

## DEPARTMENT OF AGRICULTURE CHIEF FREEDOM OF INFORMATION ACT OFFICER REPORT

**March 2014** 





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#### **EXECUTIVE SUMMARY**

The United States Department of Agriculture ("USDA") was founded by President Abraham Lincoln in 1862 and was quickly coined "The People's Department." At the time, more than half of all American either lived or worked on farms, compared with the two percent today. Despite this decrease, the USDA is still fulfilling Lincoln's vision of touching the lives of every American through its mission to provide leadership on food, agriculture, natural resources and related issues based on sound public policy, the best available science and efficient management.

To successfully accomplish its mission, the USDA operates more than 300 programs through an extensive network of Federal, State, and local cooperators and delivers more than \$170.5 billion in budgetary resources to public services worldwide. These programs affect every American, every day, by providing a safe and stable food supply, nutrition assistance, renewable energy, rural economic development, care for forest and conservation lands and global opportunities for farm and forest products. These programs also hold the answers to pressing global issues like the need for renewable energy, increasing crop yields to combat hunger, protecting the food supply and optimizing internal trade.

The Department of Agriculture's success is dependent on several core values, among them are the commitment to achieve transparency through proactive disclosures and increased usage of technology. Central to the Department of Agriculture's effort to increase transparency is its Freedom of Information Act ("FOIA") program. Operating under the direction of Ms. Cheryl L. Cook, Chief FOIA Officer, the USDA FOIA program consists of twenty FOIA offices all varying in size and scope at the mission area and agency level. These offices all collaborate to process the approximate 22,000 FOIA requests received annually at the Department of Agriculture.

The FOIA Service Center ("FSC") is the focal point for the USDA's FOIA program. The FSC provides coordination and ensures compliance with the FOIA. The FSC also processes requests and appeals on behalf of the Office of the Secretary ("OES"), Departmental Management ("DM") and the Office of the Chief Information Officer ("OCIO").

In Fiscal Year 2013, the FSC spearheaded several initiatives to increase transparency and streamline the Department of Agriculture's current FOIA process. First, the FSC continued to revamp the Department of Agriculture's FOIA website. The site now includes the Secretary's public schedule. In the spirit of cooperation, the site also includes a public facing portal permitting requesters to submit, track and receive records in connection with their requests from any of the Department of Agriculture's FOIA offices.

As for streamlining the Department of Agriculture's current FOIA process, the FSC in coordination with the Office of the General Counsel ("OGC") and the FOIA Training Subcommittee launched the Department of Agriculture's first FOIA module in its online training repository, AgLearn. Please see <a href="http://www.aglearn.usda.gov/">http://www.aglearn.usda.gov/</a>. Intended for all USDA personnel, the lite module explores the FOIA's statutory requirements, the USDA's FOIA process, key players in the USDA FOIA process, the importance of detailing our search efforts and the USDA's commonly cited FOIA exemptions.

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The FSC also purchased an e-discovery platform to complement the Department of Agriculture's existing enterprise-wide tracking database. The platform will allow the Department of Agriculture's FOIA professionals to substantially reduce their processing time as it allows users to list and identify documents and sources, identify duplicate and near duplicate documents and mails, ensure that redactions are consistent across released documents, search, categorize and rank documents for ease of review, and quickly cull voluminous records.

## Section I: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is the presumption of openness.

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply the presumption of openness.

## **FOIA Training:**

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period? If so, please provide the number of conferences or trainings held, a brief description of the topics covered, and an estimate of the number of participants from your agency who were in attendance. Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice? Provide an estimate of the percentage of your FOIA professionals who attended substantive FOIA training during this reporting period.

## **Internal Training**

On February 11, 2014, the Department FOIA Officer in coordination with our vendor for our enterprise-wide tracking database hosted a one day training seminar for the Department's FOIA officers and coordinators. The first portion of our seminar served as a refresher for those using the document management tool to review and redact responsive records. The second portion of our seminar introduced the Department's new e-discovery platform purchased in October 2013. The platform will substantially reduce processing times as it allows users to list and identify documents and sources, identify duplicate and near duplicate documents and emails, ensure redactions are consistent across released documents, search, categorize and rank documents for ease of review, and quickly cull voluminous record sets. The session included twenty-five participants most of whom were component agency FOIA officers.

Secondly, in response to our on-going discussion about "communicating with requesters in good faith" the Department FOIA Officer invited an Office of Government Information Services (OGIS) facilitator to share tips for avoiding and resolving disputes with requesters. The session was approximately one hour in length and included forty participants from USDA's FOIA community.



Thirdly, the Farm Services Agency (FSA), our largest component agency, provided substantive training via a series of teleconferences and videoconferences for many of its collateral duty FOIA professionals. FSA's training compliments guidance provided in its most recent procedural handbooks and encourages use of its agency's letter

Lastly, the Department is pleased to report it will conduct a two day training session this upcoming April on the application of USDA's commonly used FOIA exemptions in coordination with the Department of Justice. We anticipate at a minimum fifty participants for this session.

## **External Training**

Approximately 60% of our full time FOIA professionals also reported participation in one or more training courses provided by either the Department of Justice's Office of Information Policy ("DOJ/OIP") or the American Society of Access Professionals ("ASAP"). These courses included the Freedom of Information Act for Attorneys and Access Professionals, the Advanced Freedom of Information Act Seminar, the FOIA Litigation Seminar, the 6<sup>th</sup> Annual National FOIA Conference and the Food for Thought Seminars.

Component agencies also reported attendance at other FOIA outreach opportunities such as the Report Refresher Training, the E-Learning Training Modules Review, the FOIA Roundtable, as well as various other FOIA vendor conferences.

2. OIP has issued guidance that every agency should make core, substantive FOIA training available to all their FOIA professionals at least once each year. Provide your agency's plan for ensuring that such training is offered to all agency FOIA professionals by March 2015. Your plan should anticipate an upcoming reporting requirement for your 2015 Chief FOIA Officer Reports that will ask whether all agency FOIA professionals attended substantive FOIA training in the past year.

