



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT

JAMIE CLOVER ADAMS
DIRECTOR

December 23, 2015

Mr. Rich Lewis, Chair
Laws and Regulations Committee
National Conference on Weights and Measures
1135 M Street, Suite 110
Lincoln, NE 68508

RE: Proposal to Amend NIST Handbook 133 Paragraph 1.2.1, 1.3.1, 3.10.1 and 3.10.2

Dear Mr. Lewis,

This letter serves to express concerns regarding the Proposal to Amend Handbook 133 Chapter 1, Paragraphs 1.2.1., 1.3.1., and Chapter 3, Paragraphs 3.10.1., 3.10.2., jointly submitted by the Mulch and Soil Council (MSC) and the National Institute of Standards and Technology Office of Weights and Measures (NIST OWM) to the National Conference on Weights and Measures (NCWM) Laws and Regulations Committee. For the reasons indicated below, we believe the proposed changes are unwarranted and may be a result of increased regulatory oversight and recent enforcement actions on the industry rather than a warranted change.

Background

Test procedures for Mulch and Soils Labeled by Volume are outlined in NIST Handbook 133, Checking the Net Contents of Packaged Goods. These procedures have been in place approximately 30 years with minimal change. The most significant being the addition and refinement of Table 3-4, Specifications for Test Measures for Mulch and Soils. Included in the procedure, that has seen little change over the years, is the "Note" and its warning that certain types of mulch are susceptible to clumping and compacting; that extra steps may need to be taken to ensure the product being tested is "loose and free flowing when placed into the test measure." In order to further assist in understanding the procedures, requirements and other operational concerns, The Mulch and Soil Council coordinated with the National Institute of Standards and Technology Office of Weights and Measures the following In-Plant Training Program Videos:

- 1) **NIST Presentation on Product Labels:** What managers and designers need to know about package labelling laws to avoid fines and product "stop sale" penalties
- 2) **NIST Presentation on Weights and Measures:** All about weights and measures laws including method of sale, average & individual package requirements, sampling plans, test procedures, inspection lots, random & alternative package selection, test

container specifications, "off sale" & "removal" orders, criminal & civil penalties, and more

- 3) **Product Variability:** Causes of product variability, product characteristics, avoiding MAV violations, setting target fill

Bulk Products: Bulk load issues, product compaction, fill method verification, customer education, weights and measures issues

- 4) **In Plant Quality Control:** Setting equipment, determining bag size, setting line speed, quality control testing, operator training, setting lot criteria and lot numbering, record keeping, plant inventory control for inspectors

When and Where Things Go Wrong: How to use test data to identify problems and where to look for solutions

The training materials discuss in great detail Handbook 133 test procedures, Good Manufacturing Practices (GMP), minimal requirements of good Quality Assurance and Quality Control practices (QC), product variability, causes of variation, record keeping, data analysis and corrective action plans, discussion of other challenges industry face include moisture content, stickiness, particle size, palletization, compaction and shipping to ensure that through the process, the end user is getting the advertised product and labelled quantity. The tools and procedures necessary to overcome these challenges are discussed within the training seminars as well.

In addition to the training opportunities, MSC offers a Product Certification Program in order to assure consumers that certified products conform to established minimum industry guidelines. Weights and Measures standards and labelling are listed as a general requirement for product certification. The MSC Certification also provides independent, third party oversight for manufacturers.

Concerns

The stated purpose of the submission is to clarify mulch and soil test procedures promoting uniform practices. The submitted proposal effectively changes the test procedure. Changes to Chapter 1, as submitted, are unrelated to the stated purpose. The validity of the randomly selected sample is addressed in Chapter 2, Paragraph 2.3.4. - Random Sample Selection. Chapter 3, Paragraph 3.10.2.-Test Procedure. Inconsistency is incorporated into the proposed changes. It is stated "certain types of mulch are susceptible to clumping and compacting and steps are to be taken to ensure that the material is loose and free flowing". The process of ensuring "loose and free flowing product" is then restricted to a minimum of "four full rotations (but no more than eight full rotations)" in order to "reduce the clumping and compaction of material. It is unclear whether a "loose and free flow of product" is necessary or to simply "reduce" clumping and compaction.

