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Presidential Documents

Title 3—

The President

Memorandum of October 31, 2008

Assignment of Functions Under Section 1265 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181)

Memorandum for the Secretary of State

By virtue of the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby assign to you the reporting function conferred upon the President by section 1265 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181).

You are authorized and directed to publish this memorandum in the *Federal Register* .

THE WHITE HOUSE,
Washington, October 31, 2008.

[FR Doc. E8–27501
Filed 11–17–08; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 5

[Docket No. DHS–2008–0183]

Privacy Act of 1974: Implementation of Exemptions; Customs and Border Protection Advanced Passenger Information System

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of the system of records entitled the Advanced Passenger Information System from certain provisions of the Privacy Act. Specifically, the Department proposes to exempt portions of the Advanced Passenger Information System from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective November 18, 2008.

FOR FURTHER INFORMATION CONTACT: Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528; telephone 703–235–0780; facsimile: 866–466–5370.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS), elsewhere in this edition of the **Federal Register**, published a Privacy Act system of records notice describing records in the Advance Passenger Information System (APIS). APIS performs screening of both inbound and outbound passengers and crew and, in the commercial air environment, crew members overflying the United States. As part of this screening function and to facilitate DHS's border enforcement mission, APIS data is compared with information in other CBP law enforcement systems, as well as with information from the TSDB, information on individuals with outstanding wants or warrants, and information from other government agencies regarding high risk parties and queries based on law enforcement data, intelligence, and past case experience to assess persons seeking to cross (or in the case of crew, overfly) the U.S. border using a means of transport covered by CBP's APIS regulations.

APIS contains records pertaining to various categories of individuals, including: Passengers and crew who arrive, transit through or depart the United States by air or sea (and includes the U.S. domestic portions of international travel for passengers and crew flying into or out of the United States) and crew members on aircraft that overfly the United States.

No exemption shall be asserted with respect to information maintained in the system that is collected from a person and submitted by that person's air or vessel carrier, if that person, or his or her agent, seeks access or amendment of such information.

This system, however, may contain records or information recompiled from or created from information contained in other systems of records, which are exempt from certain provisions of the Privacy Act. This system may also contain accountings of disclosures made with respect to information maintained in the system. For these records or information only, in accordance with 5 U.S.C. 552a(j)(2), and (k)(2), DHS will also claim the original exemptions for these records or information from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (5), and (8); (f), and (g) of the Privacy Act of 1974, as amended, as necessary and appropriate to protect such information. Moreover, DHS will add these exemptions to Appendix C to 6 CFR Part 5, DHS Systems of Records Exempt from the Privacy Act. Such exempt records or information may be law enforcement or national security investigation records, law enforcement activity and encounter records, or terrorist screening records.

DHS needs these exemptions in order to protect information relating to law enforcement investigations from disclosure to subjects of investigations and others who could interfere with investigatory and law enforcement activities. Specifically, the exemptions are required to: Preclude subjects of investigations from frustrating the investigative process; avoid disclosure of investigative techniques; protect the identities and physical safety of confidential informants and of law enforcement personnel; ensure DHS's and other federal agencies' ability to obtain information from third parties and other sources; protect the privacy of third parties; and safeguard sensitive information. The exemptions proposed here are standard law enforcement exemptions exercised by a large number of federal law enforcement agencies.

Nonetheless, DHS will examine each request on a case-by-case basis, and, after conferring with the appropriate component or agency, may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement purposes of the systems from which the information is recompiled or in which it is contained.

Again, DHS will not assert any exemption with respect to information maintained in the system that is collected from a person and submitted by that person's air or vessel carrier, if that person, or his or her agent, seeks access or amendment of such information.

Public Comments

We received two comments; neither was specific to the Notice of Proposed Rule Making Privacy Act Exemptions.

Regulatory Requirements

A. Regulatory Impact Analyses

Changes to Federal regulations must undergo several analyses. In conducting these analyses, DHS has determined:

1. Executive Order 12866 Assessment

This rule is not a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review'' (as amended). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB). Nevertheless, DHS has reviewed this rulemaking, and concluded that there will not be any significant economic impact.

2. Regulatory Flexibility Act Assessment

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), DHS certifies that this rule will not have a significant impact on a substantial number of small entities. The rule would impose no duties or obligations on small entities. Further, the exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the RFA.

3. International Trade Impact Assessment

This rulemaking will not constitute a barrier to international trade. The exemptions relate to criminal investigations and agency documentation and, therefore, do not create any new costs or barriers to trade.

4. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. This rulemaking will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DHS consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. DHS has determined that there are no current or new information collection requirements associated with this rule.

C. Executive Order 13132, Federalism

This action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore will not have federalism implications.

D. Environmental Analysis

DHS has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

E. Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362). This rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: Public Law 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552.

■ 2. At the end of Appendix C to Part 5, add the following new paragraph ''12'' to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

12. DHS/CBP–005, Advanced Passenger Information System. A portion of the following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (5), and (8); (f), and (g); however, these exemptions apply only to the extent that information in this system records is recompiled or is created from information contained in other systems of records subject to such exemptions pursuant to 5 U.S.C. 552a(j)(2), and (k)(2). Further, no exemption shall be asserted with respect to information submitted by and collected from the individual or the individual's representative in the course of any redress process associated with this system of records. After conferring with the appropriate component or agency, DHS may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement or national security purposes of the systems from which the information is recompiled or in which it is contained. Exemptions from the above particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, when information in this system records is recompiled or is created from information contained in other systems of records subject to exemptions for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosure) because making available to a record subject the accounting of disclosures from records concerning him or her would specifically reveal any investigative interest in the individual. Revealing this information could reasonably be expected to compromise ongoing efforts to investigate a known or suspected terrorist by notifying the record subject that he or she is under investigation. This information could also permit the record subject to take measures to impede the investigation, *e.g.*, destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(b) From subsection (c)(4) (Accounting for Disclosure, notice of dispute) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(c) From subsections (d)(1), (2), (3), and (4) (Access to Records) because these provisions concern individual access to and amendment of certain records contained in this system, including law enforcement counterterrorism, investigatory, and intelligence records. Compliance with these provisions could alert the subject of an investigation of the fact and nature of the investigation, and/or the investigative interest of intelligence or law enforcement agencies; compromise sensitive information related to national security; interfere with the overall law enforcement process by leading to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; could identify a confidential source or disclose information which would constitute an unwarranted invasion of another's personal privacy; reveal a sensitive investigative or intelligence technique; or constitute a potential danger to the health or safety of law enforcement personnel, confidential informants, and witnesses. Amendment of these records would interfere with ongoing counterterrorism, law enforcement, or intelligence investigations and analysis activities and impose an impossible administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised.

(d) From subsection (e)(1) (Relevancy and Necessity of Information) because it is not always possible for DHS or other agencies to know in advance what information is relevant and necessary for it to complete an identity comparison between the individual seeking redress and a known or suspected terrorist. Also, because DHS and other agencies may not always know what information about an encounter with a known or suspected terrorist will be relevant to law enforcement for the purpose of conducting an operational response.

(e) From subsection (e)(2) (Collection of Information from Individuals) because application of this provision could present a serious impediment to counterterrorism, law enforcement, or intelligence efforts in that it would put the subject of an investigation, study, or analysis on notice of that fact, thereby permitting the subject to engage in conduct designed to frustrate or impede that activity. The nature of counterterrorism, law enforcement, or intelligence investigations is such that vital information about an individual frequently can be obtained only from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his own activities.

(f) From subsection (e)(3) (Notice to Subjects), to the extent that this subsection is interpreted to require DHS to provide notice

to an individual if DHS or another agency receives or collects information about that individual during an investigation or from a third party. Should the subsection be so interpreted, exemption from this provision is necessary to avoid impeding counterterrorism, law enforcement, or intelligence efforts by putting the subject of an investigation, study, or analysis on notice of that fact, thereby permitting the subject to engage in conduct intended to frustrate or impede that activity.

(g) From subsections (e)(4)(G), (H) and (I) (Agency Requirements) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(h) From subsection (e)(5) (Collection of Information) because many of the records in this system coming from other system of records are derived from other domestic and foreign agency record systems and therefore it is not possible for DHS to vouch for their compliance with this provision; however, the DHS has implemented internal quality assurance procedures to ensure that data used in the redress process is as thorough, accurate, and current as possible. In addition, in the collection of information for law enforcement, counterterrorism, and intelligence purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by (e)(5) would limit the ability of those agencies' trained investigators and intelligence analysts to exercise their judgment in conducting investigations and impede the development of intelligence necessary for effective law enforcement and counterterrorism efforts. The DHS has, however, implemented internal quality assurance procedures to ensure that the data used in the redress process is as thorough, accurate, and current as possible.

(i) From subsection (e)(8) (Notice on Individuals) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on DHS and other agencies and could alert the subjects of counterterrorism, law enforcement, or intelligence investigations to the fact of those investigations when not previously known.

(j) From subsection (f) (Agency Rules) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(k) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: November 10, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–27206 Filed 11–17–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1776

RIN 0572–AC12

Amending the Household Water Well System Grant Program Regulations

AGENCY: Rural Utilities Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Rural Utilities Service (RUS), an agency delivering the United States Department of Agriculture's (USDA) Rural Development Utilities Programs, hereinafter referred to as Rural Development or the Agency, is amending its regulations to administer the Household Water Well System Grant Program. This action implements provisions of the 2008 Farm Bill for limits on loans that nonprofit organizations may make to homeowners for private well systems. The 2008 Farm Bill raises the loan limit to $11,000 from $8,000. The intended effect is to make part 1776 current with statutory authority. The Agency will also amend the regulation to enable existing grant recipients to amend their grant agreements for the new $11,000 loan limit. No adverse comments are expected.

DATES: This rule will become effective January 2, 2009 unless the Agency receives written adverse comments or a written notice of intent to submit adverse comments on or before December 18, 2008. If we receive adverse comments or notices, the Agency will publish a timely document in the **Federal Register** withdrawing the rule. Comments received will be considered under the proposed rule published in this edition of the **Federal Register** in the proposed rule section. A second public comment period will not be held. Written comments must be received by the Agency or carry a postmark or equivalent no later than December 18, 2008.

ADDRESSES: Submit adverse comments or notice of intent to submit adverse comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. In the ''Search Documents'' box, enter RUS–08–WATER–03, check the box under the Search box labeled ''Select to find documents accepting comments or submissions,'' and click on the GO>> key. To submit a comment, choose ''Send a comment or submission,'' under the Docket Title. In order to submit your comment, the information requested on the ''Public Comment and Submission Form,'' must be completed. (If you click on the hyperlink of the docket when the search returns it, you will see the docket details. Click on the yellow balloon to receive the ''Public Comment and Submission Form.'') Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''How to Use this Site'' link.
- *Postal Mail/Commercial Delivery:* Please send your comment addressed to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, STOP 1522, Room 5159, 1400 Independence Avenue, SW., Washington, DC 20250–1522. Please state that your comment refers to Docket No. RUS 08–WATER–03.

Other Information: Additional information about Rural Development and its programs is available at *http://www.rurdev.usda.gov/index.html*.

FOR FURTHER INFORMATION CONTACT: Cheryl Francis, Loan Specialist, Water and Environmental Programs, USDA Rural Development, 1400 Independence Avenue, STOP 1570, Room 2229 South Building, Washington, DC 20250–1570. *Telephone:* (202) 720–9589; *Fax:* (202) 690–0649; *e-mail: cheryl.francis@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

The program is not subject to the provisions of Executive Order 12372, ''Intergovernmental Consultation,'' as implemented under USDA's regulations at 7 CFR part 3015.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to the rule; and in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994, [7 U.S.C. 6912(e)], administrative appeal procedures, if any, must be exhausted before litigation against the Department or its agencies may be initiated.

Executive Order 13132, Federalism

This rule will not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, consultation with states is not required.

Regulatory Flexibility Act Certification

The Agency certifies that this rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, 5 U.S.C. 605(b); therefore, no further analysis is required. The amendments reflect only statutory changes that Congress has mandated and over which the Agency has no discretion. They also involve minimal procedural matters on other agreements already negotiated.

Information Collection and Recordkeeping Requirements

This rule contains no new reporting or recordkeeping burdens under Office of Management and Budget (OMB) control number 0572–0139 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

National Environmental Policy Act Certification

This final rule has been examined under Agency environmental regulations at 7 CFR part 1794. The Administrator has determined that this rule is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an Environmental Impact Statement or Assessment is not required.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) number assigned to the water and waste loan and grant program is 10.862, Water and Waste Disposal Systems for Rural Communities. The Catalog is available on the Internet and the General Services Administration's (GSA) free CFDA Web site at *http://www.cfda.gov*. The CFDA Web site also contains a PDF file version of the Catalog that, when printed, has the same layout as the printed document that the Government Printing Office (GPO) provides. GPO prints and sells the CFDA to interested buyers. For information about purchasing the Catalog of Federal Domestic Assistance from GPO, call the Superintendent of Documents at 202–512–1800 or toll free at 866–512–1800, or access GPO's on-line bookstore at *http://bookstore.gpo.gov*.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

E-Government Act Compliance

The Agency is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Background

The Household Water Well System (HWWS) Grant Program is authorized by Section 306E of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1926e), as amended. The program provides grants to qualified private non-profit organizations which help homeowners finance the cost of private wells. As the grant recipient, a non-profit organization establishes a revolving loan fund lending program to provide water well loans up to $8,000 to individuals who own or will own private wells in rural areas. The individual loan recipients may use the funds to construct, refurbish, and service their household well systems for an existing home.

The Food, Conservation and Energy Act of 2008, Public Law 110–246 (Farm Bill) amends Section 306E of the CONACT (7 U.S.C. 1926e) to raise the limit for loans made to individual homeowners to $11,000. The loan limit increase will allow homeowners to obtain financial assistance for well repairs and improvements in areas where the construction costs for wells routinely exceed $8,000.

Regulation 7 CFR 1776 is used to administer grants made to private non-profit organizations under the HWWS program. There will be two amendments to the regulation. Section 1776.10 will be amended to insert language providing for an amendment to a grant agreement. This amendment will provide for a process to allow current grant recipients to increase their loan limit to $11,000. Also, Section 1776.15, section (a)(3) will be amended to replace $8,000 with $11,000, the maximum amount grantees may make to homeowners.

The Section 1776.10 amendment will provide a process for the Agency to approve an increase in the loan limit for existing grant agreements. The Section 1776.15(a)(3) amendment to the household water well regulation will bring the regulation into conformance with the Farm Bill's provision. The increase in the loan limit will allow for the grantees to meet the expected costs in providing the needed homeowner well system improvements. The proposed amendments will have no financial impact on the public or the Agency. These amendments are not published for proposed rulemaking because they merely reflect changes in statutory authority enacted by the Farm Bill of 2008 and make only minor technical corrections to the regulations, which do not involve matters of agency discretion. Notice and public comment, therefore, are impractical, unnecessary, and contrary to the public interest.

List of Subjects in 7 CFR Part 1776

Agriculture, Community development, Community facilities, Credit, Grant programs—housing and community development, Nonprofit organizations, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water pollution control, Water resources, Water supply, Watersheds.

■ For reasons set forth in the preamble, chapter XVII of title 7 of the Code of Federal Regulations is amended as follows:

PART 1776—HOUSEHOLD WATER WELL SYSTEM GRANT PROGRAM

■ 1. The authority citation for part 1776 continues to read as follows:

Authority: 7 U.S.C. 1926e.

Subpart B—HWWS Grants

■ 2. Section 1776.10 is revised to read as follows:

§ 1776.10 Grant agreement.

(a) RUS and the grantee will enter into an agreement setting forth the terms and conditions governing a particular HWWS grant award. RUS will furnish the form of grant agreement. No funds awarded under this part shall be disbursed to the grant recipient before the grant agreement is binding and RUS has received a fully executed counterpart of the grant agreement.

(b) The grantee or RUS may initiate an amendment or modification to the grant agreement to provide for a loan limit up to $11,000. No change in the grant agreement requested by the grant

recipient will be effective unless approved in writing by RUS.

Subpart C—HWWS Loans

■ 3. In § 1776.15, revise paragraph (a)(3) to read as follows:

§ 1776.15 Terms of loans.

(a) * * *

(3) Shall not exceed $11,000 for each household water well system.

* * * * *

Dated: November 10, 2008.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E8–26769 Filed 11–17–08; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 231

Bureau of Customs and Border Protection

19 CFR Part 122

[CBP Dec. 08–43; Docket No. USCBP–2007–0064]

RIN 1651–AA41

Advance Information on Private Aircraft Arriving and Departing the United States

AGENCY: Customs and Border Protection, DHS.

ACTION: Final rule.

SUMMARY: This rule finalizes, with modifications, amendments to U.S. Customs and Border Protection (CBP) regulations pertaining to private aircraft arriving and departing the United States. This final rule requires private aircraft pilots or their designees arriving in the United States from a foreign port or location destined for a U.S. port or location, or departing the United States to a foreign port or location, to transmit electronically to CBP passenger manifest information for each individual traveling onboard the aircraft. This final rule requires private aircraft pilots or their designees to provide additional data elements when submitting a notice of arrival and requires private aircraft pilots or their designees to submit a notice of departure. Private aircraft pilots (or their designees) will be required to submit the notice of arrival and notice of departure information to CBP through an approved electronic data interchange system in the same transmission as the corresponding arrival or departure passenger manifest information. Under this rule, this data must be received by CBP no later than 60 minutes before an arriving private aircraft departs from a foreign location destined for the United States and no later than 60 minutes before a private aircraft departs a U.S. airport or location for a foreign port or place.

This rule also expressly acknowledges CBP's authority to restrict aircraft from landing in the United States based on security and/or risk assessments, or, based on such assessments, to specifically designate and limit the airports where aircraft may land or depart.

DATES: This final rule is effective on December 18, 2008. Compliance Date: Private aircraft pilots (or their designees) must comply with the requirements of this final rule on May 18, 2009.

FOR FURTHER INFORMATION CONTACT: For Operational aspects: Eric Rodriguez, Office of Field Operations, (281) 230–4642; or for Legal aspects: Glen Vereb, Office of International Trade, (202) 352–0030.

SUPPLEMENTARY INFORMATION:

I. Background
- A. Background and Authorities
- B. Current Requirements and Vulnerabilities for All Aircraft
- 1. Advance Notice of Arrival
- a. Private Aircraft Arriving in the United States
- b. Private Aircraft Arriving From Areas South of the United States
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- A. General Requirements for Private Aircraft Arriving in the United States
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VIII. Amendments to the Regulations

I. Background

A. Background and Authorities

A private aircraft,[1] in contrast to a commercial aircraft,[2] is generally any aircraft engaged in a personal or business flight to or from the United States which is not carrying passengers and/or cargo for commercial purposes. *See* 19 CFR 122.1(h). Pursuant to 19 U.S.C. 1433, 1644 and 1644a, the Secretary of Homeland Security (Secretary) has broad authority respecting all aircraft, including private aircraft, arriving in and departing from the United States. The term ''general aviation'' is commonly used in regard to private aircraft. Specifically, 19 U.S.C. 1433(c) provides that the pilot of any aircraft arriving in the United States or the U.S. Virgin Islands from any foreign location is required to comply with such advance notification, arrival reporting, and landing requirements as regulations may require. Under this authority, CBP can deny aircraft landing rights within the United States based on, among other considerations, security and/or risk assessments. Alternatively, based on such assessments, CBP may specifically designate and limit the airports where aircraft may land. In addition, under 19 U.S.C. 1433(d), an aircraft pilot is required to present or transmit to CBP through an electronic data interchange system such information, data, documents, papers or manifests as the regulations may require. Section 1433(e) provides, among other things, that aircraft after arriving in the United States or U.S. Virgin Islands may depart from the airport of arrival, but only in accordance with regulations prescribed by the Secretary. And, under 19 U.S.C. 1644 and 1644a, the Secretary can designate ports of entry for aircraft and apply vessel entry and clearance laws and regulations to civil aircraft.

Further, 46 U.S.C. 60105 provides that any vessel shall obtain clearance from the Secretary pursuant to regulation, in a manner prescribed by the Secretary, before departing the United States for a

[1] 19 CFR 122.1(h) defines a ''private aircraft'' as any aircraft engaged in a personal or business flight to or from the U.S. which is not: (1) Carrying passengers and/or cargo for commercial purposes; or (2) leaving the United States carrying neither passengers nor cargo in order to lade passengers and/or cargo in a foreign area for commercial purposes; or (3) returning to the United States carrying neither passengers nor cargo in ballast after leaving with passengers and/or cargo for commercial purposes.

[2] 19 CFR 122.1(d) defines ''commercial aircraft'' as any aircraft transporting passengers and/or cargo for some payment or other consideration, including money or services rendered. If either the arrival or departure leg of an aircraft's journey is commercial, then CBP considers both legs of the journey to be commercial.

foreign port or place. Because 19 U.S.C. 1644 and 1644a provide for the extension of the vessel entry and clearance laws and regulations to civil aircraft, the Secretary is authorized to issue regulations for civil aircraft that correspond with the vessel clearance requirements under 46 U.S.C. 60105. The previous ''exception'' from clearance requirements for private aircraft under 19 CFR 122.61 did not reflect a lack of statutory authority to regulate private aircraft. It reflected instead the Secretary's (then the Secretary of the Treasury's) discretion not to impose clearance requirements on that segment of civil aviation pursuant to the implementing regulations.

B. Current Requirements and Vulnerabilities for All Aircraft

1. Advance Notice of Arrival

CBP currently requires aircraft pilots of all aircraft entering the United States from a foreign area, except aircraft of a scheduled airline arriving under a regular schedule, to give advance notice of arrival. *See* 19 CFR 122.31(a). Advance notice of arrival must be furnished by the pilot of the aircraft and is generally given when the aircraft is in the air. As described below, the regulations set forth the general rule for advance notice of arrival for private aircraft and specific requirements for certain aircraft arriving from areas south of the United States, including aircraft from Cuba.

a. Private Aircraft Arriving in the United States

Pursuant to 19 CFR 122.22, private aircraft, except those arriving from areas south of the United States (discussed below), are required to give advance notice of arrival as set forth in 19 CFR 122.31. This notice must be provided to the port director at the place of first landing by radio, telephone, or other method, or through the Federal Aviation Administration (FAA)'s flight notification procedure. *See* 19 CFR 122.31(c). The advance notice must include information about the number of alien passengers and number of U.S. citizen passengers, but the regulation does not require any identifying information for individual passengers onboard to be submitted.[3] Nor does the current regulation provide a specific timeframe for when the notice of arrival shall be given, except that the pilot shall furnish such information far enough in advance to allow inspecting officers to reach the place of first landing of the aircraft. *See* 19 CFR 122.31(e).

b. Private Aircraft Arriving From Areas South of the United States

Private aircraft entering the continental United States from a foreign area in the Western Hemisphere south of the United States are subject to special advance notice of arrival and landing requirements. *See* 19 CFR 122.23–24. These aircraft include all private aircraft and commercial unscheduled aircraft with a seating capacity of 30 passengers or less, or maximum payload capacity of 7,500 pounds or less. Pursuant to 19 CFR 122.23(b), such aircraft are required to give advance notice of arrival to CBP at the nearest designated airport to the border or coastline crossing point listed in 19 CFR 122.24(b). These aircraft must also provide advance notice of arrival at least one hour before crossing the U.S. coastline or border. *See* 19 CFR 122.23(b). The pilot may provide advance notice of arrival for these aircraft by radio, telephone, or other method, or through the FAA flight notification procedure. The advance notice of arrival for such aircraft arriving from areas south of the United States must include the information listed in 19 CFR 122.23(c).[4] Aircraft arriving from areas south of the United States that are subject to the requirements of 19 CFR 122.23 are required to land at designated airports listed in 19 CFR 122.24(b), unless DHS grants an exemption from the special landing requirement.[5]

c. Aircraft Arriving From Cuba

The current regulations require all aircraft entering the United States from Cuba, except for public aircraft,[6] to give advance notice of arrival at least one hour before crossing the U.S. border or coastline. *See* 19 CFR 122.152 and 122.154. This notice must be furnished either directly to the CBP Officer in charge at the relevant airport listed in 19 CFR 122.154(b)(2) or through the FAA flight notification procedure. The advance notice of arrival for aircraft from Cuba must include the information listed in 19 CFR 122.154(c).[7]

2. Permission To Land (Landing Rights)

The current regulations require the owner or operator of any aircraft, including a private aircraft, arriving at a landing rights airport or user fee airport to request permission to land, known as landing rights, from CBP. *See* 19 CFR 122.14(a) and 122.15(a). A ''landing rights airport'' is defined as any airport, other than an international airport or user fee airport, at which flights from a foreign area are given permission by CBP to land. *See* 19 CFR 122.1(f). A ''user fee airport'' is defined as an airport so designated by CBP and flights from a foreign area may be granted permission to land at a user fee airport rather than at an international airport or a landing rights airport. *See* 19 CFR 122.1(m). An informational listing of user fee airports is contained in section 122.15. Permission to land must be secured from the director of the port, or his representative, at the port nearest the first place of landing for both landing rights airports and user fee airports. However, the current regulations do not set forth a precise application procedure or time frame for securing permission to land.

3. Vulnerabilities

DHS is working to strengthen general aviation security to further minimize the vulnerability of private aircraft flights being used to deliver illicit materials, transport dangerous individuals or employ the aircraft as a weapon. Today, compared to regularly scheduled commercial airline operations, little or no screening or vetting of the crew, passengers or the aircraft itself is required of private aircraft before entering or departing the United States

[3] 19 CFR 122.31 provides that the contents of advance notice of arrival shall include the following information: (1) Type of aircraft and registration number; (2) Name of aircraft commander; (3) Place of last foreign departure; (4) International airport of intended landing or other place at which landing has been authorized by CBP; (5) Number of alien passengers; (6) Number of citizen passengers; and (7) Estimated time of arrival.

[4] Section 122.23(c) provides that the contents of the advance notice of arrival shall include the following: (1) Aircraft registration number; (2) Name of aircraft commander; (3) Number of U.S. citizen passengers; (4) Number of alien passengers; (5) Place of last departure; (6) Estimated time and location of crossing U.S. border/coastline; (7) Estimated time of arrival; and (8) Name of intended U.S. airport of first landing, as listed in § 122.24, unless an exemption has been granted under § 122.25, or the aircraft has not landed in foreign territory or is arriving directly from Puerto Rico, or the aircraft was inspected by CBP officers in the U.S. Virgin Islands.

[5] 19 CFR 122.25 sets forth the procedures concerning exemption from special landing requirements—known as an overflight privileges.

[6] 19 CFR 122.1(i) defines ''public aircraft'' as any aircraft owned by, or under the complete control and management of the U.S. government or any of its agencies, or any aircraft owned by or under the complete control and management of any foreign government which exempts public aircraft of the United States from arrival, entry and clearance requirements similar to those provided in subpart C of this part, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

[7] 19 CFR 122.154(c) provides that the contents of advance notice of arrival shall state: (1) Type of aircraft and registration number; (2) Name of aircraft commander; (3) Number of U.S. citizen passengers; (4) Number of alien passengers; (5) Place of last foreign departure; (6) Estimated time and location of crossing the U.S. coast or border; and (7) Estimated time of arrival.

at air ports of entry (APOE). Some of these APOEs are located well within U.S. territory and near highly populated areas. DHS has developed this final rule to address these vulnerabilities and to enhance international and domestic general aviation security. This final rule includes the identification and vetting of passengers and crew on private aircraft prior to entering and departing U.S. airspace.

II. Summary of Requirements in the Proposed Rule

On September 18, 2007, CBP published in the **Federal Register** a notice of proposed rulemaking (NPRM) entitled ''Advance Information on Private Aircraft Arriving and Departing the United States,'' proposing new requirements for private aircraft arriving to and departing from the United States, as described below. *See* 72 FR 53394.

A. General Requirements for Private Aircraft Arriving in the United States

The NPRM proposed to require the pilot of any private aircraft arriving in the United States from a foreign port or location or departing the United States for a foreign port or location to transmit to CBP an advance electronic manifest comprised of specific information regarding each individual traveling onboard the aircraft pursuant to 19 U.S.C. 1433, 1644 and 1644a.

1. Notice of Arrival

The NPRM proposed adding data elements to the existing notice of arrival requirements and proposed a new notice of departure requirement. In addition, CBP would require pilots to provide the notice of arrival and notice of departure information through the electronic Advance Passenger Information System (eAPIS) [8] Web portal or through another CBP-approved electronic data interchange system in the same transmission as the corresponding arrival or departure manifest information. Under the NPRM, these data are to be received by CBP no later than 60 minutes before an arriving private aircraft departs from a foreign location to a U.S. port or location, and no later than 60 minutes before a private aircraft departs a United States airport or location for a foreign port or place.

The NPRM also proposed a new timeframe for reporting notice of arrival no later than 60 minutes prior to the aircraft's departure to the United States from a foreign port or location, as opposed to 60 minutes before crossing the U.S border, as is the current requirement. Under the proposed rule, notice of arrival and manifest data would be required to be furnished as set forth in 19 CFR 122.22 for private aircraft, which requires submission of such information to CBP via an electronic data interchange system approved by CBP. All other aircraft subject to 19 CFR 122.23 would be required to report notice of arrival as required under that provision.

2. CBP's Authority To Restrict or Deny Aircraft Landing Rights

The NPRM proposed to clarify landing rights procedures and departure clearance procedures, and acknowledge CBP's authority to restrict aircraft from landing in the United States based on security and/or risk assessments, or to specifically designate and limit the United States airports where aircraft may land or depart.

B. Certain Aircraft Arriving From Areas South of the United States

The NPRM proposed to correct a discrepancy between the definition of ''private aircraft'' in 19 CFR 122.23, which encompasses both private aircraft and, in some instances, small, unscheduled commercial aircraft and the general definition provided for ''private aircraft'' in 19 CFR 122.1(h). This correction will properly indicate that section 122.23 encompasses small, commercial aircraft that seat less than 30 passengers, or have a maximum payload capacity of less than 7,500 pounds, carrying people or cargo for hire, which are not currently covered by section 122.23(a)(1)(iii), but which, under section 122.1(d), are considered commercial aircraft.

C. Notice of Arrival for Private Aircraft Arriving From Cuba

The NPRM proposed that private aircraft arriving from Cuba, as provided for in 19 CFR 122.154, be required to provide notice of arrival and manifest data in the same manner as private aircraft that are subject to proposed 19 CFR 122.22. Private aircraft arriving from Cuba would continue to be required to provide notice of arrival information to the specifically designated airports where the aircraft will land: Miami International Airport, Miami, Florida; John F. Kennedy International Airport, Jamaica, New York; or Los Angeles International Airport, Los Angeles, California.

III. Discussion of Comments

The NPRM requested comments to be submitted on or before November 18, 2007, regarding the proposed amendments. CBP extended the comment period to December 4, 2007, by notice published in the **Federal Register** on November 14, 2007. *See* 72 FR 64012. A total of 2,907 comments were received from the general public, including individual pilots and members of various pilot associations. CBP's responses to the comments are provided below.

General Comments

Comment: Several commenters requested that the comment period for the NPRM be extended an additional 60 days to January 18, 2008.

Response: Although CBP did not extend the comment period for an additional 60 days, CBP did extend the comment period by an additional 15 days, until December 4, 2007. *See* 72 FR 64012. CBP believed that the original 60-day comment period in addition to the 15-day extension provided the public with an adequate amount of time to submit comments. Moreover, based on the ample number of comments received by the end of the original comment period, CBP believed that public sentiment was accurately captured. Further extension of the comment period would delay implementing the final rule, which would allow the continued existence of vulnerabilities that threaten the security of the United States.