The FOIA Training Subcommittee launched its lite online FOIA training module in January 2014. The lite FOIA module is intended for all USDA personnel and details the FOIA's statutory requirement, the USDA's FOIA process, key players in the USDA's FOIA process, search requirements, commonly cited USDA FOIA exemptions and additional online FOIA resources.





The extended FOIA training module is more extensive in content and therefore intended for the USDA's FOIA professionals. In light of the length and level of detail of each chapter, the FSC will roll out the module in three phases. The first phase is devoted to procedural issues. Our planned launch for the first phase is the close of Fiscal Year 2014. The second phase emphasizes exemption application and is tentatively scheduled for launch in December 2014. The third and final phase will address appeals and other issues related to judicial review. The proposed launch date for the third phase is March 2015.

The FSC is also coordinating with the DOJ/OIP to provide interim substantive training for the USDA's FOIA professionals in April 2013. Training would be interactive and focus on the USDA's commonly cited exemptions. The Department will stream the courses for those unable to participate during the live sessions.

#### **Outreach:**

3. Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so, briefly discuss that engagement.

Yes. Several of our FOIA professionals reported participation in the DOJ's FOIA Requester Roundtable discussion regarding the use of technology in the administration of the FOIA with the requester community.

## **Discretionary Disclosures:**

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information even when the information might be technically exempt from disclosure under the FOIA. OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.



4. Does your agency have a formal process in place to review records for discretionary release? If so, briefly describe the process. If your agency is decentralized, please specify whether all components at your agency have a process in place for making discretionary releases.

Yes. The USDA's FOIA program is decentralized however all component agencies do have a process in place for making discretionary releases. Most of these processes require FOIA professionals to carefully review responsive records to determine whether a foreseeable harm would result if responsive records were released to the requester.

5. During the reporting period did your agency make any discretionary releases of otherwise exempt information?

Yes. Multiple USDA FOIA officers reported making discretionary releases of otherwise exempt information during Fiscal Year 2013.

6. What exemptions would have covered the information that was released as a matter of discretion?

Exemption 5 U.S.C. §§ 552 (b)(5) would have covered the information released as a matter of discretion.

7. Provide a narrative description or some examples of the types of information your agency released as a matter of discretion. If your agency was not able to make any discretionary releases of information, please explain why.

Some examples of records released as a matter of discretion are included in the table below.

APHIS	(b)(5)	Draft inspection reports.
FAS	(b)(5)	Draft briefing.
FNS	(b)(5)	Draft memorandum.

#### Other Initiatives:

8. Did your agency post all of the required quarterly FOIA reports for Fiscal Year 2013? If not please explain why and what your plan is for ensuring that such reporting is successfully accomplished for Fiscal Year 2014.

Yes. The USDA posted all the required quarterly FOIA reports for Fiscal Year 2013. However, due to a technical glitch now resolved the fourth quarterly report was not visible to the public on the E-FOIA.gov website.



9. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied. If any of these initiatives are online, please provide links in your description.

The USDA undertook several initiatives to ensure that the presumption of openness is being applied. A few of these initiatives are detailed below.

• In May 2013, the FSC in coordination with the Office of Communication ("OC") posted the Secretary's public schedule on the Department of Agriculture's FOIA website. Please see the following

http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=secretar y-schedule.xml.



• In July 2013, the National Institute of Food and Agriculture ("NIFA") began modernizing its grants system and developing a business plan to address the gaps in automation including document management, workflow and mobility. The goals of this initiative are to create a paperless environment, improve management and reporting, and increase transparency throughout the grant life cycle.

Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests

#### **Personnel:**

During Sunshine Week 2012 OPM announced the creation of a new job series entitled the Government Information Series, to address the work performed by FOIA and Privacy Act professionals. Creation of this distinct job series was a key element in recognizing the professional nature of their work.



1. Has your agency converted all of its FOIA professionals to the new Government Information Specialist Job series? If not, what proportion of personnel has been converted to the new job series? If not, what is your plan to ensure that all FOIA professional's position descriptions are converted?

No. Approximately 60% of the total number of professionals identified in the FY13 FOIA Annual Report process requests only as a collateral duty and therefore will not be converted to the Government Information Specialist series as their primary function falls under another series. Of the remaining 40% processing full-time (132 professionals), approximately 50% have been converted to the Government Information Specialist series. Those not yet converted are tentatively scheduled for conversion in Fiscal Year 2014.

## **Processing Procedures:**

2. For Fiscal Year 2013, did your agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing? If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

Yes. In Fiscal Year 2013, the average number of days to adjudicate requests for expedited processing was 1.75 days.

3. Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective, such as entering into agreements with other agencies or components on how to handle certain categories or types of records involving shared equities or as to avoid the need for consultation or referral altogether, or otherwise implementing procedures that speed up or eliminate the need for consultations. If so, please describe those steps.

Yes. Whenever feasible, the Department of Agriculture electronically transmits inter and intra agency consultations and referrals to ensure a more streamlined and efficient process. Our protocol also requires consultation and referral package to include the administrative tracking number, contact information for the individual sending the referral or consultation, the original request, a clean copy of all potentially responsive records, a redacted copy of all potentially responsive records if applicable and any additional background information that may assist with processing.

#### **Requester Services:**

4. Do you use e-mail or other electronic means to communicate with requesters when feasible?

Yes, when feasible USDA utilizes electronic mail for correspondence with requesters. In addition to electronic mail, USDA utilizes an enterprise wide tracking database and public access





link ("PAL") which allows our FOIA professionals to electronically transmit correspondence and responsive records to requesters.

5. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at NARA?

