November 2001

Federal Involvement in Net Content Inspection

By: Tom Coleman

The Nutritional Labeling and Education Act (NELA) was signed into law on November 8, 1990 to amend Title 21 Section 343 of the Federal Food, Drug and Cosmetic Act (FDCA). The Act requires nutritional labeling on foods and regulates health claims about nutrients to help consumers select a more healthful diet. Under the Act, State and local laws that are not "identical" to corresponding Food and Drug Administration (FDA) requirements are preempted. According to regulations under FDA (21 CFR Part 100.1(c)(4)), the phrase "not identical" does not refer to the specific words in the requirement but means that the State or local requirement directly or indirectly imposes obligations or contains provisions that (1) are not imposed by or contained in an FDA requirement, or (2) differ from those specifically imposed by or contained in an FDA requirement or implementing regulation.

Federal preemption of the net quantity of contents regulation occurred on November 8, 1991. On that date, State and local regulations on quantity of contents (e.g., net quantity of content regulations, sampling plans, and test procedures) were preempted under the NLEA if they were not "identical" to Federal requirements.

To help all weights and measures officials conduct appropriate compliance testing OWM recommends that your procedures be modified to incorporate the Category "A" Sampling plan provided in Table 2.1 contained in the Fourth Edition of NIST Handbook 133. If the average error of the lot, shipment, or delivery is negative, calculate the Sample Standard Deviation, multiply that factor by the appropriate Sample Correction Factor, thus, computing the Sample Error Limit. Disregarding the signs, if the Average Error is larger than the Sample Error Limit the commodity fails compliance requirements. The standard in conjunction with the Maximum Allowable Variation (MAV) requirement will be utilized at all locations, with the exception of United States Department of Agriculture (USDA) product which requires the use of USDA "lower limits".