PHARMAVITE

July 16, 2019

VIA ELECTRONIC SUBMISSION

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

Re: Docket No. FDA-2019-N-1482; Scientific Data and Information About Products Containing Cannabis or Cannabis-Derived Compounds; Public Hearing; Request for Comments

Pharmavite LLC (Pharmavite) is submitting the following comments in response to the U.S. Food and Drug Administration's (FDA's) request for scientific data and information about the safety, manufacturing, product quality, marketing, labeling, and sale of products containing cannabis or cannabis-derived compounds.

Pharmavite manufactures and markets Nature Made® dietary supplements. For more than 45 years, Pharmavite has made and distributed high quality vitamins, minerals, herbs, and other dietary supplements that promote wellness and help maintain good health. Pharmavite is headquartered in West Hills, CA and has manufacturing and distribution facilities in San Fernando and Valencia, CA, and in Opelika, AL.

Pharmavite's comments are submitted in the context of Pharmavite's (i) interest in manufacturing and selling dietary supplements containing hemp and hemp-derived compounds (Hemp Extract DS) in a legally compliant manner and (ii) concern regarding the sale and continuing proliferation of illegal Hemp Extract DS.

Safety:

Appropriate Safety Standard. Legal standards already exist for ensuring the safety of dietary supplements, and these are the standards against which Hemp Extract DS should be evaluated by the FDA and the dietary supplement industry[1].

Need for Legal Pathway. FDA has recognized the significant public interest in cannabis and cannabis-derived compounds, particularly CBD, and that CBD seems to be available almost everywhere. FDA has also indicated it believes there are many unanswered questions about the science, safety, and quality of products containing CBD and expressed a need for further study and high quality, scientific information about the safety and potential uses of CBD[2]. At the same time, there is clear consumer demand for Hemp Extract DS[3]. Based on publicly available information, it is also apparent that the quality and safety of many of the Hemp Extract DS available to consumers today are questionable[4].

Accordingly, FDA should act with speed to articulate and implement a legal pathway for the use of Hemp Extract DS, so that companies will have the incentive to commence: (i) appropriate safety studies and file New Dietary Ingredient Notifications (NDINs) with the FDA for such Hemp Extract DS; (ii) product development work under dietary supplement cGMP conditions; and (iii) clinical research studies to evaluate such products.

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[1] The Federal Food, Drug and Cosmetic Act (Act) requires that dietary supplements not present "a significant or unreasonable risk of illness or injury under (i) conditions of use recommended or suggested in labeling, or (ii) if no conditions of use are suggested or recommended in the labeling, under ordinary conditions of use." 21 USC 342 (f)(1)(A). Moreover, a dietary supplement may not contain a new dietary ingredient "for which there is inadequate information to provide reasonable assurance that such ingredient does not present a significant or unreasonable risk of illness or injury." 21 USC 342 (f)(1)(B). Manufacturers of such new dietary ingredients or dietary supplements containing such new dietary ingredients must have "concluded that a dietary supplement containing such dietary ingredient will reasonably be expected to be safe. 21 USC 350b (a)(2). Finally, a dietary supplement may not be or contain "any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health. 21 USC 342 (f)(1)(D).

[2] https://www.fda.gov/consumers/consumer-updates/what-you-need-know-and-what-were-working-find-out-about-products-containing-cannabis-or-cannabis

[3] The market for hemp-derived CBD products is expected to exceed over $500 million by the end of 2021. *Nutrition Business Journal*, June 2019. Hemp-based CBD Supplement Sales Chart 2017-2021E, p4.

[4] https://www.fda.gov/news-events/public-health-focus/warning-letters-and-test-results-cannabidiol-related-products; see also https://www.consumerreports.org/cbd/cbd-may-be-legal-but-is-it-safe/

As Hemp Extract DS are studied and developed and come to market through an identified legal pathway, those established high-quality producers who are currently sitting on the sidelines will enter the marketplace and retailers and consumers will naturally gravitate towards higher quality products[5]. Those products not complying with the Act will ultimately be marginalized out of the marketplace.

Possible Pathways: FDA has various means at its disposal to create such a legal pathway for Hemp Extract DS. It could:

a. make clear that the article subject to the "drug exclusion clause" 21 USC 321(ff)(3)(B) resulting from the Epidiolex IND and NDA is an "isolate" CBD product, and not a simple Hemp Extract DS[6]; and/or
b. issue an interim final rule (IFR) under the Administrative Procedure Act (5 USC 553 (b)(3)(B) and the "drug exclusion clause" 21 USC 321(ff)(3)(B), with notice and opportunity for comment, permitting Hemp Extract DS (but not foods – see below), that otherwise follow the requirements of the Act and its regulations (including without limitation filing NDINs and compliance with cGMPs) while the FDA conducts further analysis for purposes of establishing a final rule.

