Environmental Respect Awards: March 10th Deadline to Enter
An Environmental Respect Award is not a one-time honor. It is about carrying the flag, being advocates for agriculture and pledging a lifetime commitment. March 10th is the deadline to pledge your commitment. For more information, or if you have questions on how to enter, call 440-942-2000.

Ag Retailers: A Responsible Industry
The Fertilizer Institute (TFI) prepared a very professional, short video that illustrates the commitment that ag retailers have toward safety, security, emergency response and regulatory compliance. Chad Lau of Burroughs Ag, Jim Fargo with Centennial Ag Supply Company and Billy Pirkle with Crop Production Services are featured in the video. We recommend that you provide a link to this video on your company website and help spread the word that our industry is committed to stewardship and compliance in all aspects of what we do. Our thanks and congratulations to Kathy Mathers, Vice President of Public Affairs with TFI, for this very professional video. Click here to access the video or go to www.tfi.org

Don't Forget the March 1st Deadline
As a reminder worth mentioning, SARA Tier II submissions were due on March 1st. This is an annual requirement that most retailers are familiar with; however, the penalties have become quite severe for non-compliance. Please ensure your facility has submitted the 2013 SARA Tier II reports. Please contact Donna (Ext 205) or Michelle (Ext 228) if you have questions.

Pesticide-Production Report Update
Reminder: Asmark Institute submits and documents receipt of the Pesticide Production Report by U.S. EPA for each of our clients. All clients’ reports were shipped just prior to the March 1st deadline and have been received by U.S. EPA. Work will begin soon to make file copies of the reports along with the documentation where U.S. EPA signed for the reports. Each facility will receive their file copies around March 20th.

ResponsibleAg - ARA and TFI Join Forces
ARA and TFI announced plans on February 18th to create ResponsibleAg, an independent, not-for-profit organization designed to support fertilizer retailers’ compliance with federal safety and security regulations. Under ResponsibleAg, retail fertilizer dealerships will have access to comprehensive inspections based on federal regulatory requirements. The inspections will be carried out by trained auditors who will have successfully completed an intensive training course based on the objectives of ResponsibleAg.

“While the vast majority of fertilizer retail businesses operate safely, securely and in compliance with federal regulations, we are acting out of an abundance of caution and concern for the well-being of workers and communities,” said TFI President Chris Jahn. “ResponsibleAg will verify compliance at more facilities and with greater speed than is currently being done by the multitude of federal agencies that regulate the nation’s fertilizer retailers, so we are choosing to act now rather than waiting for the next government inspection.” “ResponsibleAg will help ensure existing regulations are conveyed and easily understood by fertilizer retailers,” said ARA President & CEO Daren Coppock. “Retailers want to do the right thing, but
overlapping, duplicative or potentially conflicting requirements make compliance a challenge. This program will help retailers by collecting the regulatory requirements into one standard, and offering them tools and information to ensure their facilities conform to all current federal regulations.”

ResponsibleAg will credential auditors who will inspect and verify individual facilities’ level of compliance with applicable federal regulations. Facilities that successfully complete assessments will be recognized for having done so. Any site that does not successfully complete an assessment will be provided a list of recommended corrective actions. Additionally, random quality assurance reviews to verify the assessments will be conducted by third party auditors.

TFI and ARA are each contributing $100,000 in startup capital for the organization, and the Asmark Institute is providing an ongoing contribution that provides for training programs, training facilities and administration of the ResponsibleAg website and database. Once established, ResponsibleAg will be funded by registration fees paid by participating fertilizer storage and handling inventory points and their suppliers. Auditor training costs will be funded by tuition paid by those seeking the ResponsibleAg auditor credential. Membership in TFI, ARA or any other organization is not a requirement for participation.

“ARA and TFI are committed to ResponsibleAg as a common sense approach to mitigating the potential of another accident like the one in West,” Coppock said. “Compliance needs to be the focus rather than a push for broad new regulations. The effort and resources retailers dedicate to compliance should be directed towards achieving the greatest level of safety and security possible for employees, first responders and the communities in which our members live and work.”

**Tip:** To get a head start in preparing for the ResponsibleAg third-party audit, complete the Comprehensive Risk Evaluation (CoRE) for your facility as soon as possible if you are an Asmark Institute client. If not, complete the Compliance Assessment Tool offered by TFI and ARA.

**2014 Regulatory Posters Coming Soon!**
The 2014 regulatory posters will ship in the next two weeks. The posters are normally updated and shipped around the middle of February, but are subject to delays each year due to the increase in the regulatory activity that prompts the labels and Safety Data Sheets to be revised. The set of three includes posters with information on DOT shipping descriptions, Worker Protection Standards and Restricted-Use Products.

