Church & Dwight Co., Inc.
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February 10, 2006

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

Re: **Docket No. 2004D-0555**
Draft Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Labeling for Male Condoms Made of Natural Rubber Latex

Dear Sirs:

Church & Dwight Co., Inc. ("Church & Dwight") appreciates the opportunity to comment on the above referenced docket relative to the Draft Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Labeling for Male Condoms Made of Natural Rubber Latex ["Draft Guidance"].

Church & Dwight is a manufacturer and marketer of consumer packaged goods. Our commitment to providing the consumer with quality goods has led to our portfolio of several leading brand products, including TROJAN® brand latex male condoms, and therefore the Draft Guidance is of particular relevance to us. The TROJAN® brand of condoms is the leading national condom brand, and has been sold and trusted for 89 years. We at Church & Dwight take our responsibility to manufacture and market these important products very seriously, and we go to great lengths to assure the TROJAN® quality that has earned consumers' trust.

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Church & Dwight is committed to supporting and protecting the public health through responsible policy and is eager to work with the FDA and other public health organizations to help ensure the public continues to have confidence in condoms. The fact is that condoms are the only means available to reduce the risk of transmitting sexually transmitted diseases (STDs), including HIV, among sexually active individuals.

As part of our commitment to the public health, we will continue to provide consumers with the information they need to make informed decisions about their reproductive health. We feel strongly that our current labeling for TROJAN® brand condoms, and other sub-brands, based on FDA's current labeling guidance,[1] not only already addresses the spirit of the labeling language proposed in the Draft Guidance but also is scientifically and thus medically accurate.

Notwithstanding this fact, we recognize FDA's statutory mandate to assure the safety and effectiveness of medical devices in general and FDA's particular mandate in Public Law 106-554 that gave rise to the Draft Guidance. We also recognize that there always may be occasions to "improve" current labeling to make it more consumer-friendly while maintaining its scientific and medical accuracy.

However, we believe that FDA's findings based on its review of relevant information – including an extensive review in consultation with the National Institutes for Health (NIH) and the Centers for Disease Control and Prevention (CDC) – from the available medical literature and FDA's re-examination of the medical accuracy of condom labeling indeed support FDA's current labeling guidance and make many of the proposals in the Draft Guidance unnecessary. Additionally, there has been no demonstration by way of sound scientific or medical information that would justify or require the confusing and complicated language found in many of the proposals in

the Draft Guidance. We, therefore, respectfully request that the Draft Guidance be withdrawn or modified as we propose herein so that consumers will be able to continue to make choices about their reproductive health that are based on good science and accurate medical information.

BACKGROUND

The consistent and correct use of condoms has for many years been recognized and recommended by leading public health authorities as an effective means of reducing unintended pregnancies and is the only known means for sexually active individuals to reliably reduce the risk of catching or spreading many sexually transmitted diseases (STDs), including HIV, the virus that causes AIDS.

During the past decade, teen pregnancy rates have declined, and new HIV cases are about one-half what they were in the early 1990's at the height of the epidemic.[2,3,4] Many factors are responsible for these improved trends, including public health interventions and educational programs. Church & Dwight believes, however, that one of the most significant factors in the decrease of teen pregnancies and STD transmission is the approximate 50% increase in condom usage in the United States.[5]

In light of this fact, Church & Dwight agrees with FDA's desire to ensure that public confidence in the overwhelming and proven benefits of correct and consistent condom usage is not diminished. Church & Dwight believes the current condom labeling, which has been used for a material time and extent, is scientifically sound, medically accurate and consumer-friendly; and the proposed changes in the Draft Guidance are potentially confusing. It could

harm the public health if the public's perception of a condom's prophylactic efficacy results in a decline in condom use due to labeling that is confusing or misleading. There is no evidence presented either in the Draft Guidance itself or its many citations that would form the basis for a conclusion that condom efficacy has somehow diminished over the past decade. Rather, condoms remain an effective tool in preventing unintended pregnancies and STDs including HIV/AIDS (*q.v.s.*).

All drugs and devices have limitations either in use or efficacy, but the labeling should reflect such limitations and benefits in a fair and balanced manner. In the case of condoms, Church & Dwight has concluded that if the present Draft Guidance is not amended, prospective condom users may be left with the misimpression that condoms have been found to be less effective than previously established as a means to prevent pregnancy or STD transmission.

GENERAL COMMENTS - SUMMARY

We have reviewed the Draft Guidance, and in light of the facts expressed above, we offer the following summary of our general comments on the recommendations made in the Draft Guidance, to be further expanded later in this document:

- The principal intended actions ("Intended Use") statement is incomplete, confusing, potentially misleading and inaccurate. The statement is restricted to pregnancy prevention and HIV prevention but does not address the many other STDs that can be reduced by correct and consistent condom use.

