DEPARTMENT OF VETERANS AFFAIRS
Office of General Counsel
PO Box 76
Hines IL 60141

February 11, 1997

The Department of Veterans Affairs (VA) has received from another manufacturer a facsimile transmittal regarding Federal ceiling price (FCP) calculations for 1997 of certain covered drug products that were listed on the Federal Supply Schedule (FSS) last year at one cent. Presumably, these items were priced at a penny because heavy additional discount penalties reduced their FCPs to negative figures.

In the letter, the manufacturer stated its belief that the 1996 penny prices should not be allowed to enter calculations for 1997 "in a routine way" because they would inevitably lead to penny prices for the new year. Apparently, it was concerned that this would occur because the dual FCP calculation required by 38 U.S.C. 8126(d) (Public Law 102-585, Section 603; the "P.L.") would be applicable for 1997, and last year's FSS contract price (one penny) would thereby become the 1997 FCP. The manufacturer was a single price company, so that its FCPs automatically become the FSS contract price for all agencies, since it chose not to publish or maintain separate price lists for 1) the P.L. benefited agencies and 2) all other FSS customers. The letter concluded by proposing that "the ceiling price calculation become the basis for establishing the price for these products for 1997."

VA's policy group for administration of the P.L. has reconsidered the policy regarding calculation of FCPs under 38 U.S.C. 8126(d) in a second or subsequent year of a multiyear contract by a single price company that experienced negative FCPs in the previous year.

February 11, 1997

After researching the number of covered drug items experiencing this problem and the possible impact of a change on VA, we have concluded that it is in the government's best interest to ensure that single price companies are not penalized more stringently than dual price companies through carry-over of significant additional discounts into a subsequent contract year.

Consequently, effective immediately, VA will allow single price companies, who were forced by heavy additional discount penalties (causing negative FCPs) to price covered drug items on the 1996 FSS at one cent, to calculate the 1997 FCPs for these products by utilizing the basic FCP calculation process under 38 U.S.C. 8126(a)(2). This eliminates the requirement for these penny items to be subjected to the dual calculation which begins with the current year FSS contract price. As a result of this interpretation, VA expects that single price companies and dual price companies will be placed in approximately the same beginning position for calculation of FCPs in second and subsequent years of a multiyear contract.

will also affect dual

If you have any questions regarding this new interpretation, please do not hesitate to call me.

Sincerely yours,

M. A. Noel, Jr.

Melbourne A. Noel, Jr.

cc: Chief, D&PPM (119D)
Team Leader (90N-P1)
Office of General Counsel

OPTIONAL FORM 99 (7-90) 2/12/97

FAX TRANSMITTAL # of pages ▸ ~~2~~ 1

To Bob Kenney	From Mel Noel
Dept./Agency Hogan & Hartson	Phone # 708-786-5767
Fax # 202-637-5910	Fax # per request

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION