

From: Bridges, Gregory - AMS
To: [Sachnoff, Lee F.](#)
Subject: Record Sample 4
Date: Thursday, May 05, 2016 4:47:00 PM
Attachments: [601-610.pdf](#)
[752-1000.pdf](#)

Mr. Sachnoff:

Attached is the 4th in a series emails that will be sent to you. These emails are the record set that will be discussed in our Monday teleconference.

Greg Bridges

FOIA Officer
USDA Agricultural Marketing Service
1400 Independence Avenue, S.W.
Stop 0202
Washington, D.C. 20250

From: Bridges, Gregory - AMS
To: [Sachnoff, Lee F.](#)
Subject: Sample Record Set 2
Date: Thursday, May 05, 2016 4:43:00 PM
Attachments: [51-100.pdf](#)

Mr. Sachnoff:

Attached is the 2nd in a series emails that will be sent to you. These emails are the record set that will be discussed in our Monday teleconference.

Greg Bridges

FOIA Officer
USDA Agricultural Marketing Service
1400 Independence Avenue, S.W.
Stop 0202
Washington, D.C. 20250

From: Bridges, Gregory - AMS
To: [Sachnoff, Lee E.](#)
Subject: Sample Record Set 3
Date: Thursday, May 05, 2016 4:44:00 PM
Attachments: [535-787.pdf](#)
[210-224.pdf](#)

Mr. Sachnoff:

Attached is the 3rd in a series emails that will be sent to you. These emails are the record set that will be discussed in our Monday teleconference.

Greg Bridges

FOIA Officer
USDA Agricultural Marketing Service
1400 Independence Avenue, S.W.
Stop 0202
Washington, D.C. 20250

From: Bridges, Gregory - AMS
To: [Sachnoff, Lee F.](#)
Subject: Sample Record Set 5
Date: Thursday, May 05, 2016 4:48:00 PM
Attachments: [993-1000.pdf](#)
[1004 - 1161.pdf](#)

Mr. Sachnoff:

This is the 5th in a series emails that will be sent to you. These emails are the record set that will be discussed in our Monday teleconference.

Greg Bridges

FOIA Officer
USDA Agricultural Marketing Service
1400 Independence Avenue, S.W.
Stop 0202
Washington, D.C. 20250

From: Bridges, Gregory - AMS
To: [Sachnoff, Lee E.](#)
Subject: Sample Record Set 6 (FINAL)
Date: Thursday, May 05, 2016 4:51:00 PM
Attachments: [230-289.pdf](#)

Mr. Sachnoff:

This is the final in series emails that will be sent to you. These emails are the record set that will be discussed in our Monday teleconference.

Greg Bridges

FOIA Officer
USDA Agricultural Marketing Service
1400 Independence Avenue, S.W.
Stop 0202
Washington, D.C. 20250

From: Bridges, Gregory - AMS
To: [Sachnoff, Lee F.](#)
Subject: Sample Record Set
Date: Thursday, May 05, 2016 4:41:00 PM
Attachments: [1-50.pdf](#)

Mr. Sachnoff:

Attached is the first in a series emails that will be sent to you. These emails are the record set that will be discussed in our Monday teleconference.

Greg Bridges

FOIA Officer
USDA Agricultural Marketing Service
1400 Independence Avenue, S.W.
Stop 0202
Washington, D.C. 20250



**STOP 0202-Room 3943-S
1400 Independence Avenue, SW.
Washington, DC 20250-0202**

March 21, 2016

In reply, please refer to:
2013-AMS-01201-F
EO12600 Response

Lee F. Sachoff
Kutak Rock LLP
1801 California Street
Suite 300
Denver, CO 80202

Dear Mr. Sachoff:

This letter serves as a notice to Aurora Dairy that Freedom of Information Act Request 2013-AMS-01201-F (copy enclosed) is contested in a litigation filed by *The Cornucopia Institute v. U.S. Department of Agriculture (USDA)*, Case No. 16-cv-148-RC (D.D.C). The Cornucopia Institute ("Plaintiff") requested certain information concerning your facility from the USDA, Agricultural Marketing Service ("AMS").

On March 7, 2016, we received a Freedom of Information Act ("FOIA") request, FOIA 2013-AMS-01201-F, from Plaintiff seeking:

[I]nformation regarding visits to organic dairies in Texas and New Mexico by Matthew Michael, the Director of the NOP [National Organic Program] Compliance and Enforcement Division, and [AMS] Deputy Administrator Miles McEvoy, or any other USDA official or agent acting at NOP's request. If there are any other dairies that have been visited directly by NOP staff in 2012 we would also respectfully request materials related to those visits (but only after the aforementioned documents are delivered related to the Texas and New Mexico operations [sic]...

...Cornucopia is requesting, in particular, copies of all correspondence, discussion notes, documents, phone logs and background materials related to the planning for said visits, actual visits to the Texas and New Mexico organic dairies in 2012, any follow-up correspondence or documents and subsequent actions and/or activities that transpired following the visits (including any enforcement actions by the NOP or accredited certification agencies).

On or about January 29, 2016, Plaintiff filed the above-referenced lawsuit in order to gain access to this information. Information submitted by your organization is among the records requested by Plaintiff. A review of the enclosed records reveals that the records may contain confidential commercial or business information ("CBI") within the meaning of FOIA Exemption 4, 5 U.S.C. 552(b)(4). Exemption 4 protects from public disclosure trade secrets and commercial or financial information obtained from a person that is privileged or confidential. In order to protect the information, AMS must first establish that the information is commercial or financial and that it was obtained from a person, company, organization, state government, or other outside entity.

AMS0007

Next AMS must establish that the information is “confidential,” which typically means that release of the information would cause substantial competitive harm to the submitter. In order to establish substantial competitive harm, AMS must identify the competition in the relevant market. Accordingly, FOIA Exemption 4 permits agencies to withhold CBI, the disclosure of which is likely to cause substantial competitive harm.

Whenever AMS cannot readily determine whether responsive records contain CBI, the agency must obtain and consider the views of the organization that submitted the information. See Executive Order 12,600 (copy enclosed) and 7 C.F.R. § 1.12. In addition, the agency must provide the organization with an opportunity to object to any decision to disclose the information. *Id.* Congruous with this direction, for Aurora Dairy’s review, my office is enclosing 1,384 pages of records potentially responsive to FOIA 2013-AMS-01201-F that may contain Aurora Dairy’s information protected from disclosure as CBI.

In reviewing the enclosed records, please highlight information you believe is Aurora Dairy’s CBI and prepare a detailed, written justification to support protection of the designated information as CBI. The business submitter must explain fully all grounds upon which disclosure is opposed; specifically, a business submitter must explain item-by-item why disclosure would cause substantial harm to its competitive position. Also, enclosed is a copy of our Instructions for CBI Justification.

Please note that when documents contain information that qualifies as exempt from disclosure, the entire document is not necessarily exempt. The FOIA specifically provides that any reasonably segregable portions of a document must be provided to a requester after deletion of the portions that are exempt. For that reason, please specifically indicate which portions of the records that you believe contain CBI. Please be aware that comments provided by your organization in response to this letter may be subject to disclosure under FOIA.

We appreciate receiving your response to this notice no later than 12pm on April 18, 2016. Please be advised that AMS will be operating under strict time constraints due to this litigation. If your organization does not object to disclosure of this information, please notify AMS of this position in writing. Any comments should be sent by mail or to Mr. Gregory Bridges at:

Gregory Bridges
Agricultural Marketing Service - FOIA Officer
1400 Independence Avenue, SW
South Building, Rm. 3943-S, Stop 0202
Washington, DC 20250-0273
Attn: FOIA 2013-AMS-01201-F (EO12600 Response)
Email: gregory.bridges@ams.usda.gov

If your organization objects to the release of the information, AMS will consider your response carefully in making a final determination. Should AMS decide to release any of the information, we will advise you in writing before such disclosure takes place in order to provide your organization with an opportunity to seek judicial intervention. If you have any questions please contact me at 202-720-2498, or electronically at gregory.bridges@ams.usda.gov.

Sincerely,

A rectangular box containing a handwritten signature in cursive script, which appears to read "Gregory Bridges".

Gregory Bridges
FOIA Officer
USDA, Agriculture Marketing Service

Enclosures:

1. Copy of FOIA Request
2. Responsive Records
3. Executive Order (E.O.) 12600
4. Instructions for CBI Justification



**STOP 0202-Room 3943-S
1400 Independence Avenue, SW.
Washington, DC 20250-0202**

March 21, 2016

In reply, please refer to:
2013-AMS-01201-F
EO12600 Response

Jim Black
Boehing Dairy Farm
690 County Road 45
Earth, TX 79031

Dear Mr. Black:

This letter serves as a notice to Boehing Dairy Farm that Freedom of Information Act Request 2013-AMS-01201-F (copy enclosed) is contested in a litigation filed by *The Cornucopia Institute v. U.S. Department of Agriculture (USDA)*, Case No. 16-cv-148-RC (D.D.C). The Cornucopia Institute ("Plaintiff") requested certain information concerning your facility from the USDA, Agricultural Marketing Service ("AMS").

On March 7, 2016, we received a Freedom of Information Act ("FOIA") request, FOIA 2013-AMS-01201-F, from Plaintiff seeking:

[I]nformation regarding visits to organic dairies in Texas and New Mexico by Matthew Michael, the Director of the NOP [National Organic Program] Compliance and Enforcement Division, and [AMS] Deputy Administrator Miles McEvoy, or any other USDA official or agent acting at NOP's request. If there are any other dairies that have been visited directly by NOP staff in 2012 we would also respectfully request materials related to those visits (but only after the aforementioned documents are delivered related to the Texas and New Mexico operations [sic]...

...Cornucopia is requesting, in particular, copies of all correspondence, discussion notes, documents, phone logs and background materials related to the planning for said visits, actual visits to the Texas and New Mexico organic dairies in 2012, any follow-up correspondence or documents and subsequent actions and/or activities that transpired following the visits (including any enforcement actions by the NOP or accredited certification agencies).

On or about January 29, 2016, Plaintiff filed the above-referenced lawsuit in order to gain access to this information. Information submitted by your organization is among the records requested by Plaintiff. A review of the enclosed records reveals that the records may contain confidential commercial or business information ("CBI") within the meaning of FOIA Exemption 4, 5 U.S.C. 552(b)(4). Exemption 4 protects from public disclosure trade secrets and commercial or financial information obtained from a person that is privileged or confidential. In order to protect the information, AMS must first establish that the information is commercial or financial and that it was obtained from a person, company, organization, state government, or other outside entity.

Next AMS must establish that the information is "confidential," which typically means that release of the information would cause substantial competitive harm to the submitter. In order to

establish substantial competitive harm, AMS must identify the competition in the relevant market. Accordingly, FOIA Exemption 4 permits agencies to withhold CBI, the disclosure of which is likely to cause substantial competitive harm.

Whenever AMS cannot readily determine whether responsive records contain CBI, the agency must obtain and consider the views of the organization that submitted the information. See Executive Order 12,600 (copy enclosed) and 7 C.F.R. § 1.12. In addition, the agency must provide the organization with an opportunity to object to any decision to disclose the information. *Id.* Congruous with this direction, for Boehing Dairy Farm's review, my office is enclosing 767 pages of records potentially responsive to FOIA 2013-AMS-01201-F that may contain Boehing Dairy Farm's information protected from disclosure as CBI.

In reviewing the enclosed records, please highlight information you believe is Boehing Dairy Farm's CBI and prepare a detailed, written justification to support protection of the designated information as CBI. The business submitter must explain fully all grounds upon which disclosure is opposed; specifically, a business submitter must explain item-by-item why disclosure would cause substantial harm to its competitive position. Also, enclosed is a copy of our Instructions for CBI Justification.

Please note that when documents contain information that qualifies as exempt from disclosure, the entire document is not necessarily exempt. The FOIA specifically provides that any reasonably segregable portions of a document must be provided to a requester after deletion of the portions that are exempt. For that reason, please specifically indicate which portions of the records that you believe contain CBI. Please be aware that comments provided by your organization in response to this letter may be subject to disclosure under FOIA.

We appreciate receiving your response to this notice no later than 12pm on April 18, 2016. Please be advised that AMS will be operating under strict time constraints due to this litigation. If your organization does not object to disclosure of this information, please notify AMS of this position in writing. Any comments should be sent by mail or to Mr. Gregory Bridges at:

Gregory Bridges
Agricultural Marketing Service - FOIA Officer
1400 Independence Avenue, SW
South Building, Rm. 3943-S, Stop 0202
Washington, DC 20250-0273
Attn: FOIA 2013-AMS-01201-F (EO12600 Response)
Email: gregory.bridges@ams.usda.gov

If your organization objects to the release of the information, AMS will consider your response carefully in making a final determination. Should AMS decide to release any of the information, we will advise you in writing before such disclosure takes place in order to provide your organization with an opportunity to seek judicial intervention. If you have any questions please contact me at 202-720-2498, or electronically at gregory.bridges@ams.usda.gov.

Sincerely,

A rectangular box containing a handwritten signature in cursive script, which appears to read "Gregory Bridges".

Gregory Bridges
FOIA Officer
USDA, Agriculture Marketing Service

Enclosures:

1. Copy of FOIA Request
2. Responsive Records
3. Executive Order (E.O.) 12600
4. Instructions for CBI Justification



**STOP 0202-Room 3943-S
1400 Independence Avenue, SW.
Washington, DC 20250-0202**

March 21, 2016

In reply, please refer to:
2013-AMS-01201-F
EO12600 Response

Jim Black
Hilltop Dairy, LLC
690 County Road 45
Earth, TX 79031

Dear Mr. Black:

This letter serves as a notice to Hilltop Dairy, LLC (“Hilltop Dairy”) that Freedom of Information Act Request 2013-AMS-01201-F (copy enclosed) is contested in a litigation filed by *The Cornucopia Institute v. U.S. Department of Agriculture (USDA)*, Case No. 16-cv-148-RC (D.D.C). The Cornucopia Institute (“Plaintiff”) requested certain information concerning your facility from the USDA, Agricultural Marketing Service (“AMS”).

On March 7, 2016, we received a Freedom of Information Act (“FOIA”) request, FOIA 2013-AMS-01201-F, from Plaintiff seeking:

[I]nformation regarding visits to organic dairies in Texas and New Mexico by Matthew Michael, the Director of the NOP [National Organic Program] Compliance and Enforcement Division, and [AMS] Deputy Administrator Miles McEvoy, or any other USDA official or agent acting at NOP’s request. If there are any other dairies that have been visited directly by NOP staff in 2012 we would also respectfully request materials related to those visits (but only after the aforementioned documents are delivered related to the Texas and New Mexico operations [sic]...

...Cornucopia is requesting, in particular, copies of all correspondence, discussion notes, documents, phone logs and background materials related to the planning for said visits, actual visits to the Texas and New Mexico organic dairies in 2012, any follow-up correspondence or documents and subsequent actions and/or activities that transpired following the visits (including any enforcement actions by the NOP or accredited certification agencies).

On or about January 29, 2016, Plaintiff filed the above-referenced lawsuit in order to gain access to this information. Information submitted by your organization is among the records requested by Plaintiff. A review of the enclosed records reveals that the records may contain confidential commercial or business information (“CBI”) within the meaning of FOIA Exemption 4, 5 U.S.C. 552(b)(4). Exemption 4 protects from public disclosure trade secrets and commercial or financial information obtained from a person that is privileged or confidential. In order to protect the information, AMS must first establish that the information is commercial or financial and that it was obtained from a person, company, organization, state government, or other outside entity.

Next AMS must establish that the information is “confidential,” which typically means that release of the information would cause substantial competitive harm to the submitter. In order to

establish substantial competitive harm, AMS must identify the competition in the relevant market. Accordingly, FOIA Exemption 4 permits agencies to withhold CBI, the disclosure of which is likely to cause substantial competitive harm.

Whenever AMS cannot readily determine whether responsive records contain CBI, the agency must obtain and consider the views of the organization that submitted the information. See Executive Order 12,600 (copy enclosed) and 7 C.F.R. § 1.12. In addition, the agency must provide the organization with an opportunity to object to any decision to disclose the information. *Id.* Congruous with this direction, for Hilltop Dairy's review, my office is enclosing 264 pages of records potentially responsive to FOIA 2013-AMS-01201-F that may contain Hilltop Dairy's information protected from disclosure as CBI.

In reviewing the enclosed records, please highlight information you believe is Hilltop Dairy's CBI and prepare a detailed, written justification to support protection of the designated information as CBI. The business submitter must explain fully all grounds upon which disclosure is opposed; specifically, a business submitter must explain item-by-item why disclosure would cause substantial harm to its competitive position. Also, enclosed is a copy of our Instructions for CBI Justification.

Please note that when documents contain information that qualifies as exempt from disclosure, the entire document is not necessarily exempt. The FOIA specifically provides that any reasonably segregable portions of a document must be provided to a requester after deletion of the portions that are exempt. For that reason, please specifically indicate which portions of the records that you believe contain CBI. Please be aware that comments provided by your organization in response to this letter may be subject to disclosure under FOIA.

We appreciate receiving your response to this notice no later than 12pm on April 18, 2016. Please be advised that AMS will be operating under strict time constraints due to this litigation. If your organization does not object to disclosure of this information, please notify AMS of this position in writing. Any comments should be sent by mail or to Mr. Gregory Bridges at:

Gregory Bridges
Agricultural Marketing Service - FOIA Officer
1400 Independence Avenue, SW
South Building, Rm. 3943-S, Stop 0202
Washington, DC 20250-0273
Attn: FOIA 2013-AMS-01201-F (EO12600 Response)
Email: gregory.bridges@ams.usda.gov

If your organization objects to the release of the information, AMS will consider your response carefully in making a final determination. Should AMS decide to release any of the information, we will advise you in writing before such disclosure takes place in order to provide your organization with an opportunity to seek judicial intervention. If you have any questions please contact me at 202-720-2498, or electronically at gregory.bridges@ams.usda.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory Bridges". The signature is written in a cursive style with a large initial "G".

Gregory Bridges
FOIA Officer
USDA, Agriculture Marketing Service

Enclosures:

1. Copy of FOIA Request
2. Responsive Records
3. Executive Order (E.O.) 12600
4. Instructions for CBI Justification



**STOP 0202-Room 3943-S
1400 Independence Avenue, SW.
Washington, DC 20250-0202**

March 21, 2016

In reply, please refer to:
2013-AMS-01201-F
EO12600 Response

Cherie DeJong
Natural Prairie Dairy
P.O. Box 659
Hartley, Texas 79044

Dear Ms. DeJong:

This letter serves as a notice to Natural Prairie Dairy that Freedom of Information Act Request 2013-AMS-01201-F (copy enclosed) is contested in a litigation filed by *The Cornucopia Institute v. U.S. Department of Agriculture (USDA)*, Case No. 16-cv-148-RC (D.D.C). The Cornucopia Institute ("Plaintiff") requested certain information concerning your facility from the USDA, Agricultural Marketing Service ("AMS").

On March 7, 2016, we received a Freedom of Information Act ("FOIA") request, FOIA 2013-AMS-01201-F, from Plaintiff seeking:

[I]nformation regarding visits to organic dairies in Texas and New Mexico by Matthew Michael, the Director of the NOP [National Organic Program] Compliance and Enforcement Division, and [AMS] Deputy Administrator Miles McEvoy, or any other USDA official or agent acting at NOP's request. If there are any other dairies that have been visited directly by NOP staff in 2012 we would also respectfully request materials related to those visits (but only after the aforementioned documents are delivered related to the Texas and New Mexico operations [sic]...

...Cornucopia is requesting, in particular, copies of all correspondence, discussion notes, documents, phone logs and background materials related to the planning for said visits, actual visits to the Texas and New Mexico organic dairies in 2012, any follow-up correspondence or documents and subsequent actions and/or activities that transpired following the visits (including any enforcement actions by the NOP or accredited certification agencies).

On or about January 29, 2016, Plaintiff filed the above-referenced lawsuit in order to gain access to this information. Information submitted by your organization is among the records requested by Plaintiff. A review of the enclosed records reveals that the records may contain confidential commercial or business information ("CBI") within the meaning of FOIA Exemption 4, 5 U.S.C. 552(b)(4). Exemption 4 protects from public disclosure trade secrets and commercial or financial information obtained from a person that is privileged or confidential. In order to protect the information, AMS must first establish that the information is commercial or financial and that it was obtained from a person, company, organization, state government, or other outside entity.

Next AMS must establish that the information is "confidential," which typically means that release of the information would cause substantial competitive harm to the submitter. In order to

establish substantial competitive harm, AMS must identify the competition in the relevant market. Accordingly, FOIA Exemption 4 permits agencies to withhold CBI, the disclosure of which is likely to cause substantial competitive harm.

Whenever AMS cannot readily determine whether responsive records contain CBI, the agency must obtain and consider the views of the organization that submitted the information. See Executive Order 12,600 (copy enclosed) and 7 C.F.R. § 1.12. In addition, the agency must provide the organization with an opportunity to object to any decision to disclose the information. *Id.* Congruous with this direction, for Natural Prairie Dairy's review, my office is enclosing 500 pages of records potentially responsive to FOIA 2013-AMS-01201-F that may contain Natural Prairie Dairy's information protected from disclosure as CBI.

In reviewing the enclosed records, please highlight information you believe is Natural Prairie Dairy's CBI and prepare a detailed, written justification to support protection of the designated information as CBI. The business submitter must explain fully all grounds upon which disclosure is opposed; specifically, a business submitter must explain item-by-item why disclosure would cause substantial harm to its competitive position. Also, enclosed is a copy of our Instructions for CBI Justification.

Please note that when documents contain information that qualifies as exempt from disclosure, the entire document is not necessarily exempt. The FOIA specifically provides that any reasonably segregable portions of a document must be provided to a requester after deletion of the portions that are exempt. For that reason, please specifically indicate which portions of the records that you believe contain CBI. Please be aware that comments provided by your organization in response to this letter may be subject to disclosure under FOIA.

We appreciate receiving your response to this notice no later than 12pm on April 18, 2016. Please be advised that AMS will be operating under strict time constraints due to this litigation. If your organization does not object to disclosure of this information, please notify AMS of this position in writing. Any comments should be sent by mail or to Mr. Gregory Bridges at:

Gregory Bridges
Agricultural Marketing Service - FOIA Officer
1400 Independence Avenue, SW
South Building, Rm. 3943-S, Stop 0202
Washington, DC 20250-0273
Attn: FOIA 2013-AMS-01201-F (EO12600 Response)
Email: gregory.bridges@ams.usda.gov

If your organization objects to the release of the information, AMS will consider your response carefully in making a final determination. Should AMS decide to release any of the information, we will advise you in writing before such disclosure takes place in order to provide your organization with an opportunity to seek judicial intervention. If you have any questions please contact me at 202-720-2498, or electronically at gregory.bridges@ams.usda.gov.

Sincerely,

A rectangular box containing a handwritten signature in cursive script, which appears to read "Gregory Bridges".

Gregory Bridges
FOIA Officer
USDA, Agriculture Marketing Service

Enclosures:

1. Copy of FOIA Request
2. Responsive Records
3. Executive Order (E.O.) 12600
4. Instructions for CBI Justification



**STOP 0202-Room 3943-S
1400 Independence Avenue, SW.
Washington, DC 20250-0202**

March 21, 2016

In reply, please refer to:
2013-AMS-01201-F
EO12600 Response

Jim Black
Redland Dairy
690 County Road 45
Earth, TX 79031

Dear Mr. Black:

This letter serves as a notice to Redland Dairy that Freedom of Information Act Request 2013-AMS-01201-F (copy enclosed) is contested in a litigation filed by *The Cornucopia Institute v. U.S. Department of Agriculture (USDA)*, Case No. 16-cv-148-RC (D.D.C). The Cornucopia Institute ("Plaintiff") requested certain information concerning your facility from the USDA, Agricultural Marketing Service ("AMS").

On March 7, 2016, we received a Freedom of Information Act ("FOIA") request, FOIA 2013-AMS-01201-F, from Plaintiff seeking:

[I]nformation regarding visits to organic dairies in Texas and New Mexico by Matthew Michael, the Director of the NOP [National Organic Program] Compliance and Enforcement Division, and [AMS] Deputy Administrator Miles McEvoy, or any other USDA official or agent acting at NOP's request. If there are any other dairies that have been visited directly by NOP staff in 2012 we would also respectfully request materials related to those visits (but only after the aforementioned documents are delivered related to the Texas and New Mexico operations [sic]...

...Cornucopia is requesting, in particular, copies of all correspondence, discussion notes, documents, phone logs and background materials related to the planning for said visits, actual visits to the Texas and New Mexico organic dairies in 2012, any follow-up correspondence or documents and subsequent actions and/or activities that transpired following the visits (including any enforcement actions by the NOP or accredited certification agencies).

On or about January 29, 2016, Plaintiff filed the above-referenced lawsuit in order to gain access to this information. Information submitted by your organization is among the records requested by Plaintiff. A review of the enclosed records reveals that the records may contain confidential commercial or business information ("CBI") within the meaning of FOIA Exemption 4, 5 U.S.C. 552(b)(4). Exemption 4 protects from public disclosure trade secrets and commercial or financial information obtained from a person that is privileged or confidential. In order to protect the information, AMS must first establish that the information is commercial or financial and that it was obtained from a person, company, organization, state government, or other outside entity.

Next AMS must establish that the information is "confidential," which typically means that release of the information would cause substantial competitive harm to the submitter. In order to

AMS0019

establish substantial competitive harm, AMS must identify the competition in the relevant market. Accordingly, FOIA Exemption 4 permits agencies to withhold CBI, the disclosure of which is likely to cause substantial competitive harm.

Whenever AMS cannot readily determine whether responsive records contain CBI, the agency must obtain and consider the views of the organization that submitted the information. See Executive Order 12,600 (copy enclosed) and 7 C.F.R. § 1.12. In addition, the agency must provide the organization with an opportunity to object to any decision to disclose the information. *Id.* Congruous with this direction, for Redland Dairy's review, my office is enclosing 243 pages of records potentially responsive to FOIA 2013-AMS-01201-F that may contain Redland Dairy's information protected from disclosure as CBI.

In reviewing the enclosed records, please highlight information you believe is Redland Dairy's CBI and prepare a detailed, written justification to support protection of the designated information as CBI. The business submitter must explain fully all grounds upon which disclosure is opposed; specifically, a business submitter must explain item-by-item why disclosure would cause substantial harm to its competitive position. Also, enclosed is a copy of our Instructions for CBI Justification.

Please note that when documents contain information that qualifies as exempt from disclosure, the entire document is not necessarily exempt. The FOIA specifically provides that any reasonably segregable portions of a document must be provided to a requester after deletion of the portions that are exempt. For that reason, please specifically indicate which portions of the records that you believe contain CBI. Please be aware that comments provided by your organization in response to this letter may be subject to disclosure under FOIA.

We appreciate receiving your response to this notice no later than 12pm on April 18, 2016. Please be advised that AMS will be operating under strict time constraints due to this litigation. If your organization does not object to disclosure of this information, please notify AMS of this position in writing. Any comments should be sent by mail or to Mr. Gregory Bridges at:

Gregory Bridges
Agricultural Marketing Service - FOIA Officer
1400 Independence Avenue, SW
South Building, Rm. 3943-S, Stop 0202
Washington, DC 20250-0273
Attn: FOIA 2013-AMS-01201-F (EO12600 Response)
Email: gregory.bridges@ams.usda.gov

If your organization objects to the release of the information, AMS will consider your response carefully in making a final determination. Should AMS decide to release any of the information, we will advise you in writing before such disclosure takes place in order to provide your organization with an opportunity to seek judicial intervention. If you have any questions please contact me at 202-720-2498, or electronically at gregory.bridges@ams.usda.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory Bridges". The signature is written in a cursive style with a large initial "G".

Gregory Bridges
FOIA Officer
USDA, Agriculture Marketing Service

Enclosures:

1. Copy of FOIA Request
2. Responsive Records
3. Executive Order (E.O.) 12600
4. Instructions for CBI Justification



January 4, 2013

USDA, Agricultural Marketing Service
Valerie L. Emmer Scott -- FOIA/PA Officer
Rm 3521-S
Ag Stop 0202
1400 Independence Ave., SW
Washington, DC 20250-0273

Sent via email: AMS.FOIA@usda.gov

FOIA REQUEST

Fee benefit requested

Fee waiver requested

Dear Ms. Scott,

The Cornucopia Institute is requesting information regarding visits to organic dairies in Texas and New Mexico by Matthew Michael, the Director of the NOP's Compliance and Enforcement Division, and Deputy Administrator Miles McEvoy, or any other USDA official or agent acting at NOP's request. If there are any other dairies that have been visited directly by NOP staff in 2012 we would also respectfully request materials related to those visits (but only after the aforementioned documents are delivered related to the Texas and New Mexico operations (please let us know if you would like a separate FOIA request).

It is our understanding that the Texas and New Mexico visits occurred in 2012 and Cornucopia is requesting, in particular, copies of all correspondence, discussion notes, documents, phone logs and background materials related to the planning for said visits, actual visits to the Texas and New Mexico organic dairies in 2012, any follow-up correspondence or documents and subsequent actions and/or activities that transpired following the visits (including any enforcement actions by the NOP or accredited certification agencies).

As I am making this request as a policy researcher for a not-for-profit public interest and

research organization, please waive any applicable fees. Also, I would appreciate your communicating with me by telephone or e-mail, rather than by the United States Postal Service, if you have questions regarding this request.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the Act.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink that reads "Will Fantle". The signature is written in a cursive, slightly slanted style.

Will Fantle, Codirector
The Cornucopia Institute



January 4, 2013

USDA, Agricultural Marketing Service
Valerie L. Emmer Scott -- FOIA/PA Officer
Rm 3521-S
Ag Stop 0202
1400 Independence Ave., SW
Washington, DC 20250-0273

Sent via email: AMS.FOIA@usda.gov

FOIA REQUEST

Fee benefit requested

Fee waiver requested

Dear Ms. Scott,

The Cornucopia Institute is requesting information regarding visits to organic dairies in Texas and New Mexico by Matthew Michael, the Director of the NOP's Compliance and Enforcement Division, and Deputy Administrator Miles McEvoy, or any other USDA official or agent acting at NOP's request. If there are any other dairies that have been visited directly by NOP staff in 2012 we would also respectfully request materials related to those visits (but only after the aforementioned documents are delivered related to the Texas and New Mexico operations (please let us know if you would like a separate FOIA request).

It is our understanding that the Texas and New Mexico visits occurred in 2012 and Cornucopia is requesting, in particular, copies of all correspondence, discussion notes, documents, phone logs and background materials related to the planning for said visits, actual visits to the Texas and New Mexico organic dairies in 2012, any follow-up correspondence or documents and subsequent actions and/or activities that transpired following the visits (including any enforcement actions by the NOP or accredited certification agencies).

As I am making this request as a policy researcher for a not-for-profit public interest and

research organization, please waive any applicable fees. Also, I would appreciate your communicating with me by telephone or e-mail, rather than by the United States Postal Service, if you have questions regarding this request.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the Act.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink that reads "Will Fantle". The signature is written in a cursive style with a large, stylized "W" and "F".

Will Fantle, Codirector
The Cornucopia Institute

INSTRUCTIONS FOR CONFIDENTIAL BUSINESS INFORMATION (CBI) JUSTIFICATION

The AMS FOIA Office will make a decision as to whether information is confidential business information (“CBI”) protected from disclosure under Exemption 4 of FOIA. In order to protect information from disclosure as CBI, AMS must first establish that the information is commercial or financial and that it was obtained from a person, company, organization, state government, or other outside entity. Next, AMS must establish that the information is “confidential,” which typically means that release of the information would cause substantial competitive harm to the submitter. In order to establish substantial competitive harm, AMS must be able to identify that the submitter competes in a market and disclosure of the submitter’s information will likely cause substantial competitive harm to the submitter in the relevant competitive market.

In conjunction with your review of records for CBI, please designate information you believe is CBI and, in accordance with the instructions below, prepare a detailed written justification to support protection of the designated information from disclosure under FOIA. Please explain fully all grounds upon which disclosure is opposed; specifically, a business submitter must explain item-by-item why disclosure would cause substantial harm to its competitive position.

Your written justification should respond to the instructions set forth below and be provided in a format corresponding to each of the below headings.

I. Introduction

Provide general information describing the competitive market of your business. Include any background information that provides relevancy to comments used in your justification. If any information belongs to cooperating businesses, include a discussion of how information is maintained confidential, i.e., secrecy agreements.

II. In Your Justification, Categorize Like Pieces of Information

- A. Review the documents we have referred to your organization for review pursuant to Executive Order 12,600.
- B. Designate the information your company claims as CBI.
- C. Categorize like pieces of information designated as CBI. By way of example only, a non-exhaustive list of categories of information could include:
 - detailed financial information such as a company's assets, liabilities, and net worth;

- a company's actual costs, break-even calculations, profits and profit rates;
- data describing a company's workforce that would reveal labor costs, or profit margins,
- a company's selling prices, purchase activity or pricing strategy;
- market share and volume of sales; and
- currently unannounced and future products or proprietary technical information

Please note that inclusion on the above non-exhaustive list is not meant to imply that AMS will definitively find such category of information to be CBI. AMS does not categorically decide information is CBI. Instead AMS evaluates each piece of information individually and decides whether disclosure of the information will likely cause substantial competitive harm to the submitter in the relevant competitive market.

D. Provide a discussion for each category identified. The discussion should describe:

1. What each category of information reveals about your organization's business;
2. How a competitor could use this information to cause your company competitive harm; and
3. The specific competitive harm (e.g., financial, research & development, etc.) that could result if the information is released. This is essential for our release determination;

III. Summary

Summarize the importance of the information that you have identified as CBI to the viability of your company's business operations. Provide the name and telephone number of a company official that AMS can contact for further explanation.

IV. Documents

You must provide AMS a copy of all pages on which you have identified information as CBI. When records contain information that qualifies as exempt from disclosure as CBI, the entire record is not necessarily exempt from disclosure. FOIA specifically provides that any reasonably segregable portions of a record must be provided to a requester after redaction of the portions that are exempt from disclosure. For that reason, please designate the **exact portion** of each page you believe contains CBI.

Information can be designated by drawing a box around it or underlining it if you are sending your submission by facsimile or email. Please use a writing instrument that is capable of drawing a dark heavy line to ensure your redactions can be seen. The underlined/boxed information must be visible through the markings. If sending by mail,

you may highlight the information or use one of the methods previously listed.

V. Index (Optional)

Provide an index of the referred documents that your company designated as containing CBI. The index should match each appropriate categorical justification to the documents containing information claimed as CBI.

VI. Additional Help

For assistance in preparing your response or for more information regarding this process, please consult the following resources:

- A. Freedom of Information Act, 5 U.S.C. § 552
- B. Handling Information from a Private Business, 7 C.F.R. 1.12
- C. U.S. Department of Justice's Guide to the FOIA at <http://www.justice.gov/oip/doj-guide-freedom-information-act-0>
- D. Executive Order 12,600- Predisclosure Notification Procedures for Confidential Commercial Information (copy enclosed)
- E. Obtain the advice of counsel to ensure you provide the level of detail required to support any Exemption 4 assertions

Executive Order 12600--Predisclosure notification procedures for confidential commercial information

Source: The provisions of Executive Order 12600 of June 23, 1987, appear at 52 FR 23781, 3 CFR, 1987 Comp., p. 235, unless otherwise noted.

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to provide predisclosure notification procedures under the Freedom of Information Act concerning confidential commercial information, and to make existing agency notification provisions more uniform, it is hereby ordered as follows:

Section 1. The head of each Executive department and agency subject to the Freedom of Information Act shall, to the extent permitted by law, establish procedures to notify submitters of records containing confidential commercial information as described in section 3 of this Order, when those records are requested under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, if after reviewing the request, the responsive records, and any appeal by the requester, the department or agency determines that it may be required to disclose the records. Such notice requires that an agency use good-faith efforts to advise submitters of confidential commercial information of the procedures established under this Order. Further, where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

Sec. 2. For purposes of this Order, the following definitions apply:

(a) "Confidential commercial information" means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(b) "Submitter" means any person or entity who provides confidential commercial information to the government. The term "submitter" includes, but is not limited to, corporations, state governments, and foreign governments.

Sec. 3. (a) For confidential commercial information submitted prior to January 1, 1988, the head of each Executive department or agency shall, to the extent permitted by law, provide a submitter with notice pursuant to section 1 whenever:

(i) the records are less than 10 years old and the information has been designated by the submitter as confidential commercial information; or

(ii) the department or agency has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(b) For confidential commercial information submitted on or after January 1, 1988, the head of each Executive department or agency shall, to the extent permitted by law, establish procedures to permit submitters of confidential commercial information to designate, at the time the information is submitted to the Federal government or a reasonable time thereafter, any information the disclosure of which the submitter claims could reasonably be expected to cause substantial competitive harm. Such agency procedures may provide for the expiration, after a specified period of time or changes in circumstances, of designations of competitive harm made by submitters. Additionally, such procedures may permit the agency to designate specific classes of information that will be treated by the agency as if the information had been so designated by the submitter. The head of each Executive department or agency shall, to the extent permitted by law, provide the submitter notice in accordance with section 1 of this Order whenever the department or agency determines that it may be required to disclose records:

(i) designated pursuant to this subsection; or

(ii) the disclosure of which the department or agency has reason to believe could reasonably be expected to cause substantial competitive harm.

Sec. 4. When notification is made pursuant to section 1, each agency's procedures shall, to the extent permitted by law, afford the submitter a reasonable period of time in which the submitter or its designee may object to the disclosure of any specified portion of the information and to state all grounds upon which disclosure is opposed.

Sec. 5. Each agency shall give careful consideration to all such specified grounds for nondisclosure prior to making an administrative determination of the issue. In all instances when the agency determines to disclose the requested records, its procedures shall provide that the agency give the

submitter a written statement briefly explaining why the submitter's objections are not sustained. Such statement shall, to the extent permitted by law, be provided a reasonable number of days prior to a specified disclosure date.

Sec. 6. Whenever a FOIA requester brings suit seeking to compel disclosure of confidential commercial information, each agency's procedures shall require that the submitter be promptly notified.

Sec. 7. The designation and notification procedures required by this Order shall be established by regulations, after notice and public comment. If similar procedures or regulations already exist, they should be reviewed for conformity and revised where necessary. Existing procedures or regulations need not be modified if they are in compliance with this Order.

Sec. 8. The notice requirements of this Order need not be followed if:

- (a) The agency determines that the information should not be disclosed;
- (b) The information has been published or has been officially made available to the public;
- (c) Disclosure of the information is required by law (other than 5 U.S.C. 552);
- (d) The disclosure is required by an agency rule that (1) was adopted pursuant to notice and public comment, (2) specifies narrow classes of records submitted to the agency that are to be released under the Freedom of Information Act, and (3) provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm;
- (e) The information requested is not designated by the submitter as exempt from disclosure in accordance with agency regulations promulgated pursuant to section 7, when the submitter had an opportunity to do so at the time of submission of the information or a reasonable time thereafter, unless the agency has substantial reason to believe that disclosure of the information would result in competitive harm; or
- (f) The designation made by the submitter in accordance with agency regulations promulgated pursuant to section 7 appears obviously frivolous; except that, in such case, the agency must provide the submitter with written notice of any final administrative disclosure determination within a reasonable number of days prior to the specified disclosure date.

Sec. 9. Whenever an agency notifies a submitter that it may be required to disclose information pursuant to section 1 of this Order, the agency shall also notify the requester that notice and an opportunity to comment are being provided the submitter. Whenever an agency notifies a submitter of a final decision pursuant to section 5 of this Order, the agency shall also notify the requester.

Sec. 10. This Order is intended only to improve the internal management of the Federal government, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

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The U.S. National Archives and Records Administration

1-86-NARA-NARA or 1-866-272-6272

From: [Bridges, Gregory - AMS](#)
To: [Sachnoff, Lee F.](#); [LISWELL, BROOKS - OGC](#); [Michael, Matthew - AMS](#); [Schurkamp, Lynnea - AMS](#)
Subject: 2013-AMS-01201-F Intent to Release
Start: Wednesday, June 15, 2016 4:00:00 PM
End: Wednesday, June 15, 2016 4:45:00 PM
Location: Teleconference Call In: 888-844-9904 Access Code: 7880945

Mr. Sachnoff:

The purpose of this meeting will be to review or response to FOIA #2013-AMS-01201-F.

During this discussion will discuss all concerns with the release of these records and provide further details on AMS's redactions. Joining us will be myself, Brooks Liswell from our Office of General Counsel, and Michael Matthew and Lynnea Schurkamp from our National Organic Program.

A call in number will be provided prior to the start of this meeting. If you have any questions, please contact me.

Thanks,

Greg Bridges
FOIA Officer
USDA Agricultural Marketing Service
1400 Independence Avenue, S.W.
3943-S
Stop 0202
Washington, D.C. 20250
202-720-2498

From: [Bridges, Gregory - AMS](#)
To: [Sachnoff, Lee F.](#); [LISWELL, BROOKS - OGC](#); [Michael, Matthew - AMS](#)
Cc: [Isler, Thomas A.](#); [Arney, Neil L.](#)
Subject: Canceled: EO 12600 Submitter Notice Review (Aurora Dairy)
Importance: High

All:

Due to unforeseen circumstances today's meeting has been cancelled. I apologize for the short notice. We will attempt to reschedule for later this week.

Thanks,

Greg Bridges
FOIA Officer
USDA Agricultural Marketing Service
1400 Independence Avenue, S.W.
3943-S
Stop 0202
Washington, D.C. 20250
202-720-2498

From: [Bridges, Gregory - AMS](#)
To: [Sachnoff, Lee F.](#); [LISWELL, BROOKS - OGC](#); [Michael, Matthew - AMS](#)
Subject: EO 12600 Submitter Notice Review (Aurora Dairy)

Mr. Sachnoff:

The purpose of this meeting will be to review the redactions that you submitted in response to our submitter notice.

A sample record set will be sent to you in a series of separate emails. The information that is redacted in yellow represents the kind of information that we are proposing to release. In addition to this record set, I am including records that will be sent to cottonwood cattle for an additional review.

During this discussion will discuss all concerns with the release of these records. Joining us will be myself, Brooks Liswell from our Office of General Counsel, and Michael Matthew from our National Organic Program.

If you have any questions, please contact me.

Greg Bridges
FOIA Officer
USDA Agricultural Marketing Service
1400 Independence Avenue, S.W.
Stop 0202
Washington, D.C. 20250

From: Bridges, Gregory - AMS
To: ["Sachnoff, Lee F."](#)
Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy
Date: Monday, March 14, 2016 5:57:00 PM

Hi Lee:

We are putting it in the mail this week. In light of the litigation, we had to revise the accompanying letter.

Greg Bridges

FOIA Officer
USDA Agricultural Marketing Service
1400 Independence Avenue, S.W.
Stop 0202
Washington, D.C. 20250

From: Sachnoff, Lee F. [mailto:Lee.Sachnoff@KutakRock.com]
Sent: Monday, March 14, 2016 4:02 PM
To: Bridges, Gregory - AMS
Cc: Arney, Neil L.
Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

Greg:

We have not yet received the disk with the proposed redactions. Any update on when we can expect to receive them?

Lee F. Sachnoff | Kutak Rock LLP

1801 California Street | Suite 3000 | Denver | Colorado | 80202
Direct: (303) 292-7789 | Main: (303) 297-2400 | Facsimile: (303) 292-7799
lee.sachnoff@kutakrock.com

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Thank you.

From: Bridges, Gregory - AMS
To: ["Sachnoff, Lee F."](#)
Subject: RE: FOIA 2013-AMS-01201-F (EO12600 Response)
Date: Tuesday, June 21, 2016 2:49:00 PM

Hi Lee:

Yes we did receive your letter. I will reach out to you if there are any issues.

Thanks,

Greg Bridges
FOIA Officer
USDA Agricultural Marketing Service
1400 Independence Avenue, S.W.
3943-S
Stop 0202
Washington, D.C. 20250
202-720-2498

-----Original Message-----

From: Sachnoff, Lee F. [<mailto:Lee.Sachnoff@KutakRock.com>]
Sent: Tuesday, June 21, 2016 1:51 PM
To: Bridges, Gregory - AMS
Subject: FW: FOIA 2013-AMS-01201-F (EO12600 Response)

Greg:

I wanted to make sure that you received Aurora Organic Dairy's response that my legal assistant Nguyen Vargas sent to you early today. Please confirm. Thank you.

Lee F. Sachnoff | Kutak Rock LLP
1801 California Street | Suite 3000 | Denver | Colorado | 80202
Direct: (303) 292-7789 | Main: (303) 297-2400 | Facsimile: (303) 292-7799 lee.sachnoff@kutakrock.com

-----Original Message-----

From: Vargas, Nguyen T.
Sent: Tuesday, June 21, 2016 8:57 AM
To: GREGORY.BRIDGES@ams.usda.gov
Cc: 'Juanv@AuroraOrganic.com'; Gary Sebek; brentc@AODMilk.com; Arney, Neil L.; Sachnoff, Lee F.
Subject: FOIA 2013-AMS-01201-F (EO12600 Response)

Mr. Bridges:

At the request of Lee F. Sachnoff, please find the attached correspondence and enclosures.

Please contact Mr. Sachnoff with any questions.

Very truly yours,

AMS0035

Nguyen T. Vargas, Corporate Legal Secretary Kutak Rock LLP
1801 California Street, Suite 3000
Denver, CO 80202
Telephone: (303) 297-2400
Direct: (303) 292-7733
Email: nguyen.vargas@kutakrock.com

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Thank you.

VIA E-MAIL TO
NEIL.ARNEY@KUTAKROCK.COM
AND UPS NEXT DAY AIR

June 10, 2016

Neil L. Arney, Esq.
Kutak Rock LLP
1801 California Street
Denver, Colorado 80202

Subject: Notice of Intent to Release Records in *The Cornucopia Institute v. U.S. Department of Agriculture (USDA)*, Case No. 16-cv-148-RC (D.D.C)

Dear Mr. Arney:

In correspondence dated March 21, 2016, Gregory Bridges, FOIA Officer for the Agricultural Marketing Service (“AMS”) of the United States Department of Agriculture (“USDA”), solicited the input of Aurora Organic Dairy (“AOD”), concerning records requested by The Cornucopia Institute (“Cornucopia”) in conjunction with the above-referenced lawsuit filed against the USDA under the Freedom of Information Act (“FOIA”). In the above-referenced lawsuit, Cornucopia seeks the following records:

[] Information regarding visits to organic dairies in Texas and New Mexico by Matthew Michael, the Director of the NOP [National Organic Program] Compliance and Enforcement Division, and [AMS] Deputy Administrator Miles McEvoy, or any other USDA official or agent acting at NOP’s request. If there are any other dairies that have been visited directly by NOP staff in 2012 we would also respectfully request materials related to those visits (but only after the aforementioned records are delivered related to the Texas and New Mexico operations [sic]...

..Cornucopia is requesting, in particular, copies of all correspondence, discussion notes, records, phone logs and background materials related to the planning for said visits, actual visits to the Texas and New Mexico organic dairies in 2012, any follow-up correspondence or records and subsequent actions and/or activities that transpired following the visits (including any enforcement actions by the NOP or accredited certification agencies).

In its March 21, 2016 letter, AMS requested the input of AOD because AMS could not readily determine whether information from some of the requested records was an AOD trade

secret or AOD's privileged or confidential business information within the meaning of FOIA Exemption 4. See E.O. 12600; 7 C.F.R. 1.12.

We appreciate AOD's April 15, 2016, response to our March 21, 2016 letter (herein the "April 15, 2016 Letter"). Our detailed response to the April 15, 2016 Letter, and the arguments therein, is set forth below.