Yes. Our FOIA professionals include the following language in their final appeal letters: As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS in any of the following ways:

Office of Government Information Services National Archives and Records Administration 8601 Adelphi Road College Park, Maryland 20740-6001

E-mail: ogis@nara.gov

Web: https://ogis.archives.gov Telephone: 202-741-5770 Facsimile: 202-741-5769 Toll-free: 1-877-684-6448

6. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessment to find greater efficiencies, improving search processes, eliminating redundancy, etc.

The Department in coordination with the vendor providing our enterprise wide tracking system, performed a stress test to assess timeliness as well as trends in incoming requests. In light of the increasing number of complex requests involving the review of thousands of pages of records, the Department of Agriculture opted to purchase an e-discovery platform to complement our existing enterprise wide tracking database. The platform will allow our FOIA professionals to quickly list and identify documents and sources, identify duplicate and near duplicate documents and emails, search, categorize and rank documents for ease of review, view and group documents by custodian and significantly cull records.

## **Section III: Steps Taken to Increase Proactive Disclosures**

Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Describe here the steps your agency has taken both to increase the amount of material that is available on your agency website, and the usability of such information, including



providing examples of proactive disclosures that have been made during this past reporting period (i.e., from March 2013 to March 2014). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

## **Posting Material:**

1. Do your FOIA professional have a system in place to identify records for proactive disclosures? If so, describe the system in place. Provide examples of material that your agency has posted this past reporting period, including links to where this material can be found online.

Yes. The USDA remains committed to increasing proactive disclosures. The Department of Agriculture's FOIA professionals have been instructed to coordinate with their public liaisons, webmasters and 508 coordinators to post final opinions, agency policy statements, administrative staff manuals, frequently requested records and records likely to become the subject of subsequent requests in compliance with subsection (a)(2) of the FOIA.

Our FOIA professionals are also encouraged to use social media when feasible to quickly disseminate information. The chart below includes examples of proactive disclosures during the current reporting period.

Animal and Plant Health	http://www.aphis.usda.gov/newsroom/hot_issues/index.shtml
Inspection Service's HOT	
Issues Newsroom	
Farm Service Agency's New	http://www.fsa.usda.gov/FSA/webapp?area=home&subject=fmlp&topic=dflop&
Microloan Program	utm source=spotlight&utm medium=click&utm content=rotation2&utm camp
	aign=2013microloanspecial
Farm Service Agency's Beta	http://www.fsa.usda.gov/FsaMobile/
<b>Mobile Application</b>	
Food Safety and Inspection	http://www.youtube.com/watch?v=2tst5kGOhrw&list=PL1FB7B9DA0B767F87
Service's Recipes for Disaster	http://www.youtube.com/watch?v=_WFHAZa4PMg&feature=c4-overview-
Series on Youtube	vl&list=PL1FB7B9DA0B767F87
Food Safety and Inspection	https://twitter.com/USDAFoodSafety
Service's Twitter Account	
Food and Nutrition Service's	http://www.fns.usda.gov/report-finder
Report Finder	
Food and Nutrition Service's	http://www.fns.usda.gov/2013-wic-vendor-management-study
2013 Women, Infant and	
Children (WIC) Vendor	
Management Study	
Food and Nutrition Service's	http://www.fns.usda.gov/study-and-evaluation-plan-2013
2013 Study and Evaluation	
Plan	
Food and Nutrition Service's	http://www.fns.usda.gov/ORA/SNAPCharacteristics/default.htm
<b>Supplemental Nutrition</b>	
Assistance Program (SNAP)	
Community Characteristics.	
Food and Nutrition Service's	http://www.fns.usda.gov/pd/snapmain.htm
Program Data	http://www.fns.usda.gov/pd/cnpmain.htm
Grain Inspection, Packers and	http://www.gipsa.usda.gov/psp/enforcement.html

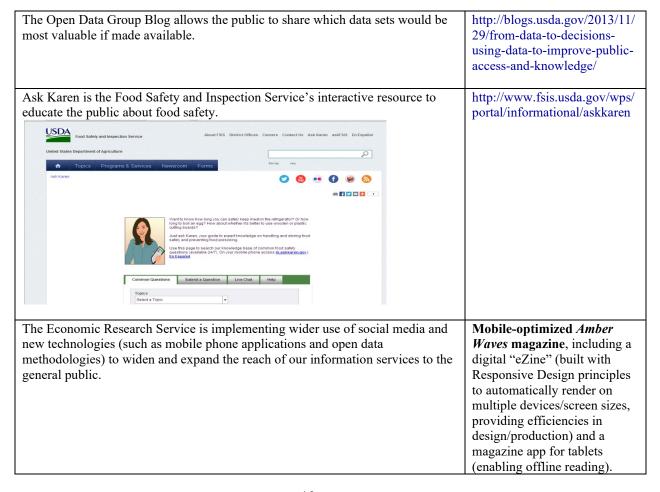
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Stockyards Administration's	
<b>Enforcement Actions</b>	
Natural Resources	https://twitter.com/USDA_NRCS/
<b>Conservation Service's Twitter</b>	
Account	
Rural Development's	http://www.rurdev.usda.gov/SupportDocuments/rdRuralCoop_NovDec2013.pdf
November – December 2013	
Rural Cooperatives Magazine	
<b>USDA's FY13 Operating Plans</b>	http://www.dm.usda.gov/foia/docs/USDA Operating Plan.pdf

