

Appendix A

NIST Handbook 130 – Uniform Packing and Labeling Regulation

Item:

231-2: 10.3. Aerosols and Similar Pressurized Containers

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Beaumont Products, Inc.

April 5, 2013

Ms. Judy Cardin
Wisconsin Weights and Measures
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911

Dear Ms. Cardin

It is clear from Mr. Fratz March 7, 2013 response (attached) to my letter of March 4, (attached) that he and The Aerosol Products Division of the CSPA have no intention of helping the BOV "group" communicate important differences between aerosols and BOV containers to consumers. Mr. Fratz continues to want to ignore the fact that there are important differences between Aerosols and the BOV system.

The laws, regulations and definitions of aerosols, which he refers to, for the most part were promulgated long before the BOV system was invented and are, therefore, badly in need of revision. These old regulations are being used by the Aerosol Products Division of the CSPA to protect the aerosol industry and are stifling the BOV group's ability to clearly communicate the consumer benefits of the new, environmentally-friendly, non-aerosol BOV system.

And, for the edification of all interested parties, I met with, along with other BOV representatives, members of Mr. Fratz's Association (including Mr. Raymond) in Dallas, Texas on May First of last year, in a good-faith effort to seek common ground on this issue. In fact, we thought we had found a workable compromise as outlined in Mr. Raymond's November draft proposal. Unfortunately, the agreed-to-proposal was not the one Mr. Raymond presented during the January NCWM meeting in Charleston.

I respectfully suggest that perhaps this issue may go beyond the purview of the NCWM and perhaps should be referred to the FTC and treated as a Truth in Advertising/labeling issue?

Is it possible to get sometime on your calendar in the next couple of months to meet to fully discuss this issue?

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L&R Committee 2013 Final Report
Appendix A – Item 231-2: Packaging and Labeling Regulation

By cc. Mr. Fratz, if I have misunderstood the intent of your most recent email on this subject, please let me know.

Sincerely yours,



Hank Picken
President & CEO
Beaumont Products, Inc.

Attachments (2)

March 4, 2013 letter to Doug Fratz
March 7, 2013 response from Doug Fratz

cc:

David Sefcik - NIST
Don Onwiler - NCWM
Paul Hertensen – BOV Solutions
Richard Miller – Technical Chemical
Jok S. Ang – Citrus Mate
Doug Fratz – Aerosol Products Division - CSPA
Doug Raymond – Regulatory Resources



Beaumont Products, Inc.

March 4, 2013

Mr. D. Douglas Fratz
CSPA
1667 K Street Suite 300
Washington DC 20006

Dear Doug:

I'm writing in response to your email of January 31, 2013 in which you invited us to join your Association.

At this point, we are not interested in joining your Association unless and/or until you recognize that there are differences between Aerosols and BOV pressurized containers and demonstrate a willingness to help us communicate these differences to Consumers. We firmly believe that at the heart of the BOV labeling issue is the requirement to educate and protect consumers ... not to protect the Aerosol Industry.

There are as many definitions in support of our contention that BOV's are not Aerosols as there are definitions that support your position that BOV's are Aerosols. The fact is that there are differences and consumers recognize these differences! Consumer Market Research on this subject substantiates consumer perceptions of these differences; and that the BOV system provides a solution to the many consumer concerns surrounding Aerosols. "Truth in Advertising" mandates that we act in the best interests of Consumers by clearly communicating differences between BOV's and Aerosols. We trust we can do this without involving the Federal Trade Commission.

For the record, the proposed revisions to the NIST Handbook, as presented by Mr. Doug Raymond, at the Charleston NCWM meeting on January 28, 2013, was not the same drafted proposal that we, the BOV "group", reviewed and agreed to back in November. And, we consider this unilateral change to be totally unprofessional. For the edification of the interested parties, copied below, I have attached the two different Proposed Revisions – the November reviewed-and-agreed-to proposal and the January un-reviewed-revision. Up until the January NCWM meeting, the BOV Group believed that your Association was acting in accordance with NCWM's request for you to reach a consensus position, with the BOV Group, not a unilateral one.