We have completed the review of the first **800 pages** of AOD's records that AMS submitted to AOD for review. **Please be aware that we are still reviewing the balance of records that AMS submitted to AOD for review.** Upon our completion of the review of the remainder of AOD's records, we will provide you with a letter, separate and apart from this letter, addressing just those records.

With this letter, we are providing you advance notice of a partial release of the enclosed records to Cornucopia. Please review the enclosed **800 pages** of records carefully. AMS intends to release the enclosed records, in the manner marked (indicating redactions under FOIA Exemptions 4 and 6), to Cornucopia on or after **June 30, 2016**.

If AOD plans to seek judicial intervention to prevent AMS from disclose any of the enclosed records, please inform AMS of the AOD's intentions to do so in writing, at Gregory.Bridges@ams.usda.gov, by **June 28, 2016**.

AMS' Response To AOD's Arguments In The April 15, 2016 Letter

The April 16, 2016 Letter argues that information in the records AMS submitted to AOD for review should not be disclosed for the following reasons:

- 1) Pursuant to FOIA Exemption 3 and the corresponding applicable non-disclosure statutes, information in the records is shielded from disclosure;
- 2) AOD's Organic System Plans are not "agency records" under FOIA;
- 3) In conjunction with the application of FOIA Exemption 4, pages with Bates Numbers 0000001 – 0001224 and 0001340 – 001347 should not be disclosed as the information on these pages contains AOD's trade secrets;
- 4) In conjunction with the application of FOIA Exemption 4, and in response AMS' request to AOD for input pursuant to E.O. 12600 and 7 C.F.R. 1.12, the April 16, 2016 Letter provided a particularized review of records submitted to AOD for review and proposed redactions to AOD's information as confidential business information; and
- 5) FOIA Exemption 6 applies to certain information contained in the records.

We address each argument directly below.

I. Exemption 3: Section 1619(h)(2) of the Food Conservation, and Energy Act of 2008 and the Organic Farm Production Do Not Shield Disclosure of AOD’s Information.

The April 15, 2016 Letter argues that FOIA Exemption 3 provides blanket protection for withholding all information in AOD’s Organic System Plans (“OSPs”), including correspondence with QAI and QAI inspection reports. The April 15, 2016 Letter specifically argues that pursuant to Exemption 3 and the application of Section 1619(h)(2) of the 2008 Farm Bill (“Section 1619”), codified at 7 U.S.C. 8719, and the Organic Foods Production Act (“OFPA”), 7 U.S.C. 6501 *et seq.*, the information is exempt from disclosure.

The text of Exemption 3 reads as follows:

(b) This section does not apply to matters that are – . . . (3) specifically exempted from disclosure by statute . . . , if that statute—(A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and (B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph. 5 U.S.C. 552(b)(3).

AMS does not intend to withhold the records submitted to AOD for review under Exemptions 3 pursuant to either of these statutes.

A. Section 1619 Is An Exemption 3 Statute But It Is Not Applicable to the Records Submitted to AOD for Review.

In public guidance issued by Boyd Rutherford, former Assistant Secretary for Administration, USDA, on July 30, 2008, a copy of which is enclosed with this letter, he explained that Section 1619 does not apply to all information gathered from agricultural producers or landowners. Section 1619 applies only to programs that provide loans, grants, subsidies, payments or other benefits. Assistant Secretary Rutherford’s memorandum specifically articulated that Section 1619 does not apply to regulatory programs where participation by the agricultural producer or landowner is required by law as a condition of participation in the marketplace.

The National Organic Program (“NOP”) is considered a regulatory program because in order for a business to participate in the marketplace as an organic producer, it must comply with NOP requirements prior to being certified as an organic producer and be authorized to offer its products using the organic label. Therefore, Section 1619 is not applicable to the records submitted to AOD for review.

Further, we have reviewed AOD’s arguments set forth in April 15, 2016 Letter regarding the application of Section 1619 and disagree. First, we believe the guidance set forth in Assistant Secretary Rutherford’s memorandum remains applicable despite the subsequent release of the case law cited in the April 15, 2016 Letter. Second, we disagree with AOD’s position regarding

the NOP dispensing benefits. Our position is that the NOP program merely sets forth requirements that must be met in order for a producer to market its products as organic. Finally, we disagree with the definition of the relevant marketplace set forth in the April 15, 2016 Letter.

B. Sections 6515(f) and 6519(a)(5) of the Organic Foods Production Act are Not Exemption 3 Statutes.

First, 7 U.S.C. 6515(f) imposes a confidentiality requirement upon certifying agents, not USDA. As such, 7 U.S.C. 6515(f) is not an explicit nondisclosure statute applicable to USDA that would meet the requirements for an Exemption 3 statute.

Second, turning to 7 U.S.C. § 6519(a)(5), this statute was added to OFPA by the year 2014 Farm Bill. In year 2009, Exemption 3 of the FOIA was revised to shield from disclosure records “specifically exempted from disclosure by statute ... if that statute-”

(A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and

(B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph.

5 U.S.C. § 552(b)(3) (emphasis added).

As 7 U.S.C. § 6519(a)(5) was enacted subsequent to the year 2009 revision to FOIA Exemption 3 without specifically citing to 5 U.S.C. § 552(b)(3), it is not considered an Exemption 3 statute. Accordingly, AMS will not be withholding the records submitted to AOD for review under Exemptions 3.

II. The Records AMS Requested AOD to Review Are “Agency Records” Subject to FOIA.

The April 16, 2016 Letter argues that AOD’s OSPs are not “agency records” subject to FOIA. We disagree with this position.

For purposes of FOIA, “agency records” are records that are (1) either created or obtained by an agency, and (2) under agency control at the time of the FOIA request. The following factors are balanced in determining whether an agency controls a record at the time of the FOIA request:

- (1) the intent of the document’s creator to retain or relinquish control over the records;
- (2) the ability of the agency to use and dispose of the record as it sees fit; (3) the extent to which agency personnel have read or relied upon the document; and (4) the degree to which the document was integrated into the agency’s record system or files.

Burka v. U.S. Dep't of Health & Human Servs., 87 F.3d 508, 515 (D.C. Cir. 1996) (citation omitted).

Balancing the above factors to the records AMS requested AOD to review, we conclude AMS controlled the records at the time of Cornucopia's FOIA request. Regarding the first factor, we believe the records in question were transferred to the AMS with full knowledge that AMS might use them in the conduct of its official business. As for the second factor, contrary to what AOD argues in its April 16, 2016 Letter, subject to applicable statutes or regulations, AMS has the ability to use and dispose of the records as it sees fit. Turning to the third factor, AMS used the requested records as part of its official business. Finally, at the time of the FOIA request, the records were maintained in AMS' files.

As AMS controlled the records at the time of the FOIA request, the records AMS requested AOD to review are "agency records" subject to FOIA.

III. Exemption 4 Shields Certain Information From Disclosure But AMS Does Not Agree With All Instances Wherein AOD Has Proposed An Exemption 4 Redaction.

Exemption 4 of the FOIA protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." Most significantly, each item of the information in question must be examined separately for purposes of the application of Exemption 4. FOIA requires that agencies segregate non-exempt information from exempt information when responding to FOIA requests. See 5 U.S.C. § 552(b).

In addition to conducting its own independent review of the application of Exemption 4 to AOD's information, AMS has reviewed AOD's information in light of the arguments AOD proffers in the April 15, 2016 Letter. AMS agrees that some information is properly withheld from release under Exemption 4. Information wherein AMS agrees with AOD's proposed redactions pursuant to Exemption 4 is marked in the enclosed records as being withheld pursuant to Exemption 4.

However, AMS has determined that, contrary to the views AOD provided to AMS, some information marked as redacted pursuant to Exemption 4 is actually releasable. Directly below is a delineation of all of the information wherein AMS has determined to make a release contrary to AOD's view that Exemption 4 is applicable. AMS' rationale as to why Exemption 4 is inapplicable to the information is also discussed.

A. AMS' Disagreement With AOD's Proposed Exemption 4 Redactions: Commercial or Financial Information Obtained From a Person That Is Privileged or Confidential.

In the April 15, 2016 Letter, AOD argues that certain information is exempt from disclosure pursuant to Exemption 4 because release of the information is likely to cause substantial harm to AOD's competitive position. In the following instances AMS disagrees with AOD's position on the application of this prong of Exemption 4:

1. Certificate numbers and crops for Aurora at the Coldwater location on the organic certificates.

Pursuant to 7 U.S.C. 6506(a)(9) and 7 C.F.R. 205.504(b)(5)(i)-(ii) this information is releasable to the public upon request. As such this information cannot be shielded from disclosure by Exemption 4.

The release of this information contrary to the proposed redactions of AOD can be found in the enclosed records at pages 5-7.

2. Headings, titles, and cover pages sufficient to show the type of information being redacted in the immediate content to follow.

The release of this information does not reveal any information that could be used by an AOD competitor. Rather, this limited disclosure of headings, titles, and cover pages is being done to indicate that the content being redacted under the headings, titles, and cover pages is information that could be expected to contain confidential business information and/or trade secrets protected from release pursuant to Exemption 4.

The release of this information contrary to the proposed redactions of AOD can be found intermittently throughout the enclosed 800 pages, for example at pages 96-102, 106, 110-112, 123, 211-215, 229, 230, 289.

3. Responses to questions wherein release of the response would not provide an advantage to an AOD competitor.

Much of this information discloses AOD's compliance with National Organic Program regulations. An AOD competitor could not use any of these answers to gain a competitive advantage over AOD as the information only discloses what AOD is legally required to do. Further, none of this information is an AOD proprietary business practice. Rather, what is being released is general information about AOD practices or industry standard practices, none of which are unique to AOD, thereby rendering a competitor incapable of using the information to gain a competitive advantage over AOD.

The below table sets forth the instances wherein this information is being released contrary to the proposed redactions of AOD:

Page Number of Information	Specific Question On Page Wherein AMS Is Releasing Info Contrary to AOD's Proposed Redaction
9	C1 and D1
16	B3
17	B4, C1, and C2
18	C3
19	C6 and C7
20	D2 checkboxes and content in narrative answer for D2
22	D6 and D7 checkboxes and D7 narrative answer
24	E2

25	E3 and E4
26	E6 checkboxes and E8 narrative
27	F1
28	F2 checkboxes and narrative answer; F3 checkboxes & note
29	F4, F5, and F6
30	F7, F8 checkboxes and narrative answer to F8
31	F9, F10, F11 and note
32	F12, F13 and F14 and note
33	F15 checkboxes
34	F16 checkboxes
35	F17 and H1 checkboxes and narrative answers to both
36	H2, I1 and I2 checkboxes and note
37	I3, J1 and J2 checkboxes and narrative answer
38	J4 checkbox; K1 and K2 checkboxes
39	K3 and K5 checkboxes
40	L1 checkboxes
41	L3 and L4 checkboxes
43	L7 and L8 checkboxes
44	L10 and L11 checkboxes and references to appendixes 24 and 9
46	A4 checkboxes
47	B1 checkboxes and narrative answer
48	B3 and B4 checkboxes
49	C2 checkboxes
50	D2 checkboxes and narrative answer
51	D6 checkboxes
52	D8 narrative answer and E2 checkboxes and narrative answer
53	E3, E4 and E5 checkboxes plus E5 bedding info except supplier
54	F1 and F2 checkboxes and F2 narrative answer
55	F3, F4 and F5 checkboxes plus narrative and note
56	F6, F7 and F8 checkboxes plus narrative answer for F6
57	F9 and F10 checkboxes
58	F11, G1, H and H1 checkboxes plus H11 narrative answer
59	H3 and H4 checkboxes and note; left pest control info
60	H5, I1 and I2 checkboxes
61	I3, I4, I5 and I6 checkboxes plus references to Appendices 1, 24 and 16
62	J References to Appendices
64	Question 1 and Question 2 checkboxes and narrative answers
65	Question 3 explanation to N/A response
117	3(b) N/A answer; blank chemical name boxes; and 3(c) general info except sanitation supplier
120	3(b) N/A answer; blank chemical name boxes; and 3(c) general info except sanitation supplier
226	B2 and B3 checkboxes and narrative updates in D1

4. General information in the Notices and other correspondence wherein release of the response would not provide an advantage to an AOD competitor.

This is general information about AOD practices or industry standard practices, none of which are unique to AOD. A competitor could not use this information to gain a competitive advantage over AOD.

Further, in response to FOIA requests for records concerning closed noncompliance or enforcement matters, AMS typically releases information concerning cited noncompliance and related operation responses, with proprietary and other exempted information redacted. Such records would include actions proposed or taken by either organic certifiers or the National Organic Program. The release of such information effects the purpose of the OFPA to assure consumers that organically produced products meet a consistent standard. 7 U.S.C. 6501(2).

The below table sets forth the instances wherein this information is being released contrary to the proposed redactions of AOD:

Page number of information	Specific Information Wherein AMS Is Releasing Info Contrary to AOD's Proposed Redaction
1	Non-proprietary information on corrective action/improvements requested
2	Non-proprietary information on corrective action/improvements requested
3	Non-proprietary information on corrective action/improvements requested
68	Non-proprietary information on organic inspection record in items 3 and 4
69	Non-proprietary information on inspection in items 4, 5, 6, and 7
70	Non-proprietary information on organic inspection record in items 7, 8, 9, 10, 11, 12, and 14
71	Non-proprietary information on organic inspection record in items 15, 16, 17, 18, and 19
72	Non-proprietary information on organic inspection record in item 21
73	Non-proprietary information on organic inspection record in item 27
74	Non-proprietary information on organic inspection record in items 28, 29 as well as items 1, 2 and 3
75	Non-proprietary information on organic inspection record in items 2 and 3
76	Non-proprietary information on organic inspection record in items 6, 7, 8, and 9
77	Non-proprietary information on organic inspection record in item 9 as well as Sections 3 and 4
79	Non-proprietary information on corrective action/improvements taken
80	Non-proprietary information on corrective action/improvements taken
81	Non-proprietary information on corrective action/improvements taken
82	Non-proprietary information on corrective action/improvements taken
83	Non-proprietary information on corrective action/improvements taken
109	Non-Proprietary information regarding legal requirements
218	Non-proprietary information on corrective action/improvements requested
219	Non-proprietary information on corrective action/improvements requested
220	Non-proprietary information on corrective action/improvements requested

B. AMS' Disagreement With AOD's Proposed Exemption 4 Redactions: Trade Secrets.

The preceding section directly above titled "AMS' Disagreement With AOD's Proposed Exemption 4 Redactions: Commercial or Financial Information Obtained From a Person That Is Privileged or Confidential" delineates all instances wherein AMS is disclosing information contrary to AOD's proposed Exemption 4 redactions.

In the April 15, 2016 Letter, AOD also argues that certain information is exempt from disclosure pursuant to Exemption 4 because the information constitutes AOD's trade secrets. Under FOIA, a "trade secret" is "a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort." *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C.Cir.1983). This definition is said to "incorporate[] a direct relationship between the information at issue and the productive process." *Id.*

Looking again at all of the information delineated in the preceding section, AMS has also determined that none of the information constitutes an AOD trade secret. Specifically, none of the information consists of a secret, commercially valuable plan, formula, or process. As such, in addition to not being shielded from disclosure as privileged or confidential commercial information, none of the information delineated in the preceding section will be shielded from disclosure pursuant to trade secrets protection afforded by Exemption 4.

IV. Exemption 6 Shields Certain Information From Disclosure But AMS Does Not Agree With All Instances Wherein AOD Has Proposed An Exemption 6 Redaction.

In the April 16, 2016 Letter, AOD proffered redactions for information that, in AOD's opinion, should be withheld pursuant to Exemption 6.

Although AOD's opinion on the applicability of Exemption 6 was not sought by AMS in its March 21, 2016 letter to AOD, AMS agrees that certain information in the records submitted to AOD for review should be withheld pursuant to Exemption 6. The specific information being withheld pursuant to Exemption 6 is indicated as such in the enclosed records.

Information for which AMS has decided to be releasable contrary to the view of AOD is set forth below. For this information, AMS has concluded that disclosure of the information does not constitute a clearly unwarranted invasion of personal privacy.

1. The name of Sally Keefe.

The fact that Ms. Keefe served as Vice President of Aurora is publically available information. As such, there is no violation of Ms. Keefe's privacy interests in disclosing her status as Vice President of Aurora to the public.

Instances where AMS is making this release contrary to the position of AOD can be found intermittently throughout the 800 enclosed pages.

2. Signatures on the vendors/suppliers' organic certificates.

The identity of the individual that provided the signature on the certificate is already being disclosed. The signature itself speaks to the authenticity of the document and, in providing the signature on the certificate, we believe the signatory understood they were relinquishing any privacy interests in the signature itself. As such, we plan to release the signatures.

Instances where AMS is making this release contrary to the position of AOD can be found on the enclosed pages at 540, 541, 543, 545, 550-552, 561, 562, 565, 568, 570-573, 581, 582, 585, 586, 580, 590, 593, 595, 598-601, 603, 605, 606, 616, 617, 618, 620, 622, 625, 628-631, 633-636, 639, 646, 649, 652, 656-658, 660, 662, 667, 669, 675-676, 679, 682.

Please direct any questions you may have regarding this matter to me at 202-720-2498 or at Gregory.Bridges@ams.usda.gov.

Sincerely,



Gregory Bridges
FOIA Officer
USDA, Agricultural Marketing Service

Enclosures



STOP 0202-Room 3943-S
1400 Independence Avenue, SW.
Washington, DC 20250-0202

**VIA E-MAIL TO
LEE.SACHNOFF@KUTAKROCK.COM
AND UPS NEXT DAY AIR**

June 22, 2016

Lee F. Sachnoff, Esq.
Kutak Rock LLP
1801 California Street
Denver, Colorado 80202

Subject: Second Notice of Intent to Release Records in *The Cornucopia Institute v. U.S. Department of Agriculture (USDA)*, Case No. 16-cv-148-RC (D.D.C)

Dear Mr. Sachnoff:

In correspondence dated March 21, 2016, Gregory Bridges, FOIA Officer for the Agricultural Marketing Service ("AMS") of the United States Department of Agriculture ("USDA"), solicited the input of Aurora Organic Dairy ("AOD"), concerning records requested by The Cornucopia Institute ("Cornucopia") in conjunction with the above-referenced lawsuit filed against USDA under the Freedom of Information Act ("FOIA").

On April 15, 2016, AOD provided AMS with a response to AMS' March 21, 2016 letter. By way of a June 10, 2016 letter (herein "AMS' June 10, 2016 Letter"), AMS, in turn, provided AOD with a response to AOD's April 15, 2016 letter. In AMS' June 10, 2016 Letter, AMS provide AOD with 800 pages of records AMS intend to release in the manner marked (indicating redactions under FOIA Exemptions 4 and 6), to Cornucopia on or after June 30, 2016 (herein the "Redacted Documents").

As a result of AMS' June 10, 2016 Letter, AOD provided AMS with a letter, dated June 21, 2016 letter (herein the "AOD's June 21, 2016 Letter") that addresses redactions (or a lack thereof) to just 48 pages of the Redacted Documents (herein the "48 Pages"). AOD's June 21, 2016 Letter enclosed a Bates Stamped copy of the 48 Pages and provided AMS with particularized proposed redactions to information on each of the 48 Pages that, in the view of AOD, was not redacted by AMS in the Redacted Documents but should have been. Additionally, AOD's June 21, 2016 Letter provided AMS with comments, corresponding to each Bates Stamped page supporting why the particular information on each of the 48 Pages should be redacted:

AMS0047

- On three of the 48 Pages (Bates Stamped 10, 11, and 703) AOD asserts the information should be redacted because the disclosure of the information would constitute an unwarranted invasion of personal privacy.
- On six of the 48 Pages (Bates Stamped 69, 77, 165, 670, 691, and 713) AOD asserts that, in attempting to redact the underlying information, AMS' execution of the redaction unintentionally and inadvertently left some information undisclosed that is otherwise exempt from disclosure.
- For the remainder of the 48 Pages (also Bates Stamped), AOD asserts that the information should be redacted because it contains AOD's confidential business information and/or trade practices, disclosure of which presents a likelihood of substantial competitive injury to AOD's business.

This letter serves as AMS response to AOD's June 21, 2016 Letter. In this letter AMS addresses only the proposed redactions to the 48 Pages forming the subject matter of AOD's June 21, 2016 Letter.¹ In addition to conducting its own independent review, AMS has carefully reviewed the arguments set forth in AOD's June 21, 2016 Letter and the proposed redactions to the 48 Pages. AMS agrees with all proposed redactions to the 48 Pages:

- For the proposed redactions on pages Bates Stamped 10, 11 and 703, AMS has determined to withhold this information pursuant to Exemption 6 because disclosure of the information would constitute an unwarranted invasion of personal privacy.
- For the proposed redactions on pages Bates Stamped 69, 77, 165, 670, 691, and 713, AOD asserts that, in attempting to redact the underlying information, AMS' execution of the redaction unintentionally and inadvertently left some information undisclosed that is otherwise exempt from disclosure. AMS agrees and will be reapplying these redactions to ensure that none of the information wherein a redaction was intended to be applied is inadvertently left exposed.
- For the remainder of the 48 Pages, AMS has determined to withhold this information because it constitutes trade secrets and/or commercial or financial information obtained from a person, that is privileged or confidential under FOIA Exemption 4, the release of which presents a likelihood of substantial competitive injury. The information reveals details about AOD's sourcing inputs, production process inputs, production protocols and procedures, and business strategy.

¹ AMS herein reasserts all arguments set forth in AMS' June 10, 2016 Letter. Through this instant June 22, 2016 letter, AMS is reevaluating the application of FOIA exemptions only to the particular information on the 48 Pages that in the view of AOD was not redacted by AMS but, for reasons stated in AOD's June 21, 2016 Letter, should be.

With this letter, we are providing you advance notice of a partial release of the enclosed **800 pages** of records to Cornucopia. As set forth in AMS' June 10, 2016 Letter, due to the volume of documents responsive to this FOIA request, this is the first partial release of AOD's records. We will contact you in the same manner concerning future releases.

Please review the enclosed **800 pages** of records carefully. AMS intends to release the enclosed records, in the manner marked (indicating redactions under FOIA Exemptions 4 and 6), to Cornucopia on or after **June 30, 2016**. In order to aid AOD in its review of the enclosed 800 pages of records AMS is directing AOD's attention to the fact that the enclosed 800 pages are the same records that make up the Redacted Documents provided to AOD in AMS' June 10, 2016 Letter except for additional redactions made to the 48 Pages addressed in this instant letter, and concurrently addressed in AOD's June 21, 2016 Letter.² Other than these 48 Pages, no information in the Redacted Documents provided to AOD in AMS' June 10, 2016 Letter has been either redacted or unredacted.

Finally, if AOD plans to seek judicial intervention to prevent AMS from disclose any of records submitted to AOD for review, including the enclosed records, please inform AMS of the AOD's intentions to do so in writing, at Gregory.Bridges@ams.usda.gov, by **3pm (EDT)** on **June 29, 2016**.

Please direct any questions you may have regarding this matter to me at 202-720-2498 or at Gregory.Bridges@ams.usda.gov.

Sincerely,



Gregory Bridges
Freedom of Information Act Officer

Enclosures (via UPS only)

² Although having nothing to do with a redaction to any information, AMS points out that it has placed its own Bates Stamps on each of the enclosed 800 pages. These Bates Stamps were not placed on the Redacted Documents provided to AOD in AMS' June 10, 2016 Letter. AMS' Bates Stamp system corresponds exactly to the Bates Stamp sequence used by AOD in the 48 Pages enclosed in the June 21, 2016 Letter.



STOP 0202-Room 3943-S
1400 Independence Avenue, SW.
Washington, DC 20250-0202

July 11, 2016

VIA EXPRESS MAIL TO

Ryan K. Miltner, Esq.
Miltner Law Firm
100 N. Main Street, P.O. Box 477
New Knoxville, Ohio 45871

Subject: Notice of Intent to Release Records in *The Cornucopia Institute v. U.S. Department of Agriculture (USDA)*, Case No. 16-cv-148-RC (D.D.C)

Dear Mr. Miltner:

In correspondence dated March 21, 2016, Gregory Bridges, FOIA Officer for the Agricultural Marketing Service (“AMS”) of the United States Department of Agriculture (“USDA”), solicited the input of Natural Prairie Dairy Farms (“NPDF”) concerning records requested by The Cornucopia Institute (“Cornucopia”) in conjunction with the above-referenced lawsuit filed against the USDA under the Freedom of Information Act (“FOIA”). In the above-referenced lawsuit, Cornucopia seeks the following records:

[I]nformation regarding visits to organic dairies in Texas and New Mexico by Matthew Michael, the Director of the NOP [National Organic Program] Compliance and Enforcement Division, and [AMS] Deputy Administrator Miles McEvoy, or any other USDA official or agent acting at NOP’s request. If there are any other dairies that have been visited directly by NOP staff in 2012 we would also respectfully request materials related to those visits (but only after the aforementioned records are delivered related to the Texas and New Mexico operations [sic]...

Cornucopia is requesting, in particular, copies of all correspondence, discussion notes, records, phone logs and background materials related to the planning for said visits, actual visits to the Texas and New Mexico organic dairies in 2012, any follow-up correspondence or records and subsequent actions and/or activities that transpired following the visits (including any enforcement actions by the NOP or accredited certification agencies).

In its March 21, 2016 letter, AMS requested the input of NPDF because AMS could not readily determine whether information from some of the requested records was an NPDF trade secret or NPDF’s privileged or confidential business information within the meaning of FOIA Exemption 4. See E.O. 12600; 7 C.F.R. 1.12.

NPDF responded to our March 21, 2016 letter by providing AMS responses on April 18, 2016 and May 2, 2016 (herein jointly referred to as “NPDF’s Responses”). Enclosed as part of

AMS0050

NPDF's Responses was NPDF's particularized review of NPDF's information. This particularized review specified what piece of information, within each record, that NPDF believes should be redacted pursuant to Exemption 4. For each proposed redaction, NPDF submitted comments supporting why the specific piece of information should be redacted.

Our detailed response to NPDF's Responses, and the arguments therein, is set forth below. We have completed the review of the **499 pages** of NPDF's records that AMS submitted to NPDF for review. We have Bates stamped these records AMS01385 to AMS01884. With this letter, we are providing you advance notice of a partial release of the enclosed records to Cornucopia. Please review the enclosed **499 pages** of records, Bates stamped AMS01385 to AMS01884, carefully. AMS intends to release the records, in the manner marked (indicating redactions under FOIA Exemptions 4 and 6), to Cornucopia on or after **July 29, 2016**.

If NPDF plans to seek judicial intervention to prevent AMS from disclosing any of the enclosed records, please inform AMS of the NPDF's intentions to do so in writing, at Gregory.Bridges@ams.usda.gov, by 3 p.m. (EDT) on **July 28, 2016**.

AMS's Reply to NPDF's Responses

NPDF's Responses assert that information in the records AMS submitted to NPDF for review should not be disclosed for the following reasons:

- 1) Pursuant to FOIA Exemption 3 and the corresponding applicable non-disclosure statutes, information in the records is shielded from disclosure.
- 2) In conjunction with the application of FOIA Exemption 4, and in response to AMS's request to NPDF for input pursuant to E.O. 12600 and 7 C.F.R. 1.12, certain information should not be disclosed as the information consists of NPDF's confidential business information.
- 3) In conjunction with the application of FOIA Exemption 4, certain information should not be disclosed as the information contains NPDF's trade secrets.

I. Exemption 3: Section 1619(h)(2) of the Food Conservation, and Energy Act of 2008 and the Organic Farm Production Do Not Shield Disclosure of NPDF's Information.

NPDF's Responses argue that FOIA Exemption 3 provides blanket protection for withholding all information in NPDF's Organic System Plans ("OSPs"), including correspondence with QAI and QAI inspection reports. NPDF's Responses specifically argue that pursuant to Exemption 3 and the application of Section 1619(h)(2) of the 2008 Farm Bill ("Section 1619"), codified at 7 U.S.C. 8719, and the Organic Foods Production Act ("OFPA"), 7 U.S.C. 6501 *et seq.*, the information is exempt from disclosure.

The text of Exemption 3 reads as follows:

(b) This section does not apply to matters that are – . . . (3) specifically exempted from disclosure by statute . . . , if that statute–(A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and (B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph.

5 U.S.C. 552(b)(3).

AMS does not intend to withhold the records submitted to NPDP for review under Exemption 3 pursuant to either of these statutes.

A. Section 1619 Is An Exemption 3 Statute But It Is Not Applicable to the Records Submitted to NPDP for Review.

In public guidance issued by Boyd Rutherford, former Assistant Secretary for Administration, USDA, on July 30, 2008, a copy of which is enclosed with this letter, he explained that Section 1619 does not apply to all information gathered from agricultural producers or landowners. Section 1619 applies only to programs that provide loans, grants, subsidies, payments or other benefits. Assistant Secretary Rutherford’s memorandum specifically articulated that Section 1619 does not apply to regulatory programs where participation by the agricultural producer or landowner is required by law as a condition of participation in the marketplace.

The National Organic Program (“NOP”) is considered a regulatory program because in order for a business to participate in the marketplace as an organic producer, it must comply with NOP requirements prior to being certified as an organic producer and be authorized to offer its products using the organic label. Therefore, Section 1619 is not applicable to the records submitted to NPDP for review.

B. Sections 6515(f) and 6519(a)(5) of the Organic Foods Production Act are Not Exemption 3 Statutes.

First, 7 U.S.C. 6515(f) imposes a confidentiality requirement upon certifying agents, not USDA. As such, 7 U.S.C. 6515(f) is not an explicit nondisclosure statute applicable to USDA that would meet the requirements for an Exemption 3 statute.

Second, turning to 7 U.S.C. § 6519(a)(5), this statute was added to OFPA by the year 2014 Farm Bill. In year 2009, Exemption 3 of the FOIA was revised to shield from disclosure records “specifically exempted from disclosure by statute ... if that statute-”

(A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and
(B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph.

5 U.S.C. § 552(b)(3) (emphasis added).

As 7 U.S.C. § 6519(a)(5) was enacted subsequent to the year 2009 revision to FOIA Exemption 3 without specifically citing to 5 U.S.C. § 552(b)(3), it is not considered an Exemption 3 statute. Accordingly, AMS will not be withholding the records submitted to NPDP for review under Exemptions 3.

II. Exemption 4: AMS Agrees With All Instances Wherein NPDP Has Proposed An Exemption 4 Redaction.

Exemption 4 of the FOIA protects “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.” Most significantly, each item of the information in question must be examined separately for purposes of the application of Exemption 4. FOIA requires that agencies segregate non-exempt information from exempt information when responding to FOIA requests. See 5 U.S.C. § 552(b).

As set forth in its Response Letters, and pursuant to Exemption 4, NPDP seeks to protect information related to its dairy production, namely: (1) the vendors from whom supplies are purchased; (2) the specific grains, products, fees, and material purchased for use; (3) the protocols, procedures, and descriptions of processes employed by NPDP; and (4) diagrams and maps of NPDP’s facilities.

To fall within the coverage of Exemption 4, the responsive information must be a trade secret or information that is: 1) commercial or financial; 2) obtained from a person; and 3) privileged or confidential. In addition to conducting its own independent review of the application of Exemption 4 to NPDP’s information, AMS has reviewed NPDP’s proposed Exemption 4 redactions and agrees with all instances wherein NPDP has proposed an Exemption 4 redaction.

A. Commercial or Financial Information Obtained From a Person That Is Privileged or Confidential.

1. Commercial or financial information.

Regarding the first factor, AMS has determined that the responsive records implicate information that contain commercial or financial information. The redacted information relates to the business operations or trade of NPDP in its efforts to provide organic dairy products to consumers. NPDP is a private company that invests significantly in the production of organic dairy products. Therefore, AMS concludes that the business submitter has a commercial interest in the redacted information at issue.

2. Information obtained from a person.

The term “person” is interpreted broadly under Exemption 4 to include businesses. Therefore NPDF is a person under Exemption 4.

3. Information that is privileged or confidential.

AMS has determined that the information NPDF proposes for redaction pursuant to Exemption 4 is confidential. For records required to be submitted, AMS considers (i) whether release would impair the agency’s ability to obtain similar information in the future [impairment prong]; (ii) whether release would cause substantial competitive harm to the person from whom the data was obtained [competitive harm prong]; (iii) whether other governmental interests such as compliance and program effectiveness would be impacted [third prong]. *National Parks & Conservation Ass’n. v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). AMS has not identified any impairment to the agency’s ability to obtain similar information in the future, therefore, AMS’s analysis primarily concerns whether release of this information could be used by NPDF’s competitors to gain a competitive advantage over NPDF.

With regard to the competitive harm prong, AMS has determined that release of the following types of information could be used by NPDF’s competitors to gain a competitive advantage over NPDF: (1) the vendors from whom supplies are purchased; (2) the specific grains, products, fees, and material purchased for use; (3) the protocols, procedures, and descriptions of processes employed by NPDF; and (4) diagrams and maps of NPDF’s facilities.

B. Trade Secrets.

In its Response Letters, and in comments accompanying the proposed Exemption 4 redactions, NPDF also argues that certain information contained in the records AMS submitted to NPDF for review is exempt from disclosure pursuant to Exemption 4 because the information constitutes NPDF’s trade secrets.

Under FOIA, a “trade secret” is “a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.” *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir.1983). This definition is said to “incorporate[] a direct relationship between the information at issue and the productive process.” *Id.*

AMS agrees that certain protocols, procedures, and descriptions of processes employed by NPDF are also protected from disclosure under the “trade secrets” prong of Exemption 4.

Please direct any questions you may have regarding this matter to me at 202-720-2498 or at Gregory.Bridges@ams.usda.gov.

Sincerely,



Gregory Bridges
FOIA Officer
USDA, Agriculture Marketing Service

Enclosures

Bridges, Gregory - AMS

From: Sachnoff, Lee F. <Lee.Sachnoff@KutakRock.com>
Sent: Tuesday, June 21, 2016 1:51 PM
To: Bridges, Gregory - AMS
Subject: FW: FOIA 2013-AMS-01201-F (EO12600 Response)
Attachments: Bridges Letter 6.21.16.pdf; Enclosures to Bridges Letter 6.21.16.pdf

Greg:

I wanted to make sure that you received Aurora Organic Dairy's response that my legal assistant Nguyen Vargas sent to you early today. Please confirm. Thank you.

Lee F. Sachnoff | Kutak Rock LLP
1801 California Street | Suite 3000 | Denver | Colorado | 80202
Direct: (303) 292-7789 | Main: (303) 297-2400 | Facsimile: (303) 292-7799 lee.sachnoff@kutakrock.com

-----Original Message-----

From: Vargas, Nguyen T.
Sent: Tuesday, June 21, 2016 8:57 AM
To: GREGORY.BRIDGES@ams.usda.gov
Cc: 'Juanv@AuroraOrganic.com'; Gary Sebek; brentc@AODMilk.com; Arney, Neil L.; Sachnoff, Lee F.
Subject: FOIA 2013-AMS-01201-F (EO12600 Response)

Mr. Bridges:

At the request of Lee F. Sachnoff, please find the attached correspondence and enclosures.

Please contact Mr. Sachnoff with any questions.

Very truly yours,

Nguyen T. Vargas, Corporate Legal Secretary Kutak Rock LLP
1801 California Street, Suite 3000
Denver, CO 80202
Telephone: (303) 297-2400
Direct: (303) 292-7733
Email: nguyen.vargas@kutakrock.com

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KUTAK ROCK LLP
SUITE 3000
1801 CALIFORNIA STREET
DENVER, COLORADO 80202-2626
303-297-2400
FACSIMILE 303-292-7799
www.kutakrock.com

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SCOTTSDALE
SPOKANE
WASHINGTON, D.C.
WICHITA

LEE F. SACHNOFF
lee.sachnoff@kutakrock.com
(303) 297-2400

June 21, 2016

**VIA EMAIL TO
GREGORY.BRIDGES@AMS.USDA.GOV
AND OVERNIGHT DELIVERY**

Gregory Bridges
Agriculture Marketing Service - FOIA Officer
U.S. Dept. of Agriculture
1400 Independence Avenue, S.W.
South Building, Rm. 3943-S, Stop 0202
Washington, DC 20250-0273

Re: FOIA 2013-AMS-01201-F (EO12600 Response)

Dear Mr. Bridges:

This is in response to your letter dated June 10, 2016, regarding the above-mentioned request (“**FOIA Request**”) under the Freedom of Information Act, 5 U.S.C. § 552, *et seq.* (“**FOIA**”), involving the potential disclosure of documents and records in the possession of the United States Department of Agriculture (“**USDA**”) relating to Aurora Organic Dairy (“**AOD**”).

We appreciate that the USDA has provided us the opportunity to review the proposed redactions to the documents being considered for release in connection with the FOIA Request that accompanied your June 10, 2016 letter (the “**Redacted Documents**”). We and AOD have reviewed the Redacted Documents in good faith, for purposes of FOIA.

As a starting point, AOD considers its OSPs to be confidential business information that provide it with a competitive advantage. In fact, AOD’s OSPs are some of the company’s most important and proprietary information which it dutifully protects. Please note that AOD has conspicuously labelled each page of its OSPs, including the QAI Questionnaire, as “*Confidential Business Information.*” When AOD submitted its OSP and information to QAI, it stated in its cover letter “*The contents of the AOD—Coldwater OSP are confidential business information and include trade secrets. Aurora Organic Dairy requests immediate notification of any request made orally or in writing under State or Federal Law for release or disclosure.*” (See Sally

AMS FOIA Office - Gregory Bridges
 June 21, 2016
 Page 2

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We are available to discuss any questions you have regarding our comments and proposed redactions. We appreciate the opportunity to bring these important matters to your attention and look forward to your response.

Sincerely yours,

Kutak Rock LLP



Lee F. Sachnoff

Enclosures

cc: Aurora Organic Dairy
Neil Arney, Esq.

Bridges, Gregory - AMS

From: Bridges, Gregory - AMS
Sent: Monday, May 02, 2016 4:18 PM
To: 'Billie Ward'
Cc: Ryan Miltner
Subject: RE: Natural Prairie Dairy Farms, LLC - FOIA 2013-AMS-01201-F (EO12600 Response)

Hi Billie:

Your email was received.

From: Billie Ward [<mailto:billie@miltnerlawfirm.com>]
Sent: Monday, May 02, 2016 1:47 PM
To: Bridges, Gregory - AMS
Cc: Ryan Miltner
Subject: Natural Prairie Dairy Farms, LLC - FOIA 2013-AMS-01201-F (EO12600 Response)

Mr. Bridges,

I am attaching a letter from Ryan Miltner.

Please let me know if you have any trouble with the file.

Billie J. Ward
Legal Assistant
The Miltner Law Firm, LLC
100 N. Main Street
P.O. Box 477
New Knoxville, OH 45871
Ph: (866) 740-5219
Fax: (866) 740-4123
Email: billie@miltnerlawfirm.com



RYAN K. MILTNER

KRISTINE H. REED

ADMITTED IN OHIO AND MICHIGAN
RYAN@MILTNERLAWFIRM.COM

ADMITTED IN OHIO, INDIANA, AND GEORGIA
KRISTINE@MILTNERLAWFIRM.COM

Via e-mail only to gregory.bridges@ams.usda.gov

May 2, 2016

Gregory Bridges
USDA-AMS, FOIA Officer

**Re: FOIA 2013-AMS-01201-F (EO12600 Response)
Natural Prairie Dairy Farms, LLC**

Dear Mr. Bridges:

I am writing to provide you additional detail regarding the confidential business information of Natural Prairie Dairy Farms, LLC (“Natural Prairie”) contained in certain documents that Natural Prairie has reviewed at your request.

The documents that were reviewed can be broadly described as documents related to the certification and inspections of Natural Prairie’s facilities. The first group of documents relates to the crop operations of the dairy. The second group relates to the cattle raising operations. The third group relates to the mailing facilities— of which there are three.

Within each of the three groups, the documents are in two general classifications (1) the reports of the certifying agent and (2) the information provided by Natural Prairie to the certifying agent.

Both classifications contain CBI as denoted in Natural Prairie’s submission.

Natural Prairie seeks to protect all information related to (1) the vendors from whom supplies are purchased; (2) the specific grains, products, fees, and material purchased for use at the dairy; (3) the protocols, procedures, and descriptions of processes employed by Natural Prairie; and (4) diagrams and maps of Natural Prairie’s facilities.

Disclosure of information in these categories will cause competitive harm to Natural Prairie. To fully appreciate the competitive harm, some additional background is necessary.

Donald De Jong, an experienced Texas dairy producer, operates Natural Prairie. Mr. De Jong and his family have been involved in commercial dairying for over 25 years. In that time, Mr. De Jong has become a leader in the dairy industry. He has founded or served in the executive management group of two separate cooperatives. He has operated multiple conventional and organic dairy facilities individually and in conjunction with both family partners and non-family partners. He is regularly recognized as a thought-leader in the dairy industry and participates in countless activities related to the improvement of the dairy industry.

100 N MAIN STREET P.O. BOX 477 NEW KNOXVILLE, OH 45871
7588 CENTRAL PARKE BLVD., SUITE 310 MASON, OH 45040
PHONE: (866) 740-5219 WWW.MILTNERLAWFIRM.COM FAX: (866) 740-4123

Mr. Gregory Bridges

May 2, 2016

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Mr. De Jong's farms regularly report extraordinary levels of milk quality, production efficiency, and financial stability. As a result, milk from his operations, and specifically Natural Prairie, is actively sought out by processors. These business partners place high value on the high-quality, consistent supply, and stable operations that Natural Prairie exemplifies. Due to this reputation and track record, Natural Prairie is able to secure long-term customers, enjoy stable growth, and in some cases command market premiums above other organic producers.

These successes result from the decades of experience that Mr. De Jong has accumulated in the dairy industry. That experience, in which Mr. De Jong has experienced successes and failures, has allowed for the development of (1) processes and procedures honed by experience; (2) relationships with vendors and customers premised on mutual respect and discretion; (3) farms plotted and constructed to afford maximum efficiency and animal comfort, including the design, layout, and construction of individual buildings and facilities; and (4) the development of feeding rations and recipes optimized for production, profitability, and efficiency; and (5) selection of products and materials that comply with the NOSP and are believed by Natural Prairie to be the optimal selections for operating the finest organic dairy farm in the world.

These successes also come with scrutiny, envy, and competition.

Other dairy producers simply do not have the same experience as Natural Prairie in large-scale organic milk production. Certainly, there are others with large organic farms, but none on the scale of Natural Prairie. The release of the materials used by Natural Prairie in feeding its herd, whether it be the grains grown for feed, the additional feed needs purchased from vendors, the rations developed for each milking group, or the recipes utilized by feed vendors in making mixed feed are all specifically developed by Natural Prairie over time. The feed recipe developed by Natural Prairie is comparable to the Coca-Cola formula or the KFC herbs and spices blend in that they were developed in-house, are not publicly shared, have value to competitors, and uniquely allow Natural Prairie to produce its goods. Other organic producers already know that Natural Prairie is a leader in organic milk production, releasing this information will give them a roadmap to replicate it.

Similarly, the vendors from which Natural Prairie purchases its supplies, feeds, and cattle is valuable confidential business information. In the organic arena, availability of livestock, feeds, and supplies can be very tight. Due to its size, it is imperative that Natural Prairie have a reliable and consistent source of the best quality goods and services. Disclosing to the public the vendors from which Natural Prairie obtains its goods will open up the door to other producers contacting these suppliers and attempting to secure the goods and services that Natural Prairie would otherwise purchase by outbidding them. In some instances, the disclosure of vendors will necessarily lead to a determination as to what specific products are being utilized by Natural Prairie.

As with the feeding of the herd, the specific products that Natural Prairie uses for the maintenance and cleaning of its facilities, the livestock treatments and vaccinations that Natural Prairie utilizes have been specifically selected following research, monitoring, trial and error, and evaluation as to cost effectiveness, regulatory compliance, and overall results. Disclosure of these products and processes will essentially provide to competitor dairies a road map to replicating Natural Prairie's methods and results.

Turning to the maps, drawings, and diagrams that are included in the Natural Prairie documents, these too reveal confidential information that would provide a competitive advantage to competitors. The operators of Natural Prairie have operated and/or designed multiple large-scale commercial dairies. In doing so, valuable information has been learned about the equipment that provides the best results. The design of the facilities has been carefully structured to provide for operational efficiency and animal comfort. This results in a dairy that

Mr. Gregory Bridges

May 2, 2016

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maximizes its production and minimizes discomfort to its herd, which translates to financial benefits. As with the other information that Natural Prairie seeks to protect, this information is of great interest to competitors who would seek to improve their own operations by mimicking Natural Prairie's operations.

Natural Prairie wishes to explicitly state that it has no issue with disclosing the ultimate results of its organic applications and inspections. This can be accomplished by providing the certifications from its certifying agent and applicable lab tests performed during inspections.

As a point of comparison, releasing the information that Natural Prairie has requested to be redacted is the equivalent of a Grade A milk processing facility being forced to disclose its manufacturing processes, vendors, equipment specifications, and management processes publicly, when all that is relevant is whether the plant has complied with the Grade A requirements of the Pasteurized Milk Ordinance.

Here, the real issue is whether Natural Prairie has complied with the NOP. There is absolutely no question that it has, and the disclosure of this valuable trade information has no bearing on that ultimate issue.

Thank you for the opportunity to provide this additional information. If additional information is required, please let us know.

Sincerely yours,



Ryan K. Miltner
Counsel for Natural Prairie Dairy Farms, LLC

Bridges, Gregory - AMS

From: Vargas, Nguyen T. <Nguyen.Vargas@KutakRock.com>
Sent: Tuesday, June 21, 2016 10:57 AM
To: Bridges, Gregory - AMS
Cc: 'Juanv@AuroraOrganic.com'; Gary Sebek; brentc@AODMilk.com; Arney, Neil L.; Sachnoff, Lee F.
Subject: FOIA 2013-AMS-01201-F (EO12600 Response)
Attachments: Bridges Letter 6.21.16.pdf; Enclosures to Bridges Letter 6.21.16.pdf

Mr. Bridges:

At the request of Lee F. Sachnoff, please find the attached correspondence and enclosures.

Please contact Mr. Sachnoff with any questions.

Very truly yours,

Nguyen T. Vargas, Corporate Legal Secretary Kutak Rock LLP
1801 California Street, Suite 3000
Denver, CO 80202
Telephone: (303) 297-2400
Direct: (303) 292-7733
Email: nguyen.vargas@kutakrock.com

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KUTAK ROCK LLP
SUITE 3000
1801 CALIFORNIA STREET
DENVER, COLORADO 80202-2626
303-297-2400
FACSIMILE 303-292-7799
www.kutakrock.com

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PHILADELPHIA
RICHMOND
SCOTTSDALE
SPOKANE
WASHINGTON, D.C.
WICHITA

LEE F. SACHNOFF
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June 21, 2016

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Sincerely yours,

Kutak Rock LLP



Lee F. Sachnoff

Enclosures

cc: Aurora Organic Dairy
Neil Arney, Esq.

Bridges, Gregory - AMS

From: Slagle, Edna M. <Edna.Slagle@KutakRock.com>
Sent: Friday, April 29, 2016 5:03 PM
To: Bridges, Gregory - AMS
Cc: Arney, Neil L.; Sachnoff, Lee F.
Subject: FOIA 2013-AMS-01201-F (EO12600 Response).PDF
Attachments: 2016-04-29 LTR (Arney to USDA) re FOIA 2013-AMS-01201-F (EO12600 Response).PDF;
Vaughn Index for Boehning Dairy.xlsx

Dear Mr. Gregory:

On behalf of Neil Arney of this office, please see the attached in connection with the above-referenced matter. A CD containing documents Bates numbered BB0000001 - BB0001300 are being delivered to you overnight along with hard copies of the attached.