**Reminder: 300A Should be Posted**
OSHA requires your previous year’s Summary of Work-Related Injuries and Illnesses (OSHA Form 300A) to be displayed from February 1st to April 30th of each year in a conspicuous place where employee notices are customarily posted. See any one of our last two newsletters for more information.

**EPA Proposes Update to WPS Rule - Heads Up!**
A proposed rule to expand requirements for protecting farmworkers and their families from pesticide exposure was released February 20th by EPA. **Jim Jones**, Assistant Administrator for EPA’s Office of Chemical Safety and Pollution Prevention, told reporters that changes to the EPA’s Agriculture Worker Protection Standard (WPS) are overdue.

The proposed rule, which runs 357 pages in a prepublication version, is expected to appear in the Federal Register around March 1st, starting a 90-day comment period. EPA hopes to have a final rule completed within a year. Just some of the new or tougher restrictions proposed are:

- Increases frequency of training from once every five years to annually,
- Requires employers to retain records for two years of application-specific pesticide information as well as farmworker training and early-entry notification,
- Expands mandatory posting of no-entry signs prohibiting entry into pesticide-treated fields until residues decline to a safe level for the most hazardous pesticides,
- Prohibits children under 16 years old from handling pesticides, with an exemption for children who are immediate family members to the owners of family farms,
• Requires employers to inform farmworkers about their legal protections, including restrictions on entering pesticide-treated fields and surrounding areas,
• Increases access to information and use of personal protective equipment,
• Establishes no-entry buffer areas surrounding pesticide-treated fields to prevent exposure from pesticide overspray and fumes,
• Provides farmworkers or their advocates information about the pesticide in use, including the pesticide label and Safety Data Sheets,
• Mandates that respirator use be consistent with the OSHA standards and
• Expands training to reduce take-home exposure from pesticides on work clothing.

“The EPA’s current 22-year-old standard has been ineffective, allowing up to 20,000 farmworkers annually to join the ranks of workers suffering from acute pesticide poisoning” according to Amy Liebman, Director of Environmental and Occupational Health for the Migrant Clinicians Network. On February 11th, a coalition of 51 House Democrats wrote a letter to the EPA urging the agency to finalize the rulemaking, saying that the current standard is “limited and insufficient.” Click here for a prepublication version of the Federal Register notice. Click here to access EPA's website for information on the proposed rule.

“The health and safety of America’s farmworkers is paramount to the crop protection industry, and we have strived for decades to continuously improve the technology surrounding product formulation and application,” noted Jay Vroom, CLA’s president and CEO. “We look forward to providing comments to EPA on the proposed changes to the Worker Protection Standard and ensuring that any final regulation is representative of the ongoing, science-based advancements in our industry.”

Albert Calkin Asks: Have you been keeping track of recent changes to the FMCSR?
DOT recently made some significant changes to the Federal Motor Carrier Safety Regulations (FMCSR). On September 25, 2013, DOT published a final rule entitled “Highway-Rail Grade Crossing; Safe Clearance.” When the change was first published in a proposed rulemaking, it would have been applicable to commercial motor vehicles (CMVs) that were used to transport hazardous materials. However, when the final rule was published, DOT adjusted the change in regulations, in an interest of public safety, to cover all CMVs. The new rule, which is applicable to all CMVs engaged in interstate commerce and found in 392.12 states, “No driver of a commercial motor vehicle shall drive onto a highway-rail grade crossing without having sufficient space to drive completely through the crossing without stopping.”

This means the routing of all CMVs which are engaged in interstate commerce, even a pickup which is towing a small trailer, is affected by this rulemaking. If there is a railroad grade crossing close to an intersection between two highways and a stop sign or even a yield sign exists or there are multiple sets of railroad tracks requiring the CMV to make one or more stops, and there is insufficient space to clear the rail grade crossing before making a stop, the driver must select a different route. Due to the location of many businesses near railroad tracks and many highways that run parallel to the railroad right-of-way, this type of situation could happen frequently in rural States. It explains in the preamble to the rulemaking that “motor carriers and brokers should ask shippers and receivers about any logistical or physical challenges that might exist near, or on the roads leading to, loading and delivery locations.”

The Federal Railroad Administration (FRA) introduced a mobile app in June of 2013 called “The Rail Crossing Locator” that can be used to assist a driver to comply with this rule. As a driver of a CMV, part 383.51(d), titled, Disqualification for railroad-highway grade crossing offenses, drivers who fail to comply with specific rules regarding railroad grade are subject to suspension of their driving privileges. The penalty for a driver for the offense of failing to have sufficient space to drive completely through the crossing without stopping is no less than 60 days, with continued violations receiving more severe penalties.