Comment: Several hundred commenters objected to what was described as proposed user fees and contact fees, but did not specify the nature or source of such fees.

Response: This final rule does not change existing user fees or create new user fees. User fees are not part of this rulemaking.

Comment: Several commenters asked how DHS was going to control the flow of traffic at airports upon implementation of the rule.

Response: This rule requires pilots to provide advance information on aircraft and individuals onboard that aircraft, prior to departure to or from the United States. CBP believes the collection and submission of this information will have a limited impact on the flow of traffic at airports. However, responsibility over the flow of air traffic at airports falls within the purview of the FAA.

Comment: Commenters expressed concerns as to whether they would be required to electronically transmit manifest and notice of arrival information when a flight begins and ends in the same country but the aircraft utilized international airspace for routing purposes.

Response: This rule does not regulate domestic flights as in the case of an

[8] eAPIS is an online transmission system that meets all current APIS data element requirements for all mandated APIS transmission types.

aircraft that takes off and lands within the United States, but utilizes foreign airspace. In addition, this rule does not regulate foreign flights in which a flight originates and terminates in that foreign country, but utilizes U.S. airspace. Therefore, those types of flights are unaffected by this rule.

Comment: One commenter recommended that CBP use FAA future surveillance and make changes involving FAA and Automated Flight Service Stations (AFSS). In their comment, Aircraft Owners and Pilots Association (AOPA) recommended an evaluation of how the FAA's (Flight Service Stations) FSS system could be incorporated in the arrival notification procedures. The commenter asserted that FSS is similar with interfacing between FAA air traffic control facilities and CBP. AOPA also asserted in its comment that in September 2007, the FAA issued a proposed rule that would require all aircraft to be equipped with Automatic Dependent Surveillance—Broadcast (ADS–B) by 2020 in order to fly within Class B and C airspace and above 10,000 feet. ADS–B is a datalink technology that uses satellite-based navigation equipment located on board aircraft and positioning information from Global Positioning System (GPS) satellites to automatically transmit aircraft location and altitude to air traffic controllers and other nearby aircraft.

Response: The technology referenced by the commenters is helpful to the FAA in monitoring airborne aircraft. However, the goal of this final rule is to obtain information on passengers and aircraft prior to take-off, not after an aircraft is airborne. CBP deems it more effective to identify potential risks to aviation and border security before an aircraft gains access to United States airspace.

Comment: Several commenters expressed concern about names that are very common and continuously appearing on the ''Watch List'' which would either restrict or delay their arrival or departure.

Response: CBP appreciates the concerns that members of the public have expressed regarding shared and/or similar names to those that appear on the consolidated U.S. government watchlist and the potential for misidentification. Maintenance of the watchlist is beyond the scope of this rule. For more information on the watchlist and how to seek redress, please refer to the U.S. Department of Homeland Security's Travel Redress Inquiry Program (DHSTRIP) by going to the Department of Homeland Security Web site, *http://www.dhs.gov* or by cutting and pasting the following web address into a web browser for information on how to address such issues: *http://www.dhs.gov/xtrvlsec/programs/gc_1169676919316.shtm.*

Comment: Several hundred commenters requested that CBP meet with their association to discuss the proposed rule.

Response: CBP did not hold public meetings on this proposed rule and did not meet with any individuals or associations to discuss the proposed rule. The 75-day comment period and the large number of comments received during the NPRM's comment period were sufficient for CBP to accurately determine public sentiment.

Comment: One commenter alleged that the public had been disenfranchised of their right to comment on this NPRM because no comments were posted on 22 separate days during the comment period.

Response: CBP works diligently to keep the public apprised of its current public policies, and takes steps in the form of published notices, notices of proposed rulemakings, final rules and other actions allowing for public comment. The commenter is correct that no comments were *posted* on *http://www.regulations.gov* on the days referenced during the comment period. However, there is a difference between comments being *posted* and comments being *submitted* and *received.* Depending on the method of submission (*e.g.*, U.S. mail or online), the process of posting comments varies slightly, but it is never immediate. On the days referenced by the commenter, comments actually were *submitted* (and *received*) for each day. However, comments are not posted immediately when submitted because prior to being posted, all comments must be initially reviewed for various reasons, such as verifying the comments received in the mail are not duplicated in the electronic docket, use of inappropriate language or locating missing attachments. After this initial review, comments are then posted. All of the days referenced by the commenter were weekend days or holidays, with one exception (the Friday following Thanksgiving). Comments were not posted on those days because personnel were not available to perform the tasks referenced above.

Comment: Some commenters expressed concern regarding how they could expect the transition from current methods of operation for international arrivals and departures by private aircraft at the various ports around the country to the newly required use of eAPIS to occur.

Response: When these regulations become effective, there will be a transitional period during which the current manual process of requesting landing rights will gradually be replaced by this automated procedure (i.e., eAPIS). During this transitional period, pilots flying into locations that currently require advance arrangements with the CBP port to ensure the availability of CBP officers to process the aircraft should continue to follow those local procedures for requesting landing rights until instructed otherwise.

Implementation—Privacy Issues

Comment: Several hundred commenters expressed concern that, as U.S. citizens, they should not be required to ''request permission'' to enter or leave their own country. Two commenters noted the proposed rule is an effort to increase surveillance and information gathering on U.S. citizens under the guise of security.

Response: DHS is working to strengthen aviation security to further minimize the vulnerability of private aircraft flights being used to deliver illicit materials, transport dangerous individuals or employ the aircraft as a weapon. Today, compared to regularly scheduled commercial airline operations, little or no screening or vetting of the crew, passengers or the aircraft itself is required of private aircraft before entering or departing the United States at air ports of entry (APOE). Some of these APOEs are located well within U.S. territory and near highly populated areas. To address this vulnerability and further strengthen U.S. borders, DHS has developed this rule.

The requirements under the final rule include the identification and vetting of individuals on private aircraft, prior to entering and departing U.S. airspace. Submission of information for all travelers, including U.S. citizens, on board a private aircraft arriving in the United States, is already authorized under 19 U.S.C. 1433(d), as implemented in 19 CFR 122.31 and 19 CFR 122.23. This final rule changes the timing of the arrival submission (60 minutes prior to departure) and the method of submission (through eAPIS or another CBP-approved data transmission method). It also requires transmission of departure manifest information for private aircraft—something CBP does not collect currently. CBP expects that early receipt of departure manifest data for private aircraft exiting the United States will allow CBP to assess the threat presented by the aircraft and persons onboard prior to takeoff, and thus aid CBP in

preventing terrorists or terrorist weapons from gaining access to an airborne aircraft.

Furthermore, pursuant to 19 U.S.C. 1433(d) and (e), 1644 and 1644a, the Secretary has the authority to regulate the departure of aircraft, both commercial and private, including requiring passenger manifest information. Further authority may be found in 46 U.S.C. 60105, providing that any vessel shall obtain clearance from the Secretary, in a manner prescribed by the Secretary, before departing the United States for a foreign port or place; this authority is extended to the departure of aircraft pursuant to the provisions of 19 U.S.C. 1644 and 1644a.

Comment: Several commenters stated that the information required for the arrival and departure manifests goes beyond what is required for international commercial air passengers.

Response: Under the current Advance Passenger Information System (APIS) requirements for commercial aviation, information is collected regarding passengers, crew and non-crew. *See* 19 CFR 4.64, 122.49a, 122.49b, 122.49c, 122.75a and 122.75b. CBP is working to process arriving passengers on private aircraft in a similar manner. For private aircraft, CBP has determined that information regarding all individuals onboard the aircraft, as well as the aircraft, is relevant for purposes of law enforcement and threat assessment. Much of the information that CBP has determined necessary for collection regarding the individuals onboard departing and arriving private aircraft is comparable to the information that commercial air carriers are currently required to submit in electronic arrival and departure manifests for passengers and crew-members. Collecting this information prior to a private aircraft's arrival or departure will allow CBP to perform advance screening to identify any individuals who may pose a risk to aviation security prior to take off and access to U.S. airspace.

With this final rule, electronic manifest information will be required for all aircraft, except public aircraft as defined in part 122, arriving in or departing from the United States. Private aircraft will be covered by the provisions outlined in this rule and commercial aircraft will be covered by the provisions outlined in the other APIS regulations. See 19 CFR 122.49a, 122.49b, 122.49c, 122.75a, and 122.75b.

Comment: Several commenters expressed concern that submitting data through the eAPIS system will lead to increased identity theft. One commenter stated that hackers could steal a pilot's clearance.

Response: CBP has a multi-layer approach to security of its databases, including software firewalls to prevent hackers from compromising its database and a secured log-in when one signs into eAPIS. CBP is very sensitive to the privacy issues associated with the use of eAPIS. For further information, CBP has published a Privacy Impact Statement (PIA) that outlines in detail what records are kept, how they are kept, and for how long they are kept. *See http://dhs.gov/xinfoshare/publications/editorial_0511.shtm.*

Implementation—Modes of Transportation

Comment: A few commenters wanted to know if hot air balloons constituted aircraft subject to the proposed rulemaking.

Response: Pursuant to 19 CFR 122.1(a), ''aircraft'' is defined as ''any device now known, or hereafter invented, used or designed for navigation or flight in the air. It does not include ''hovercraft,'' which is a vehicle that hydroplanes on a thin layer of air just above the surface of water or land. Because hot air balloons are designed and used for flight in the air, they meet the definition of an ''aircraft'' set forth in 19 CFR 122.1(a). Thus, hot air balloons are considered aircraft under CBP regulations and are subject to this final rule.

Comment: Many comments stated that if other modes of transportation, such as passenger vehicles, buses, trucks, and boats are not subject to the presentation requirement for arrival and departure manifests, private aircraft should not be either.

Response: CBP disagrees. Submission of notice of arrival information indicating the number of citizen passengers and alien passengers arriving by air in the United States is already required under 19 CFR 122.31 and 19 CFR 122.23. Additionally, pursuant to 19 U.S.C. 1433(d), (e), 1644 and 1644a, the Secretary has the authority to prescribe regulations regarding the departure of aircraft, both commercial and private. Further authority exists in 46 U.S.C. 60105, which provides that any vessel shall obtain clearance from the Secretary, in a manner prescribed by the Secretary, before departing the United States for a foreign port or place. This authority is extended to aircraft pursuant to the provisions of 19 U.S.C. 1644 and 1644a.

Although the timing of the submission, the method of submission, and the data elements required are being modified, CBP does not anticipate this final rule to negatively affect private aircraft outside the United States because notice of arrival requirements are already in place and do not cause severe economic hardship. Additionally, other modes of transportation besides aircraft and vessels, specifically trucks and trains, are subject to manifest requirements. The statutory basis for requiring a manifest from a ''vehicle'' (which includes trucks and trains) is found in 19 U.S.C. 1431(b). The regulatory provisions implementing this statute are spread throughout 19 CFR Part 123 (*see, e.g.*, sections 123.3, 123.4, 123.5, 123.91, 123.92, etc.). Vehicles required to submit a manifest would do so through presentation of CBP Form 7533 Inward Cargo Manifest for Vessel Under Five Tons, Ferry, Train, Car, Vehicle, etc., which requires the following information be submitted: name or number and description of importing conveyance, name of master or person in charge, name and address of owner, foreign port of lading, U.S. port of destination, port of arrival, date of arrival, bill of lading or marks & numbers of consignee on package, car number and initials, number and gross weight (in kilos or pounds) of packages and description of goods, and name of consignee. As indicated by the aforementioned data elements for vehicles, many elements are similar to those that will be required for private aircraft under this final rule.

CBP does not require manifests from passenger vehicles unless they are carrying commercial goods. Non-commercial pleasure boats are exempt from the entry/manifest requirements under 19 CFR 4.94. Private aircraft, unlike other modes of transportation, present a unique threat because they are not inspected at the physical border and will travel over U.S. territory before CBP has the opportunity to inspect them.

Implementation—General

Comment: One commenter expressed concern that a terrorist could use the eAPIS system to verify whether certain names are on the ''No-Fly'' list.

Response: CBP has taken into consideration potential threats and intentional misuse of the eAPIS system in the development of system access and security. If an individual on the ''No-Fly'' list is identified on the manifest, DHS will conduct a risk-based analysis to determine whether to grant, restrict or deny landing rights. If landing rights are restricted or denied, the pilot will be provided with appropriate instructions and contact information.

Comment: Several hundred commenters stated that the requirement for clearance to leave the United States should be deleted because the U.S.

government should not care if ''terrorists'' are leaving the country. Three commenters questioned how CBP would be able to apprehend terrorist suspects if we did not allow them to enter the United States.

Response: CBP disagrees. CBP believes that the outbound passenger manifest information allows CBP and other law enforcement officials to better identify individuals who may be on the ''No-Fly'' watch list when either arriving in or leaving from the United States. Additionally, outbound information is necessary because any airborne aircraft can be used to transport a dangerous device and gain access to U.S. airspace. CBP's main concern is to keep individuals who are on the ''No-Fly'' list from traveling by air, whether outgoing or incoming to prevent threats to our homeland security. As a result, CBP is able to conduct better risk assessments which can lead to higher rates of detection of individuals who are on the ''No-Fly'' list. In addition, CBP has authority under 8 U.S.C. 1185 to regulate the entry and exit of individuals from the United States.

Comment: Several hundred commenters stated that the rule does nothing to increase security for private aircraft operators because passengers aboard private aircraft generally have an established relationship with the pilot.

Response: CBP disagrees. The purpose of this rule is to increase U.S. national security as well as that of private aircraft operators. As such, it is entirely possible that the family members, friends, acquaintances and employers who may travel as passengers on private aircraft are in fact on the ''No-Fly'' list unbeknownst to the pilot, which will affect whether CBP grants, denies, or restricts landing rights to the aircraft. Because the advance screening will allow for the identification of individuals on the ''No-Fly'' list and as such will prevent these individuals from gaining access to U.S. airspace, the rule will in fact increase security for private aircraft operators. As previously stated, CBP believes that the passenger manifest information allows CBP and other law enforcement officials to better identify the travel plans of individuals on the ''No-Fly'' list. The final rule addresses the threat to national security presented by private aircraft or any of its occupants, whether or not the operator of the aircraft has a personal relationship with any or all passengers.

Comment: Several commenters suggested that DHS should allow private aircraft pilots to submit passenger manifest data for both departure from the United States and return to the United States prior to leaving the United States to accommodate situations where communications equipment may not be available or reliable outside the United States.

Response: CBP agrees. Under the final rule, as well as proposed in the NPRM, pilots may submit passenger manifest data via the eAPIS portal for both departure and arrival manifests (that is, the outbound and the return flight inbound manifests) prior to departure from the United States. As proposed in the NPRM, such advance submission of arrival and departure manifests is permitted under this final rule, inasmuch as only a minimum time frame for submission of the arrival and/or departure manifest was indicated. This final rule in no way restricts pilots from submitting manifests in advance of their departure from the United States to a foreign port or location. In fact, such early submissions are encouraged and, in cases where pre-clearance services are made available abroad, the early submission (from the United States or the originating foreign country) could help expedite the processing of the flight at the pre-clearance site.

Comment: Several hundred commenters stated that this rule will negatively affect humanitarian and tourist visits from U.S. citizens to other countries. One commenter stated that this rule would adversely affect business travel.

Response: CBP disagrees. Submission of notice of arrival information for U.S. citizens entering the United States is already required for commercial flights in 19 CFR 122.31 and 19 CFR 122.23. Although the timing of the submission, the method of submission, and the data elements required are being modified, this final rule is not anticipated to negatively affect trips outside the United States because notice of arrival requirements are already in place and do not cause severe economic hardship.

Comment: Several hundred commenters stated that current systems and procedures are adequate and new requirements are not necessary.

Response: CBP disagrees. The purpose of this rule is to provide CBP and other law enforcement officials with advance electronic information regarding pilots and passengers traveling via private aircraft to allow DHS to conduct timely risk and threat assessments. The pre-screening of passenger names against the ''No-Fly'' list prior to departure from or to the United States will allow DHS to conduct threat assessments allowing the advance identification of individuals on the ''No-Fly'' list prior to take off and access to U.S. airspace.

Comment: Several commenters stated that approval should be given annually and not on a per-flight basis. Two commenters recommended approval every five years. One commenter recommended a NEXUS type program for private aircraft.

Response: CBP disagrees. Every flight that takes off for departure and/or arrival in the United States poses a possible threat by allowing access to United States airspace by every individual onboard the aircraft. For risk assessment purposes, this arrival and departure manifest information is necessary for each flight arriving in and departing from the United States. This is so because it will allow CBP to use the most up-to-date intelligence to properly react to any persons or aircraft that pose a threat to aviation and national security. CBP notes, however, that arrival and departure manifest information for a particular flight may be submitted even months in advance of arrival or departure, but no later than 60 minutes prior to departure of the private aircraft to or from the United States.

Comment: Several hundred commenters indicated that the rule is unnecessary because small private aircraft cannot cause significant damage or threat.

Response: CBP disagrees. Any size aircraft (large or small) may meet the definition of a private aircraft under CBP regulations. Furthermore, even though large aircraft may inflict more damage if flown into infrastructure, both large and small aircraft present a threat because they may be used to transport terrorists or terrorist weapons. Creating an exemption for private aircraft would provide a loophole that could compromise our national security. Furthermore, the purpose of the rule is not only to provide CBP with advance aircraft information, but to also provide CBP with advance information regarding pilots and passengers traveling via private aircraft. This will allow DHS to conduct threat assessments and reduce the probability of a terrorist attack by allowing for the advance identification of individuals on the ''No-Fly'' list prior to their gaining access to U.S. airspace via an airborne aircraft, and granting, denying or restricting landing rights accordingly. This information is needed for each flight by private aircraft arriving in and departing from the United States, regardless of the size or weight.

Comment: Thirteen commenters suggested that if one of the passengers is not approved to come into the United States, the flight may be unexpectedly grounded abroad for an extended period of time until the issue is resolved. One commenter stated that pilots should not be responsible for law enforcement

duties. Another commenter wanted to know his liability if one of his passengers shows up on the ''No-Fly'' list.

Response: DHS will resolve any delays as quickly as possible and estimates that the frequency of such occurrences should be very low.

CBP does not expect the pilot to be responsible for law enforcement duties. The pilot is best situated to review passenger documents and to verify that the passengers he will be flying appear to match the travel documents presented. Yet, although the pilot bears responsibility for the accuracy of the data submitted, DHS is responsible for any necessary enforcement that flows from that data.

If an individual on the ''No-Fly'' watch list is identified on the manifest, DHS will conduct a risk-based analysis and make a determination whether to grant, restrict or deny landing rights. If landing rights are restricted or denied, the pilot will be provided with appropriate instructions and contact information. Provided the pilot, in accordance with his/her legal obligations under this rule, correctly transmits the manifest information and follows the instructions provided by CBP and/or TSA regarding the boarding or non-boarding of particular passengers, he should have no liability.

Comment: Several commenters stated that there was no basis in existing law for the Secretary to exercise departure clearance authority over private aircraft.

Response: CBP disagrees. As previously stated, pursuant to 19 U.S.C. 1433(e), 1644 and 1644a, the Secretary has the authority to prescribe regulations regarding the departure of aircraft to and from the United States, both commercial and private. Further authority may be found in 46 U.S.C. 60105, providing that any vessel shall obtain clearance from the Secretary, in a manner prescribed by the Secretary, before departing the U.S. for a foreign port or place; and that authority is extended to civil aircraft under 19 U.S.C. 1644 and 1644a. The ''exception'' previously provided for private aircraft under 19 CFR 122.61 was not the result of a lack of statutory authority to regulate private aircraft. Instead, the Secretary (then, the Secretary of the Treasury), exercised his discretion at the time not to impose clearance requirements on that segment of civil aviation. With this new rule, the Secretary has determined that, after September 11, 2001, the clearance requirements in this rule are necessary and appropriate.

Comment: One commenter stated that the passenger manifest requirement for departure is extremely cumbersome as private flights require flexibility in terms of passengers actually onboard at departure.

Response: The rule provides that, if a departure manifest is submitted to CBP before all individuals arrive for transport, the pilot is required to submit any changes to traveler information, and receive a new clearance from CBP. If the changes are submitted less than 60 minutes prior to departure, the pilot is only required to receive a new clearance from CBP prior to departing, he does not necessarily need to wait an additional 60 minutes. By not requiring that the pilot wait a full 60 minutes, CBP believes that the rule provides sufficient flexibility and promotes efficiency.

Comment: One commenter stated that CBP should no longer require CBP Form 178 (Private Aircraft Enforcement System Arrival Report) as the included information will be electronically transmitted to CBP one hour prior to departure.

Response: CBP agrees. CBP Form 178 was created as an internal Customs form for the use by Customs inspectors. Because the information on the CBP Form 178 is now electronically available to CBP officers through eAPIS, CBP will no longer require the form.

Implementation—Enforcement

Comment: Two commenters raised concerns whether the proposed rule was in compliance with unspecified international transportation and customs treaty agreements. One of the two commenters was concerned that CBP had not communicated with the international branch of the U.S. Department of Transportation regarding the proposed rule's impact upon international obligations.

Response: CBP believes that the rule is in compliance with all applicable international agreements. International law recognizes a State's right to regulate aircraft entering into, within or departing from its territory. International treaties, such as the Chicago Convention, contain provisions requiring aircraft in U.S. territory to comply with a broad array of U.S. laws and regulations. For example, Article 11 of the Chicago Convention requires compliance with ''the laws and regulations of a contracting State relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory.'' Similarly, Article 13 requires compliance with a State's laws and regulations ''as to the admission to or departure from its territory of passengers, crew or cargo of aircraft * * * upon entrance into or departure from, or while within the territory of that State.'' The tenets of the Chicago Convention obligations are followed in this final rule.

Comment: Several hundred commenters questioned CBP's ability to receive and process private aircraft APIS transmissions in a timely manner. One commenter stated that if CBP cannot provide a response within five minutes, approval should be assumed to be granted. One commenter indicated that this rule has very little chance of being implemented with the limited staff that CBP has available. One commenter asked what assurance the pilot will have that the eAPIS transmission was received.

Response: CBP anticipates handling the volume of private aircraft submissions through the enhanced capabilities of the eAPIS portal and other CBP-approved submission methods. CBP is capable of receiving and processing tens of thousands of private aircraft manifest submissions daily. Additionally, small commercial carriers currently use eAPIS successfully to make timely submissions of passenger manifest data. A pilot may not depart without receiving a ''cleared'' message from CBP and following all other instructions provided by DHS in the response to the eAPIS submission. Pilots will know that the eAPIS transmission has been received, based upon CBP's response to the transmission. Clearance for a flight to or from the United States should never be assumed regardless of the amount of time that has elapsed; only the pilot's receipt of a cleared response from CBP ensures that the agency has received the arrival and/or departure manifest submission.

Comment: Many commenters questioned the necessity of the proposed rule since the manifest information submitted via eAPIS cannot and/or will not be physically verified by CBP.

Response: CBP appreciates this concern. Because CBP officers do meet private aircraft upon arrival, it is imperative that the electronic manifest be available for CBP verification prior to the aircraft's arrival in the United States. Additionally, electronic departure manifests will be available for verification by CBP officers prior to the aircraft's departure from the United States.

Comment: Many commenters stated that Puerto Rico should not be considered a foreign location, and flights from Puerto Rico to the continental United States should not be subject to the requirements of the rule.

Response: CBP agrees. CBP would like to clarify that as proposed in the NPRM and as finalized in this rule, under 19 CFR 122.22(a) ''United States'' means the continental United States, Alaska, Hawaii, Puerto Rico, the Virgin Islands of the United States, Guam and the Commonwealth of Northern Mariana Islands. Accordingly, flights between Puerto Rico and other locations in the United States would not be subject to the requirements of this rule.

Comment: Several commenters inquired as to what penalties would be imposed if a pilot fails to file an arrival or departure manifest and obtain the required clearance for landing before taking off for the United States from a foreign port or place or departing the United States for a foreign destination.

Response: Pilots of aircraft departing the United States, or departing a foreign place for the United States, who fail to comply with the terms of this rule are subject to a civil penalty of $5,000 for the first violation and $10,000 for each subsequent violation as prescribed in 19 U.S.C. 1436(b) and 19 CFR 122.166(a)(c)(1). The pilot may also be subject to criminal penalties for violations under 19 U.S.C. 1436(c). In addition, the U.S. government has established protocols and procedures to defend and protect its airspace against potential threats if it is unable to identify the intention of any aircraft.

Comment: One commenter pointed out that 8 CFR 231.3 which provides exemptions for private vessels and aircraft from manifest requirements, exempts private aircraft and, therefore, contradicts the requirements proposed by the NPRM. The commenter suggested that it be amended to conform to the requirements proposed by the NPRM.

Response: Although CBP does not believe any real conflict exists to the extent this final rule is under Title 19, rather than Title 8, CBP agrees that clarification regarding exemptions for private aircraft noted in title 8 of the Code of Federal Regulations is appropriate to avoid any confusion. Section 231.3 of title 8 of the Code of Federal Regulations will be amended to reference the requirements for arrival and departure manifest presentation of 19 CFR 122.22.

Implementation—60 Minute Requirement

Comment: Several hundred commenters asked if CBP could guarantee that aircraft operators will receive a response within 45 minutes of transmitting the arrival information and manifest data so that they can proceed to the aircraft, taxi and takeoff 60 minutes after they submit the information. Two commenters stated that waiting for permission from DHS to depart is a terrible burden that will lead to delays.

Response: In most cases, an automated analysis will create a rapid response well within the 60 minute time period. In other cases, additional review may be necessary, requiring additional time. DHS will strive to process each request within 60 minutes of receipt or as quickly as possible to avoid delays.

Comment: Many commenters expressed concerns that a pilot would have to resubmit new arrival times to FAA and wait additional time if CBP's response to arrival and/or departure manifests occurred 10 minutes after the pilot's stated departure time submitted in FAA flight plans.

Response: CBP wishes to clarify that once pilots have submitted their completed passenger manifest data and have received electronic clearance to depart regarding the transmission from CBP, they are free to depart. Absent changes to the information previously transmitted, an additional submission is not necessary unless otherwise indicated by CBP. Pilots may contact the intended port of arrival telephonically or by radio with expected time of arrival updates. The 60-minute requirement is designed to give CBP an adequate amount of time to respond to the eAPIS transmission so that pilots will be able to make their scheduled departure time, as reported to FAA. Pilots also have the option of submitting an arrival/departure manifest to CBP earlier than 60 minutes prior to take off if that is their preference.

Communications—Equipment Concerns

Comment: Several hundred commenters stated that the equipment required to submit APIS information is not available in all general aviation airports.

Response: CBP recognizes that not all private aircraft departure locations are equipped to submit APIS data in the timeframe required. Under this final rule, CBP is allowing private aircraft pilots a great deal of flexibility in how and when they submit passenger manifest data to CBP. A pilot may submit complete, correct, and accurate passenger manifest data any time in advance, but no later than 60 minutes prior to departure to or from the United States, allowing the flexibility to provide data prior to travel to or from a remote location. As one alternative, a pilot may also have a third-party agent submit the data. Additionally, in response to the comments received from the NPRM, certain elements of a previously submitted arrival and/or departure manifest (i.e., flight cancellation, expected time of arrival and changes in arrival location) may now be amended via telephone, radio or by existing processes and procedures if access to the Internet is unavailable.

Original arrival and departure manifests generally must be submitted via eAPIS or another CBP-approved data interchange system. However, on a limited case-by-case basis, CBP may permit a pilot to submit or update notice of arrival and arrival/departure manifest information telephonically when unforeseen circumstances preclude submission of the information via eAPIS. Under such circumstances, CBP will manually enter the notice of arrival and arrival/departure manifest information provided by the pilot and the pilot is required to wait for CBP screening and approval to depart. CBP will strive to process such manual submissions as quickly as possible; however, the processing of these non-electronic manifests may significantly delay clearance.

Finally, when there is a change in the expected time of arrival due to unforeseen conditions such as weather changes, the pilot is permitted to contact the intended port of arrival with the new expected time of arrival telephonically, by radio, or via the FAA automated flight service stations (AFSS) and/or flight services.

Comment: Several hundred commenters noted that few private aircraft have the necessary equipment on board to transmit an arrival manifest should they need to divert to a U.S. airport in the case of emergency. Two commenters stated that the requirement to provide a 30-minute arrival notice places an undue burden on the pilot. One commenter stated weather can play a part in causing a diversion while already in flight.

Response: With respect to an aircraft arriving at a U.S. port, ''emergency'' means an urgent situation due to a mechanical, medical, or security problem affecting the flight, or an urgent situation affecting the non-U.S. port of destination that necessitates a detour to a U.S. port. CBP's policy on emergency landings remains unchanged and permission continues to be granted on a case-by-case basis. CBP will take into consideration the nature of the emergency prior to issuing any penalties and as a mitigating factor when any penalties issued by the agency are considered in the administrative petition process.

Comment: Several hundred commenters asked if facsimile, telephone, use of Flight Service Station and/or email transmissions would be

acceptable alternatives in addition to transmissions through eAPIS. Five commenters inquired as to whether the additional passenger information required by CBP could be added to the flight plan notification that they already file with the FAA.

Response: Although CBP will allow the submission of arrival manifests well in advance of the actual arrival of the aircraft and approve the passengers and aircraft depending upon the outcome of the screening process, the pilot may still be required, per any instructions received from CBP, to contact CBP at the arrival airport to confirm CBP officer availability at that port for the expected time and date of arrival indicated in the manifest. Under this final rule, facsimile, email transmissions, or submission via another agency such as the (FAA) of arrival and departure manifest data are not acceptable methods of original submission. Methods such as facsimile, email and telephone can lead to inaccuracies, tend to be inefficient and do not promote the uniformity that submission via one standard method allows. That said, on a limited case-by-case basis, CBP may permit a pilot to submit or update notice of arrival and arrival/departure manifest information telephonically when unforeseen circumstances preclude submission of the information via eAPIS. CBP also may review and approve alternative methods for electronically transmitting the required data to CBP. For example, a pilot may authorize a third-party to submit the original arrival and/or departure manifest data on the pilot's behalf.

Certain elements of a previously submitted arrival and/or departure manifest may be *amended* or *supplemented* via telephone or radio if access to the Internet is unavailable. Also, when there is a change in the expected time of arrival due to unforeseen conditions such as weather changes, the pilot is permitted to contact the intended port of arrival with the new expected time of arrival telephonically, by radio, or via the FAA automated flight service station (AFSS) and/or flight services.

Comment: One commenter had concerns about backup procedures should eAPIS not be available due to CBP/DHS system outages.

Response: In the event that eAPIS is unavailable, authorized users will need to contact CBP at the intended U.S. airport of arrival/departure for instructions on how to proceed in submitting required information. Each outage presents unique circumstances that will be dealt with on a case-by-case basis per the port's instructions.

Communications—General

Comment: Several commenters stated that the requirement to provide a 24-hour point of contact is difficult because private aircraft operators do not normally have 24-hour operation centers.

Response: The data element ''24-hour point of contact'' in § 122.22, paragraphs (b)(4)(xx) and (c)(4)(xviii) will be changed to ''24-hour Emergency Point of Contact'' to clarify that the named entity or individual provided for in this element is available for contact by CBP should an emergency arise (as opposed to day to day operations) and CBP needs information about the flight as a result of communication equipment failure or pilot unavailability.

Comment: Several commenters stated that submitting the transponder/beacon code and/or decal number in eAPIS was not possible because it was not available 60 minutes prior to takeoff. One commenter was concerned about supplying the CBP decal number as the decal may be purchased upon arrival in the United States.

Response: CBP agrees and is amending 19 CFR 122.22 (b)(4)(xviii) and (c)(4)(xix) so that the transponder code will no longer be listed as a required data element and the decal number will be required to be submitted if available.

