

nondietary ingredient substances must be subject to a food additive listing, authorized by a prior sanction, included with the terms of a color additive listing, or listed as GRAS for such use in 21 CFR part 182 or affirmed as GRAS for such use in 21 CFR part 184. Alternatively, you can meet the requirements of § 111.35(d) by a showing that the substance is GRAS within the meaning of § 170.30 (21 CFR 170.30).

Proposed § 111.35(d)(4) would require that you have information in your files that would substantiate the GRAS status of any nondietary ingredient substance that is not otherwise the subject of a food additive approval, prior sanction, or color additive listing. We believe that, to implement the act in a way to ensure that the statutory goals are achieved; that is, to ensure that the manufacturer has the relevant information to ensure that any asserted GRAS ingredient is, in fact, GRAS, it is appropriate to require that you maintain, in your files, the basis for why the nondietary substance you assert is GRAS that you use in a dietary ingredient or dietary supplement is, in fact, GRAS. You must not use unsafe ingredients in your products. Therefore, you must have information on ingredients that you intend to use in a dietary ingredient or dietary supplement to demonstrate that such ingredient is safe. Otherwise, as a responsible manufacturer, you would not use the ingredient in your product.

Therefore, under proposed § 111.35(d)(4), for any claim that a nondietary ingredient in a dietary supplement is GRAS, you must support such claim with a cite to a FDA regulation or an explanation for why there is general recognition of the safety of the use of the substance in a dietary ingredient or dietary supplement. If such claim is based on general recognition of safety based on scientific procedures, the explanation would be based on evidence that demonstrates that there is common knowledge about the safety of the substance throughout the scientific community knowledgeable about the safety of such substance. Under § 170.30(c)(1), if a substance is GRAS based on common use in food prior to January 1, 1958, this determination must be based solely on food use of the substance before January 1, 1958, and ordinarily must be based upon generally available data and information. Thus, GRAS based on common use in food prior to January 1, 1958, may be determined without the quantity or quality of scientific procedures required for approval of a food additive regulation. If you wish to

use an ingredient based solely on food use of the substance prior to January 1, 1958, you would need to support a claim that the ingredient is GRAS with an explanation of the basis for why the ingredient was in common use in a dietary ingredient or a dietary supplement prior to January 1, 1958, and why that use provides the basis for general recognition of the safety of the substance.

We will view any ingredient, that cannot meet the standard of § 170.30 for a GRAS determination, as a food additive, and any dietary ingredient or dietary supplement that contains a food additive that we have not approved for use in the dietary ingredient or dietary supplement is subject to regulatory action. If the safety of such ingredient is not recognized expressly in an FDA regulation, you have the burden to explain why the ingredient is GRAS under § 170.30.

In the **Federal Register** of April 17, 1997, we issued a proposed rule on GRAS notification (62 FR 18938). We are currently accepting GRAS notifications under this proposed rule. However, we recognized in the GRAS notification proposal (62 FR 18938 at 18951) that a failure by us to object to a GRAS notification is not equivalent to a GRAS affirmation of GRAS status and we, as a matter of discretion, may not advise a notifier of a problem that we have identified that raises no important public health issues. Therefore, if you submit a GRAS notification to us under the April 17, 1997, proposed rule, our failure to object to your determination that an ingredient is GRAS in a dietary ingredient or dietary supplement will not constitute a GRAS affirmation by us. Further, if we know of no reason to question the safety and lawfulness of the ingredient that is the subject of a GRAS notification and that is used in the manufacture of a dietary ingredient or dietary supplement, we would not object to your reliance on your determination that the use of the substance is GRAS. You could not use our response to your GRAS notification as your basis for asserting compliance with the requirements under proposed § 111.35(d) because an FDA response letter to a GRAS notification is not the same as your explanation, *e.g.*, a response letter does not provide an explanation for why an ingredient is GRAS. We encourage any dietary ingredient or dietary supplement manufacturer to consult with us on any "nondietary ingredient" substance that it intends to use in such product to ascertain whether the use of such ingredient may be more appropriately

submitted for review by us in a food additive petition.

Proposed § 111.35(e) would require that you establish a specification for any point, step, or stage in the manufacturing process where control is necessary to prevent adulteration. These points, steps, or stages may include heating steps, cooling steps, points where specific sanitation procedures are needed, product formulation control steps, points where cross contamination may occur, and steps where employee and environmental hygiene are necessary to prevent adulteration of the dietary ingredient or dietary supplement. These specifications are regulatory specifications and you would be required to perform testing or examination to confirm such regulatory specifications are met. We discuss performing testing or examination to confirm that a regulatory specification is met later in this document. A deviation from such specification would signify that the dietary ingredient or dietary supplement could be adulterated. Such deviation would require investigation and a disposition decision approved by the quality control unit under proposed § 111.35(i) (which we also discuss later in this document).

The proposed rule would not prevent you from establishing additional specifications that are not at points, steps, or stages where control is necessary to prevent adulteration if those additional specifications will help you meet your quality control demands, but a failure to meet those nonregulatory specifications will not require that you make a material review and disposition decision. In other words, you may establish additional specifications beyond those that the proposed rule would require, and a material review and disposition decision would be needed only for those specifications if not met, that are required under the proposed rule. For example, if you determine that a specific heat temperature is needed at a point, step, or stage in the manufacturing process to prevent adulteration, that heat temperature specification is a general regulatory specification. If not met, you would need to make a material review and disposition decision.

In addition, proposed § 111.35(e) identifies certain points, steps, or stages where a regulatory specification is required. Regulatory specifications are required for materials that you receive, at the inprocess stage, and that you manufacture, *e.g.*, at the finished product stage. Specifically, we are proposing to require that you establish specifications at these control points for the identity, purity, quality, strength,