

# Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

#### Publication of OIG Updated Special Fraud Alert on Telemarketing by Durable Medical Equipment Suppliers

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

**ACTION:** Notice.

**SUMMARY:** This **Federal Register** notice sets forth the recently issued OIG Updated Special Fraud Alert addressing telemarketing by durable medical equipment (DME) suppliers. For the most part, OIG Special Fraud Alerts address national trends in health care fraud, including potential violations of the anti-kickback statute for Federal health care programs. This Updated Special Fraud Alert updates the Special Fraud Alert on Telemarketing by Durable Medical Equipment Suppliers originally issued in March 2003 and continues to highlight the statutory provision prohibiting DME suppliers from making unsolicited telephone calls to Medicare beneficiaries regarding the furnishing of a covered item.

**FOR FURTHER INFORMATION CONTACT:** James A. Cannatti III, Senior Counsel, Office of Counsel to the Inspector General, (202) 205-0007.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Office of Inspector General (OIG) was established at the Department of Health and Human Services by Congress in 1976 to identify and eliminate fraud, waste, and abuse in the Department's programs and to promote efficiency and economy in departmental operations. OIG carries out this mission through a nationwide program of audits, investigations, and inspections. To reduce fraud and abuse in the Federal health care programs, including Medicare and Medicaid, OIG actively

investigates fraudulent schemes that are used to obtain money from these programs and, when appropriate, issues Special Fraud Alerts that identify practices in the health care industry that are particularly vulnerable to abuse.

OIG issues Special Fraud Alerts based on information it obtains concerning particular fraudulent or abusive practices within the health care industry. Special Fraud Alerts are intended for widespread dissemination to the health care provider community, as well as those charged with administering the Medicare and Medicaid programs. To date, OIG has published in the **Federal Register** the texts of 12 previously issued Special Fraud Alerts.<sup>1</sup>

This Updated Special Fraud Alert updates the Special Fraud Alert on Telemarketing by Durable Medical Equipment Suppliers originally issued in March 2003 and continues to focus on section 1834(a)(17) of the Social Security Act, which prohibits suppliers of DME, except under limited circumstances, from making unsolicited telephone calls to Medicare beneficiaries regarding the furnishing of a covered item, and possible telemarketing practices by DME suppliers through the use of independent marketing firms.

##### II. Updated Special Fraud Alert: Telemarketing by Durable Medical Equipment Suppliers (November 2009; Original Published March 2003)

Section 1834(a)(17)(A) of the Social Security Act prohibits suppliers of durable medical equipment (DME) from making unsolicited telephone calls to Medicare beneficiaries regarding the furnishing of a covered item, except in three specific situations: (i) The beneficiary has given written permission to the supplier to make contact by telephone; (ii) the contact is regarding a covered item that the supplier has already furnished to the beneficiary; or (iii) the supplier has furnished at least one covered item to the beneficiary during the preceding 15 months. Section 1834(a)(17)(B) specifically prohibits payment to a supplier that knowingly submits a claim generated pursuant to a prohibited telephone solicitation. Accordingly,

<sup>1</sup> All OIG Special Fraud Alerts are available on the OIG Web site at: <http://oig.hhs.gov/fraud/fraudalerts.asp>.

such claims for payment are false and violators are potentially subject to criminal, civil, and administrative penalties, including exclusion from Federal health care programs.

The Office of Inspector General (OIG) has received credible information that some DME suppliers continue to use independent marketing firms to make unsolicited telephone calls to Medicare beneficiaries to market DME, notwithstanding the clear statutory prohibition. Suppliers cannot do indirectly that which they are prohibited from doing directly. OIG has also been made aware of instances when DME suppliers, notwithstanding the clear statutory prohibition, contact Medicare beneficiaries by telephone based solely on treating physicians' preliminary written or verbal orders prescribing DME for the beneficiaries. A physician's preliminary written or verbal order is not a substitute for the requisite written consent of a Medicare beneficiary.

Except in the three specific circumstances described in the statute, section 1834(a)(17)(A) prohibits unsolicited telemarketing by a DME supplier to Medicare beneficiaries, whether contact with a beneficiary is made by the supplier directly or by another party on the DME supplier's behalf. Moreover, a DME supplier is responsible for verifying that marketing activities performed by third parties with which the supplier contracts or otherwise does business do not involve prohibited activity and that information purchased from such third parties was neither obtained, nor derived, from prohibited activity. If a claim for payment is submitted for items or services generated by a prohibited solicitation, both the DME supplier and the telemarketer are potentially liable for criminal, civil, and administrative penalties for causing the filing of a false claim, as well as criminal and civil penalties for using interstate telephone calls in furtherance of schemes to defraud.