Comment: Several commenters stated eAPIS does not accept aircraft registration numbers and airports that are not identified with an ICAO airport code.

Response: CBP developed a new module within eAPIS for private aircraft use to capture the data elements required by this regulation.

Regulatory Analyses—E.O. 12866

Comment: Several commenters stated that the Regulatory Analysis is deficient because it does not address the costs that pilots would incur to fly to another airport with adequate facilities. Three commenters stated that the costs for Internet access were not considered. One commenter stated that the costs for eAPIS on-line training and registration were not considered. One commenter stated the time for programming changes to eAPIS by DHS were not considered. One commenter stated that the Regulatory Assessment did not consider the ''ripple effects'' beyond those to private pilots and their passengers.

Response: The commenters are correct that the analysis for the NPRM did not account for all of these costs. The Regulatory Analysis for this final rule takes into account the costs for flying to facilities with Internet capabilities (see below). Costs for online training for eAPIS are not considered because eAPIS is designed to be a user-friendly system and will require users to spend little time familiarizing themselves with the web interface. Finally, as noted in the analysis for the NPRM, ''ripple effects'' beyond those entities not directly regulated are not considered because they do not represent losses in consumer surplus but are rather transfers within the economy.

Comment: A few commenters stated that the Regulatory Analysis incorrectly estimated that pilots and passengers would have to arrive 15 minutes prior to takeoff.

Response: The commenters are incorrect. CBP assumed that all pilots would have to arrive at the airport in time to submit their APIS data in a timely fashion. CBP assumed that for a portion of the pilots affected, arriving at least 60 minutes prior to takeoff would represent a departure from their normal flying practices. For this portion of the population, CBP assumed that they would arrive 15 minutes earlier than customary. CBP acknowledges that pilots could avoid arriving at the airport early by using a third party to submit required information. However, CBP believes that it is unlikely that pilots of private aircraft would hire a third party to submit required data. Also, hiring third parties to submit required data would not obviate the time costs of arriving to the airport early, as hiring third parties would create other costs.

Comment: A few commenters stated that CBP's estimate that it would take 8 hours to resolve a security incident is too low. One commenter stated that the CBP estimate of one hour to resolve a ''No-Fly'' designation has no support.

Response: This estimate was intended to represent an average time to resolve a security incident. Some incidents could take less time and others could take more time.

Comment: One commenter stated that CBP's estimate for a Value of a Statistical Life (VSL) is too high because pilots would not be willing to pay anything to reduce the risk of dying in a terrorist attack because they know the passengers they are carrying.

Response: CBP interprets this commenter's point to be that because the pilot knows the passengers he is carrying, there is no risk and the pilot would not be willing to pay to reduce a risk that does not exist. CBP disagrees that a risk does not exist for private aircraft. A terrorist incident can be caused by persons in a private aircraft. CBP presents two VSLs that are intended to capture an individual's

willingness to pay to avoid an incident. These values are used in multiple economic evaluations across the U.S. government. These values were reviewed by the Office of Management and Budget (OMB) during the proposed and final rule stages.

Comment: A few commenters stated that the risk scenarios presented in the Regulatory Analysis were not realistic for the vast majority of general aviation aircraft. One commenter stated that potential terrorist risks on small aircraft are miniscule.

Response: CBP agrees that some of the risk scenarios are more likely than others and noted this in the NPRM and in this document. These scenarios were intended to capture a range of possible outcomes given the lack of specific data on terrorist attacks involving private aircraft.

Comment: One commenter stated that the macroeconomic costs of a terrorist incident were not addressed in the Regulatory Analysis.

Response: CBP agrees that the larger economic impacts stemming from a terrorist incident are potentially significant. However, CBP does not present secondary impacts of the rule because CBP does not know the extent to which these losses are transfers versus real economic losses. In the analysis of costs, benefits, and risk reduction that would be required in order for this rule to be cost-effective [see section ''Executive Order 12866 (Regulatory Planning and Review)'' below] CBP has compared direct costs to direct benefits. The ''ripple'' effects, while important to recognize as potentially large, are not direct costs or benefits.

IV. Summary of Changes Made to NPRM

After further review of the NPRM, the analysis of the comments received from the public, and in light of CBP's desire to provide clear policy and procedural guidance to the public, CBP has made certain changes to the proposed regulatory text in this final rule. The changes are summarized below.

(1) The NPRM proposed that the redress number be a required data element for arrival and departure manifests if available. A redress number is a number assigned to a passenger who has requested redress respecting a screening concern. CBP is now encouraging, but not requiring, that pilots include in their eAPIS manifest transmissions, any redress numbers issued by TSA (or any other unique passenger number approved by DHS for the same purpose) to facilitate screening and clearance of passengers. CBP will not require a redress number as a data element for the arrival and departure manifests because a passenger may not have this number readily available for the pilot's use on the arrival or departure manifest. As such, the data element ''redress number'' in proposed § 122.22, paragraphs (b)(4)(xiii) and (c)(4)(xiii) has been removed and will not be required as an element of an arrival or departure manifest submission to CBP. Pilots are encouraged but not required to submit the redress number in their eAPIS transmissions, if available.

(2) While the NPRM did not include in the proposed regulatory text the requirement that the pilot must compare the manifest information with the information on the DHS-approved travel document presented by each individual attempting to travel onboard the aircraft to ensure that the manifest information is correct, that the travel document appears to be valid for travel to the United States, and that the traveler is the person to whom the travel document was issued, this concept was included in the background section of the NPRM (see 72 FR 53397). As such, language has been added to § 122.22, paragraphs (b)(8) and (c)(7), which will reflect this obligation. CBP is adding this requirement to the regulatory text for § 122.22 to avoid any confusion regarding this specific responsibility of pilots to examine the travel documents as well as the traveler to mitigate the security vulnerabilities of private air travel.

(3) The NPRM did not contain a proposed amendment to 8 CFR 231.3, which currently makes clear that private aircraft are exempt from having to file an arrival or departure manifest which is otherwise required for commercial aircraft under title 8. In this final rule, appropriate conforming changes have been made to 8 CFR 231.3 to clarify that that electronic arrival and departure manifest requirements for individuals traveling onboard private aircraft are now found in 19 CFR 122.22.

(4) Proposed §§ 122.26 and 122.61 are now clarified to reflect that ''United States'' as used in those sections, is as defined in § 122.22.

(5) The data element ''transponder code'' (also known as beacon code) in proposed § 122.22, paragraphs (b)(4)(xviii) and (c)(4)(xix) has been removed and will not be required as an element of an arrival or departure manifest submission to CBP, since this information is not available until after the aircraft is airborne and, thus, is unavailable for submission on an arrival and/or departure manifest 60 minutes prior to departure.

(6) The data element ''decal number'' in proposed § 122.22, paragraphs (b)(4)(iv) and (c)(4)(iv) will be optional and have ''(if available)'' added to indicate that this data element will not be required as an element of an arrival or departure manifest submission to CBP, since not all aircraft possess a decal number.

(7) The data element ''24-hour point of contact'' in proposed § 122.22, paragraphs (b)(4)(xx) and (c)(4)(xviii) will be changed to ''24-hour Emergency point of contact'' in order to clarify that the named entity or individual provided for this element is available for contact by CBP in an emergency, in case CBP needs immediate information about the flight as a result of communication equipment or pilot unavailability, rather than for contact regarding day to day operational issues.

(8) Language has been added to § 122.22 paragraphs (b)(2)(i) and (c)(2) clarifying that arrival and departure manifests may be submitted anytime prior to the departure of the aircraft, but no later than 60 minutes prior to departure of the aircraft.

(9) Language has been added to § 122.22 paragraphs (b)(6) and (c)(5) clarifying that once DHS has approved departure from the United States and/or landing within the United States, and the pilot has complied with all instructions issued by DHS, the aircraft is free to depart or land.

(10) Language has been added to § 122.22, paragraphs (b)(7) and (c)(6) indicating that changes to an already transmitted manifest regarding flight cancellation, expected time of arrival and arrival location, can be submitted telephonically, by radio or through existing processes and procedures. Additionally, language has been added to these paragraphs clarifying that changes to passenger or aircraft information must be resubmitted to CBP via eAPIS or other CBP-approved data interchange system, invalidating any CBP approval given regarding the originally submitted manifest, and requiring the pilot to await CBP approval to depart based on the amended manifest containing the added passenger information and/or changes to information regarding the aircraft.

(11) The definition of the United States in § 122.22 has been changed to include the territory of the Commonwealth of the Northern Mariana Islands (CNMI) due to subsequent legislation (section 702 of the Consolidated Natural Resources Act of 2008; Public Law 110–229 (May 8, 2008) which extends the United States immigration laws to the CNMI.

(12) Section 122.0 (scope) has been amended by deleting the last two sentences of paragraph (a) which specifically identified geographic areas where the regulations under part 122 did and did not apply. Since each section within part 122 specifies the geographic areas where they apply, these sentences have been deleted for clarification.

V. Conclusion

After careful consideration of the comments received in response to the NPRM and further review of the proposed rule, CBP is adopting as final, with the modifications discussed above, the proposed amendments published in the **Federal Register** on September 18, 2007. This final rule will help safeguard the traveling public, and aid CBP in accurately assessing the threat risk of private aircraft and those individuals traveling via private aircraft.

VI. Regulatory Analyses

A. Executive Order 12866 (Regulatory Planning and Review)

This rule is not an ''economically significant'' rulemaking action under Executive Order 12866 because it will not result in the expenditure of more than $100 million in any one year. This rule, however, is a significant regulatory action under Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Currently, pilots of private aircraft must submit information regarding themselves, their aircraft, and any passengers prior to arrival into the United States from a foreign airport. Depending on the location of the foreign airport, the pilot provides the arrival information one hour prior to crossing the U.S. coastline or border (areas south of the United States) or during the flight (other areas). The information that would be required by this rule is already collected pursuant to sections 122.31 and 122.23 for notice of arrival. The newly required data elements that must be electronically submitted pursuant to the requirements of this final rule include the information that pilots must currently provide for notice of arrival; the required information would need to be submitted earlier (60 minutes prior to departure). No notice of departure information is currently required for private aircraft departing the United States for a foreign airport.

CBP estimates that 138,559 private aircraft landed in the United States in 2006 based on current notice of arrival data. These aircraft collectively carried 455,324 passengers; including the 138,559 pilots of the aircraft, this totals 593,883 individuals arriving in the United States aboard private aircraft. CBP notes that this statistic reflects the unique and actual instances of landings by private aircraft. CBP estimates that approximately two-thirds are U.S. citizens and the remaining one-third is comprised of non-U.S. citizens.

Table 1 summarizes the 2006 arrival information for the top airports in the United States that receive private aircraft from foreign airports. Fort Lauderdale received the most arrivals, with nearly 10 percent of the U.S. private aircraft arrivals. The top 18 airports received approximately 60 percent of the total. As shown, the average number of passengers per arrival varies by port; JFK has the highest passengers per arrival (4.7) while Bellingham, Washington, has the lowest (1.4). Nationwide, the average number of passengers carried per arrival is 3.3.

TABLE 1—SUMMARY OF ARRIVALS AND PASSENGERS ABOARD PRIVATE AIRCRAFT (2006)

Airport	Aircraft/pilot arrivals	Percent of total aircraft	Passenger arrivals	Percent of total passengers	Average passengers per arrival
Ft. Lauderdale Intl. Airport, FL	12,831	9	37,848	8	2.9
West Palm Beach, FL	9,031	7	25,109	6	2.8
New York-Newark, Newark, NJ	6,464	5	29,779	7	4.6
Miami Airport, FL	5,676	4	17,596	4	3.1
Fort Pierce, FL	5,216	4	11,376	2	2.2
Otay Mesa, CA	4,944	4	18,216	4	3.7
San Juan, PR	4,090	3	10,821	2	2.6
Hidalgo, TX	3,827	3	8,647	2	2.3
Calexico, CA	3,597	3	7,963	2	2.2
JFK Airport, NY	3,497	3	16,492	4	4.7
Laredo, TX	3,280	2	10,974	2	3.3
Tucson, AZ	3,013	2	9,059	2	3.0
El Paso, TX	2,548	2	9,544	2	3.7
Houston/Galveston, TX	2,534	2	10,850	2	4.3
Seattle, WA	2,529	2	6,238	1	2.5
Brownsville, TX	2,303	2	7,027	2	3.1
San Antonio, TX	2,185	2	8,520	2	3.9
Bellingham, WA	2,160	2	3,106	1	1.4
Remaining 223 airports	58,834	42	206,159	45	3.5
Total	138,559	100	455,324	100	3.3

CBP does not currently compile data for departures, as there are currently no requirements for private aircraft departing the United States. For this analysis, we assume that the number of departures is the same as the number of arrivals.

Thus, we estimate that 140,000 private aircraft arrivals and 140,000 departures will be affected annually as a result of the rule. Although the current data elements for pilots are very similar to the requirements in this rule, the data elements for passengers are more extensive. Based on the current information collected and accounting for proposed changes in the data elements, CBP estimates that one submission, which includes the arrival information and the passenger manifest data, will require 15 minutes of time (0.25 hours) for the pilot to complete. Additionally, CBP estimates that it will require each of the 460,000 passengers 1 minute (0.017 hours) to provide the required data to the pilot. These data are all contained on a passenger's passport

or alien registration card and are thus simple to provide to the pilot.

Currently, arrival information is submitted by radio, telephone, or other method, or through the FAA's flight notification procedure. Under this rule, pilots must submit the arrival and passenger data through the eAPIS web portal, electronic EDIFACT transmissions, or an approved alternative transmission medium. For this analysis, we assume that pilots will use the eAPIS system, as it is a user-friendly and costless method to submit the required data elements to CBP and the pilot need only have access to a computer with web capabilities to access the system. We also assume that pilots will have access to a computer and the Internet to make the electronic submission. This analysis in no way precludes a private aircraft operator from implementing another approved method of transmission; however, we believe that most pilots, particularly those not traveling for business, will choose to submit the required data through the least-cost option: eAPIS.

Currently, private aircraft arriving from areas south of the United States must provide advance notice of arrival at least one hour before crossing the U.S. coastline or border. There are no such timing requirements for other areas. Thus, some pilots and their passengers may decide that to comply with the new requirements, including submitting information through eAPIS and waiting for a response from CBP, they must convene at the airport earlier than they customarily would. We do not have any information on how many, if any, pilots or passengers would need to change their practices. For this analysis, we assume that 50 percent of the pilots and passengers would need to arrive 15 minutes (0.25 hours) earlier than customary. This would result in 70,000 affected pilots (140,000 arrivals * 0.5) and 231,000 affected passengers (70,000 arrivals * 3.3 passengers per arrival) for a total of 301,000 individuals affected.

To estimate the costs associated with the time required to input data into eAPIS, we use the value of an hour of time as reported in the FAA's document on critical values, $37.20.[9] This represents a weighted cost for business and leisure private aircraft travelers. CBP believes this is a reasonable approximation of the average value of a pilot's and traveler's time.

The cost to submit advance notice of arrival data through eAPIS would be approximately $1.3 million (140,000 arrivals * 0.25 hours * $37.20 per hour). Similarly, costs to submit advance notice of departure data would be $1.3 million, for a total cost for pilots to submit the required data elements of $2.6 million annually. The cost for passengers to provide the data to the pilot to be entered into eAPIS would be approximately $570,000 (920,000 arrivals and departures * 0.017 hours * $37.20 per hour). Total costs for the eAPIS submissions would be $3.2 million annually.

To estimate the costs of arriving earlier than customary, we again use the value of time of $37.20 per hour. As noted previously, we assume that 301,000 pilots and passengers may choose to arrive 0.25 hours earlier than customary. This would result in a cost of approximately $2.8 million for arrivals and $2.8 million for departures, a total of $5.6 million annually (301,000 individuals * 0.25 hours * $37.20 per hour * 2).

Additionally, CBP estimates the potential costs to resolve issues with passengers that have been designated as ''No-Fly'' based on the screening process. Although a law enforcement response is not required under this rule, CBP estimates the costs for such a response to avoid underestimating the costs of this rule. For the purposes of this analysis, CBP estimates that on two occasions annually, a private aircraft flight will have a passenger that is designated ''No-Fly'' but through the resolution process is downgraded from ''No-Fly'' and the entire traveling party continues on their flight. CBP assumes that four individuals (the pilot plus three passengers) would be affected by a one-hour delay to resolve the ''No-Fly'' designation. CBP also assumes the resolution process will require 1 hour of law enforcement time at a TSA-estimated cost of $62.43 per hour. The total annual costs for these incidents would be approximately $422 [(four individuals * $37.20 * 1 hour + 1 individual * $62.43 * 1 hour) * two incidents].

CBP also estimates the potential costs for pilots and passengers who may be denied landing rights as a result of their eAPIS manifest submission. For the purposes of this analysis, CBP estimates that once per year, a private aircraft flight is denied landing rights. CBP again assumes that four individuals (the pilot plus three passengers) will be affected, and the delay will be eight hours to coordinate a law enforcement response. CBP assumes that four law enforcement personnel will be involved in the investigation. The total annual costs for this incident would be approximately $3,188 [(four individuals * $37.20 * 8 hours + 4 individuals * $62.43 * 8 hours) * one incident].

In response to comments received during the public comment period, CBP also addressed costs pilots may incur to fly to another airport with adequate facilities to access eAPIS. CBP believes that this will be an uncommon occurrence, as considerable flexibility has been provided in this final rule to allow pilots to submit APIS data while they are in the United States (or other locations where facilities are available) or to have a third party submit information through eAPIS on the pilots' behalf. To not underestimate costs, CBP estimates that 1 percent of the affected pilots will have to travel to another location with Internet access to submit their APIS data. Assuming that 140,000 private aircraft are affected by this rule, CBP estimates the following costs.

As noted previously, the time cost per hour for a traveler onboard a private aircraft is $37.20, and we assume 4.29 travelers aboard an aircraft (1 pilot plus the 3.29 passengers). Per the FAA critical values document, total operation costs for a general aviation aircraft are $1,090 per hour. The sum of time costs and capital costs per aircraft each hour are therefore $1,127.20. CBP assumes that the extra travel time for each affected aircraft is 4 hours, and the total undiscounted costs to fly to another airport with adequate facilities are approximately $6,997,693 [($1,090 operation costs * 1,400 flights + $37.20 * 1,400 pilots + $37.20 * 4,606 passengers) * 4 hours].

The total annual cost of the rule is expected to be $22.1 million. Over 10 years, this would total a present value cost of $155.1 million at a 7 percent discount rate ($188.1 million at a 3 percent discount rate).

The primary impetus of this rule is the security benefit afforded by a more timely submission of APIS information. Ideally, the quantification and monetization of the beneficial security effects of this regulation would involve two steps. First, we would estimate the reduction in the probability of a terrorist attack resulting from implementation of the regulation and the consequences of the avoided event (collectively, the risk associated with a potential terrorist attack). Then we would identify individuals' willingness to pay for this incremental risk reduction and multiply it by the population experiencing the benefit. Both of these steps, however, rely on key data that are not available for this rule.

[9] Federal Aviation Administration. 2005. *Economic Values for FAA Investment and Regulatory Decisions, A Guide*. Prepared by GRA, Inc. July 3, 2007. Table ES–1. Per the instructions of this guidance document (see pages 1–1 and 1–3), this estimate has not been adjusted for inflation.

In light of these limitations, we conduct a ''breakeven'' analysis to determine what change in the reduction of risk would be necessary for the benefits of the rule to exceed the costs. Because the types of attack that could be prevented vary widely in their intensity and effects, we present a range of potential losses that are driven by casualty estimates and asset destruction. For example, the average private aircraft is 3,384 pounds and carries an average of a little over four people (1 pilot and 3 passengers).[10] Some private aircraft, however, are much larger and carry many more people and thus could have potentially higher casualty losses and property damages in the event of an incident. We use two estimates of a Value of a Statistical Life (VSL) to represent an individual's willingness to pay to avoid a fatality onboard an aircraft, based on economic studies of the value individuals place on small changes in risk: $3 million per VSL and $6 million per VSL.

Additionally, we present four attack scenarios. Scenario 1 explores a situation where solely individuals are lost (no destruction of physical property). In this scenario, we estimate the losses if an attack resulted in 4 (average number of people on a private aircraft-one pilot, three passengers) to 1,000 casualties but no loss of physical capital. We acknowledge that this scenario is unlikely because an attack that would result in 1,000 casualties would almost certainly also result in loss of physical assets; however, this scenario provides a useful high end for the risk reduction probabilities required for the rule to break even.

Scenario 2 explores a situation where individuals are lost and a lower-value aircraft is destroyed. The value of the aircraft lost, $94,661, is based on the value from the FAA critical values study cited previously.[11] This value is for an aircraft built prior to 1982, which is a substantial proportion (75 percent) of the general aviation fleet of aircraft.[12]

Scenario 3 explores a situation where individuals are lost and a higher-value aircraft is destroyed. The value of the aircraft lost is $1,817,062 (aircraft built in 1982 and later).

Scenario 4 explores a situation where individuals are lost and substantial destruction of physical capital is incurred. In this scenario we again estimate individual lives lost but now consider a massive loss of physical capital (the 9/11 attack is an example of such an event).

Casualties are again estimated as before using the two VSL estimates. To value the loss of capital assets, we use a report from the Comptroller of the City of New York that estimated $21.8 billion in physical capital destruction as a result of the 9/11 attacks on the World Trade Center.[13] This report also estimates the ''ripple effects'' of the attack—the air traffic shutdown, lost tourism in New York City, and long-term economic impacts; however, we do not compare these secondary impacts to the direct costs of the rule estimated previously because we do not know the extent to which these losses are transfers versus real economic losses. In this analysis we compare direct costs to direct benefits to estimate the risk reduction required for the rule to break even.

Again, the impacts in these scenarios would be driven largely by the number of people aboard the aircraft and the size of the aircraft.

The annual risk reductions required for the rule to break even are presented in Table 2 for the four attack scenarios, the two estimates of VSL, and a range of casualties. As shown, depending on the attack scenario, the VSL, and the casualty level, risk would have to be reduced less than 1 percent (Scenario 4, 1,000 casualties avoided) to 184.1 percent (Scenario 1, 4 casualties avoided) in order for the benefits of the rule to exceed the costs to break even. However, CBP notes that risk reductions of over 100% are not possible to achieve.

TABLE 2—ANNUAL RISK REDUCTION REQUIRED (%) FOR NET COSTS TO EQUAL BENEFITS

[Annualized at 7 percent over 10 years]

Casualties avoided	Scenario 1: Loss of life	Scenario 2: Loss of life and aircraft (low value)	Scenario 3: Loss of Life and aircraft (high value)	Scenario 4: Loss of life and catastrophic loss of property
$3M VSL:				
4	184.1	182.6	159.9	<1
10	73.6	73.4	69.4	<1
100	7.4	7.4	7.3	<1
1,000	0.7	0.7	0.7	<1
$6M VSL:				
4	92.0	91.7	85.6	<1
10	36.8	36.8	35.7	<1
100	3.7	3.7	3.7	<1
1,000	0.4	0.4	0.4	<1

B. Regulatory Flexibility Act

CBP has prepared this section to examine the impacts of the rule on small entities as required by the Regulatory Flexibility Act (RFA, *See* 5 U.S.C. 601–612). A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

When considering the impacts on small entities for the purpose of complying with the RFA, CBP consulted the Small Business Administration's guidance document for conducting

[10] Federal Aviation Administration. 2005. *Economic Values for FAA Investment and Regulatory Decisions, A Guide.* Prepared by GRA, Inc. July 3, 2007. Table ES–1.

[11] Federal Aviation Administration. 2005. *Economic Values for FAA Investment and Regulatory Decisions, A Guide.* Prepared by GRA, Inc. July 3, 2007. Table ES–1. This estimate has not been adjusted for inflation.

[12] Federal Aviation Administration. 2005. *Economic Values for FAA Investment and Regulatory Decisions, A Guide.* Prepared by GRA, Inc. July 3, 2007. Table 3–14.

[13] Thompson, Jr., William C. Comptroller, City of New York. ''One Year Later: The Fiscal Impact of 9/11 on New York City.'' September 4, 2002.

regulatory flexibility analysis. Per this guidance, a regulatory flexibility analysis is required when an agency determines that the rule will have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule. We do not have information on the number of pilots and passengers traveling for business versus leisure or how many businesses, regardless of size, would be affected by the requirements. Those private individuals who are flying for leisure, rather than business, would not be considered small entities because individuals are not considered small entities. Some of the affected pilots and passengers are flying for business purposes; however, we do not know if these businesses are small entities or not. This rule may thus affect a substantial number of small entities.

In any case, the cost to submit data to CBP through eAPIS would be, at most, approximately $50 per submission ($9.30 for the APIS submission; $9.30 * 3.3 passengers + $9.30 * 1 pilot for potential early arrival). CBP believes such an expense would not rise to the level of being a ''significant economic impact.'' As we did not receive comments that demonstrate that the rule results in significant economic impacts, we are certifying that this action does not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the UMRA, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the UMRA is any provision in a Federal agency regulation that will impose an enforceable duty upon state, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. This rule would not result in such an expenditure.

D. Executive Order 13132 (Federalism)

Executive Order 13132 requires CBP to develop a process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' Policies that have federalism implications are defined in the Executive Order to include rules that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' CBP has analyzed the rule in accordance with the principles and criteria in the Executive Order and has determined that it does not have federalism implications or a substantial direct effect on the States. The rule requires private aircraft arriving in the United States from a foreign location or departing the United States to a foreign port or location to comply with notice of arrival requirements, passenger manifest requirements, and permission to land at landing rights airports. States do not conduct activities with which this rule would interfere. For these reasons, this rule would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

E. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988. That Executive Order requires agencies to conduct reviews, before proposing legislation or promulgating regulations, to determine the impact of those proposals on civil justice and potential issues for litigation. The Order requires that agencies make reasonable efforts to ensure that a regulation clearly identifies preemptive effects, effects on existing Federal laws and regulations, any retroactive effects of the proposal, and other matters. CBP has determined that this regulation meets the requirements of Executive Order 12988 because it does not involve retroactive effects, preemptive effects, or other matters addressed in the Order.

F. National Environmental Policy Act

CBP has evaluated this rule for purposes of the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*). CBP has determined that an environmental statement is not required, since this action is non-invasive and there is no potential impact of any kind. Record of this determination has been placed in the rulemaking docket.

G. Paperwork Reduction Act

There are two collections of information in this document in 19 CFR 122.22. This information will be used by CBP to further improve the ability of CBP to identify high-risk individuals onboard private aircraft so as to prevent terrorist acts and ensure aircraft and airport safety and security. The likely respondents are individuals and businesses. Under § 122.22 a private aircraft pilot would be required to file an advance arrival manifest on all individuals via an electronic data interchange system approved by CBP no later than 60 minutes prior to the aircraft departing to the United States from a foreign port or location. Additionally, a private aircraft pilot would be required to file an advance departure manifest on all individuals onboard a private aircraft through an electronic data interchange system approved by CBP no later than 60 minutes prior to that aircraft departing from the United States to a foreign port or location. eAPIS is one CBP-approved electronic data interchange systems that private aircraft pilots will use to transmit information about all of the individuals aboard an aircraft.

The collection of information encompassed within this rule has been reviewed and approved by the Office of Budget and Management in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under OMB control number 1651–0088. An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. The total estimated average annual burden associated with the collection of information in this final rule is 77,820 hours, with an estimated submission occurring twice annually taking .25 hours each for pilot respondents, and 1 minute annually for passenger respondents. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Border Security Regulations Branch, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC 20001–4501.

H. Privacy Statement

A Privacy Impact Assessment (PIA) for APIS was updated on August 8, 2007 and posted on the DHS Web site. In conjunction with the APIS Pre-departure Final Rule published in the **Federal Register** on August 23, 2007 (72 FR 48320), a System of Records Notice (SORN) was published in the **Federal Register** on that same date (72 FR 48349). On September 11, 2007, CBP and the DHS Privacy Office published and posted to the DHS Web site a PIA Update for APIS to address the General Aviation NPRM, which can be found at the following Web link: *http://dhs.gov/xinfoshare/publications/editorial_0511.shtm*. This document addressed CBP's expansion of its collection of information in APIS to include persons traveling by private aircraft. The PIA Update for APIS, also, sought comments, in conjunction with the General Aviation NPRM, with regard to CBP's and DHS's contemplation of imposing certain responsibilities upon the private pilot. In consideration of the several comments directed to this inquiry, CBP and DHS have determined that no official law enforcement functions of the Government will be delegated to the private pilot in connection with her or his obligation to submit flight manifest information to CBP.

Lastly, CBP and the DHS Privacy Office are amending the current SORN for APIS to provide further privacy compliance for APIS and the expansion of its collection of data elements pertaining to the pilot, owner, and/or operator of a private aircraft. In conjunction with the issuance of the amended SORN, CBP and the DHS Privacy Office will publish an update to the PIA for APIS.

VII. Signing Authority

This amendment to the regulations is being issued in accordance with 19 CFR 0.2(a) pertaining to the authority of the Secretary of Homeland Security (or his/her delegate) to prescribe regulations not related to customs revenue functions.

List of Subjects

8 CFR Part 231

Air carriers, Aliens, Maritime carriers, Reporting and recordkeeping requirements.

19 CFR Part 122

Air carriers, Aircraft, Airports, Air transportation, Commercial aircraft, Customs duties and inspection, Entry procedure, Reporting and recordkeeping requirements, Security measures.

VII. Amendments to the Regulations

8 CFR CHAPTER I—AMENDMENTS TO THE REGULATIONS

■ For the reasons set out in the preamble, chapter 1 of title 8 of the Code of Federal Regulations is amended to read as follows:

PART 231—ARRIVAL AND DEPARTURE MANIFESTS

■ 1. The authority citation for part 231 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1221, 1228, 1229; 8 CFR part 2.

■ 2. Section 231.3 is revised to read as follows:

§ 231.3 Exemptions for private vessels and aircraft.

The provision of this part relating to the presentation of arrival and departure manifests shall not apply to a private vessel or private aircraft. Private aircraft as defined in 19 CFR 122.1(h) are subject to the arrival and departure manifest presentation requirements set forth in 19 CFR 122.22.

■ For the reasons set out in the preamble, chapter I of title 19 of the Code of Federal Regulations is amended as follows:

19 CFR CHAPTER I—AMENDMENTS TO THE REGULATIONS

PART 122—AIR COMMERCE REGULATIONS

■ 1. The general authority citation for part 122 continues to read and the specific authority citation for 122.22 is added to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

Section 122.22 is also issued under 46 U.S.C. 60105.

* * * * *

■ 2. Section 122.0 is revised to read as follows:

§ 122.0 Scope.

(a) *Applicability.* The regulations in this part relate to the entry and clearance of aircraft and the transportation of persons and cargo by aircraft, and are applicable to all air commerce.

(b) *Authority of Other Agencies.* Nothing in this part is intended to divest or diminish authority and operational control that are vested in the FAA or any other agency, particularly with respect to airspace and aircraft safety.

■ 3. Section 122.12(c) is revised to read as follows:

§ 122.12 Operation of international airports.

* * * * *

(c) *FAA rules; denial of permission to land.*

(1) *Federal Aviation Administration.* International airports must follow and enforce any requirements for airport operations, including airport rules that are set out by the Federal Aviation Administration in 14 CFR part 91.

(2) *Customs and Border Protection.* CBP, based on security or other risk assessments, may limit the locations where aircraft entering the United States from a foreign port or place may land. Consistent with § 122.32(a) of this Title, CBP has the authority to deny aircraft permission to land in the United States, based upon security or other risk assessments.