Edna Slagle | Legal Assistant
KUTAK ROCK LLP
1801 California Street
Suite 3000
Denver, CO 80202-2626
(303) 297-2400 ext. 5860 - Telephone
(303) 292-7799 - Facsimile
www.kutakrock.com

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www.kutakrock.com

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SPOKANE
WASHINGTON, D.C.
WICHITA

April 29, 2016

NEIL L. ARNEY
neil.arney@kutakrock.com
(303) 292-7882

**VIA EMAIL TO
GREGORY.BRIDGES@AMS.USDA.GOV
AND OVERNIGHT DELIVERY**

Gregory Bridges
Agriculture Marketing Service - FOIA Officer
U.S. Dept. of Agriculture
1400 Independence Avenue, S.W.
South Building, Rm. 3943-S, Stop 0202
Washington, DC 20250-0273

Re: FOIA 2013-AMS-01201-F (EO12600 Response)

Dear Mr. Bridges:

This is in response to your letters dated March 21, 2016, regarding the above-mentioned request (“**FOIA Request**”) under the Freedom of Information Act, 5 U.S.C. § 552, *et seq.* (“**FOIA**”), involving the potential disclosure of documents and records in the possession of the United States Department of Agriculture (“**USDA**”) relating to Boehning Dairy, LLC, Redland Dairy, LLC and Hilltop Dairy LLC, three affiliated dairies under common management and control (collectively, the “**Dairies**”).

We appreciate that the USDA has provided us the opportunity to review the documents being considered for release in connection with the FOIA Request (the “**Requested Documents**”). We and the Dairies have reviewed the Requested Documents in good faith, for purposes of FOIA.

The Requested Documents primarily comprise the Dairies’ 2011 and 2012 Organic System Plans (each an “**OSP**”). As discussed in further detail below and in the attachments hereto, the vast majority of the documents are not subject to disclosure based, *inter alia*, on FOIA Exemptions 3, 4, and 6. Given the large volume of documents provided, and our desire to efficiently respond with sufficient detail, we also describe each specific objection to the disclosure of particular types of information as contained in the various documents and relate those to the competitive market analysis. To provide our objections in context, we have also provided a brief summary of competition in the organic dairy market.

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In particular, this letter identifies with particularity the Dairies' objections to disclosure of various documents in their entirety based on Exemption 3 and/or Exemption 4 and provides a detailed explanation of the factors supporting such blanket exemptions.

In addition, to the extent that the USDA does not withhold the Requested Documents in their entirety based on the Exemption 3 or Exemption 4 arguments set forth herein, we have provided a Vaughn Index (Exhibit 1),¹ which identifies by page ranges the materials that should be redacted from the Requested Documents and describes the specific objections to the redacted materials in each such page range. We also have enclosed a computer disc of the Requested Documents with the Bates Numbers and highlights showing proposed redactions of exempt materials. Further, the Vaughn Index identifies the documents to which the Dairies have no objection.

I. SUMMARY OF DOCUMENTS PROVIDED FOR REVIEW AND OBJECTIONS TO DISCLOSURE

In our view, the Requested Documents are exempt from disclosure in their entirety. Such documents are protected in full from disclosure under, *inter alia*, the Organic Farm Production Act ("OFPA") (specifically 7 U.S.C. §§ 6519(a)(5), 6515(f), and 6506(a)(9) and 7 C.F.R. § 205.504(b)(5)), Section 1619 of the Food, Conservation, and Energy Act of 2008 (a.k.a. the 2008 Farm Bill) ("FCEA"), and FOIA (specifically Exemption 3). The documents are also protected in full from disclosure under Exemption 4.

If the USDA does not agree that the Requested Documents are entirely exempt from disclosure, then, at a minimum, such documents should be redacted substantially as set forth in the highlighted copy of the Requested Documents contained in electronic form on the enclosed disc. The redactions should be made pursuant to the foregoing laws (specifically, FOIA Exemptions 4 and 6) and/or the Trade Secrets Act, 18 U.S.C. § 1905, which forbids disclosure of trade secrets and other proprietary information.

In addition, we respectfully and expressly request that the USDA not disclose this letter, the attached Vaughn Index, or the highlighted documents on the enclosed disc on the grounds that such materials are themselves exempt from disclosure under FOIA.

II. COMPETITION AND CONFIDENTIALITY IN THE ORGANIC DAIRY MARKET

The Dairies are all located in Texas and are under common ownership. The Boehning Dairy and the Redland Dairy both filed their OSPs to produce organic milk in 2006 and began

¹ For your convenience, we have placed Bates Numbers on each page of the Requested Documents. The Bates Numbers range from **BB0000001–BB0001300**. Those Bates Numbers are the Page Numbers used in the Vaughn Index.

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selling organic milk in 2007. The Hilltop Dairy followed suit in 2011. All of the Dairies were certified as organic by the Texas Department of Agriculture (“TDA”), an accredited certified agent for the USDA, and the Dairies’ OSPs were substantially identical. The organic milking cows on these farms totaled over 4,700 head in 2012, with approximately an additional 800 dry organic cows. Boehning Dairy and Hilltop Dairy continue to operate today in Texas as certified organic farms managed by Brian Boehning. Since 2013 Redland Dairy has operated as a conventional dairy, but the other two affiliated organic dairies still make use of and rely upon their shared OSPs and confidential information, and Redland Dairy may one day resume organic operations. While the Dairies’ OSPs continue to evolve, the basic production plan set forth in the 2011 and 2012 OSPs remains very current, as do many of the processes, procedures, and suppliers identified therein.

Organic milk and dairy products are consistently one of the top two organic food sales categories in the United States. Market news is closely monitored and reported. Organic dairy sales reached \$5.1 billion in 2014, nearly twice what they were a decade earlier.² Large conventional food manufacturers compete head-on with independent organic companies by introducing organic versions of their products. The Dairies have a number of successful competitors, both large and small, in the organic milk market space, who produce and market organic milk for, among others, Horizon Dairy/White Wave Foods and Organic Valley. Strong consumer interest in organic dairy products, including fluid milk, is causing processors to seek new organic producers and milk supplies.³

Organic milk production, in general, is substantially more expensive for producers than conventional milk, given the specialized production process requirements and challenges in securing the necessary organic inputs.”⁴ USDA data shows that as of 2011 there were about 1,848 organic dairies with 199,737 organic cows. (See USDA 2011 Certified Organic Production Survey, Table 10.)⁵ As noted in the USDA’s recently proposed Origin of Livestock Rule, “[a]ccording to 2010 ARMS data, the mean size of an organic dairy farm nationally was 77 cows.” Competition among organic dairy producers for inputs and markets is intense. Acquiring and maintaining an organic milk business requires reliable supply, and a strong and consistent focus on production efficiencies (among other things).

Organic dairy producers compete for suppliers and inputs to the organic milk production process and to provide organic milk at a competitive price. To do so, they must develop, implement, and constantly refine business strategies, protocols and processes to manage their

² Bloomberg Business, Feb. 10, 2015, <http://www.bloomberg.com/news/articles/2015-02-10/not-only-hipsters-cry-when-u-s-grocers-run-out-of-organic-milk>.

³ Dairy Market News, Vol. 78, Report 10, Week of March 7-11, 2011.

⁴ McBride and Greene, “Characteristics, Costs, and Issues for Organic Dairy Farming,” Economic Research Report Number 82, November 2009.

⁵ <http://usda.mannlib.cornell.edu/usda/current/OrganicProduction/OrganicProduction-10-04-2012.pdf>.

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herds so as to provide customers with high quality organic milk and reliable supplies. All of these areas of competition are integral components of specialized OSPs developed for each unique farming operation in consultation with their accredited certifying agents. Given the competitive sensitivity of these individual plans, they are held in strict confidence by the producer and by the certifying agents to whom they are submitted for review. Indeed, federal law expressly recognizes the commercial value and sensitivity of this information, as it requires certifying agents to keep OSPs entirely confidential and prohibits disclosure. *See* 7 U.S.C. § 6515(f); 7 C.F.R. § 205.501(a)(10).

III. FOIA EXEMPTION 3 -- BLANKET PROTECTION: SPECIFIC OBJECTIONS TO DISCLOSURE OF THE DAIRIES' OSPs UNDER SECTION 1619 OF FCEA AND OFPA

A. Legal Standard for Exemption 3.

FOIA Exemption 3 allows the withholding of information prohibited from disclosure by another federal statute where the statute either “(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld.” 5 U.S.C. § 552(b)(3); *see also* Department of Justice Guide to the Freedom of Information Act, 2009 Ed. (“2009 FOIA Guide”).

In determining whether a statute qualifies for Exemption 3 status, the plain language of the statute is controlling. *See, e.g., Ass'n of Retired R.R. Workers, Inc. v. U.S. R.R. Ret. Bd.*, 830 F.2d 331, 334 (D.C. Cir. 1987). As the D.C. Circuit has noted, agencies are not to take a formalistic approach to Exemption 3. *Wis. Project on Nuclear Arms Control v. U.S. Dep't of Commerce*, 317 F.3d 275, 282-85 (D.C. Cir. 2003) (“the touchstone of the Exemption 3 inquiry is whether the statute is the product of congressional appreciation of the dangers inherent in airing particular data”) (internal citations omitted).

B. Section 1619 of FCEA Is an Exemption 3 Statute.

Section 1619 of the FCEA (codified at 7 U.S.C. § 8791) provides in relevant part that the 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 programs of the Department; or (B) geospatial information otherwise maintained by the Secretary about agricultural land or operations for which information is described in subparagraph (A) is provided.

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7 U.S.C. § 8791(b)(2). That provision of the FCEA is an exemption statute under Exemption 3. *Cent. Platte Natural Res. Dist. v. U.S. Dep't of Agric.*, 643 F.3d 1142, 1147 (8th Cir. 2011); *Ctr. for Biological Diversity v. USDA*, 626 F.3d. 1113, 1118 (9th Cir. 2010); *Zanoni v. USDA*, 605 F. Supp. 2d 230, 236-37 (D.D.C. 2009).

The Dairies understand that the USDA has previously taken the position that Section 1619 does not apply to the NOP. (See July 30, 2008 public guidance issued by Boyd Rutherford.) However, as an initial matter, the Dairies maintain that the plain language of Section 1619 clearly covers information that an organic producer provides to its certifying agent (which is then provided by the certifying agent to the USDA) in order for the organic producer to participate in the NOP, a program of the USDA. The definition of an “agricultural operation” to which Section 1619 applies “includes the production and marketing of agricultural commodities and livestock.” 7 U.S.C. § 8791(b)(1). Each of the Dairies is without question an agricultural operation within the meaning of Section 1619 as it produces and sells organic milk, an agricultural commodity. All of the proprietary information describing the Dairies’ organic production system that is contained in the Requested Documents was provided to TDA, the Dairies’ certifying agent, in order for them to participate in the NOP, a national program created and administered by the USDA. Such information appears to have subsequently been provided to the USDA by TDA. The Dairies disclosed all of the information in order to participate in the NOP, a program of the USDA. Therefore, the information falls squarely within the scope of Section 1619(b)(2)(A). See 7 U.S.C. § 8791(b)(2).

Indeed, the decision *Ctr. for Biological Diversity v. USDA*, 626 F.3d. 1113 (9th Cir. 2010), which was decided after Mr. Rutherford’s guidance was issued, makes clear that Section 1619 was passed by Congress to prevent the disclosure of information like that in the OSPs at issue here. Specifically, in *Multi Ag Media LLC v. U.S. Dep't of Agric.*, 515 F.3d 1224 (D.C. Cir. 2008), *abrogated by statute as recognized in Ctr. for Biological Diversity*, 626 F.3d. at 1117, the court ordered disclosure of two files that included information on irrigation practices for thousands of farms; acreage; the number and width of rows of tobacco and cotton; farm, tract, and boundary identification; calculated acreage; and characteristics of the land such as whether it is erodible, barren, or has water or perennial snow cover. *Id.* at 1226-27. Section 1619, which abrogated *Multi Ag Media*, was intended at least in part to prevent that type of disclosure under FOIA. *Center for Biological Diversity*, 626 F.3d. at 1117; *see also Central Platte Natural Resources District*, 643 F.3d at 1147-48.

Even if Mr. Rutherford’s contention that Section 1619 “does not apply to USDA regulatory programs where participation by the agricultural producer or landowner is required by law as a condition of participation in the marketplace,” was not overruled, we believe that Section 1619 would still apply to the NOP. First, nothing in Section 1619 supports a conclusion that the “marketplace” could be narrowly defined to mean the “marketplace as an organic producer.” The marketplace should not merely include organic producers, but is properly understood as the marketplace for agricultural commodities and livestock, whether organic or

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not, and participation in the NOP is not a condition of participation in the marketplace for agricultural commodities and livestock. Second, and relatedly, any assertion that the NOP program does not dispense any benefits to organic producers is wrong. Achieving organic status under the NOP allows organic producers to label their products with the USDA organic seal, which in turn allows such producers to charge a premium that other non-organic producers cannot achieve. As such, participation in the NOP program is a “benefit” as that term is used in Mr. Rutherford’s guidance.

Because Section 1619 is an Exemption 3 statute and it applies to the NOP, the Requested Documents, which comprise the Dairies’ OSPs and associated documentation, is exempt from disclosure and should not be produced in response to the FOIA Request. *See, e.g., Center for Biological Diversity*, 626 F.3d. at 1118. Such information would include the Dairies’ OSPs in their entirety, including correspondence with TDA, and TDA inspection reports.

C. The OFPA Is an Exemption 3 Statute.

The OFPA also is an Exemption 3 statute. The plain language of the OFPA mandates that all business information submitted in the certification process is to be accorded strict confidentiality. 7 U.S.C. § 6515(f). The OFPA requires that all business information provided to a certifier by an organic producer or handler will be accorded “strict confidentiality.” 7 U.S.C. § 6515(f); 7 C.F.R. § 205.501(a)(10). The only statutory exception is that the certifier is authorized to disclose information to the Secretary and/or applicable governing State official. *Id.* The statute provides for public access to documents in only two instances – the organic certificate and laboratory analyses that pertain to certification. 7 U.S.C. § 6506(a)(9). The USDA has expressly acknowledged that limitation in its implementing regulations. *See* 7 C.F.R. § 205.504(b)(5). The OFPA confidentiality provision, as implemented by the USDA, has been upheld on review. *Harvey v. Veneman*, 2003 WL 22327171 (D. Me. 2003), *aff’d in relevant part, rev’d in part* 396 F.3d 28 (1st Cir. 2005).

The Dairies understand that the USDA has previously taken the position that the OFPA is not an Exemption 3 statute because the confidentiality language applies only to certifying agents, not the USDA. Even if that earlier position were correct, the position is no longer consistent with the OFPA as amended in 2014, which provides: “no officer, employee, or agent of the United States shall make available to the public any information, statistic, or document obtained from, or made available by, any person under this chapter, other than in a manner that ensures that confidentiality is preserved regarding . . . (B) proprietary business information.” 7 U.S.C. § 6519(a)(5).

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The organic dairy industry is highly competitive. It is no secret that Cornucopia promotes certain of the Dairies' competitors.⁶ Were the Dairies' confidential documents and materials disclosed under the auspices of FOIA in response to the FOIA Request made by Cornucopia here, nothing would prevent Cornucopia from publishing the Dairies' proprietary information and business know-how to the entire world, including to the Dairies' competitors, and the Dairies would have no recourse or ability to protect itself. Congress clearly saw the danger inherent in subjecting organic producers' confidential business information to public disclosure, and rightfully provided that such information remain confidential under OFPA. The 2014 amendment to 7 U.S.C. § 6519(a)(5) quoted above makes it clear that Congress intended to safeguard proprietary business information such as OSPs.

In the alternative, to the extent the USDA decides that Exemption 3 does not apply here, we maintain that the Dairies' OSPs are not "agency records" subject to FOIA because the USDA no longer had control over such documents after its investigation pertaining to the documents was completed. In order to be subject to disclosure under FOIA, a document must be an "agency record." *Tax Analysts v. U.S. Dep't of Justice*, 913 F. Supp. 599, 602 (D.D.C. 1996). The Supreme Court "articulated a two-part test to determine what constitutes an 'agency record'" under FOIA: "agency records" are documents that "are (1) either created or obtained by an agency, and (2) under agency control at the time of the FOIA request." *Id.* (citing *U.S. Dep't of Justice v. Tax Analysts*, 492 U.S. 136, 144-45 (1989)). "The Court said that '[b]y control we mean that the materials have come into the agency's possession in the legitimate conduct of its official duties.'" *Id.* (citing *Tax Analysts*, 492 U.S. at 144). Possession alone is not sufficient to establish control. *Id.* at 602-03. Instead, courts have considered the following factors in determining whether an agency "controlled" a document:

- (1) the intent of the document's creator to retain or relinquish control over the records;
- (2) the ability of the agency to use and dispose of the record as it sees fit;
- (3) the extent to which agency personnel have read or relied upon the document; and
- (4) the degree to which the document was integrated into the agency's record system or files.

Id. at 603 (citing *Dow Jones & Co., Inc. v. Gen. Servs. Admin.*, 714 F. Supp. 35, 39 (D.D.C. 1989)). In sum, "the question is whether, considering all of the circumstances of the case

⁶ See The Cornucopia Institute's biased and unscientific "Organic Dairy Scorecard" available at <http://www.cornucopia.org/dairysurvey/>. Cornucopia recently announced that it is planning to update and republish its survey. It is also common knowledge that the Cornucopia Institute has a close working relationship with -- and openly represents -- the interests of the Dairies' competitors. If the USDA fails to recognize that OSPs are protected from disclosure by FOIA and other applicable laws, the USDA will be fundamentally changing the competitive landscape for all organic producers and processors, because nothing will prevent a competitor (or potential competitor) from using the complaint process (and attendant FOIA requests) to gain proprietary information from other competitors in the market.

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including, of course, physical possession, the records at issue are ‘subject to the free disposition of the agency.’” *Id.* (quoting *Goland v. CIA*, 607 F.2d 339, 347 (D.C. Cir.1979)).

Here, the Dairies’ OSPs are not “agency records” subject to FOIA. As noted above, the OFPA provides for public access to documents in only two instances – the organic certificate and laboratory analyses that pertain to certification. 7 U.S.C. §6506(a)(9). While TDA provided the USDA “access” to records, including the Dairies’ OSPs, such “access” was required to permit the USDA to investigate the Dairies’ compliance with OFPA. 7 U.S.C. §§ 6519(a)(3)(b) and 6519(b). OFPA does not contemplate the USDA retaining the documents used in an investigation, once it is concluded. Indeed, the OFPA specifically provides that the organic producer and certifying agent, not the USDA, are custodians of the records. 7 U.S.C. §§ 6519(a)(2) and (3). As such, the factors discussed above demonstrate that the Dairies’ OSPs were no longer “controlled” by the USDA once the USDA’s investigation was over and are thus not “agency records” subject to the FOIA Request.

IV. FOIA EXEMPTION 4: SPECIFIC OBJECTIONS TO RELEASE OF TRADE SECRETS AND/OR CONFIDENTIAL COMMERCIAL OR FINANCIAL INFORMATION

A. Legal Standard for Exemption 4.

FOIA Exemption 4 specifically exempts from disclosure two distinct types of information: (1) “trade secrets” and/or (2) commercial or financial information obtained from a person that is privileged and confidential. 5 U.S.C. 552(b)(4). A trade secret is a “secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.” *Pub. Citizen Health Research Grp. v. Food & Drug Admin.*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). In order to qualify, there must be “a direct relationship between the information at issue and the productive process.” *Id.*; *see also Ctr. for Auto Safety v. NHTSA*, 244 F.3d 144, 151 (D.C. Cir. 2001). Information such as inputs, sources of inputs and quality control procedures are part of the productive process.⁷ A document that “qualifies as a trade secret . . . is protected from disclosure under Exemption 4 and the inquiry ends.” *Id.*; *see also Taylor v. Babbitt*, 2011 WL 189769 (D.D.C. 2011). Exemption 4, as it applies to trade secrets, is co-extensive with the Trade Secrets Act. *See* 2009 FOIA Guide, at

⁷ *See Appleton v. FDA*, 451 F. Supp. 2d 129, 141 (D.D.C. 2006) (“documents [that] contain information consisting of drug product manufacturing information, including manufacturing processes or drug chemical composition and specifications...would reveal how the drug being discussed in the document ‘is formulated, chemically composed, manufactured, and quality controlled,’ and is therefore properly withheld.”); *Heeney v. FDA*, 1999 U.S. Dist. LEXIS 23365 *25 (C.D. Cal.) (design and testing information, materials used in construction of product and identity of the company that manufactures Boston Scientific’s catheter, have a direct relationship to the productive process because they are used in making, preparing, or processing the catheter, and reflect innovation and effort).

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354; *see CNA Fin. Corp. v. Donovan*, 830 F.2d 1132, 1140 (D.C. Cir. 1987); *see also Canadian Commercial Corp. v. Dep't of the Air Force*, 514 F.3d 37, 39 (D.C. Cir. 2008).

Commercial and financial information exempt from disclosure under the second prong of Exemption 4 includes (among other things) business sales statistics, research data, customer and supplier lists, profit and loss data, overhead and operating costs and other information concerning financial condition. 2009 FOIA Guide at 270-71; *see also Pub. Citizen Health Research Grp. v. Nat'l Institutes of Health*, 209 F. Supp. 2d 37, 47 (D.D.C. 2002) (withholding royalty information because it would allow competitors to “make a rough calculation of a firm’s profit margin”). The D.C. Circuit has established two distinct analyses for determining whether commercial information qualifies as confidential for purposes of Exemption 4, the application of which depends on whether the information was submitted to the agency voluntarily or under compulsion. *Critical Mass Energy Project v. Nuclear Regulatory Comm’n*, 975 F.2d 871 (D.C. Cir. 1992) (en banc). Commercial information that is submitted voluntarily is confidential and therefore exempt from disclosure “if it is of a kind that the provider would not customarily release to the public.”⁸ *Id.* at 879. If the information was required to be provided to the agency, it is only confidential if it is likely to “cause substantial harm to the competitive position of the person from whom the information was obtained.” *Id.* at 877. This requires a showing that there is “actual competition” and “a likelihood of substantial competitive injury.” *CAN Fin. Corp.*, 830 F.2d at 1152.

B. Objection: The Dairies’ OSPs Should Be Withheld in Their Entirety Because They Are Trade Secrets and Are Confidential.

The Dairies’ OSPs are “secret, commercially valuable plans . . . used for the making of a trade commodit[y]” (organic milk) that are the end product of both innovation and substantial effort by the Dairies. Even the OFPA recognizes that OSPs are effectively trade secrets, as 7 U.S.C. § 6515(f) states they contain business information which must be kept strictly confidential by the accredited certifying agents. Like most, if not all, organic producers, each of the Dairies considers and treats its OSPs as trade secrets and confidential information. Accordingly, the Dairies’ OSPs constitute trade secrets that are exempt from disclosure in their entirety.

⁸ Although none of the Dairies is privy to how the Requested Documents came into the possession of the USDA, it appears that the documents were voluntarily submitted by TDA to the USDA during its investigative proceedings. Information submitted to an agency in the course of an investigation prior to the agency issuing a subpoena or warrant for the information has been deemed information that is voluntarily submitted despite the agency’s power to require the information. *See Shell Oil Co. v. U.S. Dep’t of Labor*, No. H-963113, slip op. at 13 (S.D. Tex. 1998). Indeed, a submission of documents remains voluntary where a subpoena has been issued for the documents but court proceedings to enforce the subpoena have not been initiated. *See McDonnell Douglas Corp. v. EEOC*, 922 F. Supp. 235, 242 (E.D. Miss. 1996). Thus, the Requested Documents are exempt from disclosure because they are the type of information that the Dairies do not customarily release to the public.

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The OSPs document the complete organic milk production plan that has been developed, certified, and implemented by the Dairies, as required by the OFPA and the USDA implementing regulations. The OSP is defined by law as:

a plan of management of an organic farming or handling operation that has been agreed to by the producer or handler and the certifying agent and that includes written plans concerning all aspects of agricultural production or handling described in this title including crop rotation and other practices as required under this chapter.

7 U.S.C. § 6502(13). By regulation, an OSP contains detailed information about all stages of the production process, enabling the certifying agent to determine that the operation complies with the regulations and qualifies for the organic label. 7 C.F.R § 205.201. Among other requirements, a dairy producer such as the Dairies must show that its milking cows have been under organic management for at least one year, all feed rations are organically produced, the health of the herd is managed without the use of antibiotics or growth hormones, and that a sufficient recordkeeping system is in place to demonstrate compliance with the standards.

The OSPs are custom documents that are specific for each organic producer and go to the essence of the owner's business model. Each of the Dairies' OSPs accordingly provides a step-by-step blueprint of the company's organic milk production process. That blueprint consists of the completed questionnaire required by TDA (the Dairies' USDA accredited certifier) the written plans, protocols and process descriptions attached to that questionnaire, the documentation of sources of organic inputs, suppliers and their organic certificates, cost and sales information and the proprietary recordkeeping system that has been developed by the Dairies to document the required compliance information. They also include, of necessity, all clarifying correspondence with TDA, as well as inspection reports, which are maintained as part of the OSP recordkeeping system.⁹

The information contained in the OSPs details every aspect of the Dairies' productive process from pasture management to milking and quality control, specifically including information such as:

- aerial photographs and maps showing pasture locations (*e.g.*, BB0000046 – 123);
- reports of the history of the pastures (*e.g.*, BB0000151 – 154);
- descriptions of the feed management procedures, including types of feed used, the composition of the feed, and information about the suppliers of the feed, (*e.g.*, BB0000275 – 280);

⁹ See, *e.g.*, BB0000001 – 42.

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- standard operating procedures, operations profiles, and pasture protocols (*e.g.*, BB0000290 – 291, BB0000311, BB0000397 – 398);
- information about sources and quantity of cattle purchased (*e.g.*, BB0000784 – 796);
- health management plans, vaccination information, and information about cattle health (*e.g.*, BB0000281 – 284);
- information about how the herd is housed (*e.g.*, BB0000285 – 289);
- information about water for the herd, including water quality (*e.g.*, BB0000232 – 255);
- information about seed use and seed suppliers (*e.g.*, BB0000179 – 182);
- specific materials used, including brand information, and material safety data sheets (*e.g.*, BB0000195 – 220; BB0000348 – 380);
- descriptions and examples of the recordkeeping systems the Dairies implemented (*e.g.*, BB0000292, BB0000391, BB0000436 – 437, BB0000659, BB0001250);
- information about the farm’s estimated annual production (*e.g.*, BB0000268);
- organic certificates for the Dairies’ suppliers (*e.g.*, BB0000184 – 192, BB0000381 – 339); and
- correspondence with the Texas Department of Agriculture related to the Dairies’ organic certification (*e.g.*, BB0000381, BB0001218).

The integration of this information into a single document, *i.e.*, how the Dairies assemble the information into an OSP, and how the different processes and procedures that ensure regulatory compliance work together, is an organic milk production plan falling squarely within the meaning of the trade secret exemption definition as applied by the D.C. Circuit. *See Center for Auto Safety*, 244 F.3d at 151.

The OSPs also are commercially valuable within the meaning of the exemption, and give the Dairies a competitive advantage in the organic milk market. *See Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1011 (1984) (“the value of a trade secret lies in the competitive advantage it gives its owner over competitors”). The OSPs, if produced, would make clear to any competitor exactly how the Dairies have successfully created a production process that meets the challenging requirements of organic production on a large scale and in a manner capable of satisfying customer demands for high-quality organic milk in reliable supplies. Such a plan would be invaluable not only to existing competitors but also to competitors looking to enter the market.

The lack of “how-to” detail in the NOP regulations is purposeful. The regulation was designed by Congress to create a national performance standard that could be met by the diverse variety of farms in regions across the United States. By way of example, how each operation identifies and secures organic inputs, the variation in those inputs, how herd health is managed in the absence of conventional drugs and treatments, how the feed ration is composed, how records

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are created, organized and maintained are all left to the individual operation and its certifier. Access to the OSPs, or even to portions thereof, would confer on organic dairy competitors unfair insight into how the Dairies have addressed production process requirements and would result in a taking of the Dairies' trade secret information.

This "how-to" aspect of organic production requires and is the end product of sustained innovation and substantial effort on the part of the producer. The OSPs are the product of years of work invested by the Dairies in creating, maintaining and improving its organic milk production plan to continue to provide organic milk products. The OSPs also reflect substantial innovations that the Dairies have developed and implemented in their supply chain, recordkeeping system, and processing plant (among other things) in order to create and maintain its market share. As such, an OSP is a plan that changes incrementally over time, but does not become obsolete or lose value simply as a function of the passage of time. The OSPs included in the Requested Documents all contain information that continues to be part of two of the Dairies' current operations.

Finally, it is beyond dispute that the OSPs are confidential. Each of the Dairies maintains its OSPs in strict confidence due to their proprietary nature. The only entity to whom they were or are ever disclosed is TDA, who is required by the OFPA to keep the OSPs in strict confidence, with the single exception of sharing them with the Secretary, and only then upon request. Accordingly, the OSPs in their entirety constitute trade secrets and are entirely exempt from disclosure under FOIA. *See supra.*

For this reason, each of the Dairies requests that the entire OSPs and their communications with their USDA-accredited certifying agent contained in the Requested Documents not be produced. Alternatively, the Dairies request that the OSPs be produced in substantially redacted form as discussed in the following sections and identified in Exhibit 1 and the highlighted documents provided in the enclosed disc.¹⁰

C. Objection: Reveals Information about the Dairies' Contractors and Suppliers Which Is Confidential.

The documents submitted for review include correspondence, invoices, bills and organic certificates that reveal the identity of the contractors and suppliers who provide the Dairies with feed, cattle, and other inputs or services that allow the Dairies to produce organic milk. For example, Pages BB000275 – 280 provide a list of the types of feed and rations produced and purchased by the Dairies for their organic herd and Pages BB000018 – 192 consist of organic

¹⁰ The Dairies expressly reserve the right to challenge the production of the OSPs in redacted form if the USDA decides to adopt that approach. As noted, the Dairies believe that these materials are subject to withholding in their entirety. The Dairies have provided some of the documents in redacted form so the USDA can see that virtually all of the information contained on an OSP and ancillary documents would need to be redacted to avoid disclosure of the Dairies' trade secrets and otherwise confidential information.

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certificates for the Dairies' suppliers. Such information qualifies as confidential commercial information that should not be disclosed under the second prong of Exemption 4 because the disclosure of such information would cause substantial harm to the Dairies' competitive position. The confidential commercial information contained in the Requested Documents remains current for virtually all suppliers. Even suppliers that are no longer providing product to the Dairies are exempt from disclosure because having that information would allow a competitor to obtain an advantage it otherwise would not have (*e.g.*, insight into the quality and reliability of potential suppliers, among other things).

First, as shown above, there is actual and very substantial competition in the organic milk industry. In fact, organic dairy has been one of the fastest growing segments of organic agriculture in the United States.¹¹ The number of certified organic milk cows more than doubled between 2005 and 2008, growing from around 86,000 to over 200,000. This growth trend will put an ever increasing strain on the already limited supply chain for organic inputs to the dairy production process. Thus, not only is there actual competition in the organic dairy market in general, there is substantial competition in the market for information regarding sources of direct and indirect inputs into the organic dairy production process.

Second, the disclosure of the Dairies' suppliers and contractors would cause substantial competitive harm to the Dairies by revealing the sources of inputs such as feed, breeding and milking stock. According to the USDA study, organic dairies, like the Dairies, cite sourcing inputs as the most difficult aspect of their operation. Disclosure of the identities of the Dairies' current and former contractors and suppliers would allow competitors insight into how to source inputs successfully for a dairy, and knowledge of which suppliers have been discontinued or added would provide insight on potential availability and reliability of such suppliers. Similarly, disclosing whether the Dairies obtain multiple products from a single supplier would disclose confidential business information regarding the Dairies' OSP and impact its competitive position in the market.

The potential harm is twofold because it will increase direct competition for the inputs these contractors and suppliers who source to the Dairies, and it will provide insight into how to source inputs for dairies that are considering transitioning to organic production or to small organic dairies seeking to increase the scale of their operations.

This reality further justifies the withholding or redaction of Organic Certificates for the Dairies' suppliers and contractors. The unredacted release of such certificates, which are an integral component of the OSPs, would in this context unequivocally reveal the identities of the Dairies' suppliers. FOIA was never intended to facilitate such anticompetitive trade practices.

¹¹ McBride and Greene, "Characteristics, Costs, and Issues for Organic Dairy Farming," Economic Research Service USDA (2009).

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D. Objection: Reveals Information about the Dairies' Protocols and Procedures, Which Is a Trade Secret and Confidential.

The Requested Documents include detailed information about the Dairies' plans and procedures for organic milk production. This information particularizes the application of the general performance standards of the regulations to the Dairies' specific farm production process. There is a "direct relationship between the protocols and procedures and the productive process" that brings these documents in their entirety within the trade secret prong of Exemption 4. These plans and procedures include quality control mechanisms, which courts have found are clearly protected from disclosure under FOIA as trade secrets and confidential. *See Center for Auto Safety*, 244 F.3d at 151; *Appleton*, 451 F. Supp. 2d at 141.

The plans and procedures contained in each of the OSPs to which this objection applies include:

- Procedures for managing herd health (*e.g.* BB0000887 – 890);
- Procedures for sourcing and moving feed (*e.g.* BB0000406 – 435, 0000437, BB0000570, BB0001240);
- Procedures for milking and flushing processes (*e.g.* BB0000270, BB0000303 – 306, BB0000658 – 664);
- Procedures for pasturing cows (*e.g.* BB0000274).

The herd health procedures, for example, constitute a plan for addressing each of the performance requirements of 7 CFR § 205.238, which set criteria for herd health management but leave to the individual organic producer how to meet those criteria. The procedures reveal detail about how the Dairies effectively maintain the health of a large herd of organic dairy cattle in varying stages of milk production. (*See, e.g.*, BB0000887 – 890.) This plan is the product of countless hours of the Dairies' employee, staff and consultant work and experience in managing herds on its farms. It is closely integrated with the Dairies' proprietary recordkeeping system described below. It remains a key component of the Dairies' organic milk production plan today.

The procedures for sourcing feed enables the Dairies to comply with the requirements of 7 CFR § 205.238, mandating the content and source of feed for livestock, and establishing strict recordkeeping requirements for documenting feed provided for livestock. These procedures ensure that the feed provided to the Dairies' cows does not contain any prohibited additives or ingredients and provides a mechanism to document that information in the Dairies' proprietary recordkeeping system. (*See, e.g.*, BB0000406 – 435, 0000437, BB0000570, BB0001240.) Although the regulations set forth strict requirements, they provide no insight as to how to achieve compliance for an organic dairy operation of the Dairies' size. the Dairies' staff has spent years developing its supply chain and creating and implementing a recordkeeping system

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to track cattle feed, to ensure compliance with the regulations. These procedures are central to the Dairies' success in producing competitively priced organic milk.

The Dairies have implemented procedures for ensuring that the producing and processing of its organic products complies with the requirements of 7 C.F.R. §§ 205.105 & 205.270, which set stringent criteria for the type and quantity of products that can be used for prepping, cleaning, and sterilizing equipment and facilities used in the production, processing, and handling of a product using the organic label. The Dairies have created and implemented procedures for the operation of its milking and processing facilities that allow it to meet these regulatory requirements, and deliver safe, high-quality organic milk without the use of prohibited substances. The Dairies' employees created these procedures from the ground up to ensure that milking and processing aspects of a large-scale dairy operation can be conducted without the use of prohibited substances.

Similarly, the Dairies have developed and implemented specific procedures to ensure that its cows are provided adequate pasture in compliance with the NOP requirements and that pastures are managed in compliance with the organic standards. These protocols and procedures required years of research, planning, innovation, and implementation, and are integral to the continued success of the Dairies in the organic milk market.

As discussed above, there is serious competition in the organic dairy market. The innovative protocols and procedures for ensuring compliance with regulatory standards, while simultaneously maintaining a competitive cost structure, have allowed the Dairies to develop their business in a challenging industry.

Disclosure of this information would provide the Dairies' competitors and potential competitors critical know-how about operating an organic dairy in compliance with organic standards which they would not otherwise be able to access. Disclosure would dilute the Dairies' competitive position by allowing competitors or potential competitors to freeride on the procedures and protocols the Dairies developed at great expense and effort. For this reason, the materials are not subject to disclosure under FOIA. *See Ruckelshaus*, 467 U.S. at 1011.

E. Objection: Information Regarding the Dairies' Business Practices and Strategy Is Exempt From Disclosure.

The Requested Documents contain information detailing the Dairies' business processes and strategies. Such information reveals high-level business plans and strategic choices the Dairies have made to secure its competitive position in the organic marketplace, including information such as to whom and in what quantities the Dairies sell their milk products, how and when additional milking cows are integrated into the production process, and other information about the composition of the Dairies' herd.

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Disclosure of such information would cause the Dairies competitive injury by allowing competitors and potential competitors to replicate the Dairies' successful business strategy. The USDA's 2009 study on the organic dairy industry found that most organic dairies had substantial difficulty generating returns in excess of labor costs and capital investment.¹² The Dairies devised a successful business model that is capable of generating such returns; thus, disclosure of its business strategies and processes would allow the Dairies' competitors and potential competitors to improve their operations or create new large organic dairy operations by leveraging the Dairies' proprietary business processes.

As discussed above, the information that the USDA required the Dairies to submit is exempt from disclosure under FOIA if it is likely to "cause substantial harm to the competitive position" of the Dairies. See *Critical Mass*, 975 F.2d at 877. The disclosure the Dairies' business strategies and processes would cause the Dairies substantial competitive injury, because competitors or potential competitors would be able to use the information to undermine the Dairies' relationship with customer and suppliers, which has been found to "necessarily aid its competitors." See FOIA Guide, at 306 (citing *McDonnell Douglas Corp. v. NASA*, No. 98-5251, slip op. at 2 (D.C. Cir. 1999)). Competitors would be able to use information contained in the Requested Documents, such as the Dairies' customers and the sale price of its product, to gain access to the Dairies' distribution system, thus undermining the Dairies' position in the market. Accordingly, such information should not be disclosed.

F. Objection: Information Regarding the Dairies' Production and Other Financial Data Is Exempt from Disclosure.

The Requested Documents include information regarding the Dairies' production and other financial data. For instance, Page BB0000268 details Boehning Dairy's expected production. This type of information should not be disclosed because it is also the type of information protected by Exemption 4.

The Dairies' production and financial data provided to the USDA for its review is exempt from disclosure because the disclosure will likely "cause substantial harm to the competitive position" of the Dairies. See *Critical Mass*, 975 F.2d at 877. First, in the hands of the Dairies' suppliers, this information could be used to weaken the Dairies' bargaining position by providing suppliers with information about prices the Dairies pays for other components of its feed mix. Second, information about prices each of the Dairies pays for various inputs into its organic system could be used by competitors as leverage in their own purchasing, unfairly improving their competitive position. Third, this information could be used by the Dairies' customers to drive down the price at which the Dairies are able to sell their milk, thus weakening the Dairies' revenues and competitive position in the organic milk market.

¹² McBride and Greene, "Characteristics, Costs, and Issues for Organic Dairy Farming," Economic Research Service USDA (2009).

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G. Objection: Reveals Information about the Dairies' Proprietary Internal Recordkeeping Mechanisms Which Is a Trade Secret and Confidential.

The Requested Documents contain information that reveals the Dairies' proprietary recordkeeping system. The Dairies are required to maintain records that "[f]ully disclose all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited." 7 C.F.R. § 205.103. The Dairies have created a proprietary recordkeeping system that tracks various aspects of the Dairies' operation in compliance with the regulation. For example, Pages BB0000292, BB0000391, BB0000436 – 437, BB0000659, and BB0001250, among others, reveal the Dairies' system for its recordkeeping. Although much of the information in these records should be withheld for the many reasons discussed above, these documents should also be withheld because the structure of these documents and the ways they are compiled and stored reveal the innovative system the Dairies have created for meeting the recordkeeping requirement of the organic regulations and qualifies a trade secret exempt from disclosure under FOIA.

As discussed above, Exemption 4 prohibits disclosure of a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. *See Public Citizen*, 704 F.2d at 1288. the Dairies' recordkeeping system is secret. Fully aware of the difficulty of creating a recordkeeping system compliant with the organic regulations, the Dairies have closely guarded their recordkeeping system, disclosing it only to the TDA and the USDA for inspection, as required by 7 C.F.R. § 205.103. The Dairies' recordkeeping system directly relates to the productive process because it documents every step of the production process and, without such a system, the Dairies' organic milk could not qualify for organic certification. the Dairies' recordkeeping system is the end product of innovation and substantial effort. No commercially-available recordkeeping system exists to track the various elements of organic dairy production as required by federal regulations. The Dairies built a recordkeeping system from scratch. Accordingly, the Dairies' proprietary recordkeeping system is a trade secret and exempt from disclosure under FOIA. *See Center for Auto Safety*, 244 F.3d at 151.

H. Objection: Information Regarding the Dairies' Business Strategy and Herd Composition Is Exempt from Disclosure.

Disclosure of information such as the Dairies' herd composition and strategy regarding the integration of new milking cows into the operation would cause the Dairies competitive injury by allowing competitors and potential competitors to emulate the Dairies' successful business strategy regarding its herd management practices. As previously discussed, the USDA's 2009 study on the organic dairy industry found that most organic dairies had substantial

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difficulty generating returns in excess of its labor costs and capital investment.¹³ The Dairies, however, have devised a successful business model that is capable of generating such returns. Accordingly, disclosure of its business strategies and process pertaining to, among other things, herd management would allow the Dairies' competitors and potential competitors to improve their operations or create new large organic dairy operations modeled after the Dairies, increasing competition in the organic milk market at the Dairies' via unfair use of the Dairies' proprietary process.

I. Objection: Reveals Information about the Dairies' Organic Production Process Inputs Which Is a Trade Secret and Confidential.

The Requested Documents contain information concerning the inputs used by the Dairies in the production of organic milk such as feed mixtures, water and pasture. These clearly qualify as trade secrets.

The nature, source, and specific application of the various inputs into the Dairies' organic production process are a closely guarded secret that the Dairies have taken great care to protect. Each of the Dairies has only divulged this information to its certifying agent, TDA, and in turn to the USDA, as required by the regulations. 7 C.F.R. § 205.201. Such information is commercially valuable because it is the management and application of these inputs that allows the Dairies to produce organic milk. The combination and timing of the application of these inputs inherently relates to the productive process. Finally, the Dairies invested substantial time and resources into developing an innovative combination of inputs that produce its organic milk products. Thus, the Dairies' inputs fit squarely into the category of information protected from disclosure as trade secrets. *See Appleton*, 451 F. Supp. 2d at 141.

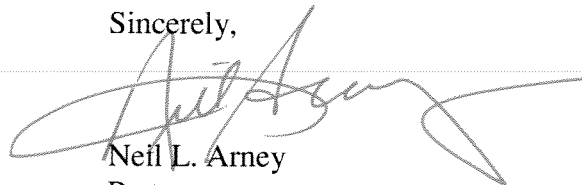
¹³ McBride and Greene, "Characteristics, Costs, and Issues for Organic Dairy Farming," Economic Research Service USDA (2009).

KUTAK ROCK LLP

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We appreciate the opportunity to bring these important matters to your attention and look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Neil L. Arney", is written over a horizontal dotted line. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Neil L. Arney
Partner

Enclosures: Exhibit 1 (Vaughn Index)
Computer Discs Containing Requested Documents with Bates Numbers
BB0000001 – BB0001300 and Highlights for Proposed Redactions

cc: Brian Boehning
Lee Sachnoff, Esq.

Bridges, Gregory - AMS

From: Ryan Miltner <ryan@miltnerlawfirm.com>
Sent: Tuesday, April 19, 2016 9:40 AM
To: Bridges, Gregory - AMS
Subject: Re: FOIA 2013-AMS-01201-F (EO12600 Response); Natural Prairie Dairy Farms, LLC

Greg,

Thanks for the confirmation.

Hard copies should arrive today. There are three separate envelopes.

Ryan

Ryan K. Miltner
The Miltner Law Firm, LLC
100 North Main Street
P.O. Box 477
New Knoxville, OH 45871
(866) 740-5219
ryan@miltnerlawfirm.com

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> On Apr 18, 2016, at 5:59 PM, Bridges, Gregory - AMS <Gregory.Bridges@ams.usda.gov> wrote:
>
> Hi Mr. Miltner:
>
> I have received the records and will begin the review process. I will contact if I have any questions.
>
> Thanks,
>
> Greg Bridges
> FOIA Officer
> USDA Agricultural Marketing Service
> 1400 Independence Avenue, S.W.
> 3943-S
> Stop 0202
> Washington, D.C. 20250
> 202-720-2498
>
>
>

> -----Original Message-----

> From: Ryan Miltner [<mailto:ryan@miltnerlawfirm.com>]

> Sent: Monday, April 18, 2016 11:49 AM

> To: Bridges, Gregory - AMS

> Cc: Cheri De Jong; Donald De Jong; Kristine Reed

> Subject: FOIA 2013-AMS-01201-F (EO12600 Response); Natural Prairie Dairy Farms, LLC

>

> Dear Mr. Bridges,

>

> As I mentioned in a voice mail I left with you on Friday, I represent Natural Prairie Dairy Farms, LLC.

>

> Attached to this email is a narrative response to the FOIA documents you provided to Natural Prairie.

>

> Due to the volume of the documents, redactions, and comments, I am providing those to you via www.sharefile.com.

>

> A separate email with a link to download the documents will follow this email.

>

> A hard copy of the attached letter and all documents are also being sent by FedEx to your office.

>

> Please advise me if you have any problems with any of the information or files or require additional information regarding Natural Prairie's response.

>

> Sincerely,

>

> Ryan K. Miltner

> The Miltner Law Firm, LLC

> 100 North Main Street

> P.O. Box 477

> New Knoxville, OH 45871

> (866) 740-5219

> ryan@miltnerlawfirm.com

>

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> This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.



RYAN K. MILTNER

KRISTINE H. REED

ADMITTED IN OHIO AND MICHIGAN
RYAN@MILTNERLAWFIRM.COM

ADMITTED IN OHIO, INDIANA, AND GEORGIA
KRISTINE@MILTNERLAWFIRM.COM

Via Federal Express Delivery and by e-mail to gregory.bridges@ams.usda.gov

April 18, 2016

Gregory Bridges
Agricultural Marketing Service – FOIA Officer
1400 Independence Avenue, SW
South Building, Rm. 3943-S, Stop 0202
Washington, DC 20250-0273

**Re: FOIA 2013-AMS-01201-F (EO12600 Response)
Natural Prairie Dairy Farms, LLC**

Dear Mr. Bridges:

I am writing in response to your correspondence dated March 21, 2016 to Natural Prairie Dairy Farms (“NPDF”). In response to your direct request, NPDF has specifically identified the CBI contained in the documents (“NPDF Documents”) you forwarded along with justification for the protection of the CBI. Both the proposed redactions and the explanations accompany this letter.

Before USDA reviews the asserted CBI, however, it is imperative that USDA determine whether any of the information that was provided to NPDF for review should be disclosed at all. As explained herein, there are two patently clear federal statutes that entirely preclude USDA from releasing any of the NPDF Documents.

The FCEA Prohibits Disclosure of the NPDF Documents

The Farm, Conservation, and Energy Act of 2008 included specific provisions that broadly prohibit the disclosure of the very information included in the NPDF Documents.

