Natural Products ASSOCIATION™
Promoting Natural Products for Healthy Lifestyles

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Jeffery Shuren
Assistant Commissioner for Policy
Division of Dockets Management (HFA-305)
Food and Drug Administration
5630 Fishers Lane, Rm. 1061
Rockville, MD 20852

Re: Petition to Request an Exemption From 100 Percent Identity Testing of Dietary Ingredients: Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements; Extension of Comment Period [Docket No. 2007N-0186 / RIN 0910-AB88]

Dear Assistant Commissioner Shuren:

The Natural Products Association, formerly the National Nutritional Foods Association (NNFA), is submitting this letter as a formal comment, concerning the establishment of procedure for a petition to request an exemption from 100 percent identity testing of dietary ingredients per the Final GMP rule, as was published in the Federal Register on June 25, 2007 (72 FR 34959). The Natural Products Association was founded in 1936 to promote and protect the unique values and shared interests of retailers and suppliers of natural nutritional foods and natural products. The Natural Products Association is a non-profit 501 (c) (6) association whose mission is to unite a diverse membership, from the smallest health food store to the largest natural products supplier. We champion consumers' freedom of choice in our marketplace. We strengthen and safeguard retailers and suppliers. We build strong markets to fuel industry growth. We act together with uncompromising integrity, and we encourage all to reach ever higher standards of quality. We are the largest trade association in the Natural Products industry by numbers, representing over 10,000 members. Thank you very much for the opportunity to comment.

The Natural Products Association has long been a proponent of the development of GMPs for dietary supplement manufacturing, holding and distributing. We have demonstrated our belief in quality systems by offering the first industry GMP standard and offering 3rd party GMP certification to that standard since 1999. While the program (attached) is currently being updated to become equivalent with the FDA cGMPs in manufacturing, packaging, labeling, or holding operations for dietary supplements, from the outset of the program we have maintained that ''*Each manufacturer SHALL have in place procedures to verify the identity of each lot of raw material.*'' We maintain that the primary goal of such procedures to ensure identity is to assure the public that what is on the

product label is true and accurate. We believe that a consistent definition and goal of identity testing is critical to assure that the agency, industry and consumers have consistent expectations regarding the purpose of identity testing. Additionally, identity testing may also be used to establish the origin, nature, characteristics, form and taxonomic classification (where applicable) of dietary supplement ingredients as defined by statute, where such specific and selective tests exist. We have long recognized that misidentification of dietary ingredients used in dietary supplements can present significant public health as well as economic concerns. In that spirit, we completely agree with the statement made in the IFR that ''*proposed alternative testing that will demonstrate that there is no material diminution of assurance, compared to the assurance provided by 100 percent identity testing, of the identity of the dietary ingredient before use when the dietary ingredient is obtained from one or more suppliers identified in the petition*.'' While we are supportive of the Agency's position offered in the IFR and we too recognize that it may be possible for a manufacturer to demonstrate, through various methods and processes in use over time for its particular operation, that a system of less than 100% identity testing would result in the comparable assurance provided by 100% identity testing'', per the intention of the rule we believe that this exemption would have to be very specific to the dietary ingredient supplier/vendor, dietary supplement manufacturer and to the incoming raw dietary ingredient, to uphold the integrity and intent of the final GMP rule. We do not believe submitting a petition to request an exemption from 100% identity testing of a dietary ingredient is something that should be taken lightly, nor should such exemption be granted without exhaustive demonstration of both the supplier's/vendor's and manufacturer's quality system, specifically that knowledge of a given firm's operating procedures could be used to provide such assurances comparable to 100% identity testing.

We recognize that any appropriate petitions based solely on statistical models will most likely have to incorporate elements of reduced testing that are similar to those for other FDA-regulated industries (i.e., ICH Q7A guidance for Active Pharmaceutical Ingredients, Process Analytical Technology Guidance-A Framework for Innovative Pharmaceutical Development, Manufacturing, and Quality Assurance, http://www.fda.gov/cder/guidance/cGMPs/production.htm#5). While identity testing is usually not reduced in the aforementioned guidance documents, there are other factors that may be unique to the manufacturing of dietary supplements that may allow for such reduced testing where appropriate and scientifically valid to do such for identity testing. To that end we believe that a consistent definition and goal of identity testing is critical to any guidance on the IFR. This will ensure that the burden required to use the petition is well understood. We also ask that any discussion in the guidance on identity include the minimum ingredient identity characteristics and parameters that must be addressed and monitored in the petition process and what degree of variability in these areas is acceptable, and what systems to determine the variability are viable.

We also understand that developing such a system would be generally prohibitive for most of the industry to use. This is due to some of the hard costs the agency identified that we believe would be incurred to set up such a system, in addition to the safeguards a firm would have to adopt (i.e. 100% finished product testing for identity) to avoid any potential liability a firm may expose themselves to by not performing ''at least on appropriate identity test on all incoming dietary

ingredients'' 100% of the time. With respect to the agency's estimate of hard costs specifically, a statistician (to develop an appropriate verification testing plan) would be $954 for 20 hours at $47.69 per hour and a risk analyst at $27.90 for 40 hours plus 50% overhead to calculate the total cost for supplier risk evaluations to be $1,674, while we appreciate the application of the GS-13 level of compensation for the statistician, we would like FDA to recognize that the statistical and risk expertise on how to develop such a petition, may not currently exist in the dietary supplement industry prior to this time. We anticipate firms seeking such exemption will need to employ individuals who have such experience with skip testing from other FDA regulated industries. We believe this is a greater expense as was originally offered in the guidance. For example, using data from salary.com, the average annual salary for a pharmaceutical risk manager is $94,000 (USD). Assuming a 40 hour work week the hourly rate would be $45.20 (USD), we ask that the agency incorporate such sources into their calculations for future estimates.

