



News & Views

A Monthly Publication Dedicated to the Feed, Seed, Grain and Farm Supply Industries of Wisconsin

Somebody Asked ■

Q.: We operate a feed mill with a federal medicated feed mill license. We have received notice from FDA to complete our annual registration through an online form. What is this about and are there any issues of which I need to be aware?

A.: The FDA has sent these notices out to only those feed mills which hold medicated feed mill licenses, which is a small portion of all licensed feed mills. It is part of the government's general move toward an online system. While that may be a noble and worthy goal, the path has been rocky at best.

We have received numerous reports from companies attempting to complete this single page online who have been frustrated by an overly complex and difficult process which has essentially blocked them from completing the form.

Because of these issues, we are advising members facing this problem to avail themselves of the waiver process to the online registration process which FDA references in their communications. Feed mills requesting this waiver are required to list a reason for the request. Acceptable language for the waiver request can be as simple as; *"ABC Co. requests a waiver from the online registration process for medicated feed mill licensees due to a lack of technical expertise required to complete the online form."* It can be that simple, but you do need to do it.

You will need to keep a copy of this request on file because one of the first items which FDA inspectors will ask for is evidence of your completion of the registration process. Until FDA responds to your waiver request with a hard copy acknowledgement, you'll need a copy of your waiver request to show you have at least attempted to comply with the agency's request.

Feed Mills & the Clean Air Act ■

In last month's newsletter we wrote about the Environmental Protection Agency (EPA) final regulations under the Clean Air Act governing emissions of chromium and manganese from feed and feed ingredient manufacturers.

The final regulations apply to facilities classified with a North American Industry Classification System (NAICS) code of 311119 (facilities primarily engaged in manufacturing animal feed), provided such facilities use a material containing 0.1 percent or more of chromium or 1 percent or more of manganese by weight *and* animal feed production represents more than 50 percent of total annual production at the facility. This should apply to most WASA members in the feed manufacturing business. Those threshold levels apply even if the material is in a pre-mix and your facility is not mixing pure mineral concentrations. This is an important point because the rule only applies to facilities meeting these specific designations.

The immediate impact upon feed mills meeting those criteria is a requirement to provide "initial notification" to FDA of your facility being subject to the rule. But whether or not your facility is in fact subject to the rule has generated quite a bit of member interest and discussion. We sent out a follow-up to our newsletter late last month and feel the relevant portion should be repeated.

The question we get most commonly is, "How do I determine if my facility is more than 50% feed production?" We have attempted to answer that question below.

To quote from the official NAICS website at the US Dept. of Labor:

Ideally, the primary business activity of an establishment is determined by relative share of production costs and/or capital investment. In practice, other variables, such as revenue, value of shipments, or employment, are used as proxies. The Census Bureau generally uses revenue or value of shipments to determine an establishment's primary business activity.

So a single business facility that includes grain, agronomy, feed and/or other operations should calculate what percentage feed operations constitute of their combined operations at that single facility. If the feed number is less than 50%, you should be exempt from the rule as feed is obviously not the facility's primary business.

We have spoken with other association staff nationally and there is general agreement on this interpretation. This will probably lead to distortions in application of the rule as some very large feed manufacturing operations might be exempt due to their co-location with other company operations, while a single, relatively small feed mill would be required to comply.

If you choose not to register, please make certain you have a readily available, defensible argument demonstrating feed is not your primary business. If you have further questions, please contact the WASA office.

The majority of the regulations, which we will go into in depth in later editions of the newsletter, will require facilities covered by the EPA final rule to be in compliance by **no later than January 5, 2012**. So, you have time to determine whether or not you will need to comply, but we do urge folks that are clearly 100% in the feed production biz and use products over the thresholds to comply with the initial notification requirement now.

If you have questions regarding the registration, please contact WASA or the DNR at 608-264-8876.

Grain Dealer Law Update 2■

It's signed!

The law which has been in development for the past couple years has finally been signed into law. (It will go into effect on June 1, of this year.)

