



August 11, 2003

Dockets Management Branch (HFA-305)  
Food and Drug Administration  
5630 Fishers Lane, Rm. 1061  
Rockville, Maryland 20852

Re: Current Good Manufacturing Practices In Manufacturing, Packing,  
Or Holding Dietary Ingredients And Dietary Supplements

To Whom It May Concern:

Consac Industries, Inc. dba Country Life ("Country Life") hereby submits its comments regarding the above-referenced proposed regulation published at 68 Fed. Reg. 12158 (March 13, 2003) (the "Proposed Regulation"). Country Life supports the implementation of a current good manufacturing practices ("cGMP" or "GMP") regulation for the dietary supplement industry. However, as outlined below, the framework set forth in the Proposed Regulation, which is unnecessarily rigid and focuses excessively on exhaustive testing and does not focus enough on necessary process control requirements, must be modified to be more cost-effective and flexible while preserving the effectiveness and the legitimate goals of ensuring the quality of dietary supplements and protecting public health. Country Life's recommended improvements will result in an effective GMP framework that contains the appropriate degree of cost-efficiency and flexibility.

### **SUMMARY OF COUNTRY LIFE'S RECOMMENDATIONS**

#### **I. Effective Process Control, Including Written Procedures and Documentation**

The Proposed Regulation excluded the use of written procedures and documentation for some key areas in an effort to reduce the economic burden of the proposal and balance against the substantial cost imposed by the primary focus of the proposal – an exhaustive testing scheme. While the concept of balancing the primary and secondary aspects of the rule is good, the proposed framework reversed the proper balance. The most critical aspect of an effective GMP system is effective process control, including written procedures and documentation for all key processing operations. Written procedures and documentation play key roles in the proper training and supervision of employees as well as providing an effective enforcement mechanism. Such an effective process control system reduces the need for the exhaustive and duplicative finished product testing scheme that has been proposed and justifies a more flexible testing

scheme that confirms that the ingredients in the product meet specifications and that the process results in consistent quality products.

**II. Revise the Proposed Testing Scheme to be More Flexible and Cost-Efficient**

The Proposed Regulation appears to rely on an unnecessarily exhaustive and rigid testing scheme that requires analytical testing of every ingredient of every batch at the finished product stage if possible. Country Life recommends the be approach be modified to use the more cost-efficient and effective approach of using reliable certificates of analysis, then relying on an effective process control system and reasonable tests necessary to assure the identity, purity, quality, strength and composition of individual dietary ingredients and dietary supplements.

**III. Permit the Use of Reliable Certificates of Analysis.**

The Preamble stated that, under the Proposed Regulation, the industry would not be able to rely upon Certificates of Analysis to demonstrate that ingredients received from suppliers meet specifications. However, during the stakeholder meeting process, FDA representatives indicated that reliable Certificates of Analysis will be acceptable. Reliable means that the certifications are supported by documentation of appropriate testing and identity tests by the relying entity, and the suppliers' testing and manufacturing practices are audited by their customers or their designees. The final rule should make clear that covered entities may rely upon such certifications and should guide the industry as to what constitutes a reliable Certificate of Analysis.

**IV. The Final Rule Should Apply to the Whole Industry, Including Raw Material Suppliers and Foreign Firms.**

Country Life agrees that this rule should apply to the entire industry, including raw material suppliers and foreign firms, as proposed by FDA and the industry in the Proposed Regulation and the ANPR. Raw material suppliers and foreign firms are critical to ensuring quality dietary supplements. Exempting either of these groups would present challenges to the cost-efficiency and effectiveness of dietary supplement GMPs. Questions of feasibility for suppliers can be addressed by making the rule more flexible where appropriate and enforcing against foreign suppliers who do not comply.

**V. The Final Rule Should Be More Flexible Without Compromising Quality.**

FDA should impose one set of dietary supplement cGMPs applicable to all product categories. With proper flexibility, those regulations will adequately govern the operations of all covered entities. Flexibility means recognizing that, for different companies operate under different circumstances, there may be different means of achieving the legitimate GMP ends. Thus, as discussed below, where possible, the final rule should refrain from being unnecessarily specific as to the means to achieve the legitimate GMP ends.