Pertinent to the NPDF Documents, the FCEA mandates that “the Secretary, any officer or employee of the Department of Agriculture, or any contractor or cooperator of the Department shall **not disclose** 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.” (Emphasis added).¹

¹ 7 U.S.C. § 8791(b). The complete language of the applicable prohibition is included as an attachment to this letter.

It is critical that that the Secretary has no discretion is this instance. The statute imposes a mandatory obligation of the Secretary to hold such information in confidence.

In construing this provision, the United States District Court for the District of Columbia held that the broad provisions of FCEA prohibit USDA from disclosing information in response to a FOIA request.

On its face, § 8791(b)(2)(A) prohibits disclosure and gives little discretion to the agency as to how the provision should be applied. . . . In other words, § 8791 satisfies FOIA Exemption (3)(A) because it leaves no discretion to the agency as to disclosure of this type of information. FOIA Exemption (3) provides that the statute must require information to be withheld in a way that leaves no discretion on the issue or that establishes particular criteria for withholding or refers to particular types of matters to be withheld. See 5 U.S.C. § 552(b)(3). Section 8791 of the FCEA satisfies both the conditions necessary for FOIA Exemption (3) status. Paragraph (2) makes it clear that information shall not be disclosed by the Department of Agriculture if that information meets the criteria that the paragraph expressly provides, which is that it is “provided by an agricultural producer or owner of agricultural land” and that it is “concerning the agricultural operation, farming . . . or the land itself, in order to participate in programs of the Department.”” 7 U.S.C. § 8791(b)(2)(A). The language of this provision does not indicate that the information described may be disclosed upon the Secretary’s discretion. Moreover, the exceptions that it do permit the Secretary to disclose information apply to specific instances in which the statute permits disclosure, none of which apply to Zanoni. The only instance in this provision where the Secretary is given any discretion is in paragraph (3), which plainly does not apply in the instant case. See 7 U.S.C. § 8791(b)(2)(A).

Zanoni v. USDA, 605 F. Supp. 2d 230, 236-37 (D.D.C. 2009).

Here, all of the information included in the NPDF Documents is provided by NPDF as an agricultural producer and owner of agricultural land. All of the information concerns the agricultural operation, farming, or the land itself. And all of the information was provided for the sole purposes of NPDF’s participation in the National Organic Program administered by USDA.

Disclosure of the NPDF Documents in this case is expressly prohibited by the FCEA nondisclosure provisions as interpreted by case law that is directly on point and FOIA Exemption 3.

The OFPA prohibits disclosure of the NPDF Documents.

NPDF is a participant in the National Organic Program administered by USDA. The regulations developed by USDA were developed under the authority of the Federal Organic Foods Production Act of 1990, 7 U.S.C. § 6501 *et seq.* (OFPA). The recordkeeping provisions of OFPA expressly prohibit public disclosure of proprietary business information of program participants. (“No officer, employee, or agent of the United States shall make available to the public any information, statistic, or document obtained from, or made available by, any person under this chapter, other than in a manner that ensures that confidentiality is preserved regarding—(A) the identity of all relevant persons (including parties to a contract); and (B) proprietary business information.”) 7 U.S.C. § 6519(a)(5). The only exception that is made is extremely narrow and requires only that the program “provide for public access to certification documents and laboratory analyses that pertain to certification.” *Id.* at 6506(a)(9).

The OFPA provides further reassurances to each organic producer that its business records will remain confidential. Although a producer is required to disclose business information to its OFPA Certifying Agent in order to assure compliance with the regulations of the National Organic Program, the Certifying Agent (in this case, the Texas Department of Agriculture) is required to “maintain strict confidentiality with respect to its clients under the applicable organic certification program” and OFPA specifically prohibits the Certifying Agent from making disclosures to third parties of “any business related information concerning such client obtained while implementing this chapter”. 7 U.S.C. §6515(f). Again, the only stated exception to the confidentiality rule permits public access to certification documents and laboratory analyses.

Of the 500 pages of NPDF Documents, only a few can be definitively determined to fall within the exception to the confidentiality provisions of the OFPA. Specifically, the pages, which have been marked as NPDF0018 through NPDF0022, constitute laboratory analyses of NPDF crops. The remaining documents do not fall within the exception.

Disclosure of nearly all of the NPDF documents is expressly prohibited by the OFPA and FOIA Exemption 3.

Discussion of Confidential Business Information

Accompanying this letter are the NPDF Documents that have been marked for redaction using Adobe Acrobat Software. Each page includes comments explaining the reason(s) why the proposed material to be redacted constitutes CBI. In making these determinations, NPDF has relied upon the explanations provided in the letter from you dated March 20, 2016 and the United States Department of Justice Guide to the Freedom of Information Act (“DOJ Guide”).

All of the comments can be viewed in the accompanying PDF document and are also provided independently in a summary accompanying this letter.

A. Trade Secrets

The NPDF Documents contain numerous trade secrets that relate directly to the management of NPDF’s organic farming operations. These trade secrets are noted as “TS” in the comments to the proposed redactions. NPDF has applied the definition of “trade secret” contained in the DOJ Guide at page 264:

In *Public Citizen*, a “trade secret” was more narrowly defined as “a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.” This definition also incorporates a requirement that there be a “direct relationship” between the trade secret and the productive process.

B. Commercial or Financial Information

The NPDF Documents also include Commercial and Financial Information. This information is noted as “CFI” in the comments to the proposed redactions. Again, NPDF has applied the three-pronged standard contained in the DOJ Guide to identify CFI. The three prongs are (1) whether the information pertains to, relates to, or deals with commerce; (2) whether the information was obtained from a person; and (3) whether the information is of a kind that would customarily not be released to the public by the person from which it was obtained. *See* DOJ Guide at p. 266-278.

There can be no doubt that all of the information in the NPFD Documents pertain to, relate to or deal with commerce. NPFD is a commercial organic dairy operation, and the information in the NPFD Documents, in its entirety, originates from the commercial operations of the farm.

Likewise, almost the entirety of the NPFD Documents was obtained from a person—NPFD and its employees and agents. For the few items of the NPFD Documents that were prepared by the Texas Department of Agriculture (“TDA”) as the certifying agent of NPFD, those should also be deemed to have originated from a person. But it is important to note that the DOJ Guide explains that even though the TDA is a state government instrumentality, that does not remove the information from Exemption 4.

The DOJ Guide reads, “Documents prepared by the government can still come within Exemption 4, however, if they simply contain summaries or reformulations of information supplied by a source outside the government, or contain information obtained through a plant inspection.”

Here, all of the information that was included in TDA summaries constitutes summaries of information supplied by NPFD and obtained through an inspection of NPFD’s facilities.

Finally, the information marked as CFI is of a kind that would customarily not be released to the public by NPFD.² As a matter of practice, the specifics of the protocols, farm maps, volumes of milk produced, numbers and types of cattle, plans, feeding formulas, and information of the like is never disclosed to outside entities except in the limited context of Organic Certification.

Conclusion

The information in the NPFD Documents cannot be disclosed through FOIA. Under FOIA Exemption 3, two separate federal statutes preclude entirely the disclosure. Under Exemption 4, NPFD has marked the NPFD Documents for redaction as CBI, included comments, and explained herein why CBI redaction is required.

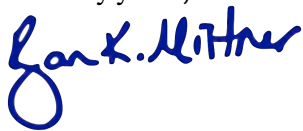
NPFD requests that USDA keep NPFD apprised as to its position regarding these documents and provide NPFD sufficient advance notice of USDA’s ultimate position on disclosure **before** any submission is made in the underlying Court action.

² As set forth in the DOJ Guide, this is the standard properly applied when as here, a submitter has voluntarily provided information to the government. In instances where a submitter is compelled to provide information, the standard is whether disclosure would cause competitive harm to the submitter. The result is the same regardless in this case, as disclosure would impose commercial harm upon NPFD by opening up its procedures, methodology, farm structure, feeding formulations, animal husbandry, and other commercially important information to its competitors, customers, and the public.

Mr., Gregory Bridges
April 18, 2016
Page 5 of 5

Please communicate with this office regarding any future developments. NPDF and I remain available to discuss our positions with you and to cooperate in any way in this matter.

Sincerely yours,

A handwritten signature in blue ink that reads "Ryan K. Miltner". The signature is written in a cursive style with a large, prominent loop at the end of the name.

Ryan K. Miltner

Enc.

cc: Natural Prairie Dairy Farms, LLC

From: [Sachnoff, Lee F.](#)
To: [Tangredi, Joseph - AMS](#)
Subject: Accepted: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

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Thank you.

From: [Tangredi, Joseph - AMS](#)
To: ["lee.sachnoff@kutakrock.com"](mailto:lee.sachnoff@kutakrock.com); [Allen, William - AMS](#); [Tangredi, Joseph - AMS](#)
Subject: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

Mr. Sachnoff – we will call your office at 303-297-2400 for the conference call on FOIA request #2013-AMS-01201 regarding Aurora Organic Dairy.

From: [Sachnoff, Lee F.](#)
To: [Tangredi, Joseph - AMS](#)
Cc: [Arney, Neil L.](#)
Subject: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy
Date: Thursday, October 15, 2015 6:19:43 PM

Joe:

I got your voicemail message. Are you available tomorrow, Friday, at 11:00 a.m. your time for a call?

Lee F. Sachnoff | Kutak Rock LLP

1801 California Street | Suite 3000 | Denver | Colorado | 80202

Direct: (303) 292-7789 | Main: (303) 297-2400 | Facsimile: (303) 292-7799

lee.sachnoff@kutakrock.com

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Thank you.



United States
Department of
Agriculture

Agricultural
Marketing
Service

STOP 0202-Room 2622-S
1400 Independence Avenue, SW.
Washington, D.C. 20250-0202

In reply, please refer to
AMS FOIA No. 2013-AMS-01201-F

Lee F. Sachnoff, Esq.
Kutak Rock, LLP
1801 California St., Suite 3000
Denver, CO 80202

JUN 22 2015

Dear Mr. Sachnoff:

The Agricultural Marketing Service (AMS) has received a Freedom of Information Act (FOIA) (5 U.S.C. § 552) request for records related to Aurora Organic Dairy and other organic dairies operating in Texas. The FOIA requires government agencies, including the Department of Agriculture (USDA), to release to the public Agency-maintained documents upon request unless the documents are specifically exempt from disclosure by the terms of the FOIA.

The Cornucopia Institute has made the following request pertaining to visits to organic dairies in Texas and New Mexico made by staff of USDA's National Organic Program (NOP):

"It is our understanding that the Texas and New Mexico visits occurred in 2012 and Cornucopia is requesting, in particular, copies of all correspondence, discussion notes, documents, phone logs and background materials related to the planning for said visits, actual visits to the Texas and New Mexico organic dairies in 2012, any follow-up correspondence or documents and subsequent actions and/or activities that transpired following the visits (including any enforcement actions by the NOP or accredited certification agencies)."

We conducted a search and identified 1384 pages of documents that are responsive to this request.

Executive Order 12600 and USDA regulations (7 CFR 1.12) provide that whenever an Agency cannot readily determine whether the information obtained from a business is privileged or confidential business information, the Agency is to obtain and consider the views of the submitter of the information and to provide the submitter an opportunity to object to the disclosure of the information.

Before we make a final decision on this request, we would like to consider your views regarding the release of information on the documents subject to this request, copies of which are enclosed on a Compact Disk in Adobe PDF format.

Please advise us if you believe that the release of this material, or portions thereof, could cause substantial competitive harm to Aurora Organic Dairy. We request that you indicate on the materials which portions would cause such competitive harm, and fully explain all grounds upon which you oppose the release of this information. If you consider this information to be confidential business information, you must provide an item-by-item explanation of why disclosure would cause substantial competitive harm to your business.

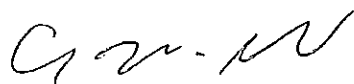
We ask that you justify any potential withholding of this information by confirming the following, providing us with specific facts and details: (1) That Aurora Organic Dairy has direct competitor(s) in the business area(s) concerned; (2) That the information proposed to be withheld is not already available in the public domain, on the internet, in generally accessible databases, or in any other easily-accessible place; and (3) That disclosure of this information to the public would entail substantial competitive harm to Aurora Organic Dairy.

Please describe how a release of this information would reveal or jeopardize such factors as your competitive position or market share. If you do not object to the release of this information, we would appreciate knowing this also.

Your response should be sent to me at FOIA Officer, Legislative and Regulatory Review Staff, Agricultural Marketing Service, USDA, Stop 0202, Room 3521 - S. Building, 1400 Independence Avenue, SW, Washington, DC 2025-0202. You have fifteen (15) working days from the date of this letter to respond to this inquiry. If we do not receive your response in that time, AMS may interpret your lack of response as your unconditional approval of our release of the aforementioned information to the requester.

If you object to the release of this information, USDA will consider your response in making its final decision. Additionally, should USDA decide to release any or all of the subject information because it determines that a release will not cause competitive harm, we will advise you by mail prior to the release of the information.

Sincerely,



Carrie Hyde-Michaels
Freedom of Information Act Officer

Enclosure

cc: Brent Cannell
Director of Compliance
Aurora Organic Dairy
1919 14th Street, Suite 300
Boulder, CO 80302

From: [Tangredi, Joseph - AMS](#)
To: ["lee.sachnoff@kutakrock.com"](mailto:lee.sachnoff@kutakrock.com)
Subject: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy
Date: Monday, June 22, 2015 4:15:05 PM
Attachments: [20150622143938252.pdf](#)

Hello Lee,

I was unable to upload even the reduced size PDF file of this information for you, accompanying the Executive Order 12600 notification letter attached. So, here is the letter, with correct FOIA tracking number, 2013-AMS-01201-F. I am mailing the file to you on a new CD.

Thanks,

Joe Tangredi

Joseph Tangredi
Legislative and Regulatory Review Staff
Agricultural Marketing Service
US Department of Agriculture
1400 Independence Ave., SW, Room 3521-S
Washington, DC 20250

From: [Sachnoff, Lee F.](#)
To: [Tangredi, Joseph - AMS](#); [Allen, William - AMS](#)
Cc: [Frandina, Michael M.](#); [Arney, Neil L.](#)
Subject: RE: AMS FOIA No. 2013-AMS-01201-F/Aurora Organic Dairy and Cornucopia
Date: Monday, August 31, 2015 12:27:59 PM

Joe:

Thank you for your assistance. Here is the address we have for your offices:

Agriculture Marketing Service, USDA, STOP 0202
Room 3521 – S. Building
1400 Independence Avenue, S.W.
Washington, DC 20250-0202

Please let me know if this is the correct address or if we should send the disc elsewhere.

Lee

From: Tangredi, Joseph - AMS [mailto:Joseph.Tangredi@ams.usda.gov]
Sent: Monday, August 31, 2015 8:19 AM
To: Sachnoff, Lee F.; Allen, William - AMS
Cc: Frandina, Michael M.; Arney, Neil L.
Subject: RE: AMS FOIA No. 2013-AMS-01201-F/Aurora Organic Dairy and Cornucopia

Good morning Lee,

Option 3 would be the best, if you could overnight the disc to us on Tuesday to arrive here on Wednesday. Please email me the mailing address you have for us, just so we can confirm it's correct.

Thanks,

Joe

From: Sachnoff, Lee F. [mailto:Lee.Sachnoff@KutakRock.com]
Sent: Monday, August 31, 2015 9:17 AM
To: Tangredi, Joseph - AMS; Allen, William - AMS
Cc: Frandina, Michael M.; Arney, Neil L.
Subject: Re: AMS FOIA No. 2013-AMS-01201-F/Aurora Organic Dairy and Cornucopia

Joe and Bill:

Aurora Organic Dairy is on track to deliver to the USDA on Tuesday, September 8, 2015 its proposed redactions and Vaughn Index on the FOIA request from Cornucopia. We had planned to send you a disc with our redactions on Monday, September 7, 2015 by overnight delivery, but we Monday, September 7, 2015 is Labor Day and our offices are closed. We can get our proposed

redactions to you in the following ways:

1. We can upload the documents to a share site from which you can download them.
2. We can break the documents into multiple, smaller files and email them separately.
3. We can email you the Vaughn Index and correspondence on Tuesday, September 8, 2015 and send out the redacted documents on disc that day with delivery the following day.

Please let us know if you have a preference for any of these options or if there is an alternative way we can handle getting you the documents. Thank you.

Lee F. Sachnoff | Kutak Rock LLP

1801 California Street | Suite 3000 | Denver | Colorado | 80202

Direct: (303) 292-7789 | Main: (303) 297-2400 | Facsimile: (303) 292-7799

lee.sachnoff@kutakrock.com

From: Sachnoff, Lee F.
Sent: Saturday, July 11, 2015 11:34 AM
To: 'Tangredi, Joseph - AMS'; Allen, William - AMS
Cc: Frandina, Michael M.; Arney, Neil L.
Subject: RE: Phone conference with AMS 11am Eastern

Joe and Bill:

Thank you for the 60 day extension to review and respond to the documents subject to the FOIA request. Aurora Organic Dairy will get you its redactions and justifications by September 8, 2015.

Lee F. Sachnoff | Kutak Rock LLP

1801 California Street | Suite 3000 | Denver | Colorado | 80202

Direct: (303) 292-7789 | Main: (303) 297-2400 | Facsimile: (303) 292-7799

lee.sachnoff@kutakrock.com

From: Tangredi, Joseph - AMS [<mailto:Joseph.Tangredi@ams.usda.gov>]
Sent: Friday, July 10, 2015 9:38 AM
To: Sachnoff, Lee F.
Cc: Frandina, Michael M.; Allen, William - AMS
Subject: RE: Phone conference with AMS 11am Eastern

Good morning Lee,

Thank you for the productive telephone call today with Michael Frandina, Bill Allen of our office and myself concerning the Aurora Organic Dairy documents that AMS sent for your review under the Executive Order 12600 process. We understand that your office will require 60 days to review these

documents and provide justifications for any withholdings based on the (b)(4) exemption of the FOIA, i.e., “substantial competitive harm” that would be caused by release of trade secrets and/or confidential business information of Aurora. As we mentioned, your office will provide highlighting of intended redactions, as well as justifications applying the standards we discussed.

If you have any other questions during this review process, please don’t hesitate to contact our office director Bill Allen, or myself.

Thank you,

Joseph Tangredi
Legislative and Regulatory Review Staff
Agricultural Marketing Service
US Department of Agriculture
1400 Independence Ave., SW, Room 3521-S
Washington, DC 20250
Tel: 202-720-2986

From: Sachnoff, Lee F. [<mailto:Lee.Sachnoff@KutakRock.com>]
Sent: Friday, July 10, 2015 10:16 AM
To: Tangredi, Joseph - AMS
Cc: Frandina, Michael M.
Subject: RE: Phone conference with AMS 11am Eastern

Joe:

Please call our mainline at 303-297-2400. The receptionist will transfer the call to me.

Lee F. Sachnoff | Kutak Rock LLP
1801 California Street | Suite 3000 | Denver | Colorado | 80202
Direct: (303) 292-7789 | Main: (303) 297-2400 | Facsimile: (303) 292-7799
lee.sachnoff@kutakrock.com

From: Tangredi, Joseph - AMS [<mailto:Joseph.Tangredi@ams.usda.gov>]
Sent: Friday, July 10, 2015 8:06 AM
To: Sachnoff, Lee F.
Subject: Phone conference with AMS 11am Eastern

Good morning Lee,

Can I just confirm the telephone number where we should call you?

Thanks,

Joe

*Joseph Tangredi
Legislative and Regulatory Review Staff
Agricultural Marketing Service
US Department of Agriculture
1400 Independence Ave., SW, Room 3521-S
Washington, DC 20250
Tel: 202-720-2986*

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Thank you.

From: [Tangredi, Joseph - AMS](#)
To: ["Arney, Neil L."; Allen, William - AMS](#)
Cc: ["Sachnoff, Lee F."; "Frandina, Michael M."](#)
Subject: RE: AMS FOIA No. 2013-AMS-01201-F/Aurora Organic Dairy and Cornucopia
Date: Tuesday, September 08, 2015 2:59:25 PM

Thank you, Mr. Arney. We will review the materials and will be in touch with you shortly.

Joseph Tangredi
Legislative and Regulatory Review Staff
Agricultural Marketing Service
US Department of Agriculture
1400 Independence Ave., SW, Room 3521-S
Washington, DC 20250
Tel: 202-720-2986

From: Arney, Neil L. [mailto:Neil.Arney@KutakRock.com]
Sent: Tuesday, September 08, 2015 2:34 PM
To: Allen, William - AMS
Cc: Sachnoff, Lee F.; Tangredi, Joseph - AMS; Frandina, Michael M.
Subject: RE: AMS FOIA No. 2013-AMS-01201-F/Aurora Organic Dairy and Cornucopia

Mr. Williams:

Attached is Aurora Organic Dairy's response to your letter dated June 15, 2015, regarding the above-referenced FOIA Request.

The response includes an Index of the Requested Documents by Bates Number range and the bases for exempting the documents from production.

For your convenience, we also have highlighted the Requested Documents, showing our proposed redactions to the documents in the event that the USDA elects not to withhold the Requested Documents in their entirety as set forth in the response. As previously discussed with Mr. Tangredi, a disc containing the highlighted documents is being sent by overnight mail.

Please let us know if you have any questions.

Sincerely,

Neil L. Arney

Neil L. Arney
Kutak Rock LLP
1801 California Street, Suite 3000
Denver, CO 80202-2626
Direct Dial: 303-292-7882
Tele: 303-297-2400
Fax: 303-292-7799
neil.arney@kutakrock.com

From: [Sachnoff, Lee F.](#)
To: [Tangredi, Joseph - AMS](#)
Cc: [Arney, Neil L.](#); [Frandina, Michael M.](#); [Brent Cannell](#)
Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy
Date: Thursday, June 25, 2015 1:09:10 PM

Joe:

I wanted to let you know that Aurora Organic Dairy did receive the CD you sent to Brent Cannell, and we were able to pull the documents from the disk. We need to undertake an initial review of the materials, and we will circle back to you early next week to discuss process and timing. Thank you.

Lee F. Sachnoff | Kutak Rock LLP
1801 California Street | Suite 3000 | Denver | Colorado | 80202
Direct: (303) 292-7789 | Main: (303) 297-2400 | Facsimile: (303) 292-7799
lee.sachnoff@kutakrock.com

-----Original Message-----

From: Tangredi, Joseph - AMS [<mailto:Joseph.Tangredi@ams.usda.gov>]
Sent: Monday, June 22, 2015 2:15 PM
To: Sachnoff, Lee F.
Subject: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

Hello Lee,

I was unable to upload even the reduced size PDF file of this information for you, accompanying the Executive Order 12600 notification letter attached. So, here is the letter, with correct FOIA tracking number, 2013-AMS-01201-F. I am mailing the file to you on a new CD.

Thanks,

Joe Tangredi

Joseph Tangredi
Legislative and Regulatory Review Staff
Agricultural Marketing Service
US Department of Agriculture
1400 Independence Ave., SW, Room 3521-S
Washington, DC 20250

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Thank you.

From: [Tangredi, Joseph - AMS](#)
To: [Sachnoff, Lee F.](#)
Cc: [Arney, Neil L.](#); [Frantina, Michael M.](#); "Brent Cannell"
Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy
Date: Wednesday, July 01, 2015 2:45:10 PM

Lee, next Friday the 10th at 11am will work for us. Please give me the email addresses of all on your end who should be invited onto the conference call, and the number we can reach you at. I will send out the invitation. Could you conference in all the participants on your end?

Thanks,

Joe

-----Original Message-----

From: Sachnoff, Lee F. [<mailto:Lee.Sachnoff@KutakRock.com>]
Sent: Wednesday, July 01, 2015 8:48 AM
To: Tangredi, Joseph - AMS
Cc: Arney, Neil L.; Frantina, Michael M.; 'Brent Cannell'
Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

Thanks Joe.

-----Original Message-----

From: Tangredi, Joseph - AMS [<mailto:Joseph.Tangredi@ams.usda.gov>]
Sent: Wednesday, July 01, 2015 6:38 AM
To: Sachnoff, Lee F.
Cc: Arney, Neil L.; Frantina, Michael M.; 'Brent Cannell'
Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

Good morning Lee,

Checking on that. Should be able to tell you today.

Thanks,

Joe

-----Original Message-----

From: Sachnoff, Lee F. [<mailto:Lee.Sachnoff@KutakRock.com>]
Sent: Tuesday, June 30, 2015 3:08 PM
To: Tangredi, Joseph - AMS
Cc: Arney, Neil L.; Frantina, Michael M.; 'Brent Cannell'
Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

Joe:

Would a call at 11:00 a m. (Eastern) on Friday, July 10 work for William and you?

Lee

-----Original Message-----

From: Tangredi, Joseph - AMS [<mailto:Joseph.Tangredi@ams.usda.gov>]
Sent: Monday, June 29, 2015 9:58 AM
To: Sachnoff, Lee F.

Cc: Arney, Neil L.; Frandina, Michael M.; 'Brent Cannell'
Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

Good morning,

Tomorrow afternoon would not be workable, but next week, the afternoons of Tuesday, Wednesday, Thursday, or all day Friday (preferably morning) would work. On our side, the phone call will be with myself and William Allen, the director of our office.

Please let me know what day/time works for you.

Thanks,

Joe

-----Original Message-----

From: Sachnoff, Lee F. [<mailto:Lee.Sachnoff@KutakRock.com>]
Sent: Monday, June 29, 2015 11:54 AM
To: Tangredi, Joseph - AMS
Cc: Arney, Neil L.; Frandina, Michael M.; 'Brent Cannell'
Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

Joe:

We received the replacement disk and your letter. Thank you for resending.

Are you available for a call tomorrow afternoon, Tuesday, to discuss our process and timing for reviewing the documents?

Lee

-----Original Message-----

From: Tangredi, Joseph - AMS [<mailto:Joseph.Tangredi@ams.usda.gov>]
Sent: Thursday, June 25, 2015 11:10 AM
To: Sachnoff, Lee F.
Cc: Arney, Neil L.; Frandina, Michael M.; 'Brent Cannell'
Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

Lee -- that's great. Also, an extra copy of the CD was mailed to you on Monday, so you should be receiving that soon. When you do, please confirm.

Thanks,

Joe

-----Original Message-----

From: Sachnoff, Lee F. [<mailto:Lee.Sachnoff@KutakRock.com>]
Sent: Thursday, June 25, 2015 1:10 PM
To: Tangredi, Joseph - AMS
Cc: Arney, Neil L.; Frandina, Michael M.; Brent Cannell
Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

Joe:

I wanted to let you know that Aurora Organic Dairy did receive the CD you sent to Brent Cannell, and we were able to pull the documents from the disk. We need to undertake an initial review of the materials, and we will circle back to you early next week to discuss process and timing. Thank you.

Lee F. Sachnoff | Kutak Rock LLP
1801 California Street | Suite 3000 | Denver | Colorado | 80202
Direct: (303) 292-7789 | Main: (303) 297-2400 | Facsimile: (303) 292-7799 lee.sachnoff@kutakrock.com

-----Original Message-----

From: Tangredi, Joseph - AMS [<mailto:Joseph.Tangredi@ams.usda.gov>]
Sent: Monday, June 22, 2015 2:15 PM
To: Sachnoff, Lee F.
Subject: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

Hello Lee,

I was unable to upload even the reduced size PDF file of this information for you, accompanying the Executive Order 12600 notification letter attached. So, here is the letter, with correct FOIA tracking number, 2013-AMS-01201-F. I am mailing the file to you on a new CD.

Thanks,

Joe Tangredi

Joseph Tangredi
Legislative and Regulatory Review Staff
Agricultural Marketing Service
US Department of Agriculture
1400 Independence Ave., SW, Room 3521-S
Washington, DC 20250

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Thank you.

From: [Tangredi, Joseph - AMS](#)
To: ["Sachnoff, Lee F."](#)
Cc: ["Arney, Neil L."](#)
Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy
Date: Friday, October 16, 2015 9:08:14 AM

Yes, thank you, Lee. I'm available then. Please call me at 202-720-2986.

By the way, as of November 1, I will be moving to another agency within USDA, the Animal and Plant Health Inspection Service (APHIS). I will be leaving this matter in the capable hands of AMS' new FOIA Officer, Greg Bridges, and our office director, Bill Allen. Bill is aware of the details from our previous conversations, and I've briefed Greg on everything. However, I hope to have all the pending issues on the Aurora Organic Dairy portion of this matter concluded before I go, because already I can tell that a good 90% or more of your proposed redactions are fine.

Thanks,

Joe

From: Sachnoff, Lee F. [mailto:Lee.Sachnoff@KutakRock.com]
Sent: Thursday, October 15, 2015 6:20 PM
To: Tangredi, Joseph - AMS
Cc: Arney, Neil L.
Subject: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

Joe:

I got your voicemail message. Are you available tomorrow, Friday, at 11:00 a.m. your time for a call?

Lee F. Sachnoff | Kutak Rock LLP

1801 California Street | Suite 3000 | Denver | Colorado | 80202
Direct: (303) 292-7789 | Main: (303) 297-2400 | Facsimile: (303) 292-7799
lee.sachnoff@kutakrock.com

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Thank you.

From: [Sachnoff, Lee F.](#)
To: [Tangredi, Joseph - AMS](#)
Cc: [Arney, Neil L.](#)
Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy
Date: Monday, October 19, 2015 7:35:06 PM

Joe:

We did not receive your disc today with you proposed redaction. Do you have a tracking number that we can trace?

Lee F. Sachnoff | Kutak Rock LLP

1801 California Street | Suite 3000 | Denver | Colorado | 80202
Direct: (303) 292-7789 | Main: (303) 297-2400 | Facsimile: (303) 292-7799
lee.sachnoff@kutakrock.com

From: Tangredi, Joseph - AMS [<mailto:Joseph.Tangredi@ams.usda.gov>]
Sent: Friday, October 16, 2015 12:29 PM
To: Sachnoff, Lee F.
Cc: Arney, Neil L.
Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

It will contain all of the Aurora pages of the total 1385, which is most of that number. The small parts we've determined may not contain Aurora's information (which you and Neil pointed out in your cover letter) will be omitted.

From: Sachnoff, Lee F. [<mailto:Lee.Sachnoff@KutakRock.com>]
Sent: Friday, October 16, 2015 1:59 PM
To: Tangredi, Joseph - AMS
Cc: Arney, Neil L.
Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

Joe:

Thank you. Will the disc contain all the pages or just the first 600?

Lee

From: Tangredi, Joseph - AMS [<mailto:Joseph.Tangredi@ams.usda.gov>]
Sent: Friday, October 16, 2015 11:40 AM
To: Sachnoff, Lee F.
Cc: Arney, Neil L.
Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

Good afternoon Lee and Neil,

Thanks for the productive telephone time as we review these FOIA documents on Aurora Organic Dairy and discuss your responses to AMS' EO 12600 inquiry for FOIA request 2013-AMS-01201-F. It turns out the file with the proposed redactions is huge in size, with well over 1 million KB. Compressing it and splitting up will take some time, so instead we will UPS the material to you on a CD. Meanwhile, if you could work on that itemized list justifying the exemption (b)(4) redaction issues on the pages I raised, that would facilitate our work on this. Here is a summary of the pages and page ranges in roughly the first half of the 1385 pages (pages 1-600) in which I raised potential issues regarding the appropriateness of your proposed redactions:

- 1) 64, 68
- 2) 107
- 3) 116
- 4) 132
- 5) 180, 181 and similar
- 6) 220, 221 and similar
- 7) 226
- 8) 230, 289
- 9) 539, 540, 541 and similar
- 10) 548, 549
- 11) 551
- 12) 553
- 13) 569

We appreciate your input on the above by COB next Friday, Oct. 23 as discussed, and we expect to have a disc out to you shortly with our full proposed changes.

Have a good weekend,

Joe

Joseph Tangredi
Legislative and Regulatory Review
Agricultural Marketing Service
US Department of Agriculture
1400 Independence Ave., SW, Room 3943-S
Washington, DC 20250
Tel: 202-720-2986

From: Sachnoff, Lee F. [<mailto:Lee.Sachnoff@KutakRock.com>]
Sent: Thursday, October 15, 2015 6:20 PM
To: Tangredi, Joseph - AMS
Cc: Arney, Neil L.

Subject: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

Joe:

I got your voicemail message. Are you available tomorrow, Friday, at 11:00 a.m. your time for a call?

Lee F. Sachnoff | Kutak Rock LLP

1801 California Street | Suite 3000 | Denver | Colorado | 80202

Direct: (303) 292-7789 | Main: (303) 297-2400 | Facsimile: (303) 292-7799

lee.sachnoff@kutakrock.com

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Thank you.

From: [Tangredi, Joseph - AMS](#)
To: "Sachnoff, Lee F."
Cc: "Arney, Neil L."; "Frantina, Michael M."; "Brent Cannell"
Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy
Date: Thursday, June 25, 2015 1:10:17 PM

Lee -- that's great. Also, an extra copy of the CD was mailed to you on Monday, so you should be receiving that soon. When you do, please confirm.

Thanks,

Joe

-----Original Message-----

From: Sachnoff, Lee F. [<mailto:Lee.Sachnoff@KutakRock.com>]
Sent: Thursday, June 25, 2015 1:10 PM
To: Tangredi, Joseph - AMS
Cc: Arney, Neil L.; Frantina, Michael M.; Brent Cannell
Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

Joe:

I wanted to let you know that Aurora Organic Dairy did receive the CD you sent to Brent Cannell, and we were able to pull the documents from the disk. We need to undertake an initial review of the materials, and we will circle back to you early next week to discuss process and timing. Thank you.

Lee F. Sachnoff | Kutak Rock LLP
1801 California Street | Suite 3000 | Denver | Colorado | 80202
Direct: (303) 292-7789 | Main: (303) 297-2400 | Facsimile: (303) 292-7799 lee.sachnoff@kutakrock.com

-----Original Message-----

From: Tangredi, Joseph - AMS [<mailto:Joseph.Tangredi@ams.usda.gov>]
Sent: Monday, June 22, 2015 2:15 PM
To: Sachnoff, Lee F.
Subject: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

Hello Lee,

I was unable to upload even the reduced size PDF file of this information for you, accompanying the Executive Order 12600 notification letter attached. So, here is the letter, with correct FOIA tracking number, 2013-AMS-01201-F. I am mailing the file to you on a new CD.

Thanks,

Joe Tangredi

Joseph Tangredi
Legislative and Regulatory Review Staff
Agricultural Marketing Service
US Department of Agriculture
1400 Independence Ave., SW, Room 3521-S
Washington, DC 20250

KUTAK ROCK LLP

SUITE 3000
1801 CALIFORNIA STREET
DENVER, COLORADO 80202-2626

303-297-2400
FACSIMILE 303-292-7799

www.kutakrock.com

September 8, 2015

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NEIL L. ARNEY
neil.arney@kutakrock.com
(303) 292-7882

**VIA EMAIL TO
WILLIAM.ALLEN@AMS.USDA.GOV
AND OVERNIGHT DELIVERY**

AMS FOIA Office - William Allen
Agriculture Marketing Service, USDA, STOP 0202
US Dept. of Agriculture
Room 3521 - S. Building
1400 Independence Avenue, S.W.
Washington, DC 20250-0202

Re: AMS FOIA No. 2013-AMS-01201-F

Dear Mr. Allen:

This is in response to the letter dated June 15, 2015, regarding the above-mentioned request (“**FOIA Request**”) under the Freedom of Information Act, 5 U.S.C. § 552, *et seq.* (“**FOIA**”), involving the potential disclosure of documents and records in the possession of the United States Department of Agriculture (“**USDA**”) relating to Aurora Organic Dairy (“**AOD**”).

We appreciate that the USDA has provided us the opportunity to review the documents being considered for release in connection with the FOIA Request (the “**Requested Documents**”). We and AOD have reviewed the Requested Documents in good faith, for purposes of FOIA. This letter and the attachments hereto identify with particularity those documents to which AOD has no objection. This letter also identifies with particularity AOD’s objections to disclosure of various documents and/or portions of documents based on exemptions to FOIA. In addition, this letter provides a detailed explanation of the factors supporting the exemptions to the FOIA Request. Further, the Vaughn Index (Exhibit 1)¹ sets forth page ranges and describes the specific objections to each page range within the Requested Documents. Finally, for your convenience, we have enclosed a computer disc of the Requested Documents with the Bates Numbers and highlights showing proposed redactions of exempt materials.

The Requested Documents primarily comprise AOD’s 2011 and 2012 Organic System Plan (“**OSP**”) for its Coldwater Farm with some duplication. As discussed in further detail below and in the attachments hereto, the vast majority of the documents are not subject to

¹ For your convenience, we have placed Bates Numbers on each page of the Requested Documents. The Bates Numbers range from **0000001 – 0001384**. Those Bates Numbers are the Page Numbers used in the Vaughn Index.

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disclosure based, *inter alia*, on FOIA Exemptions 3, 4, 6 and 7. Given the large volume of documents provided, and our desire to efficiently respond with sufficient detail, we also describe each specific objection to the disclosure of particular types of information as contained in the various documents and relate those to the competitive market analysis. To provide our objections in context, we have also provided a brief summary of competition in the organic dairy market.

I. SUMMARY OF DOCUMENTS PROVIDED FOR REVIEW AND OBJECTIONS TO DISCLOSURE

Based on our review of the Requested Documents, AOD consents to disclosure of the pages identified in Exhibit 1 by using the “N/A” notation in the columns entitled “Description of Redacted Information or Document Withheld,” “Exemption(s),” and “Basis for Redaction or Withholding.”

The remainder of the Requested Documents, in our view, is exempt from disclosure in their entirety. These documents are protected in full from disclosure under, *inter alia*, the Organic Farm Production Act (“**OFPA**”) (specifically 7 U.S.C. §§ 6519(a)(5), 6515(g), and 6506(a)(9) and 7 C.F.R. § 205.504(b)(5)), Section 1619 of the Food, Conservation, and Energy Act of 2008 (a.k.a. the 2008 Farm Bill) (“**FCEA**”), and FOIA (specifically Exemption 3). These documents are also protected in full from disclosure under Exemption 4.

If the USDA does not agree that the remainder of the Requested Documents is entirely exempt from disclosure, then, at a minimum, such documents should be redacted substantially as set forth in the highlighted copy of the Requested Documents contained in the enclosed disc. These redactions should be made pursuant to the foregoing laws (specifically, FOIA Exemptions 4 and 6) and/or the Trade Secrets Act, 18 U.S.C. § 1905, which forbids disclosure of trade secrets and other proprietary information. Finally, we believe that certain documents are actually related to the Cottonwood Cattle Company and not to AOD and should not be disclosed in response to the FOIA Request.²

In addition, we respectfully submit that this letter, the attached Vaughn Index, and the highlighted documents on the enclosed disc are themselves exempt from disclosure under FOIA, and we thus expressly request that the USDA not disclose any of these materials.

² The documents at Bates Numbers 0001225 – 0001384 appear to be related to Cottonwood Cattle Company and its certifying agent QCS. We think that such documents should not be produced without first providing them to Cottonwood Cattle Company for review, and we further think they largely consist of materials that are confidential for reasons similar to those set forth in this letter regarding AOD’s documents.

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II. COMPETITION AND CONFIDENTIALITY IN THE ORGANIC DAIRY MARKET

AOD has been continuously certified as an organic dairy producer since 2003 and currently owns and manages organic dairy farms in Colorado and Texas. The mature cattle on these farms total over 30,000 head. The Coldwater farm, to which the Requested Documents relate, continue in operation today in Texas as a certified organic farm owned and operated by AOD. While AOD's OSPs continue to evolve, the basic production plan set forth in the 2011 and 2012 OSPs remains very current, as do many of the processes, procedures, and suppliers identified therein.

AOD processes its own organic milk at the nation's largest organic-dedicated fluid milk processing plant located in Platteville, Colorado. AOD distributes and sells that organic milk to retailers across the country under private labels (also known as store brand or private brand milk).

Organic milk and dairy products are consistently one of the top two organic food sales categories in the United States. Market news is closely monitored and reported. Organic dairy sales reached \$5.1 billion in 2014, nearly twice what they were a decade earlier.³ AOD has 10-15% share of that market. Large conventional food manufacturers compete head-on with independent organic companies by introducing organic versions of their products. AOD has a number of successful competitors, both large and small, in the organic milk market space, including Horizon/WhiteWave, Organic Valley/CROPP Cooperative, Stonyfield Farms, Shamrock Farms, Clover Stornetta and Upstate Farms. Strong consumer interest in organic dairy products, including fluid milk, is causing processors to seek new organic producers and milk supplies.⁴

AOD entered the organic dairy market in 2003 with the goal of making organic milk more available and affordable for consumers by developing the private label market. It has been successful in achieving that goal. ERS reports that in 2004, 10% of organic fluid milk was private label.⁵ According to the Organic Trade Association, approximately 30% to 40% of organic milk is sold under private label arrangements.⁶ Private label organic milk is now widely available in retail supermarkets such as Safeway, Kroger and Wegman's, specialty markets such

³ Bloomberg Business, Feb. 10, 2015, <http://www.bloomberg.com/news/articles/2015-02-10/not-only-hipsters-cry-when-u-s-grocers-run-out-of-organic-milk>.

⁴ Dairy Market News, Vol. 78, Report 10, Week of March 7-11, 2011.

⁵ Dimitri and Venezia, "Retail and Consumer Aspects of the Organic Milk Market," Economic Research Service Report LDP-M-155-01, May 2007.

⁶ See the USDA's recently proposed Origin of Livestock Rule, <https://www.federalregister.gov/articles/2015/04/28/2015-09851/national-organic-program-origin-of-livestock>.

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as Whole Foods and Fresh Market, and mass merchandisers including BJ's, Costco, Target and Walmart. AOD is the nation's largest private label organic milk producer.

Organic milk production, in general, is substantially more expensive for producers than conventional milk, given the specialized production process requirements and challenges in securing the necessary organic inputs.⁷ USDA data shows that there are about 1,848 organic dairies with 199,737 organic cows at the end of 2011. *See* USDA 2011 Certified Organic Production Survey, Table 10.⁸ As noted in the USDA's recently proposed Origin of Livestock Rule, "[a]ccording to 2010 ARMS data, the mean size of an organic dairy farm nationally was 77 cows." Competition among organic dairy producers for inputs and markets is intense. Acquiring and maintaining private label organic milk business requires reliable supply and a strong and consistent focus on production efficiencies (among other things).

Organic dairy producers compete for suppliers and inputs to the organic milk production process, and to provide organic milk at a competitive price. To do so, they must develop, implement, and constantly refine business strategies, protocols and processes to manage their herds so as to consistently provide customers with high quality organic milk and reliable supplies. All of these areas of competition are integral components of the specialized OSP developed for each unique farming operation in consultation with their accredited certifying agents. Given the competitive sensitivity of these individual plans, they are held in strict confidence by the producer and by the certifying agents to whom they are submitted for review. Indeed, federal law expressly recognizes the commercial value and sensitivity of this information, as it requires certifying agents to keep OSPs entirely confidential and prohibits disclosure. *See* 7 U.S.C. § 6515(g); 7 C.F.R. § 205.501(a)(10).

III. FOIA EXEMPTION 3 -- BLANKET PROTECTION: SPECIFIC OBJECTIONS TO DISCLOSURE OF AOD'S OSPs UNDER SECTION 1619 OF FCEA AND OFPA

A. Legal Standard for Exemption 3

FOIA Exemption 3 allows the withholding of information prohibited from disclosure by another federal statute where the statute either "(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld." 5 U.S.C. § 552(b)(3); *see also* Department of Justice Guide to the Freedom of Information Act, 2009 Ed. ("2009 FOIA Guide").

⁷ McBride and Greene, "Characteristics, Costs, and Issues for Organic Dairy Farming," Economic Research Report Number 82, November 2009.

⁸ <http://usda.mannlib.cornell.edu/usda/current/OrganicProduction/OrganicProduction-10-04-2012.pdf>.

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In determining whether a statute qualifies for Exemption 3 status, the plain language of the statute is controlling. *See, e.g., Association of Retired R.R. Workers, Inc. v. U.S. R.R. Retirement Bd.*, 830 F.2d 331, 334 (D.C. Cir. 1987). As the D.C. Circuit has noted, agencies are not to take a formulistic approach to Exemption 3. *Wis. Project on Nuclear Arms Control v. U.S. Dep't of Commerce*, 317 F.3d 275, 282-85 (D.C. Cir. 2003) (“the touchstone of the Exemption 3 inquiry is whether the statute is the product of congressional appreciation of the dangers inherent in airing particular data”) (internal citations omitted).

B. Section 1619

Section 1619 of the FCEA (codified at 7 U.S.C. § 8791) provides in relevant part that the 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 programs of the Department or (B) geospatial information otherwise maintained by the Secretary about agricultural land or operations for which such information is provided.

7 U.S.C. § 8791(b)(2). That provision of the FCEA is an exemption statute under Exemption 3. *Ctr. for Biological Diversity v. USDA*, 626 F.3d. 1113, 1118 (9th Cir. 2010); *Zanoni v. USDA*, 605 F. Supp. 2d 230, 236-37 (D.D.C. March 31, 2009).

AOD understands that the USDA has previously taken the position that Section 1619 does not apply to the NOP. (See July 30, 2008 public guidance issued by Boyd Rutherford.) However, as an initial matter, AOD maintains that the plain language of Section 1619 clearly supports the conclusion that it covers information that an organic producer provides to its certifying agent (which is then provided by the certifying agent to the USDA) in order for the organic producer to participate in the NOP, a program of the USDA. The definition of an “agricultural operation” to which Section 1619 applies “includes production and marketing of agricultural commodities and livestock.” 7 U.S.C. § 8791(b)(1). AOD is without question an agricultural operation within the meaning of Section 1619 as it produces and sells organic milk, an agricultural commodity. All of the proprietary information describing AOD’s organic production system that is contained in the Requested Documents was provided to its certifying agent, Quality Assurance International (“QAI”) in order to participate in the NOP, a national program created and administered by the USDA. Such information appears to have subsequently been provided to the USDA by QAI. All such disclosures occurred in order for AOD to participate in the NOP, a program of the USDA. As such, the information falls precisely within the scope of Section 1619(b)(2)(A). *See* 7 U.S.C. § 8791(b)(2)

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Indeed, the decision *Ctr. for Biological Diversity v. USDA*, 626 F.3d. 1113 (9th Cir. 2010), which was decided after Mr. Rutherford's guidance was issued, makes clear that Section 1619 was passed by Congress to prevent the disclosure of information like that in the OSPs at issue here. Specifically, in *Multi Ag Media LLC v. U.S. Dep't of Agric.*, 515 F.3d 1224 (D.C. Cir. 2008), *abrogated by statute as recognized in Ctr. for Biological Diversity*, 626 F.3d. at 1117, the court ordered disclosure of two files that included information on irrigation practices for thousands of farms; acreage; the number and width of rows of tobacco and cotton; farm, tract, and boundary identification; calculated acreage; and characteristics of the land such as whether it is erodible, barren, or has water or perennial snow cover. *Id.* at 1226-27. Section 1619, which abrogated *Multi Ag Media*, was intended at least in part to prevent that type of disclosure under FOIA. *Ctr. for Biological Diversity*, 626 F.3d. at 1117.