Pharmavite advocates that the FDA do both so that companies can file NDINs for such Hemp Extract DS and consumers may fully benefit from the non-drug benefits of dietary supplements containing hemp and hemp-derived compounds.

IFR Pathway – CBD Limit: With respect to any IFR, to ensure safety, FDA would not need to set forth a limit on CBD content for Hemp Extract DS, as the NDIN process will determine the safe levels for each particular Hemp Extract DS. However, in the interest of safety a temporary limit on CBD content for such products could be established based on the existing science, so long as such limit could be modified over time based on the results of safety studies and further scientific evaluation of Hemp Extract DS. Such a temporary limit might deter non-compliant

[5] The classic example in this area is the quality of alcohol during prohibition and after prohibition was abolished.
[6] Based on the precedent established by FDA in the administrative decision in the Cholestin matter with respect to Red Yeast Rice, the "drug exclusion clause" does not apply to simple hemp-derived extracts, including without limitation standardized hemp derived extracts that do not concentrate CBD content (1) beyond that which normally occurs as a result of a standard extraction process (including water, alcohol and Co2 extraction processes), as all botanical extraction processes concentrate the compounds in percentages higher than found in the plant given the removal of the marc, and/or (2) other than as a result of the reduction or removal of (a) the lawful THC content (given that consumers may be seeking products with no detectable THC) or (b) any other content that provides potential safety benefits.

companies[7] from selling or marketing supplements containing above-limit and potentially unsafe levels of CBD, as these products would stand out in the marketplace and thereby attract enforcement action by the FDA, state and local enforcement authorities and the actions of "private attorneys generals."

IFR Pathway – Cautionary Statements: Until more safety data is obtained and evaluated, the IFR could require certain cautionary statements, such as that the product is not intended and should not be taken by special populations (e.g. the elderly, children, adolescents, pregnant and nursing women), and that persons taking OTC or prescription drugs should consult with their health care provider before taking the product. This should provide sufficient cautionary information to allow the issuance an IFR based on existing science.

IFR Pathway – No Conventional Food Use: Pharmavite does not believe the IFR should permit CBD enhanced hemp extracts to be used in conventional foods *at this time* for the following safety reasons:

- Given what we have seen announced, a myriad of food companies would like to introduce CBD into their products and numerous food products with CBD content would increase the potential for cumulative exposure to CBD in amounts that could be unsafe.
- Foods would not be required to label the amount of CBD in the food product (see concern immediately below) and food sold in restaurants would have even less labeling requirements. Thus, consumers might not be aware of the presence or amount of CBD in the foods, further enhancing the cumulative exposure risk.
- Foods typically do not contain warning or cautionary statements, age use restrictions or require serious adverse event reporting. Moreover, the safety of such foods for use by the elderly, children and other vulnerable consumers, such as pregnant or nursing women, has likely not be established.
- Conventional food GMPs (Food GMPs) are substantially less rigorous than dietary supplement GMPs. Among other things, Food GMPs do not require identity testing, ingredient specifications, or potency testing.

[7] Those companies who do not file NDINs for their product and who do not otherwise follow the requirements of the Act.

However, as the science on the safety of hemp extracts evolves, it is possible that use in conventional foods might be permitted at some level once cumulative exposure is taken into account.

Product Quality, Marketing, Labeling and Enforcement

Pharmavite believes product quality, marketing and labeling of Hemp Extract DS would all be well addressed by existing laws and that compliance is a critical and necessary component. FDA should therefore act quickly to enforce the law and restore order in the marketplace. Specifically, FDA should take strong action against illegal CBD products (both foods and supplements). By taking high profile enforcement action, the FDA will send a strong message to the industry and put retailers and consumers on notice of the FDA's position. We believe this would have a significant deterrent effect – at least against further expansion in the retail and online retailer market – until FDA creates the legal pathway noted above.

Without strong enforcement, unscrupulous companies and questionable products will continue to proliferate in the market, eroding consumer confidence in the FDA and responsible industry.

Pharmavite thanks FDA in advance for its consideration of these views and urges the Agency to act with speed to address the issues noted above. FDA can bring much needed clarity to the market by creating a pathway that will provide consumers with access to safe and beneficial Hemp Extract DS and enforcing the Act.

Sincerely,

Jeff Boutelle
Chief Executive Officer
Pharmavite LLC