

vaginal irritation, which may increase the risk of getting the AIDS virus (HIV) or other STDs from infected partners”?

4. Are the symptoms of vaginal irritation adequately defined? Are there other symptoms that should be included?

5. Are there additional data to correlate an increase in vaginal irritation with an increased risk of transmission of HIV and other STDs? If so, how should such information be conveyed in labeling?

6. Is a package insert the best way to provide additional information to consumers or should this information appear on the outer carton?

7. Are the proposed statements for the package insert appropriate? What revisions or additional information, if any, would be useful to make the package insert more informative and consumer friendly?

IV. Analysis of Impacts

FDA has examined the impacts of this proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million (adjusted annually for inflation).

The agency believes that this proposed rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. FDA has determined that the proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this proposed rule, because the proposed

rule is not expected to result in any 1-year expenditure that would exceed \$100 million adjusted for inflation. The current inflation adjusted statutory threshold is about \$110 million.

The purpose of this proposed rule is to require additional labeling for OTC vaginal contraceptive drug products containing nonoxynol 9. The labeling includes new warnings and other important information about using these products. These products are currently packaged in an outer carton that should have sufficient space to accommodate this additional labeling. The agency is aware that most of the currently marketed products already include a consumer package insert. Therefore, to allow firms greater flexibility, the agency is allowing almost half of the new information to appear in the package insert. There are a limited number of products currently marketed that will be affected by this proposed rule and the incremental one-time costs are minimal. The one-time costs include designing the new carton, designing a new package insert, and the inventory loss of any unused current labeling. The agency assumes the same weighted average cost to relabel (i.e., \$3,600 per stock keeping unit (SKU) (individual products, packages, and sizes)) that it estimated for the final rule requiring uniform label formats of OTC drug products (64 FR 13254 at 13279 to 13281, March 17, 1999). Inventory loss was estimated using data from a study supporting the fore mentioned rule. With a 6-month implementation period, inventory loss was estimated to be between \$500 and \$3,000 per SKU, depending on product sales, for an estimated weighted average inventory loss of \$2,050. The inventory loss and redesign costs for the package insert are estimated to be about \$1,380 per SKU.

The agency's Drug Listing System identifies 15 manufacturers and distributors of OTC vaginal contraceptive drug products containing nonoxynol 9 that together produce approximately 40 SKUs. At a relabeling cost of \$3,600 per SKU and an inventory loss of \$2,050 per SKU, estimated total one-time costs of relabeling could be \$266,000 (40 x (\$3,600 + \$2,050)). Even if all required wording is revised on the outer carton, manufacturers may revise their package inserts as well to conform to the revised language. This adds another \$55,200 (40 x \$1,380) to the one-time cost, for an estimated total of \$321,200.

As the agency is providing the language of the labeling to be used, all firms should have the necessary skills and personnel to perform the required relabeling either in-house or by

contractual arrangement. The proposed rule does not require any new reporting or recordkeeping activities. No additional professional skills are needed.

About 9 firms affected by this proposed rule meet the Small Business Administration's definition of a small entity (fewer than 750 employees). The actual impact on these firms will vary depending on the number and nature of the products they manufacture or distribute. All nine entities market additional types of products and have only one or two SKUs affected by this proposed rule. The average incremental cost per SKU to comply with this proposed rule is estimated to be \$8,030 (\$321,200/40 SKUs). Actual costs to the small entities will likely be lower because distributors of low sales volume OTC drug products usually market their products in packaging that costs less than the industry average.

While the costs to individual manufacturers to relabel their products are minimal, the potential benefits to consumers who use these products are substantial. The agency considers it essential that users be aware that these products do not protect against the AIDS virus (HIV) or other STDs. The monetary benefit of potentially preventing any cases of AIDS or STDs is significant compared to the minor cost of relabeling these products to provide the new required information.

The agency has tentatively considered but rejected several labeling alternatives: (1) A shorter or longer implementation period, and (2) an exemption from coverage for small entities. The agency considers it important that this information appear in product labeling as soon as possible, but acknowledges that implementation in a timeframe any less than 6 months would be very difficult for affected manufacturers. However, because of the importance of this new labeling information, the agency considers a period of 12 months too long to implement this new labeling. The agency rejected an exemption for small entities because the new labeling is also needed by consumers who purchase products marketed by those entities. Further, because of the importance of this information, the agency is not proposing a longer effective date for any products with annual sales less than \$25,000.

The analysis shows that this proposed rule is not economically significant under Executive Order 12866 and that the agency has considered the burden to small entities. Based on this analysis, the agency does not believe manufacturers will incur a significant