Office of
General Counsel

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New Brunswick, N. J. 08933-7002

January 29, 2007

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

Re: Docket No. 2005N-0403/RIN 0910-AA49, Requirements for Foreign and Domestic Establishment Registration and Listing for Human Drugs, Including Drugs that are Regulated Under a Biologics License Application, and Animal Drugs

Dear Sir or Madam:

On behalf of Johnson & Johnson Family of Companies (J&J), I am writing to comment on the Food and Drug Administration's (FDA) proposal to modify its regulations for drug establishment registration and listing.

J&J is the world's most comprehensive and broadly based manufacturer of health care products, as well as a provider of related services, for the consumer, pharmaceutical and medical devices and diagnostics markets. J&J has more than 200 operating companies in 54 countries around the world employing approximately 110,600 employees and selling products in more than 175 countries. The fundamental objective of Johnson & Johnson is to provide scientifically sound, high quality products and services to help heal, cure disease and improve the quality of life.

I. Proposed Restriction on the Use of NDC Numbers for Medical Devices

Johnson & Johnson supports the comments submitted by AdvaMed and shares its concern that prohibiting the continued use of NDC numbers on medical devices that have historically used this system will lead to unnecessary confusion and expensive burdens on the health care industry. It could also potentially affect patients' ability to obtain reimbursement for medical devices that currently use NDC numbers, with the potential for negative effects on public health.

A. NDC Numbers on Blood Glucose Monitoring Systems are a Key Component of the Reimbursement System

NDC numbers have been affixed to some medical devices for more than 15 years and are key components in existing reimbursement systems. For example, blood glucose

monitoring systems from all major manufacturers, including LifeScan, Inc., a Johnson & Johnson company, bear NDC numbers. Blood glucose monitoring systems are in vitro diagnostic devices that are used by people with diabetes to test their blood glucose levels at home. These devices are an integral component of diabetes self-management for millions of people with diabetes. A blood glucose monitoring system typically consists of a blood glucose meter, test strips, quality control solutions and ancillary products such as lancets and lancing devices. The NDC numbers affixed to the blood glucose monitoring products are generated following current standard practices, that is, obtaining from FDA a labeler code and completing the ten-digit number with manufacturer-assigned product and package codes.

Blood glucose monitoring products, like prescription drugs, are distributed to patients primarily through pharmacies and managed care organizations. The NDC numbers they bear are used for the same purpose as NDC numbers assigned to drugs, namely, as a key component of reimbursement systems that enables the automated processing of claims. At the pharmacy, patients with insurance obtain their blood glucose monitoring products by paying a co-payment, which is set by their insurance plan. The pharmacy submits the transaction, using the NDC number, to the insurance company for reimbursement of the remainder of the cost. A patient with diabetes will need to periodically replenish consumable supplies such as test strips, quality control solutions, and lancets. Each transaction follows the same pattern, using NDC numbers to process the reimbursement. For blood glucose monitoring supplies alone, tens of millions of such transactions involving billions of dollars occur in the United States annually.

Of course, the utility of NDC numbers for blood glucose monitoring products does not stop with reimbursement. Just as with drugs, the NDC number serves to identify specific products and allows tracking of product distribution. As with prescription drugs, the data is used to accumulate statistics that form the basis of negotiated prices and rebate agreements, and because of this, NDC numbers are deeply woven into the fabric of commercial contracts between manufacturers and providers. Because blood glucose monitoring devices and prescription drugs are distributed through the same channels, and their transactional characteristics are identical, a single system for processing reimbursement payments based on NDC numbers allows a low-cost solution for processing insurance claims, which maximizes patient convenience.

B. Prohibiting the Use of NDC Numbers on Non-Drug Products Will Increase Costs to the System and Could Negatively Impact Public Health

Prohibiting the use of NDC numbers on devices such as blood glucose monitoring products will increase costs to the system and could have negative effects on the public

health. As discussed above, the health care system currently uses NDC numbers for non-drug products that are reimbursed in a way that is identical to prescription drugs. Prohibiting the use of NDC numbers for such products without allowing adequate time for establishing a new identification process and making changes to all of the hardware and software infrastructure involved will lead to chaos in the reimbursement system for such products. FDA recognized the time necessary to implement such changes with respect to OTC drugs in the Proposed Rule, and therefore allowed seven years for full implementation of the system. A similar transition period would be required to shift to a new numbering system for medical devices that currently use NDC numbers.

