Representing Household & Institutional Products

Aerosol - Air Care - Cleaners - Polishes
Automotive Care - Antimicrobial - Pest Management

January 18, 2012

Raymond E. Johnson, Jr.
Assistant Division Director
New Mexico Department of Agriculture
Standards and Consumer Services Division
MSC 3170
New Mexico State University
P.O. Box 30005
Las Cruces, NM 88003-8005

Delivered via E-Mail
rjohnson@nmda.nmsu.edu

Re: Item 231-2 Section 10.3 Aerosols and Similar Pressurized Containers

Dear Mr. Johnson:

The Consumer Specialty Products Association[1] (CSPA) and its Aerosol Products Division (APD) represent the USA aerosol products industry, representing approximately 150 companies engaged in the manufacture and marketing of aerosol products, and has represented the vast majority of the aerosol and similar pressurized products industry since 1949. CSPA and its members are therefore vitally interested in the issues raised at the 2014 Interim Meeting of the National Conference on Weights and Measures (NCWM) regarding the appropriate net contents declaration for aerosols and similar pressurized containers.

[1] The Consumer Specialty Products Association (CSPA) is the premier trade association representing the interests of companies engaged in the manufacture, formulation, distribution and sale of more than $120 billion annually in the U.S. of familiar consumer products that help household and institutional customers create cleaner and healthier environments. CSPA member companies employ hundreds of thousands of people globally. Products CSPA represents include disinfectants that kill germs in homes, hospitals and restaurants; candles, and fragrances and air fresheners that eliminate odors; pest management products for home, garden and pets; cleaning products and polishes for use throughout the home and institutions; products used to protect and improve the performance and appearance of automobiles; aerosol products and a host of other products used every day. Through its product stewardship program, Product Care®, and scientific and business-to-business endeavors, CSPA provides its members a platform to effectively address issues regarding the health, safety and sustainability of their products. For more information, please visit www.cspa.org.

CSPA representatives participated in the meeting of state and federal regulators organized and hosted by the National Institute of Standards and Technology (NIST) in Gaithersburg, Maryland, on January 9, 2014. CSPA supports the consensus at that meeting to amend NIST Handbook 130, Uniform Packaging and Labeling Regulation as follows:

> **10.3. Aerosols and Similar Pressurized Containers.** – The declaration of quantity on an aerosol **package including Bag on Valve (BOV) technology** and **other** similar pressurized package**s** shall disclose the net quantity of the commodity (including propellant), in terms of weight, that will be expelled when the instructions for use as shown on the container are followed.
>
> **Note: Packages that utilize the Bag on Valve (BOV) technology shall be enforceable after month/day/20XX. (Amended 20XX)**

Due to the need to sell-through any products that currently do not meet this clarified requirement, CSPA strongly recommends that the enforceable date be no less than three years after the Handbook is amended. There is precedent for the need for this sell-through period in the consumer product regulations adopted by the California Air Resources Board.[2]

CSPA also supports no requirement that BOVs and related barrier packages be labeled as "non-aerosol". The *CSPA Aerosol Guide*, which contains all of the CSPA voluntary standards on aerosol products, and currently defines all pressurized packages as types of aerosol products, including BOV and other barrier packages that do not expel propellant during use.
CSPA has also researched the definition of aerosol products in dozens of federal and state regulations impacting aerosol products, and all include BOV and other barrier packages in the same class as traditional aerosol products.[3] In 2012, CSPA researched the regulatory definitions of aerosol and related pressurized products in domestic regulations both state and federal. A copy of that document is attached to these comments. In all current U.S. regulations, aerosol products are defined to include BOV and other barrier packages, and none require propellant to be released during use. The term aerosol is also used in all internationally harmonized regulations to refer to these products. Encouraging the labeling of BOVs as non-aerosol is misleading and inconsistent with regulations and industry standards nationally and worldwide.

A CSPA member company is developing low-pressure BOV food products that are dispensed in a liquid stream and used by volume measurement, and will be advocating that these products also be allowed to be labeled by net volume on the product label. CSPA has not obtained consensus yet on this issue, and discussions within the membership will likely continue.

