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NCWM Affirms Method of Sale for “Products Sold in Pressurized Containers Using Bag on Valve Technology”

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Since January of 2011, the National Conference on Weights and Measures (NCWM), along with industry representatives, trade associations, and other stakeholders have been trying to reach a consensus on the method of sale for pressurized containers utilizing “bag on valve (BOV)” technology. Unlike traditional aerosols in which the product (pay-load) is mixed with gas in the container and expelled simultaneously when dispensed, BOV is designed to separate the product from the gas inside the container so that when the product is dispensed from a barrier package only the product is expelled, while the gas remains in the package and is never mixed with the product.

Aerosols and similar pressurized containers are required to be sold by net weight in accordance with Section 10.3. Aerosols and Similar Pressurized Containers of the Uniform Packaging and Labeling Regulation in NIST Handbook 130, “Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality.” This has been the traditional method of sale and firmly established general consumer usage and trade custom with respect to the terms used in expressing a declaration of quantity for over 45 years.

The issue is some pressurized containers using BOV technology are being labeled and sold with quantity statements in terms of volume (fluid ounces). Products using BOV technology versus traditional aerosol products cannot be easily distinguished when placed side by side, creating a challenge when consumers attempt to make value comparisons when the two different methods of sale (i.e., weight and volume) are used.

On January 9, 2014, a meeting was held at the National Institute of Standards and Technology (NIST), in Gaithersburg, Maryland, www.nist.gov/pml/wmd/bov-wrkggrp.cfm to discuss the appropriate method of sale for products sold in pressurized containers using bag on valve (BOV) technology. This was done at the recommendation of the NCWM Laws and Regulations Committee. The meeting was



attended by 34 participants including representatives from the Food and Drug Administration (FDA), Federal Trade Commission (FTC), Environmental Protection Agency (EPA), Consumer Product Safety Commission (CPSC), state and county regulatory officials, industry trade associations, and individual companies representing both manufacturers and retailers. The purpose of the meeting was to clearly define the problem, understand current federal and state laws and regulations, and determine if net weight was the appropriate method of sale for BOV containers. 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. The current requirement (weight as the method of sale) in the NIST Handbook 130 is not intended to take into consideration the various technologies use to fill and dispense pressurized containers.

At the 99th NCWM Annual Conference held in Detroit, Michigan, July 13 - 17, 2014, the NCWM adopted the amended language below to clarify Section 10.3., making it clear that the method of sale applies to aerosols and other self-pressurized containers (including those utilizing BOV technology).

This amended language is effective January 2015, and includes a provision allowing BOV manufacturers who are labeling their BOV containers by volume three years to bring their packaging and labeling into compliance. This will allow manufacturers and retailers to sell existing inventories through 2017.

10.3. Aerosols and Other Pre-Pressurized Containers Dispensing Product Under Pressure. – The declaration of quantity on an aerosol and on other pre-pressurized containers dispensing products under pressure shall disclose the net quantity of the commodity (including propellant, where applicable) in terms of weight that will be expelled when the instructions for use as shown on the container are followed.

Note: Enforceable on packages using bag-on-valve (BOV) technology after January 1, 2018.
(Amended 2014)

This amendment supports and further strengthens the requirement that the traditional method of sale for aerosols and other pre-pressurized containers dispensing product under pressure (including those using BOV technology) must be sold by weight.

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