

Department of  
Veterans Affairs

FILE

Memorandum

Date: May 27, 1993  
From: Melbourne A. Noel, Jr., Office of General Counsel (025NAC)  
Subj: Transfer of Covered Drugs from One Manufacturer to Another  
To: Chief, DPPM (119)  
Assistant Chief, DPPM (119)

1. On several occasions during the past month, we have discussed whether or not a manufacturer who purchases outright or by means of a license the rights to produce a covered drug from another manufacturer (who had listed the drug on its PPA) will be allowed to treat the transferred drug as a new product for purposes of establishing non-FAMP and FCP. We have observed that DuPont-Merck seems to be in the process of transferring a number of its covered drugs to other manufacturers. The latter companies are claiming the right to establish a new FCP and a new FSS price for each transferred product, even though they already have established FCPs and FSS prices in the hands of DuPont-Merck.

2. This memo will serve to confirm General Counsel's oral ruling that transferred covered drugs come to their new manufacturers with current-year non-FAMPs, FCPs, and FSS contract prices intact. VA's "new drug" pricing policies do not apply to transferred products, even if the transferee's discounting policies are radically different from the transferor's. This ruling is necessary to protect the integrity of the discount formula imposed by P.L. 102-585. We believe that Congress did not intend to allow the mere transfer of an existing scheduled covered drug to wipe out the non-FAMP history of that drug and permit the transferee to begin with new non-FAMP calculations as of the date of its first marketing of the transferred drug.

3. With regard to FSS pricing, contracting officers have traditionally not allowed drugs already under contract to be transferred to different manufacturers with negotiation of new FSS contract prices after the transfer. They have done this for reasons similar to those expressed in the paragraph above.

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4. If manufacturers contact you with questions about this policy or if they challenge it, please forward these questions or challenges to this office.

*Mel Noel*

Melbourne A. Noel, Jr.  
Government Trial Attorney

cc: Assistant General Counsel (025)  
Chief, Pharmaceutical Products Division (904E)