- The suggested Pregnancy Rate table is outdated, incomplete and potentially misleading to those consumers who may be considering condom use.

- The labeling recommendations are too long and too complex for effective consumer comprehension.

- The timing for implementation of the Guidance is unrealistically short.

- The importance of condoms with N-9 lubricant in providing proven barrier protection and a valuable choice for those couples whose primary concern is contraception should not be diminished by warnings based on putative facts.

INTENDED USE STATEMENT

The Draft Guidance in section VI, parts A.1 and 2, provides recommended labeling relative to the principal intended actions ["Intended Use"] of latex condoms.[6] The Intended Use statement should accomplish the goal of informing a prospective user about the main purpose of a product's usage. It should not be encumbered by product limitations, warnings or other language. Such limitations may be properly included in other portions of the labeling. FDA has adopted this approach in labeling other common OTC products such as fluoride toothpaste (limitations on effectiveness against other oral conditions are included elsewhere in labeling), 21 C.F.R. §355.50,; aspirin (limitations on use by children due to concerns about Reye's Syndrome are included in the Warning section), *id.* §201.314(h)(2); and acetaminophen (warnings about liver damage due to concurrent use with alcohol are included in a special Warning), *id.* §201.322(a).

Intended Use statements in product labeling are provided to clearly communicate the complete intended use. Any Intended Use statement for any OTC drug or device that is overly wordy, potentially contradictory, redundant or in any way contains information that clouds or obscures the simple purpose of the product should be rejected. In the Draft Guidance, FDA has proposed an Intended Use statement that fails to fully inform the prospective user that condoms are effective against the transmission of STDs in general and HIV specifically. Limiting the proposed Intended Use statement to preventing the transmission of HIV without referencing efficacy against other STDs is incomplete. While the manner in which the various STDs are transmitted may be different and thus the effectiveness of condoms against the transmission of STDs varies, the overall message of STD transmission reduction for those persons who are sexually active is medically accurate and should be unequivocally stated.

FDA itself, after an extensive evaluation of the data regarding condom effectiveness, states in the preamble of the proposed enabling classification regulation, "...FDA believes there is strong support for the conclusion that condoms are effective in reducing the overall risk of STD transmission..."[7] We believe a majority of health care professionals would agree with this conclusion and in fact would agree with the promotion of condoms to reduce the risk of STDs. And that is precisely the message that the Intended Use statement should communicate to any prospective user of a condom – that the overall risk of transmitting an STD when one uses a condom is reduced. To attempt to qualify the Intended Use statement with limitations on that use would only serve to confuse the message to the consumer. These limitations should appear elsewhere in the labeling.

In addition, FDA conducted a further analysis of additional condom effectiveness data collected or generated by other federal agencies and concluded that, "...condoms, when used correctly and consistently, can be effective in reducing the risk of transmission of Group I STDs..." [HIV, gonorrhea, chlamydia, trichomoniasis, and hepatitis B virus] "...which are transmitted by exposure of the cervico-vaginal, urethral or rectal mucosa to penile fluids or cervico-vaginal secretions." FDA concluded from the available information that, "...condoms, when used correctly and consistently, can be effective in reducing the risk of transmission of group II STDs [syphilis, genital HSV, genital HPV and chancroid]." Notwithstanding that, "The degree of risk reduction would be expected to be less than that for group I STDs."[8] There is much support, as has been noted, for the position that condom usage can effectively reduce the transmission of STDs. There is also additional scientific research supporting condom effectiveness that is not referenced in the preamble of the proposed enabling classification regulation.[9,10] Therefore, Church & Dwight believes that the addition of "and other sexually transmitted diseases (STDs)" should be included in the Intended Use statement.

The Draft Guidance proposes an Intended Use statement as follows:

> *"When used correctly every time you have sex, latex condoms greatly reduce, but do not eliminate, the risk of pregnancy and the risk of catching or spreading HIV, the virus that causes AIDS."*[11]

Church & Dwight suggests the following revision to the Intended Use statement proposed in the Draft Guidance:

"Latex condoms reduce the risk of pregnancy and transmission of HIV/AIDS and other sexually transmitted diseases (STDs)."