---

[2] California Consumer Products Regulation (Title 17, California Code of Regulations (CCR), Sections 94507-94517).

[3] Regulatory agencies and organizations defining aerosol products (sometimes called pressurized products) include the U.S. Consumer Product Safety Commission, the U.S. Food & Drug Administration, the U.S. Environmental Protection Agency, the U.S. Department of Transportation, U.S. Occupational Safety and Health Administration, the National Fire Protection Association, the California Air Resources Board, and the Ozone Transport Commission (whose model rules are adopted in more than a dozen states). In addition, numerous international authorities also use the term aerosols consistently to mean all non-refillable pressurized products.

CSPA has worked for many decades to support the development of fair and reasonable regulations that promote the public good, provide a fair marketplace for all consumer specialty products, and are enforceable by regulators. The Association fully supports the goal of the Fair Packaging and Labeling Act to assure that product labels give accurate information regarding the net quantity of contents, and thereby facilitate value comparisons by consumers. We also fully support the goals of the National Conference on Weights and Measures (NCWM) to assure that compliance can be consistently and effectively monitored by those regulators.

I will not be able to attend next week's NCWM Interim Meeting in Albuquerque, but please feel free to contact me at any time prior to the meeting to provide further information.

Sincerely,

D. Douglas Fratz
Senior Science Fellow and
Aerosol Products Division Staff Executive

Cc: CSPA Aerosol Products Division Executive Board, Advisory Committee, and Transformative Technology Committee
David Sefcik, NIST, Office of Weights and Measures, david.sefcik@nist.gov

Attachment

Definitions of "Aerosol Product" and Related Terms in Various Federal and State Regulations, Standards and Codes

February 2012

CSPA Aerosol Guide 9th Edition Glossary of Terms Used in the Aerosol Industry

aerosol packaging: The processes used for production of hermetically sealed dispensers able to emit various products under pressure by actuating a valve. Also used to refer to an aerosol product dispenser.

aerosol product: A self-dispensing pressurized packaging form, consisting of a metal, glass or plastic container with a permanently attached continuous or metering valve, and designed to dispense products as sprays, streams, gels, foams, lotions or gases. Sizes range from about 0.1 fluid ounce (2.8 mL) to 33.8 fluid ounces (1 liter). (Note: The scientific term "aerosol" refers to small particles of a liquid or solid suspended in a gas.)

bag-on-valve: A type of compartmentalized aerosol dispenser, featuring a composite metal/plastic bag, attached to the valve body.

U.S. Consumer Product Safety Commission – FHSA Labeling Regulations and CFC Prohibitions

FHSA, as well as the CPSC labeling regulations at 16 CFR 1500 and CFC prohibitions at 16 CFR 1401 do not use the term "aerosol" but instead use the undefined term "self-pressurized product" almost exclusively.

U.S. Consumer Product Safety Commission – Poison Prevention Packaging Regulations

Uses but does not define "aerosol" and "aerosol form" in many parts of 16 CFR 1700. The one exception is at:

16 CFR 1700.15(b)(2)(ii): For the purposes of this paragraph … aerosol products are self-contained pressurized products.

U.S. Department of Transportation

49 CFR 181.8: *Aerosol* means any non-refillable receptacle containing a gas compressed, liquefied or dissolved under pressure, the sole purpose of which is to expel a nonpoisonous (other than a Division 6.1 Packing Group III material) liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

The aerosol container specifications in 49 CFR 178.33, however, are presented without any use of the terms "aerosol" or "pressurized".

U.S. Environmental Protection Agency – Consumer Products VOC Regulation

40 CFR 59.202: *Aerosol product* means a product characterized by a pressurized spray system that dispenses product ingredients in aerosol form by means of a propellant (i.e., a liquefied or compressed gas) that is used in whole or in part, such as a co-solvent, to expel a liquid or any other material from the same self-pressurized container or from a separate container) or mechanically induced force. ''Aerosol product'' does not include pump sprays.