##### *What To Do If You Have Information About Fraud and Abuse Involving Medicare or Medicaid Programs*

If you have information about DME suppliers or telemarketers engaging in any of the activities described above, contact any of the regional offices of OIG, U.S. Department of Health and

Human Services, at the following locations:

Regional offices	States served	Telephone
Boston .....	MA, CT, ME, NH, RI, VT .....	617-565-2664
New York .....	NY, NJ, PR, VI .....	212-264-1691
Philadelphia .....	PA, DE, DC, MD, VA, WV .....	215-861-4586
Atlanta .....	AL, GA, KY, NC, SC, TN, MS .....	404-562-7603
Chicago .....	IL, IN, MI, MN, OH, WI .....	312-353-2740
Dallas .....	TX, LA, AR, OK, NM .....	214-767-8406
Kansas City .....	MO, ND, SD, MT, KS, IA, CO, NE, UT, WY .....	816-426-4000
San Francisco .....	No. CA, OR, WA, ID, AK .....	415-437-7961
Los Angeles .....	So. CA, AZ, NV, HI .....	714-246-8302
Miami .....	FL .....	305-530-7756

Dated: December 14, 2009.

**Daniel R. Levinson,**  
*Inspector General.*

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**BILLING CODE 4152-01-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XT65**

**Endangered and Threatened Species; Take of Anadromous Fish**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; Issuance of a scientific research permit.

**SUMMARY:** Notice is hereby given that NMFS has issued Permit 14516 to Dr. Jerry Smith to take certain species of California Coho and Steelhead Salmon for scientific research. The research will allow enhanced monitoring and management of these salmonid species..

**ADDRESSES:** The application, permit, and related documents are available for review by selecting "Records Open for Public Comment" from the Features box on the Applications and Permits for Protected Species (APPS) home page, <https://apps.nmfs.noaa.gov>, and then selecting File No. 14516 from the list of available documents.

These documents are also available upon written request or by appointment, for Permit 14516: Protected Resources Division, NMFS, 777 Sonoma Avenue, Room 315, Santa Rosa, CA 95404 ph: (707) 575-6097, fax: (707) 578-3435).

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Jahn at 707-575-6097, or e-mail: [Jeffrey.Jahn@noaa.gov](mailto:Jeffrey.Jahn@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Authority**

The issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations (50 CFR parts 222-226) governing listed fish and wildlife permits.

**Species Covered in This Notice**

This notice is relevant to federally endangered Central California Coast (CCC) coho salmon (*Oncorhynchus kisutch*) and threatened Central California Coast (CCC) steelhead (*O. mykiss*).

**Permit Issued**

A notice of the receipt of an application for a scientific research permit (14516) was published in the **Federal Register** on August 17, 2009 (74 FR 41373). Permit 14516 was issued to Dr. Smith on October 6, 2009.

Permit 14516 authorizes: (1) capture (by backpack electrofishing and beach seine), handling, sample tissues (fin-clip and scales) and release of adult CCC coho salmon; (2) capture (by backpack electrofishing and beach seine), handling, sample tissues (scales) and release of adult CCC steelhead; (3) capture (by backpack electrofishing and beach seine), marking (using fin-clips), sample tissues (fin-clip and scales), and release juvenile CCC coho salmon; (4) capture (by backpack electrofishing, beach seine), handling, marking (using fin-clips), sample tissues (scales), and release of juvenile CCC steelhead; (5)

capture (by beach seine), mark (using fin-clip), sample tissues (fin-clip and scales), and release CCC coho salmon smolts; (6) capture (by beach seine), mark (using fin-clip), sample tissues (scales), and release CCC steelhead; and (7) sample tissues (fin-clip and scales) of adult CCC coho salmon carcasses.

Permit 14516 authorizes unintentional lethal take of: juvenile and smolt CCC coho salmon and CCC steelhead not to exceed 2 percent of the total number of fish captured for each life stage and species. Permit 14516 does not authorize any lethal take of adult ESA-listed salmonids.

Permit 14516 is for research to be conducted in San Gregorio Creek Lagoon, Pescadero Creek Lagoon, and multiple sites in the Gazos, Waddell and Scott creek watersheds (including their lagoons) in San Mateo and Santa Cruz counties, California. The purpose of the research is to provide ESA-listed salmonid population, distribution, and habitat assessment data which will: (1) continue long-term monitoring of CCC coho salmon and CCC steelhead year class abundance, broodyear strength, and population abundance in Gazos, Waddell and Scott creek watersheds and assess habitat quality and its effects on population dynamics; (2) seasonally monitor salmonid use of Gazos, Waddell and Scott creek lagoons to determine habitat utilization (upstream vs. lagoon) and growth rates; and (3) monitor seasonal abundance and growth of steelhead in Pescadero and San Gregorio lagoons and to acquire smolt and adult life history information from scales. The issued permit does not include creel surveys at Pescadero Lagoon as requested by the applicant. Permit 14516 expires on November 30, 2014.

Dated: January 11, 2010.

**Angela Somma,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2010-581 Filed 1-13-10; 8:45 am]

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