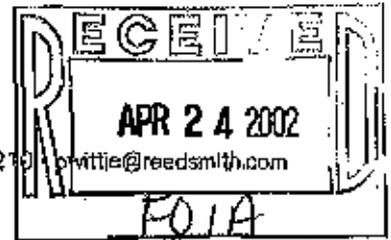


ReedSmith

02-402



Patricia H. Wittie • 202.414.9219 • pwittie@reedsmith.com

BEST COPY AVAILABLE

April 24, 2002

PPA
CS

04-23-02
05-22-02

VIA FACSIMILE

Michael Marquis
Animal & Plant Health Inspection Service
Acting FOIA Officer
4700 River Road, Unit 50
Riverdale, MD 20737-1232
FAX: 301-734-5941

Kenneth E. Cohen
Asst. General Counsel/FOIA Officer
General Law Division
Room 3311 – South Building
Washington, D.C. 20250-1400
FAX: 202-720-5837

Brian Townsend
U.S. Dept. of Agriculture
FOIA/PA Officer
Room 0612 South Bldg.
Washington, D.C. 20250
FAX: 202-720-2755

Carol Martin
USDA Office of Inspector General
FOIA/PA Officer
Room 29-E Whitten Building
Washington, D.C. 20260
FAX: 202-690-6805

RE: FOIA Request

Ladies and Gentlemen:

This is a Freedom of Information Act Request pursuant to 5 USC 552 *et seq.* and USDA regulations at 7 CFR Part 1.

This request seeks information relating to the USDA/APHIS Qualified Manufacturers' List for Primary Grown Non-Viable Dried Yeast ("QML"). A sample of the QML is attached here as Exhibit A. Previous (or subsequent) versions of this QML may have had different titles, referring to different types of yeast. We ask that you consider this request to be inclusive of all versions of the QML, regardless of the precise title used on any of the versions.

"USDA/APHIS" means the Animal & Plant Health Inspection Service (APHIS), its agents, delegees, subcontractors, representatives, employees, consultants, or others (including fruitfly rearing facilities, outside laboratories, or other independent organizations) who have acted on behalf of, or at the request of, APHIS in any matter relating to the QML.

We request the following documents:

1301 K Street, N.W.	Delaware
Suite 1100 - East Tower	New Jersey
Washington, D.C. 20005-3373	New York
202.414.8200	Pennsylvania
Fax 202.414.9299	United Kingdom
	Virginia
	Washington, DC

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DCU0020271.01-PH0718
Apr 24 08:05 AM

1. All versions or iterations of the QML since its inception.
2. All justifications for establishment and/or continuation of the QML, as required by 48 CFR 9.202(a) or previous versions of that regulation.
3. All specifications, qualification requirements, and/or evaluation criteria used by USDA/APHIS to evaluate applicants who seek to be included on the QML (hereafter "Applicants") and their products. This should include all versions of these specifications, qualification requirements and evaluation criteria, dated after 1994, including changes or amendments.
4. All data, evaluations, reports, analyses, studies, or other information generated by, used by, or relied upon by USDA/APHIS in developing or amending the specifications, qualification requirements and evaluation criteria provided in response to Request No. 3 above.
5. All test procedures utilized by or on behalf of USDA/APHIS to evaluate Applicants and their products.
6. All applications and supporting documentation submitted by organizations or entities seeking to be included on the QML since 1994; and all correspondence to and from persons, organizations or entities which have asked for information about the QML and its qualification requirements, irrespective of whether those persons, organizations or entities actually submitted an application.
7. All evaluations, reports, test results, laboratory analyses, studies, correspondence, memoranda, conclusions, decisions and determinations (hereafter "evaluations and determinations") prepared by or on behalf of USDA/APHIS in response to the applications submitted by Applicants since 1994. Please include all supporting documentation for these evaluations and determinations, including without limitation raw test data, correspondence and memoranda.
8. All data and documents dated after 1994 that relate to, refer to, describe or discuss testing of yeast samples for the QML, including without limitation test results, re-tests, test procedures, changes in test procedures, improper testing, inconsistent testing, improper test results, inconsistent test results, changes in test results, analysis of test results, differences in test results among yeasts provided by different potential offerors, differences in test results among different rearing facilities. For purposes of this request, "test" includes those qualification procedures or requirements that were utilized by or on behalf of USDA/APHIS to evaluate applicants for inclusion on the QML, as well as qualification procedures or requirements that were considered but rejected for use in such evaluations.