(3) *Commercial aircraft.* Permission to land at an international airport may be denied to a commercial aircraft if advance electronic information for incoming foreign cargo aboard the aircraft has not been received as provided in § 122.48a except in the case of emergency or forced landings.

(4) *Private Aircraft.* Permission to land at an international airport will be denied if the pilot of a private aircraft arriving from a foreign port or place fails to submit an electronic manifest and notice of arrival pursuant to § 122.22, except in the case of emergency or forced landings.

* * * * *

■ 4. Section 122.14 paragraphs (a) and (b) are revised to read as follows:

§ 122.14 Landing rights airports.

(a) *Permission to land.* Permission to land at a landing rights airport may be given as follows:

(1) *Scheduled flight.* The scheduled aircraft of a scheduled airline may be allowed to land at a landing rights airport. Permission is given by the director of the port, or his representative, at the port nearest to which first landing is made.

(i) *Additional flights, charters or changes in schedule—Scheduled aircraft.* If a new carrier plans to set up a new flight schedule, or an established carrier makes changes in its approved schedule, landing rights may be granted by the port director.

(ii) *Additional or charter flight.* If a carrier or charter operator wants to begin operating or to add flights, application must be made to the port director for landing rights. All requests must be made not less than 48 hours before the intended time of arrival, except in emergencies. If the request is oral, it must be put in writing before or at the time of arrival.

(2) *Private aircraft.* The pilots of private aircraft are required to secure permission to land from CBP following transmission of the advance notice of arrival via an electronic data interchange system approved by CBP, pursuant to § 122.22. Prior to departure as defined in § 122.22(a), from a foreign port or place, the pilot of a private aircraft must receive a message from CBP that landing rights have been granted for that aircraft at a particular airport.

(3) *Other aircraft.* Following advance notice of arrival pursuant to § 122.31, all other aircraft may be allowed to land at a landing rights airport by the director of the port of entry or station nearest the first place of landing.

(4) *Denial or withdrawal of landing rights.* Permission to land at a landing rights airport may be denied or permanently or temporarily withdrawn for any of the following reasons:

(i) Appropriate and/or sufficient Federal Government personnel are not available;

(ii) Proper inspectional facilities or equipment are not available at, or maintained by, the requested airport;

(iii) The entity requesting the landing rights has a history of failing to abide by appropriate instructions given by a CBP officer;

(iv) Reasonable grounds exist to believe that applicable Federal rules and regulations pertaining to safety, including cargo safety and security, CBP, or other inspectional activities may not be adhered to; or

(v) CBP has deemed it necessary to deny landing rights to an aircraft.

(5) *Appeal of denial or withdrawal of landing rights for commercial scheduled aircraft as defined in section 122.1(d).* In the event landing rights are denied or subsequently permanently withdrawn by CBP, within 30 days of such decision, the affected party may file a written appeal with the Assistant Commissioner, Office of Field Operations, Headquarters.

(6) *Emergency or forced landing.* Permission to land is not required for an emergency or forced landing (covered under § 122.35).

(b) *Payment of expenses.* In the case of an arrival at a location outside the limits of a port of entry, the owner, operator or person in charge of the aircraft must pay any added charges for inspecting the aircraft, passengers, employees and merchandise when landing rights are given (see §§ 24.17 and 24.22(e) of this chapter).

* * * * *

■ 5. Section 122.22 is revised to read as follows:

§ 122.22 Electronic manifest requirement for all individuals onboard private aircraft arriving in and departing from the United States; notice of arrival and departure information.

(a) *Definitions.* For purposes of this section:

Departure. ''Departure'' means the point at which the aircraft is airborne and the aircraft is en route directly to its destination.

Departure Information. ''Departure Information'' refers to the data elements that are required to be electronically submitted to CBP pursuant to paragraph (c)(4) of this section.

Pilot. ''Pilot'' means the individual(s) responsible for operation of an aircraft while in flight.

Travel Document. ''Travel Document'' means U.S. Department of Homeland Security approved travel documents.

United States. ''United States'' means the continental United States, Alaska, Hawaii, Puerto Rico, the Virgin Islands of the United States, Guam and the Commonwealth of the Northern Mariana Islands.

(b) *Electronic manifest requirement for all individuals onboard private aircraft arriving in the U.S.; notice of arrival.*

(1) *General requirement.* The private aircraft pilot is responsible for ensuring the notice of arrival and manifest information regarding each individual onboard the aircraft are transmitted to CBP. The pilot is responsible for the submission, accuracy, correctness, timeliness, and completeness of the submitted information, but may authorize another party to submit the information on their behalf. Except as provided in paragraph (b)(7) of this section, all data must be transmitted to CBP by means of an electronic data interchange system approved by CBP and must set forth the information specified in this section. All data pertaining to the notice of arrival for the aircraft and the manifest data regarding each individual onboard the aircraft must be transmitted at the same time via an electronic data interchange system approved by CBP.

(2) *Time for submission.* The private aircraft pilot is responsible for ensuring that the information specified in paragraphs (b)(3) and (b)(4) of this section is transmitted to CBP:

(i) For flights originally destined for the United States, any time prior to departure of the aircraft, but no later than 60 minutes prior to departure of the aircraft from the foreign port or place; or

(ii) For flights not originally destined to the United States, but diverted to a U.S. port due to an emergency, no later than 30 minutes prior to arrival; in cases of non-compliance, CBP will take into consideration that the carrier was not equipped to make the transmission and the circumstances of the emergency situation.

(3) *Manifest data required.* For private aircraft arriving in the United States the following identifying information for each individual onboard the aircraft must be submitted:

(i) Full name (last, first, and, if available, middle);

(ii) Date of birth;

(iii) Gender (F=female; M=male);

(iv) Citizenship;

(v) Country of residence;

(vi) Status on board the aircraft;

(vii) DHS-Approved travel document type (e.g. passport; alien registration card, etc.);

(viii) DHS-Approved travel document number, if a DHS-approved travel document is required;

(ix) DHS-Approved travel document country of issuance; if a DHS-approved travel document is required;

(x) DHS-Approved travel document expiration date, where applicable;

(xi) Alien registration number, where applicable;

(xii) Address while in the United States (number and street, city, state, and zip code). This information is required for all travelers including crew onboard the aircraft.

(4) *Notice of arrival.* The advance notice of arrival must include the following information about the aircraft and where applicable, the pilot:

(i) Aircraft tail number;

(ii) Type of Aircraft;

(iii) Call sign (if available);

(iv) CBP issued decal number (if available);

(v) Place of last departure (ICAO airport code, when available);

(vi) Date of aircraft arrival;

(vii) Estimated time of arrival;

(viii) Estimated time and location of crossing U.S. border/coastline;

(ix) Name of intended U.S. airport of first landing (as listed in § 122.24 if applicable, unless an exemption has been granted under § 122.25, or the aircraft was inspected by CBP Officers in the U.S. Virgin Islands);

(x) Owner/Lessees name (if individual: Last, first, and, if available, middle; or business entity name, if applicable);

(xi) Owner/Lessees address (number and street, city, state, zip/postal code, country, telephone number, fax number, and email address);

(xii) Pilot/Private aircraft pilot name (last, first, middle, if available);

(xiii) Pilot license number;

(xiv) Pilot street address (number and street, city, state, zip/postal code,

country, telephone number, fax number, and email address);

(xv) Country of issuance of pilot's license;

(xvi) Operator name (for individuals: last, first, and if available, middle; or business entity name, if applicable);

(xvii) Operator street address (number and street, city, state, zip code, country, telephone number, fax number, and e-mail address);

(xviii) Aircraft color(s);

(xix) Complete Itinerary (foreign airports landed at within past 24 hours prior to landing in United States); and

(xx) 24-hour Emergency point of contact (e.g., broker, dispatcher, repair shop, or other third party contact or individual who is knowledgeable about this particular flight) name (first, last, middle, if available) and phone number.

(5) *Reliable facilities.* When reliable means for giving notice are not available (for example, when departure is from a remote place) a landing must be made at a foreign place where notice can be sent prior to coming into the United States.

(6) *Permission to land.* Prior to departure from the foreign port or place, the pilot of a private aircraft must receive a message from DHS approving landing within the United States, and follow any instructions contained therein prior to departure. Once DHS has approved departure, and the pilot has executed all instructions issued by DHS, the aircraft is free to depart with the intent of landing at the designated U.S. port of entry.

(7) *Changes to manifest.* The private aircraft pilot is obligated to make necessary changes to the arrival manifest after transmission of the manifest to CBP. If changes to an already transmitted manifest are necessary, an updated and amended manifest must be resubmitted to CBP. Only amendments regarding flight cancellation, expected time of arrival (ETA) or changes in arrival location, to an already transmitted manifest may be submitted telephonically, by radio, or through existing processes and procedures. On a limited case-by-case basis, CBP may permit a pilot to submit or update notice of arrival and arrival/departure manifest information telephonically when unforeseen circumstances preclude submission of the information via eAPIS. Under such circumstances, CBP will manually enter the notice of arrival and arrival/departure manifest information provided by the pilot and the pilot is required to wait for CBP screening and approval to depart. Changes in ETA and arrival location must be coordinated with CBP at the new arrival location to ensure that resources are available to inspect the arriving aircraft. If a subsequent manifest is submitted less than 60 minutes prior to departure to the United States, the private aircraft pilot must receive approval from CBP for the amended manifest containing added passenger information and/or changes to information that were submitted regarding the aircraft and all individuals onboard the aircraft, before the aircraft is allowed to depart the foreign location, or the aircraft may be, as appropriate, diverted from arriving in the United States, or denied permission to land in the United States. If a subsequent, amended manifest is submitted by the pilot, any approval to depart the foreign port or location previously granted by CBP as a result of the original manifest's submission is invalid.

(8) *Pilot responsibility for comparing information collected with travel document.* The pilot collecting the information described in paragraphs (b)(3) and (b)(4) of this section is responsible for comparing the travel document presented by each individual to be transported onboard the aircraft with the travel document information he or she is transmitting to CBP in accordance with this section in order to ensure that the information is correct, the document appears to be valid for travel purposes, and the individual is the person to whom the travel document was issued.

(c) *Electronic manifest requirement for all individuals onboard private aircraft departing from the United States; departure information.*

(1) *General requirement.* The private aircraft pilot is responsible for ensuring that information regarding private aircraft departing the United States, and manifest data for all individuals onboard the aircraft is timely transmitted to CBP. The pilot is responsible for the accuracy, correctness, timeliness, and completeness of the submitted information, but may authorize another party to submit the information on their behalf. Data must be transmitted to CBP by means of an electronic data interchange system approved by CBP, and must set forth the information specified in paragraph (c)(3) and (c)(4) of this section. All data pertaining to the aircraft, and all individuals onboard the aircraft must be transmitted at the same time. On a limited case-by-case basis, CBP may permit a pilot to submit or update notice of arrival and arrival/departure manifest information telephonically to CBP when unforeseen circumstances preclude submission of the information via eAPIS. Under such circumstances, CBP will manually enter the notice of arrival and arrival/departure manifest information provided by the pilot and the pilot is required to wait for CBP screening and approval to depart.

(2) *Time for submission.* The private aircraft pilot must transmit the electronic data required under paragraphs (c)(3) and (c)(4) of this section to CBP any time prior to departing the United States, but no later than 60 minutes prior to departing the United States.

(3) *Manifest data required.* For private aircraft departing the United States the following identifying information for each individual onboard the aircraft must be submitted:

(i) Full name (last, first, and, if available, middle);

(ii) Date of birth;

(iii) Gender (F=female; M=male);

(iv) Citizenship;

(v) Country of residence;

(vi) Status on board the aircraft;

(vii) DHS-Approved travel document type (e.g. passport; alien registration card, etc.);

(viii) DHS-Approved travel document number;

(ix) DHS-Approved travel document country of issuance, if a DHS-Approved travel document is required;

(x) DHS-approved travel document expiration date, where applicable;

(xi) Alien registration number, where applicable;

(xii) Address while in the United States (number and street, city, state, and zip/postal code). This information is required for all travelers including crew onboard the aircraft.

(4) *Notice of Departure information.* For private aircraft and pilots departing the United States, the following departure information must be submitted by the pilot:

(i) Aircraft tail number;

(ii) Type of Aircraft;

(iii) Call sign (if available);

(iv) CBP issued decal number (if available);

(v) Place of last departure (ICAO airport code, when available);

(vi) Date of aircraft departure;

(vii) Estimated time of departure;

(viii) Estimated time and location of crossing U.S. border/coastline;

(ix) Name of intended foreign airport of first landing (ICAO airport code, when available);

(x) Owner/Lessees name (if individual: last, first, and, if available, middle; or business entity name if applicable);

(xi) Owner/Lessees street address (number and street, city, state, zip/postal code, country, telephone number, fax number, and email address);

(xii) Pilot/Private aircraft pilot name (last, first and, if available, middle);

(xiii) Pilot license number;

(xiv) Pilot street address (number and street, city, state, zip/postal code, country, telephone number, fax number, and email address);

(xv) Country of issuance of pilot's license;

(xvi) Operator name (if individual: last, first, and if available, middle; or business entity name, if applicable);

(xvii) Operator street address (number and street, city, state, zip/postal code, country, telephone number, fax number, and email address);

(xviii) 24-hour Emergency point of contact (e.g., broker, dispatcher, repair shop, or other third party contact, or individual who is knowledgeable about this particular flight) name (last, first, middle, if available) and phone number;

(xix) Aircraft color(s); and

(xx) Complete itinerary (intended foreign airport destinations for 24 hours following departure).

(5) *Permission to depart.* Prior to departure for a foreign port or place, the pilot of a private aircraft must receive a message from DHS approving departure from the United States and follow any instructions contained therein. Once DHS has approved departure, and the pilot has executed all instructions issued by DHS, the aircraft is free to depart.

(6) *Changes to manifest.* If any of the data elements change after the manifest is transmitted, the private aircraft pilot must update the manifest and resubmit the amended manifest to CBP. Only amendments regarding flight cancellation, expected time of departure or changes in departure location, to an already transmitted manifest may be submitted telephonically, by radio, or through existing processes and procedures. If an amended manifest is submitted less than 60 minutes prior to departure, the private aircraft pilot must receive approval from CBP for the amended manifest containing added passenger information and/or changes to information that were submitted regarding the aircraft before the aircraft is allowed to depart the U.S. location, or the aircraft may be denied clearance to depart from the United States. If a subsequent amended manifest is submitted by the pilot, any clearance previously granted by CBP as a result of the original manifest's submission is invalid.

(7) *Pilot responsibility for comparing information collected with travel document.* The pilot collecting the information described in paragraphs (c)(3) and (c)(4) of this section is responsible for comparing the travel document presented by each individual to be transported onboard the aircraft with the travel document information he or she is transmitting to CBP in accordance with this section in order to ensure that the information is correct, the document appears to be valid for travel purposes, and the individual is the person to whom the travel document was issued.

■ 6. Section 122.23 is amended by revising the heading, the introductory text to paragraph (a)(1) and paragraph (b) to read as follows:

§ 122.23 Certain aircraft arriving from areas south of the U.S.

(a) *Application.* (1) This section sets forth particular requirements for certain aircraft arriving from south of the United States. This section is applicable to all aircraft except:

* * * * *

(b) *Notice of arrival.* All aircraft to which this section applies arriving in the Continental United States via the U.S./Mexican border or the Pacific Coast from a foreign place in the Western Hemisphere south of 33 degrees north latitude, or from the Gulf of Mexico and Atlantic Coasts from a place in the Western Hemisphere south of 30 degrees north latitude, from any place in Mexico, from the U.S. Virgin Islands, or [notwithstanding the definition of ''United States'' in § 122.1(l)] from Puerto Rico, must furnish a notice of intended arrival. Private aircraft must transmit an advance notice of arrival as set forth in § 122.22 of this part. Other than private aircraft, all aircraft to which this section applies must communicate to CBP notice of arrival at least one hour before crossing the U.S. coastline. Such notice must be communicated to CBP by telephone, radio, other method or the Federal Aviation Administration in accordance with paragraph (c) of this section.

* * * * *

■ 7. Section 122.24 is amended by revising the heading, paragraph (a), the heading for paragraph (b) and by removing all of the text of paragraph (b) except for the table to read as follows:

§ 122.24 Landing requirements for certain aircraft arriving from areas south of U.S.

(a) *In general.* Certain aircraft arriving from areas south of the United States that are subject to § 122.23 are required to furnish a notice of intended arrival in compliance with § 122.23. Subject aircraft must land for CBP processing at the nearest designated airport to the border or coastline crossing point as listed under paragraph (b) unless exempted from this requirement in accordance with § 122.25. In addition to the requirements of this section, pilots of aircraft to which § 122.23 is applicable must comply with all other landing and notice of arrival requirements. This requirement shall not apply to those aircraft which have not landed in foreign territory or are arriving directly from Puerto Rico, if the aircraft was inspected by CBP officers in the U.S. Virgin Islands, or otherwise precleared by CBP officers at designated preclearance locations.

(b) *List of designated airports.*

* * * * *

■ 8. In § 122.25, paragraphs (d)(1) introductory text and (d)(4) introductory text by removing the term ''private aircraft'' wherever it appears, and by adding the term ''an aircraft subject to § 122.23'' in its place.

■ 9. Section 122.26 is revised to read as follows:

§ 122.26 Entry and clearance.

Private aircraft, as defined in § 122.1(h), arriving in the United States as defined in § 122.22, are not required to formally enter. No later than 60 minutes prior to departure from the United States as defined in § 122.22, to a foreign location, manifest data for each individual onboard a private aircraft and departure information must be submitted as set forth in § 122.22(c). Private aircraft must not depart the United States to travel to a foreign location until CBP confirms receipt of the appropriate manifest and departure information as set forth in § 122.22(c), and grants electronic clearance via electronic mail or telephone.

■ 10. Section 122.31 is revised to read as follows:

§ 122.31 Notice of arrival.

(a) *Application.* Except as provided in paragraph (b) of this section, all aircraft entering the United States from a foreign area must give advance notice of arrival.

(b) *Exceptions for scheduled aircraft of a scheduled airline.*

Advance notice is not required for aircraft of a scheduled airline arriving under a regular schedule. The regular schedule must have been filed with the port director for the airport where the first landing is made.

(c) *Giving notice of arrival*—(1) *Procedure.*

(i) *Private aircraft.* The pilot of a private aircraft must give advance notice of arrival in accordance with § 122.22 of this part.

(ii) *Aircraft arriving from Cuba.* Aircraft arriving from Cuba must follow the advance notice of arrival procedures set forth in § 122.154 in subpart O of this part.

(iii) *Certain aircraft arriving from areas south of the United States.* Certain aircraft arriving from areas south of the United States (other than Cuba) must follow the advance notice of arrival procedures set forth in § 122.23 of this part.

(iv) *Other aircraft.* The commander of an aircraft not otherwise covered by paragraphs (c)(1)(i), (c)(1)(ii) and (c)(1)(iii) of this section must give advance notice of arrival as set forth in paragraph (d) of this section. Notice must be given to the port director at the place of first landing, either:

(A) Directly by radio, telephone, or other method; or

(B) Through Federal Aviation Administration flight notification procedure (see International Flight Information Manual, Federal Aviation Administration).

(2) *Reliable facilities.* When reliable means for giving notice are not available (for example, when departure is from a remote place) a departure must be made at a place where notice can be sent prior to coming into the U.S.

(d) *Contents of notice.* The advance notice of arrival required by aircraft covered in paragraph (c)(1)(iv) of this section must include the following information:

(1) Type of aircraft and registration number;

(2) Name (last, first, middle, if available) of aircraft commander;

(3) Place of last foreign departure;

(4) International airport of intended landing or other place at which landing has been authorized by CBP;

(5) Number of alien passengers;

(6) Number of citizen passengers; and

(7) Estimated time of arrival.

(e) *Time of notice.* Notice of arrival as required pursuant to paragraph (c)(1)(iv) of this section must be furnished far enough in advance to allow inspecting CBP officers to reach the place of first landing of the aircraft prior to the aircraft's arrival.

(f) *Notice of other Federal agencies.* When advance notice is received, the port director will inform any other concerned Federal agency.

■ 11. Section 122.32 is revised to read as follows:

§ 122.32 Aircraft required to land.

(a) Any aircraft coming into the U.S., from an area outside of the U.S., is required to land, unless it is denied permission to land in the U.S. by CBP pursuant to § 122.12(c), or is exempted from landing by the Federal Aviation Administration.

(b) *Conditional permission to land.* CBP has the authority to limit the locations where aircraft entering the U.S. from a foreign area may land. As such, aircraft must land at the airport designated in their APIS transmission unless instructed otherwise by CBP or changes to the airport designation are required for aircraft and/or airspace safety as directed by the Federal Aviation Administration (FAA) flight services.

■ 12. Section 122.61 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 122.61 Aircraft required to clear.

(a) Private aircraft leaving the United States as defined in § 122.22, for a foreign area are required to clear as set forth in § 122.26. All other aircraft, except for public aircraft leaving the United States for a foreign area, are required to clear if:

* * * * *

■ 13. Section 122.154 is amended by revising paragraph (a) and adding a new paragraph (d) to read as follows:

§ 122.154 Notice of arrival.

(a) *Application.* All aircraft entering the U.S. from Cuba must give advance notice of arrival, unless it is an Office of Foreign Assets Control (OFAC) approved scheduled commercial aircraft of a scheduled airline.

* * * * *

(d) *Private Aircraft.* In addition to these requirements, private aircraft must also give notice of arrival pursuant to § 122.22 of this part.

Michael Chertoff,

Secretary.

[FR Doc. E8–26621 Filed 11–17–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0265; Directorate Identifier 2007–NM–349–AD; Amendment 39–15732; AD 2008–23–11]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Bombardier Model CL–600–2B19 airplanes. That AD currently requires repetitive eddy current inspections for cracking of the main landing gear (MLG) main fittings, and replacement with new or serviceable MLG main fittings if necessary. The existing AD also currently requires servicing the MLG shock struts; inspecting the MLG shock struts for nitrogen pressure, visible chrome dimension, and oil leakage; and performing corrective actions, if necessary. For certain airplanes, this new AD requires replacement of the MLG main fittings with new improved MLG main fittings, which would terminate the repetitive inspections of the MLG main fittings and inspection and servicing of the MLG shock struts. This AD results from premature failure of the MLG main fittings. We are issuing this AD to prevent failure of the MLG main fittings, which could result in collapse of the MLG upon landing.

DATES: This AD becomes effective December 23, 2008.

On February 16, 2007 (72 FR 1430, January 12, 2007), the Director of the Federal Register approved the incorporation by reference of Bombardier Service Bulletin 601R–32–093, Revision B, dated July 14, 2005.

On June 13, 2003 (68 FR 31956, May 29, 2003), the Director of the Federal Register approved the incorporation by reference of Bombardier Alert Service Bulletin A601R–32–079, Revision 'E,' dated September 12, 2002; including Appendix 1, Revision 'D,' dated September 12, 2002; including Appendices 2 and 3, dated September 12, 2002.

ADDRESSES: For service information identified in this AD, contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Pong K. Lee, Aerospace Engineer, Airframe and Propulsion Branch, ANE–

171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7324; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2003–11–11, amendment 39–13170 (68 FR 31956, May 29, 2003). The existing AD applies to certain Bombardier Model CL–600–2B19 airplanes. That NPRM was published in the **Federal Register** on March 11, 2008 (73 FR 12901). That NPRM proposed to require replacement of the main landing gear (MLG) main fittings with new improved MLG main fittings, which would terminate the existing repetitive inspections of the MLG main fittings and inspection and servicing of the MLG shock struts.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been received on the NPRM.

Request To Clarify Airplanes on Which the Replacement Is Required

Bombardier notes that the applicability in AD 2007–01–07 (specified in the NPRM as ''Other Related Rulemaking'') covers the entire fleet of Model CL–600–2B19 airplanes (serial number (S/N) 7003 through 7067 and 7069 through 8999 inclusive) since S/N 7068 is a hull loss and the airplane series ends at S/N 8999. Bombardier states that the applicability specified in the NPRM will not cover additional Model CL–600–2B19 airplanes. Bombardier adds that every Model CL–600–2B19 airplane equipped with a MLG main fitting having part number (P/N) 601R85001–3/4 (Messier-Dowty P/N 17064–101 through 104) will need to be in compliance with the replacement required by AD 2007–01–07 by May 16, 2008.

We infer that Bombardier requests that we clarify which airplanes are required to do the replacement specified in paragraph (r) of this AD. We agree that the airplanes affected by paragraph (r) of this AD should be further clarified. As stated by Bombardier, for Model CL–600–2B19 airplanes having S/N 7003 through 7067 and 7069 through 8999 inclusive, the replacement is already required in accordance with paragraph (l) of AD 2007–01–07. Therefore, we have changed paragraph (r) of this AD to specify that the replacement be accomplished only on airplanes having S/Ns 9000 and subsequent, which terminates the requirements of paragraphs (h) through (q) of this AD. We have also changed paragraph (t) of this AD to specify that, for the other airplanes on which the replacement required by paragraph (l) of AD 2007–01–07 has been accomplished, it terminates the requirements of paragraphs (h) through (q) of this AD.

We disagree with the commenter that the applicability in AD 2007–01–07 covers the entire fleet. In order to ensure that any future production airplanes, S/N 9000 and subsequent, meet the compliance requirements of this AD, the replacement specified in paragraph (r) of this AD is necessary to address the identified unsafe condition. We have also revised the Estimated Costs table in the preamble of this AD by changing the number of U.S.-registered airplanes required to do the replacement from 618 to 0.

Request To Change Compliance Time

Bombardier Aerospace asks that we change the compliance time specified in the NPRM. Bombardier states that AD 2007–01–07 (under ''Related Rulemaking'' in the NPRM) is effective for the same parts and also mandates incorporation of Bombardier Service Bulletin 601R–32–093, Revision B, dated July 14, 2005. Bombardier notes that AD 2007–01–07 was effective on February 16, 2007, and its compliance date is May 16, 2008. Bombardier adds that this compliance date is 9 months later than the date agreed to by Messier-Dowty, Bombardier Aerospace, and Transport Canada, based on careful consideration of fleet safety, MLG capability/logistics, and operator overhaul facilities capacity. Bombardier asks that the compliance time be the same as the time in AD 2007–01–07 (*i.e.*, no later than May 16, 2008). Bombardier considers that different compliance dates for the same service bulletin will create confusion among U.S. operators and unnecessary burden for all parties involved.

We do not agree with the commenter. As stated previously, the new requirements in this AD apply only to airplanes having S/Ns 9000 and subsequent. Therefore, we have made no change to the AD in this regard.

Conclusion

We have carefully reviewed the available data, including the comments that have been received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

The following table provides the estimated costs, at an average labor rate of $80 per work hour, for U.S. operators to comply with this AD. Due to other existing ADs, the actions have already been accomplished on the majority of affected U.S.-registered airplanes; therefore, the estimated costs will be significantly less than those specified in the table.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Detailed inspection (required by AD 2003–11–11).	1	None	$80, per inspection cycle	618	$49,440, per inspection cycle.
Eddy current inspection (required by AD 2003–11–11).	1	None	$80, per inspection cycle	618	$49,440, per inspection cycle.
Fluorescent penetrant inspection (required by AD 2003–11–11).	1	None	$80, per inspection cycle	618	$49,440, per inspection cycle.
Inspection and servicing of shock struts (required by AD 2003–11–11).	2	None	$160, per inspection cycle	618	$98,880, per inspection cycle.
Replacement (new action)	56	Up to $35,000	Up to $39,480	0	$0.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13170 (68 FR 31956, May 29, 2003) and by adding the following new airworthiness directive (AD):

2008–23–11 Bombardier, Inc. (Formerly Canadair): Amendment 39–15732. Docket No. FAA–2008–0265; Directorate Identifier 2007–NM–349–AD.

Effective Date

(a) This AD becomes effective December 23, 2008.

Affected ADs

(b) This AD supersedes AD 2003–11–11.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category; having serial numbers (S/Ns) 7003 and subsequent, equipped with main landing gear (MLG) main fittings having part numbers (P/Ns) 601R85001–3 and –4 (Messier-Dowty P/Ns 17064–101, –102, –103, and –104).

Unsafe Condition

(d) This AD results from premature failure of the MLG main fittings. We are issuing this AD to prevent failure of the MLG main fittings, which could result in collapse of the MLG upon landing.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Note 1: Where there are differences between the referenced service bulletin and the AD, the AD prevails.

Restatement of Requirements of AD 2003–11–11

Service Bulletin References

(f) Accomplishment of the inspections and servicing, as applicable, specified in paragraphs (h), (l), (m), and (n) of this AD, per Bombardier Alert Service Bulletin A601R–32–079, dated December 3, 1999; Revision 'A,' dated January 7, 2000; Revision 'B,' dated June 1, 2000; Revision 'C,' dated October 26, 2000; or Revision 'D,' dated December 1, 2000; prior to June 13, 2003 (the effective date of AD 2003–11–11), is considered acceptable for compliance with the requirements of paragraphs (h), (l), (m), and (n) of this AD.

(g) The term ''service bulletin,'' as used in paragraphs (h) through (q) of this AD, means the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–32–079, Revision 'E,' dated September 12, 2002; including Appendix 1, Revision 'D,' dated September 12, 2002; including Appendices 2 and 3, dated September 12, 2002.

Initial Eddy Current Inspection

(h) Perform an eddy current inspection to detect cracking of the MLG main fittings, per PART B of the service bulletin, at the earlier of the times specified in paragraph (h)(1) or (h)(2) of this AD.

(1) Prior to the accumulation of 1,500 total flight cycles on the MLG, or within 150 flight cycles after December 4, 2001 (the effective date of AD 2001–22–09, amendment 39–12488, which was superseded by AD 2003–11–11), whichever occurs later.

(2) Prior to the accumulation of 1,000 total flight cycles on the MLG, or within 150 flight cycles after June 13, 2003, whichever occurs later.

Repetitive Eddy Current Inspections

(i) Repeat the eddy current inspection specified in paragraph (h) of this AD at the time specified in paragraph (i)(1), (i)(2), or (i)(3), as applicable, except as provided by paragraph (i)(4) of this AD, per PART B of the service bulletin.

(1) For airplanes on which the eddy current inspection required by paragraph (h) of this AD is accomplished after June 13, 2003: Repeat the inspection at intervals not to exceed 500 flight cycles.

(2) For airplanes on which the repetitive eddy current inspection required by AD 2001–22–09 has been accomplished, and on which the repetitive intervals have been increased per paragraph (j) of AD 2001–22–09 before June 13, 2003: Repeat the inspection within 500 flight cycles after June 13, 2003, or within 1,000 flight cycles since the last eddy current inspection, whichever occurs first, and thereafter at intervals not to exceed 500 flight cycles.

(3) For airplanes on which the repetitive eddy current inspection required by AD 2001–22–09 has been accomplished, and on which the repetitive intervals have not been increased per paragraph (j) of AD 2001–22–09 before June 13, 2003: Repeat the eddy current inspection at intervals not to exceed 500 flight cycles.

(4) For airplanes on which an eddy current inspection has been accomplished to confirm the detailed inspection required by paragraph (o) of this AD: The next eddy current inspection must be done within 500 flight cycles following the last detailed inspection required by paragraph (o) of this AD, and thereafter at intervals not to exceed 500 flight cycles.

Corrective Actions

(j) If no cracking of the MLG main fittings is suspected during the next eddy current inspection required by paragraph (h) or (i) of this AD, but the paint has been removed: Prior to further flight, apply a new finish and install the harness clamp on the brake line with the bolt, washers, nut, and cotter pin; per PART B of the service bulletin.