Our rationale for the changes follows:

- The statement is shortened. Research indicates that a shorter statement on the front of packaging increases overall comprehension of the message.[12] Generally, sentence length is one of the two primary factors in gauging sentence readability as exemplified in FDA's *Guidance on Medical Device Patient Labeling* ["Patient Labeling Guidance"].[13] FDA has repeatedly emphasized the importance of using short sentences to improve readability and comprehension. For example, FDA counsels companies drafting labeling to "eliminate unnecessary words," "[s]ubstitute a single word for a phrase," "reduce long, complicated phrases," "simplify prepositional phrases," and "use no more than one clause in a sentence."[14] The Patient Labeling Guidance ultimately notes that the "burden for short-term memory is greater for longer sentences" and recommends using "as few words as possible to present an idea or describe an action."[15] Another example is found in the *Over-The-Counter Human Drugs; Labeling Requirements;* Final Rule, published in the *Federal Register* March 17, 1999, which notes that "... research on reading behavior and document simplification shows that the use of less complex terminology, presented in shorter sentences ... is likely to improve consumer processing of the information."[11] Other FDA guidance likewise recommends short sentences when drafting labeling.[16]

- While we agree condoms should be used correctly and consistently to maximize the benefits, we do not believe this needs to be stated in the Intended Use statement. A condom, or any other

medical device, cannot have its intended effect if it is not used correctly and consistently. Referencing this limitation can be included elsewhere.

- We have removed the words "*do not eliminate*" from the Intended Use statement because the phrase is redundant with "*reduce,*" and the prospective user will have ample information regarding this limitation in other portions of the labeling. Presently, other labeling (outside the Intended Use statement) for TROJAN® brand condoms includes the following statement in accordance with the current FDA Guidance:

  > *"TROJAN® Brand Latex Condoms, when used properly, may help reduce the risk of catching or spreading many Sexually Transmitted Diseases ("STDs") such as syphilis, gonorrhea, chlamydia infections, genital herpes, and AIDS; however, they cannot eliminate the risk."*

  We think this is a good example of how limitations can be clearly, and with specificity, communicated to the consumer.

- The word "transmission" is shorter than "catching and spreading" and conveys the same understanding to the public. The public is familiar with the meaning of this word since it appears often in conjunction with AIDS articles, stories and press releases.

- The addition of "and other sexually transmitted diseases" makes the Intended Use statement medically accurate, is consistent with existing labeling, and "FDA believes there is strong support for the conclusion that condoms are effective in reducing the overall risk of STD transmission."[7]

PREGNANCY RATE TABLES

The Draft Guidance in section VI, part A.1 and section VII provides recommended pregnancy rate labeling in the form of a table for inclusion in a package insert.[17] The FDA has not, however, provided any data that demonstrates that the addition of such a table will enhance or promote or in any way contribute to effective condom usage or to the safe and effective use of any contraceptive product. As has been noted previously, adding unnecessary information in the labeling may tend to confuse consumers and may tend to discourage condom usage entirely or correct condom usage by the consumer's failure to read all important information for use. Since condoms have been marketed successfully for decades without such a table, Church & Dwight firmly believes that adding this information will have no demonstrable benefit to the safety or effectiveness of condoms.

The application of "typical use" statistics for condom effectiveness in preventing pregnancy is inappropriate since these rates are a measure of condom compliance rather than condom effectiveness. Furthermore, the table is not consistent with the overall directions for use that condoms are to be used correctly and consistently every time you have sex. When consumers comply with these directions, they should have information available that indicates the effectiveness of condoms when used correctly and consistently. Therefore, if a table were to be added, a "perfect use" table, not a "typical use" table, should be the standard.

GENERAL LABELING RECOMMENDATIONS (NON-N-9 CONDOMS)

- Rear Panel Important Information – The Draft Guidance suggests in section VI, part 2.b the following statement:[18]

"Important Information: There are many types of sexually transmitted diseases (STDs) and different ways of catching or spreading infection. A latex condom can reduce the risk of STD transmission to or from the penis. However, some STDs can also be spread by other types of sexual contact. For additional information on STD protection, please read the enclosed insert."

We recommend the following statement in it place:

"Important Information: There are many types of STDs. Latex condoms can greatly reduce the risk of STD transmission to or from the penis. They are less effective in reducing the risk of STD transmission from other parts of the body not protected by the condom. See additional information (state location in labeling)."

We believe our recommended statement is simpler and offers more complete and medically accurate information.

- Front of Packet - The Draft Guidance suggests in section VI, part 2.a the following Intended Use statement: [19]

  "When used correctly every time you have sex, latex condoms greatly reduce, but do not eliminate, the risk of pregnancy and the risk of catching or spreading HIV, the virus that causes AIDS."

We recommend the statement be revised to read as follows:

"Reduces the risk of pregnancy, HIV/AIDS, and other STDs"

The same rationale as for the Intended Use statement on the front panel of the carton also applies here. In addition, copy must be

abbreviated in order to fit and be legible on the small individual packets.