Even if Mr. Rutherford's contention that Section 1619 "does not apply to USDA regulatory programs where participation by the agricultural producer or landowner is required by law as a condition of participation in the marketplace," was not overruled, we believe that Section 1619 would still apply to the NOP. First, nothing in Section 1619 supports a conclusion that the "marketplace" could be narrowly defined to mean the "marketplace as an organic producer." The marketplace should not merely include organic producers, but is properly understood as the marketplace for agricultural commodities and livestock, whether organic or not, and participation in the NOP is not a condition of participation in the marketplace for agricultural commodities and livestock. Second, and relatedly, any assertion that the NOP program does not dispense any benefits to organic producers is wrong. Achieving organic status under the NOP allows organic producers to label their products with the USDA organic seal, which in turn allows such producers to charge a premium that other non-organic producers cannot achieve. As such, participation in the NOP program is a "benefit" as that term is used in Mr. Rutherford's guidance.

Since Section 1619 is an Exemption 3 statute and it applies to the NOP, the remainder of the Requested Documents, which comprise AOD's OSPs and supporting documentation, are exempt from disclosure and should not be produced in response to the FOIA Request. *See., e.g., Ctr. for Biological Diversity*, 626 F.3d. at 1118 *Zanoni*, 605 F. Supp. 2d at 236-37. Such information would include AOD's OSPs in their entirety, including correspondence with QAI, and QAI inspection reports.

C. The OFPA

The OFPA also is an Exemption 3 statute. The plain language of the OFPA mandates that all business information submitted in the certification process is to be accorded strict confidentiality. 7 U.S.C. § 6515(g). The OFPA requires that all business information provided to a certifier by an organic producer or handler will be accorded "strict confidentiality." 7 U.S.C. § 6515(g); 7 C.F.R. § 205.501(a)(10). The only statutory exception is that the certifier is authorized to disclose to the Secretary and/or applicable governing State official. *Id.* The statute

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provides for public access to documents in only two instances – the organic certificate and laboratory analyses that pertain to certification. 7 U.S.C. §6505(a)(9). The USDA has expressly acknowledged that limitation in its implementing regulations. *See* 7 C.F.R. § 205.504(b)(5). The OFPA confidentiality provision, as implemented by the USDA, has been upheld on review. *Harvey v. Veneman*, 2003 WL 22327171 (D. Me. 2003), *aff'd in relevant part, rev'd in part* 396 F.3d 28 (1st Cir. 2005).

AOD understands that the USDA has previously taken the position that the OFPA is not an Exemption 3 statute because the confidentiality language applies only to certifying agents, not the USDA. Even if that earlier position was correct, the position is no longer consistent with the OFPA as amended in 2014, which provides: “no officer, employee, or agent of the United States shall make available to the public any information, statistic, or document obtained from, or made available by, any person under this chapter, other than in a manner that ensures that confidentiality is preserved regarding . . . (B) proprietary business information.” 7 U.S.C. § 6519(a)(5).

The organic dairy industry is highly competitive. It is no secret that Cornucopia promotes certain of AOD’s competitors.⁹ Were AOD’s confidential documents and materials disclosed under the auspices of FOIA in response to the FOIA Request made by Cornucopia here, nothing would prevent Cornucopia from publishing AOD’s proprietary information and business know-how to the entire world, including to AOD’s competitors, and AOD would have no recourse or ability to protect itself. Congress clearly saw the danger inherent in subjecting organic producers’ confidential business information to public disclosure, and rightfully provided that such information remain confidential under OFPA. The 2014 amendment to 7 U.S.C. § 6519(a)(5) quoted above makes it clear that Congress intended to safeguard proprietary business information such as OSPs.

Finally, and to the extent the USDA decides that Exemption 3 does not apply here, it is our position that AOD’s OSPs are not “agency records” subject to FOIA because the USDA no longer had control over such documents after its investigation pertaining to the documents was completed. In order to be subject to disclosure under FOIA, a document must be an “agency record.” *Tax Analysts v. U.S. Dept. of Justice*, 913 F. Supp. 599, 602 (D.D.C. 1996). The Supreme Court “articulated a two-part test to determine what constitutes an ‘agency record’”

⁹ *See* The Cornucopia Institute’s biased and unscientific “Organic Dairy Scorecard” available at <http://www.cornucopia.org/dairysurvey/>. The Cornucopia Institute filed an initial complaint against AOD with the USDA in 2005 and since then has filed a series of complaints, all of which have been dismissed or closed by the USDA. It is also common knowledge that the Cornucopia Institute has a close working relationship with -- and openly represents -- the interests of AOD’s competitors. If the USDA fails to recognize that OSPs are protected from disclosure by FOIA and other applicable laws, the USDA will be fundamentally changing the competitive landscape for all organic producers and processors, because nothing will prevent a competitor (or potential competitor) from using the complaint process (and attendant FOIA requests) to gain proprietary information from other competitors in the market.

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under FOIA: “agency records” are documents that “are (1) either created or obtained by an agency, and (2) under agency control at the time of the FOIA request.” *Id.* (citing *United States Department of Justice v. Tax Analysts*, 492 U.S. 136, 144–145 (1989)). “The Court said that ‘[b]y control we mean that the materials have come into the agency’s possession in the legitimate conduct of its official duties.’” *Id.* (citing *Tax Analysts*, 492 U.S. at 144). Possession alone is not sufficient to establish control. *Id.* at 602-03. Instead, courts have considered the following factors in determining whether an agency “controlled” a document:

- (1) the intent of the document’s creator to retain or relinquish control over the records;
- (2) the ability of the agency to use and dispose of the record as it sees fit;
- (3) the extent to which agency personnel have read or relied upon the document;
- and (4) the degree to which the document was integrated into the agency’s record system or files.

Id. at 603 (citing *Dow Jones & Company, Inc. v. General Services Administration*, 714 F. Supp. 35, 39 (D.D.C. 1989)). In sum, “the question is whether, considering all of the circumstances of the case including, of course, physical possession, the records at issue are ‘subject to the free disposition of the agency.’” *Id.* (quoting *Goland v. CIA*, 607 F.2d 339, 347 (D.C.Cir.1979)).

Here, AOD’s OSPs should not be considered “agency records” of USDA subject to FOIA. As noted above, the OFPA provides for public access to documents in only two instances – the organic certificate and laboratory analyses that pertain to certification. 7 U.S.C. §6505(a)(9). While QAI was required to allow the USDA “access” to records, including AOD’s OSPs, 7 U.S.C. § 6519(a)(3)(b), such “access” was required in order to allow the USDA to investigate compliance with OFPA. 7 U.S.C. § 6519(b). Once the USDA’s investigation was concluded, OFPA does not contemplate the USDA retaining the documents used in its investigation. Indeed, the OFPA specifically provides that the organic producer and certifying agent, not the USDA, are custodians of the records. 7 U.S.C. §§ 6519(a)(2) and (3). As such, the factors discussed above demonstrate that AOD’s OSPs were no longer “controlled” by the USDA once the USDA’s investigation was over and are thus not “agency records” subject to the FOIA Request.

IV. FOIA EXEMPTION 4: SPECIFIC OBJECTIONS TO RELEASE OF TRADE SECRETS AND/OR CONFIDENTIAL COMMERCIAL OR FINANCIAL INFORMATION

A. Legal Standard for Exemption 4

FOIA Exemption 4 specifically exempts from disclosure two distinct types of information: (1) “trade secrets” and/or (2) commercial or financial information obtained from a person that is privileged and confidential. 5 U.S.C. 552(b)(4). A trade secret is a “secret, commercially valuable plan, formula, process, or device that is used for the making, preparing,

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compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.” *Pub. Citizen Health Research Group v. Food & Drug Admin.*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). In order to qualify, there must be “a direct relationship between the information at issue and the productive process.” *Id.*; *see also Center for Auto Safety v. NHTSA*, 244 F.3d 144, 151 (D.C. Cir. 2001). Information such as inputs, sources of inputs and quality control procedures are part of the productive process.¹⁰ A document that “qualifies as a trade secret . . . is protected from disclosure under Exemption 4 and the inquiry ends.” *Id.*; *see also Taylor v. Babbit*, 2011 WL 189769 (D.D.C. 2011). Exemption 4, as it applies to trade secrets, is co-extensive with the Trade Secrets Act. 2009 FOIA Guide, at 354; *see CNA Fin. Corp. v. Donovan*, 830 F.2d 1132, 1140 (D.C. Cir. 1987); *see also Canadian Commercial Corp. v. Dep’t of the Air Force*, 514 F.3d 37, 39 (D.C. Cir. 2008).

Commercial and financial information exempt from disclosure under the second prong of Exemption 4 includes (among other things) business sales statistics, research data, customer and supplier lists, profit and loss data, overhead and operating costs and other information concerning financial condition. 2009 FOIA Guide at 270-271; *see also Pub. Citizen Health Research Group v. National Institutes of Health*, 209 F. Supp. 2d 37, 47 (D.D.C. 2002) (withholding royalty information because it would allow competitors to “make a rough calculation of a firm’s profit margin”). The D.C. Circuit has established two distinct analyses for determining whether or not commercial information qualifies as confidential for purposes of Exemption 4, the application of which depends on whether the information was submitted to the agency voluntarily or under compulsion. *Critical Mass Energy Project v. Nuclear Regulatory Comm’n*, 975 F.2d 871 (D.C. Cir. 1992) (en banc). Commercial information that is submitted voluntarily is confidential and therefore exempt from disclosure “if it is of a kind that the provider would not customarily release to the public.”¹¹ *Id.* at 879. If the information was required to be provided to the agency, it is only confidential if it is likely to “cause substantial harm to the competitive position of the person from whom the information was obtained.” *Id.* at

¹⁰ *See Appleton v. FDA*, 451 F. Supp. 2d 129, 141 (D.D.C. 2006) (“documents [that] contain information consisting of drug product manufacturing information, including manufacturing processes or drug chemical composition and specifications...would reveal how the drug being discussed in the document ‘is formulated, chemically composed, manufactured, and quality controlled,’ and is therefore properly withheld.”); *Heeney v. FDA*, 1999 U.S. Dist. LEXIS 23365 *25 (C.D. Cal.) (design and testing information, materials used in construction of product and identity of the company that manufactures Boston Scientific’s catheter, have a direct relationship to the productive process because they are used in making, preparing, or processing the catheter, and reflect innovation and effort).

¹¹ Although AOD is not privy to how the Requested Documents came into the possession of the USDA, it appears that the documents were voluntarily submitted by QAI to the USDA during its investigative proceedings. Information submitted to an agency in the course of an investigation prior to the agency issuing a subpoena or warrant for the information has been deemed information that is voluntarily submitted despite the agency’s power to require the information. *See Shell Oil Co. v. U.S. Dep’t of Labor*, No. H-963113, slip op. at 13 (S.D. Tex. 1998). Indeed, a submission of documents remains voluntary where a subpoena has been issued for the documents but court proceedings to enforce the subpoena have not been initiated. *See McDonnell Douglas Corp. v. EEOC*, 922 F. Supp. 235, 242 (E.D. Miss. 1996). Thus, the Requested Documents are exempt from disclosure because they are the type of information that AOD does not customarily release to the public.

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877. This requires a showing that there is “actual competition” and “a likelihood of substantial competitive injury.” *CNA Fin. Corp.*, 830 F.2d at 1152.

B. Objection: AOD’s OSPs Should Be Withheld in Their Entirety Because They Are Trade Secrets and Are Confidential

AOD’s OSPs are “secret, commercially valuable plans . . . used for the making of a trade commodit[y]” (organic milk) that are the end product of both innovation and substantial effort by AOD. Even the OFPA recognizes that OSPs are effectively trade secrets as 7 U.S.C. § 6515(g) states they contain business information which must be kept strictly confidential by the accredited certifying agents. Moreover, AOD considers its OSPs to be trade secrets and confidential information as evidenced by AOD stating in the header of its OSP “*Confidential Business Information.*” Accordingly, AOD’s OSPs constitutes trade secrets that are exempt from disclosure in their entirety.

The OSPs document the complete organic milk production plan that has been developed, certified and implemented by AOD, as required by the OFPA and the USDA implementing regulations. The OSP is defined by law as:

A plan of management of an organic farming or handling operation that has been agreed to by the producer or handler and the certifying agent and that includes written plans concerning all aspects of agricultural production or handling described in this title including crop rotation and other practices required under this title.

7 U.S.C. § 6502(13). By regulation, an OSP contains detailed information about all stages of the production process, enabling the certifying agent to determine that the operation complies with the regulations and qualifies for the organic label. 7 C.F.R § 205.201. Among other requirements, a dairy producer such as AOD must show that its milking cows have been under organic management for at least one year, all feed rations are organically produced, the health of the heard is managed without the use of antibiotics or growth hormones, and that a sufficient recordkeeping system is in place to demonstrate compliance with the standards.

The OSPs are custom documents that are specific for each organic producer and goes to the essence of the owner’s business model. Each of AOD’s OSPs accordingly provides a step-by-step blueprint of the company’s organic milk production process. That blueprint consists of the completed questionnaire required by QAI (AOD’s USDA accredited certifier for many of its farms including its Coldwater Farm) the written plans, protocols and process descriptions attached to that questionnaire, the documentation of sources of organic inputs, suppliers and their organic certificates, cost and sales information and the proprietary recordkeeping system that has been developed by AOD to document the required compliance information. They also include,

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of necessity, all clarifying correspondence with QAI, as well as inspection reports which are maintained as part of the OSP recordkeeping system.¹²

The information contained in the OSPs details every aspect of AOD's productive process from pasture management to milk processing and quality control, specifically including information such as:

- aerial photographs and maps showing pasture locations (e.g. 0000184 – 195);
- reports of the history of the pastures (e.g. 0000210 – 215);
- descriptions of the types of feed used, the composition of the feed, and information about the suppliers of the feed, (e.g. 0001004 – 1005);
- standard operating procedures, operations profiles, and pasture protocols (e.g. 0000994 - 1003);
- information about sources and quantity of cattle purchased (e.g. 0000320 – 322);
- health management plans, vaccination information, and information about cattle health (e.g. 0000230 – 287);
- information about how the herd is housed (e.g. 0000128);
- information about water for the herd, including water quality (e.g. 0000180 – 181);
- descriptions of the recordkeeping systems AOD implemented (e.g. 0000316 – 319);
- information about the farm's monthly production (e.g. 0000122 – 125);
- organic certificates for AOD's suppliers (e.g. 0000535 – 749); and
- correspondence related to AOD's organic certification (e.g. 0000001 - 3).

The integration of this information into a single document, *i.e.*, how AOD assembles the information into an OSP, and how all of the different processes and procedures that ensure regulatory compliance work together, is an organic milk production plan falling squarely within the meaning of the trade secret exemption definition as applied by the D.C. Circuit. *See Center for Auto Safety*, 244 F.3d at 151.

The OSPs are also commercially valuable within the meaning of the exemption, and give AOD a competitive advantage in the private label milk market. *See Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1011 (1984) (“the value of a trade secret lies in the competitive advantage it gives its owner over competitors”). The OSPs, if produced, would make clear to any competitor exactly how AOD has successfully created a production process that meets the challenging requirements of organic production on a large scale and in a manner capable of satisfying customer demands for high-quality organic milk in reliable supplies. Such a plan would be invaluable not only to existing competitors but also to competitors looking to enter the market.

The lack of “how-to” detail in the NOP regulations is purposeful. The regulation was designed by Congress to create a national performance standard that could be met by the diverse

¹² *See e.g.*, 0000066 – 78

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variety of farms in regions across the United States. By way of example, how each operation identifies and secures organic inputs, the variation in those inputs, how herd health is managed in the absence of conventional drugs and treatments, how the feed ration is composed, how records are created, organized and maintained are all left to the individual operation and its certifier. Access to the OSPs, or even to portions thereof, would confer on organic dairy competitors unfair insight into how AOD has addressed production process requirements and would result in a taking of AOD's trade secret information that has secured it a market share of over 15% in the organic milk market.

This "how-to" aspect of organic production requires and is the end product of sustained innovation and substantial effort on the part of the producer. The OSPs are the product of the years of work invested by AOD in creating, maintaining and improving its organic milk production plan to continue to provide organic milk products at a competitive price. The OSPs also reflect substantial innovations that AOD has developed and implemented in its supply chain, recordkeeping system, and processing plant (among other things) in order to create and maintain its market share. As such, an OSP is a plan that changes incrementally over time, but does not become obsolete or lose value simply as a function of the passage of time. The OSPs included in the Requested Documents all contain information that continues to be part of AOD's current operations.

Finally, it is beyond dispute that the OSPs are confidential. AOD maintains its OSPs in strict confidence due to their proprietary nature. The only entity to whom they were or are disclosed is QAI, who is required by the OFPA to keep the OSPs in strict confidence, with the single exception of sharing them with the Secretary, upon request. Accordingly, the OSPs in their entirety constitute trade secrets and are entirely exempt from disclosure under FOIA. *See supra*.

For this reason, AOD requests that the entire OSPs contained in the Requested Documents not be produced. Alternatively, AOD requests that the OSPs be produced in substantially redacted form as discussed in the following sections and identified in Exhibit 1 and the highlighted documents provided in the enclosed disc.¹³

C. Objection: Reveals Information about AOD Contractors and Suppliers Which Is Confidential

The documents submitted for review include correspondence, invoices, bills and organic certificates that reveal the identity of the contractors and suppliers who provide AOD with feed,

¹³ AOD expressly reserves the right to challenge the production of the OSPs in redacted form if the USDA decides to adopt that approach. As noted, AOD believes that these materials are subject to withholding in their entirety. AOD has provided some of the documents in redacted form so the USDA can see that virtually all of the information contained on an OSP and ancillary documents would need to be redacted to avoid disclosure of AOD's trade secrets and otherwise confidential information.

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cattle, and other inputs or services that allow AOD to produce private label organic milk at competitive prices. For example, Pages 0001004 – 1005 provide a list of the types of feed and sources of livestock feed purchased by AOD for its organic herd and Pages 0000535 – 749 consist of organic certificates for AOD suppliers. Such information qualifies as confidential commercial information that should not be disclosed under the second prong of Exemption 4 because the disclosure of such information would cause substantial harm to AOD's competitive position. The confidential commercial information contained in the Requested Documents remains current for virtually all suppliers. Even suppliers that are no longer providing product to AOD are exempt from disclosure because having that information would allow a competitor to obtain an advantage it otherwise would not have (*e.g.*, insight into the quality and reliability of potential suppliers of inputs, among other things).

First, as shown above, there is actual and very substantial competition in the organic milk industry. In fact, organic dairy has been one of the fastest growing segments of organic agriculture in the United States.¹⁴ The number of certified organic milk cows more than doubled between 2005 and 2008, growing from around 86,000 to over 200,000. This growth trend will put an ever increasing strain on the already limited supply chain for organic inputs to the dairy production process. Thus, not only is there actual competition in the organic dairy market in general, there is substantial competition in the market for information regarding sources of direct and indirect inputs into the organic dairy production process.

Second, the disclosure of AOD's suppliers and contractors would cause substantial competitive harm to AOD by revealing the sources of inputs such as feed, breeding and milking stock. According to the USDA study, organic dairies, like AOD, cite sourcing inputs as the most difficult aspect of their operation. Disclosure of the identities of AOD's current and former contractors and suppliers would allow competitors insight on how to source inputs successfully for a dairy, and knowledge of which suppliers have been discontinued or added would provide insight on potential availability and reliability of such suppliers. The potential harm is twofold because it will increase direct competition for the inputs these contractors and suppliers provide AOD, and it will provide insight into how to source inputs for dairies that are considering transitioning to organic production or to small organic dairies seeking to increase the scale of their operations.

This reality further justifies the withholding or redaction of Organic Certificates for AOD suppliers and contractors. The unredacted release of such certificates, which are an integral component of the OSPs, would in this context unequivocally reveal the identities of AOD suppliers. FOIA was never intended to facilitate such anticompetitive trade practices.

¹⁴ McBride and Greene, "Characteristics, Costs, and Issues for Organic Dairy Farming," Economic Research Service USDA (2009).

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D. Objection: Reveals Information about AOD Protocols and Procedures, Which Is a Trade Secret and Confidential

The Requested Documents include multiple whole and/or partial copies of AOD's protocols and procedures for organic milk production. These protocols particularize the application of the general performance standards of the regulations to AOD's specific farm production process. There is a "direct relationship between the protocols and procedures and the productive process" that brings these documents in their entirety within the trade secret prong of Exemption 4. These protocols and procedures are also quality control mechanisms, which courts have found are clearly protected from disclosure under FOIA as trade secrets and confidential. *See Center for Auto Safety v. NHTSA*, 244 F.3d 144, 151 (D.C. Cir. 2001); *Appleton*, 451 F. Supp. 2d at 141.

The protocols and procedures contained in each of the OSPs to which this objection applies include:

- Protocols for managing herd health in compliance with organic standards (e.g. 0000230 – 287);
- Procedures for sourcing and verifying that feed is compliant with organic standards (e.g. 0000533 – 534);
- Protocol for ensuring that the milking process is compliant with organic standards (e.g. 0000311);
- Procedures for pasturing cows in compliance with organic standards (e.g. 0000994 - 1003).

The herd health protocol, for example, creates an integrated plan for addressing each of the performance requirements of 7 CFR § 205.238 that set criteria for herd health management but leave to the task of the individual organic producer the specifics on how those criteria will be achieved. It organizes the various requirements into a logical and standard management framework with the detail required for effectively maintaining the health of a large herd of organic dairy cattle in varying stages of milk production, appropriate specific therapies for specific health issues, specifies reproductive practices and mandates bio-security procedures. (*See e.g.*, 0000230 – 287.) This plan is the product of many, many hours of AOD's veterinary staff work and experience in managing herds on its farms. It is closely integrated with AOD's proprietary recordkeeping system described below. It remains a key component of AOD's organic milk production plan today.

The procedures and protocols for sourcing and verifying that feed is compliant with organic standards enables AOD to comply with the requirements of 7 CFR § 205.238, mandating the content and source of feed for livestock, and establishing strict recordkeeping requirements for documenting feed provided for livestock. These procedures ensure that the feed provided to AOD's cows does not contain any of the additives or ingredients prohibited for use in organic

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dairy production and provides a mechanism for inputting that information into AOD's proprietary recordkeeping system. (*See, e.g.*, 0000533 – 534, 1004 – 1005, 476 – 532.) Although the regulations set forth strict requirements, they provide no insight as to how to implement compliance for an organic dairy operation of AOD's size. AOD's staff has spent years developing its supply chain and creating and implementing a recordkeeping system to track cattle feed, to ensure compliance with the regulations. These procedures are central to AOD's success in producing competitively priced organic milk for the private label market.

AOD has established protocols and implemented procedures for ensuring that the producing and processing of its organic products complies with the requirements of 7 CFR §§ 205.105 and 205.270, which set stringent criteria on the type and quantity of products that can be used for prepping, cleaning and sterilizing equipment and facilities used in the production, processing and handling of a product using the organic label. AOD has created and implemented innovative procedures and protocols for the operation of its milking and processing facilities that allow it to meet these regulatory requirements, and deliver safe, high-quality organic milk without the use of prohibited substances in its milking and processing facilities. AOD's producing and processing procedures and protocols were created by AOD employees from the ground up, and are uniquely tailored to ensure that milking and processing aspects of a large-scale dairy operation can be conducted without the use of prohibited substances that would be permitted for use in a non-organic operation.

Similarly, AOD has developed and implemented specific procedures and protocols to ensure that its cows are provided adequate pasture in compliance with the NOP requirements and that pastures are managed in compliance with the organic standards. These protocols and procedures required years of research, planning, innovation and implementation on the part of AOD's employees to create a logical and effective system of pasturing cows for an operation AOD's size, and are integral to the continued success of AOD in the private brand organic milk market.

As discussed above, there is serious competition in the organic dairy market. The innovative protocols and procedures for ensuring its production process complies with regulatory standards, while simultaneously maintaining a competitive cost structure, have allowed AOD to develop its business in a challenging industry.

Disclosure of this information would provide AOD's competitors and potential competitors critical know-how about operating an organic dairy in compliance with organic standards which they would not otherwise be able to access. Possession of this information would allow competitors or potential competitors to enter the organic dairy market via the use of AOD's protocols and procedures instead of having to undertake the expensive and time-consuming task of developing their own protocols and procedures for operating an organic dairy in compliance with organic standards. Thus, disclosure would dilute the competitive advantage AOD has gained in the organic dairy by allowing competitors or potential competitors to enter

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the market by capitalizing on the substantial investment of time and resources AOD committed to designing its protocols and procedures. For this reason, the materials are not subject to disclosure under FOIA. *See Ruckelshaus*, 467 U.S. at 1011.

E. Objection: Information Regarding AOD Business Practices and Strategy Is Exempt From Disclosure

The Requested Documents contain information detailing AOD's business processes and strategies. Such information reveals high-level business plans and strategic choices AOD has made to secure its competitive position in the organic marketplace, including information such as to whom and in what quantities AOD sells its milk products, how and when additional milking cows are integrated into the production process, and other information about the composition of AOD's herd.

Disclosure of information such as AOD's herd composition and strategy regarding the integration of new milking cows into the operation would cause AOD competitive injury by allowing competitors and potential competitors to emulate AOD's successful business strategy. The USDA's 2009 study on the organic dairy industry found that most organic dairies had substantial difficulty generating returns in excess of its labor costs and capital investment.¹⁵ AOD has devised a successful business model that is capable of generating such returns; thus, disclosure of its business strategies and processes would allow AOD's competitors and potential competitors to improve their operations or creating new large organic dairy operations by leveraging off of AOD's proprietary business processes.

As discussed above, the information that the USDA required AOD to submit is exempt from disclosure under FOIA if it is likely to "cause substantial harm to the competitive position" of AOD. *See Critical Mass*, 975 F.2d at 877. The disclosure of information revealing AOD's business strategies and processes would cause AOD substantial competitive injury, because competitors or potential competitors would be able to use the information to undermine AOD's relationship with customer and suppliers, which has been found to "necessarily aid its competitors." *See FOIA Guide*, at 306 (citing *McDonnell Douglas Corp. v. NASA*, No. 98-5251, slip op. at 2 (D.C. Cir. 1999)). Competitors would be able to use information contained in the Requested Documents such as AOD's customers and the sale price of its product to gain access to AOD's distribution system, thus undermining AOD's position in the market. Accordingly, such information should not be disclosed in response to the FOIA Request.

¹⁵ McBride and Greene, "Characteristics, Costs, and Issues for Organic Dairy Farming," Economic Research Service USDA (2009).

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F. Objection: Information Regarding AOD Production and Other Financial Data Is Exempt from Disclosure

The Requested Documents include information regarding AOD's production and other financial data. For instance, Pages 0000122 – 125 detail AOD's expected production. This type of information should not be disclosed because it is also the type of information protected by Exemption 4.

As discussed above, the information that the USDA required AOD to submit is exempt from disclosure under FOIA if it is likely to "cause substantial harm to the competitive position" of AOD. *See Critical Mass*, 975 F.2d at 877. The production and financial data in the records the USDA provided to AOD for its review qualifies for this exemption because the disclosure will likely cause AOD substantial competitive injury.

The disclosure of AOD's production and other financial information would cause substantial harm to AOD's competitive position in several ways. First, in the hands of AOD's suppliers, this information could be used to weaken AOD's bargaining position by providing suppliers with information about prices AOD is paying for other components of its feed mix. Second, in the hands of AOD's competitors, information about prices AOD is paying for various inputs into its organic system could be used as leverage in their own purchasing, thus improving the position of AOD's competitors and potential competitors. Third, this information could be used by AOD's customers to drive down the price at which AOD is able to sell its milk, thus weakening AOD's revenues. Similarly, the disclosure of AOD's other financial information, such as the price it receives for its organic milk products, could be used by AOD's suppliers, competitors and customers to weaken AOD's competitive position in the organic milk market; knowing this information would obviously give these constituencies a competitive advantage vis-à-vis AOD.

G. Objection: Reveals Information about AOD's Proprietary Internal Recordkeeping Mechanisms Which is a Trade Secret and Confidential

The Requested Documents contain information that reveals AOD's proprietary recordkeeping system. AOD is required to maintain records that "[f]ully disclose all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited." 7 C.F.R. § 205.203. AOD has created a proprietary recordkeeping system that tracks all aspects of the AOD's operation in compliance with the regulation. For example, Pages 0000316 – 319 reveal AOD's system for its recordkeeping. Although much of the information in these records should be withheld from disclosure for additional reasons discussed herein, these documents should also be withheld because the structure of these documents and the ways they are compiled and stored reveal the innovative system AOD has created for meeting the recordkeeping requirement of the organic regulations and is a trade secret exempt from disclosure under FOIA.

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As discussed above, Exemption 4 prohibits disclosure of information that is a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. *See Public Citizen*, 704 F.2d at 1288. AOD's recordkeeping system is secret. Fully aware of the difficulty in creating a recordkeeping system compliant with the organic regulations, AOD has closely guarded its recordkeeping system and has only disclosed it to the QAI and made it available for USDA inspection, as required by 7 C.F.R. § 205.203. AOD's recordkeeping system directly relates to the productive process because the system, not only documents every step of the production process, it is integral to the production process because without such a system AOD's organic milk could not qualify for organic certification. AOD's recordkeeping system is also the end product of innovation and substantial effort. There is no commercially-available recordkeeping system to track the various elements of organic dairy production as required by the regulations. AOD was thus compelled to create a recordkeeping system from the ground up, which was adequate to the task. Accordingly, AOD's proprietary recordkeeping system is a trade secret and exempt from disclosure under FOIA. *See Center for Auto Safety*, 244 F.3d at 151.

H. Objection: Information Regarding AOD Business Strategy and Herd Composition Is Exempt From Disclosure

Disclosure of information such as AOD's herd composition and strategy regarding the integration of new milking cows into the operation would cause AOD competitive injury by allowing competitors and potential competitors to emulate AOD's successful business strategy regarding its herd management practices. As previously discussed, the USDA's 2009 study on the organic dairy industry found that most organic dairies had substantial difficulty generating returns in excess of its labor costs and capital investment.¹⁶ AOD, however, has devised a successful business model that is capable of generating such returns. Accordingly, disclosure of its business strategies and process pertaining to, among other things, herd management would allow AOD's competitors and potential competitors to improve their operations or create new large organic dairy operations modeled after AOD, increasing competition in the organic milk market at AOD's via unfair use of AOD's proprietary process.

I. Objection: Reveals Information about AOD's Organic Production Process Inputs Which Is a Trade Secret and Confidential

The Requested Documents contain information concerning the inputs used by AOD in the production of private label organic milk such as feed mixtures, water and pasture. As discussed above, information qualifies for the trade secret exemption of FOIA if it is "a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing,

¹⁶ McBride and Greene, "Characteristics, Costs, and Issues for Organic Dairy Farming," Economic Research Service USDA (2009).

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compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.” *See supra* at IV(B). Information regarding AOD’s production inputs clearly meet these requirements and qualify as trade secrets.

The nature, source, and specific application of the various inputs into AOD’s organic production process are a closely guarded secret that AOD has taken great care to protect. AOD has only divulged this information to its certifying agent, QAI, and in turn to the USDA, as required by the regulations. 7 C.F.R. § 205.201. Such information is commercially valuable because it is the management and application of these inputs that allows AOD to produce private label organic milk at competitive prices. The information inherently relates to the productive process because it is the combination and timing of the application of these inputs that allows AOD’s organic products to be created. Finally, AOD has invested substantial time and resources into developing the specific combination of inputs that go into the production of its organic milk products, which have substantially innovated the process of organic dairy production. Thus, AOD’s inputs fit squarely into the category of information protected from disclosure as trade secrets. *See Appleton*, 451 F. Supp. 2d at 141.

V. EXEMPTION 6(b) AND 7(C)

Finally, Exemption 6(b) protects against disclosure of information about individuals in “personnel and medical files and similar files” when the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.” Exemption 7(C) exempts disclosure of information compiled for law enforcement purposes and protects personal information when disclosure “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” AOD has suggested redactions to comply with these two exemptions.

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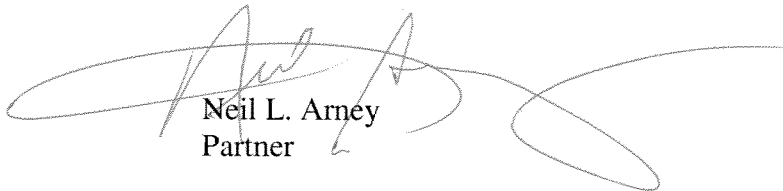
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We appreciate the opportunity to bring these important matters to your attention and look forward to your response.

Sincerely,



Neil L. Arney
Partner

Enclosures: Exhibit 1 (Vaughn Index)
Computer Disc Containing Requested Documents with Bates Numbers 0000001 –
0001384 and Highlights for Proposed Redactions

cc: Joseph Tangredi, AMS
AOD
Lee Sachnoff, Esq.

As set forth in the accompanying letter, AOD asserts that all of Requested Documents listed herein should be withheld from production in their entirety under Exemption 3 of FOIA. To the extent that the USDA concludes that Exemption 3 does not apply to the Requested Documents, AOD asserts that the documents should be withheld from production under Exemptions 4, 6 and 7 as follows. AOD is not waiving its right to challenge any decision by the USDA not to withhold the Requested Documents in their entirety.			
Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
1 - 3	The letter has AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
4	The cover sheet has information about AOD's production process and other information about AOD's operations. It also has individual initials.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of a determination regarding AOD's production process, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual initials have been redacted to prevent an unwarranted invasion of personal privacy.
5 - 6			
7	The NOP Organic System Plan Summary contains AOD business plans, information about AOD's production process, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of AOD business plans, information about AOD's production process, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
8 - 10	The Application for Organic Certification Annual Monitoring contains AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information primarily consists of AOD business plans and also includes information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
11	The letter has individual names and contact information.	Exemptions (6) and 7(C)	Individual information has been redacted to prevent an unwarranted invasion of personal privacy.
12 - 44	The Dairy Organic Compliance Plan contains AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
45 - 62	The Livestock Organic Compliance Plan contains AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
63 - 65	<p>The US and Canada Equivalence Verification contains AOD business plans, information about AOD's production process, and other information about AOD's operations. It also has individual names and contact information.</p>	<p>Exemption 4; Exemptions (6) and 7(C)</p>	<p>The redacted information consists of details about AOD's business plans and production process, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.</p>
66 - 78	<p>The Inspection Work Order #9952 contains information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.</p>	<p>Exemption 4; Exemptions (6) and 7(C)</p>	<p>The redacted information consists of AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.</p>
79 - 83	<p>The letter has information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.</p>	<p>Exemption 4; Exemptions (6) and 7(C)</p>	<p>The redacted information consists of information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.</p>

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
84	The letter has details of materials used during AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of details of materials used during AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
85	The letter has details of materials used during AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of details of materials used during AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
86	The letter has individual names and contact information.	Exemptions (6) and 7(C)	Individual information has been redacted to prevent an unwarranted invasion of personal privacy.
87 - 88	N/A	N/A	N/A
89	The Seed Documentation tab has details of materials used during AOD's operations.	Exemption 4	The redacted information consists of details of materials used during AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
90 - 94	The Materials List contains details of materials used during AOD's operations. It also has individual names and contact information.	Exemption 4	The redacted information consists of details of materials used during AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.

Exhibit 1

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
95	N/A	N/A	N/A
96 - 121	The Attachments 1 - 10 have AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
122 - 125	The Operational Overview tab has AOD business plans, information about AOD's production process, and other information about AOD's operations.	Exemption 4	The redacted information consists of AOD business plans, information about AOD's production process, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
126 - 127	The Animal Welfare tab has information about AOD's production process and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production process and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
128	The Shelter and Housing tab has information about AOD's production process and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production process and other information about AOD's operations,, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
129 - 154	The Land Use History tab has information about AOD's production process and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of information about AOD's production process and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
155 - 164	The Seed documentation tab contains details of materials used during AOD's operations and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of details of materials used during AOD's operations and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
165 - 179	The Soil Sample Report tab contains details of materials used during AOD's operations and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of details of materials used during AOD's operations and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
180 - 181	The Water Sample Report tab contains details of materials used during AOD's operations and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of details of materials used during AOD's operations and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
182	The international verification has AOD business plans and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information contains details of AOD business plans and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
183	The Livestock Farm Profile Form has information about AOD's production process and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of information about AOD's production process and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
184 - 195	The Maps tab has information about AOD's production process and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production process and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
196	The form has individual initials.	Exemptions (6) and 7(C)	Individual information has been redacted to prevent an unwarranted invasion of personal privacy.
197	The Livestock Farm Profile Form has AOD business plans, information about AOD's production process, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of AOD business plans, information about AOD's production process, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
198 - 208	The dry matter intake form and calculations have AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
209	The form has individual initials.	Exemptions (6) and 7(C)	Individual information has been redacted to prevent an unwarranted invasion of personal privacy.
210 - 215	The Field History tab has AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
216	The form has individual initials.	Exemptions (6) and 7(C)	Individual information has been redacted to prevent an unwarranted invasion of personal privacy.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
217 - 220	The letter has AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
221 - 223	The letter has AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
224	The form has information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of AOD business plans, information about AOD's production process, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
225 - 227	The Application for Organic Certification Annual Monitoring contains AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
228	N/A	N/A	N/A
229	The Continuous Organic Management of Livestock appendix contains AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
230 - 287	The Cow Organic Herd Health Protocol appendix contains AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
288	The Surgical Practices appendix contains information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.

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289 - 306	The Calf Organic Herd Health Protocol appendix contains AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
307 - 308	The Calf Antibiotic Protocol appendix contains AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
309 - 310	The Prohibited Substance Protection appendix contains information about AOD's production process and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production process and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
311	The Monitoring Procedures appendix contains information about AOD's production process and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production process and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.

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312 - 315	The Flow Charts appendix contains AOD business plans, information about AOD's production process, and other information about AOD's operations.	Exemption 4	The redacted information consists of AOD business plans, information about AOD's production process, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
316 - 319	The Record Keeping appendix contains information about AOD's production process and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production process and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
320 - 322	The Replacement Animals appendix contains AOD business plans, information about AOD's production process, and other information about AOD's operations.	Exemption 4	The redacted information consists of AOD business plans, information about AOD's production process, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
323	N/A	N/A	N/A
324 (duplicate of 311)	The Monitoring Procedures appendix contains information about AOD's production process and other information about AOD's operations.	Exemption 4	Page 324 is a duplicate of page 311. The redacted information consists of information about AOD's production process and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
325 - 475 (withheld in entirety)	The medicine label documents (including the number of pages in the document) have information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The document should be withheld in its entirety because it consists of information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
476 - 532	The Feed Supplement appendix has information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
533 - 534	The Supplier Certification appendix has information about AOD's production process and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production process and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
535 - 750	The Supplier appendix has AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.

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750	The Manure Methods appendix has information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
751 - 752	The Clean Equipment appendix has information about AOD's production process and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production process and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
753	The Organic Compliance Complaint Procedure appendix has information about AOD's production process and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production process and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
754 - 757	The Wash Procedures appendix has information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.

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758 - 773	The Wash Products appendix has information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
774 - 775	The letter has information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
776 - 779	The Operation Overview tab has AOD business plans, information about AOD's production process, and other information about AOD's operations.	Exemption 4	The redacted information consists of AOD business plans, information about AOD's production process, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
780 - 781	The Animal Welfare tab has information about AOD's production process and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production process and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.

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782	The Shelter tab has information about AOD's production process and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production process and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
783 - 808	The Land Use History tab has information about AOD's production process and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of information about AOD's production process and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
809 - 811	The Seed Documentation tab has details of materials used during AOD's operations.	Exemption 4	The redacted information consists of details of materials used during AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
812 - 813	The Supplier Certification appendix has information about AOD's production process and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production process and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.

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814 - 825	The Herd Health appendix has information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
826 - 987 (withheld in entirety)	The medicine label documents (including the number of pages in the document) have information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The document should be withheld in its entirety because it consists of information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
988 - 993	The physical therapy label documentation has information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
994 - 1003	The Pasture and Grazing plan has AOD business plans, information about AOD's production process, and other information about AOD's operations.	Exemption 4	The redacted information consists of AOD business plans, information about AOD's production process, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
1004 - 1005	The Organic Feed Rations tab has information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
1006 - 1021	The Feed Supplement appendix has information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
1022 - 1031	The Herd Health appendix has information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
1032 - 1062 (withheld in entirety)	The medicine label documents (including the number of pages in the document) have information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The document should be withheld in its entirety because it consists of information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
1063 - 1095	The Dairy Organic Compliance Plan contains AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
1096 - 1113	The Livestock Organic Compliance Plan contains AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
1114 - 1117	The Organic Compliance Plan Addendum contains information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
1118	N/A	N/A	N/A

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
1119	The Seed Documentation tab has details of materials used during AOD's operations.	Exemption 4	The redacted information consists of details of materials used during AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
1120 - 1121	The Dairy Herd Profile Form has information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
1122 - 1124	The Individual Feed Ration has information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
1125	The Livestock Farm Profile Form has information about AOD's production process and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production process and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
1126	N/A	N/A	N/A

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
1127 - 1134	The Planned Dry Matter Demand and Intake Summary has information about AOD's production process and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of information about AOD's production process and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
1135	N/A	N/A	N/A
1136	The Producer International Market Verification Sheet has information about AOD's production process and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of information about AOD's production process and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
1137 - 1148	The Maps tab has information about AOD's production process and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production process and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
1149 - 1153	The Operational Overview tab has AOD business plans, information about AOD's production process, and other information about AOD's operations.	Exemption 4	The redacted information consists of AOD business plans, information about AOD's production process, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
1154 - 1156	The Animal Welfare tab has information about AOD's production process and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production process and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
1157 - 1158	The Shelter and Housing tab has information about AOD's production process and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production process and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
1159 - 1164	The Field History tab has AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of AOD business plans, information about AOD's production process, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
1165 - 1196	The Land Use History tab has information about AOD's production process and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of information about AOD's production process and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
1197 - 1214	The Seed documentation tab contains details of materials used during AOD's operations and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of details of materials used during AOD's operations and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
1215 - 1218	The Soil Sample Report tab contains details of materials used during AOD's operations and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of details of materials used during AOD's operations and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
1219	N/A	N/A	N/A
1220 - 1221	N/A	N/A	N/A
1222 - 1224	The US and Canada Equivalence Verification contains AOD business plans, information about AOD's production process, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4; Exemptions (6) and 7(C)	The redacted information consists of details about AOD's business plans and production process, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
1225 - 1384 (withheld in entirety)	These are not AOD documents but appear that pertain to Cottonwood Cattle Company, whom AOD does business with.		These documents should be withheld in their entirety until Cottonwood Cattle Company can review them.

From: [Tangredi, Joseph - APHIS](#)
To: [Sachnoff, Lee F.](#); [Allen, William - AMS](#)
Cc: [Frandina, Michael M.](#); [Arney, Neil L.](#)
Subject: RE: AMS FOIA No. 2013-AMS-01201-F/Aurora Organic Dairy and Cornucopia
Date: Monday, August 31, 2015 12:31:05 PM

That's correct, Lee. I would just add the following:

AMS FOIA Office – William Allen
Agriculture Marketing Service, USDA, STOP 0202
US Dept of Agriculture
Room 3521 – S. Building
1400 Independence Avenue, S.W.
Washington, DC 20250-0202

From: Sachnoff, Lee F. [mailto:Lee.Sachnoff@KutakRock.com]
Sent: Monday, August 31, 2015 12:28 PM
To: Tangredi, Joseph - AMS; Allen, William - AMS
Cc: Frandina, Michael M.; Arney, Neil L.
Subject: RE: AMS FOIA No. 2013-AMS-01201-F/Aurora Organic Dairy and Cornucopia

Joe:

Thank you for your assistance. Here is the address we have for your offices:

Agriculture Marketing Service, USDA, STOP 0202
Room 3521 – S. Building
1400 Independence Avenue, S.W.
Washington, DC 20250-0202

Please let me know if this is the correct address or if we should send the disc elsewhere.

Lee

From: Tangredi, Joseph - AMS [mailto:Joseph.Tangredi@ams.usda.gov]
Sent: Monday, August 31, 2015 8:19 AM
To: Sachnoff, Lee F.; Allen, William - AMS
Cc: Frandina, Michael M.; Arney, Neil L.
Subject: RE: AMS FOIA No. 2013-AMS-01201-F/Aurora Organic Dairy and Cornucopia

Good morning Lee,

Option 3 would be the best, if you could overnight the disc to us on Tuesday to arrive here on Wednesday. Please email me the mailing address you have for us, just so we can confirm it's correct.

Thanks,

Joe

From: Sachnoff, Lee F. [<mailto:Lee.Sachnoff@KutakRock.com>]
Sent: Monday, August 31, 2015 9:17 AM
To: Tangredi, Joseph - AMS; Allen, William - AMS
Cc: Frandina, Michael M.; Arney, Neil L.
Subject: Re: AMS FOIA No. 2013-AMS-01201-F/Aurora Organic Dairy and Cornucopia

Joe and Bill:

Aurora Organic Dairy is on track to deliver to the USDA on Tuesday, September 8, 2015 its proposed redactions and Vaughn Index on the FOIA request from Cornucopia. We had planned to send you a disc with our redactions on Monday, September 7, 2015 by overnight delivery, but we Monday, September 7, 2015 is Labor Day and our offices are closed. We can get our proposed redactions to you in the following ways:

1. We can upload the documents to a share site from which you can download them.
2. We can break the documents into multiple, smaller files and email them separately.
3. We can email you the Vaughn Index and correspondence on Tuesday, September 8, 2015 and send out the redacted documents on disc that day with delivery the following day.

Please let us know if you have a preference for any of these options or if there is an alternative way we can handle getting you the documents. Thank you.

Lee F. Sachnoff | Kutak Rock LLP
1801 California Street | Suite 3000 | Denver | Colorado | 80202
Direct: (303) 292-7789 | Main: (303) 297-2400 | Facsimile: (303) 292-7799
lee.sachnoff@kutakrock.com

From: Sachnoff, Lee F.
Sent: Saturday, July 11, 2015 11:34 AM
To: 'Tangredi, Joseph - AMS'; Allen, William - AMS
Cc: Frandina, Michael M.; Arney, Neil L.
Subject: RE: Phone conference with AMS 11am Eastern

Joe and Bill:

Thank you for the 60 day extension to review and respond to the documents subject to the FOIA request. Aurora Organic Dairy will get you its redactions and justifications by September 8, 2015.

Lee F. Sachnoff | Kutak Rock LLP
1801 California Street | Suite 3000 | Denver | Colorado | 80202
Direct: (303) 292-7789 | Main: (303) 297-2400 | Facsimile: (303) 292-7799

lee.sachnoff@kutakrock.com

From: Tangredi, Joseph - AMS [<mailto:Joseph.Tangredi@ams.usda.gov>]
Sent: Friday, July 10, 2015 9:38 AM
To: Sachnoff, Lee F.
Cc: Frandina, Michael M.; Allen, William - AMS
Subject: RE: Phone conference with AMS 11am Eastern

Good morning Lee,

Thank you for the productive telephone call today with Michael Frandina, Bill Allen of our office and myself concerning the Aurora Organic Dairy documents that AMS sent for your review under the Executive Order 12600 process. We understand that your office will require 60 days to review these documents and provide justifications for any withholdings based on the (b)(4) exemption of the FOIA, i.e., "substantial competitive harm" that would be caused by release of trade secrets and/or confidential business information of Aurora. As we mentioned, your office will provide highlighting of intended redactions, as well as justifications applying the standards we discussed.

If you have any other questions during this review process, please don't hesitate to contact our office director Bill Allen, or myself.

Thank you,

Joseph Tangredi
Legislative and Regulatory Review Staff
Agricultural Marketing Service
US Department of Agriculture
1400 Independence Ave., SW, Room 3521-S
Washington, DC 20250
Tel: 202-720-2986

From: Sachnoff, Lee F. [<mailto:Lee.Sachnoff@KutakRock.com>]
Sent: Friday, July 10, 2015 10:16 AM
To: Tangredi, Joseph - AMS
Cc: Frandina, Michael M.
Subject: RE: Phone conference with AMS 11am Eastern

Joe:

Please call our mainline at 303-297-2400. The receptionist will transfer the call to me.