(k) If any cracking of the MLG main fittings is found during any eddy current inspection required by paragraph (h) or (i) of this AD: Prior to further flight, replace any cracked MLG main fitting with a new or serviceable part per the service bulletin.

Servicing the Shock Struts

(l) Prior to the accumulation of 1,500 total flight cycles on the MLG shock struts, or

within 500 flight cycles after December 4, 2001, whichever occurs later: Service (Oil and Nitrogen) the left and right MLG shock struts per PART C (for airplanes on the ground) or PART D (for airplanes on jacks) of the service bulletin.

Other Inspections

(m) Within 500 flight cycles after completing the actions required by paragraph (l) of this AD: Inspect the MLG left and right shock struts for nitrogen pressure, visible chrome dimension, and oil leakage, in accordance with PART E of the service bulletin. Thereafter, repeat the inspection at intervals not to exceed 500 flight cycles.

Corrective Actions for Certain Inspections

(n) If the chrome extension dimension of the shock strut pressure reading is outside the limits specified in the Airplane Maintenance Manual, Task 32–11–05–220–801, or any oil leakage is found during any inspection required by paragraph (m) of this AD: Prior to further flight, service the MLG shock strut in accordance with PART C (for airplanes on the ground) or PART D (for airplanes on jacks) of the service bulletin.

Detailed and Follow-On Inspections and Corrective Action

(o) Prior to the accumulation of 1,000 total flight cycles on the MLG, or within 250 flight cycles after June 13, 2003, whichever occurs later: Accomplish a detailed inspection of the MLG main fittings to detect signs of cracking (including linear paint cracks along the circumference of the main fitting tube, lack of paint (paint peeling) or other paint damage, lack of adhesion or paint bulging, and signs of corrosion), per PART A of the service bulletin. Repeat the inspection thereafter at intervals not to exceed 100 flight cycles.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(p) If any linear paint crack along the circumference of the main fitting tube, lack of paint (paint peeling) or other paint damage, evidence of paint bulging due to lack of adhesion, or evidence of corrosion is found during any inspection required by paragraph (o) of this AD: Prior to further flight, accomplish either an eddy current inspection to detect cracking, per PART B of the service bulletin; or a fluorescent penetrant inspection to detect cracking, per PART F of the service bulletin.

(1) If no cracking of the MLG main fittings is found during any inspection required by paragraph (p) of this AD: Prior to further flight, repaint and/or repair/rework any paint damage per PART B of the service bulletin.

(2) If any cracking of the MLG main fittings is found during any inspection required by paragraph (p) of this AD: Prior to further flight, replace any cracked MLG main fitting with a new or serviceable part per the service bulletin.

Reporting Requirement

(q) Within 30 days after each inspection and servicing required by paragraphs (h), (i), (l), (m), (o), and (p) of this AD, report all findings, positive or negative, to: Bombardier Aerospace, In-Service Engineering, fax number 514–855–8501. Although the service bulletin references completion of a ''Service Bulletin Comment Sheet-Facsimile Reply Sheet,'' this AD does not require that action. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

New Requirements of This AD

Replacement

(r) *For airplanes having serial numbers 9000 and subsequent:* Within 6 months after the effective date of this AD, replace the MLG main fittings with new improved MLG main fittings, in accordance with Bombardier Service Bulletin 601R–32–093, Revision 'B,' dated July 14, 2005. Replacing the MLG main fittings terminates the requirements of paragraphs (h) through (q) of this AD.

Credit for Actions Done According to Previous Issues of the Service Bulletin

(s) Replacements done before the effective date of this AD in accordance with Bombardier Service Bulletin 601R–32–093, dated October 17, 2003; or Revision 'A,' dated September 21, 2004; are acceptable for compliance with the requirements of paragraph (r) of this AD.

Credit for AD 2007–01–07

(t) For airplanes having S/Ns 7003 through 7067 inclusive and S/Ns 7069 through 8999 inclusive, equipped with MLG main fittings having P/N 601R85001–3 or –4 (Messier-Dowty P/N 17064–101, –102, –103, or –104): Accomplishing the replacement required by paragraph (l) of AD 2007–01–07, amendment 39–14879, terminates the requirements of paragraphs (h) through (q) of this AD.

Alternative Methods of Compliance (AMOCs)

(u)(1) The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Pong K. Lee, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7324; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) AMOCs issued to allow escalation of the repetitive intervals for the eddy current inspections from 500 to 1,000 flight cycles in accordance with paragraph (e) of AD 2001–22–09 are not approved as AMOCs with this AD.

Note 3: Information concerning the existence of AMOCs with this AD, if any, may be obtained from the New York ACO.

Related Information

(v) Canadian airworthiness directive CF–1999–32R3, dated September 21, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(w) You must use Bombardier Service Bulletin 601R–32–093, Revision 'B,' dated July 14, 2005; and Bombardier Alert Service Bulletin A601R–32–079, Revision 'E,' dated September 12, 2002; including Appendix 1, Revision 'D,' dated September 12, 2002; including Appendices 2 and 3, dated September 12, 2002; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) On February 16, 2007 (72 FR 1430, January 12, 2007), the Director of the Federal Register approved the incorporation by reference of Bombardier Service Bulletin 601R–32–093, Revision 'B,' dated July 14, 2005.

(2) On June 13, 2003 (68 FR 31956, May 29, 2003), the Director of the Federal Register approved the incorporation by reference of Bombardier Alert Service Bulletin A601R–32–079, Revision 'E,' dated September 12, 2002; including Appendix 1, Revision 'D,' dated September 12, 2002; including Appendices 2 and 3, dated September 12, 2002.

(3) Contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com* for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on November 4, 2008.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–26915 Filed 11–17–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0529; Airspace Docket No. 08–AWP–6]

Establishment and Revocation of Class E Airspace; Lake Havasu, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E airspace at Lake Havasu, AZ. Additional controlled airspace is necessary to accommodate aircraft using VHF Omni-Directional Radio Range/Distance Measuring Equipment (VOR/DME) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Lake Havasu City Airport, Lake Havasu, AZ. This action also will revoke Class E airspace at the old Lake Havasu Airport, Lake Havasu, AZ, as that airport has been abandoned. This will improve the safety and management of aircraft operations at Lake Havasu City Airport, Lake Havasu, AZ.

DATES: *Effective Date:* 0901 UTC, January 15, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Area, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On July 21, 2008, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish controlled airspace at Lake Havasu, AZ, (73 FR 42284). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Lake Havasu City Airport, Lake Havasu, AZ. This rulemaking also removes the Class E airspace area at the old Lake Havasu Airport, which has been abandoned. Controlled airspace is necessary to accommodate IFR aircraft using VOR/DME (GPS) approach procedures at Lake Havasu City Airport, Lake Havasu, AZ.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAAs authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Lake Havasu City Airport, Lake Havasu, AZ, and removes Class E airspace at the old abandoned Lake Havasu Airport.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Lake Havasu, AZ [Revoked]

* * * * *

AWP AZ E5 Lake Havasu, AZ

Lake Havasu City, AZ
(Lat. 34°34′16″ N., long. 114°21′30″ W.)
Chemehuevi Valley Airport, CA
(Lat. 34°31′44″ N., long. 114°25′56″ W.)

That airspace extending upward from 700 feet above the surface within a 4-mile radius of Lake Havasu City Airport, excluding that airspace with a 1.5-mile radius of Chemehuevi Valley Airport. That airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 34°42′47″ N., long. 114°29′37″ W.; to lat. 34°42′47″ N., long. 114°12′00″ W.; to lat. 34°23′54″ N., long. 114°12′00″ W.; to lat. 34°18′13″ N., long. 114°32′12″ W.; thence to the point of beginning.

* * * * *

Issued in Seattle, Washington, on November 5, 2008.

Kathryn Higgins,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E8–27277 Filed 11–17–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0716; Airspace Docket No. 08–ASW–9]

Establishment of Low Altitude Area Navigation Route T–254; Houston, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a low altitude Global Positioning System (GPS)/Global Navigation Satellite System (GNSS) area navigation route, designated T–254, in the vicinity of the Houston, TX, terminal area. This route allows for more efficient utilization of airspace and enhances the management of aircraft operations in the vicinity of Houston, TX.

DATES: *Effective Date:* 0901 UTC, January 15, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace and Rules Group, Office of System Operations

Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On July 2, 2008, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish T–254 in the vicinity of Houston, TX (73 FR 37905). The purpose of the route is to provide a more efficient use of navigable airspace for westbound and eastbound en route Instrument Flight Rules (IFR) operations navigating around the Houston Class B terminal airspace area. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Area navigation routes are published in paragraph 6011 of FAA Order 7400.9S, signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in Title 14 Code of Federal Regulations (14 CFR) part 71.1. The area navigation route listed in this document will be published subsequently in the Order.

The Rule

This action amends 14 CFR part 71 by establishing area navigation route T–254 in the vicinity of Houston, TX. The new route extends between the Centex, TX, very high frequency omnidirectional range/tactical air navigation (VORTAC) aid and the Lake Charles, LA, VORTAC. T–254 enhances aviation safety, facilitates more efficient use of the navigable airspace for en route IFR operations flying westbound and eastbound in the vicinity of Houston, TX, and establishes a published route to assist aircraft navigating around the Houston Class B terminal airspace area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes area navigation route T–254 in the vicinity of Houston, TX.

Environmental Review

The FAA has determined that this action is categorically excluded from further environmental documentation according to FAA Order 1050.1E, Environmental Impacts: Policies and Procedures, in accordance with paragraph 311a. Additionally, the implementation of this action will not result in any extraordinary circumstances in accordance with FAA Order 1050.1E paragraph 304.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–254 Centex, TX to Lake Charles, LA [New]

Centex, TX (CWK)	VORTAC	(Lat. 30°22′43″ N., long. 97°31′47″ W.)
College Station, TX (CLL)	VORTAC	(Lat. 30°36′18″ N., long. 96°25′14″ W.)
EAKES, TX	WP	(Lat. 30°33′18″ N., long. 95°18′29″ W.)
CREPO, TX	WP	(Lat. 30°16′54″ N., long. 94°14′43″ W.)
Lake Charles, LA (LCH)	VORTAC	(Lat. 30°08′28″ N., long. 93°06′18″ W.)

* * * * *

Issued in Washington, DC, on November 5, 2008.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E8–26933 Filed 11–17–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1171; Airspace Docket No. 08–AEA–25]

RIN 2120–AA66

Modification of Jet Route J–522 in the Vicinity of Rochester, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the published description of jet route J–522 to reflect the relocation of one of the navigation aids used to form a portion of the route.

DATES: *Effective Dates:* 0901 UTC, January 15, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Group, Office of System Operations Airspace

and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The Rochester VORTAC, located at the Greater Rochester International Airport, Rochester, NY, is one of the navigation aids used to form a point along jet route J–522. Due to airport construction, the Rochester VORTAC is being relocated to another point on the airport. In addition, the equipment is being upgraded to a doppler very high frequency omnidirectional range/distance measuring equipment (VOR/DME) facility. This will improve the coverage and reliability of the facility. Due to the relocation, the radial of the new Rochester VOR/DME, as used in the route description, has changed by one degree from the currently published radial.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 to make a minor revision to the description of Jet Route J–522 to change the radial based on the Rochester VOR/DME facility. The commissioning of the Rochester VOR/DME at a new location on the airport results in a one degree change in the affected radial.

Because this action is a minor change in the alignment of the routes and is needed for navigation accuracy and safety reasons, I find that notice and public procedure under 5 U.S.C. 553(b) are impractical and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

Jet Routes are published in paragraph 2004 of FAA Order 7400.9S, effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document will be published subsequently in the Order.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends a portion of the en route structure.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a, 311b, and 311k. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9S, Airspace Designations and Reporting Points, dated October 3, 2008 and effective October 31, 2008, is amended as follows:

Paragraph 2004 Jet Routes.

* * * * *

J–522 [Modified]

From Brainerd, MN; Green Bay, WI; Traverse City, MI; Au Sable, MI; Toronto, ON, Canada; INT Toronto 096° and Rochester, NY, 301° radials; Rochester, NY; Hancock, NY; to Kingston, NY. The airspace within Canada is excluded.

* * * * *

Issued in Washington, DC, on November 7, 2008.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E8–27154 Filed 11–17–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1091; Airspace Docket No. 08–AAL–32]

Revision of Jet Routes and Federal Airways; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the legal descriptions of eight Federal Airways and one Jet Route that have the Saldo (AK) Nondirectional Beacon (NDB), AK, included as part of their route structure. The NDB name is being changed to the Chinook (AUB) NDB. This action is necessary since the Saldo NDB is no longer being used as an outer marker, which requires changing the two-letter designation to a three-letter designation. No changes are being made to the National Airspace System routing structure or procedures.

DATES: *Effective Dates:* 0901 UTC, January 15, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The National Flight Data Center has recently identified the need to change the Saldo NDB name as it is no longer being used as an outer marker. It is currently identified with the two-letter identifier ''AK''. The new name will be

Chinook, with the three-letter identifier ''AUB''. There are eight Jet Routes and Federal Airways attached to this NDB. They are J–606, B–27, G–8, G–12, R–1, R–99, V–619 and T–230. The Federal Airways are further delineated as Colored, VOR, and Area Navigation Routes. No changes to routing or procedures are taking place. Accordingly, since this action merely involves a change in the legal description of the NDB, and does not involve a change in dimensions or operating requirements of the airspace, notice and public procedures under 5 U.S.C. 553 (b) are unnecessary.

Jet Routes are listed in paragraph 2004, Colored Federal Airways are listed in paragraph 6009, VOR Federal Airways are listed in paragraph 6010, and United States Area Navigation Routes are listed in paragraph 6011 of FAA Order 7400.9S, signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The airways listed in this document will be revised subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Jet Route J–606, Federal Airways B–27, G–8, G–12, R–1, R–99, V–619, and U.S. Area Navigation Route T–230, by changing the name of the Saldo NDB to Chinook (AUB) NDB.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it revises Jet Routes and Federal Airways in Alaska.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9S, *Airspace Designations and Reporting Points*, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 2004 Jet Routes.

* * * * *

J–606 [Revised]

From St. Paul Island, AK, NDB; to INT Cape Newenham, AK, NDB, 131° and Chinook, AK, NDB 262° radials; to Chinook, AK, NDB.

* * * * *

Paragraph 6009 (a) Green Federal airways.

* * * * *

G–8 [Revised]

From Shemya, AK, NDB, 20 AGL; Mount Moffet, AK, NDB, 20 AGL; Dutch Harbor, AK, NDB, 20 AGL; INT Dutch Harbor, AK, NDB 041° and Elfee, AK, NDB 253° bearings, 20 AGL; Elfee, AK, NDB, 20 AGL; Chinook, AK, NDB; INT Chinook, AK, NDB 054° and Kachemak, AK, NDB 269° bearings; to Kachemak, AK, NDB.

* * * * *

G–12 [Revised]

From Chinook, AK, NDB, 20 AGL; Port Heiden, AK, NDB, 20 AGL; Borland, AK, NDB; 20 AGL; to Elfee, AK, NDB.

* * * * *

Paragraph 6009(b) Red Federal airways.

* * * * *

R–1 [Revised]

From St. Paul Island, AK, NDB, 20 AGL; INT Chinook, AK, NDB 262° and Cape Newenham, AK, NDB 131° bearings; to Chinook, AK, NDB.

* * * * *

R–99 [Revised]

From St. Paul Island, AK, NDB, 20 AGL; Dutch Harbor, AK, NDB, 20 AGL; Chinook, AK, NDB, 20 AGL; Iliamna, AK, NDB; INT Iliamna, AK, NDB 124° and Kachemak, AK, NDB 269° bearings; to Kachemak, AK, NDB.

* * * * *

Paragraph 6009(d) Blue Federal airways.

* * * * *

B–27 [Revised]

From Woody Island, AK, NDB, 50 miles 12 AGL, 50 miles 95 MSL, 53 miles 12 AGL; Chinook, AK, NDB, 51 miles 12 AGL, 84 miles 70 MSL, 63 miles 12 AGL; Oscarville, AK, NDB; St. Marys, AK, NDB; Fort Davis, AK, NDB, 35 miles 12 AGL, 71 miles 55 MSL, 54 miles 12 AGL; to Hotham, AK, NDB.

* * * * *

Paragraph 6010(b) Alaskan VOR Federal airways.

* * * * *

V–619 [Revised]

From Port Heiden, AK, NDB/DME; via the INT of Port Heiden, AK, NDB/DME 044° and Chinook, AK, NDB 200° bearings; Chinook, AK, NDB; Dillingham, AK, VOR/DME 099° radial/47 DME; to Dillingham, AK, VOR/DME.

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–230 [Revised]

SPY	NDB/DME.	(Lat. 57°09′28″ N., long. 170°13′51″ W.)
AUB	NDB	(Lat. 58°44′14″ N., long. 156°46′40″ W.)

* * * * *

Issued in Washington, DC, on November 6, 2008.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E8–26941 Filed 11–17–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 736, 740, 742, 744, 748, 752, 760, and 772

[Docket No. 080220216–81424–03]

RIN 0694–AD59

Conforming Changes to Certain End-User/End-Use Based Controls in the EAR; Clarification of the Term ''Transfer'' and Related Terms as Used in the EAR

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) by making conforming changes in certain end-user/end-use controls in the EAR to ensure that the terminology used to describe each type of end-user/end-use control is consistent, to the fullest extent possible, with the terminology in other such controls in the EAR. The amendments in this rule clarify that a party cannot proceed with an export, reexport, or transfer (in-country) that is in transit at the time the party is informed by BIS that a license is required (in accordance with certain end-user/end-use controls in the EAR), unless that party first obtains a license from BIS authorizing the completion of the transaction. These changes are intended to enhance the ability of BIS to stop items subject to the EAR, including items not on the Commerce Control List, from being exported, reexported or transferred (in-country) when there is an unacceptable risk that such items will be used in, or diverted to, any of the proliferation activities specified in certain sections of the EAR. This rule also amends the EAR by revising the definition of the term ''transfer'' and certain related terms, to provide greater clarity regarding these provisions. BIS published these amendments in proposed form in the **Federal Register** with a request for comments.

DATES: This rule is effective: November 18, 2008.

ADDRESSES: Written comments on this rule may be sent to the **Federal Register** eRulemaking Portal: *http://www.regulations.gov,* or by e-mail to *publiccomments@bis.doc.gov.* Include RIN 0694–AD59 in the subject line of the message. Comments may be submitted by mail or hand delivery to Timothy Mooney, Office of Exporter Services, Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, 14th St. & Pennsylvania Avenue, NW., Room H2705, Washington, DC 20230, *Attn:* RIN 0694-AD59; or by fax to (202) 482–3355.

Send comments regarding the collection of information to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to *jseehra@omb.eop.gov,* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, 14th St. & Pennsylvania Avenue, NW., Room H2705, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Timothy Mooney, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce; by *telephone:* (202) 482–2440; or by *fax:* 202–482–3355.

SUPPLEMENTARY INFORMATION:

Background

Conforming Changes to Certain End-User/End-Use Based Controls in the EAR

Part 744 of the EAR deals with the end-user and end-use based control policy under the EAR. Section 744.3 prohibits exports, reexports and transfers (in-country) of items subject to the EAR to certain missile-related end-uses. Section 744.4 prohibits exports, reexports and transfers (in-country) of items subject to the EAR to certain chemical and biological proliferation activities. Section 744.6 prohibits certain activities by U.S. persons in support of certain nuclear, missile, chemical, or biological end-uses. Section 744.2 prohibits exports and reexports of items subject to the EAR to certain nuclear proliferation activities. This rule adds transfer (in-country) to the scope of the prohibition set forth in § 744.2 to ensure that the language in that section conforms with the language in §§ 744.3, 744.4 and 744.6.

Within each of these sections of part 744, there is a paragraph (b) that includes ''is informed'' provisions that set out the requirements of what persons need to do once they are informed by BIS that their transactions would be subject to the prohibitions set forth in §§ 744.2, 744.3, 744.4 or 744.6. Prior to publication of this rule, there were minor differences in the terminology used to describe the end-user/end-use controls in each of these sections. This rule amends the end-user/end-use controls in these sections of part 744 to ensure that the terminology used in any one of these sections conforms, to the fullest extent possible, with the terminology used in the other sections. These changes are intended to make the end-user/end-use controls in part 744 of the EAR more consistent as well as transparent, so that members of the public can more clearly understand their obligations under the EAR.

In addition, this rule adds new provisions to § 744.1 to clarify that a party cannot proceed with an export, reexport, or transfer (in-country) that is in transit at the time the party is informed by BIS that a license is required (in accordance with the end-user/end-use controls in §§ 744.2, 744.3, 744.4 or 744.6 of the EAR), unless that party first obtains a license from BIS authorizing the completion of the transaction. This rule clarifies that once a person ''is informed'' by BIS that a transaction is subject to one of the prohibitions in §§ 744.2, 744.3, 744.4 or 744.6, a person would be required to apply for authorization from BIS before proceeding with the transaction. This rule further amends the EAR to clearly explain the steps a person must take if an item included in such a transaction is already in transit when a person ''is informed'' by BIS.

These changes to part 744 are intended to enhance the ability of BIS to stop items subject to the EAR, including items not on the Commerce Control List, from being exported, reexported or transferred (in-country) when there is an unacceptable risk that such items will be used in, or diverted to, any of the proliferation activities specified in §§ 744.2, 744.3, 744.4 and 744.6 of the EAR.

This clarification is consistent with UN Security Council Resolution 1540 (2004), which includes binding obligations on all UN Member States to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials. UNSCR 1540 stipulates that States are to establish, develop, review and maintain appropriate effective national export and transshipment controls over such items, including appropriate laws and regulations to control export, transit, transshipment and reexport; and to establish and enforce appropriate criminal or civil penalties for violations of such export control laws and regulations.

Through this clarification, the United States is continuing to carry out its commitment to the Proliferation Security Initiative (PSI) Statement of Interdiction Principles, which states that PSI partners will work to strengthen their relevant national legal authorities where necessary and not to allow any persons subject to their jurisdiction to

transport or assist in the transport of any cargoes of weapons of mass destruction (WMD), their delivery systems, or related materials to or from states or non-state actors of proliferation concern. The PSI is a global effort that aims to stop shipments of WMD, their delivery systems, and related materials flowing to or from states or non-state actors of proliferation concern. Announced by President Bush on May 31, 2003, the PSI stems from the National Strategy to Combat Weapons of Mass Destruction issued in December 2002. That strategy recognizes the need for more robust tools to defeat the proliferation of WMD around the world, and specifically identifies interdiction as an area where greater focus will be placed. The PSI is a set of activities, not a formal treaty-based organization, that focuses on establishing greater coordination among its partner states when a particular action is needed.

This rule makes the following specific revisions to the EAR:

1. In § 744.1 (General Provisions), this rule amends paragraph (a)(1)(Introduction), by adding ''transfer (in-country)'' to specify clearly that the prohibitions in §§ 744.2, 744.3, 744.4 and 744.6 also apply to such scenarios. This rule also amends paragraph (b)(2) (Determine Applicability), by adding a sentence at the end of that paragraph that states ''For exports, reexports or transfers (in-country) that are in transit at the time you are informed by BIS that a license is required in accordance with §§ 744.2(b), 744.3(b), 744.4(b) or 744.6(b) of the EAR, you may not proceed any further with the transaction, unless you first obtain a license from BIS (see part 748 of the EAR for instructions on how to apply for a license).'' This rule also amends paragraph (a)(1) by adding ''transfer (in-country)'' to specify clearly that the prohibition specified in § 744.5 (Restrictions on Certain Maritime Nuclear Propulsion End-Uses) also applies to such scenarios.

2. In § 744.2 (Restrictions on Certain Nuclear End-Uses), this rule amends paragraph (a) (General Prohibition) by clarifying that this prohibition in § 744.2 also applies to transfers (in-country) to conform with the language used in §§ 744.3, 744.4 and 744.6. In paragraph (b) (Additional Prohibition), this rule amends the heading to clarify that this paragraph applies an additional prohibition ''on persons informed by BIS''. Also in paragraph (b), this rule amends the ''is informed'' provisions to conform with the ''is informed'' provisions in §§ 744.3, 744.4 and 744.6. Specifically, the rule removes the phrase ''exporters or reexporters'', replaces it with the term ''persons'' in three locations, and adds the phrase ''transfer (in-country)'' to clarify that this prohibition also applies to transfers (in-country). Also in paragraph (b), this rule adds the phrase ''or for the export, reexport, or transfer (in-country)'' before the phrase ''of specified items'' in the first sentence, among other minor changes, to conform with §§ 744.3, 744.4 and 744.6.

3. In § 744.3 (Restrictions on Certain Rocket Systems (Including Ballistic Missile Systems And Space Launch Vehicles And Sounding Rockets) and Unmanned Air Vehicles (Including Cruise Missile Systems, Target Drones And Reconnaissance Drones) End-Uses), this rule amends paragraph (a) (General Prohibition) by inserting the word ''that'' after the phrase, ''* * * or transfer you know'' and by deleting the word ''the'' in the phrase ''at the time of export'' to conform with §§ 744.2, 744.4 and 744.6. In paragraph (b) (Additional Prohibition), this rule amends the heading to clarify that this paragraph applies an additional prohibition ''on persons informed by BIS''. Also in paragraph (b), this rule amends the ''is informed'' provisions by adding the word ''persons'' in two locations, by adding the phrase ''(in-country)'' after the word transfer and by adding the phrase ''or for the export, reexport, or transfer (in-country)'' before the phrase ''of specified items'' in the first sentence, among other minor changes, to conform with §§ 744.2, 744.4 and 744.6.

4. In § 744.6 (Restrictions on Certain Activities of U.S. Persons), this rule amends paragraph (a) (General Prohibition) to conform with §§ 744.2, 744.3 and 744.4 by adding the phrase ''(in-country)'' after the word ''transfer'' in paragraphs (a)(1)(i) and (a)(1)(ii) and in paragraph (a)(3) to clarify that this prohibition in § 744.6 also applies to transfers (in-country). In paragraph (b) (Additional Prohibitions on U.S. persons informed by BIS) this rule updates the ''is informed'' provisions to conform with §§ 744.2, 744.3 and 744.4; specifically by adding the phrase ''by specific notice'' after the word ''individually'' in the first sentence and by removing the term ''exporter'' and replacing it with the term ''U.S. persons'' in the last sentence.

5. In § 744.5 (Restrictions on Certain Maritime Nuclear Propulsion End-Uses), this rule amends paragraph (a) (General Prohibition) by clarifying that this prohibition in § 744.5 also applies to transfers (in-country). With this final rule, this paragraph (a) prohibits the exports, reexports, and transfers (in-country) of items subject to the EAR to defined nuclear maritime end-uses in § 744.5.

Revisions to Definitions of Transfer and Related Terms

In § 772.1 (Definitions of Terms as Used in the Export Administration Regulations), this rule revises the term ''transfer'' to clarify that the term merely refers to a conveyance of items. This rule further clarifies the definition by including the definition of ''in-country transfer/transfer (in-country)'' as an ancillary definition to the term ''transfer'', referring to the conveyance of items within a single foreign country. These revisions will provide greater clarity regarding the meaning of these defined terms under the EAR. In a note at the end of these definitions, this rule adds cross references to §§ 750.7(c) (Changes to a license) and 764.2(e) (Acting with knowledge of a violation). The term ''transfer'' may also be included on licenses issued by BIS. In that regard, these cross references are a reminder to persons involved with items authorized by a BIS license that changes that can be made to a BIS license are the non-material changes described in § 750.7(c). In addition, persons should be aware that any person that knowingly makes a material change to a BIS license without proper authorization would violate § 764.2(e) of the EAR.

This rule also corrects several places in the EAR where the term ''transfer'' is used, but the intended meaning is ''transfer (in-country)'' or ''in-country transfer''. Specifically, references to the term ''transfer'' in § 736.2, General Order No. 2 to Supp. No. 1 to part 736, §§ 740.5, 740.7, 740.9, 740.11, 744.3, 744.4, 744.6, Supp. No. 2 to part 748, §§ 752.5, 752.8, 752.16, and Supplement No. 3 to part 752 are clarified with this rule. This rule also clarifies that the term ''retransfer'' means ''in-country transfer'' by replacing the term ''retransfer'' with the term ''transfer (in-country)'' in §§ 740.11, 740.17, 742.15, 752.5 and Supp. No. 3 to part 752. This rule also removes one outdated reference to ''re-transfer'' in Supp. No. 5 to part 742 because it is not needed. This rule also clarifies that the terms ''transferred'' and ''transfer'', in the context of §§ 760.1 and 760.3, mean ''assigned to'' and ''assignment'', respectively.

Comments and Responses

BIS received one public comment, which addressed four aspects of the proposed rule. A summary of this public comment and BIS responses appear below.

Comment 1: Transfer Provisions Under the Ear Should Be Removed or at Least Limited to ''U.S. Person'' Activities Under § 744.6

The proposed changes to part 744 were intended to make certain conforming changes to certain end-user and end/use based controls under the EAR. The public comment to make § 744.2 conform with §§ 744.3 and 744.4 by removing the transfer (in-country) prohibition from these other end-use controls would be contrary to U.S. export control interests. Adopting this public comment for making the end-use controls under part 744 conform in this way would make it be permissible under the EAR for foreign nationals to ''knowingly'' transfer (in-country) items that are subject to the EAR to prohibited end-users that are involved in prohibited missile technology or chemical and biological end-uses.

BIS tries as much as possible to narrow controls under the EAR, especially those that have extraterritorial reach, to those controls that are most critical to protecting U.S. export control interests. The end-use controls in part 744, especially those under §§ 744.2, 744.3, 744.4 and 744.6 are critical to protecting U.S. non-proliferation control interests. By making this conforming change to § 744.2, along with the other conforming changes to certain end-use controls in part 744, BIS is taking a positive step to enhance U.S. national security by helping to better ensure that items subject to the EAR are not being ''knowingly'' supplied to persons involved in certain prohibited nuclear end-uses.

Comment 2: Transfer Provisions Under the EAR Are Extraterritorial

Given that the EAR controls ''items'' that are subject to the EAR no matter where they are located in the world, by its inherent nature the EAR is extraterritorial in its reach. In some cases, EAR restrictions extend to ''items'' that are subject to the EAR that are located within a foreign country, such as the provisions dealing with transfers (in-country). Another example of the extraterritorial reach of the EAR would be when an ''item'' that is subject to the EAR is located in a foreign country, but was illegally exported to that foreign country. Under § 764.2(e) a person that had ''knowledge'' of that violation would be prohibited from being involved with that ''item'' that was subject to the EAR that was involved with a violation of the EAR. This would extend to certain activities, such as servicing that ''item'' that was subject to the EAR that was involved in a violation of the EAR.

The jurisdiction of the EAR follows the ''item'' that is subject to the EAR. In certain limited cases, the jurisdictional reach of the EAR extends even further, such as the end-use control under § 744.6. However, because these end-use controls extend beyond ''items'' that are subject to the EAR (e.g., applying to certain foreign origin items and certain activities), these end-use controls are only applicable to ''U.S. persons''. In these cases the EAR jurisdiction is being asserted over the ''U.S. person'' which allows for a broader EAR jurisdiction to apply. Any other extraterritorial application of the EAR will always be tied to an ''item'' that is subject to the EAR. The end-use controls in part 744, especially those end-use controls under §§ 744.2, 744.3, 744.4 and 744.6 are broad in scope given that they apply to all items that are subject to the EAR. However, each of these end-use controls is targeted by including a required ''knowledge'' element to trigger the end-use control. For the end-use control in § 744.2, this control is further targeted by carving out countries that are listed in Supplement No. 3 to Part 744 and by specifying the types of nuclear end-uses that are of concern to the U.S. Government under § 744.2.

