

suggested alternatives to requirements, such as using the Centers for Disease Control and Prevention, poison control centers, FDA's MedWatch program, and consumer complaint files to monitor and record injuries and illnesses attributed to marketed products.

In contrast, several comments supported a requirement for written procedures or medical evaluation of serious adverse events. Some comments stated that an evaluation procedure is necessary and that manufacturers are and should be responsible for establishing procedures to respond appropriately to reports of serious illness and injury that may have resulted from using a dietary supplement. Other comments stated that medical evaluations are not necessary because manufacturers should be using appropriate internal quality control procedures within their quality control units or elsewhere to identify the cause of adverse events and respond appropriately.

We agree with those comments stating that manufacturers are and should be responsible for evaluating consumer complaints. Manufacturers have an obligation to ensure that the dietary supplements that they put on the market are not adulterated or misbranded. Consumer complaints about a dietary supplement might indicate a CGMP-related problem associated with a dietary supplement. For example, a consumer complaint might identify a previously unknown manufacturing deviation that caused a batch of dietary supplements to be adulterated. Thus, a procedure for reviewing and investigating consumer complaints is recommended. Records of consumer complaints related to CGMPs, and the review and investigation of such records, are necessary and we discuss such a record requirement later in this document. In that discussion, we address what we mean by a consumer complaint and we address the comments on the type of evaluation that would be necessary for consumer complaints and whether the comments' suggested alternatives to written procedures and medical evaluations are sufficient to identify potential concerns.

Some comments objected to written procedures and medical evaluation arguing that such requirements go beyond the CGMP regulations for food and, therefore, would be contrary to section 402(g)(2) of the act. Other comments claimed that written procedures would present unwarranted potential criminal liability, that there are many unsubstantiated injuries and illness inherent in the food industry, and that dietary supplement safety

problems are rare. These comments also stated that a costly and burdensome safety surveillance system is not warranted for these products, that the term "serious adverse event" is ambiguous, and that most manufacturers lack trained medical personnel to serve this function.

Because we have found dietary supplement problems that could have been prevented by CGMPs and that resulted in product recalls, we find that manufacturers must be able to identify these types of problems with their products. It is a manufacturer's responsibility to do so. We disagree with those comments stating that we do not have legal authority to require a manufacturer to evaluate consumer complaints as we propose to define that term in this proposed rule.

We also disagree that written procedures would present unwarranted potential criminal liability. Persons subject to regulation under the act and its implementing regulations may face civil or criminal action if they fail to comply with the act or our regulations (see, e.g., sections 301, 302, and 303 (21 U.S.C. 331, 332, and 333) of the act). The fact that such an outcome is possible under the statutory scheme does not mean that a provision that would require written procedures and evaluation of consumer complaints is "unwarranted." If we were to accept such a claim, then we would find it difficult to issue any regulation to implement the act, and that result would conflict with our obligation to protect the public health. Therefore, we reject the comments' argument regarding potential criminal liability and its effect on rulemaking.

We also disagree with the claim that there is no basis for requiring an evaluation of adverse events because there are many unsubstantiated reports of injuries or illness and because dietary supplement safety problems are rare. In the past, voluntary reports of injury or illness have identified adulterated dietary supplements. Consumer complaint reports associated with the use of marketed dietary supplements, such as *D. lanata* contaminated plantain, identified the need for further investigation and led to recalls or warnings to protect the public health (Ref. 6). Evaluation of consumer complaint reports can reveal patterns of adverse events that assist us and manufacturers in identifying the need for further investigation to determine what public health actions are needed.

For example, assume that, after you investigate an AER, you find that the product contained an ingredient that should not have been used and that the

ingredient caused the adverse event. The fact that the wrong ingredient appeared in your product would indicate that some type of problem occurred in your manufacturing process of that product. Once you identify the ingredient as the cause of the problem, you would be able to take steps to remove any such product from the market and prevent the problem from recurring, helping to ensure product quality and purity, and restore consumer confidence that your products contain the correct ingredients. In short, investigations of consumer complaints benefit both manufacturers and consumers and these benefits will exist regardless of whether there are many or few injuries or illnesses believed to be associated with your product.

Question 6. We invited comment on whether a CGMP regulation for dietary supplements should require manufacturers to establish procedures to identify, evaluate, and respond to potential safety concerns with dietary ingredients. We asked whether such an evaluation is necessary, and, if so, what elements need to be included in such an evaluation and their relative importance (e.g., the presence and potency of pharmacologically active substances, the presence of different microorganisms, the presence of different contaminants and impurities). We also asked whether we should require that these evaluations be documented in a firm's records, and, if so, what type of records would be adequate to document that such an evaluation had occurred.

In general, the comments opposed requiring manufacturers to establish procedures to identify, evaluate, and respond to potential safety concerns with dietary ingredients. Most comments claimed that such procedures are unnecessary because dietary ingredients have a history of safe use in food and that DSHEA is based on this history of prior use in food. Other comments argued that, because DSHEA is based on a history of prior use of existing dietary supplements and established a notification procedure for new dietary ingredients, a requirement concerning potential safety concerns for dietary ingredients would be beyond the scope of this rulemaking.

Several comments noted that for those dietary ingredients that do not have a history of safe use in food and are considered "new dietary ingredients," as defined in section 413(c) of the act, DSHEA established procedures for evaluating safety concerns. Section 413(a)(2) of the act requires a manufacturer to submit a "new dietary ingredient" notification to FDA 75 days