Lee F. Sachnoff | Kutak Rock LLP

1801 California Street | Suite 3000 | Denver | Colorado | 80202
Direct: (303) 292-7789 | Main: (303) 297-2400 | Facsimile: (303) 292-7799
lee.sachnoff@kutakrock.com

From: Tangredi, Joseph - AMS [<mailto:Joseph.Tangredi@ams.usda.gov>]
Sent: Friday, July 10, 2015 8:06 AM
To: Sachnoff, Lee F.
Subject: Phone conference with AMS 11am Eastern

Good morning Lee,

Can I just confirm the telephone number where we should call you?

Thanks,

Joe

*Joseph Tangredi
Legislative and Regulatory Review Staff
Agricultural Marketing Service
US Department of Agriculture
1400 Independence Ave., SW, Room 3521-S
Washington, DC 20250
Tel: 202-720-2986*

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Thank you.

From: [Tangredi, Joseph - APHIS](#)
To: "Sachnoff, Lee F."
Cc: "Arney, Neil L."; "Frandina, Michael M."; "Brent Cannell"; [Allen, William - AMS](#)
Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy
Date: Monday, July 06, 2015 9:45:55 AM

Great. Thanks - will talk then on Friday, June 10th at 11am Eastern time.

Joe Tangredi

-----Original Message-----

From: Sachnoff, Lee F. [<mailto:Lee.Sachnoff@KutakRock.com>]
Sent: Thursday, July 02, 2015 4:30 PM
To: Tangredi, Joseph - AMS
Cc: Arney, Neil L.; Frandina, Michael M.; 'Brent Cannell'
Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

Joe:

The participants in the call will be:

Neil Arney neil.arney@kutakrock.com
Michael Frandina michael.frandina@kutakrock.com
Lee F. Sachnoff lee.sachnoff@kutakrock.com

We all can be reached at 303-297-2400. We will be camped out in a conference room for the call.

Lee F. Sachnoff | Kutak Rock LLP
1801 California Street | Suite 3000 | Denver | Colorado | 80202
Direct: (303) 292-7789 | Main: (303) 297-2400 | Facsimile: (303) 292-7799 lee.sachnoff@kutakrock.com

-----Original Message-----

From: Tangredi, Joseph - AMS [<mailto:Joseph.Tangredi@ams.usda.gov>]
Sent: Wednesday, July 01, 2015 12:45 PM
To: Sachnoff, Lee F.
Cc: Arney, Neil L.; Frandina, Michael M.; 'Brent Cannell'
Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

Lee, next Friday the 10th at 11am will work for us. Please give me the email addresses of all on your end who should be invited onto the conference call, and the number we can reach you at. I will send out the invitation. Could you conference in all the participants on your end?

Thanks,

Joe

-----Original Message-----

From: Sachnoff, Lee F. [<mailto:Lee.Sachnoff@KutakRock.com>]
Sent: Wednesday, July 01, 2015 8:48 AM
To: Tangredi, Joseph - AMS
Cc: Arney, Neil L.; Frandina, Michael M.; 'Brent Cannell'

Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

Thanks Joe.

-----Original Message-----

From: Tangredi, Joseph - AMS [<mailto:Joseph.Tangredi@ams.usda.gov>]
Sent: Wednesday, July 01, 2015 6:38 AM
To: Sachnoff, Lee F.
Cc: Arney, Neil L.; Frandina, Michael M.; 'Brent Cannell'
Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

Good morning Lee,

Checking on that. Should be able to tell you today.

Thanks,

Joe

-----Original Message-----

From: Sachnoff, Lee F. [<mailto:Lee.Sachnoff@KutakRock.com>]
Sent: Tuesday, June 30, 2015 3:08 PM
To: Tangredi, Joseph - AMS
Cc: Arney, Neil L.; Frandina, Michael M.; 'Brent Cannell'
Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

Joe:

Would a call at 11:00 a.m. (Eastern) on Friday, July 10 work for William and you?

Lee

-----Original Message-----

From: Tangredi, Joseph - AMS [<mailto:Joseph.Tangredi@ams.usda.gov>]
Sent: Monday, June 29, 2015 9:58 AM
To: Sachnoff, Lee F.
Cc: Arney, Neil L.; Frandina, Michael M.; 'Brent Cannell'
Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

Good morning,

Tomorrow afternoon would not be workable, but next week, the afternoons of Tuesday, Wednesday, Thursday, or all day Friday (preferably morning) would work. On our side, the phone call will be with myself and William Allen, the director of our office.

Please let me know what day/time works for you.

Thanks,

Joe

-----Original Message-----

From: Sachnoff, Lee F. [<mailto:Lee.Sachnoff@KutakRock.com>]
Sent: Monday, June 29, 2015 11:54 AM
To: Tangredi, Joseph - AMS
Cc: Arney, Neil L.; Frandina, Michael M.; 'Brent Cannell'
Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

Joe:

We received the replacement disk and your letter. Thank you for resending.

Are you available for a call tomorrow afternoon, Tuesday, to discuss our process and timing for reviewing the documents?

Lee

-----Original Message-----

From: Tangredi, Joseph - AMS [<mailto:Joseph.Tangredi@ams.usda.gov>]
Sent: Thursday, June 25, 2015 11:10 AM
To: Sachnoff, Lee F.
Cc: Arney, Neil L.; Frandina, Michael M.; 'Brent Cannell'
Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

Lee -- that's great. Also, an extra copy of the CD was mailed to you on Monday, so you should be receiving that soon. When you do, please confirm.

Thanks,

Joe

-----Original Message-----

From: Sachnoff, Lee F. [<mailto:Lee.Sachnoff@KutakRock.com>]
Sent: Thursday, June 25, 2015 1:10 PM
To: Tangredi, Joseph - AMS
Cc: Arney, Neil L.; Frandina, Michael M.; Brent Cannell
Subject: RE: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

Joe:

I wanted to let you know that Aurora Organic Dairy did receive the CD you sent to Brent Cannell, and we were able to pull the documents from the disk. We need to undertake an initial review of the materials, and we will circle back to you early next week to discuss process and timing. Thank you.

Lee F. Sachnoff | Kutak Rock LLP
1801 California Street | Suite 3000 | Denver | Colorado | 80202
Direct: (303) 292-7789 | Main: (303) 297-2400 | Facsimile: (303) 292-7799 lee.sachnoff@kutakrock.com

-----Original Message-----

From: Tangredi, Joseph - AMS [<mailto:Joseph.Tangredi@ams.usda.gov>]
Sent: Monday, June 22, 2015 2:15 PM
To: Sachnoff, Lee F.
Subject: EO 12600 notice, FOIA #2013-AMS-01201-F re: Aurora Dairy

Hello Lee,

I was unable to upload even the reduced size PDF file of this information for you, accompanying the Executive Order 12600 notification letter attached. So, here is the letter, with correct FOIA tracking number, 2013-AMS-01201-F. I am mailing the file to you on a new CD.

Thanks,

AMS0171

Joe Tangredi

Joseph Tangredi
Legislative and Regulatory Review Staff
Agricultural Marketing Service
US Department of Agriculture
1400 Independence Ave., SW, Room 3521-S
Washington, DC 20250

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Thank you.

KUTAK ROCK LLP

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www.kutakrock.com

April 15, 2016

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WICHITA

NEIL L. ARNEY
neil.arney@kutakrock.com
(303) 292-7882

**VIA EMAIL TO
GREGORY.BRIDGES@AMS.USDA.GOV
AND OVERNIGHT DELIVERY**

Gregory Bridges
Agriculture Marketing Service - FOIA Officer
U.S. Dept. of Agriculture
1400 Independence Avenue, S.W.
South Building, Rm. 3943-S, Stop 0202
Washington, DC 20250-0273

Re: FOIA 2013-AMS-01201-F (EO12600 Response)

Dear Mr. Bridges:

This is in response to your letter dated March 21, 2016, regarding the above-mentioned request (“**FOIA Request**”) under the Freedom of Information Act, 5 U.S.C. § 552, *et seq.* (“**FOIA**”), involving the potential disclosure of documents and records in the possession of the United States Department of Agriculture (“**USDA**”) relating to Aurora Organic Dairy (“**AOD**”).

We appreciate that the USDA has provided us the opportunity to review the documents being considered for release in connection with the FOIA Request (the “**Requested Documents**”). We and AOD have reviewed the Requested Documents in good faith, for purposes of FOIA.

The Requested Documents primarily comprise AOD’s 2011 and 2012 Organic System Plan (“**OSP**”) for its Coldwater Farm with some duplication. As discussed in further detail below and in the attachments hereto, the vast majority of the documents are not subject to disclosure based, *inter alia*, on FOIA Exemptions 3, 4, and 6. Given the large volume of documents provided, and our desire to efficiently respond with sufficient detail, we also describe each specific objection to the disclosure of particular types of information as contained in the various documents and relate those to the competitive market analysis. To provide our objections in context, we have also provided a brief summary of competition in the organic dairy market.

In particular, this letter identifies with particularity AOD’s objections to disclosure of various documents in their entirety based on Exemption 3 and/or Exemption 4 and provides a detailed explanation of the factors supporting such exemptions.

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In addition, to the extent that the USDA does not withhold the Requested Documents in their entirety based on the Exemption 3 and Exemption 4 arguments set forth herein, we have provided a Vaughn Index (Exhibit 1),¹ which identifies by page ranges the materials that should be redacted from the Requested Documents and describes the specific objections to the redacted materials in each such page range. We also have enclosed a computer disc of the Requested Documents with the Bates Numbers and highlights showing proposed redactions of exempt materials. Further, the Vaughn Index identifies the documents to which AOD has no objection.

I. SUMMARY OF DOCUMENTS PROVIDED FOR REVIEW AND OBJECTIONS TO DISCLOSURE

Based on our review of the Requested Documents, AOD consents to disclosure of the pages identified in Exhibit 1 by using the “N/A” notation in the columns entitled “Description of Redacted Information or Document Withheld,” “Exemption(s),” and “Basis for Redaction or Withholding.”

The remainder of the Requested Documents, in our view, is exempt from disclosure in their entirety. Such documents are protected in full from disclosure under, *inter alia*, the Organic Farm Production Act (“**OFPA**”) (specifically 7 U.S.C. §§ 6519(a)(5), 6515(f), and 6506(a)(9) and 7 C.F.R. § 205.504(b)(5)), Section 1619 of the Food, Conservation, and Energy Act of 2008 (a.k.a. the 2008 Farm Bill) (“**FCEA**”), and FOIA (specifically Exemption 3). The documents are also protected in full from disclosure under Exemption 4.

If the USDA does not agree that the remainder of the Requested Documents is entirely exempt from disclosure, then, at a minimum, such documents should be redacted substantially as set forth in the highlighted copy of the Requested Documents contained in the enclosed disc. The redactions should be made pursuant to the foregoing laws (specifically, FOIA Exemptions 4 and 6) and/or the Trade Secrets Act, 18 U.S.C. § 1905, which forbids disclosure of trade secrets and other proprietary information. Finally, we believe that certain documents are actually related to the Cottonwood Cattle Company and not to AOD and should not be disclosed in response to the FOIA Request.²

In addition, we respectfully submit that this letter, the attached Vaughn Index, and the highlighted documents on the enclosed disc are themselves exempt from disclosure under FOIA, and expressly request that the USDA not disclose any of these materials.

¹ For your convenience, we have placed Bates Numbers on each page of the Requested Documents. The Bates Numbers range from 0000001 – 0001384. Those Bates Numbers are the Page Numbers used in the Vaughn Index.

² The documents at Bates Numbers 0001225 – 0001341 and 0001348 – 0001384 appear to be related to Cottonwood Cattle Company and its certifying agent QCS. Such documents should not be produced because Cottonwood Cattle Company is not a dairy, and therefore, its documents are not responsive to the FOIA request. Moreover, the documents contain confidential information and should not be disclosed, at least not without first providing Cottonwood an opportunity to review and comment on the documents.

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II. COMPETITION AND CONFIDENTIALITY IN THE ORGANIC DAIRY MARKET

AOD has been continuously certified as an organic dairy producer since 2003 and currently owns and manages organic dairy farms in Colorado and Texas. The mature cattle on these farms total over 30,000 head. The Coldwater farm, to which the Requested Documents relate, continue in operation today in Texas as a certified organic farm owned and operated by AOD. While AOD's OSPs continue to evolve, the basic production plan set forth in the 2011 and 2012 OSPs remains very current, as do many of the processes, procedures, and suppliers identified therein.

AOD processes its own organic milk at the nation's largest organic-dedicated fluid milk processing plant located in Platteville, Colorado. AOD distributes and sells that organic milk to retailers across the country under private labels (also known as store brand or private brand milk).

Organic milk and dairy products are consistently one of the top two organic food sales categories in the United States. Market news is closely monitored and reported. Organic dairy sales reached \$5.1 billion in 2014, nearly twice what they were a decade earlier.³ AOD has 10-15% share of that market. Large conventional food manufacturers compete head-on with independent organic companies by introducing organic versions of their products. AOD has a number of successful competitors, both large and small, in the organic milk market space, including Horizon/WhiteWave, Organic Valley/CROPP Cooperative, Stonyfield Farms, Shamrock Farms, Clover Stornetta and Upstate Farms. Strong consumer interest in organic dairy products, including fluid milk, is causing processors to seek new organic producers and milk supplies.⁴

AOD entered the organic dairy market in 2003 with the goal of making organic milk more available and affordable for consumers by developing the private label market. It has been successful in achieving that goal. ERS reports that in 2004, 10% of organic fluid milk was sold under private label.⁵ According to the Organic Trade Association, in 2015, approximately 30% to 40% of organic milk is sold under private label arrangements.⁶ Private label organic milk is now widely available in retail supermarkets such as Safeway, Kroger and Wegman's, specialty markets such as Whole Foods and Fresh Market, and mass merchandisers including BJ's, Costco, Target and Walmart. AOD is the nation's largest private label organic milk producer.

³ Bloomberg Business, Feb. 10, 2015, <http://www.bloomberg.com/news/articles/2015-02-10/not-only-hipsters-cry-when-u-s-grocers-run-out-of-organic-milk>.

⁴ Dairy Market News, Vol. 78, Report 10, Week of March 7-11, 2011.

⁵ Dimitri and Venezia, "Retail and Consumer Aspects of the Organic Milk Market," Economic Research Service Report LDP-M-155-01, May 2007.

⁶ See the USDA's proposed Origin of Livestock Rule, <https://www.federalregister.gov/articles/2015/04/28/2015-09851/national-organic-program-origin-of-livestock>.

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Organic milk production, in general, is substantially more expensive for producers than conventional milk, given the specialized production process requirements and challenges in securing the necessary organic inputs.”⁷ USDA data shows that as of 2011 there were about 1,848 organic dairies with 199,737 organic cows. (See USDA 2011 Certified Organic Production Survey, Table 10.)⁸ As noted in the USDA’s recently proposed Origin of Livestock Rule, “[a]ccording to 2010 ARMS data, the mean size of an organic dairy farm nationally was 77 cows.” Competition among organic dairy producers for inputs and markets is intense. Acquiring and maintaining private label organic milk business requires reliable supply and a strong and consistent focus on production efficiencies (among other things).

Organic dairy producers compete for suppliers and inputs to the organic milk production process, and to provide organic milk at a competitive price. To do so, they must develop, implement, and constantly refine business strategies, protocols and processes to manage their herds so as to provide customers with high quality organic milk and reliable supplies. All of these areas of competition are integral components of specialized OSPs developed for each unique farming operation in consultation with their accredited certifying agents. Given the competitive sensitivity of these individual plans, they are held in strict confidence by the producer and by the certifying agents to whom they are submitted for review. Indeed, federal law expressly recognizes the commercial value and sensitivity of this information, as it requires certifying agents to keep OSPs entirely confidential and prohibits disclosure. See 7 U.S.C. § 6515(f); 7 C.F.R. § 205.501(a)(10).

III. FOIA EXEMPTION 3 -- BLANKET PROTECTION: SPECIFIC OBJECTIONS TO DISCLOSURE OF AOD’S OSPs UNDER SECTION 1619 OF FCEA AND OFPA

A. Legal Standard for Exemption 3.

FOIA Exemption 3 allows the withholding of information prohibited from disclosure by another federal statute where the statute either “(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld.” 5 U.S.C. § 552(b)(3); see also Department of Justice Guide to the Freedom of Information Act, 2009 Ed. (“2009 FOIA Guide”).

In determining whether a statute qualifies for Exemption 3 status, the plain language of the statute is controlling. See, e.g., *Ass’n of Retired R.R. Workers, Inc. v. U.S. R.R. Ret. Bd.*, 830 F.2d 331, 334 (D.C. Cir. 1987). As the D.C. Circuit has noted, agencies are not to take a

⁷ McBride and Greene, “Characteristics, Costs, and Issues for Organic Dairy Farming,” Economic Research Report Number 82, November 2009.

⁸ <http://usda.mannlib.cornell.edu/usda/current/OrganicProduction/OrganicProduction-10-04-2012.pdf>.

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formulistic approach to Exemption 3. *Wis. Project on Nuclear Arms Control v. U.S. Dep't of Commerce*, 317 F.3d 275, 282-85 (D.C. Cir. 2003) (“the touchstone of the Exemption 3 inquiry is whether the statute is the product of congressional appreciation of the dangers inherent in airing particular data”) (internal citations omitted).

B. Section 1619 of FCEA Is an Exemption 3 Statute.

Section 1619 of the FCEA (codified at 7 U.S.C. § 8791) provides in relevant part that the 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 programs of the Department; or (B) geospatial information otherwise maintained by the Secretary about agricultural land or operations for which information is described in subparagraph (A) is provided.

7 U.S.C. § 8791(b)(2). That provision of the FCEA is an exemption statute under Exemption 3. *Cent. Platte Natural Res. Dist. v. U.S. Dep't of Agric.*, 643 F.3d 1142, 1147 (8th Cir. 2011); *Ctr. for Biological Diversity v. USDA*, 626 F.3d 1113, 1118 (9th Cir. 2010); *Zanoni v. USDA*, 605 F. Supp. 2d 230, 236-37 (D.D.C. 2009).

AOD understands that the USDA has previously taken the position that Section 1619 does not apply to the NOP. (See July 30, 2008 public guidance issued by Boyd Rutherford.) However, as an initial matter, AOD maintains that the plain language of Section 1619 clearly covers information that an organic producer provides to its certifying agent (which is then provided by the certifying agent to the USDA) in order for the organic producer to participate in the NOP, a program of the USDA. The definition of an “agricultural operation” to which Section 1619 applies “includes the production and marketing of agricultural commodities and livestock.” 7 U.S.C. § 8791(b)(1). AOD is without question an agricultural operation within the meaning of Section 1619 as it produces and sells organic milk, an agricultural commodity. All of the proprietary information describing AOD’s organic production system that is contained in the Requested Documents was provided to its certifying agent, Quality Assurance International (“QAI”) in order to participate in the NOP, a national program created and administered by the USDA. Such information appears to have subsequently been provided to the USDA by QAI. AOD disclosed all of the information in order to participate in the NOP, a program of the USDA. Therefore, the information falls squarely within the scope of Section 1619(b)(2)(A). See 7 U.S.C. § 8791(b)(2).

Indeed, the decision *Ctr. for Biological Diversity v. USDA*, 626 F.3d 1113 (9th Cir. 2010), which was decided after Mr. Rutherford’s guidance was issued, makes clear that Section

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1619 was passed by Congress to prevent the disclosure of information like that in the OSPs at issue here. Specifically, in *Multi Ag Media LLC v. U.S. Dep't of Agric.*, 515 F.3d 1224 (D.C. Cir. 2008), *abrogated by statute as recognized in Ctr. for Biological Diversity*, 626 F.3d. at 1117, the court ordered disclosure of two files that included information on irrigation practices for thousands of farms; acreage; the number and width of rows of tobacco and cotton; farm, tract, and boundary identification; calculated acreage; and characteristics of the land such as whether it is erodible, barren, or has water or perennial snow cover. *Id.* at 1226-27. Section 1619, which abrogated *Multi Ag Media*, was intended at least in part to prevent that type of disclosure under FOIA. *Center for Biological Diversity*, 626 F.3d. at 1117; *see also Central Platte Natural Resources District*, 643 F.3d at 1147-48.

Even if Mr. Rutherford's contention that Section 1619 "does not apply to USDA regulatory programs where participation by the agricultural producer or landowner is required by law as a condition of participation in the marketplace," was not overruled, we believe that Section 1619 would still apply to the NOP. First, nothing in Section 1619 supports a conclusion that the "marketplace" could be narrowly defined to mean the "marketplace as an organic producer." The marketplace should not merely include organic producers, but is properly understood as the marketplace for agricultural commodities and livestock, whether organic or not, and participation in the NOP is not a condition of participation in the marketplace for agricultural commodities and livestock. Second, and relatedly, any assertion that the NOP program does not dispense any benefits to organic producers is wrong. Achieving organic status under the NOP allows organic producers to label their products with the USDA organic seal, which in turn allows such producers to charge a premium that other non-organic producers cannot achieve. As such, participation in the NOP program is a "benefit" as that term is used in Mr. Rutherford's guidance.

Because Section 1619 is an Exemption 3 statute and it applies to the NOP, the remainder of the Requested Documents, which comprise AOD's OSPs and supporting documentation, is exempt from disclosure and should not be produced in response to the FOIA Request. *See, e.g., Center for Biological Diversity*, 626 F.3d. at 1118. Such information would include AOD's OSPs in their entirety, including correspondence with QAI, and QAI inspection reports.

C. The OFPA Is an Exemption 3 Statute.

The OFPA also is an Exemption 3 statute. The plain language of the OFPA mandates that all business information submitted in the certification process is to be accorded strict confidentiality. 7 U.S.C. § 6515(f). The OFPA requires that all business information provided to a certifier by an organic producer or handler will be accorded "strict confidentiality." 7 U.S.C. § 6515(f); 7 C.F.R. § 205.501(a)(10). The only statutory exception is that the certifier is authorized to disclose information to the Secretary and/or applicable governing State official. *Id.* The statute provides for public access to documents in only two instances – the organic certificate and laboratory analyses that pertain to certification. 7 U.S.C. § 6506(a)(9). The

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USDA has expressly acknowledged that limitation in its implementing regulations. *See* 7 C.F.R. § 205.504(b)(5). The OFPA confidentiality provision, as implemented by the USDA, has been upheld on review. *Harvey v. Veneman*, 2003 WL 22327171 (D. Me. 2003), *aff'd in relevant part, rev'd in part* 396 F.3d 28 (1st Cir. 2005).

AOD understands that the USDA has previously taken the position that the OFPA is not an Exemption 3 statute because the confidentiality language applies only to certifying agents, not the USDA. Even if that earlier position were correct, the position is no longer consistent with the OFPA as amended in 2014, which provides: “no officer, employee, or agent of the United States shall make available to the public any information, statistic, or document obtained from, or made available by, any person under this chapter, other than in a manner that ensures that confidentiality is preserved regarding . . . (B) proprietary business information.” 7 U.S.C. § 6519(a)(5).

The organic dairy industry is highly competitive. It is no secret that Cornucopia promotes certain of AOD’s competitors.⁹ Were AOD’s confidential documents and materials disclosed under the auspices of FOIA in response to the FOIA Request made by Cornucopia here, nothing would prevent Cornucopia from publishing AOD’s proprietary information and business know-how to the entire world, including to AOD’s competitors, and AOD would have no recourse or ability to protect itself. Congress clearly saw the danger inherent in subjecting organic producers’ confidential business information to public disclosure, and rightfully provided that such information remain confidential under OFPA. The 2014 amendment to 7 U.S.C. § 6519(a)(5) quoted above makes it clear that Congress intended to safeguard proprietary business information such as OSPs.

In the alternative, to the extent the USDA decides that Exemption 3 does not apply here, we maintain that AOD’s OSPs are not “agency records” subject to FOIA because the USDA no longer had control over such documents after its investigation pertaining to the documents was completed. In order to be subject to disclosure under FOIA, a document must be an “agency record.” *Tax Analysts v. U.S. Dep’t of Justice*, 913 F. Supp. 599, 602 (D.D.C. 1996). The Supreme Court “articulated a two-part test to determine what constitutes an ‘agency record’” under FOIA: “agency records” are documents that “are (1) either created or obtained by an agency, and (2) under agency control at the time of the FOIA request.” *Id.* (citing *U.S. Dep’t of*

⁹ *See* The Cornucopia Institute’s biased and unscientific “Organic Dairy Scorecard” available at <http://www.cornucopia.org/dairysurvey/>. The Cornucopia Institute filed an initial complaint against AOD with the USDA in 2005 and since then has filed a series of complaints, all of which have been dismissed or closed by the USDA. It is also common knowledge that the Cornucopia Institute has a close working relationship with -- and openly represents -- the interests of AOD’s competitors. If the USDA fails to recognize that OSPs are protected from disclosure by FOIA and other applicable laws, the USDA will be fundamentally changing the competitive landscape for all organic producers and processors, because nothing will prevent a competitor (or potential competitor) from using the complaint process (and attendant FOIA requests) to gain proprietary information from other competitors in the market.

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Justice v. Tax Analysts, 492 U.S. 136, 144-45 (1989)). “The Court said that ‘[b]y control we mean that the materials have come into the agency’s possession in the legitimate conduct of its official duties.’” *Id.* (citing *Tax Analysts*, 492 U.S. at 144). Possession alone is not sufficient to establish control. *Id.* at 602-03. Instead, courts have considered the following factors in determining whether an agency “controlled” a document:

- (1) the intent of the document’s creator to retain or relinquish control over the records;
- (2) the ability of the agency to use and dispose of the record as it sees fit;
- (3) the extent to which agency personnel have read or relied upon the document;
- and (4) the degree to which the document was integrated into the agency’s record system or files.

Id. at 603 (citing *Dow Jones & Co., Inc. v. Gen. Servs. Admin.*, 714 F. Supp. 35, 39 (D.D.C. 1989)). In sum, “the question is whether, considering all of the circumstances of the case including, of course, physical possession, the records at issue are ‘subject to the free disposition of the agency.’” *Id.* (quoting *Goland v. CIA*, 607 F.2d 339, 347 (D.C. Cir.1979)).

Here, AOD’s OSPs are not “agency records” subject to FOIA. As noted above, the OFPA provides for public access to documents in only two instances – the organic certificate and laboratory analyses that pertain to certification. 7 U.S.C. §6506(a)(9). While QAI provided the USDA “access” to records, including AOD’s OSPs, such “access” was required to permit the USDA to investigate AOD’s compliance with OFPA. 7 U.S.C. §§ 6519(a)(3)(b) and 6519(b). OFPA does not contemplate the USDA retaining the documents used in an investigation, once it is concluded. Indeed, the OFPA specifically provides that the organic producer and certifying agent, not the USDA, are custodians of the records. 7 U.S.C. §§ 6519(a)(2) and (3). As such, the factors discussed above demonstrate that AOD’s OSPs were no longer “controlled” by the USDA once the USDA’s investigation was over and are thus not “agency records” subject to the FOIA Request.

IV. FOIA EXEMPTION 4: SPECIFIC OBJECTIONS TO RELEASE OF TRADE SECRETS AND/OR CONFIDENTIAL COMMERCIAL OR FINANCIAL INFORMATION

A. Legal Standard for Exemption 4.

FOIA Exemption 4 specifically exempts from disclosure two distinct types of information: (1) “trade secrets” and/or (2) commercial or financial information obtained from a person that is privileged and confidential. 5 U.S.C. 552(b)(4). A trade secret is a “secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.” *Pub. Citizen Health Research Grp. v. Food & Drug Admin.*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). In order to qualify, there must be “a direct

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relationship between the information at issue and the productive process.” *Id.*; see also *Ctr. for Auto Safety v. NHTSA*, 244 F.3d 144, 151 (D.C. Cir. 2001). Information such as inputs, sources of inputs and quality control procedures are part of the productive process.¹⁰ A document that “qualifies as a trade secret . . . is protected from disclosure under Exemption 4 and the inquiry ends.” *Id.*; see also *Taylor v. Babbit*, 2011 WL 189769 (D.D.C. 2011). Exemption 4, as it applies to trade secrets, is co-extensive with the Trade Secrets Act. See 2009 FOIA Guide, at 354; see *CNA Fin. Corp. v. Donovan*, 830 F.2d 1132, 1140 (D.C. Cir. 1987); see also *Canadian Commercial Corp. v. Dep’t of the Air Force*, 514 F.3d 37, 39 (D.C. Cir. 2008).

Commercial and financial information exempt from disclosure under the second prong of Exemption 4 includes (among other things) business sales statistics, research data, customer and supplier lists, profit and loss data, overhead and operating costs and other information concerning financial condition. 2009 FOIA Guide at 270-71; see also *Pub. Citizen Health Research Grp. v. Nat’l Institutes of Health*, 209 F. Supp. 2d 37, 47 (D.D.C. 2002) (withholding royalty information because it would allow competitors to “make a rough calculation of a firm’s profit margin”). The D.C. Circuit has established two distinct analyses for determining whether commercial information qualifies as confidential for purposes of Exemption 4, the application of which depends on whether the information was submitted to the agency voluntarily or under compulsion. *Critical Mass Energy Project v. Nuclear Regulatory Comm’n*, 975 F.2d 871 (D.C. Cir. 1992) (en banc). Commercial information that is submitted voluntarily is confidential and therefore exempt from disclosure “if it is of a kind that the provider would not customarily release to the public.”¹¹ *Id.* at 879. If the information was required to be provided to the agency, it is only confidential if it is likely to “cause substantial harm to the competitive position of the person from whom the information was obtained.” *Id.* at 877. This requires a showing that there is “actual competition” and “a likelihood of substantial competitive injury.” *CAN Fin. Corp.*, 830 F.2d at 1152.

¹⁰ See *Appleton v. FDA*, 451 F. Supp. 2d 129, 141 (D.D.C. 2006) (“documents [that] contain information consisting of drug product manufacturing information, including manufacturing processes or drug chemical composition and specifications...would reveal how the drug being discussed in the document ‘is formulated, chemically composed, manufactured, and quality controlled,’ and is therefore properly withheld.”); *Heeney v. FDA*, 1999 U.S. Dist. LEXIS 23365 *25 (C.D. Cal.) (design and testing information, materials used in construction of product and identity of the company that manufactures Boston Scientific’s catheter, have a direct relationship to the productive process because they are used in making, preparing, or processing the catheter, and reflect innovation and effort).

¹¹ Although AOD is not privy to how the Requested Documents came into the possession of the USDA, it appears that the documents were voluntarily submitted by QAI to the USDA during its investigative proceedings. Information submitted to an agency in the course of an investigation prior to the agency issuing a subpoena or warrant for the information has been deemed information that is voluntarily submitted despite the agency’s power to require the information. See *Shell Oil Co. v. U.S. Dep’t of Labor*, No. H-963113, slip op. at 13 (S.D. Tex. 1998). Indeed, a submission of documents remains voluntary where a subpoena has been issued for the documents but court proceedings to enforce the subpoena have not been initiated. See *McDonnell Douglas Corp. v. EEOC*, 922 F. Supp. 235, 242 (E.D. Miss. 1996). Thus, the Requested Documents are exempt from disclosure because they are the type of information that AOD does not customarily release to the public.

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B. Objection: AOD's OSPs Should Be Withheld in Their Entirety Because They Are Trade Secrets and Are Confidential.

AOD's OSPs are "secret, commercially valuable plans . . . used for the making of a trade commodit[y]" (organic milk) that are the end product of both innovation and substantial effort by AOD. Even the OFPA recognizes that OSPs are effectively trade secrets, as 7 U.S.C. § 6515(f) states they contain business information which must be kept strictly confidential by the accredited certifying agents. Moreover, AOD considers and treats its OSPs as trade secrets and confidential information as evidenced by the "*Confidential Business Information*" header inserted into the OSPs and the fact that AOD strictly guards against their disclosure. Accordingly, AOD's OSPs constitute trade secrets that are exempt from disclosure in their entirety.

The OSPs document the complete organic milk production plan that has been developed, certified, and implemented by AOD, as required by the OFPA and the USDA implementing regulations. The OSP is defined by law as:

a plan of management of an organic farming or handling operation that has been agreed to by the producer or handler and the certifying agent and that includes written plans concerning all aspects of agricultural production or handling described in this title including crop rotation and other practices as required under this chapter.

7 U.S.C. § 6502(13). By regulation, an OSP contains detailed information about all stages of the production process, enabling the certifying agent to determine that the operation complies with the regulations and qualifies for the organic label. 7 C.F.R § 205.201. Among other requirements, a dairy producer such as AOD must show that its milking cows have been under organic management for at least one year, all feed rations are organically produced, the health of the heard is managed without the use of antibiotics or growth hormones, and that a sufficient recordkeeping system is in place to demonstrate compliance with the standards.

The OSPs are custom documents that are specific for each organic producer and go to the essence of the owner's business model. Each of AOD's OSPs accordingly provides a step-by-step blueprint of the company's organic milk production process. That blueprint consists of the completed questionnaire required by QAI (AOD's USDA accredited certifier for many of its farms including its Coldwater Farm) the written plans, protocols and process descriptions attached to that questionnaire, the documentation of sources of organic inputs, suppliers and their organic certificates, cost and sales information and the proprietary recordkeeping system that has been developed by AOD to document the required compliance information. They also include,

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of necessity, all clarifying correspondence with QAI, as well as inspection reports which are maintained as part of the OSP recordkeeping system.¹²

The information contained in the OSPs details every aspect of AOD's productive process from pasture management to milk processing and quality control, specifically including information such as:

- aerial photographs and maps showing pasture locations (*e.g.*, 0000184 – 195);
- reports of the history of the pastures (*e.g.*, 0000210 – 215);
- descriptions of the types of feed used, the composition of the feed, and information about the suppliers of the feed, (*e.g.*, 0001004 – 1005);
- standard operating procedures, operations profiles, and pasture protocols (*e.g.*, 0000994 - 1003);
- information about sources and quantity of cattle purchased (*e.g.*, 0000320 – 322);
- health management plans, vaccination information, and information about cattle health (*e.g.*, 0000230 – 287);
- information about how the herd is housed (*e.g.*, 0000128);
- information about water for the herd, including water quality (*e.g.*, 0000180 – 181);
- descriptions of the recordkeeping systems AOD implemented (*e.g.*, 0000316 – 319);
- information about the farm's monthly production (*e.g.*, 0000122 – 125);
- organic certificates for AOD's suppliers (*e.g.*, 0000535 – 749); and
- correspondence related to AOD's organic certification (*e.g.*, 0000001– 3).

The integration of this information into a single document, *i.e.*, how AOD assembles the information into an OSP, and how the different processes and procedures that ensure regulatory compliance work together, is an organic milk production plan falling squarely within the meaning of the trade secret exemption definition as applied by the D.C. Circuit. *See Center for Auto Safety*, 244 F.3d at 151.

The OSPs also are commercially valuable within the meaning of the exemption, and give AOD a competitive advantage in the private label milk market. *See Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1011 (1984) (“the value of a trade secret lies in the competitive advantage it gives its owner over competitors”). The OSPs, if produced, would make clear to any competitor exactly how AOD has successfully created a production process that meets the challenging requirements of organic production on a large scale and in a manner capable of satisfying customer demands for high-quality organic milk in reliable supplies. Such a plan would be invaluable not only to existing competitors but also to competitors looking to enter the market.

The lack of “how-to” detail in the NOP regulations is purposeful. The regulation was designed by Congress to create a national performance standard that could be met by the diverse

¹² *See, e.g.*, 0000066 – 78

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variety of farms in regions across the United States. By way of example, how each operation identifies and secures organic inputs, the variation in those inputs, how herd health is managed in the absence of conventional drugs and treatments, how the feed ration is composed, how records are created, organized and maintained are all left to the individual operation and its certifier. Access to the OSPs, or even to portions thereof, would confer on organic dairy competitors unfair insight into how AOD has addressed production process requirements and would result in a taking of AOD's trade secret information that has secured it a market share of over 15% in the organic milk market.

This "how-to" aspect of organic production requires and is the end product of sustained innovation and substantial effort on the part of the producer. The OSPs are the product of years of work invested by AOD in creating, maintaining and improving its organic milk production plan to continue to provide organic milk products at a competitive price. The OSPs also reflect substantial innovations that AOD has developed and implemented in its supply chain, recordkeeping system, and processing plant (among other things) in order to create and maintain its market share. As such, an OSP is a plan that changes incrementally over time, but does not become obsolete or lose value simply as a function of the passage of time. The OSPs included in the Requested Documents all contain information that continues to be part of AOD's current operations.

Finally, it is beyond dispute that the OSPs are confidential. AOD maintains its OSPs in strict confidence due to their proprietary nature. The only entity to whom they were or are ever disclosed is QAI, who is required by the OFPA to keep the OSPs in strict confidence, with the single exception of sharing them with the Secretary, upon request. Accordingly, the OSPs in their entirety constitute trade secrets and are entirely exempt from disclosure under FOIA. *See supra.*

For this reason, AOD requests that the entire OSPs, and related communications with QAI, contained in the Requested Documents, namely Bates Numbers 0000001 – 0001224 and 0001340 – 0001347, not be produced. Alternatively, AOD requests that the OSPs be produced in substantially redacted form as discussed in the following sections and identified in Exhibit 1 and the highlighted documents provided in the enclosed disc.¹³

¹³ AOD expressly reserves the right to challenge the production of the OSPs in redacted form if the USDA decides to adopt that approach. As noted, AOD believes that these materials are subject to withholding in their entirety. AOD has provided some of the documents in redacted form so the USDA can see that virtually all of the information contained on an OSP and ancillary documents would need to be redacted to avoid disclosure of AOD's trade secrets and otherwise confidential information.

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C. **Objection: Reveals Information about AOD Contractors and Suppliers Which Is Confidential.**

The documents submitted for review include correspondence, invoices, bills and organic certificates that reveal the identity of the contractors and suppliers who provide AOD with feed, cattle, and other inputs or services that allow AOD to produce private label organic milk at competitive prices. For example, Pages 0001004 – 1005 provide a list of the types of feed and sources of livestock feed purchased by AOD for its organic herd and Pages 0000535 – 749 consist of organic certificates for AOD suppliers. Such information qualifies as confidential commercial information that should not be disclosed under the second prong of Exemption 4 because the disclosure of such information would cause substantial harm to AOD's competitive position. The confidential commercial information contained in the Requested Documents remains current for virtually all suppliers. Even suppliers that are no longer providing product to AOD are exempt from disclosure because having that information would allow a competitor to obtain an advantage it otherwise would not have (*e.g.*, insight into the quality and reliability of potential suppliers, among other things).

First, as shown above, there is actual and very substantial competition in the organic milk industry. In fact, organic dairy has been one of the fastest growing segments of organic agriculture in the United States.¹⁴ The number of certified organic milk cows more than doubled between 2005 and 2008, growing from around 86,000 to over 200,000. This growth trend will put an ever increasing strain on the already limited supply chain for organic inputs to the dairy production process. Thus, not only is there actual competition in the organic dairy market in general, there is substantial competition in the market for information regarding sources of direct and indirect inputs into the organic dairy production process.

Second, the disclosure of AOD's suppliers and contractors would cause substantial competitive harm to AOD by revealing the sources of inputs such as feed, breeding and milking stock. According to the USDA study, organic dairies, like AOD, cite sourcing inputs as the most difficult aspect of their operation. Disclosure of the identities of AOD's current and former contractors and suppliers would allow competitors insight into how to source inputs successfully for a dairy, and knowledge of which suppliers have been discontinued or added would provide insight on potential availability and reliability of such suppliers. This is equally true for AOD's affiliated companies that supply other AOD entities. The organic certificates of AOD affiliates show which types of supplies come from which AOD affiliates (for example, feed, livestock, etc.). Disclosing the extent to which AOD competes with suppliers for limited resources would reveal confidential information that will cause AOD substantial harm. Similarly, disclosing whether AOD obtains multiple products from a single supplier would disclose confidential business information regarding AOD's OSP and impact its competitive position in the market.

¹⁴ McBride and Greene, "Characteristics, Costs, and Issues for Organic Dairy Farming," Economic Research Service USDA (2009).

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The potential harm is twofold because it will increase direct competition for the inputs these contractors and suppliers who source to AOD, and it will provide insight into how to source inputs for dairies that are considering transitioning to organic production or to small organic dairies seeking to increase the scale of their operations.

This reality further justifies the withholding or redaction of Organic Certificates for AOD suppliers and contractors. The unredacted release of such certificates, which are an integral component of the OSPs, would in this context unequivocally reveal the identities of AOD suppliers. FOIA was never intended to facilitate such anticompetitive trade practices.

D. Objection: Reveals Information about AOD Protocols and Procedures, Which Is a Trade Secret and Confidential.

The Requested Documents include multiple whole and/or partial copies of AOD's protocols and procedures for organic milk production. These protocols particularize the application of the general performance standards of the regulations to AOD's specific farm production process. There is a "direct relationship between the protocols and procedures and the productive process" that brings these documents in their entirety within the trade secret prong of Exemption 4. These protocols and procedures are also quality control mechanisms, which courts have found are clearly protected from disclosure under FOIA as trade secrets and confidential. *See Center for Auto Safety*, 244 F.3d at 151; *Appleton*, 451 F. Supp. 2d at 141.

The protocols and procedures contained in each of the OSPs to which this objection applies include:

- Protocols for managing herd health in compliance with organic standards (*e.g.* 0000230 – 287);
- Procedures for sourcing and verifying that feed is compliant with organic standards (*e.g.* 0000533 – 534);
- Protocol for ensuring that the milking process is compliant with organic standards (*e.g.* 0000311);
- Procedures for pasturing cows in compliance with organic standards (*e.g.* 0000994 - 1003).

The herd health protocol, for example, creates an integrated plan for addressing each of the performance requirements of 7 CFR § 205.238, which set criteria for herd health management but leave to the individual organic producer how to meet those criteria. The protocol organizes the various requirements into a logical and standard management framework with the detail required for effectively maintaining the health of a large herd of organic dairy cattle in varying stages of milk production, appropriate specific therapies for specific health issues, specifies reproductive practices, and mandates bio-security procedures. (*See, e.g.*, 0000230 – 287.) This plan is the product of countless hours of AOD's veterinary staff work and

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experience in managing herds on its farms. It is closely integrated with AOD's proprietary recordkeeping system described below. It remains a key component of AOD's organic milk production plan today.

The procedures and protocols for sourcing and verifying that feed is compliant with organic standards enables AOD to comply with the requirements of 7 CFR § 205.238, mandating the content and source of feed for livestock, and establishing strict recordkeeping requirements for documenting feed provided for livestock. These procedures ensure that the feed provided to AOD's cows does not contain any prohibited additives or ingredients and provides a mechanism to document that information in AOD's proprietary recordkeeping system. (*See, e.g.*, 0000533 – 534, 1004 – 1005, 476 – 532.) Although the regulations set forth strict requirements, they provide no insight as to how to achieve compliance for an organic dairy operation of AOD's size. AOD's staff has spent years developing its supply chain and creating and implementing a recordkeeping system to track cattle feed, to ensure compliance with the regulations. These procedures are central to AOD's success in producing competitively priced organic milk for the private label market.

AOD has established protocols and implemented procedures for ensuring that the producing and processing of its organic products complies with the requirements of 7 C.F.R. §§ 205.105 & 205.270, which set stringent criteria for the type and quantity of products that can be used for prepping, cleaning, and sterilizing equipment and facilities used in the production, processing, and handling of a product using the organic label. AOD has created and implemented innovative procedures and protocols for the operation of its milking and processing facilities that allow it to meet these regulatory requirements, and deliver safe, high-quality organic milk without the use of prohibited substances. AOD employees created these procedures and protocols from the ground up to ensure that milking and processing aspects of a large-scale dairy operation can be conducted without the use of prohibited substances.

Similarly, AOD has developed and implemented specific procedures and protocols to ensure that its cows are provided adequate pasture in compliance with the NOP requirements and that pastures are managed in compliance with the organic standards. These protocols and procedures required years of research, planning, innovation, and implementation, and are integral to the continued success of AOD in the private brand organic milk market.

As discussed above, there is serious competition in the organic dairy market. The innovative protocols and procedures for ensuring compliance with regulatory standards, while simultaneously maintaining a competitive cost structure, have allowed AOD to develop its business in a challenging industry.

Disclosure of this information would provide AOD's competitors and potential competitors critical know-how about operating an organic dairy in compliance with organic standards which they would not otherwise be able to access. Disclosure would dilute the AOD's

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competitive position by allowing competitors or potential competitors to free ride on the procedures and protocols AOD developed at great expense and effort. For this reason, the materials are not subject to disclosure under FOIA. *See Ruckelshaus*, 467 U.S. at 1011.

E. Objection: Information Regarding AOD Business Practices and Strategy Is Exempt From Disclosure.

The Requested Documents contain information detailing AOD's business processes and strategies. Such information reveals high-level business plans and strategic choices AOD has made to secure its competitive position in the organic marketplace, including information such as to whom and in what quantities AOD sells its milk products, how and when additional milking cows are integrated into the production process, and other information about the composition of AOD's herd.

Disclosure of such information would cause AOD competitive injury by allowing competitors and potential competitors to replicate AOD's successful business strategy. The USDA's 2009 study on the organic dairy industry found that most organic dairies had substantial difficulty generating returns in excess of labor costs and capital investment.¹⁵ AOD has devised a successful business model that is capable of generating such returns; thus, disclosure of its business strategies and processes would allow AOD's competitors and potential competitors to improve their operations or create new large organic dairy operations by leveraging AOD's proprietary business processes.

As discussed above, the information that the USDA required AOD to submit is exempt from disclosure under FOIA if it is likely to "cause substantial harm to the competitive position" of AOD. *See Critical Mass*, 975 F.2d at 877. The disclosure of AOD's business strategies and processes would cause AOD substantial competitive injury, because competitors or potential competitors would be able to use the information to undermine AOD's relationship with customer and suppliers, which has been found to "necessarily aid its competitors." *See FOIA Guide*, at 306 (citing *McDonnell Douglas Corp. v. NASA*, No. 98-5251, slip op. at 2 (D.C. Cir. 1999)). Competitors would be able to use information contained in the Requested Documents, such as AOD's customers and the sale price of its product, to gain access to AOD's distribution system, thus undermining AOD's position in the market. Accordingly, such information should not be disclosed.

F. Objection: Information Regarding AOD Production and Other Financial Data Is Exempt from Disclosure.

The Requested Documents include information regarding AOD's production and other financial data. For instance, Pages 0000122 – 125 detail AOD's expected production. This type

¹⁵ McBride and Greene, "Characteristics, Costs, and Issues for Organic Dairy Farming," Economic Research Service USDA (2009).

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of information should not be disclosed because it is also the type of information protected by Exemption 4.

AOD's production and financial data provided to the USDA for its review is exempt from disclosure because the disclosure will likely "cause substantial harm to the competitive position" of AOD. *See Critical Mass*, 975 F.2d at 877. First, in the hands of AOD's suppliers, this information could be used to weaken AOD's bargaining position by providing suppliers with information about prices AOD is paying for other components of its feed mix. Second, information about prices AOD pays for various inputs into its organic system could be used by competitors as leverage in their own purchasing, unfairly improving their competitive position. Third, this information could be used by AOD's customers to drive down the price at which AOD is able to sell its milk, thus weakening AOD's revenues and competitive position in the organic milk market.

G. Objection: Reveals Information about AOD's Proprietary Internal Recordkeeping Mechanisms Which Is a Trade Secret and Confidential.

