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Net Content Inspections - What and Where to Test

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NIST WMD frequently receives inquiries as to whether or not a commodity needs to be tested. To address that concern, any commodity sold by weight, measure, count or combinations of these declarations may be tested. An effective program will typically include testing at each of the following levels: point-of-pack, wholesale, and retail. The decision to test and where to test may be based on different factors, such as marketplace surveys, sales volume, complaints, routine inspections, or follow-up inspections.

While Federal law preempts State enforcement if the testing procedures are not identical to, are different from, or are in addition to Federal requirements, State regulatory agencies have the authority to inspect product at any location in the distribution chain. For example, FDA has the authority to conduct inspections at “any factory, warehouse, or establishment in which food, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into interstate commerce or after such introduction” (21 U.S.C. 341 (a)(1)). While it is true that FDA generally conducts inspections of packaged items at the point-of-pack, this is primarily because it is the most efficient allocation of their resources; however, if they choose, they can inspect/test product at any location that the product is exposed or offered for sale. According to FDA, if States or local jurisdictions choose to inspect/test at point-of-pack, wholesale, or retail, they must not apply any procedure or requirement that conflicts with Federal requirements.

The net quantity of content statement must be accurate, but reasonable variations are permitted. The limits for acceptable variation are based on current good manufacturing practices in weighing, measuring, and packing. Accuracy is applied to the average net contents of the packages in the lot. Inspection lot (referred to as "lot" in NIST Handbook 133) is defined as a collection of identically labeled (except for quantity or identity in the case of random packages) packages available for inspection at one time at point-of-pack, wholesale, and retail. The collection of packages will pass or fail as a whole based on the results of tests on a sample drawn from this collection. We encourage States to follow the model guidelines for administrative review located in NIST Handbook 130, Interpretations and Guidelines, Section 2.6.10. to enable compliance with FDA requirements.

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