Further, the argument that there is no acceptable test methodology to measure the net volume is spurious. Since the BOV system does not aerosolize the payload, dispensed by the container, it is quite simple to collect all of the liquid, dispensed by the BOV container into a beaker, simply by removing the actuator, inverting the can and depressing the dip tube. Once exhausted the liquid volume is easy to measure with a graduated scale. As you well know, the ECU has been doing this with BOV containers for years.

The very fact that a QC test, is so easily done with a BOV underscores the real difference between an Aerosol and a BOV container – the “small particles of a liquid or solid are NOT suspended in a gas” (i.e., not aerosolized), so it is easy to collect.

Please let me know if you are willing to work with us to come up with a True consensus position regarding labeling and QC testing which will provide Consumers with the information required to make an informed choice between Aerosols and the BOV’s.

Sincerely yours,

Hank Picken

Attachments (2)

November: “Agreed-to-Proposal”

January: “Unilateral Proposal”

cc:

David Sefcik - NIST

Don Onwiler - NCWM

Judy Cardin - NIST

Paul Hertensen – BOV Solutions

Richard Miller – Technical Chemical

Doug Raymond – Reg Resources

CSPA/NAA Proposed Revisions To NIST Handbook 130 - 2012

Provisions Related to Aerosols and Similar Pressurized Containers

6.3. Net Quantity. – A declaration of net quantity of the commodity in the package, exclusive of wrappers and any other material packed with such commodity (except as noted in Section 10.3. Aerosols and Similar Pressurized Containers), shall appear on the principal display panel of a consumer package and, unless otherwise specified in this regulation (see Sections 6.6. through 6.9. Prescribed Units), shall be in terms of the largest whole unit.

(...)

10.3 Aerosols and Similar Pressurized Containers - The declaration of quantity on a pressurized container shall disclose the net quantity of the commodity (including delivered propellant), in terms of weight, that will be expelled when the instructions for use as shown on the container are followed.

10.3.1 Pressurized Containers which utilize Bag-on-Valve (BOV) technology or similar technology that does not expel the propellant shall be permitted to disclose the net quantity in terms of either net weight or net volume. Those products in pressurized containers using net volume declaration must be registered with the National Conference of Weights and Measures as meeting the requirements to use this provision or be labeled "Meets NCWM section 10.3.1".

Hank Picken

From: Doug Fratz <DFratz@cspa.org>
Sent: Thursday, March 07, 2013 3:54 PM
To: Hank Picken
Cc: rmiller@technicalchemical.com; judy.cardin@wisconsin.gov; dononwiler@ncwm.net; paul@bovsolutions.com; dsefcik@nist.gov; Doug Raymond
Subject: March 4th Letter

Dear Hank:

I regret that you are declining my latest invitation to become a member of CSPA. Our Aerosol Products Division includes more than 140 companies involved in the wide and diverse aerosol industry, including many that market bag-on-valve products or the packaging components that go into them. Each type of aerosol product technology has distinct strengths, and CSPA works to support the interests of all of them.

CSPA created an ad hoc BOV Workgroup early last year as a courtesy to allow several non-CSPA-member companies such as yours to provide input to CSPA members on several issues, including this one. We invited all to join CSPA last year, and some did and some did not. The change in CSPA member consensus on the weights and measures issue this year occurred upon further reflection by CSPA members that market BOV and other aerosol products. We attained 100% consensus of our members to seek allowance for dual labeling of both net weight and net volume, and therefore made that proposal to the NCWM. (If you can provide a shelf-test protocol to measure net volume, that may be useful in the NCWM consideration of whether net volume can be allowed.) Very few CSPA members, however, would seek to move their BOV products to dual declaration, as most are satisfied with net weight declaration. And absolutely no current members are supporting the comprehensive campaign that would be needed to seek to change the dozens of federal and state laws, codes and regulations that classify BOV aerosol products with other aerosol products.

