1619. The Conservation Cooperator must consult with NRCS prior to providing protected information to an entity or individual outside of the Conservation Cooperator and as necessary to implement the program to ensure that such release is permissible.
- The Conservation Cooperator will use the protected information only to perform work that is directly connected to provide conservation related services. Use of the protected information to perform work that is not directly connected to provide conservation related services is expressly prohibited.
- The Conservation Cooperator must internally restrict access to the protected information to only those individuals who have a demonstrated need to know the protected information in order to provide conservation related services.
- The provisions in Section 1619 are continuing obligations. Even when the Conservation Cooperator is no longer an NRCS Conservation Cooperator, or when individuals currently affiliated with the Conservation Cooperator become no longer so affiliated, every person having been provided access to the protected

information will continue to be legally bound to comply with the provisions of this Acknowledgment.

- The Conservation Cooperator must notify all managers, supervisors, employees, contractors, agents, and representatives about this Acknowledgment and the requirements of Section 1619. For the duration of this Acknowledgment, notifications about the existence of this Acknowledgment must be made to those individuals who are new to the organization and periodic notifications must be sent throughout the organization (as well as to all contractors and agents) to remind all about the ongoing and continuing requirements.
- When the Conservation Cooperator is unsure whether particular information is covered or protected by Section 1619, the Conservation Cooperator must consult with NRCS to determine whether the information must be withheld.
- This Acknowledgment is nontransferable and may not be bought, sold, traded, assigned, extended to, or given free of charge to any other individual or organization not directly covered by this Acknowledgment.
- Use of the protected information for any purpose is expressly prohibited when an individual or organization is no longer an NRCS Conservation Cooperator. When the Conservation Cooperator is no longer an NRCS Conservation Cooperator, any protected information provided under this Acknowledgment must be immediately destroyed or returned to NRCS. The Conservation Cooperator must provide to NRCS written certification that the protected information (paper copy, electronic copy, or both) has been properly destroyed, removed from any electronic storage media, or both.

Protected Information

An example of the type of information prohibited by disclosure under Section 1619 includes, but is **not limited to**, the following:

- State identification and county number (where reported and where located).
- Producer or landowner name, business full address, phone number, Social Security Number, and similar personal identifying information.
- Farm, tract, field, and contract numbers.
- Production shares and share of acres for each Farm Serial Number (FSN) field.
- Acreage information, including crop codes.
- All attributes for Common Land Units (CLUs) in USDA's Geospatial Information System
- Any photographic, map, or geospatial data that, when combined with other maps, can be used to identify a landowner.
- Location of conservation practices.

Section 1619 allows disclosure of “payment information (including payment information and the names and addresses of recipients of payments) under any Department program that is otherwise authorized by law” (emphasis added). The names and payment information of producers generally may be provided to the public; however the Conservation Cooperator shall consult with NRCS if there is any uncertainty as to the provision of such information.

Section 1619 also allows disclosure of otherwise protected information if “the information has been transformed into a statistical or aggregate form without naming any—(i) individual owner, operator, or producer; or (ii) specific data gathering cite.” The Conservation Cooperator must consult with NRCS as to whether specific information falls within this exception prior to relying on this exception.

Violations

The Conservation Cooperator will be held responsible for violations of this Acknowledgment and Section 1619. A violation of this Acknowledgment by the Conservation Cooperator may result in action by NRCS, including termination of the underlying Cooperative Working Agreement and Memorandum of Understanding.

Effective Period

This Acknowledgment will be in effect on the date of the final signature and continues until NRCS notifies the Conservation Cooperator that the Acknowledgment is no longer required based on changes in applicable Federal law.

Signature of the NRCS Conservation Cooperator and the Date Signed

Papio-Missouri River Natural Resources District

Executed this ____ day of _____, 20__

SEC. 1619. INFORMATION GATHERING.

(a) **GEOSPATIAL SYSTEMS**—The Secretary shall ensure that all the geospatial data of the agencies of the Department of Agriculture are portable and standardized.

(b) **LIMITATION ON DISCLOSURES**—

(1) **DEFINITION OF AGRICULTURAL OPERATION**—In this subsection, the term “agricultural operation” includes the production and marketing of agricultural commodities and livestock.

(2) **PROHIBITION**—Except as provided in paragraphs (3) and (4), the Secretary, any officer or employee of the Department of Agriculture, or any contractor or cooperator of the Department, shall not disclose—

(A) 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

(B) Geospatial information otherwise maintained by the Secretary about agricultural land or operations for which information described in subparagraph (A) is provided.

(3) **AUTHORIZED DISCLOSURES**—

(A) **LIMITED RELEASE OF INFORMATION**—If the Secretary determines that the information described in paragraph (2) will not be subsequently disclosed except in accordance with paragraph (4), the Secretary may release or disclose the information to a person or Federal, State, local, or tribal agency working in cooperation with the Secretary in any Department program—

(i) When providing technical or financial assistance with respect to the agricultural operation, agricultural land, or farming or conservation practices; or

(ii) When responding to a disease or pest threat to agricultural operations, if the Secretary determines that a threat to agricultural operations exists and the disclosure of information to a person or cooperating government entity is necessary to assist the Secretary in responding to the disease or pest threat as authorized by law.

(4) **EXCEPTIONS**—Nothing in this subsection affects—

(A) The disclosure of payment information (including payment information and the names and addresses of recipients of payments) under any Department program that is otherwise authorized by law;

(B) The disclosure of information described in paragraph (2) if the information has been transformed into a statistical or aggregate form without naming any—

(i) Individual owner, operator, or producer; or

(ii) Specific data gathering site; or

(C) The disclosure of information described in paragraph (2) pursuant to the consent of the agricultural producer or owner of agricultural land.

(5) **CONDITION OF OTHER PROGRAMS**—The participation of the agricultural producer or owner of agricultural land in, or receipt of any benefit under, any program administered by the Secretary may not be conditioned on the consent of the agricultural producer or owner of agricultural land under paragraph 4(c).

(6) **WAIVER OF PRIVILEGE OR PROTECTION**—The disclosure of information under paragraph (2) shall not constitute a waiver of any applicable privilege or protection under Federal law, including trade secret protection.