The Requested Documents contain information that reveals AOD's proprietary recordkeeping system. AOD is required to maintain records that "[f]ully disclose all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited." 7 C.F.R. § 205.103. AOD has created a proprietary recordkeeping system that tracks all aspects of the AOD's operation in compliance with the regulation. For example, Pages 0000316 – 319 reveal AOD's system for its recordkeeping. Although much of the information in these records should be withheld for the many reasons discussed above, these documents should also be withheld because the structure of these documents and the ways they are compiled and stored reveal the innovative system AOD has created for meeting the recordkeeping requirement of the organic regulations and qualifies a trade secret exempt from disclosure under FOIA.

As discussed above, Exemption 4 prohibits disclosure of a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. *See Public Citizen*, 704 F.2d at 1288. AOD's recordkeeping system is secret. Fully aware of the difficulty of creating a recordkeeping system compliant with the organic regulations, AOD has closely guarded its recordkeeping system, disclosing it only to the QAI and the USDA for inspection, as required by 7 C.F.R. § 205.103. AOD's recordkeeping system directly relates to the productive process because it documents every step of the production process and, without such a system, AOD's organic milk could not qualify for organic certification. AOD's recordkeeping system is the end product of innovation and substantial effort. No commercially-available recordkeeping system exists to track the various elements of organic dairy production as required by federal regulations. AOD built a recordkeeping system from scratch. Accordingly, AOD's proprietary recordkeeping system is a

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trade secret and exempt from disclosure under FOIA. *See Center for Auto Safety*, 244 F.3d at 151.

H. Objection: Information Regarding AOD Business Strategy and Herd Composition Is Exempt from Disclosure.

Disclosure of information such as AOD's herd composition and strategy regarding the integration of new milking cows into the operation would cause AOD competitive injury by allowing competitors and potential competitors to emulate AOD's successful business strategy regarding its herd management practices. As previously discussed, the USDA's 2009 study on the organic dairy industry found that most organic dairies had substantial difficulty generating returns in excess of its labor costs and capital investment.¹⁶ AOD, however, has devised a successful business model that is capable of generating such returns. Accordingly, disclosure of its business strategies and process pertaining to, among other things, herd management would allow AOD's competitors and potential competitors to improve their operations or create new large organic dairy operations modeled after AOD, increasing competition in the organic milk market at AOD's via unfair use of AOD's proprietary process.

I. Objection: Reveals Information about AOD's Organic Production Process Inputs Which Is a Trade Secret and Confidential.

The Requested Documents contain information concerning the inputs used by AOD in the production of private label organic milk such as feed mixtures, water and pasture. These clearly qualify as trade secrets.

The nature, source, and specific application of the various inputs into AOD's organic production process are a closely guarded secret that AOD has taken great care to protect. AOD has only divulged this information to its certifying agent, QAI, and in turn to the USDA, as required by the regulations. 7 C.F.R. § 205.201. Such information is commercially valuable because it is the management and application of these inputs that allows AOD to produce private label organic milk at competitive prices. The combination and timing of the application of these inputs inherently relates to the productive process. Finally, AOD has invested substantial time and resources into developing an innovative combination of inputs that produce its organic milk products. Thus, AOD's inputs fit squarely into the category of information protected from disclosure as trade secrets. *See Appleton*, 451 F. Supp. 2d at 141.

V. EXEMPTION 6(b)

Finally, Exemption 6(b) protects against disclosure of information about individuals in "personnel and medical files and similar files" when the disclosure of such information "would

¹⁶ McBride and Greene, "Characteristics, Costs, and Issues for Organic Dairy Farming," Economic Research Service USDA (2009).

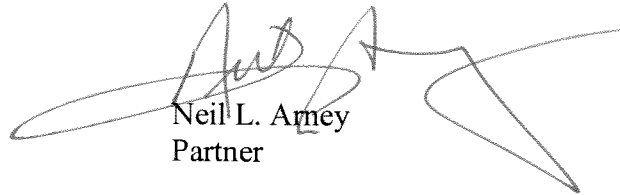
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constitute a clearly unwarranted invasion of personal privacy.” AOD has suggested redactions to comply with Exemption 6(b).

We appreciate the opportunity to bring these important matters to your attention and look forward to your response.

Sincerely,



Neil L. Arney
Partner

Enclosures: Exhibit 1 (Vaughn Index)
Computer Disc Containing Requested Documents with Bates Numbers 0000001 –
0001384 and Highlights for Proposed Redactions

cc: Aurora Organic Dairy
Lee Sachnoff, Esq.

As set forth in the accompanying letter, AOD asserts that all of Requested Documents listed herein should be withheld from production in their entirety under Exemption 3 of FOIA. In addition, AOD's OSPs, and related communications with its certifying agency QAI, which are Bates Nos. 0000001-001224, should be withheld in their entirety under Exemption 4 as containing trade secret information. To the extent that the USDA concludes that the blanket exemptions should not apply to the Requested Documents, AOD asserts that the documents should be redacted and withheld from production under Exemptions 4 and 6 as set forth herein. AOD is not waiving its right to challenge any decision by the USDA not to withhold the Requested Documents in their entirety.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
1 - 3	This is a confidential letter from QAI, regarding AOD's confidential 2011 OSP for Coldwater. The letter has AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
4	This cover sheet is a confidential communication with QAI regarding AOD's confidential 2011 OSP for Coldwater. The cover sheet has information about AOD's production processes and other information about AOD's operations. It also has individual initials.	Exemption 4 and Exemption 6	The redacted information consists of a determination regarding AOD's production processes, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual initials have been redacted to prevent an unwarranted invasion of personal privacy.
5 - 6	NOP Certificate for AOD's confidential 2011 OSP for Coldwater. The certificate contains information about AOD's operations. It also contains individual information.	Exemption 4 and Exemption 6	The redacted information contains information regarding AOD's livestock operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual initials and signatures have been redacted to prevent an unwarranted invasion of personal privacy.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
7	This is a summary of AOD's confidential 2011 OSP for Coldwater. The summary contains AOD business plans, information about AOD's production processes, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of AOD business plans, information about AOD's production processes, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
8 - 10	This is the AOD's Application for Organic Certification for Coldwater and contains information regarding AOD's confidential 2011 OSP, including business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4 and Exemption 6	The redacted information primarily consists of AOD business plans and also includes information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
11	This is a confidential communication with QAI regarding AOD's confidential 2011 OSP for Coldwater. The letter has individual names and contact information.	Exemption 6	Individual information has been redacted to prevent an unwarranted invasion of personal privacy.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
12 - 44	The documents entitled Dairy Organic Compliance Plan are part of AOD's confidential 2011 OSP for Coldwater. The documents contain AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations. They also contain individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. Fields such as "Source," "Other," "None," and "Please Explain," should be redacted, even if there is no information provided, because without such redactions, the recipient of the document would be able to discern AOD's answers and gain insight into AOD's confidential operations, causing substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
45 - 62	The documents entitled Livestock Organic Compliance Plan are part of AOD's confidential 2011 OSP for Coldwater. The documents contain AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations. They also contain individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. Fields such as "None," and "No, please explain" should be redacted, even if there is no information provided, because without such redactions, the recipient of the document would be able to discern AOD's answers and gain insight into AOD's confidential operations, causing substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
63 - 65	The US and Canada Equivalence Verification is part of AOD's confidential 2011 OSP for Coldwater and contains AOD business plans, information about AOD's production processes, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of details about AOD's business plans and production processes, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
66 - 78	The Inspection Work Order #9952 is a confidential communication with OAI regarding AOD's confidential 2011 OSP for Coldwater and contains information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
79 - 83	This is a confidential communication with QAI regarding AOD's confidential 2011 OSP for Coldwater. The letter has information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
84	This is a confidential communication with QAI regarding AOD's confidential 2011 OSP for Coldwater. The letter has details of materials used during AOD's operations. It also has individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of details of materials used during AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
85-86	These are confidential communications with QAI regarding AOD's confidential 2011 OSP for Coldwater. The letters have details of materials used during AOD's operations. They also have individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of details of materials used during AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
87 - 89	This is the Table of Contents for AOD's confidential 2011 OSP for Coldwater, and the cover page for the Seed Documentation Tab 7 from AOD's confidential 2011 OSP.	N/A	N/A
90 - 94	The documents entitled Materials List are part of AOD's confidential 2011 OSP for Coldwater and contain details of materials used during AOD's operations. They also contain individual names and contact information.	Exemption 4	The redacted information consists of details of materials used during AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
95	This is an identification page from AOD's confidential 2011 OSP for Coldwater.	N/A	N/A

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
96 - 121	The Attachments 1 - 10 are part of TAB 5 to AOD's confidential 2011 OSP for Coldwater. The Attachments contain AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations. They also contain individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. Prior to establishing the Organic Integrity Database, the NOP used to publish a list of certified operations that included their respective Organic Certificate Numbers; certificate numbers must be redacted to prevent the recipient from identifying AOD's suppliers, which is highly confidential information, and gaining an unfair competitive advantage in the marketplace. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
122 - 125	The documents entitled Operational Overview & Expect Production are TAB 2 from AOD's confidential 2011 OSP for Coldwater. The documents contain AOD business plans, information about AOD's production processes, and other information about AOD's operations.	Exemption 4	The redacted information consists of AOD business plans, information about AOD's production processes, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
126 - 127	The documents entitled Animal Welfare Program Summary are TAB 3 from AOD's confidential 2011 OSP for Coldwater and contain information about AOD's production processes and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production processes and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
128	The document entitled Shelter & Housing is TAB 4 from AOD's confidential 2011 OSP for Coldwater and contains information about AOD's production processes and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production processes and other information about AOD's operations,, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
129 - 154	These documents are part of the Land Use History, which is TAB 6 from AOD's confidential 2011 OSP for Coldwater. These documents contain information about AOD's production processes and other information about AOD's operations. They also contain individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of information about AOD's production processes and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
155 - 164	These documents are part of the Seed Documentation, which is TAB 7 from AOD's confidential 2011 OSP for Coldwater. These documents contain details of materials used during AOD's operations and other information about AOD's operations. They also contain individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of details of materials used during AOD's operations and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.

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165 - 179	The documents entitled Soil Sample Reports are TAB 8 from AOD's confidential 2011 OSP for Coldwater. The documents contain details of materials used during AOD's operations and other information about AOD's operations. They also contain individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of details of materials used during AOD's operations and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
180 - 181	The documents entitled Water Sample Reports are TAB 9 from AOD's confidential 2011 OSP for Coldwater. The documents contain details of materials used during AOD's operations and other information about AOD's operations. They also contain individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of details of materials used during AOD's operations and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
182	The international verification is part of AOD's confidential 2011 OSP for Coldwater and contains information regarding AOD business plans and other information about AOD's operations. It also has individual names and contact information.	Exemption 4 and Exemption 6	The redacted information contains details of AOD business plans and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.

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183	The Livestock Farm Profile Form is a confidential communication with QAI regarding AOD's confidential 2011 OSP for Coldwater. The completed Form contains information about AOD's production processes and other information about AOD's operations. It also has individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of information about AOD's production processes and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
184 - 195	These Maps are from TAB 1 of AOD's confidential 2011 OSP for Coldwater. The Maps contain information about AOD's production processes and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production processes and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
196	The Livestock Producer Individual Field Profile is a confidential communication with QAI and is part of AOD's confidential 2011 OSP for Coldwater.	Exemption 6	Individual information has been redacted to prevent an unwarranted invasion of personal privacy.
197	The Dairy Herd Profile Form is a confidential communication with QAI regarding AOD's confidential 2011 OSP for Coldwater. The Profile contains AOD business plans, information about AOD's production processes, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of AOD business plans, information about AOD's production processes, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.

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198 - 208	The dry matter intake form and calculations are part of AOD's confidential 2011 OSP for Coldwater and contain AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
209	The Producer Annual Input Record is part of AOD's confidential 2011 OSP for Coldwater. The form has individual initials.	Exemption 6	Individual information has been redacted to prevent an unwarranted invasion of personal privacy.
210 - 215	The documents entitled Field History & Projected Yield are part of TAB 5 from AOD's confidential 2011 OSP for Coldwater. The documents contain AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations. They also contain individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. AOD's own text and introduction to AOD's chart, which is not part of the certifying agent's form, must be redacted to prevent the recipient from discerning the types of crops produced by AOD at Coldwater and how AOD manages its organic pastures, which would disclose confidential information regarding AOD's OSP and impact its competitive position in the marketplace. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
216	The Medical Input Profile is from AOD's confidential 2011 OSP for Coldwater. The Profile contains individual initials.	Exemption 6	Individual information has been redacted to prevent an unwarranted invasion of personal privacy.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
217 - 220	This is a confidential communication with QAI regarding AOD's confidential 2011 OSP for Coldwater. The letter contains AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
221 - 223	This is a confidential communication with QAI regarding AOD's confidential 2011 OSP for Coldwater. The letter contains AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
224	The document entitled Veterinary Prescription Form is part of AOD's confidential 2011 OSP for Coldwater. The form has information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of AOD business plans, information about AOD's production processes, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.

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225 - 227	The document entitled Application for Organic Certification Annual Monitoring is part of AOD's confidential 2012 OSP for Coldwater. The completed application contains AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
228	This is a list of the AOD's written policies and procedures and is part of AOD's confidential 2012 OSP for Coldwater.	N/A	N/A
229	The documents entitled Continuous Organic Management of Livestock are Appendix 7 from AOD's confidential 2012 OSP for Coldwater. The documents contain AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
230 - 287	The documents entitled Cow Organic Herd Health Protocol are Appendix 8 from AOD's confidential 2012 OSP for Coldwater. The documents contain AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
288	The documents entitled Surgical Practices are Appendix 9 from AOD's confidential 2012 OSP for Coldwater. The documents contain information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
289 - 306	The documents entitled Calf Organic Herd Health Protocol are Appendix 10 from AOD's confidential 2012 OSP for Coldwater. The documents contain AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
307 - 308	The documents entitled Calf Antibiotic Protocol are Appendix 11 from AOD's confidential 2012 OSP for Coldwater. The documents contain AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
309 - 310	The documents entitled Prohibited Substance Protection are Appendix 2 from AOD's confidential 2012 OSP for Coldwater. The documents contain information about AOD's production processes and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production processes and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
311	The document entitled Monitoring Procedures is Appendix 3 from AOD's confidential 2012 OSP for Coldwater. The document contains information about AOD's production processes and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production processes and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
312 - 315	The documents entitled Flow Charts are Appendix 4 from AOD's confidential 2012 OSP for Coldwater. The documents contain AOD business plans, information about AOD's production processes, and other information about AOD's operations.	Exemption 4	The redacted information consists of AOD business plans, information about AOD's production processes, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
316 - 319	The documents entitled Recordkeeping System Elements are Appendix 5 from AOD's confidential 2012 OSP for Coldwater. The documents contain information about AOD's production processes and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production processes and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
320 - 322	The documents entitled Replacement Animals materials are Appendix 6 from AOD's confidential 2012 OSP for Coldwater. The documents contain AOD business plans, information about AOD's production processes, and other information about AOD's operations.	Exemption 4	The redacted information consists of AOD business plans, information about AOD's production processes, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
323	This is the table of contents for AOD's confidential 2012 OSP for Coldwater.	N/A	N/A

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324 (duplicate of 311)	The document entitled Monitoring Practices & Procedures is Appendix 3 from AOD's confidential 2012 OSP for Coldwater. The document contains information about AOD's production processes and other information about AOD's operations.	Exemption 4	Page 324 is a duplicate of page 311. The redacted information consists of information about AOD's production processes and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
325 - 475 (withheld in entirety)	These documents are part of the Medicine Label documents from AOD's confidential 2012 OSP for Coldwater. The documents (including the number of pages in the documents) have information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The document should be withheld in its entirety because it consists of information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
476 - 532	The documents entitled Feed Supplements & Additives are Appendix 15 from AOD's confidential 2012 OSP for Coldwater. The documents contain information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
533 - 534	The documents entitled Supplier Certification Verification Procedure are Appendix 16 from AOD's confidential 2012 OSP for Coldwater. The documents contain information about AOD's production processes and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production processes and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.

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535 - 749	The documents entitled Supplier List are Appendix 17 from AOD's confidential 2012 OSP for Coldwater. The documents contain AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations. They also contain individual names and contact information, and names of AOD customers.	Exemption 4 and Exemption 6	The redacted information consists of AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, including its customers, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. Aurora Organic Farms, Inc. and Aurora Organic Dairy Corp. established separate and distinct entities for their varying operations. Each limited liability company and corporation has its own Federal Employer Identification Number from the IRS, state registration number, and Organic Certificate from its USDA accredited certifying agent. Just as names and identifying information of AOD's third-party suppliers are confidential business information and protected from disclosure under Exemption 4, so are names and identifying information of AOD's affiliated companies who supply other AOD entities. The organic certificates of AOD affiliates (Bates Nos. 0000539-549 and 0000656-666) show which types of supplies come from which AOD affiliates (for example, feed, livestock, etc.). Disclosing the extent to which AOD competes with suppliers for limited resources would reveal confidential information that will cause AOD substantial harm. Similarly, disclosing whether AOD obtains multiple products from a single supplier would disclose confidential business information regarding AOD's OSP and impact its competitive position in the market. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.

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750	The document entitled Manure Decomposing Methods is Appendix 22 from AOD's confidential 2012 OSP for Coldwater. The document contains information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
751 - 752	The documents entitled Clean Equipment Program are Appendix 23 from AOD's confidential 2012 OSP for Coldwater. The documents contain information about AOD's production processes and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production processes and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
753	The document entitled Organic Compliance Complaint Procedure Overview is Appendix 24 from AOD's confidential 2012 OSP for Coldwater. The document contains information about AOD's production processes and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production processes and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
754 - 757	The documents entitled Wash Procedures are Appendix 18 from AOD's confidential 2012 OSP for Coldwater. The documents contain information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.

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758 - 773	The documents entitled Wash Products for Milk Handling are Appendix 19 from AOD's confidential 2012 OSP for Coldwater. The documents contain information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
774 - 775	This is a confidential communication with QAI regarding AOD's confidential 2012 OSP for Coldwater. The letter contains information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations. The also contain individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
776 - 779	The documents entitled Operational Overview & Expected Production are TAB 2 from AOD's confidential 2011 OSP for Coldwater. The documents contain AOD business plans, information about AOD's production processes, and other information about AOD's operations.	Exemption 4	The redacted information consists of AOD business plans, information about AOD's production processes, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.

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780 - 781	The documents entitled Animal Welfare Program Summary are TAB 3 from AOD's confidential 2011 OSP for Coldwater. The documents contain information about AOD's production processes and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production processes and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
782	The document entitled Shelter & Housing is TAB 4 from AOD's confidential 2011 OSP for Coldwater. The document contains information about AOD's production processes and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production processes and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
783 - 808	The documents entitled Land Use History are part of TAB 6 from AOD's confidential 2011 OSP for Coldwater. The documents contain information about AOD's production processes and other information about AOD's operations. They also contain individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of information about AOD's production processes and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
809 - 811	These documents are part of the Seed Documentation TAB 7 from AOD's confidential 2011 OSP for Coldwater. The documents contain details of materials used during AOD's operations.	Exemption 4	The redacted information consists of details of materials used during AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
812 - 813	The documents entitled Supplier Certification Verification Procedures are part of Appendix 16 from AOD's confidential 2012 OSP for Coldwater. The documents contain information about AOD's production processes and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production processes and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
814 - 825	These documents are part of the Herd Health Methods Appendix 12 from AOD's confidential 2012 OSP for Coldwater. The documents contain information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
826 - 987 (withheld in entirety)	These documents are part of the Medicine Label documents from AOD's confidential 2012 OSP for Coldwater. The documents (including the number of pages in the documents) have information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The document should be withheld in its entirety because it consists of information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
988 - 993	These documents are part of the Physical Therapy Label documentation from AOD's confidential 2012 OSP for Coldwater. The documents contain information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
994 - 1003	The documents entitled Pasture & Grazing Plan are Appendix 13 from AOD's confidential 2012 OSP for Coldwater. The documents contain AOD business plans, information about AOD's production processes, and other information about AOD's operations.	Exemption 4	The redacted information consists of AOD business plans, information about AOD's production processes, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
1004 - 1005	The documents entitled Organic Feed Rations are Appendix 14 from AOD's confidential 2012 OSP for Coldwater. The documents contain information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
1006 - 1021	The documents entitled Feed Supplements & Additives are Appendix 15 from AOD's confidential 2012 OSP for Coldwater. The documents contain information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
1022 - 1031	The documents entitled Herd Health Methods are Appendix 12 from AOD's confidential 2012 OSP for Coldwater. The documents contain information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
1032 - 1062 (withheld in entirety)	These documents are part of the Medicine Label documents from AOD's confidential 2012 OSP for Coldwater. The documents (including the number of pages in the documents) have information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The document should be withheld in its entirety because it consists of information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
1063 - 1095	The documents entitled Dairy Organic Compliance Plan are part of AOD's confidential 2012 OSP for Coldwater. The documents contain business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations. They also contain individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
1096 - 1113	The documents entitled Livestock Organic Compliance Plan are part of AOD's confidential 2012 OSP for Coldwater. The documents contain AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations. They also contain individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
1114 - 1117	The documents entitled Organic Compliance Plan Addendum Materials List are part of AOD's confidential 2012 OSP for Coldwater. The documents contain information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations. They also contain individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
1118	The document entitled Producer Annual Input Record is part of AOD's confidential 2012 OSP for Coldwater.	N/A	N/A
1119	This document is entitled Seed Documentation and is TAB 7 from AOD's confidential 2011 OSP for Coldwater.	N/A	N/A
1120 - 1121	The documents entitled Dairy Herd Profile Form are part of AOD's confidential 2011 OSP for Coldwater. The documents contain information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations. The documents also contain individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
1122 - 1124	The documents entitled Individual Feed Ration are part of AOD's confidential 2011 OSP for Coldwater. The documents contain information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations. They also contain individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
1125	The document entitled Livestock Farm Profile Form is part of AOD's confidential 2011 OSP for Coldwater. The document contains information about AOD's production processes and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production processes and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
1126	The document entitled Livestock Farm Profile Form is part of AOD's confidential 2011 OSP for Coldwater. The document contains information about AOD's production processes and other information about AOD's operations.	N/A	N/A
1127 - 1134	The documents entitled Planned Dry Matter Demand and Intake Summary are part of AOD's confidential 2011 OSP for Coldwater. The documents contain information about AOD's production processes and other information about AOD's operations. They also contain individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of information about AOD's production processes and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
1135	The document entitled Medical Input Profile is part of AOD's confidential 2011 OSP for Coldwater.	N/A	N/A
1136	The document entitled Producer International Market Verification Sheet is part of AOD's confidential 2011 OSP for Coldwater. The document contains information about AOD's production processes and other information about AOD's operations. It also has individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of information about AOD's production processes and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
1137 - 1148	The Maps are part of TAB 2 from AOD's confidential 2012 OSP for Coldwater. The documents contain information about AOD's production processes and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production processes and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
1149 - 1153	The documents entitled Operational Overview are TAB 2 from AOD's confidential 2012 OSP for Coldwater. The documents contain AOD business plans, information about AOD's production processes, and other information about AOD's operations.	Exemption 4	The redacted information consists of AOD business plans, information about AOD's production processes, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
1154 - 1156	The documents entitled Animal Welfare Summary are TAB 3 from AOD's confidential 2012 OSP for Coldwater. The documents contain information about AOD's production processes and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production processes and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
1157 - 1158	The documents entitled Shelter & Housing are TAB 4 from AOD's confidential 2012 OSP for Coldwater. The documents contain information about AOD's production processes and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production processes and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
1159 - 1164	The documents entitled Field History & Projected Yield are TAB 5 from AOD's confidential 2012 OSP for Coldwater. The documents contain AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of AOD business plans, information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
1165 - 1196	These documents entitled Land Use History are part of TAB 6 from AOD's confidential 2012 OSP for Coldwater. The documents contain information about AOD's production processes and other information about AOD's operations. They also contain individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of information about AOD's production processes and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
1197 - 1214	These documents entitled Seed Documents are part of TAB 7 from AOD's confidential 2012 OSP for Coldwater. The documents contain details of materials used during AOD's operations and other information about AOD's operations. They also contain individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of details of materials used during AOD's operations and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
1215 - 1218	The documents entitled Soil Sample Report are part of TAB 8 from AOD's confidential 2012 OSP for Coldwater. The documents contain details of materials used during AOD's operations and other information about AOD's operations. They also contain individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of details of materials used during AOD's operations and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
1219	This document is entitled Water Sample Report and is part of AOD's confidential 2012 OSP for Coldwater.	N/A	N/A
1220 - 1221	This document is the Table of Contents for AOD's confidential 2012 OSP for Coldwater.	N/A	N/A

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
1222 - 1224	This document which is entitled US and Canada Equivalence Verification Program is part of AOD's confidential 2011 OSP for Coldwater. The document contains AOD business plans, information about AOD's production processes, and other information about AOD's operations. It also has individual names and contact information.	Exemption 4 and Exemption 6	The redacted information consists of details about AOD's business plans and production processes, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
1225 - 1341 (withheld in entirety)	These are not AOD documents but appear to pertain to Cottonwood Cattle Company, with whom AOD does business.		These documents should be withheld in their entirety until Cottonwood Cattle Company can review them.
1342 - 1347	These are certificates for AOD operations at Coldwater, High Plains, Pepper, and Platteville. The certificates contain information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations.	Exemption 4	The redacted information consists of information about AOD's production processes, details of materials used during AOD's operations, and other information about AOD's operations, which is exempt from production on the grounds that (a) it is trade secret information of AOD and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide AOD's competitors insight into its organic processes and thereby cause substantial harm to AOD's competitive position.
1348 - 1384 (withheld in entirety)	These are not AOD documents but appear to pertain to Cottonwood Cattle Company, with whom AOD does business.		These documents should be withheld in their entirety until Cottonwood Cattle Company can review them.

EXHIBIT 1

<p>As set forth in the accompanying letter, Boehning Dairy, Hilltop Dairy, and Redland Dairy (the "Dairies") assert that all of Requested Documents listed herein should be withheld from production in their entirety under Exemption 3 of FOIA. In addition, the Dairies' OSPs, and related communications with the accredited certifying agency, namely the Texas Department of Agriculture, should be withheld in their entirety under Exemption 4. To the extent that the USDA concludes that the blanket exemptions should not apply to the Requested Documents, the Dairies assert that the documents should be withheld from production under Exemptions 4 and 6 as follows. The Dairies are not waiving their rights to challenge any decision by the USDA not to withhold the Requested Documents in their entirety.</p>			
Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
0001 - 0042	<p>Inspection findings and reports by the Texas Department of Agriculture contain information about Boehning's processes and operations, including health management, sanitation, livestock living conditions, livestock feed, pasture practices, product production, product labeling, crop fertility management, soil and water conservation, control of pests, disease, and weeds, and recordkeeping, among other topics. The documents include a farm map.</p>	<p>Exemption 4; Exemption 6</p>	<p>The redacted information consists of details about Boehning's processes and operations, including details of materials used, livestock management procedures, and other information which are exempt from production on the grounds that (a) it is trade secret information of Boehning and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Boehning's competitors insight into its organic processes and thereby cause substantial harm to Boehning's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.</p>

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
0043 - 0220	Boehning Dairy Farm (Land)'s Producer Organic System Plan ("OSP") and supporting documentation, contain maps, list of fields, field crop/greenhouse plans, buffer zone information, fertility inputs, soil and crop fertility management, seed and planting stock disclosures, suppliers' organic certifications, material safety data sheets, product data and labels, and Boehning's suppliers, among other information.	Exemption 4; Exemption 6	The redacted information consists of details about Boehning's processes and operations, including details of materials used, livestock management procedures, and other information which are exempt from production on the grounds that (a) it is trade secret information of Boehning and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Boehning's competitors insight into its organic processes and thereby cause substantial harm to Boehning's competitive position. Fields such as "Source," "Other," "None," and "Please Explain," should be redacted, even if there is no information provided, because without such redactions, the recipient of the document would be able to discern Boehning's answers and gain insight into Boehning's confidential operations, causing substantial harm to Boehning's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
0221 - 0266	The soil and irrigation water analysis reports are exhibits to Boehning's OSP and contain details about the composition of Boehning's soil and irrigation water. The reports also contain individual names.	Exemption 4; Exemption 6	The redacted information consists of details about Boehning's processes and operations, including details about the composition of Boehning's soil and irrigation water, among other information which is exempt from production on the grounds that (a) it is trade secret information of Boehning and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Boehning's competitors insight into its organic processes and thereby cause substantial harm to Boehning's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
0267 - 0306	Boehning Dairy's Livestock OSP and supporting documentation contain information about Boehning's operations, including farm and livestock information, grazing plans, feed ration tables, feed management, livestock health care, confinement and outdoor access, stocking rates, and recordkeeping, maps, diagrams, and photographs.	Exemption 4; Exemptions 6	The redacted information consists of details about Boehning's processes and operations, including details of materials used, livestock management procedures, and other information which is exempt from production on the grounds that (a) it is trade secret information of Boehning and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Boehning's competitors insight into its organic processes and thereby cause substantial harm to Boehning's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
0307 - 0309	Boehning Dairy LLC Organic Livestock Dry Matter Worksheet is an exhibit to Boehning's OSP and contains details about feed sources and amounts.	Exemption 4; Exemption 6	The redacted information consists of details about Boehning's processes and operations, including feed sources, amounts, and total dry matter intake, which are exempt from production on the grounds that (a) it is trade secret information of Boehning and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Boehning's competitors insight into its organic processes and thereby cause substantial harm to Boehning's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
0310 - 0313	Boehning Dairy LLC Organic Livestock Outdoor Access Calendar is an exhibit to Boehning's OSP and contains details about livestock management.	Exemption 4; Exemption 6	The redacted information consists of details about Boehning's processes and operations, including outdoor access schedule and confinement details, which are exempt from production on the grounds that (a) it is trade secret information of Boehning and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Boehning's competitors insight into its organic processes and thereby cause substantial harm to Boehning's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
0314-0339	Organic certificates, verification letters, and other certification documents are attachments to Boehning's OSP and contain information about Boehning's suppliers. The documents contain individual names and contact information.	Exemption 4; Exemption 6	The redacted information consists of information about Boehning's suppliers, which is exempt from production on the grounds that (a) it is trade secret information of Boehning and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Boehning's competitors insight into its organic processes and thereby cause substantial harm to Boehning's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
0340 - 0346	These attachments to Boehning's OSP contain information about Boehning's custom processor, product labels, and "organic use" procedures.	Exemption 4	The redacted information consists of information about Boehning's suppliers and materials used in its operations, which is exempt from production on the grounds that (a) it is trade secret information of Boehning and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Boehning's competitors insight into its organic processes and thereby cause substantial harm to Boehning's competitive position.
0347 - 0380	Documents used for material reviews copied from the Hilltop Dairy OSP file contain information about materials used by Boehning and accompanying material safety data sheets.	Exemption 4; Exemption 6	The redacted information consists of information about Hilltop's suppliers and materials used in its operations, which is exempt from production on the grounds that (a) it is trade secret information of Hilltop and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Hilltop's competitors insight into its organic processes and thereby cause substantial harm to Hilltop's competitive position. The documents also contain initials of individuals, which have been redacted to prevent an unwarranted invasion of personal privacy.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
0381	The correspondence between Hilltop and the Texas Department of Agriculture, relating to Hilltop Dairy's Livestock OSP contains information about materials used by Hilltop and Hilltop's supplier's organic certificates.	Exemption 4	The redacted information consists of information about Hilltop's suppliers and materials used in its operations, which is exempt from production on the grounds that (a) it is trade secret information of Hilltop and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Hilltop's competitors insight into its organic processes and thereby cause substantial harm to Hilltop's competitive position.
0382 - 0478	Boehning Dairy's Processor (Food and Feed) OSP contains information about Boehning's operations, procedures, processes, suppliers, materials, and other information. The documents include maps, flow charts, photographs, quality control worksheets, material safety data sheets, information about cleaning products, and permits.	Exemption 4	The redacted information consists of information about Boehning's operations, procedures, processes, suppliers, materials, facilities, record keeping, used in its operations, which is exempt from production on the grounds that (a) it is trade secret information of Boehning and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Boehning's competitors insight into its organic processes and thereby cause substantial harm to Boehning's competitive position.
0479 - 0516	Boehning Dairy's Livestock OSP and supporting documentation contain information about Boehning's operations, including feed management, feed suppliers, and feed processing. These documents include certificates for Boehning's suppliers, related certification correspondence between Boehning's supplier and the Midwest Organic Services Association, and other certification records. Some records contain individual names and contact information.	Exemption 4; Exemption 6	The redacted information consists of information about Boehning's operations, procedures, feed management, suppliers, materials, which is exempt from production on the grounds that (a) it is trade secret information of Boehning and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Boehning's competitors insight into its organic processes and thereby cause substantial harm to Boehning's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
0517 - 0559	Boehning's Processor (Food and Feed) OSP and Livestock OSP and supporting document exhibits contain information about feed processing, handling, and storage, and names of suppliers and processors, their organic certification, and processing procedures. The exhibits include organic certificates, other certification documents, and correspondence regarding organic certification of third parties with whom Boehning does business. This range of pages includes duplicates of certain documents.	Exemption 4; Exemption 6	The redacted information consists of information about Boehning's operations, procedures, feed management and processing, suppliers, and materials, used, which is exempt from production on the grounds that (a) it is trade secret information of Boehning and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Boehning's competitors insight into its organic processes and thereby cause substantial harm to Boehning's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
0560 - 0568	These documents are exhibits to Boehning's OSP and contain information about Boehning's operations related to sanitation and pest and disease control. The exhibits contain information about materials Boehning uses and safety data about those materials.	Exemption 4	The redacted information consists of details of materials used during Boehning's operations, which is exempt from production on the grounds that (a) it is trade secret information of Boehning and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Boehning's competitors insight into its organic processes and thereby cause substantial harm to Boehning's competitive position.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
0569 - 0664	<p>Document Withheld</p> <p>These documents are exhibits to Boehning's OSP and relate to Boehning's feed management. Documents contain information about the flow of feed throughout the facilities, premises, facilities layout, equipment used, products, labeling, recordkeeping, material safety data sheets, and other information. The documents include photographs, maps, forms, permits, OSP documents and supporting materials, and organic certification documents. The documents include individual names and signatures.</p>	<p>Exemption 4; Exemption 6</p>	<p>The redacted information consists of information about Boehning's operations, procedures, feed management and processing, materials, organic certification, and recordkeeping, which is exempt from production on the grounds that (a) it is trade secret information of Boehning and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Boehning's competitors insight into its organic processes and thereby cause substantial harm to Boehning's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.</p>
0665 - 0741	<p>These documents are exhibits to Boehning's OSP and relate to Boehning's feed management and cleaning operations and procedures. Documents contain information about the flow of feed throughout the facilities, premises, facilities, equipment used, recordkeeping, material safety data sheets, and other information. The documents include photographs, maps, forms, permits, and organic certification documents. The documents include individual names and signatures.</p>	<p>Exemption 4; Exemption 6</p>	<p>The redacted information consists of information about Boehning's operations, procedures, feed management and cleaning, materials, and recordkeeping, which is exempt from production on the grounds that (a) it is trade secret information of Boehning and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Boehning's competitors insight into its organic processes and thereby cause substantial harm to Boehning's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.</p>

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
0742 - 0755	Texas Department of Agriculture inspection results, contain information about Boehning's OSP, including soil and crop fertility management, soil and water conservation, and other information related to Boehning's operations. Documents include Department of Agriculture forms, written material related to the inspection, and photographic documentation. The documents include individual names and signatures.	Exemption 4; Exemption 6	The redacted information consists of information about Boehning's operations, procedures, soil and water conservation, and soil and crop fertility, which is exempt from production on the grounds that (a) it is trade secret information of Boehning and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Boehning's competitors insight into its organic processes and thereby cause substantial harm to Boehning's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
0756 - 0767	Inspection results by the Texas Department of Agriculture, contain information about Boehning's OSP, including information about Boehning's processes and operations, including health management, sanitation, livestock living conditions, livestock feed, pasture practices, product production, product labeling, crop fertility management, soil and water conservation, control of pests, disease, and weeds, and recordkeeping, among other topics. The documents include a production farm map, as well as individual names.	Exemption 4; Exemption 6	The redacted information consists of details about Boehning's processes and operations, including details of materials used, livestock management procedures, and other information which are exempt from production on the grounds that (a) it is trade secret information of Boehning and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Boehning's competitors insight into its organic processes and thereby cause substantial harm to Boehning's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
0768 - 0777	<p>Inspection results by the Texas Department of Agriculture, contain information about Hilltop Dairy's OSP, including information about Hilltop's processes and operations, including health management, sanitation, livestock living conditions, livestock feed, pasture practices, product production, product labeling, crop fertility management, soil and water conservation, control of pests, disease, and weeds, and recordkeeping, among other topics. The documents include a production farm map, as well as individual names.</p>	<p>Exemption 4; Exemption 6</p>	<p>The redacted information consists of details about Hilltop Dairy's processes and operations, including details of materials used, livestock management procedures, and other information which are exempt from production on the grounds that (a) it is trade secret information of Hilltop Dairy and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Hilltop Dairy's competitors insight into its organic processes and thereby cause substantial harm to Hilltop Dairy's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.</p>
0778 - 0927	<p>Hilltop Dairy Livestock OSP includes information about cattle sales, grazing plans, materials used, material safety data sheets, organic certificates, organic certification documents, maps, and other documents. The documents include supplier information and contact information, Hilltop Dairy's Organic Livestock Dry Matter Worksheet and Organic Livestock Outdoor Access Calendar. The documents also include names and initials of third parties.</p>	<p>Exemption 4; Exemption 6</p>	<p>The redacted information consists of details about Hilltop Dairy's processes and operations, suppliers, materials, and other information, which are exempt from production on the grounds that (a) it is trade secret information of Hilltop Dairy and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Hilltop Dairy's competitors insight into its organic processes and thereby cause substantial harm to Hilltop Dairy's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.</p>

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
0928 - 0936	<p>Inspection results by the Texas Department of Agriculture, contain information about Hilltop Dairy's OSP, including contain information about Hilltop's processes and operations, including health management, sanitation, livestock living conditions, livestock feed, pasture practices, product production, product labeling, crop fertility management, soil and water conservation, control of pests, disease, and weeds, and recordkeeping, among other topics.</p>	<p>Exemption 4; Exemption 6</p>	<p>The redacted information consists of Hilltop Dairy's business plans, information about Hilltop Dairy's production process, and other information about Hilltop Dairy's operations, which is exempt from production on the grounds that (a) it is trade secret information of Hilltop Dairy and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Hilltop Dairy's competitors insight into its organic processes and thereby cause substantial harm to Hilltop Dairy's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.</p>
0937 - 1031	<p>Hilltop Dairy's Processor (Food and Feed) OSP and attached documents contain information about Hilltop Dairy's operations, procedures, processing, products, ingredients, sanitation, pest management, product labeling, materials used, and recordkeeping. Documents include maps, flow charts of product movement, photographs, internal quality control worksheets, materials safety data sheets, permits, and organic certificates and other certification documents. Documents contain information about Hilltop Dairy's suppliers. Documents also contain individual names and signatures.</p>	<p>Exemption 4; Exemption 6</p>	<p>The redacted information consists of Hilltop Dairy's business plans, information about Hilltop Dairy's production process, and other information about Hilltop Dairy's operations, which is exempt from production on the grounds that (a) it is trade secret information of Hilltop Dairy and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Hilltop Dairy's competitors insight into its organic processes and thereby cause substantial harm to Hilltop Dairy's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.</p>

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
1032 - 1072	<p>Redland Dairy's Producer OSP and attached documentation, contain maps, list of fields, field crop/greenhouse plans, buffer zone information, fertility inputs, soil and crop fertility management, seed and planting stock disclosures, suppliers' organic certifications, material safety data sheets, product data and labels, and Redland's suppliers, among other information.</p>	<p>Exemption 4; Exemption 6</p>	<p>The redacted information consists of details about Redland Dairy's processes and operations, including details of materials used, livestock management procedures, and other information which are exempt from production on the grounds that (a) it is trade secret information of Redland Dairy and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Redland Dairy's competitors insight into its organic processes and thereby cause substantial harm to Boehning's competitive position. Fields such as "Source," "Other," "None," and "Please Explain," should be redacted, even if there is no information provided, because without such redactions, the recipient of the document would be able to discern Redland Dairy's answers and gain insight into Redland Dairy's confidential operations, causing substantial harm to Redland Dairy's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.</p>
1073 - 1192	<p>Redland Dairy Livestock OSP includes information about cattle sales, grazing plans, materials used, material safety data sheets, organic certificates, organic certification documents, maps, and other documents. The documents include supplier information and contact information, Redland Dairy's Organic Livestock Dry Matter Worksheet and Organic Livestock Outdoor Access Calendar. The documents also include names and initials of third parties.</p>	<p>Exemption 4; Exemption 6</p>	<p>The redacted information consists of details about Redland Dairy's processes and operations, including details of materials used, livestock management procedures, and other information which are exempt from production on the grounds that (a) it is trade secret information of Redland Dairy and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Boehning's competitors insight into its organic processes and thereby cause substantial harm to Redland Dairy's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.</p>

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
1193 - 1194	<p>Inspection results by the Texas Department of Agriculture contain information about Redland Dairy's compliance with processing categories, products manufactured and ingredients, processing and handling, sanitation, pest management, product labeling, materials used and recordkeeping. The documents contain an individual's name.</p>	<p>Exemption 4; Exemption 6</p>	<p>The redacted information consists of information about Redland Dairy's compliance with organic regulations across several categories, which is exempt from production on the grounds that (a) it is trade secret information of Redland Dairy and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Redland Dairy's competitors insight into its organic processes and thereby cause substantial harm to Redland Dairy's competitive position.</p>
1195 - 1274	<p>Redland Dairy Processor (Food and Feed) OSP and supporting documents contain information about Redland Dairy's operations, procedures, processing, products, ingredients, sanitation, pest management, product labeling, materials used, and recordkeeping. Documents include maps, flow charts of product movement, photographs, internal quality control worksheets, materials safety data sheets, permits, organic certificates and other certification documents, and correspondence to the Texas Department of Agriculture regarding a processor application. Documents contain information about Redland Dairy's suppliers. Documents also contain individual names and signatures.</p>	<p>Exemption 4; Exemption 6</p>	<p>The redacted information consists of Redland Dairy's business plans, information about Redland Dairy's production process, and other information about Redland Dairy's operations, which is exempt from production on the grounds that (a) it is trade secret information of Redland Dairy and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Redland Dairy's competitors insight into its organic processes and thereby cause substantial harm to Redland Dairy's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.</p>

Page Numbers	Description of Redacted Information or Document Withheld	Exemption(s)	Basis for Redaction or Withholding
1275 - 1288	Texas Department of Agriculture inspection results, contain information about Boehning's OSP, including information about soil and crop fertility management, soil and water conservation, and other information related to Boehning's operations. Documents include Department of Agriculture forms, written material related to the inspection, and photographic documentation. The documents include individual names and signatures.	Exemption 4; Exemption 6	The redacted information consists of information about Boehning's operations, procedures, soil and water conservation, and soil and crop fertility, which is exempt from production on the grounds that (a) it is trade secret information of Boehning and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Boehning's competitors insight into its organic processes and thereby cause substantial harm to Boehning's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.
1289 - 1300	Inspection results by the Texas Department of Agriculture, contain information about Boehning's OSP, including information about Boehning's processes and operations, including health management, sanitation, livestock living conditions, livestock feed, pasture practices, product production, product labeling, crop fertility management, soil and water conservation, control of pests, disease, and weeds, and recordkeeping, among other topics. The documents include a farm map.	Exemption 4; Exemption 6	The redacted information consists of details about Boehning's processes and operations, including details of materials used, livestock management procedures, and other information which are exempt from production on the grounds that (a) it is trade secret information of Boehning and/or (b) it is maintained as confidential, is not generally disclosed to the public and, if disclosed, would provide Boehning's competitors insight into its organic processes and thereby cause substantial harm to Boehning's competitive position. In addition, individual information has been redacted to prevent an unwarranted invasion of personal privacy.



RYAN K. MILTNER

KRISTINE H. REED

ADMITTED IN OHIO AND MICHIGAN
RYAN@MILTNERLAWFIRM.COM

ADMITTED IN OHIO, INDIANA, AND GEORGIA
KRISTINE@MILTNERLAWFIRM.COM

Via Federal Express Delivery and by e-mail to gregory.bridges@ams.usda.gov

April 18, 2016

Gregory Bridges
Agricultural Marketing Service – FOIA Officer
1400 Independence Avenue, SW
South Building, Rm. 3943-S, Stop 0202
Washington, DC 20250-0273

*Re: FOIA 2013-AMS-01201-F (EO12600 Response)
Natural Prairie Dairy Farms, LLC*

Dear Mr. Bridges:

I am writing in response to your correspondence dated March 21, 2016 to Natural Prairie Dairy Farms (“NPDF”). In response to your direct request, NPDF has specifically identified the CBI contained in the documents (“NPDF Documents”) you forwarded along with justification for the protection of the CBI. Both the proposed redactions and the explanations accompany this letter.

Before USDA reviews the asserted CBI, however, it is imperative that USDA determine whether any of the information that was provided to NPDF for review should be disclosed at all. As explained herein, there are two patently clear federal statutes that entirely preclude USDA from releasing any of the NPDF Documents.

The FCEA Prohibits Disclosure of the NPDF Documents

The Farm, Conservation, and Energy Act of 2008 included specific provisions that broadly prohibit the disclosure of the very information included in the NPDF Documents.

Pertinent to the NPDF Documents, the FCEA mandates that “the Secretary, any officer or employee of the Department of Agriculture, or any contractor or cooperator of the Department shall **not disclose** 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.” (Emphasis added).¹

¹ 7 U.S.C. § 8791(b). The complete language of the applicable prohibition is included as an attachment to this letter.

It is critical that that the Secretary has no discretion is this instance. The statute imposes a mandatory obligation of the Secretary to hold such information in confidence.

In construing this provision, the United States District Court for the District of Columbia held that the broad provisions of FCEA prohibit USDA from disclosing information in response to a FOIA request.

On its face, § 8791(b)(2)(A) prohibits disclosure and gives little discretion to the agency as to how the provision should be applied. . . . In other words, § 8791 satisfies FOIA Exemption (3)(A) because it leaves no discretion to the agency as to disclosure of this type of information. FOIA Exemption (3) provides that the statute must require information to be withheld in a way that leaves no discretion on the issue or that establishes particular criteria for withholding or refers to particular types of matters to be withheld. See 5 U.S.C. § 552(b)(3). Section 8791 of the FCEA satisfies both the conditions necessary for FOIA Exemption (3) status. Paragraph (2) makes it clear that information shall not be disclosed by the Department of Agriculture if that information meets the criteria that the paragraph expressly provides, which is that it is “provided by an agricultural producer or owner of agricultural land” and that it is “concerning the agricultural operation, farming . . . or the land itself, in order to participate in programs of the Department.”” 7 U.S.C. § 8791(b)(2)(A). The language of this provision does not indicate that the information described may be disclosed upon the Secretary’s discretion. Moreover, the exceptions that it do permit the Secretary to disclose information apply to specific instances in which the statute permits disclosure, none of which apply to Zanoni. The only instance in this provision where the Secretary is given any discretion is in paragraph (3), which plainly does not apply in the instant case. See 7 U.S.C. § 8791(b)(2)(A).