FDA's prohibition of the use of NDC numbers on non-drug products such as blood glucose monitoring systems could also have a negative impact on public health. Research has shown that consistently following good blood glucose monitoring practices and using those results to modify behavior can improve health outcomes and quality of life for people with diabetes by preventing or delaying the onset of chronic complications of the disease. Insurance reimbursement for blood glucose monitoring products is a key enabler of their use, and complicating the system for providing this reimbursement will inevitably decrease use. Thus, the potential impact of prohibiting use of NDC numbers on medical devices, without allowing for adequate time to replace the system, is a reduction in the practice of blood glucose monitoring with negative health consequences for people with diabetes.

C. Recommendation for Modifying the Proposed Rule

We recommend a change to the Proposed Rule to allow the continued use of NDC numbers for some devices, such as blood glucose monitoring products, in a way that addresses the valid concerns expressed by FDA. The proposed changes would allow FDA to review and approve or reject the use of NDC numbers on non-drug products on an exception basis. FDA would validate the NDC numbers currently in use by comparison with the existing database. Any potentially duplicative NDC number could be rejected and a new unique number developed for the product.

Add the following section to Subpart C — National Drug Code Number

§207.35 When may a National Drug Code (NDC) number be used on a non-drug product, who may obtain it, how is it assigned, and what information must be submitted?

(a) *When may an NDC number be used on a non-drug product?* An NDC number may be applied to a non-drug product when authorized by FDA through issuance of a labeler code to the manufacturer.

(b) *Who may obtain it?* A manufacturer of a non-drug product may apply for a labeler code by providing the information described in §207.35(d).

(c) *What information must be submitted?*

(1) To obtain a new labeler code or authorization for continued use of an existing labeler code, the manufacturer must submit the following.

(i) The manufacturer's name, address, telephone and fax numbers, email address and, if applicable, the labeler code already assigned to the manufacturer.

(ii) The common name(s) of the product type(s) to which the NDC number will be affixed.

(iii) Information justifying the need or continuing need for an NDC number affixed to this type of product.

(2) We will review the information and assign to the manufacturer a new labeler code (or authorize continued use of the existing labeler code) or reject the request thereby prohibiting use of NDC numbers on that type(s) of product.

***Amend §207.37(d) to read as follows*:**

(d) Use the NDC number on products that are not subject to this part, such as dietary supplements and medical devices, except as provided in §207.35.

D. Continue to Allow Certain Medical Devices to Continue to Use NDC Numbers Permanently, or Until an Alternate System is in Place

Because the unintended consequences of prohibiting the use of NDC numbers on medical devices are substantial and costly, we urge FDA to adopt these recommended changes to the Proposed Rule on a permanent basis. Alternatively, and if the costs are justified, the changes could be adopted during a reasonable transitional period while a new product identification system for medical devices, such as the Unique Device Identifier (UDI) recently proposed by FDA, is put into place. The transition period must be long enough to (1) enable new unique numbers to be assigned and affixed to all affected products, (2) allow the computer systems used to process reimbursement claims to be reprogrammed, and (3) permit training of individuals in the distribution channels on the use of the new system. The additional costs of developing such a new and duplicative numbering system for devices that are distributed and reimbursed through the same channels as prescription drugs, such as blood glucose monitoring systems, should be weighed in considering whether to make this exemption transitional or permanent. But whether permanent or transitional, some relief from the blanket prohibition on the use of

NDC numbers on non-drug products is necessary to prevent complications in the health care reimbursement system and potential adverse effects on public health.

