

## Attachment C

# Preliminary Draft Basinwide 1619 Agreement

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### Anticipated signatories:

U. S. Geological Survey  
Maryland Department of Agriculture  
Virginia Department of Conservation and Recreation  
West Virginia Department of Agriculture  
West Virginia Department of Environmental Protection  
Pennsylvania Department of Environmental Protection  
Delaware Department of Natural Resources and Environmental Control  
New York Upper Susquehanna Coalition

*Note: sharing is anticipated between USGS and the agencies within each state, not among the states. For example, sharing would occur with data provided by USDA to USGS and WVDA and WVDEP. The WV data would not be shared with other states.*

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## UNITED STATES DEPARTMENT OF AGRICULTURE

### MEMORANDUM OF UNDERSTANDING

#### USDA SECTION 1619 COOPERATOR

#### CERTIFYING USDA AGENCY: FARM SERVICE AGENCY

### Purpose

This USDA Section 1619 Cooperator Memorandum of Understanding is being issued by the Farm Service Agency (FSA) to establish that (*replace with the name of the Chesapeake Bay state agencies and USGS*) have been certified by FSA to be working in cooperation with the Secretary of Agriculture on a USDA program by providing technical or financial assistance to a USDA program that concerns an agricultural operation, agricultural land, farming practice, or conservation practice. Those individuals or organizations (governmental or non-governmental) certified by FSA as working in cooperation with the Secretary of Agriculture by providing this assistance to USDA programs requiring access to data protected by Section 1619 of the Food, Conservation and Energy Act of 2008 (2008 Farm Bill) are known as USDA Section 1619 Cooperators.

### USDA Section 1619 Cooperator

As a certified USDA Section 1619 Cooperator, (*replace with the name of the Chesapeake Bay state agencies and USGS*) are authorized access to otherwise protected agricultural information. Protected information approved for disclosure under this Memorandum of Understanding shall

be strictly limited to only that information necessary for (*replace with the Chesapeake Bay state agencies and USGS*) to provide the technical and financial assistance, in the form of monitoring, assessment, and evaluation, concerning the Natural Resource Conservation Service (NRCS) Chesapeake Bay Watershed Initiative (CBWI) and FSA Conservation Reserve Program (CRP) and Conservation Reserve Enhancement Program (CREP) data. Disclosure to (*replace with the Chesapeake Bay state agencies and USGS*) can include receiving the protected information either 1) directly from FSA and NRCS; or 2) directly from another USDA Section 1619 Cooperator; or 3) receiving the protected information directly from the producer or owner as part of the process required to enable a producer or owner to participate in the USDA program.

### **USDA Section 1619 Cooperator Use of the Protected Information**

(*replace with the name of the Chesapeake Bay state agencies and USGS*) has provided information to NRCS and FSA indicating that the protected information shall be used to *provide conservation services, monitoring, assessing or evaluation of conservation benefits*.

### **Responsibilities**

NRCS and FSA agree to:

Provide to (*replace with the name of the Chesapeake Bay state agencies and USGS*) the protected information that has been approved for disclosure under this Memorandum of Understanding. The protected data types approved for disclosure are limited to:

- *Spatially referenced (e.g., vector files usable in a geographic information system) NRCS and FSA practice data for the Chesapeake Bay Watershed including PA, VA, WV, MD, DE, DC and NY. These data will be fully attributed.*
- *Spatially referenced and fully attributed practice information; and*
- *Spatially referenced and fully attributed Common Land Unit data*

*Permit the (replace with the name of the Chesapeake Bay state agencies and USGS) to release aggregated statistical information to Chesapeake Bay Program Partner organizations and the public following review and approval by NRCS and FSA of the data aggregation procedures to ensure compliance with section 1619 and other applicable law.*

(*replace with the name of the Chesapeake Bay state agencies and USGS*) agrees that:

- Signature on this Memorandum of Understanding indicates acknowledgement and understanding that data types identified in this Memorandum of Understanding are protected from further disclosure by Section 1619 of the 2008 Farm Bill (see Exhibit 1). (*replace with the name of the Chesapeake Bay state agencies and USGS*) shall not subsequently disclose the protected information to any individual or organization that is not directly covered by this Memorandum of Understanding. Any such subsequent disclosure of the protected information will be a violation of the Federal statute Section 1619. (*replace with the name of the Chesapeake Bay state agencies and USGS*) may be held legally liable should subsequent disclosure of the protected information occur in violation of Section 1619.
- Signature on this Memorandum of Understanding legally binds (*replace with the name of the Chesapeake Bay state agencies and USGS*) to comply with the provisions in Section

1619. When signature is made on behalf of an organization, signature also legally binds every owner, manager, supervisor, employee, contractor, agent, and representative of *(replace with the name of the Chesapeake Bay state agencies and USGS)* to comply with the provisions in Section 1619.