The FMCSA regularly makes changes to the FMCSR which have significant impact on the trucking industry, which do not get broad publicity. Our thanks to Albert Calkin with Innovative Safety Solutions, Inc. for bringing this to our attention, when no one else in the country picked up on this significant change. Albert works with the Montana Agricultural Business Association and the Montana Grain Elevator Association and can be reached at 406-227-0745. Click here to review changes to the regulations that are published in the Federal Register.
Families Awarded $16 Million in Grain Bin Deaths
The families of a teenager and a man killed in a grain bin accident in northwest Illinois were awarded $8 million in a recent verdict handed down by a jury. A Carroll County jury deliberated for eight hours before granting the verdict to the families of Wyatt Whitebread, 14, and Alejandro Pacas, 19, both of Mount Carroll, according to the Clifford Law Offices, whose lawyers represented the families.

They were killed in July 2010 while working at Haasbach LLC in a Consolidated Grain and Barge Co. grain elevator. Both were standing on the grain in the bin, pushing it down to the conveyor, when Whitebread began crying for help as he became buried in the grain, lawyers said. Pacas and another man, Will Piper, tried to save Whitehead, but the teen and Pacas suffocated. Piper was covered in grain up to his neck for about six hours before rescuers were able to save him. He was awarded $875,000 by the same jury.

"These boys should not have been working in the bin in the first place," attorney Kevin Durkin said in a statement. "Consolidated Grain and Barge had ultimate responsibility for what went on in that bin and the company failed these families." The U.S. Department of Labor issued 25 citations to Haasbach with a penalty of $555,000 after an investigation into the deaths. The department found Haasbach violated the Fair Labor Standards Act’s Child Labor standards for employing anyone less than 18 to perform hazardous jobs. Haasbach was fined $68,125 for that violation.

Suffocation from engulfment is a leading cause of death in grain bins. The number of deaths more than doubled between 2006 and 2010, according to the Occupational Safety & Health Administration.

NGFA Releases Sweep Auger Guide For Industry
The National Grain & Feed Association (NGFA) has completed a sweep auger guide designed to assist grain handlers in developing and implementing a sweep auger operations safety policy. Over the past several years, there has been uncertainty within the industry regarding what type of sweep auger equipment can be used, and the types of procedures that OSHA may find acceptable. OSHA’s Directorate of Enforcement Programs on May 3, 2013, issued a memo to its regional administrators designed to clarify the agency’s sweep auger enforcement policy. The memo was based upon a then recent settlement between OSHA and a NGFA-member company regarding a sweep auger citation. Overall, the memo was a positive step toward providing closure on many of the questions that the industry has had concerning OSHA’s sweep auger policies. OSHA’s sweep auger policy memo states that employees are allowed to be physically inside a bin with an active sweep auger provided:

- The only unguarded portion of the auger is in front,
- Sub-floor augers are guarded by secure grates or other guards,
- There is an engineering control (such as a standard guardrail attached to the auger, a portable guard rail trailing seven feet behind the auger, or a dead-man switch on an operating control inside an enclosure or attached to a handle that keeps the employee seven feet back from the auger); and
- The facility’s bin entry permit procedures are followed.

NGFA’s Safety, Health, Environmental and Quality Committee recommended the new guide be developed to assist the industry in complying. Contact NGFA, your State grain and feed association for a copy of the new guide. Contact Dustin Warder at 270-926-4600, Ext 203 or at dustin@asmark.org for more information.

HR Spotlight: Employment Recordkeeping Recommendations
With the increasing documentation for employment records needed today, just how should an employer organize all the records? HR experts recommend employee records be separated into three files to minimize accidental exposure of personal information and to be ready for regulatory audits. A personal file should contain job descriptions, documents relating to offers, promotions, transfers, discipline records and performance evaluations. A confidential file should contain reference and background checks, physician notes and FMLA paperwork, workers’ comp claims and drug test results. A payroll file should contain direct deposit authorizations, W-4, garnishment orders, and salary changes and bonus documents. For employees that are drivers subject to the federal rules, a separate file is necessary.
EPA Seeks Comments from the Retail Industry on Hazardous Waste Management
EPA is seeking input from the retail industry on ways to improve hazardous waste management in that sector. EPA is responding to issues the retail industry has identified that they face in implementing hazardous waste regulations. The agency seeks information and data on such issues as store programs for dealing with hazardous waste, hazardous waste training for employees, aerosol cans and the sustainability efforts of retail operations. The notice has not yet been published in the Federal Register. Comments are due 60 days after publication, and should be identified by Docket ID No. EPA-HQ-RCRA-2012-0428, according to sources at EPA.