- Package Insert

Throughout the document, the Draft Guidance suggests a requirement for a package insert.[20] We believe these references should be eliminated and substituted by the use of the term "other labeling." The manufacturer should be allowed to determine where the additional information should be placed.

- Correct or Inconsistent Use

The Draft Guidance suggests in section VI, part 3:[21]

"Store condoms in a cool, dry place."

We recommend the statement be revised to read as follows:

"Avoid condom exposure to direct sunlight or storage for prolonged periods at temperatures above 100 F."

The revised statement is more specific and useful for the consumer.

- Important Information

In section VII of the Draft Guidance, examples are provided that follow the recommendations in the Draft Guidance. In the package insert example under "Important information",[22] we recommend adding the complete list of Group I and Group II STDs in the areas of the proposed labeling that reference them:

o In the first paragraph, trichomoniasis and hepatitis B virus should be added to the list along with HIV, chlamydia and gonorrhea.

- In the second paragraph, syphilis and chancroid should be added to the list along with genital herpes and HPV.

These additions make the proposed labeling complete, and FDA supports this in the proposed rule.[8]

LENGTH OF DRAFT LABELING

In order for the condom labeling to be most effective and comprehensible, the messages should be fewer, shorter, simpler and non-redundant as referenced in the section on Intended Use. Our recommended revisions to the Intended Use statement are consistent with these conclusions and similar conclusions by FDA.[10,11,12,23,24,25] In addition, we encourage the Agency to eliminate as much redundancy on the rest of the draft labeling as possible, and in the interest of the overall health of those adults who are sexually active, include only medically accepted and relevant information.

TIMING OF IMPLEMENTATION OF THE GUIDANCE

The timing of implementation for the labeling changes is not sufficient. Depending on the changes suggested in the Final Guidance, it will take approximately 24 months, rather than 12 months, to implement all the required changes. Therefore, the deadline should allow 24 months for current labeling to leave the control of manufacturers.

FDA estimates the burden for implementation of Draft Guidance under the assumption that, "There are no capital costs or operating and maintenance costs associated...."[26] However, if due to the extent of the draft labeling, packaging changes that require equipment changes are needed, we estimate that it could take as long as 15 to 18 months to obtain and install the necessary capital

equipment and then an additional three months to validate the modified packaging lines as required under FDA's GMP/QSR regulations.

CONDOMS LUBRICATED WITH NONOXYNOL-9 (N-9)

Generally, Church & Dwight is in agreement with the spirit of the proposed labeling in the Draft Guidance relative to N-9.

Nonoxynol-9 (N-9) has been in use for more than fifty (50) years as an effective spermicide. Studies have demonstrated that N-9 reduces the number of active sperm, and in various forms (*e.g.*, gel, cream, foam), is considered effective as a stand alone primary contraceptive. The barrier properties of a condom combined with the added protection offered by N-9 lubricant, provides consumers a valuable contraceptive option. Church & Dwight's TROJAN® brand condoms with N-9 lubricant have been available for more than 20 years, for added protection against pregnancy.

Because family planning is important, it is crucial for consumers to have access to the contraceptive options they are most comfortable with and are most appropriate for their lifestyle. Survey data confirm that most condom users, especially married couples, use condoms primarily to prevent pregnancy.[27] Furthermore, users of condoms with a spermicidal lubricant understand that these condoms are for extra protection against pregnancy.[28] Condoms lubricated with N-9 offer this substantial segment of the population an important contraceptive choice.

There is ample evidence to support the additional contraceptive efficacy provided by N-9 as a contraceptive in helping to reduce the risk of pregnancy. Questioning of the benefit of N-9 has its foundations in the failure of N-9 to materialize as an effective microbicide as hoped for and promoted by many agencies and

organizations, but not the U.S. condom industry. The Department of Health and Human Services (HHS) commenting relative to a Government Accountability Office report on N-9 as a microbicide issued in March 2005, stated "The only claims that may be made in condom labeling concerning N-9 relate to its use as a spermicide which some believe provides the condom with additional contraceptive protection. It is also important to make clear that the *barrier* features of condoms provide the primary protection against STDs and the primary contraceptive protection." And, HHS further stated "HHS is concerned that the final sentence of the draft report (page 26) may unintentionally undermine efforts to inform the public of the protection provided by condoms. If the choice is to use a condom with N-9 or to have unprotected sex in a potentially risky situation, an N-9 condom is by far the better choice."[29]

