Yerba Prima®

August 7, 2003

Attn: Dockets Management Branch (HFA-305)
Food and Drug Administration
5630 Fishers Lane, rm. 1061
Rockville, MD 20852

Docket No. 96N-0417

Yerba Prima is a manufacturer of dietary supplement products, in business since 1980. In 1992 we instituted a GMP system at our facility that was much stricter than the food GMPs that governed dietary supplements at that time. In the years since then, we have continued to refine and improve our GMP system. We have passed two independent audits that were more similar to drug GMP audits than to food GMP audits. As a result of these efforts through the years, Yerba Prima is already in compliance with most of the provisions of the proposed dietary supplement GMPs. However, there are several aspects of the proposed GMPs that either seem overly burdensome or would have a significant negative impact on our ability to stay in business. In fact, FDA has ignored the will of Congress to model dietary supplement GMPs on existing food GMPs and has proposed some aspects of dietary supplement GMPs that are even stricter than existing drug GMPs. I would like to comment on these aspects in detail and comment on some other aspects in brief.

My CFR section numbers and page numbers refer to the Federal Register Vol. 68, No. 49, March 13, 2003 Proposed Rules, except where noted.

1. Testing of finished batches [111.35(g)(1) p.12257]

Summary of this comment: Testing of finished batches should not be required in the dietary supplement GMPs. It should be up to each company to determine what type of testing will keep products in compliance with quality and safety specifications

This section mandates testing of each finished batch (when possible) to determine whether established specifications for identity, purity, quality, strength and composition are met. In my understanding of quality assurance, this is not the best way to ensure quality products. A manufacturing process that is "under control" and includes quality checks, well-trained workers and good manufacturing practices throughout is the best way to ensure the end result of a quality product.

Yerba Prima currently performs testing as needed on incoming materials and comprehensive testing on every in-process batch. During 2002, we had approximately 427 incoming dietary ingredients and approximately 174 in-process batches. We spent approximately $16,000 on comprehensive testing of the in-process batches. We had approximately 675 finished product batches in 2002. If we were to perform the same testing on the 675 finished product batches that we currently perform on the in-process batches, it would cost us about $54,000. **That would be an increased expense of $38,000, which would be significant for our company.**

We have spoken with consultants who teach drug GMP courses and consultants who audit food and drug facilities. All of these consultants have stated that it is reasonable to perform comprehensive testing on the in-process batches and release the finished product batches based upon a thorough review of the Batch Record, with of course on-going quality checks by the QC staff and every production worker during the packaging process.

2. Testing of incoming materials [111.35(k)]
Summary of this comment: Dietary supplement manufacturers should be able to accept supplier Certificates of Analysis, with a requirement to perform at least one identity test on the material.

In the preamble, and in the public meeting I attended in Oakland, California, it was stated that the manufacturer must test all incoming materials and that it is not permissible to accept the supplier Certificate of Analysis in place of some testing. I do not understand why the dietary supplement GMPs should be even stricter than the drug GMPs for incoming materials. In the drug GMPs [21CFR 211.84(d)(2)], it states that "In lieu of such testing by the manufacturer, a report of analysis may be accepted from the supplier of a component, provided that at least one specific identity test is conducted on such component by the manufacturer, and provided that the manufacturer establishes the reliability of the supplier's analyses through appropriate validation of the supplier's test results at appropriate intervals." Congress directed that the dietary supplement GMPs were to be modeled on food GMPs. FDA in the preamble states that FDA believes that dietary supplements fall in a continuum somewhere between foods and drugs, which makes sense to me and many in the industry. However, there is no justification for dietary supplement ingredient testing to be stricter than testing for drug ingredients.

Yerba Prima works with high quality suppliers for our ingredients. Nearly every supplier does comprehensive testing on their ingredients and provides a Certificate of Analysis to Yerba Prima. Many of our suppliers also sell the same ingredients to pharmaceutical companies. In addition, Yerba Prima has an audit program for our suppliers. Many of the audits have been done in person by Yerba Prima staff.

If Yerba Prima were to do complete testing on all incoming dietary ingredients and not be able to accept our supplier Certificates of Analysis, it would a significant expense. In 2002, we received approximately 427 incoming dietary ingredients. **Testing all of these in lieu of accepting our supplier Certificates of Analysis would cost our company about $107,000. This would cause great harm to our business.**

3. Reprocessing [111.35(h)(4)(iii) p.12257]
Summary of this comment: Upon approval of the quality unit, dietary supplement manufacturers should be allowed to reprocess batches that do not meet specifications.

The proposed rule states that manufacturers "must not reprocess any component, dietary ingredient or dietary supplement if it is rejected because of contamination with microorganisms or other contaminants, such as heavy metals."

This does not make sense and should be revised. Dietary supplement ingredient and finished goods manufacturers use many methods that reduce or eliminate microorganisms and other contaminants. Among the methods used are pasteurization, steam, heat, ethylene oxide, ozone, screening, sifting, powerful magnets, and others I may not be familiar with. Ingredient suppliers and manufacturers routinely use one or more of these methods on ingredients, in-process materials and even finished products (in the case of some liquid products). There is not a significant difference between using one of these methods for the first time and using one of these methods for reprocessing. If a problem of microbial or other contamination is found during testing of an ingredient, in-process material or finished product, the quality control unit should be able to make a determination whether it is appropriate to reprocess the material so that it meets specifications and is safe to use.