## **INTRODUCTION**

Country Life and its family of businesses has participated in the health and nutrition industry for more than 30 years. Country Life distributes products produced in its own plant that was designed to be cGMP compliant and by high quality contract manufacturers. Our product lines include high-quality dietary supplements, functional foods and beverages and natural beauty supplies.

Country Life has always supported fair and appropriate cGMPs for the dietary supplement industry. Country Life, through the National Nutritional Foods Association and its counsel, supported the inclusion of language permitting dietary supplement cGMPs in the Dietary Supplement Health and Education Act of 1994 (“DSHEA”) (21 U.S.C. Section 342(g)) as well as the preparation of the industry cGMP proposal that was published in the ANPR. Indeed, although it is a small company with less than 500 employees, Country Life was one of the first companies in the dietary supplement industry to invest into the design and construction of a fully GMP compliant manufacturing plant. Country Life also holds itself and its contractors to stringent quality standards.

Current good manufacturing practices (cGMP) rules for dietary supplements are vital to the dietary supplement industry to fully implement DSHEA and to provide uniform standards for the dietary supplement industry to produce safe and accurately labeled dietary supplement products. Also, GMPs, if enforced properly, will level the playing field between responsible manufacturers, like Country Life, and other companies who have refused to invest resources into GMP compliance and unfairly used their resulting minimal costs to undercut the prices of responsible companies. Such conduct is unfair to our customers, who are entitled to high quality products, and responsible manufacturer.

Country Life supports the important goals that underlie the Proposed Regulation -- protecting the public health by preventing adulteration, regaining public confidence in dietary supplements, and providing a mechanism for efficient enforcement of cGMPs. The Proposed Regulation, although it is a commendable preliminary effort by FDA, proposes a framework that is unnecessarily rigid and focuses heavily on exhaustive finished product testing and attempts to cut costs by easing certain necessary process control requirements.

FDA’s assessment of the economic impact of its proposed framework grossly underestimates the cost to the dietary supplement industry. Country Life’s alternative approach will provide a more cost efficient and effective framework for ensuring quality of dietary supplements. The keys to such a framework will be (a) striking a more appropriate balance between an effective process control system and a reasonable testing scheme that is calculated to confirm the quality of dietary supplements; and (b) providing companies with greater flexibility in developing a specific cGMP program that meets the mandates of the rule. These changes will ease the economic impact and unnecessary burdens of the proposed rule to an acceptable level without compromising the legitimate goals of cGMPs.

## COMMENTS

### A. Preamble.

The Preamble to the Proposed Regulation discusses many of FDA's assumptions and much of its reasoning in developing the proposal. Although Country Life disagrees with many of the assenting made about the dictory supplement industry in the Preamble, below we discuss a few issues which deserve consideration in developing an appropriate framework for the final rule. The main considerations are: (1) DSHEA requires that the final rule be "modeled after" food GMPs; (2) FDA's economic assessment is flawed and underestimates significantly the costs it would impose on the industry; (3) the final rule should be more flexible, where possible, without compromising the legitimate goals of GMP; and (4) enforcement of the final rule will be critical.

#### 1. The Final Rule Must Comply with DSHEA.

Country Life is concerned that many aspects of the Proposed Regulation not only depart from being modeled after food cGMP's, but appear to be modeled after, and to some extent exceed, GMPs for over the counter (OTC) drugs. The Preamble to the Proposed Regulation addresses this issue by stating that the dictionary meaning of "modeled after" suggests that the Proposed Regulation should only be "preliminarily patterned after" food GMPs and, due to some of the similarities between dietary supplements and drugs, hybrid food and drug GMP requirements are necessary. In the Dietary Supplement Health & Education Act of 1994 ("DSHEA"), Congress explicitly required that any proposed dietary supplement cGMP regulation "be modeled after" GMPs for food. Having been involved in the process at that time, we recall that this provision was intended to prevent FDA from adopting overly burdensome, drug-like GMPs for the dietary supplement industry. The underlying reasoning was that such stringent requirements were not necessary for dietary supplements, and that unnecessary costs would cause many, especially small businesses to go out of business. While Country Life agrees that limited borrowing of appropriate concepts of drug GMPs regulations may be necessary, the Proposed Regulation should not be generally modeled after drug GMPs, nor should it be more stringent than drug GMPs in any respect.

