



Animal and
Plant Health
Inspection
Service

Veterinary
Services

USDA APHIS VETERINARY SERVICES

NATIONAL ANIMAL HEALTH

MONITORING SYSTEM

National Animal
Health Monitoring
System

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CONFIDENTIAL BUSINESS INFORMATION PROTECTION

The following provides guidance to stakeholders of the USDA-APHIS-VS National Animal Health Monitoring System (USDA-NAHMS) regarding protection from disclosure of confidential business information that is collected or obtained from producers, study participants or other stakeholders via Freedom of Information Act (FOIA, 5 U.S.C. § 552) request. Exemption 4 of the FOIA applies to data collected or obtained by USDA-NAHMS, as it protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential."

Confidential Business Information (CBI) is defined in the Code of Federal Regulations (19 CFR 201.6, U.S. International Trade Commission) as "information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, the disclosure of which is likely to have the effect of either impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions, or causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information". The term Confidential Business Information includes "proprietary information" within the meaning of section 777(b) of the Tariff Act of 1930 (19 U.S.C. 1677f(b)).

In 2019 the U.S. Supreme Court issued an opinion addressing the meaning of the word "confidential" (see <https://www.justice.gov/oip/exemption-4-after-supreme-courts-ruling-food-marketing-institute-v-argus-leader-media>), for applying Exemption 4 of the FOIA to protect data from release or disclosure. In the wake of the Supreme Court ruling, the U.S. Department of Justice produced a "Step-by-Step Guide for Determining if Commercial or Financial Information Obtained from a Person is Confidential Under Exemption 4 of the FOIA" (see <https://www.justice.gov/oip/step-step-guide-determining-if-commercial-or-financial-information-obtained-person-confidential>). This algorithm is displayed below.

Based on the above decisions and definitions, USDA-NAHMS protects all data collected in any study as CBI from FOIA request under Exemption 4. This includes, but is not limited to, data collected via all questionnaires as well as results of biologic sampling. Note, however, that while denoting data as CBI protects producer information from a request under the FOIA, *it does not protect the information from subpoena or requests from other government agencies as deemed appropriate.*

USDA-NAHMS is a statistical unit under the Confidential Information Protection and Statistical Efficiency Act. Additional protections for NAHMS' studies such as those afforded as a CIPSEA study may also be applicable.

Implementation

The following processes and documents describe the implementation of applying Exemption 4 of the FOIA to USDA-NAHMS data collections.

Informed Consent and Producer Agreement

Informed Consent, as part of the USDA-NAHMS Producer Agreement, clearly explains to voluntary producer participants their rights, responsibilities, and limitations of each NAHMS collection. Standard USDA-NAHMS Informed Consent/Producer Agreements contains a statement explaining CBI and its protections. The Informed Consent/Producer Agreement also contains the justification for the request for its confidential treatment and serves as a certification in writing under oath that substantially identical information is not available to the public. The Informed Consent/Producer Agreement shall be approved as part of the OMB package for each collection for approval.

Email Communication

All email communication containing CBI shall be identified as such in the subject line. Further, there will be a statement in the body of the email identifying the contents as protected by CBI. The following statement will be included in the body of the email:

“This communication contains information protected from the Freedom of Information Act considered Confidential Business Information per 19 CFR 201.6.”

All attempts should be made to utilize non-electronic alternatives to transmit personal identifiable information (PII). Any personal identifiable information (PII) transmitted electronically shall be done so in an encrypted word document.

Storage

All CBI should be treated securely. It shall be stored under lock and key. Physical access to CBI is limited to those with need to know. CBI protected documents shall be destroyed based on the USDA-APHIS record management schedule.