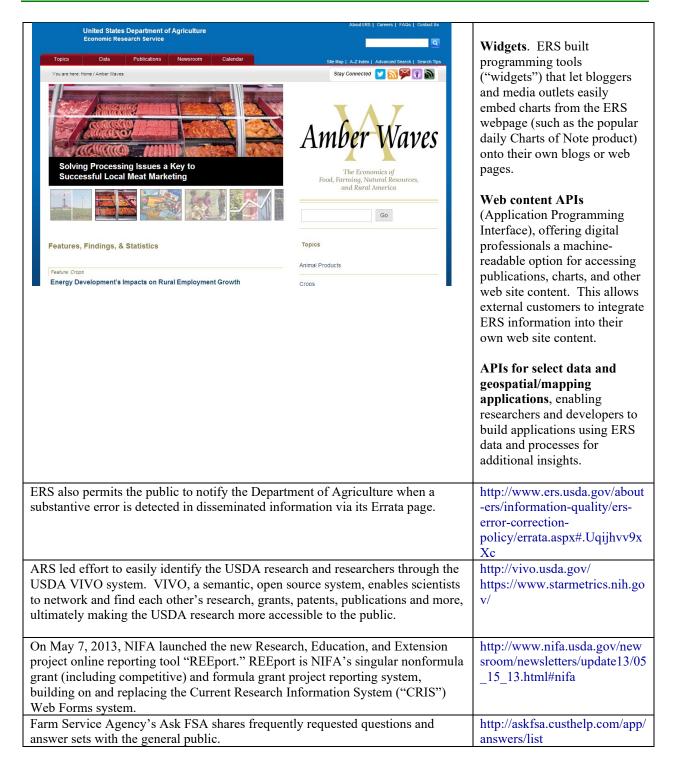
## **Making Posted Material More Useful:**

2. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities on the site, creating mobile applications, providing explanatory material, etc.? If so, provide examples of such improvements.

Yes. The USDA, through its Open Government initiatives as well as the work of our individual agency components, is actively working to make the information posted to our public facing websites more useful and accessible to the public. Some examples of such improvements are included in the chart below.







## 3. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If so, was social media utilized?

Yes. The social media tools shown provide an opportunity for the public to stay engaged, collaborate and learn more about the Department of Agriculture's many programs, policies, decisions and initiatives.



Tool	Link
USDA Blog	http://blogs.usda.gov/







Tool	Link		
USDA FaceBook	https://www.facebook.com/USDA		

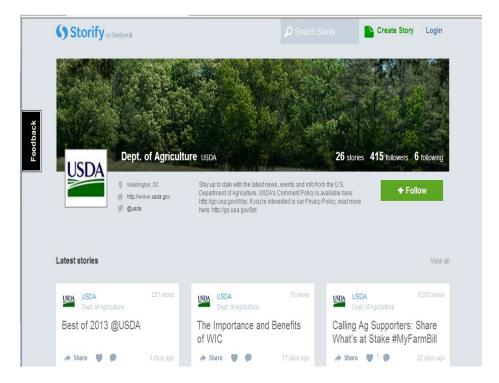


Tool	Link
USDA Flickr	http://www.flickr.com/photos/usdagov

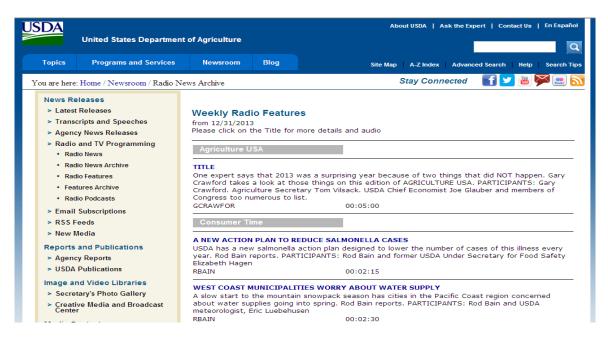




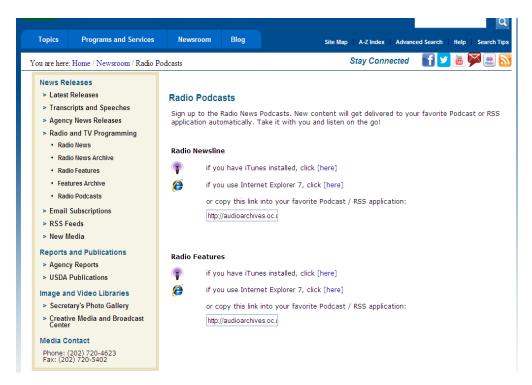
Tool	Link		
USDA Storify	http://storify.com/USDA		



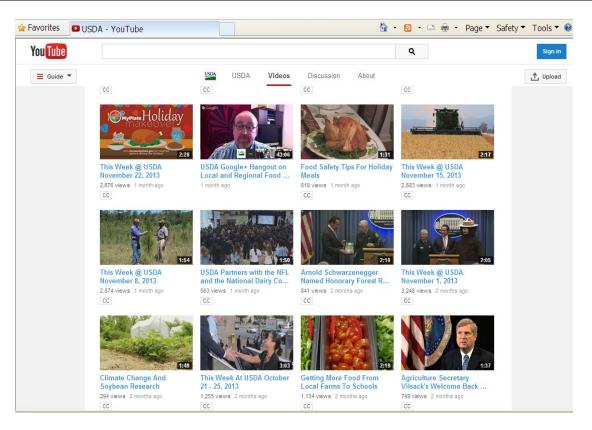
Tool	Link		
USDA Podcasts	http://audioarchives.oc.usda.gov/radiopodcasts.asp		







Link Tool USDA Youtube http://www.youtube.com/usda





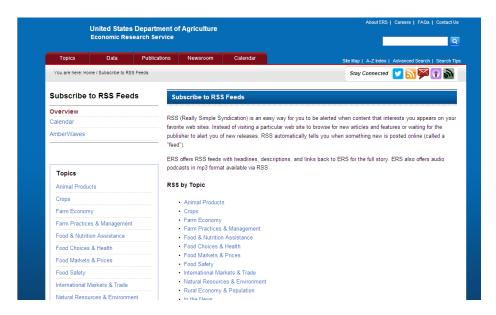
4. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are.

The USDA is committed to ensuring posted information is 508 compliant. Although 508 compliance issues are quickly resolved, it does lengthen the time required to post.