Zanoni v. USDA, 605 F. Supp. 2d 230, 236-37 (D.D.C. 2009).

Here, all of the information included in the NPDF Documents is provided by NPDF as an agricultural producer and owner of agricultural land. All of the information concerns the agricultural operation, farming, or the land itself. And all of the information was provided for the sole purposes of NPDF’s participation in the National Organic Program administered by USDA.

Disclosure of the NPDF Documents in this case is expressly prohibited by the FCEA nondisclosure provisions as interpreted by case law that is directly on point and FOIA Exemption 3.

The OFPA prohibits disclosure of the NPDF Documents.

NPDF is a participant in the National Organic Program administered by USDA. The regulations developed by USDA were developed under the authority of the Federal Organic Foods Production Act of 1990, 7 U.S.C. § 6501 *et seq.* (OFPA). The recordkeeping provisions of OFPA expressly prohibit public disclosure of proprietary business information of program participants. (“No officer, employee, or agent of the United States shall make available to the public any information, statistic, or document obtained from, or made available by, any person under this chapter, other than in a manner that ensures that confidentiality is preserved regarding—(A) the identity of all relevant persons (including parties to a contract); and (B) proprietary business information.”) 7 U.S.C. § 6519(a)(5). The only exception that is made is extremely narrow and requires only that the program “provide for public access to certification documents and laboratory analyses that pertain to certification.” *Id.* at 6506(a)(9).

The OFPA provides further reassurances to each organic producer that its business records will remain confidential. Although a producer is required to disclose business information to its OFPA Certifying Agent in order to assure compliance with the regulations of the National Organic Program, the Certifying Agent (in this case, the Texas Department of Agriculture) is required to “maintain strict confidentiality with respect to its clients under the applicable organic certification program” and OFPA specifically prohibits the Certifying Agent from making disclosures to third parties of “any business related information concerning such client obtained while implementing this chapter”. 7 U.S.C. §6515(f). Again, the only stated exception to the confidentiality rule permits public access to certification documents and laboratory analyses.

Of the 500 pages of NPDF Documents, only a few can be definitively determined to fall within the exception to the confidentiality provisions of the OFPA. Specifically, the pages, which have been marked as NPDF0018 through NPDF0022, constitute laboratory analyses of NPDF crops. The remaining documents do not fall within the exception.

Disclosure of nearly all of the NPDF documents is expressly prohibited by the OFPA and FOIA Exemption 3.

Discussion of Confidential Business Information

Accompanying this letter are the NPDF Documents that have been marked for redaction using Adobe Acrobat Software. Each page includes comments explaining the reason(s) why the proposed material to be redacted constitutes CBI. In making these determinations, NPDF has relied upon the explanations provided in the letter from you dated March 20, 2016 and the United States Department of Justice Guide to the Freedom of Information Act (“DOJ Guide”).

All of the comments can be viewed in the accompanying PDF document and are also provided independently in a summary accompanying this letter.

A. Trade Secrets

The NPDF Documents contain numerous trade secrets that relate directly to the management of NPDF’s organic farming operations. These trade secrets are noted as “TS” in the comments to the proposed redactions. NPDF has applied the definition of “trade secret” contained in the DOJ Guide at page 264:

In *Public Citizen*, a “trade secret” was more narrowly defined as “a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.” This definition also incorporates a requirement that there be a “direct relationship” between the trade secret and the productive process.

B. Commercial or Financial Information

The NPDF Documents also include Commercial and Financial Information. This information is noted as “CFI” in the comments to the proposed redactions. Again, NPDF has applied the three-pronged standard contained in the DOJ Guide to identify CFI. The three prongs are (1) whether the information pertains to, relates to, or deals with commerce; (2) whether the information was obtained from a person; and (3) whether the information is of a kind that would customarily not be released to the public by the person from which it was obtained. *See* DOJ Guide at p. 266-278.

There can be no doubt that all of the information in the NPFD Documents pertain to, relate to or deal with commerce. NPFD is a commercial organic dairy operation, and the information in the NPFD Documents, in its entirety, originates from the commercial operations of the farm.

Likewise, almost the entirety of the NPFD Documents was obtained from a person—NPFD and its employees and agents. For the few items of the NPFD Documents that were prepared by the Texas Department of Agriculture (“TDA”) as the certifying agent of NPFD, those should also be deemed to have originated from a person. But it is important to note that the DOJ Guide explains that even though the TDA is a state government instrumentality, that does not remove the information from Exemption 4.

The DOJ Guide reads, “Documents prepared by the government can still come within Exemption 4, however, if they simply contain summaries or reformulations of information supplied by a source outside the government, or contain information obtained through a plant inspection.”

Here, all of the information that was included in TDA summaries constitutes summaries of information supplied by NPFD and obtained through an inspection of NPFD’s facilities.

Finally, the information marked as CFI is of a kind that would customarily not be released to the public by NPFD.² As a matter of practice, the specifics of the protocols, farm maps, volumes of milk produced, numbers and types of cattle, plans, feeding formulas, and information of the like is never disclosed to outside entities except in the limited context of Organic Certification.

Conclusion

The information in the NPFD Documents cannot be disclosed through FOIA. Under FOIA Exemption 3, two separate federal statutes preclude entirely the disclosure. Under Exemption 4, NPFD has marked the NPFD Documents for redaction as CBI, included comments, and explained herein why CBI redaction is required.

NPFD requests that USDA keep NPFD apprised as to its position regarding these documents and provide NPFD sufficient advance notice of USDA’s ultimate position on disclosure **before** any submission is made in the underlying Court action.

² As set forth in the DOJ Guide, this is the standard properly applied when as here, a submitter has voluntarily provided information to the government. In instances where a submitter is compelled to provide information, the standard is whether disclosure would cause competitive harm to the submitter. The result is the same regardless in this case, as disclosure would impose commercial harm upon NPFD by opening up its procedures, methodology, farm structure, feeding formulations, animal husbandry, and other commercially important information to its competitors, customers, and the public.

Mr., Gregory Bridges
April 18, 2016
Page 5 of 5

Please communicate with this office regarding any future developments. NPDF and I remain available to discuss our positions with you and to cooperate in any way in this matter.

Sincerely yours,

A handwritten signature in blue ink that reads "Ryan K. Miltner". The signature is written in a cursive style with a large, prominent loop at the end of the name.

Ryan K. Miltner

Enc.

cc: Natural Prairie Dairy Farms, LLC

Summary of Comments on 20160418 Natural Prairie FOIA Docs
(marked for USDA).pdf

This page contains no comments

Number: 1 Author: Subject: Redact Date: 4/18/16, 10:48:43 AM

CFI - Client and Account Numbers constitute financial information. All "TDA Client NO.", "TDA Account No." and "TDA License No." references have been marked for redaction.

Narrative notations are provided through page NPFD0095. The same rationale applied to the redactions marked on pages NPFD 0243, 0245, 0249-0258, 0317-0326, 0378-0388, and 0440-0449.

Number: 2 Author: Subject: Redact Date: 4/14/16, 2:49:10 PM

CFI-NPDF does not customarily disclose the findings of its inspections to outside entities. Rather NPDF does share its organic certifications.

Number: 1 Author: Subject: Redact Date: 4/14/16, 2:51:45 PM

CFI - Client and Account Numbers constitute financial information.

Number: 2 Author: Subject: Redact Date: 4/14/16, 2:53:43 PM

TS - The specific products used in the operation of NPDPs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 1 Author: Subject: Redact Date: 4/18/16, 9:16:47 AM

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

Number: 2 Author: Subject: Redact Date: 4/14/16, 2:57:57 PM

CFI – The size of NPDF's operations, volumes, acreage, herd size, and production levels are protectable as commercial information customarily not shared publicly.

Number: 3 Author: Subject: Redact Date: 4/14/16, 2:57:41 PM

CFI – The size of NPDF's operations, volumes, acreage, herd size, and production levels are protectable as commercial information customarily not shared publicly.

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

 Number: 1 Author: Subject: Redact Date: 4/18/16, 9:17:11 AM

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

 Number: 2 Author: Subject: Redact Date: 4/14/16, 3:00:51 PM

CFI – Information about the composition of NPDF's farm operations, including information about soils, field, and their uses are protectable as commercial information customarily not shared publicly.

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

Number: 1 Author: Subject: Redact Date: 4/18/16, 9:17:33 AM

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

Number: 2 Author: Subject: Redact Date: 4/14/16, 3:02:55 PM

TS - The specific products used in the operation of NPDFs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

Number: 1 Author: Subject: Redact Date: 4/18/16, 9:18:04 AM

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

Number: 2 Author: Subject: Redact Date: 4/14/16, 3:05:24 PM

TS - The specific products used in the operation of NPDFs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations

Number: 3 Author: Subject: Redact Date: 4/14/16, 3:05:30 PM

TS - The specific products used in the operation of NPDFs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

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 Number: 1 Author: Subject: Redact Date: 4/18/16, 9:20:04 AM

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

 Number: 2 Author: Subject: Redact Date: 4/18/16, 9:20:09 AM

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

Number: 1 Author: Subject: Redact Date: 4/18/16, 10:51:24 AM

TS - All of the questions and answers in the Organic System Plan documents throughout the NPDP Documents speak to the nature of the farm's operations, production methods, types of agricultural products produced, procedures, protocols, feed formulas, husbandry practices, and other aspects of the farm operations. These specifics constitute competitively useful information that could potentially be utilized by other organic producers who compete with NPDP or by customers of NPDP to exert pricing pressures upon it.

CFI - The information regarding the operations of NPDP contained in the Organic Systems Plans is information that is customarily not shared publicly.

This explanation applies to each of the proposed redactions on each of the Organic System Plans contained in the NPDP Documents, except where another comment specifically states otherwise.

Number: 2 Author: Subject: Redact Date: 4/18/16, 10:51:24 AM

Number: 3 Author: Subject: Redact Date: 4/18/16, 10:51:24 AM

Number: 4 Author: Subject: Redact Date: 4/18/16, 10:51:24 AM

Number: 5 Author: Subject: Redact Date: 4/18/16, 9:21:32 AM

Number: 6 Author: Subject: Redact Date: 4/18/16, 9:21:18 AM

This page contains no comments

Number: 1 Author: Subject: Redact Date: 4/18/16, 10:51:03 AM

TS, CFI - Each and every map, explanatory table, and diagram included in the NPDF documents constitutes a trade secret. The layout of the farm crop production, building design, crop selection and location, livestock handling, and other information contained in these maps and diagrams is the result of years of development and refining to maximize the economic efficiency and productivity of the entire farm operation. These integral parts of the productive process of the production of certified organic milk by NPDF.

Disclosure of this information would impose competitive harm upon NPDF. It is information the type of which is customarily not disclosed publicly.

These comments apply to each and every map, explanatory table, and diagram in the NPDF Documents.

This narrative and rationale applies to the maps, tables, diagrams, and narrative descriptions of facilities on pages NPDF 0027, 0029-0032, 0098, 0104, 0116, 0128-0133, 0339-0334, 0401-0405, and 0462-0466.

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Number: 1 Author: Subject: Redact Date: 4/14/16, 3:33:53 PM

TS - The specific products used in the operation of NPDFs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 1 Author: Subject: Redact Date: 4/14/16, 3:34:16 PM

TS - The specific products used in the operation of NPDFs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 1 Author: Subject: Redact Date: 4/14/16, 3:34:33 PM

TS - The specific products used in the operation of NPDFs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 1 Author: Subject: Redact Date: 4/18/16, 10:59:26 AM

TS, CFI - The various certifications included throughout the NPDF documents convey specific and identifiable products, formulations, and recipes that NPDF utilizes in the production of certified organic milk. This specific information is a valuable trade secret that relates to the know-how, methodologies, and protocols of the farm operations. In addition, this information is customarily not shared publicly.


These comments apply to each and every organic certification and summary organic plan in the NPDF Documents.


The pages on which these certificates, summary organic plans, and related labels and recipes appear on pages NPDF 0037-38, 0040, 0043, 0165-0208, 0215-0219, 0277-0298, 0302-0309, 0311-0316, 0337-0338.

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 Number: 1 Author: Subject: Redact Date: 4/14/16, 3:42:42 PM

 Number: 2 Author: Subject: Redact Date: 4/14/16, 3:42:54 PM

 Number: 3 Author: Subject: Redact Date: 4/14/16, 3:43:03 PM

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Number: 1 Author: Subject: Redact Date: 4/18/16, 9:25:22 AM

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

Number: 2 Author: Subject: Redact Date: 4/18/16, 9:25:33 AM

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

Number: 3 Author: Subject: Redact Date: 4/14/16, 3:54:42 PM

CFI -NPDF does not customarily disclose the findings of its inspections to outside entities. Rather NPDF does share its organic certifications.

Number: 1 Author: Subject: Redact Date: 4/18/16, 9:25:51 AM

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

Number: 2 Author: Subject: Redact Date: 4/14/16, 3:55:43 PM

TS - The specific products used in the operation of NPDFs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

 Number: 1 Author: Subject: Redact Date: 4/18/16, 9:26:15 AM

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

 Number: 2 Author: Subject: Redact Date: 4/18/16, 9:26:25 AM

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

 Number: 3 Author: Subject: Redact Date: 4/18/16, 9:26:39 AM

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

Number: 1 Author: Subject: Redact Date: 4/18/16, 9:27:13 AM

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

Number: 2 Author: Subject: Redact Date: 4/14/16, 3:59:09 PM


TS - The methods used in the operation of NPDFs breeding and animal replacement program are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 3 Author: Subject: Redact Date: 4/14/16, 3:59:30 PM

TS - The methods used in the operation of NPDFs breeding and animal replacement program are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 4 Author: Subject: Redact Date: 4/18/16, 11:18:20 AM

TS - The feed rations and specific products utilized by NPDFs are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

 Number: 1 Author: Subject: Redact Date: 4/18/16, 9:28:17 AM

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

Number: 1 Author: Subject: Redact Date: 4/18/16, 9:28:47 AM

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

Number: 2 Author: Subject: Redact Date: 4/18/16, 11:18:34 AM

TS - The specific products used in the operation of NPDFs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 3 Author: Subject: Redact Date: 4/14/16, 4:05:50 PM

TS - The methods used in the operation of NPDFs animal welfare program are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 1 Author: Subject: Redact Date: 4/18/16, 9:29:07 AM

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

Number: 2 Author: Subject: Redact Date: 4/14/16, 4:06:37 PM

TS - The specific products used in the operation of NPDFs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 1 Author: Subject: Redact Date: 4/18/16, 9:29:24 AM

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

Number: 2 Author: Subject: Redact Date: 4/18/16, 9:29:54 AM

TS - The specific methods used in pest management control are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 3 Author: Subject: Redact Date: 4/18/16, 10:45:40 AM

TS - The specific methods used in predator control are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

Number: 1 Author: Subject: Redact Date: 4/14/16, 4:11:20 PM

CFI – The size of NPDF's operations, volumes, acreage, herd size, and production levels are protectable as commercial information customarily not shared publicly.

Number: 1 Author: Subject: Redact Date: 4/14/16, 4:12:15 PM

TS - The specific products used in the operation of NPDPs farming operations and the sources of those products are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 1 Author: Subject: Redact Date: 4/18/16, 11:21:35 AM

TS - The feed rations and specific products utilized by NPDFs are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 2 Author: Subject: Redact Date: 4/14/16, 4:13:42 PM

TS - The specific products used in the operation of NPDFs farming operations and the sources of those products are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.


Number: 1 Author: Subject: Redact Date: 4/18/16, 11:18:53 AM

TS - The feed rations and specific products utilized by NPDFs are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.


Number: 2 Author: Subject: Redact Date: 4/14/16, 4:15:14 PM

TS - The specific feed rations used in the operation of NPDFs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

CFI - This information is customarily not shared publicly.

 Number: 1 Author: Subject: Redact Date: 4/18/16, 11:19:01 AM

TS - The feed rations and specific products utilized by NPDFs are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

 Number: 1 Author: Subject: Redact Date: 4/18/16, 11:19:15 AM

TS - The feed rations and specific products utilized by NPDFs are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 1 Author: Subject: Redact Date: 4/14/16, 4:17:44 PM

TS - The specific livestock management and husbandry protocols of NPDP are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 2 Author: Subject: Redact Date: 4/14/16, 4:17:56 PM

TS - The specific products used in the operation of NPDPs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 3 Author: Subject: Redact Date: 4/18/16, 10:44:56 AM

Number: 1 Author: Subject: Redact Date: 4/18/16, 10:55:03 AM

TS, CFI - Each and every protocol, procedure, and related diagram included in the NPDF documents constitutes a trade secret. These protocols are the result of years of development and refining to maximize the economic efficiency and productivity of the entire farm operation, to ensure proper husbandry, safety, and regulatory compliance. These protocols are integral parts of the productive process of the production of certified organic milk by NPDF.

Disclosure of this information would impose competitive harm upon NPDF. It is information the type of which is customarily not disclosed publicly.

These comments apply to each and every protocol in the NPDF Documents.

This narrative description should be applied to every protocol, procedure, and diagram redaction in the NPDF Documents, including pages 0083, 0088-0094, 0098, 0114-0116, 0135-0138, 0224, 0240-0242, 0344-0352, 0372-0377, 0406-0414, 0434, 0467-0475.

Number: 2 Author: Subject: Redact Date: 4/18/16, 10:44:22 AM

Number: 3 Author: Subject: Redact Date: 4/14/16, 4:20:13 PM

Number: 1 Author: Subject: Redact Date: 4/18/16, 9:33:38 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 2 Author: Subject: Redact Date: 4/14/16, 5:10:25 PM

TS - The specific products used in the operation of NPDFs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

CFI – The specific products used by NPDF is also protectable as commercial information customarily not shared publicly.

Number: 3 Author: Subject: Redact Date: 4/14/16, 5:06:04 PM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 4 Author: Subject: Redact Date: 4/14/16, 5:09:23 PM


CFI - For purposes of farm and biosecurity, this information is customarily not shared publicly.

Number: 5 Author: Subject: Redact Date: 4/14/16, 5:06:34 PM


TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 6 Author: Subject: Redact Date: 4/14/16, 5:07:51 PM

Specific contact information for Dr. Waldron is CFI.

 Number: 1 Author: Subject: Redact Date: 4/18/16, 10:56:14 AM

TS - The specific products used in the operation of NPDPs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

 Number: 2 Author: Subject: Redact Date: 4/14/16, 4:22:51 PM

Number: 1 Author: Subject: Redact Date: 4/14/16, 5:11:45 PM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 2 Author: Subject: Redact Date: 4/14/16, 5:11:55 PM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 3 Author: Subject: Redact Date: 4/14/16, 5:12:17 PM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 4 Author: Subject: Redact Date: 4/18/16, 10:43:43 AM

Number: 1 Author: Subject: Redact Date: 4/14/16, 5:12:47 PM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 2 Author: Subject: Redact Date: 4/14/16, 5:13:11 PM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 3 Author: Subject: Redact Date: 4/18/16, 9:34:20 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 4 Author: Subject: Redact Date: 4/18/16, 10:43:26 AM


TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 5 Author: Subject: Redact Date: 4/18/16, 10:43:26 AM


TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 6 Author: Subject: Redact Date: 4/18/16, 10:43:26 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

 Number: 1 Author: Subject: Redact Date: 4/18/16, 10:46:27 AM

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

 Number: 2 Author: Subject: Redact Date: 4/18/16, 10:46:38 AM

CFI - See previous comments regarding identification numbers on p. NPDF 0004.

Number: 1 Author: Subject: Redact Date: 4/18/16, 9:37:40 AM


CFI – The size of NPDF's operations, locations, volumes, acreage, herd size, and production levels are protectable as commercial information customarily not shared publicly.

Number: 2 Author: Subject: Redact Date: 4/18/16, 9:38:32 AM

CFI – The size of NPDF's operations, locations, volumes, acreage, herd size, and production levels are protectable as commercial information customarily not shared publicly.

Number: 3 Author: Subject: Redact Date: 4/18/16, 9:38:51 AM

CFI – The size, location, of NPDF's operations, volumes, acreage, herd size, and production levels are protectable as commercial information customarily not shared publicly.

 Number: 1 Author: Subject: Redact Date: 4/18/16, 9:39:07 AM

CFI – The size of NPDP's operations, volumes, acreage, herd size, and production levels are protectable as commercial information customarily not shared publicly.

Number: 1 Author: Subject: Redact Date: 4/18/16, 9:40:31 AM

TS, CFI - Each and every map and diagram included in the NPDF documents constitutes a trade secret. This also extends to questions and answers and narrative descriptions of the layout of the facility and facility components. The layout of the farm crop production, building design, crop selection and location, livestock handling, and other information contained in these maps and diagrams is the result of years of development and refining to maximize the economic efficiency and productivity of the entire farm operation. These integral parts of the productive process of the production of certified organic milk by NPDF.

Disclosure of this information would impose competitive harm upon NPDF. It is information the type of which is customarily not disclosed publicly.

These comments apply to each and every map and diagram in the NPDF Documents.

Number: 2 Author: Subject: Redact Date: 4/18/16, 9:41:06 AM

TS - The specific products used in the operation of NPDFs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 3 Author: Subject: Redact Date: 4/18/16, 9:41:15 AM

TS, CFI - Each and every protocol included in the NPDF documents constitutes a trade secret. These protocols are the result of years of development and refining to maximize the economic efficiency and productivity of the entire farm operation, to ensure proper husbandry, safety, and regulatory compliance. These protocols are integral parts of the productive process of the production of certified organic milk by NPDF.

Disclosure of this information would impose competitive harm upon NPDF. It is information the type of which is customarily not disclosed publicly.

These comments apply to each and every protocol in the NPDF Documents.

Number: 4 Author: Subject: Redact Date: 4/18/16, 9:41:25 AM

TS, CFI - Each and every protocol included in the NPDF documents constitutes a trade secret. These protocols are the result of years of development and refining to maximize the economic efficiency and productivity of the entire farm operation, to ensure proper husbandry, safety, and regulatory compliance. These protocols are integral parts of the productive process of the production of certified organic milk by NPDF.

Disclosure of this information would impose competitive harm upon NPDF. It is information the type of which is customarily not disclosed publicly.

These comments apply to each and every protocol in the NPDF Documents.

Number: 5 Author: Subject: Redact Date: 4/18/16, 9:44:27 AM

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Number: 1 Author: Subject: Redact Date: 4/18/16, 10:56:46 AM

TS - The specific products used in the operation of NPDPs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 2 Author: Subject: Redact Date: 4/18/16, 9:44:27 AM

TS - The specific products used in the operation of NPDPs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 1 Author: ryanmiltner Subject: Redact Date: 4/14/16, 5:29:21 PM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 2 Author: Subject: Redact Date: 4/18/16, 9:44:03 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 3 Author: Subject: Redact Date: 4/18/16, 9:44:03 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 4 Author: Subject: Redact Date: 4/18/16, 9:44:03 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 5 Author: Subject: Redact Date: 4/18/16, 9:44:03 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 6 Author: Subject: Redact Date: 4/18/16, 9:45:08 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 7 Author: Subject: Redact Date: 4/18/16, 9:45:08 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

This page contains no comments

Number: 1 Author: Subject: Redact Date: 4/18/16, 9:45:47 AM

TS, CFI - Each and every map and diagram included in the NPFD documents constitutes a trade secret. The layout of the farm crop production, building design, crop selection and location, livestock handling, and other information contained in these maps and diagrams is the result of years of development and refining to maximize the economic efficiency and productivity of the entire farm operation. These integral parts of the productive process of the production of certified organic milk by NPFD.

Disclosure of this information would impose competitive harm upon NPFD. It is information the type of which is customarily not disclosed publicly.

These comments apply to each and every map and diagram in the NPFD Documents.

Number: 2 Author: Subject: Redact Date: 4/18/16, 9:45:47 AM

TS - The specific products used in the operation of NPFDs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 3 Author: Subject: Redact Date: 4/18/16, 9:46:51 AM

TS - The specific products used in the operation of NPFDs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 4 Author: Subject: Redact Date: 4/18/16, 9:46:51 AM

TS - The specific products used in the operation of NPFDs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 5 Author: Subject: Redact Date: 4/18/16, 9:47:07 AM

TS - The specific products used in the operation of NPFDs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 1 Author: Subject: Redact Date: 4/18/16, 9:47:33 AM

TS - The specific products used in the operation of NPDPs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 2 Author: Subject: Redact Date: 4/18/16, 9:47:33 AM

TS - The specific products used in the operation of NPDPs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.


Number: 3 Author: Subject: Redact Date: 4/18/16, 9:47:33 AM

TS - The specific products used in the operation of NPDPs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.


Number: 4 Author: Subject: Redact Date: 4/18/16, 9:47:33 AM

TS - The specific products used in the operation of NPDPs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.


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 Number: 1 Author: Subject: Redact Date: 4/18/16, 9:47:47 AM


TS - The specific products used in the operation of NPDPs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

 Number: 1 Author: Subject: Redact Date: 4/18/16, 11:20:11 AM

TS - The feed rations and specific products utilized by NPDFs are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

 Number: 1 Author: Subject: Redact Date: 4/18/16, 11:20:18 AM

TS - The feed rations and specific products utilized by NPDFs are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

 Number: 1 Author: Subject: Redact Date: 4/18/16, 11:20:26 AM

TS - The feed rations and specific products utilized by NPDFs are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 1 Author: Subject: Redact Date: 4/18/16, 9:49:33 AM

TS - The specific products used in the operation of NPDPs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 2 Author: Subject: Redact Date: 4/18/16, 10:41:15 AM

TS - The specific products used in the operation of NPDPs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 1 Author: Subject: Redact Date: 4/18/16, 9:50:07 AM

TS, CFI - Each and every protocol included in the NPDF documents constitutes a trade secret. These protocols are the result of years of development and refining to maximize the economic efficiency and productivity of the entire farm operation, to ensure proper husbandry, safety, and regulatory compliance. These protocols are integral parts of the productive process of the production of certified organic milk by NPDF.

Disclosure of this information would impose competitive harm upon NPDF. It is information the type of which is customarily not disclosed publicly.

These comments apply to each and every protocol in the NPDF Documents.

Number: 2 Author: Subject: Redact Date: 4/18/16, 9:50:07 AM

TS - The specific products used in the operation of NPDFs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 3 Author: Subject: Redact Date: 4/18/16, 9:50:07 AM

TS, CFI - Each and every protocol included in the NPDF documents constitutes a trade secret. These protocols are the result of years of development and refining to maximize the economic efficiency and productivity of the entire farm operation, to ensure proper husbandry, safety, and regulatory compliance. These protocols are integral parts of the productive process of the production of certified organic milk by NPDF.

Disclosure of this information would impose competitive harm upon NPDF. It is information the type of which is customarily not disclosed publicly.

These comments apply to each and every protocol in the NPDF Documents.

Number: 1 Author: Subject: Redact Date: 4/18/16, 9:50:32 AM

TS, CFI - Each and every protocol included in the NPDF documents constitutes a trade secret. These protocols are the result of years of development and refining to maximize the economic efficiency and productivity of the entire farm operation, to ensure proper husbandry, safety, and regulatory compliance. These protocols are integral parts of the productive process of the production of certified organic milk by NPDF.

Disclosure of this information would impose competitive harm upon NPDF. It is information the type of which is customarily not disclosed publicly.

These comments apply to each and every protocol in the NPDF Documents.

Number: 2 Author: Subject: Redact Date: 4/18/16, 9:50:42 AM

TS - The specific products used in the operation of NPDFs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 1 Author: Subject: Redact Date: 4/18/16, 9:51:51 AM

TS - The specific livestock management and husbandry protocols of NPDP are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 2 Author: Subject: Redact Date: 4/18/16, 9:51:51 AM

TS - The specific products used in the operation of NPDPs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 3 Author: Subject: Redact Date: 4/18/16, 10:40:40 AM

Number: 4 Author: Subject: Redact Date: 4/18/16, 10:40:40 AM

Number: 5 Author: Subject: Redact Date: 4/18/16, 9:52:51 AM

Specific contact information for Dr. Waldron is CFI.

Number: 1 Author: Subject: Redact Date: 4/18/16, 9:53:21 AM

TS - The specific livestock management and husbandry protocols of NPDP are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 2 Author: Subject: Redact Date: 4/18/16, 9:53:21 AM

TS - The specific livestock management and husbandry protocols of NPDP are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 3 Author: Subject: Redact Date: 4/18/16, 10:40:23 AM

TS - The specific livestock management and husbandry protocols of NPDP are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

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Number: 1 Author: Subject: Redact Date: 4/18/16, 9:53:52 AM

TS - The specific livestock management and husbandry protocols of NPDP are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 2 Author: Subject: Redact Date: 4/18/16, 9:53:52 AM

TS - The specific livestock management and husbandry protocols of NPDP are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 3 Author: Subject: Redact Date: 4/18/16, 9:53:52 AM

TS - The specific livestock management and husbandry protocols of NPDP are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 1 Author: Subject: Redact Date: 4/18/16, 9:54:18 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 2 Author: Subject: Redact Date: 4/18/16, 9:54:18 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 3 Author: Subject: Redact Date: 4/18/16, 9:54:18 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 4 Author: Subject: Redact Date: 4/18/16, 9:54:43 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 5 Author: Subject: Redact Date: 4/18/16, 9:54:43 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 6 Author: Subject: Redact Date: 4/18/16, 9:54:43 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 7 Author: Subject: Redact Date: 4/18/16, 9:55:03 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 8 Author: Subject: Redact Date: 4/18/16, 9:55:03 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 9 Author: Subject: Redact Date: 4/18/16, 9:55:03 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 1 Author: Subject: Redact Date: 4/18/16, 9:55:39 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 2 Author: Subject: Redact Date: 4/18/16, 9:55:39 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 3 Author: Subject: Redact Date: 4/18/16, 9:55:39 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 4 Author: Subject: Redact Date: 4/18/16, 9:55:39 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 5 Author: Subject: Redact Date: 4/18/16, 9:55:55 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 1 Author: Subject: Redact Date: 4/18/16, 9:56:17 AM

TS - The specific livestock management and husbandry protocols of NPDP are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

CFI – The size of NPDP’s operations, volumes, acreage, herd size, and production levels are protectable as commercial information customarily not shared publicly.

Number: 2 Author: Subject: Redact Date: 4/18/16, 9:56:17 AM

TS - The specific livestock management and husbandry protocols of NPDP are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

CFI – The size of NPDP’s operations, volumes, acreage, herd size, and production levels are protectable as commercial information customarily not shared publicly.

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Number: 1 Author: Subject: Redact Date: 4/18/16, 9:56:44 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 2 Author: Subject: Redact Date: 4/18/16, 9:56:44 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 3 Author: Subject: Redact Date: 4/18/16, 9:56:44 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 4 Author: Subject: Redact Date: 4/18/16, 9:57:10 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 5 Author: Subject: Redact Date: 4/18/16, 9:57:10 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 6 Author: Subject: Redact Date: 4/18/16, 9:57:10 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 7 Author: Subject: Redact Date: 4/18/16, 9:57:10 AM

TS - The specific livestock management and husbandry protocols of NPDF are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

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Number: 1 Author: Subject: Redact Date: 4/18/16, 10:39:58 AM

Number: 2 Author: Subject: Redact Date: 4/14/16, 6:37:27 PM

TS, CFI - Each and every map and diagram included in the NPDF documents constitutes a trade secret. The layout of the farm crop production, building design, crop selection and location, livestock handling, and other information contained in these maps and diagrams is the result of years of development and refining to maximize the economic efficiency and productivity of the entire farm operation. These integral parts of the productive process of the production of certified organic milk by NPDF.

Disclosure of this information would impose competitive harm upon NPDF. It is information the type of which is customarily not disclosed publicly.

These comments apply to each and every map and diagram in the NPDF Documents.

Number: 1 Author: Subject: Redact Date: 4/18/16, 10:39:16 AM

Number: 2 Author: Subject: Redact Date: 4/14/16, 6:42:33 PM

TS, CFI - Each and every narrative description of the specific equipment at and design of the NPDF facility included in the NPDF documents constitutes a trade secret. The equipment at and design of the NPDF facility results of years of development and refining to maximize the economic efficiency and productivity of the entire farm operation, to ensure proper husbandry, safety, and regulatory compliance. The facility design and equipment are integral parts of the productive process of the production of certified organic milk by NPDF.

Disclosure of this information would impose competitive harm upon NPDF. It is information the type of which is customarily not disclosed publicly.

These comments apply to each and every such narrative description in the NPDF Documents.

Number: 1 Author: Subject: Redact Date: 4/18/16, 10:38:59 AM

Number: 2 Author: Subject: Redact Date: 4/14/16, 6:42:48 PM

TS, CFI - Each and every protocol included in the NPDF documents constitutes a trade secret. These protocols are the result of years of development and refining to maximize the economic efficiency and productivity of the entire farm operation, to ensure proper husbandry, safety, and regulatory compliance. These protocols are integral parts of the productive process of the production of certified organic milk by NPDF.

Disclosure of this information would impose competitive harm upon NPDF. It is information the type of which is customarily not disclosed publicly.

These comments apply to each and every protocol in the NPDF Documents.

Number: 1 Author: Subject: Redact Date: 4/18/16, 10:38:41 AM

Number: 2 Author: Subject: Redact Date: 4/14/16, 6:42:55 PM

TS, CFI - Each and every protocol included in the NPFD documents constitutes a trade secret. These protocols are the result of years of development and refining to maximize the economic efficiency and productivity of the entire farm operation, to ensure proper husbandry, safety, and regulatory compliance. These protocols are integral parts of the productive process of the production of certified organic milk by NPFD.

Disclosure of this information would impose competitive harm upon NPFD. It is information the type of which is customarily not disclosed publicly.

These comments apply to each and every protocol in the NPFD Documents.

Number: 1 Author: Subject: Redact Date: 4/18/16, 10:38:26 AM

Number: 2 Author: Subject: Redact Date: 4/14/16, 6:43:04 PM

TS, CFI - Each and every protocol included in the NPFD documents constitutes a trade secret. These protocols are the result of years of development and refining to maximize the economic efficiency and productivity of the entire farm operation, to ensure proper husbandry, safety, and regulatory compliance. These protocols are integral parts of the productive process of the production of certified organic milk by NPFD.

Disclosure of this information would impose competitive harm upon NPFD. It is information the type of which is customarily not disclosed publicly.

These comments apply to each and every protocol in the NPFD Documents.

Number: 1 Author: Subject: Redact Date: 4/18/16, 10:38:26 AM

Number: 2 Author: Subject: Redact Date: 4/14/16, 6:43:10 PM

TS, CFI - Each and every protocol included in the NPDP documents constitutes a trade secret. These protocols are the result of years of development and refining to maximize the economic efficiency and productivity of the entire farm operation, to ensure proper husbandry, safety, and regulatory compliance. These protocols are integral parts of the productive process of the production of certified organic milk by NPDP.

Disclosure of this information would impose competitive harm upon NPDP. It is information the type of which is customarily not disclosed publicly.

These comments apply to each and every protocol in the NPDP Documents.

Number: 1 Author: ryanmiltner Subject: Redact Date: 4/13/16, 2:40:56 PM

Number: 2 Author: Subject: Redact Date: 4/14/16, 6:43:17 PM

TS, CFI - Each and every protocol included in the NPFD documents constitutes a trade secret. These protocols are the result of years of development and refining to maximize the economic efficiency and productivity of the entire farm operation, to ensure proper husbandry, safety, and regulatory compliance. These protocols are integral parts of the productive process of the production of certified organic milk by NPFD.

Disclosure of this information would impose competitive harm upon NPFD. It is information the type of which is customarily not disclosed publicly.


These comments apply to each and every protocol in the NPFD Documents.


Number: 1 Author: Subject: Redact Date: 4/18/16, 11:10:31 AM


TS - The specific products used in the operation of NPFDs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.


Various labels for products are contained in the NPFD Documents and are marked for redaction. Also included are Material Data Safety Sheets for such products.


These labels and MSDS are on pages NPFD 0139-0165, 0209-0214, 0229-0223, 0225-0239, 0299, 0301, 0310, 0312, 0356-0371, 0418-0433, and 0479-0494.


 Number: 1 Author: Subject: Redact Date: 4/18/16, 10:37:08 AM


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Number: 1 Author: Subject: Redact Date: 4/18/16, 11:03:49 AM


TS - The specific products used in the operation of NPDFs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.


Various labels for products are contained in the NPDF Documents and are marked for redaction. Also included are Material Data Safety Sheets for such products.


These labels and MSDS are on pages NPDF 139-165, 209-214, 229-223, 225-239, 277-316, 337-338, and 356-371.


Number: 2 Author: Subject: Redact Date: 4/18/16, 10:37:08 AM


Number: 3 Author: Subject: Redact Date: 4/18/16, 10:37:08 AM


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Number: 1 Author: Subject: Redact Date: 4/18/16, 10:37:08 AM


Number: 2 Author: Subject: Redact Date: 4/14/16, 6:46:41 PM


TS - The specific products used in the operation of NPDFs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.


TS, CFI - The various certifications included throughout the NPDF documents convey specific and identifiable products, formulations, and recipes that NPDF utilizes in the production of certified organic milk. This specific information is a valuable trade secret that relates to the know-how, methodologies, and protocols of the farm operations. In addition, this information is customarily not shared publicly.


These comments apply to each and every organic certification and summary organic plan in the NPDF Documents.


 Number: 1 Author: Subject: Redact Date: 4/18/16, 10:34:28 AM

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Number: 2 Author: Subject: Redact Date: 4/14/16, 6:47:16 PM

TS, CFI - Each and every protocol included in the NPFD documents constitutes a trade secret. These protocols are the result of years of development and refining to maximize the economic efficiency and productivity of the entire farm operation, to ensure proper husbandry, safety, and regulatory compliance. These protocols are integral parts of the productive process of the production of certified organic milk by NPFD.

Disclosure of this information would impose competitive harm upon NPFD. It is information the type of which is customarily not disclosed publicly.

These comments apply to each and every protocol in the NPFD Documents.

Number: 1 Author: Subject: Redact Date: 4/18/16, 10:33:50 AM

TS, CFI - The various labels and Material Data Safety Sheets included throughout the NPDP documents convey specific and identifiable products, formulations, and/or recipes that NPDP utilizes in the production of certified organic milk. This specific information is a valuable trade secret that relates to the know-how, methodologies, and protocols of the farm operations. In addition, this information is customarily not shared publicly.


These comments apply to each and every label, material data safety sheet, formulation and recipe in the NPDP Documents.


Number: 1 Author: Subject: Redact Date: 4/18/16, 10:33:36 AM


TS, CFI - Each and every protocol included in the NPDF documents constitutes a trade secret. These protocols are the result of years of development and refining to maximize the economic efficiency and productivity of the entire farm operation, to ensure proper husbandry, safety, and regulatory compliance. These protocols are integral parts of the productive process of the production of certified organic milk by NPDF.

Disclosure of this information would impose competitive harm upon NPDF. It is information the type of which is customarily not disclosed publicly.


These comments apply to each and every protocol in the NPDF Documents.


 Number: 1 Author: Subject: Redact Date: 4/18/16, 10:04:39 AM

 Number: 2 Author: Subject: Redact Date: 4/18/16, 10:04:39 AM

 Number: 1 Author: Subject: Redact Date: 4/18/16, 10:04:39 AM

TS - The specific livestock management and husbandry protocols of NPDP are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

 Number: 1 Author: Subject: Redact Date: 4/18/16, 10:04:39 AM

 Number: 2 Author: Subject: Redact Date: 4/18/16, 10:04:39 AM

Number: 1 Author: Subject: Redact Date: 4/18/16, 10:04:39 AM

TS - The specific livestock management and husbandry protocols of NPDP are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 2 Author: Subject: Redact Date: 4/18/16, 10:04:39 AM

TS - The specific livestock management and husbandry protocols of NPDP are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

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CFI-NPDF does not customarily disclose the findings of its inspections to outside entities. Rather NPDF does share its organic certifications.

 Number: 1 Author: Subject: Redact Date: 4/18/16, 10:04:39 AM

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TS - The specific products used in the operation of NPDPs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

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Number: 1 Author: Subject: Redact Date: 4/18/16, 10:07:19 AM

TS - The specific products used in the operation of NPDPs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 2 Author: Subject: Redact Date: 4/18/16, 10:07:19 AM

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Number: 1 Author: Subject: Redact Date: 4/18/16, 10:07:19 AM

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Number: 2 Author: Subject: Redact Date: 4/18/16, 10:07:19 AM

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Number: 1 Author: Subject: Redact Date: 4/18/16, 10:07:19 AM

TS, CFI - Each and every protocol included in the NPDF documents constitutes a trade secret. These protocols are the result of years of development and refining to maximize the economic efficiency and productivity of the entire farm operation, to ensure proper husbandry, safety, and regulatory compliance. These protocols are integral parts of the productive process of the production of certified organic milk by NPDF.

Disclosure of this information would impose competitive harm upon NPDF. It is information the type of which is customarily not disclosed publicly.

These comments apply to each and every protocol in the NPDF Documents.

Number: 1 Author: Subject: Redact Date: 4/18/16, 10:07:19 AM

TS, CFI - Each and every map and diagram included in the NPDF documents constitutes a trade secret. The layout of the farm crop production, building design, crop selection and location, livestock handling, and other information contained in these maps and diagrams is the result of years of development and refining to maximize the economic efficiency and productivity of the entire farm operation. These integral parts of the productive process of the production of certified organic milk by NPDF.

Disclosure of this information would impose competitive harm upon NPDF. It is information the type of which is customarily not disclosed publicly.

These comments apply to each and every map and diagram in the NPDF Documents.

Number: 1 Author: Subject: Redact Date: 4/18/16, 10:08:04 AM

TS, CFI - Each and every narrative description of the specific equipment at and design of the NPDF facility included in the NPDF documents constitutes a trade secret. The equipment at and design of the NPDF facility results of years of development and refining to maximize the economic efficiency and productivity of the entire farm operation, to ensure proper husbandry, safety, and regulatory compliance. The facility design and equipment are integral parts of the productive process of the production of certified organic milk by NPDF.

Disclosure of this information would impose competitive harm upon NPDF. It is information the type of which is customarily not disclosed publicly.

These comments apply to each and every such narrative description in the NPDF Documents.

Number: 1 Author: Subject: Redact Date: 4/18/16, 10:08:17 AM

TS, CFI - Each and every narrative description of the specific equipment at and design of the NPDP facility included in the NPDP documents constitutes a trade secret. The equipment at and design of the NPDP facility results of years of development and refining to maximize the economic efficiency and productivity of the entire farm operation, to ensure proper husbandry, safety, and regulatory compliance. The facility design and equipment are integral parts of the productive process of the production of certified organic milk by NPDP.

Disclosure of this information would impose competitive harm upon NPDP. It is information the type of which is customarily not disclosed publicly.

These comments apply to each and every such narrative description in the NPDP Documents.

Number: 1 Author: Subject: Redact Date: 4/18/16, 10:08:31 AM

TS, CFI - Each and every protocol included in the NPDF documents constitutes a trade secret. These protocols are the result of years of development and refining to maximize the economic efficiency and productivity of the entire farm operation, to ensure proper husbandry, safety, and regulatory compliance. These protocols are integral parts of the productive process of the production of certified organic milk by NPDF.

Disclosure of this information would impose competitive harm upon NPDF. It is information the type of which is customarily not disclosed publicly.

These comments apply to each and every protocol in the NPDF Documents.


Number: 1 Author: Subject: Redact Date: 4/18/16, 10:08:43 AM


TS, CFI - Each and every protocol included in the NPDF documents constitutes a trade secret. These protocols are the result of years of development and refining to maximize the economic efficiency and productivity of the entire farm operation, to ensure proper husbandry, safety, and regulatory compliance. These protocols are integral parts of the productive process of the production of certified organic milk by NPDF.


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These comments apply to each and every protocol in the NPDF Documents.


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 Number: 1 Author: Subject: Redact Date: 4/18/16, 10:12:27 AM


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Number: 1 Author: Subject: Redact Date: 4/18/16, 10:15:11 AM


Number: 2 Author: Subject: Redact Date: 4/18/16, 10:15:11 AM


Number: 3 Author: Subject: Redact Date: 4/18/16, 10:15:11 AM

CFI-NPDF does not customarily disclose the findings of its inspections to outside entities. Rather NPDF does share its organic certifications.

 Number: 1 Author: Subject: Redact Date: 4/18/16, 10:15:11 AM

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Number: 1 Author: Subject: Redact Date: 4/18/16, 10:15:11 AM

TS - The specific products used in the operation of NPDPs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 2 Author: Subject: Redact Date: 4/18/16, 10:15:35 AM

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Number: 3 Author: Subject: Redact Date: 4/18/16, 10:15:35 AM

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Number: 4 Author: Subject: Redact Date: 4/18/16, 10:15:35 AM

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 Number: 1 Author: Subject: Redact Date: 4/18/16, 11:12:03 AM

TS - The specific products used in the operation of NPDPs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

 Number: 1 Author: Subject: Redact Date: 4/18/16, 11:12:11 AM

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Number: 1 Author: Subject: Redact Date: 4/18/16, 11:14:51 AM

TS - The specific products used in the operation of NPDPs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 1 Author: Subject: Redact Date: 4/18/16, 11:15:00 AM


TS - The specific products used in the operation of NPDPs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 1 Author: Subject: Redact Date: 4/18/16, 10:30:38 AM


Number: 2 Author: Subject: Redact Date: 4/18/16, 10:30:38 AM


Number: 3 Author: Subject: Redact Date: 4/15/16, 11:21:02 AM

CFI-NPDF does not customarily disclose the findings of its inspections to outside entities. Rather NPDF does share its organic certifications.

 Number: 1 Author: Subject: Redact Date: 4/18/16, 10:29:34 AM

 Number: 2 Author: Subject: Redact Date: 4/18/16, 10:29:34 AM

 Number: 1 Author: Subject: Redact Date: 4/18/16, 10:29:07 AM

 Number: 2 Author: Subject: Redact Date: 4/18/16, 10:29:07 AM

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Number: 1 Author: Subject: Redact Date: 4/18/16, 10:29:07 AM

TS - The specific products used in the operation of NPDPs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 2 Author: Subject: Redact Date: 4/18/16, 10:26:00 AM

TS - The specific products used in the operation of NPDPs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 3 Author: Subject: Redact Date: 4/18/16, 10:26:00 AM

TS - The specific products used in the operation of NPDPs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 4 Author: Subject: Redact Date: 4/18/16, 10:26:00 AM

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Number: 1 Author: Subject: Redact Date: 4/18/16, 10:26:00 AM


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 Number: 1 Author: Subject: Redact Date: 4/18/16, 11:12:25 AM

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 Number: 1 Author: Subject: Redact Date: 4/18/16, 11:12:30 AM

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 Number: 1 Author: Subject: Redact Date: 4/18/16, 11:13:36 AM

TS - The specific products used in the operation of NPDFs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 1 Author: Subject: Redact Date: 4/18/16, 11:13:48 AM


TS - The specific products used in the operation of NPDPs farming operations are valuable trade secrets that relate to the know-how, methodology, and protocols of the farm operations.

Number: 1 Author: Subject: Redact Date: 4/18/16, 10:27:01 AM


Number: 2 Author: Subject: Redact Date: 4/18/16, 10:27:01 AM


Number: 3 Author: Subject: Redact Date: 4/18/16, 10:27:01 AM

CFI-NPDF does not customarily disclose the findings of its inspections to outside entities. Rather NPDF does share its organic certifications.

 Number: 1 Author: Subject: Redact Date: 4/18/16, 10:27:01 AM

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Number: 1 Author: Subject: Redact Date: 4/18/16, 10:28:09 AM

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Number: 3 Author: Subject: Redact Date: 4/18/16, 10:28:09 AM

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