In the course of the stakeholder meeting process, certain FDA representatives have admitted that, prior to publication of the Proposed Regulation, they did not review drug GMP regulations or consider how they compare with the Proposed Regulation. Country Life strongly encourages FDA to consider how each provision of the Proposed Regulation compares its counterparts in food and drug GMPs.

#### 2. FDA's Economic Analysis is Flawed and Underestimates the Costs Imposed on the Industry.

The economic impact of the Proposed Regulation on the dietary supplement industry would be much greater than FDA stated in its assessment. FDA's assessment, however,

is based upon incomplete information and grossly underestimates the cost of the regulation as proposed.

The NNFA surveyed its members to conduct its own analysis of the economic impact of the Proposed Regulation. These surveys benefited from much broader participation from the industry. These surveys revealed the following:

- Initial costs of the Proposed Regulation to the dietary supplement industry will be \$675 million – 5 times greater than FDA’s estimate;
- On-going costs to the industry will be nearly \$1.2 billion per year – 15 times greater than FDA’s estimate; and
- A significant percentage of the excessive costs is linked to finished product testing requirements. Specifically, FDA has miscalculated costs by underestimating the (a) the number of batches produced by companies per year; (b) the cost to perform specific analytical tests; and (c) the number of tests that would need to be required under the proposal.

NNFA’s comments discuss in further detail its survey and the economic data that demonstrates that FDA’s economic analysis underestimates the cost to industry. NNFA’s survey and data support Country Life’s alternative, more cost-efficient GMP approach.

3. One Set of Appropriately Flexible Standards is Necessary.

The Proposed Regulation creates uniform standards for the entire industry. It does not apply different standards for different types of dietary supplements or dietary ingredients, or different standards based upon company size, or different standards for suppliers. The Preamble requests comment regarding the extent to which different standards for GMP should apply to different segments of the industry.

Country Life believes the final rule should have uniform standards for the entire industry. The difference in circumstances can be addressed by building enough flexibility into the rule so that different segments of the industry operating under different circumstances can tailor the means to achieving the end goal as is reasonable and appropriate under their circumstances. Country Life believes that a uniform set of reasonably flexible standards will be operate more efficiently and will not be as confusing to the industry as varying rules.

4. Enforcement will be key to the effectiveness of the final rule.

The ultimate effectiveness of the final rule will be determined by whether and the extent to which it is enforced. Unless a proper enforcement mechanism is put in place, consistent compliance throughout the industry will not be achieved and the goals of GMP will be compromised. Thus, Country Life urges FDA to consider creating an enforcement mechanism that will reach beyond the responsible companies for which GMP compliance was a priority

prior to the Proposed Regulation and give others in the industry incentive to make GMP compliance a priority.

**B. The Final Rule Must Focus More on Process Control, Including Written Procedures and Documentation**

In order to make the final rule more effective and cost-efficient, the imbalance between the roles of process control, including written procedures and documentation, and product testing must be corrected. The Proposed Regulation excluded the use of written procedures and documentation for some key areas in an effort to reduce the economic burden of the Proposed Regulation while making an exhaustive finished product testing scheme, including substantial and unnecessary cost to the industry, the primary focus of the proposal.

The final rule must recognize that the most critical aspect of an effective GMP system is effective process control, including written procedures and documentation for all key processing operations. Written procedures and documentation key roles in the proper training and supervision of employees, including having a record at all times of exactly what employees should do to maintain consistent quality. Written procedures and documents also provide traceability and an effective enforcement mechanism.

Due to the primary importance of written procedures and documentation to achieving consistent quality, Country Life believes the final rule should require written procedures and documentation at each major point of the manufacturing process. Process control through appropriate written procedures and documentation, when backed up by a reasonable testing scheme that confirms that the system is functioning as it should, is a more effective means of achieving GMP goals than the proposed framework, which approaches the balance between process control and testing from the reverse -- exhaustive and unnecessary testing requirements coupled with minimal written procedures and documentation.

