from respondents The Wire Works, Inc., and Electrodes, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising, labeling, and promotional practices related to the sale of brass electrical discharge machining (''EDM'') wire electrodes. Wire EDM is a metal removal technique that is used to cut metal parts. The Commission's complaint charges that respondents misrepresented that certain of its EDM wire electrodes were all or virtually all made in the United States when, in truth and in fact, a substantial portion of their content was of foreign origin.

The proposed consent order contains a provision that is designed to remedy the charges and to prevent the respondents from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondents from misrepresenting the extent to which their EDM wire electrodes are made in the United States. The proposed order would allow respondents to represent that such EDM wire electrodes are made in the United States as long as all, or virtually all, of the components of the EDM wire electrodes are of U.S. origin and all, or virtually all, of the labor in manufacturing them is performed in the United States. It also would allow respondents to make a representation regarding the U.S. origin or U.S. content of their EDM wire electrodes product as permitted in future regulations, guides, or enforcement policy statements promulgated by the Commission. The proposed order further would allow respondents to describe the specific processing that is performed on the product in the United States, *e.g.*, that the product is ''Drawn in the U.S.A.,'' ''Annealed in U.S.A.,'' ''Coldworked in U.S.A.,'' or ''Strengthened in U.S.A.,'' so long as the claim is truthful and substantiated. If the product is not last substantially transformed in the United States, the proposed order would require the respondents to comply with regulations and rulings issued by the U.S. Customs Service under section 304 of the Tariff Act, 19 U.S.C. 1304.

Part II of the proposed order requires the respondents to maintain materials relied upon in disseminating any representation covered by the order. Part III of the proposed order requires the respondents to distribute copies of the order to certain company officials and employees. Part IV of the proposed order requires the respondents to notify the Commission of any change in the corporations that may affect compliance obligations under the order. Part V of the proposed order requires the respondents to file one or more compliance reports. Part VI of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–25419 Filed 9–29–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Report of the ''Tar,'' Nicotine, and Carbon Monoxide of the Smoke of 1262 Varieties of Domestic Cigarettes for the Year 1996 and Report of the ''Tar,'' Nicotine, and Carbon Monoxide of the Smoke of 1252 Varieties of Domestic Cigarettes for the Year 1997

ACTION: Notice.

SUMMARY: The Federal Trade Commission publishes the ''Report of the 'Tar,' Nicotine, and Carbon Monoxide of the Smoke of 1262 Varieties of Domestic Cigarettes for the Year 1996'' and the ''Report of the 'Tar,' Nicotine, and Carbon Monoxide of the Smoke of 1252 Varieties of Domestic Cigarettes for the Year 1997.''

DATES: September 30, 1999.

ADDRESSES: Copies of the reports are available from the FTC's World Wide Web site at: http://www.ftc.gov and from the FTC's Public Reference Branch, Room 130, 600 Pennsylvania Ave., NW., Washington, DC 20580. Telephone (202) 326–3128.

FOR FURTHER INFORMATION CONTACT: Michael Ostheimer, Staff Attorney Federal Trade Commission, Bureau of Consumer Protection, 600 Pennsylvania Ave., NW., Washington, DC 20580. Telephone (202) 326–2699.

SUPPLEMENTARY INFORMATION: These reports contain data on the ''tar,'' nicotine and carbon monoxide yields of 1262 varieties of cigarettes manufactured and sold in the United States in 1996, and of 1252 varieties sold in 1997. The Tobacco Institute Testing Laboratory (TITL), a private laboratory operated by the cigarette industry, conducted the ''tar,'' nicotine, and carbon monoxide testing for the widely-available domestic cigarette varieties. This testing was conducted under the review of a representative of the FTC through periodic unannounced inspections. TITL provided the results to the respective cigarette companies, which then provided the data generated by TITL regarding their own brands to the Commission in response to compulsory process. Cigarette smoke from generic, private label, and not-widely-available cigarettes was not tested by TITL, but was tested by the cigarette companies and the test results were provided to the FTC in response to compulsory process.