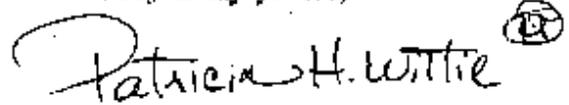
9. All evaluations, reports, test results, laboratory analyses, studies, correspondence, memoranda, conclusions, decisions and determinations (hereafter "evaluations and determinations") that were generated by, used by, or relied upon by USDA/APHIS in (a) making changes in the QML specifications or qualification criteria and (b) evaluating changes in the products or manufacturing processes of Applicants previously approved for inclusion on the QML.
10. All correspondence to and from Applicants since 1994, which relates to or refers to the Applicant's listing, or denial of listing, on the QML; or to revisions, amendments, or other changes in the Applicants' products, manufacturing processes, or specifications.
11. All determinations that it is unreasonable to specify the standards for qualification which a prospective offeror must satisfy, if any, submitted pursuant to 48 CFR 9.202(b) or its predecessors; and all waivers provided by the head of the USDA procuring activity based on such determinations, if any, pursuant to 48 CFR 9.202(b) or its predecessors.
12. Copies of all specifications requiring this qualified product that are included in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, as required by 48 CFR 9.203(b); and copies of all instructions concerning qualification procedures for this QML that are included in the Federal Standardization Manual, FSPM-0001 as required by 48 CFR 9.203(b).
13. All documents that relate to, refer to, describe or discuss delegation from USDA/APHIS to organizations or entities in Guatemala and Mexico, of purchasing, contracting, and/or funding authority for yeast used by the fruit fly rearing facilities in those two countries, including without limitation assignments, contracts, subcontracts, budgets, appropriations, memoranda, agreements, and all other documents that relate to or explain the fact that USDA/APHIS no longer issues solicitations for yeast for use in those facilities.
14. All documents that relate to, refer to, describe or discuss the manner in which yeast used by the fruit fly rearing facilities in Mexico and Guatemala is solicited, purchased and paid for, and what funds are utilized for payment.

Please notify us before proceeding if search charges are expected to exceed \$500.

In accordance with 7 CFR Part 1, we ask that you respond to this request within twenty (20) days. In accordance with 7 CFR §1.7(a), if you deny all or any part of this request, we ask that you provide the following information:

- a. A description of the information that is being withheld, in sufficient detail so that we may evaluate the propriety of your position.
- b. The exemption pursuant to which you are withholding the information.
- c. The reasons for the denial.
- d. The name and title or position of each person responsible for denial.

Very truly yours,

A handwritten signature in cursive script that reads "Patricia H. Wittie". To the right of the signature is a small circular stamp containing the number "12".

Patricia H. Wittie

cc: Stephen Knight

Attachment: Exhibit A

REQUEST FOR DOCUMENT SEARCH

Date Sent: 7/21/08

TO: PPQ

REQUESTER: Patricia Wittie

REQUEST #: FOIA 002-402

DUE TO FOIA: 7/28/08

Attached is a FOIA request for documents maintained by your office. Please conduct a thorough search for all responsive records, including files that may be kept in locations other than your office.

Please complete this page and return it with one single-sided copy of the responsive records by MAIL to USDA, APHIS, LPA, FOI, 4700 Riverdale Road, Unit 50, Riverdale, MD 20737 or HAND DELIVER to Suite 2B-02, Place records in box outside Space 2B-02.7 Address records to the attention of: Melinda Hill (734-5974/Cubicle 2B-02.03)

DO NOT STAPLE DOCUMENTS.

SEARCH START DATE: _____

Search time* (clerical): _____

Search time* (professional): _____

*Does not include photocopying time

Review time (professional): _____

Search conducted by:

Name	Title	Office and Phone
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Missing Document Explanation/Special Notes:

FOI Liaison's Initials & Date: _____

*****PLEASE NOTE: Agency records retention periods are affected by this FOIA/PA request. DO NOT DESTROY ORIGINALS for a minimum of 3 years. Please see APHIS Records Management Handbook: Inf 8 - Privacy Act Requests and Inf 9 - FOIA Requests.**

REQUEST FOR DOCUMENT SEARCH

Date Sent: 7/21/08

TO: ASD

REQUESTER: Patricia Wittie

REQUEST #: FOIA 002-402

DUE TO FOIA: 7/28/08

Attached is a FOIA request for documents maintained by your office. Please conduct a thorough search for all responsive records, including files that may be kept in locations other than your office.

Please complete this page and return it with one single-sided copy of the responsive records by MAIL to USDA, APHIS, LPA, FOI, 4700 Riverdale Road, Unit 50, Riverdale, MD 20737 or HAND DELIVER to Suite 2B-02, Place records in box outside Space 2B-02.7 Address records to the attention of: Melinda Hill (734-5974/Cubicle 2B-02.03)

DO NOT STAPLE DOCUMENTS.