The major change is the thresholds for the requirement of either reviewed or audited financial statements to be filed with the Department. Current law has those levels based on dollars of purchases from producers, which can vary year to year given market price fluctuations. The new levels are bushel-based and should provide licensees with a more predictable situation regarding the requirement for which type, if any; financial statements would need to be submitted. Those new levels for grain dealer licensees are 200,000 bu. for a reviewed audit and 2.5 million bu. for audited financials. The levels for warehouse keepers also changes significantly from 500,000 bu. to 1.5 million bu. for an audited statement, while the minimum threshold for a reviewed financial statement stays at 300,000 bu. It has been estimated this will save the state's grain industry about \$1 million per year in fees for audits which were solely prepared because of the state requirement.

The other point to keep in mind is Department staff have stated they intend to allow businesses with May 31 year-ends to be able to use the new law's thresholds even though the law does not take effect until June 1st.

In addition, the signed law changes how producers will be able to make claims against the fund in case of a buyer default. In almost every instance related to changes in the law, the "coverage umbrella" offered by the fund will be tightened with less broad coverage. This is a good thing which allows the fund to serve as supplemental coverage to producers in case of a default rather than attempting to provide indemnification for everyone in every situation.

Annual Dues Notices■

Dues notices will be sent out for the 2010-2011 year beginning the first week of June! We appreciate your continued support of YOUR association.

Export Achievement Award■

Earlier this month, Governor Jim Doyle presented his annual Export Achievement Awards recognizing Wisconsin firms and organizations that have achieved extraordinary results in international sales or have contributed to Wisconsin's ability to compete in a global market.

We are very happy and proud to congratulate WASA member, The DeLong Co. of Clinton, as winner of the Medium Agricultural Exporter Award.

The award recited the following regarding the firm as part of the awards ceremony:

The DeLong Co., Inc., a fifth generation family-owned agricultural business, was started over 100 years ago and serves the farming industry. The firm operates 15 locations in three states, supplying fertilizers and feeds and also storing and exporting feed and grains. In the mid-1980's, the DeLong Co. was an innovator in identity preservation by loading ocean-going containers with Wisconsin-grown soybeans here in the state, rather than shipping in bulk down the Mississippi River. In 2004, the company began loading commercial corn, soybeans, and feed products for export in containers, competing directly against bulk vessels. Over the past three years, the DeLong Co. has exported over \$2 billion of agricultural products. The firm is currently one of Wisconsin's leading exporters of soybeans and DDGS and has been able to build a market share of 40 to 50 percent of U.S. containerized shipments of grain and feed products to the Pacific Rim and Southeast Asia. The DeLong Co. has added 30 new employees to handle the growth in export sales.

Other winners in the agricultural category included Small Agricultural Exporter winner, ENRECO Inc. of Newton. This firm is a producer of stabilized, ground flaxseed ingredients containing Omega-3s, fiber, and antioxidants for use in baked goods.

And the Large Agricultural Exporter winner was CROPP Cooperative/Organic Valley of LaFarge. CROPP Cooperative is the parent company of Organic Valley and is the largest organic, farmer-owned cooperative in North America.

Our sincere congratulations to all of the ag category winners, especially WASA's own The DeLong Co. Well done!

FDA & Safe Transportation■

FDA issued an advance notice of proposed rulemaking to request data and information on the food transportation industry and its practices, as well as data and information on the contamination of transported foods and any associated outbreaks. FDA is doing this as it begins the implementation process of the Sanitary Food Transportation Act of 2005, which requires the agency to issue regulations setting forth sanitary transportation practices to be followed by shippers, carriers by motor vehicle or rail vehicle, receivers, and others engaged in food transport. A few of the questions posed by FDA are:

- What industry standards exist for the cleaning of food transportation vehicles?
- How is the adequacy of cleaning vehicles (including bulk vehicles and non-bulk vehicles) assessed?
- What procedures and practices are in place to prevent contamination of foods not completely enclosed by packaging during transport?
- How are the physical integrity and physical security of a food transport vehicle ensured during its run?

We will be working with WASA members to respond to the FDA information request in the coming months. If you wish further information, please contact the WASA office.

Looking Down the Road■

June 9-10 **4 State Dairy Nutrition and Management Conference**
Dubuque, IA

July 28 -29 **NGFA/Grain Journal Safety, Health & Environmental Quality Conference**
Hilton Omaha, Omaha, NE

Sept. 9 **WASA Golf Outing**
Lawsonia Golf Course
Green Lake