Contraceptive Benefits of N-9 Lubricant On Condoms

> "N-9 was developed as a contraceptive and is the only spermicide available in the United States. It is found in a variety of over-the-counter vaginal contraceptive products– including creams, foams, gels, and suppositories – and on N-9 condoms. Vaginal contraceptive products that contain N-9 have been sold over-the-counter in the United States for almost 50 years. N-9 condoms have been available over-the-counter in the United States since the early 1980s." – HHS[30]

Published and accepted data support the contraceptive efficacy of N-9. The efficacy data for stand-alone N-9 products and for diaphragms with and without N-9 support the conclusion that the consistent use of condoms with spermicidal (N-9) lubricant can reduce the one-year pregnancy failure rate from 2% to 1%, a 50% reduction, over condoms without N-9 – this reduction is substantial:[31]

- Significant evidence of the efficacy of N-9 is demonstrated where N-9 is used as a stand alone contraceptive product. The 1-year

pregnancy rate drops from 85% (no protection) to 18% (spermicides used). This is a 79% reduction in the unintended pregnancy rate when N-9 is used.[31]

- In a study designed to look at the relative effectiveness of diaphragms with and without the use of N-9, the authors found that in a 12-month study with consistent use, the pregnancy rate for diaphragms without N-9 was 19.3% and the comparable rate for diaphragms with N-9 was 12.3%.[32] Although the size of the trial did not provide statistical power, the study demonstrated that the benefit of N-9 use with diaphragms produced a 36% reduction in the unintended pregnancy rate (19.3% pregnancy rate drops to 12.3 %).[31]

- In another study with the Lea's Shield the adjusted 6-month pregnancy rate for the device without N-9 was 9.3% while the rate with N-9 was 5.6%.[33] As in the case of diaphragms, this demonstrates that the use of N-9 on the Lea's Shield reduces the unintended pregnancy rate by 40% (9.3% drops to 5.6 %). This was a 6-month study, so it provides an estimate as to the relative effectiveness values for a 1-year study.

- There is sufficient N-9 on condoms lubricated with N-9 to provide a measure of additional pregnancy prevention. This is based upon the concentration of N-9 necessary to reduce the sperm motility below 50%, and the total volume of fluids (semen and vaginal secretions) present during intercourse.[34,35]

- Condoms lubricated with N-9 provide a measure of additional pregnancy prevention in the event of imperfect use. For example, if erection is lost before withdrawal, it is possible for some semen to spill outside the condom. In these situations, seminal

fluid may leak into the vagina, and N-9, which reduces the number of active sperm, provides an additional and important means of pregnancy prevention.

Theoretical Risk of N-9 Raised By The WHO/CONRAD Report On N-9

The United Nations World Health Organization (WHO) and CONRAD report of June 25, 2002 reviewed data from numerous N-9 studies to determine the effectiveness of N-9 in preventing HIV transmission. The majority of these studies were conducted among "sex workers" in Third World countries, who had a high frequency of use.[36] One study demonstrated that N-9 does not protect against HIV transmission, and that frequent use (more than 3 times per day) may cause vaginal irritation, which may increase the risk of transmission of HIV from infected partners.[37] Largely as a result of this single study, WHO concluded there may be a theoretical risk associated with condoms with N-9 lubricant.

These data, generated primarily from studies of "sex workers" and relied upon by WHO, have little relevance when it comes to the use of condoms with N-9 lubricant by the general U.S. population and only provide an observation of a potential direct adverse effect. Importantly, the studies involved the use of N-9 alone or in combination with other contraceptive devices -- not condoms with N-9 lubricant – and the data were equivocal even in those circumstances. The WHO recognized this fact and concluded, "However, it is better to use N-9 lubricated condoms than no condoms." [38]

Recommended Changes Regarding Condoms with N-9 Lubricant

The above discussion supports the importance of providing condoms with N-9 lubricant for consumers who are primarily concerned with pregnancy prevention. It also provides reasons to provide labeling for condoms with N-9 lubricant that is medically accurate, but does not discourage the proper use of these condoms or condoms in general.

In order to help ensure that the Draft Guidance proposed labeling is medically accurate and does not unintentionally discredit condom use, we recommend the following labeling changes to the Draft Guidance:

- Limited Benefits of N-9

  The following statement is proposed on page 16 in section VI, part B, item 1a. of the Draft Guidance:

  > *"The lubricant on this condom contains the spermicide nonoxynol-9 (N-9) which kills sperm; however, the amount of additional pregnancy protection provided by the N-9 has not been measured"*

  The above statement should be revised to read as follows:

  > *"The lubricant on this condom has the spermicide nonoxynol-9 (N-9) to reduce the risk of pregnancy if some semen spills outside the condom; however, how much risk is reduced is not known.*

  The revised statement is truthful and otherwise non-misleading and provides a valid medically accurate justification for the addition of N-9 to the condom.