Lastly, BIS would note that no foreign governments submitted public comments regarding this proposed rule. Also when the transfer (in-country) provisions were added to §§ 744.3 and 744.4, other governments around the world did not voice complaints to BIS. In contrast, since that time, various countries around the world have increasingly worked with the USG in various international forums, such as the Proliferation Security Initiative (PSI) to help stem the flow of WMDs and many countries have adopted additional restrictions within their own export control systems to help stem the proliferation of WMDs.

Comment 3: Transfer Provisions Under the EAR Are Not Enforceable

BIS actively works with other countries to help enforce the EAR, including transfer provisions under the EAR. For example, as part of BIS's international efforts to achieve its enforcement mission, BIS sends experienced Department of Commerce Special Agents overseas as Export Control Officers (ECOs) at key U.S. embassies in Beijing, China; Hong Kong; Abu Dhabi, UAE; New Delhi, India; and Moscow, Russia. The principal mission of the ECOs is to ensure that U.S. dual-use goods entering their region are used in accordance with U.S. export control laws and regulations. Compliance verification is accomplished through targeted end-use checks and by working with host governments and local businesses to ensure that they understand and comply with U.S. export laws and regulations, including any applicable transfer provisions under the EAR. ECOs also work with host governments and local businesses to provide information and appropriate training to facilitate better understanding of the EAR.

Comment 4: Guidance on Not Proceeding With an In-Transit Transaction at the Time You Are Informed by BIS Is Not Needed

The public comment noted that the proposed addition to § 744.1(b)(2) on not proceeding with an in-transit transaction at the time you are informed by BIS that a license is required is unnecessary and undesirable because the point is already covered more clearly in § 758.8(b).

BIS believes that this provision will provide a mechanism by which a party can apply for authorization to continue a transaction once they have been informed by BIS of such risk, as described in the license requirements in §§ 744.2, 744.3, 744.4 or 744.6, after the ''export'' has taken place (i.e., left the territory). This provision is needed given the restrictions in § 748.4(d)(2). Section 758.8(b) does not provide clear guidance regarding whether a party could apply for a license once they are informed under the provisions of §§ 744.2, 744.3, 744.4 and 744.6.

Changes From the Proposed Rule

After considering the one public comment received, BIS is implementing the proposed rule as was proposed without making any additional changes.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or en route aboard a carrier to a port of export or reexport, on November 18, 2008 pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before December 18, 2008. Any such items not actually exported or reexported before midnight, on December 18, 2008, require a license in accordance with this rule.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of July 23, 2008, 73 FR 43603 (July 25, 2008), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This final rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.).* This collection has been approved by the Office of Management and Budget under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes for a manual or electronic submission. This final rule is expected to have a minimal increase on the total number of license applications submitted to BIS. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security as indicated in the **ADDRESSES** section of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although the formal comment period closed on June 17, 2008, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to one of the addresses listed in the **ADDRESSES** section of the preamble of this final rule.

List of Subjects

15 CFR Parts 736 and 772

Exports.

15 CFR Parts 740, 748 and 752

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 760

Boycotts, Exports, Reporting and recordkeeping requirements.

■ Accordingly, parts 736, 740, 742, 744, 748, 752, 760, and 772 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 736—[AMENDED]

■ 1. The authority citation for 15 CFR part 736 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008); Notice of November 8, 2007, 72 FR 63963 (November 13, 2007).

■ 2. Section 736.2 is amended by revising the first sentence of paragraph (b)(10) to read as follows:

§ 736.2 General prohibitions and determination of applicability.

* * * * *

(b) * * *

(10) * * * You may not sell, transfer, export, reexport, finance, order, buy, remove, conceal, store, use, loan, dispose of, transport, forward, or otherwise service, in whole or in part, any item subject to the EAR and exported or to be exported with knowledge that a violation of the Export Administration Regulations, the Export Administration Act or any order, license, License Exception, or other authorization issued thereunder has occurred, is about to occur, or is intended to occur in connection with the item. * * *

■ 3. General Order No. 2 to Supplement No. 1 to part 736, is amended by revising the last sentence of paragraph (b) to read as follows:

Supplement No. 1 to Part 736—General Orders

* * * * *

General Order No. 2

* * * * *

(b) * * * License conditions requiring written U.S. Government authorization for the reexport, transfer (in-country), or resale of items already exported or reexported remain in effect, and requests for BIS authorization to reexport, transfer (in-country), or sell such items will require interagency approval.

* * * * *

PART 740—[AMENDED]

■ 4. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 5. Section 740.5 is amended by revising the first and second sentences of paragraph (b)(1) to read as follows:

§ 740.5 Civil end-users (CIV).

* * * * *

(b) *Restrictions.*

(1) * * * You may not use CIV if you ''know'' the item will be or is intended to be exported, reexported, or transferred (in-country) to military uses or military end-users. Such exports, reexports, and transfers (in-country) will continue to require a license. In addition to conventional military activities, military uses include any proliferation activities described and prohibited by part 744 of the EAR. * * *

* * * * *

■ 6. Section 740.7 is amended by revising paragraph (b)(5) to read as follows:

§ 740.7 Computers (APP).

* * * * *

(b) * * *

(5) License Exception APP does not authorize exports, reexports and transfers (in-country) for nuclear, chemical, biological, or missile end-users and end-uses subject to license requirements under § 744.2, § 744.3, § 744.4, and § 744.5 of the EAR. Such

exports, reexports and transfers (in-country) will continue to require a license and will be considered on a case-by-case basis. Reexports and transfers (in-country) to these end-users and end-uses in eligible countries are strictly prohibited without prior authorization.

* * * * *

■ 7. Section 740.9 is amended by revising paragraph (a)(2)(ix)(A) to read as follows:

§ 740.9 Temporary imports, exports, and reexports (TMP).

* * * * *

(a) * * *

(2) * * *

(ix) *Temporary exports to a U.S. subsidiary, affiliate or facility in Country Group B.* (A) Components, parts, tools or test equipment exported by a U.S. person to its subsidiary, affiliate or facility in a country listed in Country Group B (*see* Supplement No. 1 to this part) that is owned or controlled by the U.S. person, if the components, part, tool or test equipment is to be used for manufacture, assembly, testing, production or modification, provided that no components, parts, tools or test equipment or the direct product of such components, parts, tools or test equipment are transferred (in-country) or reexported from such subsidiary, affiliate or facility without prior authorization by BIS.

* * * * *

■ 8. Section 740.11 is amended by revising paragraph (c)(3) to read as follows:

§ 740.11 Governments, international organizations, and international inspections under the Chemical Weapons Convention (GOV).

* * * * *

(c) * * *

(3) *Confidentiality.* The application of the provisions of this paragraph (c) is subject to the condition that the confidentiality of business information is strictly protected in accordance with applicable provisions of the EAR and other U.S. laws regarding the use and transfer of U.S. goods and services.

* * * * *

PART 742—[AMENDED]

■ 9. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008); Notice of November 8, 2007, 72 FR 63963 (November 13, 2007).

■ 10. In Supplement No. 5 to Part 742 is amended by revising paragraph (3) to read as follows:

Supplement No. 5 to Part 742—Checklist on Encryption and Other ''Information Security'' Functions

* * * * *

3. For products that contain an ''encryption component'', can this encryption component be easily used by another product, or accessed by the end-user for cryptographic use?

PART 744—[AMENDED]

■ 11. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008); Notice of November 8, 2007, 72 FR 63963 (November 13, 2007).

■ 12. Section 744.1 is amended by revising paragraphs (a)(1) and (b)(2) to read as follows:

§ 744.1 General provisions.

(a)(1) *Introduction.* In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part contains prohibitions against exports, reexports, and selected transfers to certain end-users and end-uses as introduced under General Prohibition Five (End-use/End-users) and Nine (Orders, Terms, and Conditions), unless authorized by BIS. Sections 744.2, 744.3, 744.4 prohibit exports, reexports and transfers (in-country) of items subject to the EAR to defined nuclear, missile, and chemical and biological proliferation activities. Section 744.5 prohibits exports, reexports and transfers (in-country) of items subject to the EAR to defined nuclear maritime end-uses. Section 744.6 prohibits certain activities by U.S. persons in support of certain nuclear, missile, chemical, or biological end-uses. Section 744.7 prohibits exports and reexports of certain items for certain aircraft and vessels. Section 744.9 prohibits U.S. persons from providing technical assistance to certain foreign persons seeking to develop or manufacture certain encryption commodities or software. Section 744.10 prohibits exports and reexports of any item subject to the EAR to Russian entities, included in Supplement No. 4 of this part. Section 744.11 imposes license requirements, to the extent specified in Supplement No. 4 to this part on entities listed in Supplement No. 4 to this part for activities contrary to the national security or foreign policy interests of the United States. Sections 744.12, 744.13 and 744.14 prohibit exports and reexports of any item subject to the EAR to persons designated as Specially Designated Global Terrorists, Specially Designated Terrorists, or Foreign Terrorist Organizations, respectively. Section 744.16 sets forth the right of a party listed in Supplement No. 4 to this part to request that its listing be removed or modified. Section 744.19 sets forth BIS's licensing policy for applications for exports or reexports when a party to the transaction is an entity that has been sanctioned pursuant to any of three specified statutes that require certain license applications to be denied. Section 744.20 requires a license, to the extent specified in Supplement No. 4 to this part, for exports and reexports of items subject to the EAR destined to certain sanctioned entities listed in Supplement No. 4 to this part. Section 744.15 describes restrictions on exports and reexports to persons named in general orders. In addition, these sections include license review standards for export license applications submitted as required by these sections. It should also be noted that part 764 of the EAR prohibits exports, reexports and certain transfers of items subject to the EAR to denied parties.

* * * * *

(b) * * *

(2) *Determine applicability.* Second, determine whether any of the end-use and end-user prohibitions described in this part are applicable to your planned export, reexport, transfer (in-country) or other activity. See Supplement No. 1 to part 732 for guidance. For exports, reexports or transfers (in-country) that are in transit at the time you are informed by BIS that a license is required in accordance with §§ 744.2(b), 744.3(b), 744.4(b) or 744.6(b) of the EAR, you may not proceed any further with the transaction unless you first obtain a license from BIS (see part 748 of the EAR for instructions on how to

apply for a license). The provisions of § 748.4(d)(2) shall not apply to license applications submitted pursuant to a notification from BIS that occurs while an export, reexport, or transfer (in-country) is in transit.

* * * * *

■ 13. Section 744.2 is amended by revising paragraph (a) introductory text and paragraph (b) to read as follows:

§ 744.2 Restrictions on certain nuclear end-uses.

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export, reexport, or transfer (in-country) to any destination, other than countries in Supplement No. 3 to this part, an item subject to the EAR without a license if, at the time of export, reexport, or transfer (in-country) you know [1] that the item will be used directly or indirectly in any one or more of the following activities described in paragraphs (a)(1), (a)(2), and (a)(3) of this section:

* * * * *

(b) *Additional prohibition on persons informed by BIS.* BIS may inform persons, either individually by specific notice or through amendment to the EAR, that a license is required for a specific export, reexport, or transfer (in-country), or for the export, reexport, or transfer (in-country) of specified items to a certain end-user, because there is an unacceptable risk of use in, or diversion to, the activities specified in paragraph (a) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. However, the absence of any such notification does not excuse persons from compliance with the license requirements of paragraph (a) of this section.

* * * * *

■ 14. Section 744.3 is amended:
■ a. By revising paragraph (a) introductory text;
■ b. By revising paragraph (b); and
■ c. By revising paragraph (d)(1) to read as follows:

[1] Part 772 of the EAR defines ''knowledge'' for all of the EAR except part 760, Restrictive Trade Practices and Boycotts. The definition, which includes variants such as ''know'' and ''reason to know'', encompasses more than positive knowledge. Thus, the use of ''know'' in this section in place of the former wording ''know or have reason to know'' does not lessen or otherwise change the responsibilities of persons subject to the EAR.

§ 744.3 Restrictions on certain rocket systems (including ballistic missile systems and space launch vehicles and sounding rockets) and unmanned air vehicles (including cruise missile systems, target drones and reconnaissance drones) end-uses.

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export, reexport, or transfer (in-country) an item subject to the EAR without a license if, at the time of export, reexport or transfer (in-country) you know that the item:

* * * * *

(b) *Additional prohibition on persons informed by BIS.* BIS may inform persons, either individually by specific notice or through amendment to the EAR, that a license is required for a specific export, reexport or transfer (in-country) or for the export, reexport, or transfer (in-country) of specified items to a certain end-user, because there is an unacceptable risk of use in, or diversion to, the activities specified in paragraphs (a)(1) or (a)(2) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. However, the absence of any such notification does not excuse persons from compliance with the license requirements of paragraphs (a)(1), (a)(2), or (a)(3) of this section.

* * * * *

(d) *License review standards.* (1) Applications to export, reexport or transfer (in-country) the items subject to this section will be considered on a case-by-case basis to determine whether the export, reexport or transfer (in-country) would make a material contribution to the proliferation of certain rocket systems, or unmanned air vehicles. When an export, reexport or transfer (in-country) is deemed to make a material contribution, the license will be denied.

* * * * *

■ 15. Section 744.4 is amended:
■ a. By revising paragraph (a); and
■ b. By revising paragraph (d)(1) to read as follows:

§ 744.4 Restrictions on certain chemical and biological weapons end-uses.

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export, reexport, or transfer (in-country) an item subject to the EAR without a license if, at the time of export, reexport, or transfer (in-country) you know that the item will be used in the design, development, production, stockpiling, or use of chemical or biological weapons in or by any country or destination, worldwide.

* * * * *

(d) *License review standards.* (1) Applications to export, reexport, or transfer (in-country) items subject to this section will be considered on a case-by-case basis to determine whether the export, reexport, or transfer (in-country) would make a material contribution to the design, development, production, stockpiling, or use of chemical or biological weapons. When an export, reexport, or transfer (in-country) is deemed to make such a contribution, the license will be denied.

* * * * *

■ 16. Section 744.5 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 744.5 Restrictions on certain maritime nuclear end-uses.

(a) * * * In addition to the license requirements for items specified on the CCL, you may not export, reexport, or transfer (in-country) certain technology subject to the EAR without a license if at the time of the export, reexport or transfer (in-country) you know the item is for use in connection with a foreign maritime nuclear propulsion project. * * *

* * * * *

■ 17. Section 744.6 is amended:
■ a. By revising paragraph (a)(1)(i) introductory text;
■ b. By revising paragraph (a)(1)(ii);
■ c. By revising paragraph (a)(3); and
■ d. By revising paragraph (b), to read as follows:

§ 744.6 Restrictions on certain activities of U.S. persons.

(a) * * *

(1) * * *

(i) No U.S. person as defined in paragraph (c) of this section may, without a license from BIS, export, reexport, or transfer (in-country) an item where that person knows that such item:

* * * * *

(ii) No U.S. person shall, without a license from BIS, knowingly support an export, reexport, or transfer (in-country) that does not have a license as required by this section. Support means any action, including financing, transportation, and freight forwarding, by which a person facilitates an export, reexport, or transfer (in-country).

* * * * *

(3) Whole plant requirement. No U.S. person shall, without a license from BIS,

participate in the design, construction, export, reexport, or transfer (in-country) of a whole plant to make chemical weapons precursors identified in ECCN 1C350, in countries other than those listed in Country Group A:3 (Australia Group) (See Supplement No. 1 to part 740 of the EAR).

(b) *Additional prohibitions on U.S. persons informed by BIS.* BIS may inform U.S. persons, either individually by specific notice or through amendment to the EAR, that a license is required because an activity could involve the types of participation and support described in paragraph (a) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. However, the absence of any such notification does not excuse the U.S. person from compliance with the license requirements of paragraph (a) of this section.

* * * * *

PART 748—[AMENDED]

■ 18. The authority citation for 15 CFR part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 19. Supplement No. 2 to part 748 is amended by revising paragraph (c)(2), to read as follows:

Supplement No. 2 to Part 748—Unique Application and Submission Requirements

* * * * *

(c) * * *

(2) Security Safeguard Plan requirement. The United States requires security safeguards for exports, reexports, and transfers (in-country) of High Performance Computers (HPCs) to ensure that they are used for peaceful purposes. If you are submitting a license application for an export, reexport, or in-country transfer of a high performance computer to or within a destination in Computer Tier 3 (see § 740.7(c)(1) of the EAR) or to Cuba, Iran, North Korea, Sudan, or Syria you must include with your license application a security safeguard plan signed by the end-user, who may also be the ultimate consignee. This requirement also applies to exports, reexports, and transfers (in-country) of components or electronic assemblies to upgrade existing ''computer'' installations in those countries. A sample security safeguard plan is posted on BIS's Web page at *http://www.bis.doc.gov/hpcs/SecuritySafeguardPlans.html.*

* * * * *

PART 752—[AMENDED]

■ 20. The authority citation for 15 CFR part 752 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 21. Section 752.5 is amended by revising the undesignated paragraph at the end of (c)(8)(ii) to read as follows:

§ 752.5 Steps you must follow to apply for an SCL.

* * * * *

(c) * * *

(8) * * *

(ii) * * *

''No chemicals or chemical equipment received under this Special Comprehensive License will be transferred, resold, or reexported to a destination or end-user that requires a license, unless the new end-user has been approved by the Bureau of Industry and Security, and in no case will the items be transferred, resold, or reexported to a party who is not the end-user.''

* * * * *

■ 22. Section 752.8 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 752.8 SCL application review process.

(a) * * * In reviewing and approving a specific SCL request, BIS retains the right to limit the eligibility of items or to prohibit the export, reexport, or transfer (in-country) of items under the SCL to specific firms, individuals, or countries.

* * * * *

■ 23. Section 752.16 is amended by revising paragraph (a)(1)(v) to read as follows:

§ 752.16 Administrative actions.

(a)(1) * * *

(v) Require that certain exports, reexports, or transfers (in-country) be individually authorized by BIS;

* * * * *

■ 24. Supplement No. 3 to part 752 is amended by revising Block (8) paragraph (iv) to read as follows:

Supplement No. 3 to Part 752—Instructions on Completing Form BIS–752 ''Statement by Consignee in Support of Special Comprehensive License''

* * * * *

Block 8: Disposition or Use of Items.

* * * * *

(iv) Item (d): Complete this Block if your company plans to transfer or resell within the country of import. State the end-use of your customers. If you plan to transfer to end-users that require prior approval by BIS, complete and attach Form BIS–748P–B, End-User Appendix.

* * * * *

PART 760—[AMENDED]

■ 25. The authority citation for 15 CFR part 760 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 26. Section 760.1 is amended by revising the first and second sentences of paragraph (b)(4)(viii) to read as follows:

§ 760.1 Definitions.

* * * * *

(b) * * *

(4) * * *

(viii) At the request of country Y, A, an individual employed by U.S. company B, is assigned to company C as an employee. C is a foreign company owned and controlled by country Y. A, a U.S. national who will reside in Y, has agreed to the assignment provided he is able to retain his insurance, pension, and other benefits. * * *

* * * * *

■ 27. Section 760.3 is amended by revising the first sentence of paragraph (f)(4)(i) to read as follows:

§ 760.3 Exceptions to prohibitions.

* * * * *

(f) * * *

(4) * * *

(i) A, a U.S. individual employed by B, a U.S. manufacturer of sporting goods with a plant in boycotting country Y, wishes to obtain a work visa so that he may be assigned to the plant in Y. * * *

* * * * *

PART 772—[AMENDED]

■ 28. The authority citation for 15 CFR part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 29. Section 772.1 is amended by revising the definition of ''transfer'' to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Transfer. A shipment, transmission, or release to any person of items subject to the EAR either within the United States or outside the United States. *In-country transfer/transfer (in-country).* The shipment, transmission, or release of items subject to the EAR from one person to another person that occurs outside the United States within a single foreign country.

Note: This definition of transfer does not apply to § 750.10 or Supplement No. 8 to part 760 of the EAR. The term ''transfer'' may also be included on licenses issued by BIS. In that regard, the changes that can be made to a BIS license are the non-material changes described in § 750.7(c). Any other change to a BIS license without authorization is a violation of the EAR. See §§ 750.7(c) and 764.2(e).

* * * * *

Dated: November 10, 2008.

Christopher R. Wall,

Assistant Secretary for Export Administration.

[FR Doc. E8–27226 Filed 11–17–08; 8:45 am]

BILLING CODE 3510–33–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1110

Certificates of Compliance

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Act (''CPSA''), at section 14(a) as amended by section 102(a) of the Consumer Product Safety Improvement Act of 2008 (''CPSIA''), Public Law 110–314, requires that, for products manufactured on or after November 12, 2008, manufacturers (including importers) and private labelers of the products certify that the products comply with all applicable CPSA consumer product safety rules and similar rules, bans, standards and regulations under any other laws administered by the Commission by issuing a certificate that accompanies the product and can be furnished to certain parties. The certificate must specify each such rule, ban, standard, or regulation with which the product must comply. In general, the certification must be based on a test of each product or upon a reasonable testing program. Certificates and certification for certain children's products must be based on testing by third party laboratories whose accreditation to do so has been accepted by the Commission. The third party testing requirements become effective on a rolling schedule as the Commission issues specific laboratory accreditation requirements. Section 14(a)(4) of the CPSA gives the Commission the authority where there is more than one manufacturer, importer, or private labeler to designate one or more of such entities as the person(s) who shall issue the required certificate and to relieve all others of that responsibility.

The final rule published today limits the parties who must certify to the U.S. importer and, in the case of domestically produced products, the U.S. manufacturer. It also specifies the requirements that an electronic certificate must meet.

DATES: *Effective Date:* This rule is effective November 18, 2008.

FOR FURTHER INFORMATION CONTACT: John ''Gib'' Mullan, Assistant Executive Director for Compliance and Field Operations, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail: *jmullan@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The Commission is aware that, as a result of the extremely short deadline for complying with the new certificate requirement and its vast expansion over that previously required by section 14(a) (which applied only to products subject to consumer product safety standards under the CPSA) there is substantial confusion over what is required by way of certification.

The Commission has received thousands of inquiries as to how to comply, when to comply, what is required in support of the certification, and what form the certificate must take, as well as hundreds of requests to evaluate an individual product as to what existing and future bans, standards, regulations, or rules might apply to it. Commission staff has been unable to respond to many of these inquiries due to the press of the other very early multiple statutory deadlines imposed on the agency by the CPSIA.

The Commission believes that for the expanded § 14(a) certificate program to be implemented in a fair and orderly way and to produce the benefits intended by Congress, it must be streamlined, at least in its initial phase.

Accordingly, the Commission is exercising its authority under CPSA section 14(a)(4) by issuing this immediately effective final rule designating the importer as the sole entity that must issue the certificate required by section 14(a) in the case of an imported product.[1] This certificate must be available to the Commission no later than the time when the product or shipment is available for inspection in the United States. The Commission is also designating the domestic manufacturer as the sole entity that must issue the certificate required by section 14(a) in the case of a domestically produced product. This certificate must be available to the Commission upon request before the product or shipment is introduced into domestic commerce.

Section 14(g)(3) of the CPSA as added by section 102(b) of the CPSIA requires that the certificates required by section 14(a) of the CPSA ''accompany'' each product or shipment of products subject to the certification requirements and be ''furnished'' to each distributor or retailer of the product. In addition, a copy of the certificate must be ''furnished'' to the CPSC upon request.

The final rule issued today provides that the requirements of section 14(g)(3) can be satisfied by providing the statutorily required certificate information by electronic means. The means by which the certificate may be provided in electronic form is specified.

This rule is being issued in immediate final form in recognition that the new, broader consumer product certification requirements established by CPSIA go into effect for products manufactured on and after November 12, 2008. The Commission expects that with time CPSIA's expanded certification requirements will become more routine and it then would consider whether this rule needs to be revised based on actual experience.

The rule issued here is effective upon publication in the **Federal Register**.

II. Pertinent Statutory Provisions

Section 14(a)(1) of the CPSA, as amended by CPSIA, requires that the manufacturer (including the importer) and the private labeler, if any, of a product that is subject to an applicable consumer product safety rule under the CPSA, or similar rule, ban, standard, or regulation under any other Act enforced by the Commission issue a certificate of compliance.[2] This requirement applies

[1] The Commission voted 2–0 to issue this rule.

[2] CPSIA section 14(a)(2) imposes additional testing requirements to support certificates of compliance for ''children's products'' as defined in section 3(a)(2) of Consumer Product Safety Act. Ninety days after the Commission issues those requirements for a given product or category of

to any such product manufactured on or after November 12, 2008. Section 14(a)(4) provides the Commission with authority to designate by rule one or more of these parties to issue the required certificate and to relieve the other parties enumerated in section 14 from the requirement to furnish certificates.

Sections 14(g)(1) and (2) of the CPSA as added by CPSIA specify the information that must be provided in a certificate.

(1) Identification of issuer and conformity assessment body.—Every certificate required under this section shall identify the manufacturer or private labeler issuing the certificate and any third party conformity assessment body on whose testing the certificate depends. The certificate shall include, at a minimum, the date and place of manufacture, the date and place where the product was tested, each party's name, full mailing address, telephone number, and contact information for the individual responsible for maintaining records of test results.

(2) English language.—Every certificate required under this section shall be legible and all content required by this section shall be in the English language. A certificate may also contain the same content in any other language.

Section 14(g)(3) of the CPSA as added by CPSIA specifies the availability of the required certificates.

(3) Availability of certificates.—Every certificate required under this section shall accompany the applicable product or shipment of products covered by the same certificate and a copy of the certificate shall be furnished to each distributor or retailer of the product. Upon request, the manufacturer or private labeler issuing the certificate shall furnish a copy of the certificate to the Commission.

While the new provisions of section 14 do not address electronic certificates in general, new section 14(g)(4) does specifically address electronic filing of certificates for import shipments with CPSC and the Commissioner of Customs.

(4) Electronic filing of certificates for imported products.—In consultation with the Commissioner of Customs, the Commission may, by rule, provide for the electronic filing of certificates under this section up to 24 hours before arrival of an imported product. Upon request, the manufacturer or private labeler issuing the certificate shall furnish a copy to the Commission and to the Commissioner of Customs.

This rule does not establish the requirements under section 14(g)(4) for pre-arrival electronic filing with the Commissioner of Customs and the Commission of certificates for imported products. Rather it addresses acceptable means for making electronic certificates available to the Commission and to distributors and retailers at this time in compliance with the requirements of CPSA sections 14(a) and (g). If the Commission elects to do so at some future date, it may address the specific issue of electronic filing of certificates for imported products with the Commission and the Commissioner of Customs by subsequent rulemaking.

III. Need for Streamlining Certificate Requirements

Prior to enactment of the CPSIA, the certificate requirement ran to eleven (11) CPSA consumer product safety standards.[3] The CPSIA expanded that universe to include all CPSA standards and bans and all similar standards, bans, rules and regulations under any other Act administered by the Commission, including the Federal Hazardous Substances Act, the Flammable Fabrics Act, the Poison Prevention Packaging Act, the Refrigerator Safety Act, the Children's Gasoline Burn Prevention Act, and the Virginia Graeme Baker Pool and Spa Safety Act. Congress provided only ninety days from enactment of the CPSIA for the Commission and the regulated community to address this vastly expanded product certification requirement. As noted above, the Commission has received literally thousands of inquiries as to how to comply, when to comply, what is required in support of the certification, whether and how an electronic certificate might be acceptable, and what form the certificate must take, whether hard copy or electronic.

The Commission is hampered in its overall efforts to implement the CPSIA by the fact it is funded for Fiscal year 2009 by continuing resolution at its funding level for FY 2008 established prior to enactment of those sweeping new responsibilities. Commission staff has been unable to respond to many inquiries due to the press of the other very early, multiple statutory deadlines imposed on the agency by the CPSIA.

In addition, the staff has been deluged with hundreds and hundreds of requests to evaluate specific individual products and specify what bans, standards, regulations, etc., might apply to them. First, the Commission does not have, or expect to have, sufficient resources to evaluate every one of the products within the scope of the *thousands of types* of products within its jurisdiction in this manner. The CPSC has never ''pre-approved'' products for compliance with its standards, bans, regulations or rules in this manner in any event. Second, it is the responsibility of the manufacturer of the product as a normal incident of doing business to know what legal requirements of the Commission or otherwise apply to its products.

The Commission is concerned by the apparent confusion among companies about the reach of the general certificate requirements including what rules apply to their products. Manufacturers and retailers have always been required to know which rules apply to their products and to assure that their products comply with those rules. Before it has even gone into effect, the new general certificate requirement has not only focused attention on safety compliance but also has given some companies a cause to be concerned about their ability to comply with the certification program.

While the Commission expects every company to make best efforts to comply promptly with the new general certificate requirements, the Commission's resource limitations under the continuing resolution will force it to focus more on a product's compliance with our safety rules. The certificate is evidence of compliance and therefore it is appropriate to concentrate initially more on the substantive requirements underlying the certificate than on the certificate or the form of the certificate itself. As our resource limitations are fully addressed by Congress, the Commission will then be able to properly focus on all aspects of compliance, *particularly* compliance with the new general certification requirements.

The Commission also recognizes that it still has work to do to clarify aspects of the general certification program and will be working to quickly resolve uncertainties.

products on the rolling schedule specified in section 14(a)(3), the certificate for the product or products in question manufactured after that date must be supported by testing performed by a third party laboratory whose accreditation has been accepted by the Commission absent the Commission's exercise of its authority to extend such a deadline by an additional sixty days in certain instances. The rule set out here is equally applicable to certificates that must be based on third party testing.

[3] In most of those standards, the Commission has already addressed which entity must provide certificates under the prior version of CPSA section 14(a). *See, e.g.,* 16 CFR part 1210, etc. Today's rule does not amend those standards in this respect in light of the significant additional certificate information now required by CPSA section 14(a) as amended by CPSIA.

Importers should be aware that after this initial period of adjustment, failure to abide by the general certificate requirement will subject shipments to refusal of admission into the country and potential destruction. The Commission staff is developing Frequently Asked Question (FAQ) lists for posting on the Commission's World Wide Web site as the agency's resources permit to address issues of more general applicability posed by the new CPSIA requirements.

All of the above considerations lead the Commission to the conclusion that at least in the initial implementation phase, the expanded certification program must be streamlined to minimize confusion in the regulated community, to allow for fairness, and to allow the Commission staff to respond appropriately to the most pressing CPSIA implementation challenges. Accordingly, by this rule, the Commission is limiting the certificate requirements of section 14(a) of the CPSA to the importer in the case of products manufactured outside the United States and to the domestic manufacturer in the case of products manufactured in the United States. In the case of imports, the required certificate must be available to the Commission no later than the time when the product or shipment is available for inspection in the United States. In the case of domestic products, the certificate must be available to the Commission prior to introduction of the product or shipment in question into domestic commerce.

IV. Need for Electronic Certificates

Following enactment of CPSIA on August 14th, the Commission has received many comments regarding the urgent need for a means for electronic certificates as an alternative to paper certificates. Importers have noted the extremely difficult task of associating paper certificates with the proper contents of a shipping container that may contain items not subject to the certification requirement and many items that are, but that are subject to varying certification requirements depending on the specific product in question. Similar difficulties have been noted with respect to bulk shipments that are then broken down for shipment to a number of distributors or retailers. Manufacturers of small volume per retailer products have noted the substantial additional complexity and cost if such products must be accompanied by appropriate paper certificates down to the individual retailer level. This later situation has been identified as extremely problematic for manufacturers (including importers) and private labelers, that are not associated with major retail chains, but who ship to many independent retailers. Finally many commenters have noted that international and domestic commerce is now largely tracked and otherwise conducted electronically and that a return to paper for some portion of that commerce is a major step backward in facilitating efficient trade. Based on all of the above, the Commission believes that immediately recognizing the suitability of electronic certificates provided they meet the statutory content and availability requirements is appropriate.