40 CFR 59.503: *Aerosol Coating Product* means a pressurized coating product containing pigments or resins that is dispensed by means of a propellant and is packaged in a disposable can for hand-held application, or for use in specialized equipment for ground traffic/marking applications. For the purpose of this regulation, applicable aerosol coatings categories are listed in Table 1 of this subpart.

U.S. Environmental Protection Agency – Pesticide Registration

40 CFR 156: For pesticide labeling, uses but does not define the terms "pressurized products" and "pressurized container".

40 CFR 156.10(d)(3): If the pesticide is solid or semisolid, viscous or pressurized, or is a mixture of liquid and solid, the net content statement shall be in terms of weight expressed as avoirdupois pounds and ounces.

U.S. Environmental Protection Agency – Ozone Depletion Regulation

Uses terms "aerosol" and "propellant" but defines neither.

U.S. Environmental Protection Agency – Automotive Fuel Additive Registration

40 CFR 79.58: Uses, but does not define, the term "aftermarket aerosol fuel additive".

U.S. Federal Trade Commission – Fair Packaging & Labeling Regulations

Does not use the term aerosol product, but uses the word "propellant" and "commodity under pressure" in the net contents declaration provision:

16 CFR 500.25(a): The statement of net quantity of contents shall accurately reveal the quantity of the commodity in the container exclusive of wrappers and other material packed therewith: *Provided,* that in the case of a commodity packed in a container designed to deliver the commodity under pressure, the statement shall declare the net quantity of the contents that will be expelled when the instructions for use are followed. The propellant is included in the net quantity statement.

U.S. Food & Drug Administration – Food, Drug, Cosmetic Regulations

21 CFR 2.125: Uses, but does not define, "aerosol product or other pressurized dispenser" as well as "aerosol product" and "aerosol".

21 CFR 101, 21 CFR 300, 21 CFR 369, 21 CFR 740, and 21 CFR 801: These sections use, but do not define, "self-pressurized container" and do not use the term "aerosol". 21 CFR 740 does specifically exempt from the inhalation misuse warning labeling products with a "physical barrier" to prevent escape of the propellant.

U.S. Food & Drug Administration – Tamper Resistance Regulation

21 CFR 700.25(b): For purposes of this section, the term ''aerosol product'' means a product which depends upon the power of a liquified or compressed gas to expel the contents from the container.

National Fire Protection Association Code 30B

3.3.1* Aerosol. A product that is dispensed from an aerosol container by a propellant.

3.3.2* Aerosol Container. A metal can or plastic container, up to a maximum size of 1000 ml (33.8 fl oz), or a glass or plastic bottle, up to a maximum size of 118 ml (4 fl oz), that is designed and intended to dispense an aerosol.

3.3.3* Aerosol Propellant. The liquefied or compressed gas that expels the contents from an aerosol container when the valve is actuated. A propellant is considered flammable if it forms a flammable mixture with air or if a flame is self-propagating in a mixture of the propellant and air.

National Institute for Standards and Technology Handbook 130

Uses but does not define the term "aerosols and similar pressurized containers". Provides the following interpretation of FTC net quantity declaration:

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

National Institute for Standards and Technology Handbook 133

Uses but does not define the terms "aerosol or other pressurized packages" and "aerosol containers".

U.S. Occupational Health & Safety Administration

29 CFR 1910.106(a)(1): Aerosol shall mean a material which is dispensed from its container as a mist, spray, or foam by a propellant under pressure.

California Air Resources Board – Consumer Products VOC Regulation

94508(a)(5): "Aerosol Product" means a pressurized spray system that dispenses product ingredients by means of a propellant contained in a product or a product's container, or by means of a mechanically induced force. "Aerosol Product" does not include "Pump Spray."

Ozone Transport Commission – Consumer Products (VOC) Model Rule

2(a)(12) "Aerosol Product" means a pressurized spray system that dispenses product ingredients by means of a propellant contained in a product or a product's container, or by means of a mechanically induced force. "Aerosol Product" does not include "Pump Spray".

###