In response to concerns that have been raised regarding the accuracy and utility of the testing method currently used to determine the ''tar,'' nicotine, and carbon monoxide ratings of cigarettes, the Commission in 1998 requested the assistance of the Department of Health and Human Services in reviewing the scientific and public health questions surrounding the test method and, if appropriate, determining how the test method should be changed. In its July 1999 ''Report to Congress for 1997, Pursuant to the Cigarette Labeling and Advertising Act,'' the Commission recommended that Congress consider giving authority over cigarette testing to one of the Federal government's science-based, public health agencies.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–25417 Filed 9–29–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Publication of the OIG Special Advisory Bulletin on the Effect of Exclusion From Participation in Federal Health Care Programs

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: In its role of identifying and eliminating fraud, waste and abuse in the Department's health care programs, the OIG periodically develops and

issues guidance, including Special Fraud Alerts and Advisory Bulletins, to alert and inform health care providers and program beneficiaries about potential problems or areas of special interest. This **Federal Register** notice sets forth the recently-issued OIG Special Advisory Bulletin addressing the effect of an OIG exclusion on an individual's or entity's participation in the Federal health care programs.

FOR FURTHER INFORMATION CONTACT: Robin Schneider, Office of Counsel to the Inspector General, (202) 619–1306.

SUPPLEMENTARY INFORMATION:

I. Background

This Special Advisory Bulletin is designed to help all affected parties better understand the scope of payment prohibitions that apply to items and services provided to Federal program beneficiaries, and to provide guidance to individuals and entities that have been excluded from the Federal health care programs and to those who employ or contract with an excluded individual or entity to provide such items or services.

II. Special Advisory Bulletin: Gainsharing Arrangements and CMPs for Hospital Payments to Physicians To Reduce or Limit Services to Beneficiaries

A. Introduction

The Office of Inspector General (OIG) was established in the U.S. Department of Health and Human Services to identify and eliminate fraud, waste, and abuse in the Department's programs and to promote efficiency and economy in Departmental operations. The OIG carries out this mission through a nationwide program of audits, inspections, and investigations. In addition, the OIG has been given the authority to exclude from participation in Medicare, Medicaid and other Federal health care programs [1] individuals and entities who have engaged in fraud or abuse, and to impose civil money penalties (CMPs) for certain misconduct related to Federal health care programs (sections 1128 and 1128A of the Social Security Act (the Act)).

Recent statutory enactments have strengthened and expanded the OIG's authority to exclude individuals and entities from the Federal health care programs. These laws also expanded the OIG's authority to assess CMPs against individuals and entities that violate the law. With this expanded authority, the OIG believes that it is important to explain the effect of program exclusions under the current statutory and regulatory provisions.

The Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104–191, authorized the OIG to provide guidance to the health care industry to prevent fraud and abuse, and to promote high levels of ethical and lawful conduct. To further these goals, the OIG issues Special Advisory Bulletins about industry practices or arrangements that potentially implicate the fraud and abuse authorities subject to enforcement by the OIG.

In order to assist all affected parties in understanding the breadth of the payment prohibitions that apply to items and services provided to Federal program beneficiaries,[2] this Special Advisory Bulletin provides guidance to individuals and entities that have been excluded from Federal health care programs, as well as to those who might employ or contract with an excluded individual or entity to provide items or services reimbursed by a Federal health care program.

B. Statutory Background

In 1977, in the Medicare-Medicaid Anti-Fraud and Abuse Amendments, Public Law 95–142, Congress first mandated the exclusion of physicians and other practitioners convicted of program-related crimes from participation in Medicare and Medicaid (now codified at section 1128 of the Act). This was followed in 1981 with Congressional enactment of the Civil Monetary Penalties Law (CMPL), Public Law 97–35, to further address health care fraud and abuse (section 1128A of the Act). The CMPL authorizes the Department and the OIG to impose CMPs, assessments and program exclusions against individuals and entities who submit false or fraudulent, or otherwise improper claims for Medicare or Medicaid payment. ''Improper claims'' include claims submitted by an excluded individual or entity for items or services furnished during a period of program exclusion.

