



**STOP 0232-Room 2753-S  
1400 Independence Avenue, SW.  
Washington, DC 20250-0232**

November 1, 2013

David Thomas  
American Dairy Products Institute  
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Dear Dave:

Thank you for your inquiry on the confidentiality of proprietary information shared electronically with our Dairy Market News service. We appreciate the role you and the American Dairy Products Institute have taken to safeguard proprietary business information for the companies your organization represents while helping Agricultural Marketing Service (AMS)-Market News review reporting procedures.

Confidentiality of proprietary information is a high priority for the United States Department of Agriculture (USDA), AMS, and its employees. In short, electronic data submitted to AMS-Market News receives the same protection as all statistical data submitted to USDA. Multiple laws and regulations protect data used in AMS-Market News publications. Below are some of the laws and regulations in place to protect your data from disclosure:

- Under section 7 U.S.C. § 1622(g) of the Agricultural Marketing Act of 1946 (AMA) (7 U.S.C. § 1621 et seq.), the Secretary is directed to collect and disseminate marketing information. Under section 2276 of the Department of Agriculture Organic Act (7 U.S.C. § 2201 et seq.), USDA must keep source information collected under the authority of section 1622(g) confidential. Further, anyone who uses such information for purposes other than data aggregation or discloses source information publicly is subject to penalties of up to one year in jail, fined up to \$10,000, or both. Section 2276 also makes such information “immune from mandatory disclosure of any type, including legal process.” 7 U.S.C. § 2276 (b)(2)(A).
- In addition, in Title 18 of the U.S. Code on Crimes and Criminal Procedure, section 1905 prohibits government employees from publishing, divulging, disclosing, or “making known in any manner or to any extent not authorized by law any information” received in the course of official duties or employment. Such information explicitly includes trade secrets, processes, operations, identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association. This section also subjects violators to fines and/or imprisonment for up to one year. 18 U.S.C. § 1905.
- Finally, under the Freedom of Information Act (FOIA) (5 U.S.C. 552), proprietary information submitted to the Dairy Market News Service is also protected. A FOIA request typically requires the release of agency records requested by any person, unless one or more of the nine exemptions enumerated in the Act apply. 5 U.S.C. § 552(b). Exemption 3 of FOIA exempts information prohibited from disclosure by another statute from mandatory disclosure if that statute “requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue.” 5 U.S.C. § 552(b)(3)(A)(i). In addition, Exemption 4 of FOIA exempts “trade

secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. § 552(b)(4).

Also, please note that there are protections for participants in the Dairy Products Mandatory Reporting Program (7 CFR part 1170). Section 1637b(c)(2) of the AMA and section 1170.12 of the Program’s regulations mandate that all reports must be aggregated in a manner that ensures that confidentiality is preserved regarding the identity of persons, including parties to a contract, and proprietary business information, unless required for enforcement purposes.

Please feel free to contact me with any further questions regarding this issue or concerning Market News.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph Gaynor". The signature is fluid and cursive, with the first name "Joseph" being the most prominent part.

Joseph Gaynor

Market Information Branch, Chief

Dairy Programs