

Weights and Measures Update

Following three declarations can ensure that you are on your way to compliance.

By Jonathan Bardzik



This industry is now worth over \$40 billion in annual revenue, and gardening has become America's number-one outdoor leisure activity. All major network morning shows have gardening segments, there's a separate rack for gardening magazines at the local Barnes & Noble, Starbucks promotes free coffee grounds to their customers to use as a soil amendment, heck — this industry has two television channels of its own! Even weights and measures regulators have noticed. While the notice from regulators is not quite as gratifying as the television coverage, think of them as our industry's paparazzi — when they start showing up it is a sure sign of success.

A LITTLE BACKGROUND

By now you've probably heard about the increased regulatory scrutiny on container-grown plants, and you

may have a few questions, so I'll get started.

Weights and measures laws exist to protect consumers. The goal is to allow consumers to make price and quantity comparisons between similar products. The National Institute of Standards and Technology (NIST) advises the state and county weights and measures jurisdictions around the country on interpreting the application of these laws. They are enforced at the local level by your state or county department of weights and measures. These enforced laws require three pieces of information to be clearly labeled on the product.

1. Identity: what is it?
2. Net Contents: how much?
3. Responsibility: who is responsible for the quantity and quality of this product?

As a retailer, you have to ensure that all the containerized plants in your nursery have the above information, in the correct format on a label. This label can be a sticker on the pot, a stick tag, ◆

What do this picture and the photo on page 72 have common? One thing: They won't make the grade with NIST regulators.

hangtag or a sign adjacent to a group of the same plants.

THREE MUST KNOWS

Declaration of Identity. What the Declaration of Identity needs to look like is a lot like what you have on plants, labels and signs right now. It can be the common name, like Cranesbill, or the botanical name, like *Geranium x 'Rozanne'*. For mixed containers, such as hanging baskets and container gardens, you can use "Mixed Annuals" or "Mixed Herbs."

Declaration of Net Contents. The declaration of net contents is part of the law that requires an accurate measure of quantity be used

uniformly for all similar products. This can be weight, dimension or volume. In our industry, we could measure the size of the plant, the soil volume, dimensions of the pot or the volume capacity of the pot. What is being recommended? Well, many people in our industry have pondered this issue; how do you accurately label a perennial by plant size and not retag it every week from April 1st to September 1st? Soil volume is variable and changes during the life of the plant in the pot, which leaves the volume capacity and size of the container.

Whether using dimension or volume, the law requires both

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WHERE IT ALL BEGAN

In 2003 an independent garden retailer in Pennsylvania, while checking out his local mass merchant competition, discovered an empty hanging basket that was labeled for sale as a 10-inch. He recognized that, like most nursery containers, the measurement was not accurate and contacted the weights and measures bureau at the Pennsylvania Department of Agriculture (PDA) to register a complaint. Following up on the complaint, PDA sent a notice out to all registered sellers of plant material in the state announcing immediate enforcement of accuracy-in-labeling regulations. The Pennsylvania Landscape and Nursery Association (PLNA) became involved and was able to successfully petition PDA for an extension of the enforcement deadline.

The American Nursery & Landscape Association (ANLA) became aware of this complaint and contacted the National Institute of Standards and Technology (NIST), the national regulatory agency that sets consumer product labeling policy, to explore the ramifications of the situation in Pennsylvania. NIST regulators informed ANLA that several other states' weights and measures departments, independent of PDA, had already begun preliminary investigations into labeling regulation compliance among garden retailers.

ANLA formed a joint task force with members of the Society of American Florists (SAF) to research the implications of these regulations for the green industry. Task force co-chair, Dave Fujino of Hines Horticulture, Irvine, Calif., stated, "It was interesting to discover that these consumer product labeling regulations have been in place for over 10 years. The industry has been out of compliance for years. Due to our success [we are now a \$40 billion dollar industry] our industry is coming under heavier regulatory scrutiny." The task force also assisted PLNA in crafting a temporary agreement with PDA to avoid disruption of sales during the spring 2004 season. PDA, recognizing that over 80 percent of the plant material sold in Pennsylvania came from out of state, acknowledged that this was an interstate commerce issue and should be reviewed at the national level. During spring 2004 no enforcement actions were reported in Pennsylvania.

The agreement has now been superseded by the recent release of a set of guidelines produced by ANLA with the assistance of SAF, OFA, the North American Horticultural Suppliers Association and the Produce Marketers Association. These guidelines provide the industry with compliance recommendations, satisfying labeling requirements for containerized plants. While these regulations do require a change in the information contained on plant labels, they do not require significant changes in industry practice such as redesigning pots. The guidelines cover required information and presentation for advertising, signage and labels. The compliance guidelines are available at www.anla.org.

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U.S. and metric measures be used. On an irregular pot, like our tapered, stackable containers, that means top diameter, bottom diameter and height, and after converting it, it is a total of six measurements. Volume, on the other hand, requires only two — U.S. and metric. Choosing to use the latter, the declaration of net contents is just the volume capacity of the pot listed in U.S. and metric.

Responsibility. The declaration of responsibility lists the party — grower, distributor or retailer — who takes responsibility for the quantity, identity and quality of the product. The identity must contain the name of the company and its city, state and zip. Unless your growing facility is on-site, you need to provide a declaration of responsibility, even if your fields or greenhouse range are just a couple of miles away.

Now once you have these three pieces of information, there are specific instructions for placement of the declaration of net contents and identity; they must appear together on one label. Net contents must appear in the bottom 30 percent of that label. The declaration of responsibility can appear anywhere else on the product. As of now, several industry trade associations have been working in conjunction with labeling companies to design compliant sample labels, which you can find in the new set of guidelines from ANLA by visiting www.anla.org.

COMPLIANCE AT RETAIL

The compliance deadline has long passed, enacted in 1971. Yes, these laws were written in 1971, and our industry has been out of compliance to the extent that



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INDUSTRY ISSUES



With NIST enforcement this sign could cost you hundreds of dollars.

signs and labels have not met these requirements. Our recent success has earned us greater regulatory attention. When other industries have gone through this process there is often leniency granted while existing label inventories are depleted, but regulators still have the ultimate discretion to issue warnings and fines.

To ensure that you are on your way to compliance, the next time you order labels, make sure they are compliant. Remember, signage and advertising can easily be changed to reflect these regulations, and do it as soon as possible. This is not a problem that rests solely in your hands. Pot manufacturers are providing growers and label companies with accurate volume capacity information. Label companies are already working to design compliant labels, and many growers, who already provide labeling as a service, are working to obtain compliant labels for the plants they ship to you. But do keep in mind that the retailer is responsible if the products do not contain this information.

I know it may seem like the trade associations got together with the regulators to make your life difficult, but they didn't. Regulators have long acknowl-

edged that our industry is out of compliance with these regulations. Several trade associations, including ANLA, have worked together to study these laws and provide compliance recommendations. These laws were already written; trade associations are just helping their members avoid regulatory action. If you're still revolting compliance, the guidelines provided by the trade associations are recommendations and strictly voluntary. Following the recommendations addresses compliance with all regulations as they are understood. It is up to each business to make the decision on how much risk they are comfortable taking. ☒

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