**C. FDA's Proposed Testing Scheme Should Be Reconsidered**

The proposed testing scheme is the aspect of the proposal that needs the most change. It also presents the best opportunity to make the final rule more cost-efficient yet effective.

Proposed Section 111.35 and the policy stated in the Preamble, as currently drafted, would require:

- That manufacturers establish specifications as to the identity, purity, quality, strength and composition of components, dietary ingredients and dietary supplements upon receipt, in process (with respect to dietary ingredients and dietary supplements), and in the finished product (with respect to dietary ingredients and dietary supplements).

- That manufacturers ensure, through testing or examination, that the products comply with the specifications, as follows:
  - Test each finished batch, and
  - If the manufacturer can document that any specification cannot be tested on a finished batch because there is no scientifically valid analytical method, perform testing upon receipt and in-process (at points where control is necessary).

The proposal emphasizes finished product testing as the primary cGMP control. This is not the most effective nor the most efficient means to assure product safety and quality. It is not technically feasible in many instances. Most striking was the cost to test for every component in every batch. Although the Preamble discusses the “flexible” testing standards, the proposed testing requirements are more stringent and less flexible than OTC drug GMP requirements. The cost of the proposed testing approach is much higher than estimated by FDA. Country Life’s recommended changes, which include cutting the unnecessary testing costs mandated by the proposed regulation significantly, will effectively meet the quality goals of GMP when balanced with an effective process control system, including appropriate written procedures and documentation.

The testing aspect of the Proposed Regulation could be more cost-efficient and flexible, and still achieve the goals of GMP, by: (1) permitting the use of reliable Certificates of Analysis that demonstrate appropriate testing against specifications and, where appropriate, allowing such certifications to ease the cumulative and unnecessary testing burdens down the supply chain; (2) identifying the testing obligations of different entities with different roles in the supply chain; and (3) adopting a more flexible standard for testing of non-dietary ingredients and components. This recommended alternative testing approach would reduce testing costs significantly without compromising quality.

1. The Final Rule Should Permit Reliable Certificates of Analysis.

The final rule must permit the use of verified certificates of analysis that demonstrate that scientifically valid analytical testing has been conducted. Certificates of analysis are a key component of the manufacturing process, used by similar industries, and there is no economically feasible alternative. The reliability of certificates may be demonstrated through (a) identity testing, (b) maintenance of documentation of specific and appropriate test results, and (c) appropriate verification of the information provided and that the supplier complies with GMP.

Certificates of analysis are acceptable in other industries. For instance, they are suitable to order the release of a detained active pharmaceutical ingredient,<sup>1</sup> with drug

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<sup>1</sup> 65 FR 75718, at 75719

components which are not active ingredients,<sup>2</sup> and in the food cGMPs.<sup>3</sup> Dietary supplements do not pose additional risks beyond these industries that warrant treating this industry different in this regard.

Although Country Life was pleased that, during the course of the stakeholder meeting process, FDA representatives indicated a willingness to accept verified Certificates of Analysis, Country Life recommends the following clarifications. The final rule should clearly state that verified Certificates of Analysis are acceptable and issue guidelines as to what should be included in a proper verified certificate of analysis. Moreover, the final rule should make clear that analytical tests for specifications do not have to take place in the finished product phase and do not have to be repeated at any point in the manufacturing process unless such testing is necessary at a critical control point.

2. The Final Rule Should Set Boundaries Distinguishing the Testing Responsibilities that Correspond With Different Roles in the Supply Chain.

The Proposed Regulation does not make clear which testing obligations correspond with which roles in the supply chain. Nor does it make clear that only one party in the supply chain needs to perform certain tests with regard to certain ingredients. The final rule must make different obligations correspond with different roles in the supply chain, and should clarify that such obligations only fall on one party to perform such testing so long as parties down the supply chain verify verification that such testing was performed.