There are models we believe would be more favorable to petitioning for the exemption that we would like the agency to consider for any future guidance:

Model #1) Ingredient suppliers/vendors that only produce one ingredient, only produce one ingredient from a specific location, and only supply one ingredient to a specific manufacturing firm. While we indicate below that there are minimum qualifiers that we believe a petition would need to be successful, and that these models, do not, in any shape, or form alleviate these minimum qualifiers we recognize that the very nature of some supplier/vendors businesses inherently would eliminate any potential for a mix-up with respect to identity. For example, if a supplier/vendor only produces one dietary ingredient, conforms to the FDA GMPs for dietary supplements, conducts all the required verification of ingredient specifications, including identity testing, and the relevant identifying information is printed indelibly or affixed in a manner that under no circumstances could it be removed from a sealed container originating from that package once it was delivered to the dietary supplement manufacturer. This would be an example where the supply chain control could be managed statistically but additionally there is a chain of custody element here that may provide useful for exempting 100% identity testing for the dietary supplement manufacturer if the minimum qualifiers are also met.

Model #2) Ingredient suppliers/vendors that occupy the same facility. Operations that produce both raw dietary ingredients for and finished dietary supplement products may present a situation in which control of the supply chain is managed from the records surrounding the custody of those raw dietary ingredients that were formulated into finished dietary supplement products on site, which may present information that may useful in exempting 100% testing. Such an environment would also incorporate in-process and finished product testing to confirm identity.

While those two models may be unique, we anticipate that there are other unique situations that may lend themselves to an environment where the potential for mix-up and risk, can not only be managed through the appropriate statistical sampling and modeling that would accompany any type of skip testing, but also through control of the chain of custody and controls that provide comparable assurance to 100% identity testing. Still, we believe for a petition to be successful there are minimum elements that must be present and we believe that these minimums need further dialogue in

offered guidance. Guidance should provide (detailed) criteria for qualifying dietary ingredient manufacturers and suppliers and factors that would cause an ingredient or ingredient supplier to be unsuitable for the reduced identity testing petition process. These criteria include: Ingredient supplier/vendor controls; What the agency believes are adequate controls to eliminate or reduce to an acceptable level potential for mix-ups or errors that an ingredient supplier must have in place related to their packaging and labeling and related filling, packaging and labeling systems and how best to demonstrate these in the petition?; Visual examination will be a critical component of any such system, visual inspection of container, container labeling and ingredient itself. In situations where visual verification is used for confirmation that the material in the incoming container is, in fact, the material that listed on the label and C of A, what level of evidence, procedures and documentation would the agency consider adequate?; Petitioner's internal quality system; What procedures for an exemption would the agency deem necessary for a petitioner to be suitable to submit a petition?

We would also like to comment on two items that appeared in the guidance that we would like the agency to expand on their positions. First, the guidance states ''The petitions, which we assume would include the results of 1 year's testing (for purposes of this analysis)'', does the agency assume a certain minimum amount of data will be collected within a year? If so, what is the minimum amount of data that agency believes is appropriate? We believe such data may be very useful to firms coordinating their efforts to meet the exemption and would be supportive of the communication of data that supports a minimum. Additionally, the agency states that ''firms receiving fewer than 10 incoming lots of a specific ingredient annually will not benefit from petition exemption because they would not receive a ''plausible'' minimum number of lots with which to develop their verification testing program''. With the understanding set forth here for small business being that few would submit a petition, based on receiving fewer than 10 incoming lots, does the agency envision any way in which a small firm could develop a verification testing plan using a supplier's successful petition, if that supplier produced greater than 10 lots?

Lastly, we would like the agency to elaborate on the time the agency anticipates in responding to exemption petitions. While we understand that there is a statutory requirement to respond to such petitions within 180 days, does the agency intend to notify petition submitters when situations arise that may exceed that 180 day time frame. Additionally if a firm who has been granted encounters a failure of their system to which they can no longer use such exemption is there an expectation by the agency that the firm will notify the agency of such a breakdown. If so, what would be the time the agency would expect such notice?

Again, we appreciate this opportunity to comment on the petition to request an exemption from 100 percent identity testing of dietary ingredients as it relates to the Final cGMP rule for manufacturing, packaging, labeling, or holding operations for dietary supplements. We would also like to applaud the agency for offering the final rule this year; again we believe cGMPs are essential to ensure the quality of dietary supplements so that consumers can be confident that the products they purchase contain what is on the label. We would welcome the opportunity to participate in any forum where the exemption and issues surrounding cGMPs for dietary supplements may be discussed further.

Very truly yours,

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