To enhance the OIG's ability to protect the Medicare and Medicaid programs and beneficiaries, the Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100–93, expanded and revised the OIG's administrative sanction authorities by, among other things, establishing certain mandatory and discretionary exclusions for various types of misconduct.

The enactment of HIPAA in 1996 and the Balanced Budget Act (BBA) of 1997, Public Law 105–33, further expanded the OIG's sanction authorities. These statutes extended the application and scope of the current CMP and exclusion authorities beyond programs funded by the Department to all ''Federal health care programs.'' BBA also authorized a new CMP authority to be imposed against health care providers or entities that employ or enter into contracts with excluded individuals for the provision of services or items to Federal program beneficiaries.

In the discussion that follows, it should be understood that the prohibitions being described apply to items and services provided, directly or indirectly, to Federal program beneficiaries. The ability of an excluded individual or entity to render items and services to others is not affected by an OIG exclusion.

C. Exclusion From Federal Health Care Programs

The effect of an OIG exclusion from Federal health care programs is that no Federal health care program payment may be made for any items or services (1) furnished by an excluded individual or entity, or (2) directed or prescribed by an excluded physician (42 CFR 1001.1901). This payment ban applies to all methods of Federal program reimbursement, whether payment results from itemized claims, cost reports, fee schedules or a prospective payment system (PPS). Any items and services furnished by an excluded individual or entity are not reimbursable under Federal health care programs. In addition, any items and services furnished at the medical direction or prescription of an excluded physician are not reimbursable when the individual or entity furnishing the services either knows or should know of the exclusion. This prohibition applies even when the Federal payment itself is made to another provider, practitioner or supplier that is not excluded.

The prohibition against Federal program payment for items or services furnished by excluded individuals or entities also extends to payment for administrative and management services not directly related to patient care, but that are a necessary component of providing items and services to

[1] A Federal health care program is defined as any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government or a State health care program (with the exception of the Federal Employees Health Benefits Program) (section 1128B(f) of the Act). The most significant Federal health care programs are Medicare, Medicaid, Tricare and the Veterans programs.

[2] A Federal program beneficiary is an individual that receives health care benefits that are funded, in whole or in part, by a Federal health care program.

Federal program beneficiaries. This prohibition continues to apply to an individual even if he or she changes from one health care profession to another while excluded.[3] In addition, no Federal program payment may be made to cover an excluded individual's salary, expenses or fringe benefits, regardless of whether they provide direct patient care.

Set forth below is a listing of some of the types of items or services that are reimbursed by Federal health care programs which, when provided by excluded parties, violate an OIG exclusion. These examples also demonstrate the kinds of items and services that excluded parties may be furnishing which will subject their employer or contractor to possible CMP liability.

- Services performed by excluded nurses, technicians or other excluded individuals who work for a hospital, nursing home, home health agency or physician practice, where such services are related to administrative duties, preparation of surgical trays or review of treatment plans if such services are reimbursed directly or indirectly (such as through a PPS or a bundled payment) by a Federal health care program, even if the individuals do not furnish direct care to Federal program beneficiaries;
- Services performed by excluded pharmacists or other excluded individuals who input prescription information for pharmacy billing or who are involved in any way in filling prescriptions for drugs reimbursed, directly or indirectly, by any Federal health care program;
- Services performed by excluded ambulance drivers, dispatchers and other employees involved in providing transportation reimbursed by a Federal health care program, to hospital patients or nursing home residents;
- Services performed for program beneficiaries by excluded individuals who sell, deliver or refill orders for medical devices or equipment being reimbursed by a Federal health care program;
- Services performed by excluded social workers who are employed by health care entities to provide services to Federal program beneficiaries, and whose services are reimbursed, directly or indirectly, by a Federal health care program;
- Administrative services, including the processing of claims for payment, performed for a Medicare intermediary or carrier, or a Medicaid fiscal agent, by an excluded individual;
- Services performed by an excluded administrator, billing agent, accountant, claims processor or utilization reviewer that are related to and reimbursed, directly or indirectly, by a Federal health care program;
- Items or services provided to a program beneficiary by an excluded individual who works for an entity that has a contractual agreement with, and is paid by, a Federal health care program; and
- Items or equipment sold by an excluded manufacturer or supplier, used in the care or treatment of beneficiaries and reimbursed, directly or indirectly, by a Federal health care program.