The verified certificate of analysis aspect of this approach will place much of the testing responsibility on the raw material supplier. Once the suppliers furnish a verified Certificate of Analysis as to their ingredients, the testing is streamlined for manufacturers and other companies down the supply chain. Manufacturers, like Country Life, should be responsible to perform identity tests, reasonable tests to verify the reliability of their suppliers, testing to prevent adulteration at critical control points in the process. Companies that merely bottle and/or label finished product should be responsible for potency, identity, and purity, but should not be saddled with the majority of laboratory expenditures. This approach is effective at confirming the quality of the process, but eliminates unnecessary testing, and will lower the extraordinary testing costs imposed by FDA's proposal.

3. Testing Requirements Regarding Non-Dietary Ingredients and Components Should be More Flexible.

The Proposed Regulation does not distinguish between dietary ingredients, non-dietary ingredients and components in dietary supplements for testing purposes, imposing the same testing requirements regardless of the status of the ingredient. This aspect of the Proposed Regulation is more stringent than its counterpart the OTC drug GMP regulations. OTC drug

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<sup>2</sup> 21 CFR Part 211.84(d) and 21 CFR Part 211.165(a)

<sup>3</sup> 21 CFR Part 110.80(a)(2)

GMP regulations have more flexible testing standards for “inactive” ingredients, which are analogous to non-dietary ingredients in the dietary supplement context. For example, with regard to “inactive” ingredients, drug GMPs have a “reasonableness” standard in place, which recognizes the goal of providing reasonable certainty that the product contains what the company says, which can be accomplished through reasonable identity testing, but does not require analytical testing of each and every component or ingredient. Certain parts of the Preamble note that varying tests may be appropriate for different types of ingredients as far as identity testing. This should be the case for non-dietary ingredients under the final rule.

**D. GMPs Should Apply to the Entire Industry, Including Suppliers and Foreign Firms**

Proposed section 111.1 provides that the Proposed Regulation will apply to all manufacturers, suppliers and other entities “if you manufacture, package, or hold a dietary ingredient or dietary supplement.” In the Preamble, FDA indicates that this section applies to foreign firms that manufacture, package or hold dietary ingredients and dietary supplements that are imported or offered for import into the U.S., unless such products are “imported for further processing and export under section 801(d)(3) of the act”.

Country Life agrees that the final rule should apply to the entire dietary supplement industry, including raw material suppliers and foreign firms. Country Life understands that some suppliers are arguing that they should be exempted from this rule. Country Life disagrees. Raw material suppliers are key to ensuring quality. Exempting raw material suppliers from the final rule would hinder the goal of ensuring quality and would be inefficient economically, especially given that suppliers can help streamline testing in the raw material stage of the supply chain. Moreover, raw material suppliers often are in a position to take advantage of economies of scale and, due to their expertise regarding the ingredients they supply, are in the best position to evaluate a raw material properly.

Country Life understands that some suppliers are taking the position that the rule should not apply to them, arguing, in part, that as suppliers of food and dietary supplement ingredients around the world it may not be feasible to make significant changes in their process to supply to the dietary supplement industry in the U.S. It will be more feasible for such suppliers to comply with the final rule without major changes to their processes or equipment if: (a) more flexibility were built into certain sections of the rule, as Country Life proposes; (b) FDA ensures a level playing field for responsible suppliers by enforcing the final rule against foreign suppliers, some of whom have a history of non-compliance and undercutting responsible suppliers; and (c) FDA works with regulators from other countries to harmonize standards and enforcement internationally.

**E. Personnel Qualification Requirements, Which Appear to Exceed Those of OTC Drug GMP, Should be Revised**

Proposed Sections 111.12 and 111.13 appear to propose personnel qualification requirements that exceed the requirements of similar provisions in the OTC drug GMP

regulations. These provisions, as proposed, would require that employees and supervisors have the “training and experience” to perform their respective duties. A comparison of this proposed language with the counterpart language in OTC drug GMP regulations leads to the conclusion that the proposal exceeds the relevant requirement in OTC drug GMP, which requires “education, training and experience, *or any combination thereof.*” This alternative language provides greater flexibility without sacrificing the quality goals of GMP. As such, Country Life recommends that the Sections 111.12 and 111.13 of the final rule be revised to state “training and experience, *or any combination thereof.*”

#### **F. Requirements Regarding Product Returns**

Proposed sections 111.85 and 111.35(i) would require a material review and disposition decision with the Quality Control (QC) group regarding any returned product and that returned product may not be salvaged, unless: (1) evidence from their packaging indicates that they have not been stored under improper storage conditions; and (2) tests demonstrate that the product meets all specifications for identity, purity, quality, strength and composition.