5. Describe any other steps taken to increase proactive disclosures at your agency.

As mentioned previously, the Department of Agriculture utilizes several popular social media tools such as blog posts, Twitter, Facebook, Flickr and Storify to assist with increasing proactive disclosures. All of these tools have allowed the Department of Agriculture to expand its public outreach and initiate dialogue with the general public.

One tool not yet mentioned is our Really Simple Syndication ("RSS") feeds of the latest USDA news articles or entries which can be sent to a user automatically. To subscribe, visit: http://www.usda.gov/wps/portal/usda/usdahome?navid=RSS FEEDS.



Section IV: Steps Taken to Greater Utilize Technology

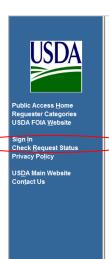
A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. Over the past several years agencies have reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2014, as we have done over the past years, the questions have been further refined and now also address different, more innovative aspects of technology use.



## **Online tracking of FOIA requests:**

1. Can a FOIA requester track the status of his/her FOIA request electronically? If yes, how is this tracking function provided to the public?

Yes. Requesters may submit and track their request(s) online to any USDA FOIA components using the USDA online web portal, Public Access Link (PAL) at https://efoia-pal.usda.gov/palMain.aspx.



USDA Freedom of Information Act (FOIA) Public Access Website

Welcome to the United States Department of Agriculture Freedom of Information Act Public Access Link. This portal provides members of the public with basic information on how to obtain access to records maintained by the USDA.

To Submit a FOIA Request Online

Register to create an online profile or to log in to your existing profile click "Sign In" on the left panel

Prior to submitting your request online review the following links

Agency FOIA Contacts - to submit your request online you will need to know which agency/office you want to submit to. FOIA requests for the USDA Forest Service are currently not accepted electronically. Click on Agency FOIA Contacts for the address to send the request in writing.

<u>USDA Agencies/Offices & Mission Areas</u> - these links will provide a detail description of each agency/office and their primary functions

FOIA Fee Schedule - review to understand how costs are calculated and charged based on a requester's category.

FOIA Reading Room - the records you are seeking may already be available in the agency reading room

Multiple Agency FOIA Requests - this submission site does not provide the ability to submit a single FOIA request to multiple agencies. You can however submit the same request to each agency using this site or send your request to the Departmental FOIA Officer to 355 E Street, SW, 10<sup>th</sup> Floor, Washington, DC 20024. If possible, include the names of the agencies, and the portion of the FOIA that applies to each agency.

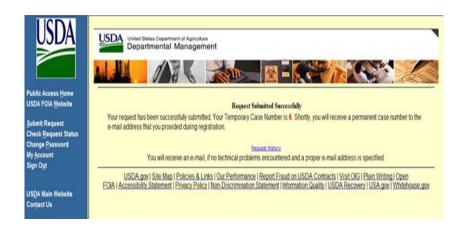
Description of Records - although you do not have to give a document's title, you should identify the documents that you want as specifically as possible to increase the likelihood that the agency will be able to locate them. Any facts you can furnish about the time, authors, events, subjects, and other details of the documents will be helpful to the agency in deciding where to search and in determining which records respond to your request, sungly ou and the government time and money. Please list, as clearly as possible, the name of the document(s), the type of document(s), and any other specifics you may have that will identify the documents you seek.

2. If so, describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is open or closed, while others will provide further details to the requester throughout the course of the processing, such as search commenced or documents currently in review. List the specific types of information that are available through your agency's tracking system.

Once registered, requesters must establish a password which will then allow them to (1) submit requests, check the status of their request(s) and download records responsive to their request(s).

With the submission of every request, an acknowledgement and tracking number are provided upon receipt.





PAL allows requesters to see when their requests are received, assigned, in-process and closed. Once records are reviewed, the requester can also download directly from the link.



3. In particular, does your agency tracking system provide the requester with an estimated date of completion for his or her request?

No. The PAL does not provide the requester with an estimated date of completion for requests.

4. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability.

Not applicable. The USDA currently provides online tracking of requests.

## Use of technology to facilitate processing of requests:

5. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or



# employing software that can sort and de-duplicate documents? If so, describe the technological improvements being made.

Yes. The Department of Agriculture is taking steps to utilize more advanced technology to facilitate overall FOIA efficiency. In October 2013, the Department of Agriculture purchased an e-discovery platform to complement our existing enterprise wide tracking database in light of the increasing number of voluminous requests. The platform will allow our FOIA professionals to quickly list and identify documents and sources, identify duplicate and near duplicate documents and emails, search, categorize and rank documents for ease of review, view and group documents by custodian, create a Vaughn index and significantly cull records.

6. Are there additional technological tools that would be helpful to achieving further efficiencies in your agency's FOIA program?

Yes. The FSC is currently researching technological tools that will assist the public and internal USDA users on improved search results. The search capability solutions provided by this vendor will allow the public to search for documents across web sites using keywords, search for key words within PDF documents and conduct searches for specific terms that result in targeted answers rather than an interpretation of keyword search.

# Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests and appeals. For the figures required in this Section, please use those contained in the specified sections of your agency's 2012 Annual FOIA Report.

- 1. Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested. If your agency does not utilize a separate track for processing simple requests, answer the question below using the figure provided in your report for your non-expedited requests.
  - a. Does your agency utilize a separate track for simple requests?

Yes. USDA utilizes a separate track for simple requests.

b. If so, for your agency overall, for Fiscal Year 2013, was the average number of days to process simple requests twenty working days or fewer?



Yes. In Fiscal Year 2013, the average number of days to process a simple request was 15.52 days.

c. If your agency does not track simple requests separately, was the average number of days to process non- expedited requests twenty working days or fewer?

Not applicable. The USDA tracks simple requests separately.

- 2. Sections XII.D.(2) and XII.E.(2) of your agency's Annual Report, entitled "Comparison of Number of Requests/Appeals from Previous and Current Annual Report Backlogged Requests/Appeals," show the numbers of any backlog of pending requests or pending appeals from Fiscal Year 2012 as compared to Fiscal Year 2011. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In addition, Section VII.E, entitled "Pending Requests Ten Oldest Pending Requests," and Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," from both Fiscal Year 2012 and Fiscal Year 2013 should be used for this section.
  - a. If your agency had a backlog of requests at the close of Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012?