II. Proposed Requirement for FDA Assignment of NDC Numbers for Drug Products

Johnson & Johnson supports the comments submitted by PhRMA and provides below additional elaboration and perspective on certain issues. Generally, J&J is concerned that FDA's proposal to assign all three sections of the NDC number will have a significant negative impact on manufacturing flexibility, and potentially could be disruptive to the supply chain extending from the manufacturer to the retailer. Under the current system, manufacturers use defined processes to assign NDC numbers that allow the manufacturer to easily identify the product, strength, dosage form and packaging configuration by reading the NDC number. The product codes are assigned by the manufacturer when the product is early in the development phase. Assignment of the product codes allows the manufacturer to link research, quality and manufacturing documentation on the product from development through the product's life cycle.

We are concerned that requiring manufacturers to obtain an NDC number for each product from FDA will inhibit the business flexibility of our companies in terms of timing, as well as add a level of complexity to the process. Specifically:

- It is not clear from the Proposed Rule when an NDC code would be assigned, as well as the amount of time such a request of the Agency would take to process. Timing of NDC code assignment becomes especially crucial with respect to imported products and new product launches.

- Assignment of numbers by FDA may not provide a direct correlation to product identity, strength, dosage form and packaging configuration that is obvious to the manufacturer.

- Many products completing development may not be marketed immediately. It is not clear from the Proposed Rule how the status of these products will be reported in annual drug listing.

- During development, formulations are adjusted to meet the quality requirements for the dosage form, and changes to inactive ingredients are not unusual. At this stage, the package size and type, and the product shape, color, and code imprint may not be defined. The Proposed Rule could necessitate multiple NDC numbers to be generated before the product is released, presenting difficulty in maintaining a clear documentation trail for pharmaceutical development. Since these product codes are used to link information related to the product contained in research,

quality, manufacturing, and business systems, reassignment of numbers will cause confusion and increase the potential for documentation errors.

- FDA's proposal to change the format of the NDC number to include additional digits and alpha-numeric codes is problematic, because the systems throughout the supply chain that rely on NDC numbers may not be capable of handling this format.

- FDA should avoid retrospective changes to NDC codes that exist prior to finalization of the rule and should preserve manufacturer flexibility in the assignment of labeler codes for entities under common ownership in light of significant impacts on government drug rebate and payment systems.[1]

We recommend FDA maintain the current system of manufacturer self-assignment of product and packaging codes. Alternatively, FDA should consider establishing clear and consistent parameters to align industry practices for assignment of product and package codes that are transparent to FDA and industry.

III. Proposed Requirement for Assignment of New NDC Numbers for Inactive Ingredient Changes

The Proposed Rule would require a new NDC number to be assigned to a drug product following a change in an inactive ingredient, including a coloring agent. While we appreciate FDA's goal of assigning a unique number to each drug product, we believe that this requirement would be overly burdensome to industry with respect to changes of inactive ingredients that do not change the quality attributes of the product. FDA currently has oversight of each manufacturer's responsibility for qualifying these types of changes through the biennial cGMP inspection process.

[1] Under the Medicaid Drug Rebate Program (42 U.S.C. § 1396r-8), participating manufacturers report pricing (average manufacturers price and best price) to the Centers for Medicare & Medicaid Services and pay rebates to the States based on utilization of their products as determined by NDCs. Similarly, many States operate "supplemental" rebate programs for their Medicaid drug utilization and state pharmaceutical assistance programs that rely on such NDC-specific data. NDC numbers are also integral to provider reimbursement as well as manufacturer reporting of average sales price under Part B of the Medicare program. Any retrospective changes to NDCs that have already been assigned could create administrative problems and possibly under- or over-payments in the NDC-based reporting and rebate system, as well as in some commercial and Medicare Part D rebate arrangements. Additionally, there would be tremendous administrative burden on manufacturers forced to recontract and/or amend existing discount and rebate agreements to include the new NDCs. In the same vein, for entities under common ownership it is important to retain flexibility in the assignment of labeler codes in order to avoid similar complications following corporate restructuring.

We request that the Final Rule define the types of changes to a drug product that would require assignment of a new NDC number (e.g., changes to inactive ingredients that result in a new dosage form, change due to formulation or excipient change, change in an inactive ingredient supplier, name or address of manufacturing facility, or a change in colors or style of the packaging).