As another example of the same point, some agricultural or herbal ingredients meet microbial and other specifications without being treated by one of the methods listed above. According to my reading of the proposed rule, if one such ingredient is approved by the quality unit and later found to not meet microbial specifications, it would be illegal to even treat it for the first time, because that would be considered reprocessing. Again, this part of the proposed rule does not make sense.

This is another instance in which the proposed dietary supplement GMPs are even stricter than existing drug GMPs. In the drug GMPs, reprocessing is addressed in sections 211.115(a)&(b) and 211.165(f). The regulations state that "Reprocessing may be performed" and that "Reprocessing shall not be performed without the review and approval of the quality control unit." Here, as in the section above, there is no justification for dietary supplement regulations to be stricter than drug regulations. Overall, dietary supplements are much safer than drugs and the intent of Congress was for the dietary supplement GMP regulations to reflect this.

4. Water [111.15(d)(2) & (3)]
Summary of this comment: When city water is used in a facility, the city water report should be acceptable as a document of water quality.

It states on page 12254 that companies must have documentation that water used complies with EPA, state and local drinking water regulations. We use city-supplied water. The city provides a yearly report of their water quality. I would like clarification that the city report would be sufficient documentation, rather than a need to do water testing at an independent laboratory. Microbial water testing costs less than $100, but complete water testing costs $2-3,000, so if we were to do this testing ourselves there would be significant additional expenses.

5. Ingredients [111.35(d)]
Summary of this comment: This section is covered by existing food law and should be deleted or simplified.

In this section, there is a very confusing description of what can legally be used as an ingredient in dietary supplement products. Food laws already cover dietary supplements. This section should be simplified.

6. Access to records [111.125(c)]
Summary of this comment: FDA should have access to manufacturing records only when there is a reasonable belief that there is a public health hazard.

The preamble of the proposed rule states that FDA has access for inspection or copying to "all records required under this part". This is not modeled on food GMPs or food laws, as required by Congress. Failure to provide records could result in civil or criminal penalties. However, FDA does not have the authority to demand access to GMP records during a routine FDA inspection. It is my understanding that FDA currently has a right to see only labeling and interstate shipping records. Even the new provisions of the Bioterrorism Act of 2002 give the FDA access to food manufacturing records only if the Secretary has "a reasonable belief that an article of food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals." It should be made clear in the final rule that FDA has access to records and authority to copy records at dietary supplement manufacturers only when it has "a reasonable belief that an article of food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals."

7. Cleaning logs [111.50(c)(4)]
Summary of this comment: Notes regarding cleaning of equipment should be allowed to be placed in a Cleaning Log for each major piece of equipment, rather than being mandated to be placed in the Batch Records.

The proposed GMPs state that records of maintenance, cleaning and sanitizing must be written in the Batch Records. This would not be helpful, and in fact would be very

confusing. We currently use a Cleaning Log for each major piece of equipment. This allows us to keep a better record and to look up when cleaning was done much more easily than if the notes were put into individual Batch Records. It is my understanding that nearly all food companies and drug companies follow this procedure of using a Cleaning Log for each piece of equipment.

8. Cost to develop GMP records

Summary of this comment: Small companies that do not currently have written Batch Records and other documents that will be required by the dietary supplement GMPs will have to spend a lot of staff time and money to get into compliance.

Eleven years ago, Yerba Prima began writing detailed standard operating procedures, Batch Records, specifications and other documents similar to the documents that are proposed. It took a process of attending a class that cost approximately $1,000, paying a consultant several thousand dollars, and staff time of a knowledgeable person equivalent to one year about half of his time. I would estimate the current cost of document preparation for a small to medium sized company to be in the range of $20,000 - $50,000, and much more for a large company.

I would also like to mention that the wording in the preamble of the proposed rule implies that there are currently no GMP standards for the dietary supplement industry. This is not true! It has been said by FDA staff and repeated in the media, but it is not true. All dietary supplement companies have been and still are required to be in compliance with food GMPs and should be in compliance with food GMPs. If some dietary supplement manufacturers have not been following food GMPs, then they should have been told by FDA to comply or shut their doors.

Conclusion: At the meeting in Oakland, California, FDA staff asked for comments to help them understand the impact of the proposed rule on dietary supplement companies, especially small companies. I have tried to do that in my comments. Yerba Prima is one of the small companies in the dietary supplement industry. If the proposed rule were to be adopted as it is now, the extra expenses involved (as described in the comments above) would force Yerba Prima to either raise our prices significantly or to go out of business. If we were to raise our prices significantly, it would harm consumers and could also result in damage to our business and to the jobs of our employees. I have made suggestions in the comments above that I believe would help FDA meet its goal of safe, higher quality dietary supplement products on the market (which is also our company's goal) without the need for unnecessary duplicating of tests that would drive up prices industry-wide and could drive more companies out of business.

Sincerely,

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