No. The overall number of backlogged requests in the Department of Agriculture increased by 34.83% in Fiscal Year 2013.

	Number of Backlogged	Number of Backlogged
	Requests	Requests
	as of End of the Fiscal Year	as of End of the Fiscal
	from	Year from
	Previous Annual Report	Current Annual Report
USDA	741	1137
OVERALL	/41	1137

b. If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012?

No. The overall number of backlogged administrative appeals in the Department of Agriculture increased by 4.12% in Fiscal Year 2013.

	Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report		
USDA OVERALL	163	170		

c. In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012? If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2012 Annual FOIA report. If you had less than ten total oldest requests to close, please



#### indicate that.

No. Although the Department of Agriculture did not close its overall ten oldest pending requests from the previous fiscal year, 70% of our component agencies reported closing out five or more of its ten oldest pending requests. A total of four of our overall oldest pending requests were closed.

d. In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012? If no, please provide the number of these appeals your agency was able to close, as well as the number of appeals your agency had in Section VI. C. (5) of your Fiscal Year 2012 Annual FOIA Report.

No. The Department of Agriculture closed three out of its ten oldest administrative appeals reported in Fiscal Year 2012. The total number of administrative appeals listed in VI.C.(5) is seventy-six.

e. In Fiscal Year 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2012? If no, please provide the number of these consultations your agency did close, as well as the number of pending consultations your agency listed in Section XII.C. of your Fiscal Year 2012 Annual FOIA Report.

Yes. The Department of Agriculture did close its ten oldest consultations from the previous fiscal years.

If you answered "no" to any of the above questions, describe why your agency was not able to reduce backlogs and/ or close the ten oldest pending requests, appeals, and consultations. In doing so answer the following questions then include any additional explanation:

## Request and/or Appeal Backlog:

a. Was the lack of a reduction in the request and/ or appeal backlog a result of an increase in the number of incoming requests or appeals?

Yes. The overall lack of reduction in our appeals can be attributed to an increase in the number of incoming appeals. In Fiscal Year 2013, the Department of Agriculture received seventeen more appeals.

b. Was the lack of a reduction in the request and/ or appeal backlog caused by a loss of staff?

No. The overall lack of reduction cannot be attributed to a loss in staff.

c. Was the lack of a reduction in the request and/or appeal backlog caused by an increase in the complexity of the requests received?



Yes. All component agencies reported a significant increase in the complexity of requests received.

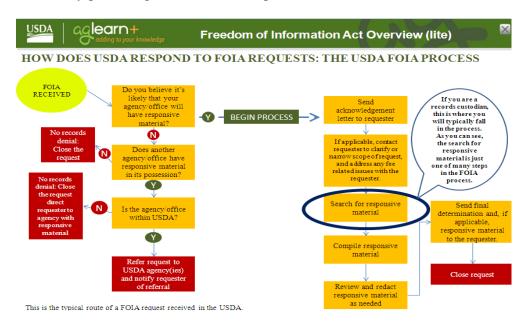
## d. What other causes, if any, contributed to the lack of a decrease in the request backlog?

A few components reported agency re-organizations as a contributing factor to the decrease in the backlog. During these re-organizations, the FOIA function would invariably shift from one professional with FOIA experience to another with varying levels of FOIA experience.

Another factor contributing to the lack in decrease in backlog was the influx of complex requests received in August and September related to the sequestration and the Department of Agriculture's budget and shutdown plans.

## e. Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals and consultations from Fiscal Year 2012.

The largest obstacle faced by our FOIA professionals is the untimely return of records from the Department of Agriculture's records custodians. In an effort to expedite this stage in processing, the FSC in coordination with the FOIA training subcommittee and the OGC developed a few slides in the lite training module which emphasized the FOIA's statutory requirements and the importance of timely providing records to FOIA professionals.





WHAT MUST YOU DO TO ENSURE THE SUCCESS OF USDA'S FOIA PROGRAM: Statutory Requirements for Processing Requests

If receiving a FOIA or if asked to compile records, <u>immediately</u> consult with your agency's FOIA officer for instruction. <u>Click here for the link of USDA agency FOIA Officers</u>.

Keep in mind that USDA must respond to FOIA requesters within <u>20</u> working days. In some situations an extension can be granted. Your FOIA officer will let you know if an extension was granted.

If agencies do not make a determination within the statutory period, your FOIA Officer may be unable to charge fees for search, review, or duplication costs but more importantly, the requester then has the right to seek judicial redress. Please note that a lawsuit may result in a court awarding attorneys fees and costs to the FOIA requester -- and those come from agency's appropriations.

A quick return of records also allows for an adequate review of records. <u>Timeliness is important!</u> If for any reason your search is delayed, <u>immediately</u> contact your agency FOIA officer

f. If your agency was unable to close any of its ten oldest requests or appeals because you were waiting to hear back from other agencies on consultations sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.

Not applicable. There were no external consultations restricting USDA from closing any of its ten oldest requests or appeals.

Plans for closing of Ten Oldest Pending Requests, Appeals, and Consultations and Reducing Backlogs:

3. If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close those "ten oldest" requests, appeals and consultations during Fiscal Year 2014.

The Department of Agriculture's ten oldest pending requests and appeals originate primarily in one component. This particular component has restructured its team to include an administrative position. The professional in the administrative position will log, finalize and track correspondence, follow up with records custodians regarding outstanding search requests, address fees and other logistical issues with requesters and prepare weekly reports in an effort to alleviate the team's limited number of FOIA processors reviewing and redacting records.