CSPA will continue to represent the broad range of companies in the aerosol products industry, and I continue to hope that one day Beaumont Products will join us to work together on the common issues we face.

D. Douglas Fratz

Vice President, Scientific & Technical
Affairs and
Aerosol Products Division Staff
Executive

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Washington, DC 20006

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CSPA's 2013 Mid-Year Meeting
"The Evolving Marketplace"
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National Conference on Weights & Measures

Louisville, Kentucky
July 15, 2013



Beaumont Products, Inc.

2013 Small Business of the Year

[1]

Introduction

Hank Picken
President & CEO Beaumont Products, Inc.

- ❖ Over 40 years of Consumer Products Industry Experience
 - Unilever
 - Pfizer
 - Colgate Palmolive
- ❖ Aerosol Experience - Marketing
 - Pfizer (Barbasol – Shave Cream)
 - Colgate Palmolive (Nordika – Personal Deodorant)
- ❖ Manufacturing & Marketing
 - AMREP – Specialty Chemicals

[2]

About Beaumont Products, Inc

- ❖ Manufacturer & Marketer of Natural Consumer Products since 1991
- ❖ Produce approximately 1 MM Bag-on-Valve (BOV) containers per year
- ❖ Pioneered non-aerosol delivery systems (natural positioning)
 - Excel/Atmos
 - Hans Stoffel
 - CCL
- ❖ Member of the “BOV Group”
- ❖ Not members of, nor are we represented by, the Aerosol Products Division of the CSPA (Consumer Specialty Products Association).
- ❖ We do not support the January 22, 2013 CSPA/NAA proposal on this subject requiring BOV's to declare both weight & volume



[3]

The “Issue”...

Should BOV's declare dispensable contents on a Net Volume (liquid) basis like all other non-aerosol liquids or should BOV's be required to label in accordance with Aerosol standards and declare contents in weight?

[4]

Objective

To clearly communicate the “dispensable” content of a BOV container to consumers, while emphasizing the differences between BOV's and Aerosols.

[5]

Support

- ❖ BOV's should use net volume (liquid) declaration because it is a clear communication of the useful and dispensable content.
- ❖ To use weight is to mislead the consumer into believing that the weight of the gas is part of the product and blurs the differences between BOV's and Aerosols.
- ❖ Since the gas in a BOV container never mixes with the product and the gas never leaves the can, it should be considered part of the package and not part of the dispensed product.

[6]

Bag on Valve

– A Unique Non-aerosol, Environmentally Safe Spray Container –


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{ 7 }

Bag on Valve

– A Unique, Non-aerosol, Environmentally Safe Spray Container

- ❖ Components
- ❖ Filling (Under Cap - gas & through dip tube - product)
- ❖ *Gas never mixes with the product*
- ❖ *Gas never leaves the can*
- ❖ Inert gas – either ambient air or nitrogen
- ❖ No “gas house” used in manufacturing



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Proposal

❖ Agreed to CSPA/NAA/BOV Group (November 14, 2012) Proposed Revisions to NIST Handbook 130-2012:

CSPA/NAA Proposed Revisions To NIST Handbook 130 - 2012

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(...)

10.3 Aerosols and Similar Pressurized Containers - The declaration of quantity on a pressurized container shall disclose the net quantity of the commodity (including delivered propellant), in terms of weight, that will be expelled when the instructions for use as shown on the container are followed.

{ 9 }

Proposal (continued...)

10.3.1 Pressurized Containers which utilize Bag-on-Valve (BOV) technology or similar technology that does not expel the propellant shall be permitted to disclose the net quantity in terms of either net weight or net volume. Those products in pressurized containers using net volume declaration must be registered with the National Conference of Weights and Measures as meeting the requirements to use this provision or be labeled “Meets NCWM section 10.3.1.”