D. Violation of an OIG Exclusion by an Excluded Individual or Entity

An excluded party is in violation of its exclusion if it furnishes to Federal program beneficiaries items or services for which Federal health care program payment is sought. An excluded individual or entity that submits a claim for reimbursement to a Federal health care program, or causes such a claim to be submitted, may be subject to a CMP of $10,000 for each item or service furnished during the period that the person or entity was excluded (section 1128A(a)(1)(D) of the Act). The individual or entity may also be subject to treble damages for the amount claimed for each item or service. In addition, since reinstatement into the programs is not automatic, the excluded individual may jeopardize future reinstatement into Federal health care programs (42 CFR 1001.3002).

E. Employing an Excluded Individual or Entity

As indicated above, BBA authorizes the imposition of CMPs against health care providers and entities that employ or enter into contracts with excluded individuals or entities to provide items or services to Federal program beneficiaries (section 1128A(a)(6) of the Act; 42 CFR 1003.102(a)(2)). This authority parallels the CMP for health maintenance organizations that employ or contract with excluded individuals (section 1857(g)(1)(G) of the Act). Under the CMP authority, providers such as hospitals, nursing homes, hospices and group medical practices may face CMP exposure if they submit claims to a Federal health care program for health care items or services provided, directly or indirectly, by excluded individuals or entities.

Thus, a provider or entity that receives Federal health care funding may only employ an excluded individual in limited situations. Those situations would include instances where the provider is both able to pay the individual exclusively with private funds or from other non-federal funding sources, and where the services furnished by the excluded individual relate solely to non-federal program patients.

In many instances, the practical effect of an OIG exclusion is to preclude employment of an excluded individual in any capacity by a health care provider that receives reimbursement, indirectly or directly, from any Federal health care program.

F. CMP Liability for Employing or Contracting With an Excluded Individual or Entity

If a health care provider arranges or contracts (by employment or otherwise) with an individual or entity who is excluded by the OIG from program participation for the provision of items or services reimbursable under such a Federal program, the provider may be subject to CMP liability if they render services reimbursed, directly or indirectly, by such a program. CMPs of up to $10,000 for each item or service furnished by the excluded individual or entity and listed on a claim submitted for Federal program reimbursement, as well as an assessment of up to three times the amount claimed and program exclusion may be imposed. For liability to be imposed, the statute requires that the provider submitting the claims for health care items or services furnished by an excluded individual or entity ''knows or should know'' that the person was excluded from participation in the Federal health care programs (section 1128A(a)(6) of the Act; 42 CFR 1003.102(a)(2)). Providers and contracting entities have an affirmative duty to check the program exclusion status of individuals and entities prior to entering into employment or contractual relationships, or run the risk of CMP liability if they fail to do so.

G. How to Determine If an Individual or Entity is Excluded

In order to avoid potential CMP liability, the OIG urges health care providers and entities to check the OIG List of Excluded Individuals/Entities on the OIG web site (www.hhs.gov/oig) prior to hiring or contracting with individuals or entities. In addition, if they have not already done so, health care providers should periodically check the OIG web site for determining the participation/exclusion status of current employees and contractors. The web site contains OIG program

[3] For example, the prohibition against Federal program payment for items and services would continue to apply in the situation where an excluded pharmacist completes his or her medical degree and becomes a licensed physician.

exclusion information and is updated in both on-line searchable and downloadable formats. This information is updated on a regular basis. The OIG web site sorts the exclusion of individuals and entities by: (1) The legal basis for the exclusion, (2) the types of individuals and entities that have been excluded, and (3) the State where the excluded individual resided at the time they were excluded or the State where the entity was doing business. In addition, the entire exclusion file may be downloaded for persons who wish to set up their own database. Monthly updates are posted to the downloadable information on the web site.