For all intents and purposes, these proposed sections appear to require that no product can be salvaged that has been returned because companies receiving returns often can't verify the conditions under which such products have held and every product returned would have to be retested.

However, during the course of the FDA stakeholder meeting process, when questioned about the extent to which testing would be required of returned product, FDA representatives indicated that the extent of testing requirements would depend upon the reason that such products were returned. This type of a reasoned approach is much more practical than the approach that appears to be suggested in the actual language of the proposed sections 111.85 and 111.35(i). The final rule should be clarified in its final form to take these practical issues into account and allow flexibility as to when returned product must be tested.

Country Life recommends that proposed section 111.85(b)(2) be modified to state as follows: “Tests, which only are required to be conducted to the extent that product is returned for a GMP related reason, demonstrate that the dietary ingredients or dietary supplements meet all specifications for identity, purity, quality, strength, and composition.”

#### **G. Cleaning and Sanitation**

Cleaning and sanitation is another area in which greater flexibility and less specificity is warranted. The Proposed Regulation provides as follows:

1. Definitions:

a. Sanitize means to adequately treat equipment, containers, utensils, or any other dietary product contact surface by applying cumulative heat or chemicals on cleaned food contact surfaces that when evaluated for efficacy, yield a reduction of five logs, which is equal to 99.999% reduction, of representative disease micro-organisms of public health

significance and substantially reduce the numbers of other undesirable micro-organisms, but without adversely affecting the product or its safety for the consumer.

b. Contact surface means any surface that contacts a component, dietary ingredient, dietary supplement, and those surfaces from which drainage onto the component, dietary ingredient, dietary supplement, or onto surfaces that contact the component, dietary ingredient, or dietary supplement ordinarily occurs during the normal course of operations. Examples of contact surfaces include, but are not limited to, containers, utensils, tables, contact surfaces of equipment, and packaging.

2. The batch production record must contain “the date and time of the maintenance, cleaning and sanitizing of the equipment and processing lines used in producing the batch.”

Country Life is concerned about several aspects of proposed Section 111.3. First, the proposed definition of “sanitize” is inappropriate in that this proposed definition not only departs from food GMP, but it exceeds OTC drug GMP because it is more specific than OTC drug GMP in its requirement of a 5 log reduction of representative disease micro-organisms of public health significance.

Additionally, Country Life is concerned that this proposed provision, as drafted, may require that it halt production while it sanitizes all equipment and processing lines to achieve the “5 log reduction” discussed above. The unnecessary additional cost of such production “down time” will be significant.

Country Life recommends that the final rule focus more on the end goal of ensuring that contact surfaces are cleaned and sanitized appropriately. Thus, Country Life recommends that the final rule state as follows: “‘Sanitize’ means to adequately treat equipment, containers or utensils by a process that is effective in destroying vegetative cells of microorganisms of public health significance, and in substantially reducing numbers of other undesirable microorganisms, but without adversely affecting the product or its safety for the consumer.” This language, which is the exact language used in the ANPR and is more modeled after food GMPs, is much more flexible without compromising the quality goals of GMP as it still mandates “effective” sanitation without overly specifying the means to achieve the goal.

## **VI. CONCLUSION**

The Proposed Regulation appears to be a commendable first step toward achieving consistent quality in the dietary supplement industry. However, it must be revised to achieve the legitimate goals of protecting the public health and ensuring quality in an effective and cost-efficient manner that does not unduly burden the industry. The final rule can balance these goals with greater flexibility where appropriate, but especially in the testing approach, and

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by placing greater emphasis on process controls such as written procedures and documentation in key operations. Effective enforcement also will be critical to maintaining the integrity of dietary supplement GMPs.

Respectfully submitted,



Ryan Drexler,  
President

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