IV. Proposed Definition of "Appropriate NDC Number"

FDA has specifically requested comment on its proposal to require repackers, relabelers and drug product salvagers to use their own NDC numbers, rather than the manufacturer's NDC number. Section 201.2 of the Proposed Rule defines the appropriate NDC number to appear on a product label as "the NDC number of the manufacturer, repacker or relabeler (including a drug product salvager who repacks or relabels the drug), . . . that is the last manufacturer, repacker, relabeler, . . . responsible for the drug immediately before it is received by the wholesaler or retailer."

Often a repacker, relabeler, or drug product salvager is working under contract with and on behalf of the drug manufacturer. In those circumstances, we are concerned that this requirement will create confusion in the distribution system and is not necessary to ensure product quality. Repackaged, relabeled and salvaged drug products must meet defined quality requirements. When a repacker or relabeler is working on behalf of a manufacturer, cGMPs require the manufacturer to conduct oversight of those operations. Compliance is verified during biennial cGMP inspections.

Maintaining two NDC numbers for the same product, made by the same manufacturer, could potentially cause confusion in the distribution system. NDC numbers are encoded in UPC codes, so having two different NDC numbers for the same product will require an additional UPC code for that product. Many retailers' systems cannot manage two different UPC codes for the same product. Modifying those systems will lead to additional costs for the health care system.

We recommend that repackers, relabelers, and drug product salvagers who operate as contract manufacturers for the drug product manufacturer be permitted to use the manufacturer's NDC number on those products.

V. Request Further Clarification of Which Labels Must Include NDC Numbers

The Proposed Rule requires NDC numbers to appear on labels for all products subject to the drug listing rule. It would be helpful for FDA to clarify which labels are subject to this requirement. For example, would bulk drug entering the United States require an NDC code on the drum label? As a second example, would shipping labels,

which are routinely developed to contain very minimal information to curb drug diversion, require NDC codes? FDA's clarification of this requirement would be helpful.

VI. Interaction between the Structured Product Labeling (SPL) Initiative and the Proposed Online E-Drug Registration System

The preamble to the Proposed Rule states that SPL will be part of the new e-drug registration process, but will not replace or eliminate a separate drug registration process. Johnson & Johnson requests further consideration of leveraging all opportunities to combine these two processes. Since the e-drug listing system is yet to be developed, perhaps it can be designed to interact with and capitalize on synergies with SPL metadata currently being collected. This solution may require the expansion of metadata collected (i.e., the names and addresses of manufacturing companies and marketing companies, if different, since only one would be reflected in the NDC code, as well as manufacturing facility establishment code information). It is also our understanding that a separate e-drug registration system would be needed for establishment registrations, as well as other drug registrations for which SPL is not a requirement.

The Proposed Rule has the potential to introduce significant complications in the SPL initiative if it remains in its present form. For example, if any change to the packaging of a product or the elimination of an inactive ingredient requires a new NDC number, this will require a corresponding change to the SPL. This may become potentially unwieldy in terms of managing the SPL and printed labeling materials. We are also concerned about the potential for introducing discrepancies between the printed labeling and the SPL posted by the National Library of Medicine due to the timing of implementing such changes.

VII. Proposed Changes to the Drug Registration Process

A. Requiring Submission of Batch Information for Listed Products

We recommend that FDA reconsider its proposal to require manufacturers to submit batch numbers and batch sizes for listed products through the drug registration process. Information pertaining to batches can be determined from lot numbers, and is readily available when it is needed. While Johnson & Johnson understands and appreciates FDA's goal to provide risk-based inspectional oversight, we believe that product volume information is already accessible to FDA through other reports. Requiring manufacturers to submit this information in the drug registration process would be burdensome and duplicative.

B. Proposed Drug Registration Submission Timing

FDA specifically requested comment on the potential burden that may result from the proposed requirement to certify that no changes have occurred since the last review of the drug listing information. This proposal, along with the proposed requirement to submit updates on individual drug listings within 30 days, will demand a great deal of resources from manufacturers, which are currently only required to provide updates in June and December.

Thank you for your consideration of these comments.

Sincerely,

Kathy J. Schroeher
Associate General Counsel
Johnson & Johnson