H. Conclusion

In accordance with the expanded sanction authority provided in HIPAA and BBA, and with limited exceptions,[4] an exclusion from Federal health care programs effectively precludes an excluded individual or entity from being employed by, or under contract with, any practitioner, provider or supplier to provide any items and services reimbursed by a Federal health care program. This broad prohibition applies whether the Federal reimbursement is based on itemized claims, cost reports, fee schedules or PPS. Furthermore, it should be recognized that an exclusion remains in effect until the individual or entity has been reinstated to participate in Federal health care programs in accordance with the procedures set forth at 42 CFR 1001.3001 through 1001.3005. Reinstatement does not occur automatically at the end of a term of exclusion, but rather, an excluded party must apply for reinstatement.

If you are an excluded individual or entity, or are considering hiring or contracting with an excluded individual or entity, and question whether or not the employment arrangement may violate the law, the OIG Advisory Opinion process is available to offer formal binding guidance on whether an employment or contractual arrangement may be in violation of the OIG's exclusion and CMP authorities. The process and procedure for submitting an advisory opinion request can be found at 42 CFR 1008, or on the OIG web site at www.hhs.gov/oig.

[4] In certain instances, a State health care program may request a waiver of an exclusion if an individual or entity is the sole community physician or the sole source of essential specialized services in a community (42 CFR 1001.1801(b)).

Dated: September 21, 1999.

June Gibbs Brown,

Inspector General.

[FR Doc. 99–25427 Filed 9–29–99; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: Jerry Jennings, on behalf of the Cooperative Breeding Program for Keel-billed toucan, Red-breasted toucan, Saffron toucanet, and Chestnut-eared aracari (CB006). The applicant wishes to amend the approved cooperative breeding program to include the Spot-billed toucanet (*Selenidera maculirostris*). The Toucan Preservation Center maintains responsibility for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2095); FAX: (703/358–2298).

Dated: September 24, 1999.

Dr. Rosemarie Gnam,

Chief, Branch of Operations, Office of Management Authority.

[FR Doc. 99–25398 Filed 9–29–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management,

[NM–070–1430–01; NMNM 97495]

Notice of Realty action—Recreation and Public Purpose (R&PP) Act Classification, New Mexico

AGENCY: Bureau of Land Management Interior.

ACTION: Notice.

SUMMARY: The following described public land in San Juan County, New Mexico have been examined and found suitable for classification for lease or conveyance to the City of Farmington under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 et seq.). City of Farmington proposes to use the land for a sports complex with adjoining trail system.

New Mexico Principal Meridian

T. 29 N., R. 13 W.,
sec. 6, lots 9, 13, SE¼SE¼,
W½SW¼SE¼, S½SE¼SW¼SE¼.

containing 7.95 acres, more or less.

COMMENT DATES: On or before November 15, 1999 interested parties may submit comments regarding the proposed conveyance or classification of the lands to the Bureau of Land Management at the following address. Any adverse comments will be reviewed by the Field Office Manager, Bureau of Land Management, 1235 La Plata Highway, Suite A, Farmington, New Mexico 87401 who may sustain, vacate, or modify this reality action. In the absence of any adverse comments, this realty action becomes the final determination of the Department of the Interior and effective November 30, 1999.

FURTHER INFORMATION: Information related to this action, including the environmental assessment, is available for review at the Bureau of Land Management, Farmington Field Office, 1235 La Plata Highway, Suite A, Farmington, NM 87401.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. The segregative effect will terminate upon issuance of the patent to City of Farmington, or two (2) years from the date of this publication, whichever occurs first.