This component will also purchase additional licenses for the e-discovery platform recently purchased by the Department in light of the increasing number of complex requests received. As mentioned previously, the platform will allow FOIA professionals to substantially reduce their processing time in that it allows users to list and identify documents and sources, identify duplicate and near duplicate documents and mails, ensure that redactions are consistent across

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released documents, search, categorize and rank documents for ease of review, and quickly cull voluminous record sets.

4. If your agency held a backlog of more than 1000 pending requests and did not reduce that backlog in Fiscal Year 2013, provide your agency's plan for achieving backlog reduction in the year ahead.

In FY2012, the USDA's overall backlog included less than 1,000 requests. However, in FY2013 there was no reduction in the overall backlog. The Department FOIA Officer will begin monitoring and assessing each component's backlog and then provide an overall backlog reduction report at the Department of Agriculture's monthly Council meetings beginning in January. Those components unable to demonstrate progress in the reduction of their backlog by April 2013, will also meet with the Department FOIA Officer to either refine or revise the current backlog reduction plan.

## **Interim Responses:**

OIP has issued guidance encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information.

5. Does your agency have a system in place to provide interim responses to requesters when appropriate?

Yes. Our agency does have a system in place to provide interim responses to requesters when appropriate.

6. If your agency had a backlog in Fiscal Year 2013, please provide an estimate of the number or percentage of cases in the backlog where substantive, interim responses were provided during the fiscal year, even though the request was not finally closed.

Interim responses were provided for approximately 50% of the cases in the Department of Agriculture's backlog.

#### **Use of FOIA's Law Enforcement "Exclusions"**

In order to increase transparency regarding the use of the FOIA's statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to "treat the records as not subject to the requirements of [the FOIA]," 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

1. Did your agency invoke a statutory exclusion during Fiscal Year 2013?

No. USDA did not invoke 5 U.S.C. § 552(c)(1), (2) or (3) in Fiscal Year 2012.



## 2. If so, what was the total number of times exclusions were invoked?

Not applicable. USDA did not invoke any statutory exemptions.

## **Spotlight on Success**

Out of all the activities undertaken by your agency since March 2013 to increase transparency and improve FOIA administration, describe here one success story that you would like to highlight as emblematic of your agency's efforts. The success story can come from any one of the five key areas.

## **USDA's Spotlight on Success:**

The USDA is pleased to report it made substantial strides in decreasing its overall average number of days to process both simple and complex requests. The overall average number of days to process simple requests in Fiscal Year 2013 is 15.52 days which is a 53.14% decrease from the previous Fiscal Year. The overall average number of days to process complex requests is 43.38 days which marks a 43.22% decrease from Fiscal Year 2012.

Fiscal Year 2013

	SIMPLE			COMPLEX				
	*Medi an Numb er of Days	#Average Number of Days	Lowest Number of Days	Highest Number of Days	*Median Number of Days	#Average Number of Days	Lowest Number of Days	Highest Number of Days
				ı	ı		ı	
USDA OVERALL	14	15.52	1	647	19	43.38	1	1,162

Fiscal Year 2012

		SIMPLE				COMPLEX			
	*Median Number of Days	#Average Number of Days	Lowest Number of Days	Highest Number of Days	*Median Number of Days	#Average Number of Days	Lowest Number of Days	Highest Number of Days	
USDA FY2012 OVERALL	16	33.12	0	954	25	76.4	0	863	

The USDA is also pleased to report the launch of its first lite FOIA module in its online training repository, AgLearn. The product is the result of collaboration between the FOIA Service

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Center, the Office of the General Counsel and the FOIA Training Subcommittee and is intended for all USDA personnel as it addresses common concerns among our FOIA community.

Among other items, the module details the FOIA's statutory requirement, the USDA's FOIA process, key players in the USDA's FOIA process, the importance of the timely delivery of records to FOIA Officers, search requirements, commonly cited USDA FOIA exemptions and additional online FOIA resources. Below for review are a few slides from our lite module.



#### What is FOIA?

The <u>Freedom of Information Act (FOIA)</u> is a federal disclosure statute which grants access to federal **agency records** when a proper FOIA request is filed.

"Agency records" are any documents created or obtained by agency employees. These documents include but are NOT limited to the following examples:

- 1. Policies, Handbooks and Manuals
- 2. Directives and other Guidance
- 3. Letters
- 4. Email Correspondence
- 5. Data (alpha-numeric and geo-spatial)
- 6. Memorandums, Briefings and Reports
- Calendars
- 8. Photos, Slides, Audio and Video Recordings and Spatial Imagery
- 9. Visitor's Logs
- 10. Handwritten Notes
- 11. Drafts (electronic or hard copy)



#### **USDA** aalearn+ Freedom of Information Act Overview (lite) HOW DOES USDA RESPOND TO FOIA REQUESTS: THE USDA FOIA PROCESS FOIA Do you believe it's RECEIVED likely that your If you are a records custodian, Send agency/office will acknowledgement this is where you have responsive **BEGIN PROCESS** letter to requester will typically fall in the process. 0 As you can see, If applicable, contact the search for requester to clarify or narrow scope of request Close the Does another 0 responsive request agency/office have materialis just and address any fee related issues with the responsive material one of many steps in the FOIA in its possession? requester. process. Y nial: Close

Search for responsive

material

Compile responsive material

Review and redact responsive material as needed determination and, if

applicable, responsive material to the requester.

Close request

This is the typical route of a FOIA request received in the USDA.

Is the agency/office

within USDA?