IRS Issues Regulations on Employer Responsibility for Health Coverage
IRS recently issued final regulations that provide guidance on large employers' shared responsibility for employee health insurance coverage under Section 4980H of the Internal Revenue Code. Under the final regulations, the employer mandate will apply to employers with 100 or more full-time employees beginning January 1, 2015. The final rules will apply to midsize businesses with 50 to 99 full-time equivalent employees beginning January 1, 2016. Companies that have fewer than 50 employees are exempt from providing coverage or filling out any forms in any year. The final regulations were effective February 12, 2014.

“Ambush” Election Rule Back in Front of NLRB
The newly reconstituted National Labor Relations Board (NLRB) recently acted on a 3-2 party line vote to re-propose its controversial “ambush election” rulemaking, a NLRB effort to speed up union elections. The rule is widely opposed by business because it overrides decades of workplace union election law by limiting employers' participation in the organizing process. A previous effort died in 2011 when a federal court struck it down as the NLRB approved the measure without a quorum of voting commissioners. The NLRB says the new rules could take effect as early as this year if they’re approved and published. The new proposal has a 60-day comment period and the board will hold a public hearing in April. Legal challengers are expected.

Wisconsin Pushing to Govern Farm Equipment Size
Two Wisconsin legislators recently told the 1,800 attendees of the Corn/Soy Expo held in Wisconsin Dells that new laws regulating the size and use of farm equipment on state roads would give farmers more leeway with large equipment than they currently have. The proposal would allow farmers 15% more weight than is currently allowed under the law. It would also spell out length, width and height requirements as well as requirements for reflectors, flashers and reflective tape on implements. The 15% number was used because it’s the level used in the fall harvest exemption, which is based on available science.

DHS Acknowledges Faster Response Time
Department of Homeland Security (DHS) recently issued a letter to the regulated facilities that have been designated a Tier 1-4 high risk chemical facility and who are still waiting on a Letter of Authorization from DHS. David Wulf, Director, Infrastructure Security Compliance Division of DHS, issued the letter that indicated the agency has significantly increased the operational pace of their Chemical Facility Anti-Terrorism Standards (CFATS) program over the past year. He reported DHS is now conducting approximately 100 Authorization Inspections per month. In the letter, Wulf advises regulated facilities to be prepared by ensuring the accuracy of the information previously submitted to save time and effort later in the compliance process. DHS is reaching out to facilities that have submitted a Site Security Plan (SSP) or Alternative Security Program (ASP), but have not yet received a Letter of Authorization from DHS.

Worth Watching: The Issue - Not The Show
The first episode of Chipotle’s “Farmed and Dangerous” show was aired and, as anticipated, it portrays the agricultural community and efforts by the agriculture industry to defend itself in a less-than-favorable light. The theme is “big agriculture” versus “sustainable” farmers who grow wholesome food. Reportedly, Chipotle is seeking a mainstream television network that would be willing to air the program and continue producing episodes. The Fertilizer Institute and others in our industry are maintaining a “watch and wait” strategy, monitoring the next three episodes to see if a response is needed.
DRIVERS: What’s The Big Deal With How You Check The Box?
Make sure your CDL drivers are self-certifying accurately to avoid violations. If your CDL driver marked “excepted interstate” or claimed an “excepted intrastate” status during self-certification to avoid submitting a medical examiner’s certificate to his or her state of licensing, you should be concerned.

If the driver self-certified as “excepted interstate,” he or she does not have an active CDL to operate in “non-excepted interstate” commerce. This declaration on his or her driving record could place the driver out-of-service for not having a current CDL for the vehicle operated.

“Excepted” means the driver is claiming he or she is engaged exclusively in one of the types of operations detailed in 49 CFR §390.3(f), §391.2, §391.68, or §398.3 — so he or she does not need a medical card.

Similarly, claiming an excepted intrastate status, the driver is using state regulations (exceptions mimicking or similar to the federal rules, grandfathering, etc.) that do not require the driver to have a medical exam. But the driver would have an intrastate-only restriction on his or her license. To engage in interstate commerce with the excepted intrastate-only restriction would result in a violation for not having the appropriate license for the vehicle operated.

To add to the dilemma, many states that downgrade the CDL to an excepted status require drivers to retake some of the CDL tests in order to reactivate to a non-excepted interstate commerce CDL. If your driver mistakenly claimed the wrong status, he or she should contact his or her state of licensing as soon as possible to correct the situation.

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