V. Electronic Certificates Can ''Accompany'' Products and Product Shipments and Can Be ''Furnished'' to Distributors and Retailers

Section 14(g)(3) requires that the certificate ''accompany'' each product or shipment of products and be ''furnished'' to each distributor or retailer of the product. The legislative history of section 102(b) of CPSIA is silent as to the intended meaning of the word ''accompany.'' Among other meanings, Webster's defines ''accompany'' to mean ''coexist or occur with.''[4] The Commission believes that a properly designed electronic certificate containing the information prescribed by sections 14(a) and (g) of the CPSA, as applicable, that is uniquely identified to the product or products covered by the certificate is ''coexisting'' or ''occurring with'' the product or products in question.

Webster's defines ''furnish'' as ''to supply'' or ''give.''[5] The Commission believes that an electronic certificate that can be reasonably accessed by distributors and retailers satisfies the requirement of ''furnishing'' the certificate to distributors and retailers of the product.

VI. Acceptable Form of Electronic Certificate

As noted above in section II. of this preamble, CPSA sections 14(a) and (g) specify the information that must be in a certificate and the form in which it must be available. For purposes of this rule, which limits the requirement to furnish certificates to importers and domestic manufacturers, the applicable portions of those provisions are as follows:

1. Identification of the product covered by the certificate.

2. Citation to each CPSC product safety regulation to which the product is being certified. Specifically, CPSIA requires that the certificate specify each applicable consumer product safety rule under the Consumer Product Safety Act and any similar rule, ban, standard or regulation under any other Act enforced by the Commission that is applicable to the product.

3. Identification of the importer or domestic manufacturer as applicable certifying compliance of the product, including the importer or domestic manufacturer's name, full mailing address, and telephone number.

4. Contact information for the individual maintaining records of test results, including the custodian's name, e-mail address, full mailing address, and telephone number. (CPSC recommends that each issuer maintain test records supporting the certification for at least three years as is currently required by certain consumer product specific CPSC standards, for example at 16 CFR 1508.10 for full-size baby cribs.).

5. Date (month and year at a minimum) and place (including city and country or administrative region) where the product was manufactured. (If the same manufacturer operates more than one location in the same city, the street address of the factory in question should be provided.)

6. Date and place (including city and country or administrative region) where the product was tested for compliance with the regulation(s) cited above.

7. Identification of any third-party laboratory on whose testing the certificate depends, including name, full mailing address and telephone number of the laboratory.

Section 14(g)(2) requires that the foregoing information be available in English. As provided for in CPSIA, the same information also may be provided in any other language.

The Commission expects that the statutory content and language requirements will be met for any certificate, whether issued in electronic or paper form.

The Commission believes that an electronic certificate is properly ''accompanying'' the product or shipment of the product as required by CPSIA if a certificate meeting the requirements of the rule issued today can reasonably be accessed by information on the product or accompanying the product or shipment, for example a unique identifier that can be accessed via a World Wide Web URL or other electronic means, provided the URL or other electronic means and the certificate and unique identifier are

[4] Webster's II New Riverside University Dictionary, Houghton Mifflin Company, 1994, at p. 71.

[5] *Id.* at p. 513.

available to the Commission immediately when the product or shipment itself is available for inspection in the United States. Similarly, if a reasonable means to access the electronic certificate is available to distributor(s) and retailer(s), the Commission believes that the statutory ''furnish'' requirement is met.

As with paper certificates, for an electronic certificate to ''accompany'' a shipment, it must be created prior to arrival of the shipment in question into U.S. domestic commerce. The Commission would expect that an electronic certificate would have a means to verify the date of its creation or last modification.

Any entity or entities may maintain the electronic certificate platform(s) and may enter the requisite data. However, the certifying entity or entities remain legally responsible for the accuracy and completeness of the certificate information required by statute and its availability in timely fashion.[6]

VII. Paperwork Reduction Act

This final rule does not impose any information collection requirements. Rather, it restates the express statutory requirements for the content of certificates that appear at sections 14(a) and (g) of the CPSA. Accordingly it is not subject to the Paperwork Reduction Act, 44 U.S.C. sections 3501 through 3520.

VIII. Executive Order 12988

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations. This regulation is issued under authority of the CPSA and the CPSIA. The CPSA provision on preemption appears at section 26 thereof. The CPSIA provision on preemption appears at section 231 thereof. Otherwise the preemptive effect of this rule would be determined in an appropriate proceeding in a court of competent jurisdiction.

IX. Environmental Considerations

This final rule falls within the scope of the Commission's environmental review regulations at 16 CFR 1021.5(c)(2) which provide a categorical exclusion from any requirement for the agency to prepare an environmental assessment or environmental impact statement for product certification rules.

[6] It is also self evident that a product subject to an applicable CPSC standard, ban, or regulation is expected to comply therewith, irrespective of the issuance and availability of a certificate.

X. Immediate Effective Date

The Commission is issuing this rule as an immediately effective final rule. Section 553(b) of the Administrative Procedure Act (''APA''), 5 U.S.C. 553, excludes rules from the otherwise applicable notice and comment requirements of the APA, *inter alia,* where the agency for good cause finds that notice and comment are impracticable or contrary to the public interest. Here, the CPSIA statutory deadline for issuance of certificates is November 12, 2008 for products manufactured on or after that date. There is substantial confusion in the regulated community as to the application and implementation of that requirement. Moreover, the Commission's resources are extremely challenged by the myriad of near term statutory deadlines for implementation of various other CPSIA provisions. Accordingly, the Commission finds that notice and comment on this rule is impracticable and would not be in the public interest.

Section 553(d) of the APA excludes certain final rules from the otherwise applicable APA requirement that the effective date of a rule be at least 30 days after publication of the rule. The pertinent exclusions here are for a rule that relieves a restriction and ''as otherwise provided for good cause shown and published with the rule.'' In view of the certificate deadline of November 12, 2008 for products subject to the requirement that are manufactured on or after that date, the Commission finds that good cause exists to make this rule effective immediately.

List of Subjects in 16 CFR Part 1110

Consumer protection, labeling.

■ For the reasons stated in the preamble, the Commission amends Title 16 of the Code of Federal Regulations by adding a new part 1110 to read as follows:

PART 1110—CERTIFICATES OF COMPLIANCE

Sec.

1110.1 Purpose and scope.
1110.3 Definitions.
1110.5 Acceptable certificates.
1110.7 Who must certify and provide a certificate.
1110.9 Form of certificate.
1110.11 Contents of certificate.
1110.13 Availability of electronic certificate.
1110.15 Legal responsibility for certificate information.

Authority: Pub. L. No. 110–314, § 3, 122 Stat. 3016, 3017 (2008); 15 U.S.C. 14.

PART 1110—CERTIFICATES OF COMPLIANCE

§ 1110.1 Purpose and scope.

(a) This part 1110:

(1) Limits the entities required to provide certificates in accordance with section 14(a) of the Consumer Product Safety Act, as amended (CPSA), 15 U.S.C. 2063(a), to importers and U.S. domestic manufacturers;

(2) Specifies the content, form, and availability requirements of the CPSA that must be met for a certificate to satisfy the certificate requirements of section 14(a); and

(3) Specifies means by which an electronic certificate shall meet those requirements.

(b) This part 1110 does not address issues related to type or frequency of testing necessary to satisfy the certification requirements of CPSA section 14(a). It does not address issues related to CPSA section 14(g)(4) concerning advance filing of electronic certificates of compliance with the Commission and/or the Commissioner of Customs.

§ 1110.3 Definitions.

The following definitions apply for purposes of this part 1110.

(a) *Electronic certificate* means, for purposes of this part 1110, a set of information available in, and accessible by, electronic means that sets forth the information required by CPSA section 14(a) and section 14(g) and that meets the availability requirements of CPSA section 14(g)(3).

(b) Unless otherwise stated, the definitions of section 3 of the CPSA and additional definitions in the Consumer Product Safety Improvement Act of 2008 (CPSIA), Pub. L. 110–314, apply for purposes of this part 1110.

§ 1110.5 Acceptable certificates.

A certificate that is in hard copy or electronic form and complies with all applicable requirements of this part 1110 meets the certificate requirements of section 14 of the CPSA. This does not relieve the importer or domestic manufacturer from the underlying statutory requirements concerning the supporting testing and/or other bases to support certification and issuance of certificates.

§ 1110.7 Who must certify and provide a certificate.

(a) *Imports.* Except as otherwise provided in a specific standard, in the case of a product manufactured outside the United States, only the importer must certify in accordance with, and provide the certificate required by,

CPSA section 14(a) as applicable, that the product or shipment in question complies with all applicable CPSA rules and all similar rules, bans, standards, and regulations applicable to the product or shipment under any other Act enforced by the Commission.

(b) *Domestic products.* Except as otherwise provided in a specific standard, in the case of a product manufactured in the United States, only the manufacturer must certify in accordance with, and provide the certificate required by, CPSA section 14(a) as applicable, that the product or shipment in question complies with all applicable CPSA rules and all similar rules, bans, standards, and regulations applicable to the product or shipment under any other Act enforced by the Commission.

(c) *Availability of certificates.*

(1) *Imports.* In the case of imports, the certificate required by CPSA section 14(a) must be available to the Commission from the importer as soon as the product or shipment itself is available for inspection in the United States.

(2) *Domestic products.* In the case of domestic products, the certificate required by CPSA section 14(a) must be available to the Commission from the manufacturer prior to introduction of the product or shipment in question into domestic commerce.

§ 1110.9 Form of certificate.

As required by CPSA section 14(g)(2), the information on a hard copy or electronic certificate must be provided in English and may be provided in any other language.

§ 1110.11 Content of certificate.

As required by CPSA sections 14(a) and 14(g), a certificate must contain the following information:

(a) Identification of the product covered by the certificate.

(b) Citation to each CPSC product safety regulation or statutory requirement to which the product is being certified. Specifically, the certificate shall identify separately each applicable consumer product safety rule under the Consumer Product Safety Act and any similar rule, ban, standard or regulation under any other Act enforced by the Commission that is applicable to the product.

(c) Identification of the importer or domestic manufacturer certifying compliance of the product, including the importer or domestic manufacturer's name, full mailing address, and telephone number.

(d) Contact information for the individual maintaining records of test results, including the custodian's name, e-mail address, full mailing address, and telephone number. (CPSC suggests that each issuer maintain test records supporting the certification for at least three years as is currently required by certain consumer product specific CPSC standards, for example at 16 CFR 1508.10 for full-size baby cribs.)

(e) Date (month and year at a minimum) and place (including city and state, country, or administrative region) where the product was manufactured. If the same manufacturer operates more than one location in the same city, the street address of the factory in question should be provided.

(f) Date and place (including city and state, country or administrative region) where the product was tested for compliance with the regulation(s) cited above in subsection (b).

(g) Identification of any third-party laboratory on whose testing the certificate depends, including name, full mailing address and telephone number of the laboratory.

§ 1110.13 Availability of electronic certificate.

(a) CPSA section 14(g)(3) requires that the certificates required by section 14(a) ''accompany'' each product or product shipment and be ''furnished'' to each distributor and retailer of the product in question.

(1) An electronic certificate satisfies the ''accompany'' requirement if the certificate is identified by a unique identifier and can be accessed via a World Wide Web URL or other electronic means, provided the URL or other electronic means and the unique identifier are created in advance and are available, along with access to the electronic certificate itself, to the Commission or to the Customs authorities as soon as the product or shipment itself is available for inspection.

(2) An electronic certificate satisfies the ''furnish'' requirement if the distributor(s) and retailer(s) of the product are provided a reasonable means to access the certificate.

(b) An electronic certificate shall have a means to verify the date of its creation or last modification.

§ 1110.15 Legal responsibility for certificate information.

Any entity or entities may maintain an electronic certificate platform and may enter the requisite data. However, the entity or entities required by CPSA section 14(a) to issue the certificate remain legally responsible for the accuracy and completeness of the certificate information required by statute and its availability in timely fashion.

Dated: November 10, 2008.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E8–27356 Filed 11–13–08; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 601

[Docket No. FDA–2006–N–0364] (formerly Docket No. 2006N–0466)

Exceptions or Alternatives to Labeling Requirements for Products Held by the Strategic National Stockpile; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations to reincorporate a regulation that was inadvertently removed. This action is being taken to correct the regulations.

DATES: This rule is effective November 18, 2008.

FOR FURTHER INFORMATION CONTACT: Tiffany J. Brown, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA has discovered that an error appeared in the agency's codified regulations for part 601 (21 CFR part 601). In the **Federal Register** of December 28, 2007 (72 FR 73589), FDA published an interim final rule that inadvertently revised § 601.12(f)(3)(i)(D) (21 CFR 601.12(f)(3)(i)(D)) instead of adding a new paragraph, § 601.12(f)(3)(i)(E). Accordingly, § 601.12(f)(3)(i)(D), which was added in the **Federal Register** of January 24, 2006 (71 FR 3922), is being reincorporated into the regulations to replace current § 601.12(f)(3)(i)(D); current § 601.12(f)(3)(i)(D) is being redesignated as § 601.12(f)(3)(i)(E). This document corrects the errors described previously. Publication of this document constitutes final action under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because this amendment is nonsubstantive.

List of Subjects in 21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 601 is amended as follows:

PART 601—LICENSING

■ 1. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: 15 U.S.C. 1451–1561; 21 U.S.C. 321, 351, 352, 353, 355, 356b, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263, 264; sec 122, Pub. L. 105–115, 111 Stat. 2322 (21 U.S.C. 355 note).

■ 2. In § 601.12, redesignate paragraph (f)(3)(i)(D) as paragraph (f)(3)(i)(E) and add new paragraph (f)(3)(i)(D) to read as follows:

§ 601.12 Changes to an approved application.

* * * * *

(f) * * *

(3)(i) * * *

(D) A change to the information required in § 201.57(a) of this chapter as follows:

(*1*) Removal of a listed section(s) specified in § 201.57(a)(5) of this chapter; and

(*2*) Changes to the most recent revision date of the labeling as specified in § 201.57(a)(15) of this chapter.

* * * * *

Dated: November 10, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–27254 Filed 11–17–08; 8:45 am]

BILLING CODE 4160–01–S

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4041 and 4042

RIN 1212–AB14

Disclosure of Termination Information

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is a final rule to implement section 506 of the Pension Protection Act of 2006 (Pub. L. 109–280) which amends sections 4041 and 4042 of ERISA. These amendments require that a plan administrator disclose information it has submitted to PBGC in connection with a distress termination filing, and that a plan administrator or plan sponsor disclose information it has submitted to PBGC in connection with a PBGC-initiated termination. The new provisions also require PBGC to disclose the administrative record in a PBGC-initiated termination. The disclosures must be made to an affected party upon request.

DATES: Effective December 18, 2008. For information about applicability of the amendments made by this rule, see Applicability in the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kenneth Cooper, Assistant General Counsel; or Catherine Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Background

Pension Benefit Guaranty Corporation (''PBGC'') administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 , as amended (''ERISA''), 29 U.S.C. 1301–1461. Sections 4041 and 4042 of ERISA govern the termination of single-employer defined benefit pension plans that are subject to Title IV. A plan administrator may initiate a distress termination by sending a notice of intent to terminate to all affected parties pursuant to section 4041(a)(2). Under section 4042 of ERISA, PBGC may itself initiate proceedings to terminate a pension plan if it determines that certain conditions are present.

Under section 4041(c), a single-employer plan may terminate in a distress termination if PBGC determines that the requirements of section 4041(c)(2)(B) are met. Before PBGC can make this determination, the plan administrator must provide certain information to PBGC pursuant to section 4041(c)(2)(A). Under § 4041.45(c) of PBGC's regulation on Termination of Single Employer Plans, 29 CFR part 4041, PBGC may also require the submission of additional information.

PBGC determines whether a plan meets the criteria for a distress termination or a PBGC-initiated termination through an informal adjudicatory process. If PBGC staff believe that a plan should be terminated, a written recommendation is prepared. With certain exceptions, the recommendation is then reviewed by the Trusteeship Working Group (''TWG''), an interdepartmental body comprised of representatives from PBGC's financial, actuarial, policy, regulatory, and legal departments. If the TWG agrees with the staff recommendation, it forwards its own recommendation concerning the termination to the Director or other designated official (''Deciding Official''). All determinations are documented in a trusteeship decision record.

As part of the informal adjudicatory process, PBGC staff may present or make available to the TWG information and documents that relate to a termination recommendation and, if the TWG recommends termination, to the Deciding Official. This material may include information that PBGC has obtained from the plan sponsor or plan administrator, as well as other information that PBGC has obtained or generated.

For PBGC-initiated terminations, if the Deciding Official approves the termination, PBGC sends a notice to the plan administrator that the determination has been made (''Notice of Determination''). The plan may then be terminated by agreement or PBGC may apply to the appropriate district court for a decree adjudicating that the plan must be terminated.

PPA 2006 Amendments

On August 17, 2006, the President signed into law the Pension Protection Act of 2006, Pub. L. 109–280 (''PPA 2006''). Section 506 of PPA 2006 adds disclosure provisions to both sections 4041 and 4042 of ERISA. These provisions allow an affected party to request information related to a plan termination from the plan administrator in the case of a distress termination under section 4041, and from the plan administrator, plan sponsor, and PBGC in the case of a termination under section 4042. ''Affected party'' is defined in section 4001(a)(21) of ERISA to include each participant in the plan, each beneficiary under the plan, each employee organization representing plan participants, and PBGC.

With respect to distress terminations, the new provisions require that a plan administrator that has filed a Notice of Intent to Terminate must provide to an affected party, upon request, information submitted to PBGC in conjunction with the distress termination. This information must be provided not later than 15 days after receipt of the request. One of the new provisions allows a court to limit disclosure of confidential information to an authorized representative of the

participants and beneficiaries that agrees to keep the information confidential.

With respect to PBGC-initiated terminations, the new provisions require that, following receipt by the plan administrator of a Notice of Determination, the plan sponsor, plan administrator, and PBGC must provide information related to the termination to an affected party upon request. The plan sponsor or plan administrator must, not later than 15 days after receipt of a request, provide copies of any information it provided to PBGC in connection with the termination. PBGC must, not later than 15 days after receipt of a request, provide a copy of the administrative record, including the trusteeship decision record. As in the distress termination provisions, one of the new provisions allows a court to limit disclosure of confidential information to an authorized representative. The new provisions are applicable to terminations initiated on or after August 17, 2006.

On December 5, 2007 (at 72 FR 68542), PBGC published a proposed rule to amend sections 4041 and 4042 of ERISA to implement the provisions of section 506 of PPA 2006. PBGC received two comments on the proposed rule, one from a labor union and one from a business federation.

One commenter suggested that the final rule explicitly recognize that the new disclosure provisions in sections 4041(c)(2)(D) and 4042(c)(3) of ERISA do not alter any disclosure obligations under other federal statutes and rules. The provisions added by section 506 of PPA 2006 apply only to the disclosure of information in connection with a distress termination or PBGC-initiated termination under Title IV of ERISA and are independent of disclosure requirements in other statutes. However, PBGC does not believe it is necessary to revise the final regulation in response to this comment.

Both commenters commented on the confidentiality provisions in the final rule. One commenter suggested that the final rule provide some guidance regarding reasonable fees that may be charged by a plan administrator. These points are discussed below with the topics to which they relate.[1]

The final regulation is unchanged from the proposed regulation, except that the final regulation states explicitly, with reference to the applicable statutory provisions, that plan administrators in distress and PBGC-initiated terminations, and plan sponsors in PBGC-initiated terminations, may charge a reasonable fee for any information provided in other than electronic form.

Final Regulation

General Provisions

Section 506 of PPA 2006 generally requires that information be provided to an affected party upon request. The final regulation requires that all requests to the plan administrator, plan sponsor, or PBGC be made in writing, and contain information relating to the plan, and the requestor's status as an affected party.

Section 506 of PPA 2006 requires that the plan administrator, plan sponsor, or PBGC provide information not later than 15 days after receipt of a request. A plan administrator or plan sponsor must also provide information not later than 15 days after the submission of additional information to PBGC. For this purpose, because a large amount of information may need to be disclosed in a short time, PBGC is interpreting ''day'' to mean ''business day,'' as defined in § 4000.22 of PBGC's regulation on Filing, Issuance, Computation of Time, and Record Retention, 29 CFR part 4000.

Sections 4041(c)(2)(D)(iii) and 4042(c)(3)(D) of ERISA, added by PPA 2006, state that PBGC may prescribe the form and manner of the provision of information under the respective provisions. These provisions state that information may be delivered ''in written, electronic or other appropriate form to the extent such form is reasonably accessible'' to the individual who makes the request. PBGC's issuance rules in part 4000, subpart B, are appropriate for the provision of information under sections 4041(c)(2)(D)(iii) and 4042(c)(3)(D). Accordingly, the provision of information under section 4041(c)(2)(D)(iii) will be governed by § 4041.3 of PBGC's current regulation, which provides that subpart B of part 4000 applies to issuances relating to plan terminations. The date of issuance will be determined in accordance with part 4000, subpart C, as provided in § 4041.3.

With respect to a PBGC-initiated termination, the final regulation requires that a plan administrator or plan sponsor respond to a request under section 4042(c)(3)(D) of ERISA in accordance with part 4000, subpart B. The final regulation further provides that the date of issuance is determined in accordance with the rules in part 4000, subpart C.

Sections 4041(c)(2)(D)(iii)(II) and 4042(c)(3)(D)(ii) of ERISA provide that a plan administrator, in the case of a distress termination, and a plan sponsor, in the case of a PBGC-initiated termination, may charge a reasonable fee for any information provided in other than electronic form. As noted above, a commenter suggested that PBGC provide, at minimum, some direction to plan administrators and plan sponsors with regard to what constitutes a reasonable fee. The commenter suggested that PBGC look to FOIA and to section 104(b)(4) of ERISA.

Unlike FOIA, which states that ''each agency shall promulgate regulations * * * specifying the schedule of fees applicable to the processing of requests * * *'' (5 U.S.C. § 552(a)(4)(A)(i)), there is no directive to establish fee schedules in sections 4041(c)(2)(D)(iii) and 4042(c)(3)(D) of ERISA. Moreover, while these sections state that PBGC may prescribe the form and manner of disclosure, they do not contain language similar to that in section 104(b)(4) of ERISA with respect to prescribing the maximum amount of a reasonable fee. For these reasons, PBGC has decided not to accommodate the commenter's suggestion.

PBGC has added references to sections 4041(c)(2)(D)(iii)(II) and 4042(c)(3)(D)(ii) of ERISA to the final regulation.

Information To Be Disclosed by Plan Administrator in Distress Terminations

Under section 4041(a)(2) of ERISA, a plan administrator that seeks to terminate a plan in a distress termination must provide a notice of intent to terminate to each affected party. The notice must include information required under PBGC's regulations. Section 4041.43 of PBGC's regulation on Termination of Single Employer Plans specifies the information that must be included in a notice of intent to terminate that is issued to affected parties other than PBGC. The regulation also requires that a separate notice with additional information be filed with PBGC on PBGC Form 600, Distress Termination, Notice of Intent to Terminate. After the

[1] One commenter suggested that the final regulation allow for an exception to the assumed receipt date of three business days after PBGC issues a notice that a plan should be terminated. The commenter suggested that a plan administrator or plan sponsor be allowed to use the actual receipt date if it can prove that actual receipt occurred after three business days. The commenter incorrectly stated that the assumed receipt date starts the clock for the fifteen business days a plan administrator has to respond to a request from an affected party for information about the termination. However, the assumed receipt date is the earliest date on which an affected party may make a request for information. If a plan administrator or plan sponsor receives a request from an affected party on or after that date, it then has fifteen business days to provide the information.

notices of intent to terminate have been issued to affected parties other than PBGC and the Form 600 has been filed with PBGC, additional information must be submitted to PBGC at a later date in accordance with section 4041(c)(2) of ERISA and § 4041.45 of the regulation.

Section 4041(c)(2)(D)(i) of ERISA, added by PPA 2006, states in relevant part:

> A plan administrator that has filed a notice of intent to terminate under subsection (a)(2) shall provide to an affected party any information provided to the corporation under subsection (a)(2) not later than 15 days after—
>
> (I) receipt of a request from the affected party for the information; or
>
> (II) the provision of new information to the corporation relating to a previous request.

PBGC is interpreting this provision as requiring disclosure of the Form 600 and any additional information submitted to PBGC under section 4041(c)(2) of ERISA. PBGC recognizes that because the statute references only section 4041(a)(2), which addresses the notice of intent to terminate, it is possible to read section 4041(c)(2)(D)(i) as requiring that a plan administrator disclose only the Form 600. Such a narrow reading, however, would be at odds with Congress's intent to provide greater disclosure of information submitted to PBGC in connection with a distress termination.

The Technical Explanation of PPA 2006 prepared by the staff of the Joint Committee on Taxation states that section 506 requires ''a plan administrator to provide an affected party with any information provided to PBGC in connection with the proposed plan termination.'' The broad reference to ''any information * * * in connection with the proposed plan termination''—without the limitation to section 4041(a)(2)—suggests the required disclosures include information submitted to PBGC under section 4041(c)(2), in addition to the Form 600 filed pursuant to section 4041(a)(2) and the implementing regulation. Further, because a plan administrator files the Form 600 once, requiring disclosure of only the Form 600 would give no effect to the requirement in section 4041(c)(2)(D)(i)(II) that a plan administrator must provide copies of new information it submits to PBGC not later than 15 days after such submission.

In light of these considerations, the final regulation provides that, upon written request of an affected party, a plan administrator must provide copies of any information submitted to PBGC pursuant to sections 4041(a)(2) and 4041(c)(2) of ERISA and sections 4041.43 and 4041.45 of the regulation not later than 15 business days after receipt of the request. If PBGC Form 600 has not been filed with PBGC at the time of the request, the final regulation requires the plan administrator to provide the information not later than 15 business days after PBGC Form 600 is filed. In addition, the final regulation requires that if the plan administrator has provided information in response to a request and later submits additional information to PBGC in connection with the proposed distress termination, the plan administrator must, not later than 15 business days after the submission, provide copies of that information to any affected party that has made a previous request.

If a plan administrator fails to provide information under section 4041(c)(2)(D)(i) of ERISA and the implementing regulation within the specified timeframe, PBGC may assess penalties under section 4071 of ERISA.

Information To Be Disclosed by Plan Administrator and Plan Sponsor in a Termination Initiated by PBGC

Section 4042(c)(3) of ERISA imposes disclosure requirements on the plan administrator, the plan sponsor, and PBGC in connection with a PBGC-initiated termination. With regard to the plan sponsor and plan administrator, section 4042(c)(3)(A)(i) provides that, upon request:

> A plan sponsor or plan administrator of a single-employer plan that has received a notice from [PBGC] of a determination that the plan should be terminated under this section shall provide to an affected party any information provided to the corporation in connection with the plan termination.

Under this provision, an affected party may request termination information only after the plan administrator has received a Notice of Determination from PBGC that the plan should be terminated. The final regulation adopts an assumed receipt date of three business days after PBGC issues the Notice of Determination. Thus, a request for information may be made on or after the third business day after the Notice of Determination is issued. Once such a request is received by the plan administrator or plan sponsor, the information must be provided not later than 15 business days after receipt of the request. As in the case of a distress termination, if new information relating to the request is submitted to PBGC, copies must be provided, not later than 15 business days after the submission, to any affected party that has made a previous request.

A plan administrator or plan sponsor that fails to provide information requested under section 4042(c)(3) of ERISA and the implementing regulation within the specified timeframe may be subject to penalties under section 4071 of ERISA.

Disclosure of Administrative Record by PBGC in Terminations Initiated by PBGC

Section 4042(c)(3)(A)(ii) of ERISA states that, upon request of an affected party, PBGC ''shall provide a copy of the administrative record, including the trusteeship decision record of a termination of a plan'' not later than 15 days after receipt of the request. The right to request a copy of the administrative record arises only after a Notice of Determination that the plan should be terminated is received by the plan administrator. As in the provisions relating to requests for information from the plan administrator or plan sponsor, the final regulation adopts an assumed receipt date of 3 business days after PBGC issues the Notice of Determination. Thus, a request for the administrative record may be made on or after the third business day after the Notice of Determination is issued. The final regulation further provides that PBGC will send the administrative record to the affected party not later than 15 business days after it receives the request, and will use measures reasonably calculated to ensure actual receipt (including electronic measures). This standard is analogous to the requirements in Part 4000, subpart B, that the plan administrator and plan sponsor must follow.

Disclosure of Confidential Information by Plan Administrator and Plan Sponsor

Sections 4041(c)(2)(D)(ii)(I) and 4042(c)(3)(C)(i) of ERISA prohibit the disclosure by the plan administrator, in connection with a distress termination, and the plan administrator or plan sponsor, in connection with a PBGC-initiated termination, of information ''that may directly or indirectly be associated with, or otherwise identify, an individual participant or beneficiary.'' The final regulation incorporates this restriction.

In addition, both sections 4041(c)(2)(D)(ii)(I) and 4042(c)(3)(C)(i) of ERISA provide a means for a plan sponsor or plan administrator to seek to restrict the disclosure of confidential information that would be exempt from disclosure under Freedom of Information Act (''FOIA''). Under section 552(b)(4) of FOIA, an agency has discretion to withhold documents on

matters that are ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' Sections 4041(c)(2)(D)(ii)(II) and 4042(c)(3)(C)(ii) provide that a court may limit disclosure of confidential information described in section 552(b) of FOIA, 5 U.S.C. 552(b), to ''authorized representatives * * * of the participants or beneficiaries that agree to ensure the confidentiality of such information.'' Section 4041(c)(2)(D)(iv) defines ''authorized representative'' for purposes of both sections 4041 and 4042 as ''any employee organization representing participants in the pension plan.'' Accordingly, the final regulation provides that a plan administrator that has received a request for information in connection with a distress termination, and a plan administrator or plan sponsor that has received a request for information in connection with a PBGC-initiated termination, may seek a court order under which confidential information described in 5 U.S.C. 552(b) will be disclosed only to authorized representatives (within the meaning of section 4041(c)(2)(D)(iv) of ERISA) that agree to ensure the confidentiality of such information, and will not be disclosed to other affected parties.

Typically, the authorized representative will be a labor union in a plan maintained in conjunction with a collective bargaining agreement. However, there may be no authorized representative where the participants are not covered under a collective bargaining agreement. The new PPA 2006 provisions do not address limiting disclosure of confidential information in such cases.

One commenter suggested that the final rule recognize that a confidentiality agreement voluntarily entered into between the appropriate parties may be substituted for a court order. PBGC is not adopting this suggestion. With respect to requests to a plan administrator or plan sponsor, nothing in the final rule precludes a plan administrator or plan sponsor from entering into a confidentiality agreement with an affected party in lieu of obtaining a court order.

Disclosure of Confidential Information by PBGC

By its terms, section 4042(c)(3)(C)(i) of ERISA, which prohibits disclosure of information that identifies an individual participant or beneficiary, applies to a plan administrator or plan sponsor, but not to PBGC. This may be because PBGC is already prohibited from disclosing such information. Under the Privacy Act, 5 U.S.C. 552a, PBGC is prohibited from disclosing personally identifiable information with regard to a participant or beneficiary, without the individual's written consent. There are narrow exceptions stated in 5 U.S.C. 552a(b), but none apply to disclosure of identifying information that may be part of the administrative record in a PBGC-initiated termination. Accordingly, the final regulation states that PBGC shall not disclose any portions of the administrative record that it is prohibited from disclosing under 5 U.S.C. 552a.