USDA agency(ies)

and notify requester of referral

N



WHAT MUST YOU DO TO ENSURE THE SUCCESS OF USDA'S FOIA PROGRAM: Statutory Requirements for Processing Requests

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#### WHAT MUST YOU DO TO ENSURE THE SUCCESS OF USDA'S FOIA PROGRAM: Adequate Searches

It is critical that you document your search efforts as it gives insight as to whether an adequate and reasonable search was conducted. For that reason, if asked to conduct a search, we ask that you document your answers to the following questions by taking written notes, filling out a search form provided by your FOIA office, or sending an email describing your efforts in detail to your FOIA officer:

- Who performed the search(es)?
  - Did you perform the search(es)?
  - $Did \ a \ member \ of \ your \ staff per form \ the \ search (es) \ on \ your \ behalf?$
- Did you rely on your communication or telecommunication server to pull the records?
- Which system or files did you search?
  - Did you review your own and/or others individuals email account? If so, did you review inbox, outbox, subfolders and draft
  - Did you review your agency's database(s)?
  - Did you review your agency's file cabinet drawer(s)?
- iii. Howlong did it take you to conduct your search(es)?
  - When did you commence and end your search(es)

    - Did you complete your search(es) in a few hours or did you search take multiple days, weeks or months?
  - iii. How many hours did you spend reviewing files?
- iv. Did you use key words to conduct your search(es)?
  - i. How did you arrive at the key words used to perform your search(es)?
  - Do you believe other key words not used would uncover a dditional records?
- How many agency records did you uncover during your search(es)?
- Why was the search(es) conducted adequate?
  - Do you believe there are additional records in another USDA agency? If so which USDA service agency?
  - Do you believe there are additional records in another federal agency? If so which federal agency?

### Research, Education and Economics' (REE) Spotlight on Success:

REE provides FOIA program support services to the Agricultural Research Service (ARS), Economic Research Service (ERS), the National Agricultural Statistics Service (NASS), National Institute of Food and Agriculture (NIFA). The following spotlights on success are from agencies serviced by REE.

#### <u>ARS</u>

ARS leads the effort to easily identify USDA research and researchers through the USDA VIVO system. VIVO, a semantic, open source system, enables scientists to network and find each other's research, grants, patents, publications and more, ultimately making USDA research more accessible to the public. Currently, the system is available within USDA and contains content drawn from the five targeted science agencies: ARS, ERS, NASS, NIFA and Forest Service. USDA VIVO includes over 6,000 scientists and researchers, over 47,000 publications, patents and reports, and more than 6,000 research projects. New content is ingested several times each year and is always expanding. The USDA VIVO system is accessible via the USDA network at http://vivo.usda.gov/. Data from USDA VIVO will be shared with other systems such as STAR METRICS https://www.starmetrics.nih.gov/, a partnership between science agencies and research institutions, created to document the outcomes of science investments to the public.





#### ERS

ERS is implementing wider use of social media and new technologies (such as mobile phone applications and open data methodologies) to widen and expand the reach of our information services to the general public. ERS has been a leading innovator in support of the Administration's Digital Strategy and Open Data initiatives, providing a wealth of products—including data and resources—designed to enhance delivery of information and services. In FY 2013, ERS released several new tools designed to help consumers more easily access critical programs and stimulate further innovation:

**Mobile-optimized** *Amber Waves* magazine, including a digital "eZine" (built with Responsive Design principles to automatically render on multiple devices/screen sizes, providing efficiencies in design/production) and a magazine app for tablets (enabling offline reading).





**Widgets**. ERS built programming tools ("widgets") that let bloggers and media outlets easily embed charts from the ERS webpage (such as the popular daily Charts of Note product) onto their own blogs or web pages.

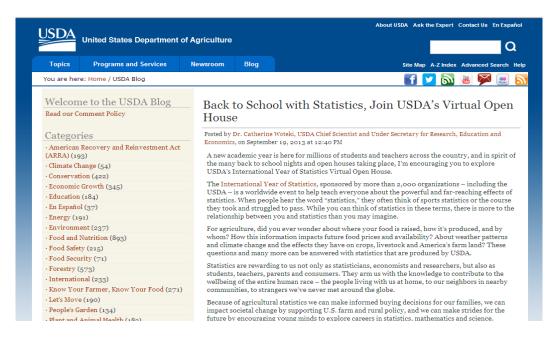
Web content APIs (Application Programming Interface), offering digital professionals a machine-readable option for accessing publications, charts, and other web site content. This allows external customers to integrate ERS information into their own web site content.

**APIs for select data and geospatial/mapping applications**, enabling researchers and developers to build applications using ERS data and processes for additional insights.

The new products and tools extend and expand access to ERS research findings, market outlook, and data—making the Agency's information more readily available to the general public. These items were a first among USDA (and many government agencies), enabling USDA to meet its 12-month Digital Government Strategy goals to ensure high-value services and systems are available anywhere, anytime, and on any device.

#### NASS

In September 2013, NASS hosted an open house event jointly with USDA's Economic Research Service and World Agricultural Outlook Board to celebrate the International Year of Statistics. The event allowed attendees the opportunity to learn how statistics enhance the work of USDA, see examples of the current and historical work of USDA statistical agencies, and ask questions they may have for officials and staff about the information the agencies produce. To coincide with the event and increase transparency, Dr. Catherine Woteki, USDA Chief Scientist and Under Secretary for Research, Education and Economics posted an entry on the USDA Blog encouraging the public to explore USDA's many statistical products and services, "Back to School with Statistics, Join USDA's Virtual Open House."





## • NIFA Spotlight on Success

On May 7, 2013, NIFA launched the new Research, Education, and Extension project online reporting tool "REEport." REEport is NIFA's singular nonformula grant (including competitive) and formula grant project reporting system, building on and replacing the Current Research Information System (CRIS) Web Forms system. REEport also implements the Research Performance Progress Report (RPPR), a standard progress report format that all federal research agencies are required to use. The RPPR resulted from an initiative of the Research Business Models (RBM) Subcommittee of the Committee on Science, a committee of the National Science and Technology Council. REEport features an all-electronic workflow. Previously, NIFA staff used a paper process to distribute proposals to national program leaders for review and decisions on formula projects. REEport allows NIFA staff to receive, distribute, and return to grantees all formula research project data and associated approvals electronically. This robust notification system sends automatic email notifications of a project's approval and progress monitoring status to everyone connected to the project.