- N-9 Not Intended as Protection Against HIV/AIDS or other STDs

The following statement appears on page 16 in section VI, part B, item 1b. of the Draft Guidance:

"The nonoxynol-9 (N-9) lubricant on this condom does not protect against HIV/AIDS or other sexually transmitted diseases"

It should be revised to read as follows:

"The nonoxynol-9 (N-9) lubricant by itself does not protect against HIV/AIDS or other sexually transmitted diseases"

The recommended change is concise and medically accurate.

- Risks of N-9 - Users at Risk of HIV/AIDS - Risk of Anal Use

FDA has recommended three different warning statements to address irritation, HIV/AIDS transmission and rectal use. We recommend combining these statements into a single "CAUTION" statement to appear on the outer retail package to make it more consumer-friendly and medically accurate, consistent with our current labeling:

"CAUTION: Spermicidal Lubricants Are Not For Rectal Use Or More Than Once-A-Day Vaginal Use."

This statement can be expanded under the heading "CAUTIONS" elsewhere in other labeling rather than on the retail package. Our recommended changes to the individual cautionary statements

to appear elsewhere in other labeling other than on the retail package follow:

- Risks of N-9 Irritation and Transmission of HIV/AIDS

  The following warning statement appears in section VI, part B, items 2a. on pages 16-17 of the Draft Guidance:

  > *"**Nonoxynol-9 Warning:** The spermicide nonoxynol-9 (N-9) can irritate the vagina. This may increase the risk of getting HIV/AIDS from an infected partner."*

  This statement should be revised to read as follows:

  > *"The spermicide N-9 may irritate the vagina if used more than once daily. This irritation may increase the risk of getting HIV/AIDS from an infected partner if a condom is not used correctly every time you have vaginal sex."*

  The recommended change is more medically accurate based on the currently available scientific and medical evidence.

- Users at Risk of HIV/AIDS Should Choose Latex Condoms without N-9

  We agree with the following warning statement as proposed in section VI, part B, items 2b. on page 17 of the Draft Guidance:

  > *"**Nonoxynol-9 Warning:** If you or your partner has HIV/AIDS, or if you do not know if you or your partner is infected, you should choose a latex condom without nonoxynol-9 (N-9)"*

However, we believe that this statement should be included elsewhere in the labeling other than the retail package.

o Risk of Anal Use of Condoms with N-9

The following warning statement is proposed in section VI, part B, items 2c. on page 17 of the Draft Guidance:

> *"**Nonoxynol-9 Warning:** You should not use condoms with nonoxynol-9 (N-9) for anal sex. N-9 can irritate the rectum and may increase the risk of getting HIV/AIDS from an infected partner."*

The FDA recommended statement should not appear on the retail package but should be changed to read as follows and appear in the package insert (or other additional information location) under the heading "CAUTIONS":

> *"You should not use condoms with N-9 lubricant for anal sex. N-9 can irritate the rectum which may increase the risk of getting HIV/AIDS from an infected partner if a condom is not used correctly every time you have anal sex."*

The recommended changes are more medically accurate based on the scientific and medical evidence.

o Combined N-9 Statements

The Draft Guidance on pages 17-18 suggests a means of combining the various N-9 statements including the cautionary statements. We recommend the following single statement in place of the three and the combination statement suggested in the Draft Guidance.

> "If you or your partner has HIV/AIDS, or if you do not know if you or your partner is infected, you should not use nonoxynol-9."

This single statement is all comprehensive of the three suggested in the Draft Guidance. The important concept that consumers should take away from reading the labeling statement(s) is "If you or your partner has HIV/AIDS, or if you do not know if you or your partner is infected, you should not use nonoxynol-9."

CONCLUSIONS

Product labeling must be understandable to the average consumer. FDA has on more than one occasion made similar statements:

- "Because the reading comprehension of the average American adult is below the ninth grade level, it is usually recommended that instructional material be written at the sixth-grade level."[39]

- "Write labeling so that its readability lies below the user group's reading grade level. The sixth grade level is a good target for readability. Labeling written at this level can be understood by most device users."[40]

- "Although it appears that 80 percent of the adult population over age 25 are high school graduates, the unfortunate fact is that education is not always a good indicator of reading ability.... In 1993, the National Adult Literacy Survey, ... sponsored by the Department of Education, ... interviewed 26,000 persons aged 16 and over.... The results are grouped into five literacy levels. Level one included 23 percent of the population. They can do simple

