

Responsible Ag Frequently Asked Questions (FAQ)

Updated July 29, 2013

- 1) **What specifically is the goal/objective to be obtained?** There is a twofold goal for the Code of Practice. First, we want to reduce the chances for accidents in our industry. We owe no less to our employees, customers and communities. The entire industry gets a black eye when accidents like the one in West happened – or any number of other accidents – and we hope to minimize the chances of them happening by helping everyone make sure they're in compliance with applicable regulations. The second reason is to demonstrate responsibility on the part of the industry to regulators, legislators and the public, and in so doing hopefully alleviate a perceived need for additional regulations. Once someone looks at the number of applicable regulations to fertilizer retail facilities, it's pretty obvious that a significant body of regulations already exists. There are enough that it's hard to keep track of all of them, so getting them all into one checklist and auditing against that list is probably our best chance to make a difference.
- 2) **Is input restricted to ARA or TFI members only?** No. While ARA certainly prefers that retailers involved in this project are members, this is not a litmus test for involvement. Associations by nature work on behalf of their members, so it is our preference that those who are involved are also members. But this is a precedent-setting project with broad implications for the entire industry, and we are not requiring membership to participate.
- 3) **Has a legal review been conducted regarding customers who may be denied shipment and are the results contingent upon a favorable review before this potential program progresses?** The way the system is presently designed, a pass/fail score would be reported to the database by the auditor when the audit is complete. Suppliers who have been authorized by that retailer to see their scores would be able to look them up and know if the customer had passed or failed the audit before shipping product. If the company passed, there would be no issue. If the company failed its most recent audit, the supplier then has a business decision to make: are they comfortable shipping product to a company that they know failed its last audit? Each supplier company will make their own business decision, so there is no antitrust issue. Both TFI and ARA have outside counsel involved to manage this delicate issue.
- 4) **If shipment is denied, what will be the process for appeals?** The appeal process has not specifically been defined, but will likely work like this: If a facility fails an audit they will be provided with a corrective action plan. When they have completed those actions the retailer would certify that with Responsible Ag's database and the audit score would be adjusted accordingly.
- 5) **Is implementation of the program contingent on a final report from the CSB?** The Chemical Safety Board (CSB) is unlikely to generate many more clear conclusions from West, since much of the evidence was either destroyed by the explosion or by the Bureau of Alcohol Tobacco and Firearms (ATF) during their investigation. It is highly unlikely that any new information would be discovered that would cause the industry to abandon this effort. Should new information come to light we will certainly consider it, but we do not think it is wise to wait any longer to assert industry leadership.
- 6) **Will this lead to duplication of inspections?** Our vision is that those who are currently doing inspections could get certified on the Code and handle everything in one trip. Avoiding duplicative inspections is a priority, and this is one of the benefits of

having an industry-led solution rather than one imposed by regulators who will not be sensitive to this concern.

- 7) **Cost of Inspections and Audits.** This topic will be one of the major agenda items at the August 19 meeting in Bloomington, IL. At present, our best guess is that the effort will be funded by some combination of fees from suppliers and registration and/or audit fees from retailers. Who pays what and the level of resource necessary has not yet been determined. Has a cost/benefit analysis been conducted?
- 8) **Has a cost-benefit analysis been conducted?** The short answer to this is “No”, as least if the cost-benefit analysis intended is a pure economic analysis of having the system versus not having it. However, a pretty strong case can be made for having it on cost-benefit grounds. As an industry-led program, we are making every effort to hold down the costs of registration and inspections for retailers, and to create a governing structure that is streamlined, sensitive to industry needs and seasons, and efficient. On the flip side of that coin are costs that retailers could face if this effort is not successful. Those could include higher liability insurance premiums or declined coverage for certain products (already happening in some areas), and compliance with additional regulations that would likely be promulgated if the industry does not take leadership. One of the benefits of Responsible Ag will be to consolidate the regulatory requirements from all of the federal agencies into one checklist. It will not replace regulatory inspections, but it will help retailers be in compliance when those inspections do happen. Once states become familiar with the program, it may actually reduce the frequency of state inspections.
- 9) **Have the insurance companies who insure those who manufacture, wholesale, broker, retail and transport NH3 and AN been consulted to forecast the degree of liability shift that will take place and the related change in insurance premiums?** This appears to be a manageable issue, as there are currently bulk pesticide inspections by AASA that are in operation aside from a specific federal or state mandate. We are inviting some insurance people to the next meeting to lend their perspective. We have already heard anecdotal evidence of retailer liability premiums increasing, insurers stepping up their own audits, products being excluded from coverage, and combinations of those. We believe that the presence of an effective Responsible Ag program will reduce risks in the industry, which could actually serve to dampen premium increases. In Minnesota, where a program similar to this already exists, that has reportedly been the case.
- 10) **Aren't there already enough existing laws?** The Code of Practice is intended to consolidate all of the existing law into one place and do an inspection against it. The Code will not create new regulatory requirements. Hopefully it will mean that retailers won't need to consult multiple federal regulatory references to evaluate their compliance but can rely on the Code audit to check them all. Liability for non-compliance will remain with the retailer, as it should. If there are "best practices" that the Code determines should be done but are not currently required by regulations, those would be included in the audit but should not count against the final score. Furthermore, if there are requirements specific to a state that a state association wants to include in its audit forms, the association could make that request to the governing board.
- 11) **How will the program be enforced?** The primary “enforcement” will be through market mechanisms. Participating suppliers will check to make sure that their ship-to

locations are registered with the system and that they passed their most recent audit before sending a shipment. If the facility did not pass, the supplier will face a business decision as noted above.

- 12) Who determines those that can access the database of program participants?** In order to keep competitors from obtaining data and to protect the confidentiality of retailer information, retailers will need to specify which suppliers can access their audit scores.
- 13) The "Code of Practice" is proposed to regulate the distribution of NH3 but what about other industries that use this product such as mining, refrigeration, etc.?** Our scope is limited to the agricultural product distribution chain. There has also been significant discussion about including stationary storage owned by farmers, as those facilities have no less risk (and perhaps more) than retail facilities do. There is also some discussion in the context of the NH3 code about whether an updated agricultural-specific standard should be proposed as an alternative to the ANSI K-61 document, referencing K-61 where appropriate but excluding the refrigeration information that doesn't apply to agriculture.
- 14) Will those who manufacture, wholesale, broker and physically handle NH3 and AN be subject to audits and audit fees?** Suppliers will pay a registration fee to help support the program financially and gain access to the database, but will not be inspected under this program. The inspection focus for Responsible Ag is retail and beyond.