- *(replace with the name of the Chesapeake Bay state agencies and USGS)* shall use the protected information only to perform work that is directly connected to providing technical or financial assistance, in the form of monitoring, assessment, and evaluation, with respect to NRCS CBWI and FSA CRP and CREP programs. Use of the protected information to perform work that is not directly connected to NRCS CBWI and FSA CRP and CREP programs is expressly prohibited.
- *(replace with the name of the Chesapeake Bay state agencies and USGS)* shall internally restrict access to the protected information to only those individuals within the organization that have a demonstrated need to know the protected information in order to perform work on NRCS CBWI and FSA CRP and CREP data.
- The provisions in Section 1619 are continuing obligations. Even when *(replace with the name of the Chesapeake Bay state agencies and USGS)* is no longer a USDA Section 1619 Cooperator, or when individuals currently affiliated with the organization should leave the organization, every person having been provided access to the protected information shall continue to be legally bound to comply with the provisions in Section 1619.
- *(replace with the name of the Chesapeake Bay state agencies and USGS)* shall notify all employees who will have access to the restricted information about this Memorandum of Understanding and Acknowledgement. For the duration of this Memorandum of Understanding, notifications about the existence of this Memorandum of Understanding shall be made to those individuals that are new to the organization and periodic notifications shall be sent throughout the organization (and at a frequency not to exceed 180 calendar days) to remind all about the ongoing/continuing requirement to comply with this Memorandum of Understanding.
- This Memorandum of Understanding is non-transferable. The certification to obtain protected information 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 Memorandum of Understanding.
- *(replace with the name of the Chesapeake Bay state agencies and USGS)* shall notify NRCS and FSA immediately when *(Chesapeake Bay state agencies and USGS)* is no longer, or within 30 calendar days notice of the date on which *(Chesapeake Bay state agencies and USGS)* will no longer be a USDA Section 1619 Cooperator working in cooperation with the Secretary of Agriculture by providing technical or financial assistance with respect to NRCS and FSA, whichever is sooner.
- Use of the protected information for any purpose is expressly prohibited when an individual/organization is no longer a USDA Section 1619 Cooperator. When *(replace with the name of the Chesapeake Bay state agencies and USGS)* is no longer a USDA Section 1619 Cooperator, any protected information provided under this Memorandum of

Understanding must be immediately destroyed. (*replace with the name of the Chesapeake Bay state agencies and USGS*) shall provide to NRCS and FSA written certification that the protected information (paper and/or electronic copy) has been properly destroyed and/or removed from any electronic storage media.

- The State's "sunshine law", "open records act", and/or version of the Freedom of Information Act does not have a competing legal obligation that could potentially be used in an attempt to compel disclosure of the Section 1619 protected information identified in this Memorandum of Understanding.

*Note: If the Secretary of Agriculture does not receive full assurance that the protected information will be properly withheld by a State governmental agency, (e.g., State policy indicating that public disclosure of information shall not be required for records that are specifically required by the Federal government to be kept confidential), then Section 1619 prohibits the disclosure of the protected information to the State governmental agency. Remove this text from the final MOU.*

### **Amendments**

This Memorandum of Understanding may be amended at any time by mutual written agreement of the NRCS, FSA and (*replace with the name of the Chesapeake Bay state agencies and USGS*).

### **Termination**

This Memorandum of Understanding may be terminated:

- Immediately by NRCS or FSA if it is confirmed or even suspected that (*replace with the name of the Chesapeake Bay state agencies and USGS*) has committed a subsequent disclosure of the protected information in violation of Section 1619.
- Immediately by NRCS or FSA if it is confirmed that (*replace with the name of the Chesapeake Bay state agencies and USGS*) is no longer a USDA Section 1619 Cooperator working in cooperation with the Secretary of Agriculture by providing technical or financial assistance to USDA programs requiring access to data protected by Section 1619 of the 2008 Farm Bill.
- Immediately at the request of (*replace with the name of the Chesapeake Bay state agencies and USGS*) upon identification that (*replace with the name of the Chesapeake Bay state agencies and USGS*) no longer requires access to Section 1619 protected information and therefore requests that the USDA Section 1619 Cooperator certification be rescinded.
- At any time by mutual written agreement of NRCS or FSA and (*replace with the name of the Chesapeake Bay state agencies and USGS*) or independently by NRCS or FSA or (*replace with the name of the Chesapeake Bay state agencies and USGS*) with 30 calendar days written notice to the other party.

### **Effective Period**

This Memorandum of Understanding will be in effect on the date of the final signature and continues until (*specific expiration date or a maximum date of July 31, 2015*). Should the Memorandum of Understanding need to continue beyond the identified effective period, the entire Memorandum of Understanding must be reviewed, updated if necessary, and revalidated prior to the expiration date of the identified effective period.

**Signature of the USDA Section 1619 Cooperator and the Date Signed**

\_\_\_\_\_  
(*\*Signature Block for the USDA Section 1619 Cooperator*)

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

*\* When signature is made on behalf of an organization, this must be an Official within the organization with the authority to legally bind the entire organization to comply with the provisions in Section 1619. Remove this text from the final Memorandum of Understanding.*

**Signature of the Farm Service Agency Certifying Official and the Date Signed**

\_\_\_\_\_  
(*\*\*Signature Block for the USDA Certifying Official*)

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.