> matching and read brief, simple text. Level two was 25 percent of the population, they can locate a single piece of information in text and read low-level information. Levels one and two had difficulty integrating or synthesizing information from complex or lengthy text.... Surprisingly, many people functioning in levels one and two believed that they had no problems with comprehension.... So, they don't even recognize their own limitations."[41]

Church & Dwight strongly believes that the current condom labeling is based on good science and thus medically accurate. Should it be determined that change is necessary, we have made recommendations in our comments demonstrating how the Draft Guidance can be improved over what is now being proposed. We believe our recommendations, if change is necessary, are based on good science, are medically accurate, are concise and easily readable and understood by the average consumer. To reiterate our major points:

- The principal intended actions ("Intended Use") statement is incomplete, confusing, potentially misleading and inaccurate. The statement is restricted to pregnancy prevention and HIV prevention but does not address the risk of transmitting many other STDs that can be reduced by correct and consistent condom use.

- The suggested Pregnancy Rate table is outdated. It is also incomplete and potentially misleading to those consumers who may be considering condom use because it fails to include "Perfect Use".

- The draft labeling is too long and too complex for effective consumer comprehension.

- The timing for implementation of the Draft Guidance is unrealistically short. If capital equipment modifications are required, implementation timing could be as much as 24 months.

- N-9 condoms provide a valuable contraceptive option for those couples whose primary concern is pregnancy prevention. The Draft Guidance should include the fact that the barrier properties of the condom itself do provide substantial protection for those couples not at risk for STDs.

Church & Dwight remains open to discussion on condom labeling and will work with the agency to finalize and incorporate the appropriate labeling for condoms.

Sincerely,

Stephen C. Kolakowsky

Stephen C. Kolakowsky
Director
Regulatory Affairs

Endnotes

1. The following guidance documents have previously been issued by FDA regarding condom labeling:

   (a) FDA Guidance to *All U.S. Condom Manufacturers, Importers and Repackagers, April 7, 1987. ("Villforth Letter-1")*

   Attachment A — "An acceptable statement of intended use for the prevention of transmission of sexually transmitted diseases follows:

   > When used properly, the latex condom may prevent the transmission of many sexually transmitted diseases (STDS) such as syphilis, gonorrhea, chlamydial infections, genital herpes, and AIDS. It cannot eliminate the risk. For maximum protection, it is important to follow the accompanying instructions. Failure to do so may result in loss of protection. During intimate contact, lesions and various body fluids can transmit STDs. Therefore, the condom should be applied before any such contact .

   "Different wording may be employed, but the wording should convey a balanced description of risks and benefits, and there should be a warning about the loss of protection resulting from improper use.

   "An Acceptable statement of intended use for prevention of pregnancy could be similarly constructed."

   (b) FDA Guidance to *All U.S. Condom Manufacturers, Importers and Repackagers, July 31, 1987. ("Villforth Letter-2")*

   Revised Attachment B — Instructions for Use Labeling
   "The following constitute an acceptable set of instructions if protection against sexually transmitted diseases is claimed. You may wish to add additional instructions appropriate for your specific product.
   - "• Use a new condom every time you have sexual intercourse or other acts between partners which involve contact with the penis.
   - "• Put the condom on after the penis is erect and prior to intimate contact, because lesions, pre-ejaculate secretions, semen, vaginal secretions, saliva, urine, and feces can contain STD organisms.
   - "• Place the condom on the head of the penis and unroll or pull it all the way to the base.
   - "• Leave an empty space at the end of the condom to collect semen: Remove any air remaining in the tip of the condom by gently pressing the air out towards the base of the penis.
   - "• If a lubricant is desired, use water-based lubricants such as _____. Do not use oil-based lubricants, such as those made with petroleum jelly, mineral oil, vegetable oil, or cold cream, as these may damage the condom.
   - "• After ejaculation, carefully withdraw the penis while it is still erect. Hold onto the rim of the condom as you withdraw so that the condom does not slip off.
   - "• Store condoms in a cool, dry place.
   - "• If the rubber material is sticky or brittle or obviously damaged do not use it.
   - "• Do not reuse condoms."

   An acceptable set of instructions for use for prevention of pregnancy could be similarly constructed.

   (c) FDA Guidance to *Manufacturers, Importers , and Repackagers of Condoms for Contraception or Sexually-Transmitted Disease Prevention, February 13, 1989. ("Holt Letter")*

   > "Condoms that are intended to prevent pregnancy and/or the transmission of STDs ...
   > We believe that the labeling must contain a positive statement of the condom's intended use(s).
   > Conversely, if the condom has only one of the two possible intended uses, the labeling must prominently describe which use is excluded."