Label As:

Non-Aerosol, Pressurized BOV Spray Container

(Provided that only inert, non-flammable/non-combustible gas is used and that no gas is introduced into the bag)

{ 10 }

Support for Proposal

- ❖ BOV's are Non-Aerosol, Pressurized Containers
 - There is no mixing of gas and product.
 - Gas remains in the can as part of the package.
 - Relative ease to measure dispensed product.
- ❖ In contrast, in aerosols gas (propellant) is mixed with the product and is dispersed with the product

{ 11 }

Industry Definitions of Aerosols

(Pre-date the BOV)

However, there are many definitions of Aerosols which would exclude BOV's. For example, from the Hawley's Condensed Chemical Dictionary:

“A suspension of liquid or solid particles in a gas, the particles often being in the colloidal size range. Fog and smoke are common examples of natural aerosols, fine spray (perfumes, insecticides, inhalants anti-perspirants, paints, etc.) are man-made.”

{ 12 }


Industry Definitions of Aerosols

(continued...)

Consumer Definition from Market Research:

From a Consumer Market Research study conducted by The Atlantis Group, June 7, 2012, consumers defined Aerosols as follows:
"A pressurized can, containing a mixture of gas and product (payload) that is sprayed by pressing the button (actuator). The sprayed product is thus diluted with gas".

*EU requires liquid fill declaration for both Aerosols and BOV's



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Proposed BOV Test Protocol

- The Measurement of Dispensed Liquid from a BOV -

Video content unavailable

File Name: BOV Protocol Applied to BOV Video 2

14

Issues with same Protocol applied to an Aerosol - Underscores the differences

Video content unavailable

File Name: BOV Protocol Applied to Aerosol Video 3

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FTC Guidelines on Comparative Advertising

(From a "Statement of Policy Regarding Comparative Advertising" FTC August 13, 1979).

- ❖ "(Advertisers should not be restrained) from making truthful and non-deceptive statements that a product has certain desirable properties or qualities which a competing product or products do not possess. Such a comparison may have the effect of disparaging the competing product, but we know of no rule of law which prevents a seller from honestly informing the public of the advantages of its products as opposed to those of competing products"
- ❖ "Industry codes which restrain comparative advertising in this manner are subject to challenge by the Federal Trade Commission"

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Conclusions

- ❖ There are real differences between Aerosols and BOV's, and there is an obligation to clearly communicate these differences to consumers.
- ❖ A dispensed-net volume (liquid – fl oz, or mL) content declaration and non-aerosol statement would help communicate these differences.
- ❖ To use net weight is to mislead the consumer into believing that the weight of the gas is part of the product and blurs the differences between BOV's and Aerosols.

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Slides 18 and 19 contain no technical content or graphics; therefore, they are omitted from this document.

Aerosol Weight Test

Video content unavailable

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File Name:
Aerosol Weight Test Video 4



REPORT ON AEROSOLS

The following represents consumer playback from a discussion on aerosols, which was part of a focus group project conducted by The Atlantis Group in Atlanta, GA on June 7, 2012.

Definition of an Aerosol:
A pressurized can, containing a mixture of gas and product (payload) that is sprayed by pressing the button (actuator). The sprayed product is thus diluted with gas.

Negative Comments About Aerosols:
Harmful to the environment
Contains CFC's
Bad for the ozone layer
Highly flammable
Harmful to breath
Hazardous to inhale
Causes respiratory problems
Puts toxic fumes into the environment
Causes allergic reaction ... asthma attacks
Contains a bunch of chemicals
Noisy, high-powered spray
Less "product" in the can
Expensive – aerosols charge for product & propellant
"Potentially causes cancer"
Not appropriate for food related uses due to small particles in the propellant

Positive Comments about Aerosols:
Convenient
Light weight
Easy to use
Targeted Spray
Even Distribution
Less messy than other packages
Quick application
Good even coverage

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CSPA/NAA Proposed Revision

CSPA/NAA Proposed Revisions To NIST Handbook 130 - 2012

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(...)

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10.3.1 Pressurized Containers which utilize Bag-on-Valve (BOV) technology or similar technology that does not expel the propellant shall be permitted to disclose the net quantity in terms of both net weight and net volume. This option allows consumer value comparison with various other product delivery forms that may be either net weight or net volume.

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