

**Meeting to Discuss the Method of Sale for Products Sold in Pressurized Containers
Using Bag on Valve Technology**

January 9, 2014

**National Institute of Standards and Technology
Gaithersburg, Maryland**

INTRODUCTION

On January 9, 2014, a meeting was held at the National Institute of Standards and Technology (NIST), in Gaithersburg, Maryland (agenda attached) to discuss the appropriate method of sale for products sold in pressurized containers using bag on valve (BOV) technology.

The meeting was a collaborative effort attended by 34 participants (see attached), six of which participated by tele-conference. Attendees included representation from federal agencies, including the Food and Drug Administration (FDA), Federal Trade Commission (FTC), Environmental Protection Agency (EPA), and Consumer Product Safety Commission (CPSC) and the National Institute of Standards and Technology; State and County Weights and Measures Officials including California (Los Angeles County), Maryland, Massachusetts, New Mexico (Chairman of the Laws and Regulation Committee of the National Conference on Weights and Measures) and Pennsylvania; Trade Associations including the National Aerosol Association (NAA) and Consumer Specialty Products Association (CSPA). Also participating were representatives from Beaumont Products, BOV Solutions, Energizer, Proctor & Gamble, Walmart and Measurement Canada.

The purpose of the meeting was to achieve three primary objectives:

1. Clearly define the problem.
2. Understand current federal and state laws and regulations pertaining to aerosols and pressurized containers.
3. Recommend a method of sale for products sold in pressurized containers using BOV technology, which would enable value comparison and fair competition and provide uniformity between state and federal regulations.

BACKGROUND

Aerosols and similar pressurized containers are required to be sold by net weight in accordance with Section 10.3. of the Uniform Packaging and Labeling Regulation found in NIST Handbook 130- Uniform Laws and Regulations. Some pressurized containers using BOV technology are being sold labeled with quantity statements in terms of volume (fluid ounces). Products using BOV technology versus traditional aerosols cannot be easily distinguished from one another when placed side by side, creating a barrier against consumers attempting to make value comparisons when two different methods of sale (i.e., weight and volume) are used. The use of BOV crosses many categories of commodities such as personal care, animal and veterinary care, household products, industrial, automotive, food and medicine.

This issue was brought before the National Conference on Weights and Measures (NCWM) in January of 2011, where it was discussed by regulatory officials and industry. Because a solution could not be agreed upon by industry, and because the issue affects several federal agencies (FDA, FTC, EPA), the Laws and Regulations Committee of the NCWM recommended that NIST facilitate a meeting to involve all stakeholders to help resolve the issue.

OVERVIEW

The following presentations were made which can be found in the attachments:

- David Sefcik (NIST) – Defined the issue before the NCWM, including history and background, and reviewed current state and federal regulations.
- Paul Hertensen (BOV Solutions) – Discussed the uniqueness of BOV technology and its applications. This included a discussion on the various types of BOV.
- Hank Picken (Beaumont Products) – Discussed the definitions of pressurized packaging comparing barrier packages to aerosols, outlined major differences between aerosols and BOV, and discussed FTC guidelines on comparative advertising.
- Doug Fratz (Consumer Specialty Products Association) – Discussed CSPA members' position on the method of sale for pressurized product, current regulatory definitions of aerosol and similar pressurized containers, the use of BOV in the marketplace, and the types of pressurized product in the marketplace.
- Doug Raymond – (National Aerosol Association) – Discussed the similarities of both BOV containers and traditional aerosols, along with the NAA position.

GROUP DISCUSSION SUMMARY

Industry's initial positions on the method of sale was as follows:

- BOV Solutions – Weight was acceptable, but a feasible, uniform way (i.e., statement on product) needed to be agreed upon to communicate that BOV does not expel propellant.
- Beaumont Products – Is not in support one of the NCWM proposals that recommends modifying current language in Section 10.3. of the Uniform Packaging and Labeling Regulation of NIST Handbook 130 to require weight and volume. Recommends that a quantity statement in terms of fluid volume be required, which will clearly distinguish a BOV package from an aerosol package. In addition, BOV is not an aerosol and the containers should be labeled as such.
- CSPA - Net weight is acceptable for traditional aerosols products. Net volume should continue to be allowed as a supplementary net content statement and placed on the back of the label. CSPA considers BOV a type of aerosol.
- NAA – BOV containers and traditional aerosol appear to be the same, so the labeling should be the same. NAA does not oppose dual labeling for BOV (weight and volume).

SUMMARY OF KEY POINTS

- There was agreement that there exist two separate issues.
 - What method of sale shall be required?
 - How to distinguish BOV from traditional aerosol for marketing purposes.
- NCWM is not the place to address terminology or other ways to distinguish between BOV and traditional aerosol. This would need to be addressed by industry.
- There was agreement that the method of sale should not be used to differentiate BOV from traditional aerosol.
- Having similar products labeled in terms of differing units of measure (e.g., some by volume and others by weight) would frustrate value comparison for consumers.
- Weight as the method of sale has been the traditional method of sale for aerosols and pressurized containers for over 45 years.
- The current requirement (weight as the method of sale) in the NIST Handbook 130, Uniform Packaging and Labeling Regulation, was not intended to take into consideration the various technologies use to fill and dispense pressurized containers.
- A NIST Handbook 133 test procedure for determining accurate net weight currently exists that is feasible and functional for testing of both BOV and traditional aerosols.
- Requiring or allowing a volume quantity statement would create a situation whereby the net contents could not be verified because there is no test procedure. Also, concern was expressed on whether every new technology that is used to fill and deliver from pressurized containers would have to be evaluated to determine the method of sale.
- Requiring or allowing a volume quantity statement for pressurized containers would require the Environmental Protection Agency to change their Federal regulations. The Food and Drug Administration and Federal Trade Commission do not specify a specific method of sale.

RECOMMENDATION ON THE METHOD OF SALE

At the conclusion of the meeting, there was unanimous agreement that weight should be required as the method of sale for all pressurized containers, regardless of technology.

ACTION ITEMS and NEXT STEPS

1. NIST will prepare a summary of the meeting and recommend to the NCWM Laws and Regulation Committee (L&R) that all pressurized containers have net weight as the method of sale.
2. The current regulation in NIST Handbook 130, Section 10.3. "Aerosols and Similar Pressurized Containers", under the Uniform Packaging and Labeling Regulation, is sufficient as it stands, but it was recommended that the L&R make a minor modification to have the Section title of the section changed to either "Pressurized Containers," "Aerosols and Pressurized Containers," or "Aerosols and Other Pressurized Containers". It is also recommended that consideration be given to whether or not there is value to adding a note indicating that the method of sale is independent upon the technology used.
3. It was recommended that industry continue to stay involved with the NCWM to express its support. Written comments and letters were encouraged.
4. Industry stated manufacturers will require up to 3 years in order to achieve 100% compliance with the labeling requirement. This is consistent with the time line federal regulatory agencies have required in the past for changes that have affected packaging and labeling of pressurized products. It should be noted though, that any new packaging (new label stock) should be in compliance with the current regulation, which requires net weight.
5. The federal agencies were encouraged to review current guidance provided to ensure uniformity based on the discussions and outcomes of the meeting.
6. It was recommended that the NCWM Laws and Regulation Committee correct an incorrect statement made in the "Southern Weights and Measures Annual Final Report, October 6-9, 2013". It states "Packages using BOV technology are non- aerosol by definition because the propellant is not dispensed with the product." According to the Consumer Product Safety Commission, these types of packages would be considered an aerosol according to current statute.