   (d) FDA Guidance to *Latex Condom Manufacturers, April 8, 1993 (*"Yin Letter")

   "Based on current information, FDA has determined that the labeling of all latex condoms, including those containing spermicide, should include statements that inform the user about protection against the transmission of STDs.

"The statement, 'If used properly, latex condoms will help to reduce the risk of transmission of HIV infection (AIDS) and many other sexually transmitted diseases,' should be placed in a prominent location on both sides of each individual condom wrapper and on the principal display panel of the outer package.

"An expanded statement, to be added to the current directions for use, should read, 'If used properly, latex condoms will help to reduce the risk of transmission of HIV infection 9AIDS) and many other sexually transmitted diseases, including chlamydia, genital herpes, genital warts, gonorrhea, hepatitis B, and syphilis.'"

(e) In addition to the above guidance, labeling requirements for all medical devices, including condoms, are stipulated in 21 CFR Part 801.

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4. Jaffe, H.W., HIV/AIDS in America Today, Presented at *2003 National HIV Prevention Conference*, Atlanta, GA.
5. Condom Category Sales Data, 1985–2005, *Data on File*, Church & Dwight Co., Inc.
6. *Draft Guidance for Industry and FDA Staff — Class II Special Controls Guidance Document: Labeling for Male Condoms Made of Natural Rubber Latex*, US FDA, November 14, 2005; pp. 10-12.
7. Obstetrical and Gynecological Devices; Designation of Special Control for Condom and Condom With Spermicidal Lubricant, *Federal Register* November 14, 2005, 70: 69102-68118, at 69106.
8. *Op cite,* p. 69108, and Table 1, pp. 69105-6.
9. *Op cite,* p. 69117.
10. Several scientific reports pertinent to condom effectiveness were not included among the list of references in the *Federal Register* notice of November 14, 2005, at page 69117. Among those not cited are the following:
    (a) de Vincenzi, I., A Longitudinal Study of Human Immunodeficiency Virus Transmission by Heterosexual Partners, *N Engl J Med* 1994; 331: 341-346.
    (b) Holmes, K.K. et al., Effectiveness of Condoms in Preventing Sexually Transmitted Infections *Bull WHO* 2004; 82: 454-461.
    (c) Ness R.B. et al., Condom Use and the Risk of Recurrent Pelvic Inflammatory Disease, Chronic Pelvic Pain, or Infertility Following an Episode of Pelvic Inflammatory Disease, *Am J Public Health* 2004; 94: 1327-1329.
    (d) Paz-Bailey, G. et al., The Effect of Correct and Consistent Condom Use on Chlamydial and Gonococcal Infection Among Urban Adolescents, *Arc Pediatr Adolesc Med* 2005; 159: 536-542.
    (e) Wald, A. et al., The Relationship between Condom Use and Herpes Simplex Virus Acquisition, *Ann Intern Med* 2005; 143: 707-713.
    (f) Warner, L. et al., Condom Effectiveness for Reducing Transmission of Gonorrhea and Chlamydia: The Importance of Assessing Partner Infection Status, *Am J Epidemiol* 2004;159: 242-251.
    (g) Warner, L. et al., Application of the Case-Crossover Design to Reduce Unmeasured Confounding in Studies of Condom Effectiveness, *Am J Epidemiol* 2005; 161: 765-773.
    (h) Winer, R. et al., The effect of Consistent Condom Use on the Risk of Genital HPV Infection Among Newly Sexually Active Young Women, (abstract MP-120). Presented at the 16th Biennial Meeting of the International Society for Sexually Transmitted Diseases Research (ISSTDR), July 10-13, 2005, Amsterdam, the Netherlands.
11. *Op cite*, Draft Guidance — Labeling for Male Condoms, p. 12.
12. Over-The-Counter Drugs; Labeling Requirements, *Federal Register* March 17, 1999, 64: 13253-13303.

13. *Guidance on Medical Device Patient Labeling; Final Guidance for Industry and FDA,* April 19, 2001, p. 23.
14. *Op cite*, pp. 26-27 and 30.
15. *Op cite*, p. 30.
16. *FDA Guidance, Human Factors Principles for Medical Device Labeling*, Sept. 1993, at 11-12.
17. *Op cite,* Draft Guidance — Labeling for Male Condoms, pp. 11 and 24.
18. *Op cite*, p.12.
19. *Op cite*, pp. 12 and 22.
20. *Op cite*, pp.11-18 and 22-24.
21. *Op cite, p. 14.*
22. *Op cite, p.23.*
23. *Op cite,* Guidance on Medical Device Patient Labeling, pp. 23-30.
24. *Op cite,* Over-the Counter Drugs; Labeling Requirements, p. 13255.
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