There is concern that packages containing excessive moisture are not to be tested, as stated in the "Note" section of the proposal. The majority of the product is stored outdoors and exposed to the elements prior to packaging and some are put through a process of soaking and drying the product as part of the packaging process. Wet product is then put into a plastic bag, sealed, stacked adjacent to multiple other packages of wet product and finally either capped with a large plastic bag or shrink wrapped for distribution. Once distributed, the majority of the product is

again stored outdoors in the elements. Furthermore, the requirement cited in the Note section could be utilized to circumvent regulatory oversight.

Again, additional concerns arise with the proposed section "placing contents into the test measure". The described procedure of placing the gathered end of a bag into the measure as far as possible and "quickly" dumping the contents in a continuous motion may increase the number and size of voids within the measure. It seems impossible to simultaneously "quickly dump the contents of the package into a test measure in a continuous flow" while massaging the outside of the bag to "maintain a continuous flow of product but not for the purpose of de-clumping the product", all while not touching product or the measure at any time during the procedure.

Comments

The purpose of a volume test is to measure the amount of product contained within a package or container. To obtain the most accurate measure of mulch, products should be loose, free flowing and poured into the measure in a manner that will minimize voids within the measure. Provers and other vessels utilized to measure volume are designed to prevent voids and allow trapped air to move to the top and be eliminated. De-foaming agents are often utilized with certain products to achieve the most accurate measurement.

The proposal suggests that current test procedures lack uniformity, however, in May of 2014, NCWM reported that enforcement action had been taken where significant shortages were identified as a result of an industry complaint. Consistency is shown as four (4) States reported shortages of one operator's product in excess of 10%. The identified shortages being over double the 5% Maximum Allowable Variation (MAV).

Unfortunately, it appears that few firms have identified who, if anyone, within their plants participated in the MSC training seminars. A quality assurance program monitoring the operating characteristics of packaging equipment by tracking data with Control or Run Charts had not been witnessed and none employed a Corrective Action Plan to ensure potential identified non-compliant product is corrected prior to reaching retail markets. No one process is universal and fits every type or size operator, therefore, a program should be implemented, monitored and adjusted to meet the Company's needs.

A presentation titled Weights and Measures Challenges for 2014 -2015, published by the Mulch and Soil Council can be found at:

www.mulchandsoilcouncil.org/membership/audio/2014/presentations/weights_and_measures.pdf

It is implied that NCWM conducted an "unofficial survey" of 14 states over a 3 month period and the data supplied to MSC showed variations in test procedures, spurring "Major Policy Change at NIST" per MSC. The unofficial survey had nothing to do with test procedures but rather a request that states participate in checking the net contents. There is no information from this that could be used to determine if there were inconsistencies in procedures.

Close

Accurate Weights and Measures are good business for operators and consumers, the goal being to ensure fair and equitable competition in the marketplace where consumers may comparison shop and make informed decisions about their purchase with confidence. At this time, little data has been presented and there has been no apparent collaboration with states actively testing these products to show there are inconsistencies between state programs with testing procedures. The greatest benefit to the industry and consumers equally is to maintain

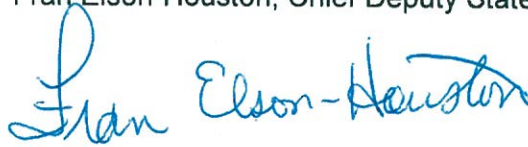
current procedures and promote further education and training within the industry. With this in mind, we request that the proposal be withdrawn.

Sincerely,

A handwritten signature in black ink, appearing to read 'Craig A. VanBuren', with a long horizontal line extending to the right.

Craig A. VanBuren, Acting Director
Laboratory Division
MI Dept. of Agriculture & Rural Development

Fran Elson-Houston, Chief Deputy State Sealer

A handwritten signature in blue ink, reading 'Fran Elson-Houston', written in a cursive style.

Ohio Department of Agriculture
Division of Weights and Measures