SEARCH START DATE: _____

Search time* (clerical): _____

Search time* (professional): _____

*Does not include photocopying time

Review time (professional): _____

Search conducted by:

Name	Title	Office and Phone
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Missing Document Explanation/Special Notes:

FOI Liaison's Initials & Date: _____

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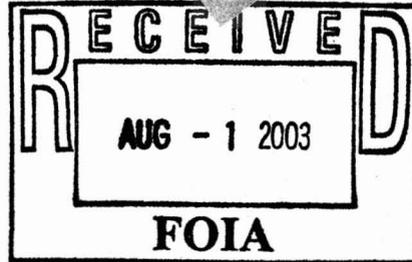
Patricia H. Wittie
 Direct Phone: 202.414.9210
 Email: pwittie@reedsmith.com

1301 K Street, N.W.
 Suite 1100 - East Tower
 Washington, D.C. 20005-3373
 202.414.9200
 Fax 202.414.9299

August 1, 2003

**VIA FACSIMILE AND
 FIRST CLASS MAIL**

Administrator
 Animal Plant Health Inspection Service
 Ag Box 3401
 Washington, D.C. 20250-3401



RE: FOIA APPEAL
 Case No. 02-402

DUE OUT BY

AUG 29 2003

FOIA

Dear Sir or Madam:

On April 24, 2002, we submitted a FOIA request that was designated by your office as Case No. 02-402. On July 30, 2003 (fifteen months later) we received a letter dated July 25, 2003 as USDA's response to that FOIA request ("Response Letter"). The Response Letter stated, *inter alia*:

Please note that on May 31, 2001, you filed a FOIA request (copy enclosed) FOIA 01-376. We responded to your request on November 6, 2001, and April 3, 2002, with 293 pages of documents and 90 pages of documents respectively. For your convenience we are enclosing a copy of both of our response letters to you.

After reviewing both of your requests, staff have determined that they are for the same information. Staff have advised this office that no additional documents have been created since our responses to FOIA 01-376. In an effort to avoid duplication, we are not providing a second copy of documents we have already provided to you.

The Response Letter incorrectly asserts that FOIA 01-376 and FOIA 02-402 "are for the same information." FOIA 01-376 asked for (a) copies of certain contract documentation; and (b) copies of documentation relating to testing of a sample of Williams yeast in August 2000. FOIA

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 FALLS CHURCH • WILMINGTON • NEWARK • MIDLANDS, U.K. • CENTURY CITY • RICHMOND • HARRISBURG • LEESBURG • WESTLAKE VILLAGE

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Animal Plant Health Inspection Service
August 1, 2003
Page 2

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02-402 asked for copies of certain documentation that the USDA is required to prepare pursuant to the Federal Acquisition Regulation (48 CFR Part 9) and evaluations, reports, test results, analyses, specifications, and requirements relating to the QML in question and testing of yeast samples for *all* applicants who have asked to have their products tested for the QML at any time since 1994. For example (and without limitation):

1. FOIA 02-402, para. 2, requested "All justifications for establishment and/or continuation of the QML, as required by 48 CFR 9.202(a) or previous versions of that regulation."

This request was not included anywhere in FOIA 01-376, and USDA's statement that this request asks for "the same information" as FOIA 01-376 has no factual basis.

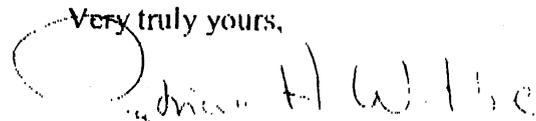
2. FOIA 02-402, para. 7 sought "all evaluations, reports, test results, laboratory analyses, studies, correspondence, memoranda, conclusions, decisions and determination (hereafter "evaluations and determinations") prepared by or on behalf of USDA/APHIS in response to the applications submitted by Applicants since 1994. Please include all supporting documentation for these evaluations and determinations, including without limitation raw test data, correspondence and memoranda."

This request was not included anywhere in FOIA 01-376, and USDA's statement that this request asks for "the same information" as FOIA 01-376 has no factual basis.

In fact, none of the requests in FOIA 02-402 were included in FOIA 01-376. Copies of FOIA 02-402 and FOIA 01-376 are attached here for your convenience, so that you may compare them.

Please provide us with an immediate response to this request, which has now been pending for more than 15 months.

Very truly yours,



Patricia H. Wittie

Attachments (2)

cc: Senator Peter G. Fitzgerald (w/encl.)
Michael S. Marquis