

## Pocono Northeast Resource Conservation & Development Council ACKNOWLEDGMENT OF SECTION 1619 COMPLIANCE

### Purpose and Background

The purpose of this Acknowledgment of Section 1619 compliance (hereinafter "Acknowledgment") is to require acknowledgment by Pocono Northeast Resource Conservation & Development Council (PNERCD) staff and contractors 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 Natural Resources Conservation Service (NRCS), Department of Agriculture (USDA) and its cooperators. PNERCD may assist 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 the Cooperative Agreement. 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, PNERCD is authorized access to otherwise-protected agricultural information. Such protected information must be strictly limited to only that information necessary for PNERCD staff or contractor to provide conservation related services. Disclosure to the NRCS 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 (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 NRCS; 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. PNERCD staff and contractors are a "contractor or cooperator" of USDA within the meaning of Section 1619. **Accordingly, the PNERCD staff and contractors may not subsequently disclose any information protected by section 1619.** By signature on this Acknowledgment, PNERCD staff and/or contractor is certifying future compliance with the statutory obligations under Section 1619. Upon execution of this

Acknowledgment, NRCS may continue to provide to PNERCD the protected information provided under Cooperative Agreement.

## Responsibilities

\_\_\_\_\_ (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 are 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.
- The State's "sunshine law," "open records act" or other version of the Freedom of Information Act is superseded by section 1619 under the Supremacy Clause of the U.S. Constitution. Accordingly, information protected from disclosure by section 1619 must not be released under such State laws.

### **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 NRCS 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 site." 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 agreement.

**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**

Signature: \_\_\_\_\_

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_