With respect to disclosure of confidential information, PBGC believes that, under the provisions added by section 506 of PPA 2006, it must disclose any part of the administrative record that contains confidential information, except as limited by a court. Unlike FOIA, which specifies categories of information that are exempt from disclosure, there are no exemptions under section 4042(c)(3) of ERISA. Rather, disclosure may only be limited by a court to the extent provided in section 4042(c)(3)(C)(ii).

In addition, PBGC believes that the Trade Secrets Act, 18 U.S.C. 1805, does not apply to disclosure of the administrative record under section 4042(c)(3) of ERISA. The Trade Secrets Act prohibits disclosure of trade secrets and related information ''to any extent not authorized by law.'' PBGC believes that the disclosure requirements with respect to PBGC, as set forth in section 4042(c)(3), compel PBGC to disclose the administrative record upon request, subject only to limitation by a court as provided in section 4042(c)(3)(C)(ii). As a result, such disclosure is ''authorized by law.''

Additionally, PBGC does not believe that information it receives under sections 4010 or 4043 of ERISA that becomes part of an administrative record is exempt from disclosure under section 4042(c)(3). Information and documents submitted to PBGC under those sections are ''exempt from disclosure under [FOIA], and * * * may not be made public, except as may be relevant to any administrative or judicial action or proceeding.'' 29 U.S.C. 1310(c), 1343(f). The exemption from disclosure under FOIA does not apply to disclosure of the administrative record because requests for the administrative record are made under section 4042(c)(3), not under FOIA. In addition, since material in the administrative record relates to an administrative action or proceeding, the restriction on making such material public does not apply.

To address the potential disclosure of confidential information that is part of an administrative record, the final regulation provides that PBGC will promptly notify the plan administrator and plan sponsor upon receipt of a request for the administrative record from an affected party. PBGC expects that this notification will be made not later than the second business day after receipt of the request. Under the final regulation, the plan administrator or plan sponsor may then seek a court order under which disclosure of those portions of the administrative record that contain confidential information described in 5 U.S.C. 552(b) will be made only to authorized representatives (within the meaning of section 4041(c)(2)(D)(iv) of ERISA) that agree to ensure the confidentiality of such information, and will not be disclosed to other affected parties. The final regulation further provides that if PBGC receives such a court order prior to the 15th business day after PBGC receives a request for the administrative record, PBGC will disclose confidential information that is part of the administrative record only as provided in the order.

One commenter expressed concern that the confidentiality provisions do not extend to the administrative record provided by PBGC and that requiring a court order seems to be an unnecessary step. However, as explained above, the confidentiality provisions do extend to the administrative record, and the court order is required under the PPA 2006 amendment.

As noted above under Disclosure of Confidential Information by Plan Administrator and Plan Sponsor, PBGC is not adopting a commenter's suggestion that the final rule recognize that a confidentiality agreement voluntarily entered into between the appropriate parties may be substituted for a court order. With respect to disclosure of an administrative record by PBGC, PBGC cannot rely on a confidentiality agreement between private parties to determine its statutory obligations to persons who are not parties to the agreement.

Applicability

The amendments in this final regulation are applicable to terminations initiated on or after August 17, 2006, but only to requests for information made on or after December 18, 2008.

Compliance With Rulemaking Guidelines

E.O. 12866

PBGC has determined, in consultation with the Office of Management and Budget, that this final rule is not a

''significant regulatory action'' under Executive Order 12866. PBGC identifies the following specific problems that warrant this agency action:

• The statute does not specify the form and manner in which information requested must be provided to the affected party, but instead states that PBGC may prescribe such requirements. Without rules for how the information is to be provided, plan administrators and plan sponsors will not know whether the method they choose for providing requested information is appropriate.

• There is uncertainty in the statute with respect to the information that a plan administrator that has filed a notice of intent to terminate a plan in a distress termination must provide, upon request, to an affected party. Without rules for what information is to be provided, plan administrators will not know what information they must provide, and affected parties will not know what information they are entitled to receive.

• There is uncertainty in the statute with respect to determining the date as of which an affected party may request information provided to PBGC in connection with a PBGC-initiated termination. Without clarification, affected parties will not know when they can begin to request information, and plan administrators, plan sponsors, and PBGC will not know when their obligation to provide information arises.

• Unlike FOIA, which specifies categories of information that are exempt from disclosure, section 4042(c)(3)(c)(ii) of ERISA provides only that a court may limit disclosure by PBGC of confidential information described in section 552(b) to an authorized representative. The statute does not specify when and by whom court limitation may be sought in cases where PBGC receives a request for the administrative record. Without clarification, plan administrators and plan sponsors will not know how disclosure of confidential information they submitted to PBGC can be limited.

Regulatory Flexibility Act

PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that the amendments in this final regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), sections 603 and 604 do not apply.

The final rule implements statutory changes made by Congress. It prescribes the form and manner for providing requested information and clarifies the type of information that must be provided and the timeframes for providing such information. It also provides for notification by PBGC to the plan sponsor and plan administrator of a request for an administrative record so that the plan sponsor or plan administrator can, if it chooses, seek a court order limiting disclosure of confidential information as provided in the statute. These provisions impose no significant burden beyond the burden imposed by statute.

Paperwork Reduction Act

The information collection requirements under this rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act (OMB control number 1212–0065; expires October 31, 2011). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. This information is needed in order to provide sufficient information to affected parties about the termination or possible termination of their pension plans.

List of Subjects

29 CFR Part 4041

Disclosure, Pensions, Termination of pension plans.

29 CFR Part 4042

Disclosure, Pensions, Termination of pension plans.

■ For the reasons given above, 29 CFR chapter XL is amended as follows:

PART 4041—TERMINATION OF SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4041 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, 1344, 1350.

■ 2. New § 4041.51 is added to read as follows:

§ 4041.51 Disclosure of information by plan administrator in distress termination.

(a) *Request for Information*—(1) *In general.* If a notice of intent to terminate under § 4041.43 is issued with respect to a plan, an affected party may make a request to the plan administrator for information submitted to PBGC under sections 4041(a)(2) and 4041(c)(2) of ERISA and §§ 4041.43 and 4041.45.

(2) *Requirements.* A request under paragraph (a) of this section must:

(i) Be in writing to the plan administrator;

(ii) State the name of the plan and that the request is for information submitted to PBGC with respect to the application for a distress termination of the plan;

(iii) State the name of the person making the request for information and such person's relationship to the plan (e.g., plan participant), and that such relationship meets the definition of affected party under § 4001.2 of this chapter; and

(iv) Be signed by the person making the request.

(b) *Response by Plan Administrator*—(1) *Information.* The information that a plan administrator must provide in response to a request under paragraph (a) of this section includes PBGC Form 600, and any information submitted to PBGC pursuant to section 4041(c)(2) of ERISA and § 4041.45.

(2) *Timing of response.* A plan administrator that receives a request under paragraph (a) of this section must provide the information requested not later than the 15th business day (as defined in § 4000.22 of this chapter) after receipt of the request.

(3) *Deferral of due date.* If, at the time the plan administrator receives a request under paragraph (a) of this section, the plan administrator has not filed a PBGC Form 600, the plan administrator must provide the information requested under paragraph (a) not later than the 15th business day (as defined in § 4000.22 of this chapter) after a PBGC Form 600 is filed with PBGC.

(4) *Supplemental responses.* If, at any time after the later of the receipt of a request under paragraph (a) of this section, or the filing of PBGC Form 600, the plan administrator submits additional information to PBGC with respect to the plan termination under section 4041(c)(2) of ERISA and § 4041.45, the plan administrator must, not later than the 15th business day (as defined in § 4000.22 of this chapter) after each additional submission, provide the additional information to any affected party that has made a request under paragraph (a) of this section.

(5) *Confidential information.* (i) In responding to a request under paragraph (a) of this section, the plan administrator shall not provide information that may, directly or indirectly, identify an individual participant or beneficiary of the plan.

(ii) A plan administrator that has received a request under paragraph (a) of this section may seek a court order under which confidential information described in section 552(b) of title 5, United States Code—

(A) Will be disclosed only to authorized representatives (within the meaning of section 4041(c)(2)(D)(iv) of

ERISA) that agree to ensure the confidentiality of such information, and,

(B) Will not be disclosed to other affected parties.

(6) *Reasonable fees.* Under section 4041(c)(2)(D)(iii)(II) of ERISA, a plan administrator may charge a reasonable fee for any information provided under this section in other than electronic form.

■ 3. New part 4042 is added to read as follows:

PART 4042—SINGLE-EMPLOYER PLAN TERMINATION INITIATED BY PBGC

Subpart A—General Provisions

Sec.
4042.1 Purpose and scope.
4042.2 Definitions.
4042.3 Issuance rules.

Subpart B—Reserved

Subpart C—Disclosure

4042.4 Disclosure of information by plan administrator or plan sponsor.
4042.5 Disclosure of administrative record by PBGC.

Authority: 29 U.S.C. 1302(b)(3), 1342.

Subpart A—General Provisions

§ 4042.1 Purpose and scope.

This part sets forth rules and procedures relating to single-employer plan terminations initiated by PBGC under section 4042 of ERISA.

§ 4042.2 Definitions.

The following terms used in this part are defined in § 4001.2 of this chapter: *Affected party, ERISA, PBGC,* and *plan administrator.*

§ 4042.3 Issuance rules.

PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part. PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

Subpart B—Reserved

Subpart C—Disclosure

§ 4042.4 Disclosure of information by plan administrator or plan sponsor.

(a) *Request for Information*—(1) *In general.* Beginning on the third business day (as defined in § 4000.22 of this chapter) after PBGC has issued a notice under section 4042 of ERISA that a plan should be terminated, an affected party may make a request to the plan sponsor or the plan administrator (or both) for any information that such plan administrator or plan sponsor has submitted to PBGC in connection with the plan termination.

(2) *Requirements.* A request under paragraph (a) of this section must:

(i) Be in writing to the plan administrator or plan sponsor;

(ii) State the name of the plan and that the request is for information submitted to PBGC in connection with the plan termination;

(iii) State the name of the person making the request for information and such person's relationship to the plan (e.g., plan participant), and that such relationship meets the definition of affected party under § 4001.2 of this chapter; and

(iv) Be signed by the person making the request.

(b) *Response by Plan Administrator or Plan Sponsor*—(1) *Timing of response.* A plan administrator or plan sponsor that receives a request under paragraph (a) of this section must provide the information requested not later than the 15th business day (as defined in § 4000.22 of this chapter) after receipt of the request.

(2) *Supplemental responses.* If, at any time after receipt of a request under paragraph (a), the plan administrator or plan sponsor submits additional information to PBGC in connection with the plan termination, the plan administrator or plan sponsor must provide such additional information to any affected party that has made a request under paragraph (a), not later than the 15th business day (as defined in § 4000.22 of this chapter) after the information is submitted to PBGC.

(3) *Confidential information.* (i) In responding to a request under paragraph (a) of this section, the plan administrator or plan sponsor shall not provide information that may, directly or indirectly, identify an individual participant or beneficiary.

(ii) A plan administrator or plan sponsor that has received a request under paragraph (a) of this section may seek a court order under which confidential information described in section 552(b) of title 5, United States Code—

(A) Will be disclosed only to authorized representatives (within the meaning of section 4041(c)(2)(D)(iv) of ERISA) that agree, to ensure the confidentiality of such information, and

(B) Will not be disclosed to other affected parties.

(4) *Reasonable fees.* Under section 4042(c)(3)(D)(ii) of ERISA, a plan administrator or plan sponsor may charge a reasonable fee for any information provided under this section in other than electronic form.

§ 4042.5 Disclosure of administrative record by PBGC.

(a) *Request for Administrative Record*—(1) *In general.* Beginning on the third business day (as defined in § 4000.22 of this chapter) after PBGC has issued a notice under section 4042 of ERISA that a plan should be terminated, an affected party with respect to the plan may make a request to PBGC for the administrative record of PBGC's determination that the plan should be terminated.

(2) *Requirements.* A request under paragraph (a) of this section must:

(i) Be in writing;

(ii) State the name of the plan and that the request is for the administrative record with respect to a notice issued by PBGC under section 4042 of ERISA that a plan should be terminated;

(iii) State the name of the person making the request, the person's relationship to the plan (e.g., plan participant), and that such relationship meets the definition of affected party under § 4001.2 of this chapter; and

(iv) Be signed by the person making the request.

(3) A request under paragraph (a) of this section must be sent to PBGC's Disclosure Officer at the address provided on PBGC's Web site. To expedite processing, the request should be prominently identified as an ''Administrative Record Request.''

(b) *PBGC Response to Request for Administrative Record*—(1) *Notification of plan administrator and plan sponsor.* Upon receipt of a request under paragraph (a) of this section, PBGC will promptly notify the plan administrator and plan sponsor that it has received a request for the administrative record, and the date by which PBGC will provide the information to the affected party that made the request.

(2) *Confidential information.* (i) In responding to a request under paragraph (a) of this section, PBGC will not disclose any portions of the administrative record that are prohibited from disclosure under the Privacy Act, 5 U.S.C. 552a.

(ii) A plan administrator or plan sponsor that has received notification pursuant to paragraph (b)(1) of this section may seek a court order under which those portions of the administrative record that contain confidential information described in section 552(b) of title 5, United States Code—

(A) Will be disclosed only to authorized representatives (within the meaning of section 4041(c)(2)(D)(iv)) of ERISA) that agree to ensure the confidentiality of such information, and

(B) Will not be disclosed to other affected parties.

(iii) If, before the 15th business day (as defined in § 4000.22 of this chapter) after PBGC has received a request under paragraph (a), PBGC receives a court order as described in paragraph (b)(2)(ii) of this section, PBGC will disclose those portions of the administrative record that contain confidential information described in section 552(b) of title 5, United States Code, only as provided in the order.

(3) *Timing of response.* PBGC will send the administrative record to the affected party that made the request not later than the 15th business day (as defined in § 4000.22 of this chapter) after it receives the request.

(4) *Form and manner.* PBGC will provide the administrative record using measures (including electronic measures) reasonably calculated to ensure actual receipt of the material by the intended recipient.

Issued in Washington, DC, this 13 day of November, 2008.

Charles E.F. Millard,

Director, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing publication of this final rule.

Judith R. Starr,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. E8–27350 Filed 11–17–08; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[SATS Number NM–047–FOR]

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the New Mexico regulatory program (the ''New Mexico program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). New Mexico is proposing additions to and revisions of the New Mexico Administrative Code (NMAC) to improve and clarify the public notification process during permitting actions, to correct outdated citations, and to comply with formatting requirements for New Mexico administrative law. The revisions also include non-substantive editorial changes. New Mexico revised its program to provide additional safeguards, clarify ambiguities, and achieve stylistic consistency.

DATES: *Effective Date:* November 18, 2008.

FOR FURTHER INFORMATION CONTACT: Bob Postle, Branch Chief, Field Operations, Program Support Division; *Telephone:* (505) 248–5070; *Internet address: bpostle@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program
II. Submission of the Proposed Amendment
III. Office of Surface Mining Reclamation and Enforcement's (OSM's) Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the New Mexico Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (a)(7). On the basis of these criteria, the Secretary of the Interior conditionally approved the New Mexico program on December 31, 1980. You can find background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 31, 1980, **Federal Register** (45 FR 86459). You can also find later actions concerning New Mexico's program and program amendments at 30 CFR 931.10, 931.11, 931.13, 931.15, 931.16, and 931.30.

II. Submission of the Proposed Amendment

By letter dated November 28, 2007, New Mexico sent us an amendment to its program (SATS number NM–047–FOR; Administrative Record No. OSM–2007–0021–0002) under SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico sent the amendment to include changes made at its own initiative.

We announced receipt of the proposed amendment in the January 11, 2008, **Federal Register** (73 FR 1983). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. OSM–2007–0021–0002). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on February 11, 2008. We did not receive any comments.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

A. Minor Revisions to New Mexico's Rules

New Mexico proposed minor wording, editorial, punctuation, grammatical, citation, stylistic, and recodification changes to the following previously approved rules at NMAC:

- 19.8.1.7.B(1); G(1); N, and R(3)—Definitions
- 19.8.2.201.B.(2)(a)—Areas Where Mining Is Prohibited or Limited
- 19.8.2.202.F—Procedures/Review by Other Agencies
- 19.8.4.401.A and B—Procedures: Initial.
  Processing, Record-Keeping, and Notification Requirements
- 19.8.4.402.B—Procedures: Hearing Requirements
- 19.8.5.504.B—Permit Application Filing Deadlines
- 19.8.6.601.F—General Requirements: Exploration of Less Than 250 Tons
- 19.8.6.603.B(2)—Applications: Approval or Disapproval of Exploration of More Than 250 Tons
- 19.8.6.606.B—Public Availability of Information
- 19.8.7.705.A—Permit Term Information
- 19.8.7.708—Identification of Location of Public Office for Filing of Application
- 19.8.8.801.B—General Environmental Resources Information
- 19.8.8.803.B—Geology Description
- 19.8.8.814.A, B(5), D, and D(2)—Prime Farmland Investigation
- 19.8.9.901.B(1) and B(3)—Operation Plan: Existing Structures
- 19.8.9.903.B(3)—Operation Plan: Maps and Plans
- 19.8.9.906.B(2)—Reclamation Plan: General Requirements
- 19.8.9.907.B(1)—Reclamation Plan: Protection of Hydrologic Balance
- 19.8.9.909.A(2)—Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments
- 19.8.9.913—Relocation or Use of Public Roads
- 19.8.9.916—Transportation Facilities

- 19.8.9.917—Return of Coal Processing Waste to Abandoned Underground Workings
- 19.8.10.1000.A(4)(a) and A(4)(b)—Experimental Practices in Mining
- 19.8.10.1000.E—Experimental Practices in Mining
- 19.8.10.1001.A, B(1)(b), and (C)—Mountaintop Removal Mining
- 19.8.10.1002.B and C—Steep Slope Mining
- 19.8.10.1003.A(3) and A(4)(c)—Permits Incorporating Variances From Approximate Original Contour Restoration Requirements for Steep Slope Mining
- 19.8.10.1004.A(1), A(4), and B—Prime Farmlands
- 19.8.10.1005.B(8)—Variances for Delay in Contemporaneous Reclamation Required in Combined Surface and Underground Mining Operations
- 19.8.10.1006.C—Surface Coal Mining and Reclamation Operation on Areas or Adjacent to Areas Including Alluvial Valley Floors
- 19.8.11.1100.A(3)—Public Notices of Filing of Permit Applications
- 19.8.11.1101.A and C—Opportunity for Submission of Written Comments on Permit Applications
- 19.8.11.1102.B(2)—Right to File Written Objections
- 19.8.11.1103.B(4)—Hearings and Conferences
- 19.8.11.1105.B—Review of Permit Applications
- 19.8.11.1106.K—Criteria for Approval or Denial
- 19.8.11.1108.C—Criteria for Permit Approval or Denial: Existing Structures
- 19.8.11.1109.F—Permit Approval or Denial Actions
- 19.8.11.1111.B(4)—Permit Terms
- 19.8.11.1112.C—Conditions of Permits: General and Right of Entry
- 19.8.13.1301.G—Permit Revisions
- 19.8.13.1303.A(3) and B(2)—Permit Renewals: Complete Applications
- 19.8.13.1305.A(4)—Permit Renewals: Approval or Denial
- 19.8.13.1307.A(2)(d), B, and C(2)—Transfer, Assignment or Sale of Permit Rights: Obtaining Approval
- 19.8.14.1401.B and D—Requirement to File a Bond
- 19.8.14.1403.A, C, D, D(1), and D(2)—Period of Liability
- 19.8.14.1406.C, D, E, and E(2)—General Terms and Conditions of Bond
- 19.8.14.1407.A, B(1), and B(4)—Bond Requirements for Underground Coal Mines and Long-Term Coal-Related Surface Facilities and Structures
- 19.8.14.1409.A(1), B(3), D(1), and E—Collateral Bonds
- 19.8.14.1410.D(4)—Self-Bonding
- 19.8.14.1411.B—Replacement of Bonds
- 19.8.14.1412.A(3), B(2), C(2), and D—Requirement to Release Performance Bonds
- 19.8.14.1413.A(2)(b), C, and D—Forfeiture Bonds
- 19.8.14.1414.B and D—Terms and Conditions for Liability Insurance
- 19.8.19.1902.C and C(3)(c)—Performance Standards for Coal Exploration
- 19.8.20.2010.A—Hydrologic Balance: Water Quality Standards and Effluent Limitations
- 19.8.20.2017.E(1), E(2), E(4), and E(6)—Hydrologic Balance: Permanent and Temporary Impoundments
- 19.8.20.2019—Hydrologic Balance: Protection of Ground Water Recharge Capacity
- 19.8.20.2026.B, B(1), and B(2)—Hydrologic Balance: Underground Mine Entry and Access Discharges
- 19.8.20.2037.B—Disposal of Excess Spoil: Durable Rock Fills
- 19.8.20.2047—Coal Processing Waste: Dams and Embankments: General Requirements
- 19.8.20.2049.A(1)—Coal Processing Waste: Dams and Embankments: Design and Construction
- 19.8.20.2050—Air Resources Protection
- 19.8.20.2056—Backfilling and Grading: Covering Coal And Acid- and Toxic-forming Material
- 19.8.20.2065 and 2065.B—Revegetation: Standards for Success
- 19.8.20.2066—Revegetation: Tree and Shrub Stocking
- 19.8.24.2404.C(4)(a) and (b), C(5), and C(6)—Prime Farmland: Revegetation
- 19.8.26.2601.A, A(2), and D—Steep Slopes: Performance Standards
- 19.8.27.2701.B—Coal Processing Plants: Performance Standards
- 19.8.29.2900.B and H—Inspections
- 19.8.30.3001.J—Notices of Violation
- 19.8.30.3002.D—Permit Suspension or Revocation
- 19.8.31.3105.B—Procedure for Civil Penalty Assessment
- 19.8.31.3106.B and D—Procedure for Assessment Conference
- 19.8.31.3110.A—Amount of Individual Civil Penalty
- 19.8.34.3400—Scope
- 19.8.34.3401—Definition
- 19.8.34.3402 and 3402.A—Application Requirements and Procedures
- 19.8.34.3403—Contents of Applications for Exemption
- 19.8.34.3404—Public Availability of Information
- 19.8.34.3405—Requirements for Exemptions
- 19.8.34.3406—Conditions of Exemption and Right of Inspection and Entry
- 19.8.34.3407—Stockpiling of Minerals
- 19.8.34.3408 and 3408.C—Revocation and Enforcement
- 19.8.34.3409, 3409.A and A(2)—Reporting Requirements
- 19.8.35.12.C—How a Decision on a VER Request Will be Made
- 19.8.35.14—Availability of Records for VER Requests and Determinations

Because these changes are minor and nonsubstantive in nature, we find that they will not make New Mexico's previously approved rules less effective than the corresponding Federal regulations.

B. Revisions to New Mexico's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

New Mexico proposed revisions to the following rules containing language that is the same as or is similar to the corresponding sections of the Federal regulations (NMAC citation followed by Federal counterpart citation and NMAC section title):

- 19.8.1.7.G(1), 30 CFR 707.5, Definitions
- 19.8.13.1301.E(2)(b), 30 CFR 775.11(a), Permit Revisions
- 19.8.20.2065.A, 30 CFR 817.116(a)(1), Revegetation: Standards for Success
- 19.8.20.2065.B(1), 30 CFR 817.116(a)(2), Revegetation: Standards for Success
- 19.8.20.2068, 30 CFR 817.122, Subsidence Control: Public Notice
- 19.8.30.3000, 30 CFR 843.11(c), Cessation Orders
- 19.8.31.3108.B, 30 CFR 845.20(b), Final Assessment and Payment of Penalty
- 19.8.31.3110.B, 30 CFR 846.14(b), Amount of Individual Civil Penalty

Because these proposed rules contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations.

C. Revisions to New Mexico's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. NMAC 19.8.5.504.D, 30 CFR 773.6(c), Permit Application Filing Deadlines

New Mexico proposed to eliminate NMAC 19.8.5.504.D concerning applications for a permit to conduct surface coal mining and reclamation operations that do not meet the requirements of NMAC 19.8.5.501 and 19.8.5.502. NMAC 19.8.5.501 and 19.8.5.502 concern continuing interim

program permits and Federal permits, respectively. There are no longer any such interim or Federal permits that need to be continued in New Mexico, so citing them in this section is moot.

New Mexico also omitted the last sentence of 19.8.5.504.D, which makes reference to the rules and regulations of NMAC 19.8.11.1103.E, since 1103.E is proposed to be deleted with this amendment package. We approve these changes to New Mexico Administrative Code.

2. NMAC 19.8.7.701.F, Identification of Interests

New Mexico's existing rules require the applicant to submit the name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area. New Mexico proposed to modify its existing rules by adding language that requires the permit application to also include ''the owner of record and residents of all dwellings and structures on and within one-half mile (2640 feet) of any part of the proposed permit area''. This provision adds specificity and is no less effective than the Federal counterpart at 30 CFR 778.13(b), which requires ''the name and address of each owner of record of all property (surface and subsurface) *contiguous* to any part of the proposed permit area''. Therefore, we find that NMAC 19.8.7.701.F is no less effective than 30 CFR 778.13(b) and approve it.

3. NMAC 19.8.8.812.D, Maps: General Requirements

New Mexico proposed to modify its existing rules by adding language at NMAC 19.8.8.812.D, which coincides with the above listed proposed change to NMAC 19.8.7.701.F. The proposed revision to 812.D ensures that dwellings and structures, and names of present owners of record and residents of those dwellings and structures, on and within one-half mile (2640 feet) of the proposed permit area are included on the permit application maps. New Mexico's proposed rule includes a larger area and therefore protects more dwellings and structures than the Federal counterpart at 30 CFR 779.24(d) which requires that only the location of all buildings on and within 1000 feet of the proposed permit area are included on the permit application maps. For this reason, we find that NMAC 19.8.812.D is no less effective than 30 CFR 778.13(b) and approve this proposed change.

4. NMAC 19.8.11.1100.B(1) Through (4), Public Notices of Filing of Permit Applications

New Mexico added language to NMAC 19.8.11.1100 which expands upon the Federal counterpart rules at 30 CFR 773.6(a) concerning public participation and public notification in the permitting processing. New Mexico proposed to modify its rules to expand the options for notification of permit applications. The added language requires the permit applicant to: ''* * * Submit, at the time of filing the application, a plan approved by the director [of the New Mexico program] to provide notice using at least three of the methods listed below. If the director determines that significant non-English speaking populations live within the general area of the proposed mine, the applicant shall include at least one method that seeks to reach these populations. The notice shall summarize the information listed in, and shall be given prior to the last publication of the notice in, Subsection A of 19.8.11.1100 NMAC. The methods may include:

(1) Mailing a notice to the owners of record, as shown by the most recent property tax schedule, of all properties adjacent to the proposed permit area and to the owners of all properties containing a residence located within one-half mile (2640 feet) of the proposed permit area as identified in Subsection F of 19.8.7.701 NMAC;

(2) Posting a notice in at least four publicly accessible and conspicuous places, including the entrance to the proposed operation if that entrance is publicly accessible and conspicuous;

(3) Publishing a notice in a display ad at least three inches by four inches at a place in the newspaper calculated to give the general public the most effective notice; or

(4) Broadcasting public service announcements on radio stations that serve the general permit area''.

OSM supports any additional outreach to the public during the notification process. Because New Mexico's additions to NMAC result in more public notification than 30 CFR 773.6 requires, they are no less effective than the Federal regulations relating to public notification of permit applications. We approve these changes.

5. NMAC 19.8.11.1100.D(5), Public Notices of Filing of Permit Applications

New Mexico proposed to modify its existing rules to require that, in addition to Federal, State, Tribal, and local government agencies, governmental planning agencies, sewage and water treatment authorities, and water companies, written notifications shall also be sent to ''all persons on a list, maintained by the director, of individuals and organizations who have requested notice of applications under the act and who have provided a surface or electronic mail address to the director''. This means that in addition to the above listed agencies, non-agency interested parties or individuals have equal access to written notifications. Because New Mexico's proposed rule provides additional access to written notification of agency decisions, we find that NMAC 19.8.11.1100.D(5) is no less effective than 30 CFR 773.6(a)(3) and approve it.

6. NMAC 19.8.11.1100.E(3), Public Notices of Filing of Permit Applications

New Mexico proposed a provision at NMAC 19.8.11.1100.E(3) that requires written notification to be posted on a Web site maintained by the director after receipt of a complete application. This proposed rule creates and requires an additional way to notify the public about a permit application. Although there is no Federal counterpart that exists, this provision expands upon the requirements listed in 30 CFR 773.6(a) and is therefore no less effective than 30 CFR. We approve this proposed revision.

7. NMAC 19.8.11.1103.B, 30 CFR 773.6(c)(2), Hearings and Conferences

New Mexico proposed to add a provision that in addition to ''any person, whose interests are or may be adversely affected by the issuance, revision or renewal of the permit, or the officer or head of any federal, state, tribal or local government agency or authority'', the *director* may also motion for an informal conference. This proposed change is more inclusive than the Federal counterpart at 30 CFR 773.6(c)(2), since an additional entity may request an informal conference. Therefore, we approve this proposed revision to NMAC 19.8.11.1103.B.

8. NMAC 19.8.11.1103.E, 30 CFR 773.6(c)(2) and 30 CFR 775.11, Hearings and Conferences

New Mexico proposed to repeal the ''public hearing'' option at 19.8.11.1103.E. Since 30 CFR has no part about ''public hearings'', only ''informal conferences'' at 30 CFR 773.6(c) (pre-approval of permit application) and ''hearings'' at 30 CFR 775.11 (after notification of decision concerning the application) in relation to the permit application process, the State thought this part should be omitted to be more consistent with 30

CFR. New Mexico's rules concerning informal conferences at NMAC 19.8.11.1103.A and B, like their Federal counterpart at 30 CFR 773.6(c)(2), include procedural guidelines for requesting an informal conference on any permit application, rules for conducting an informal conference (notification of location, time, and date of informal conference and who shall conduct the informal conference), and rules concerning requesting access to the permit area for information-gathering purposes. The rules at 19.8.11.1103 are as effective as the Federal counterpart at 30 CFR 773.6(c).

Of great importance is the proposed deletion of the following language at NMAC 19.8.11.1103.E concerning a person's right to present evidence, give testimony, etc. at the hearing:

NMAC 19.8.11.1103.E(5), which states that ''any person desiring to present evidence or give testimony at the hearing on the proposed plan shall:

(a) File a request to do so with the director at least ten days prior to the hearing;

(b) Contain the name and address of the person desiring to participate; and

(c) Contain a concise statement of the nature of the person's interest'' and NMAC 19.8.11.1103.E(7), which states that ''any person who has filed a timely request to participate in the hearing shall be given reasonable time at the hearing to submit relevant evidence, data and views, and shall be allowed to call and examine witnesses, introduce exhibits, cross examine witnesses and submit rebuttal evidence.''

It is essential that a person is provided the opportunity to present evidence, give testimony, cross examine witnesses, etc. at a hearing that is adjudicatory in nature.

The above two rules are addressed at NMAC 19.8.12.1200, *Administrative Review By The Director* (equivalent to the Federal regulation at 30 CFR 775.11, *Administrative and Judicial Review of Decisions*). 30 CFR 775.11 and NMAC 19.8.12.1200 both pertain to the request of a hearing on the reasons for the final decision *after* the applicant is notified of the final decision concerning the application.

It was a concern that the deletion of NMAC 19.8.11.1103.E would eliminate the opportunity for a person to request a hearing after the decision, but this option is clearly addressed and allowed by NMAC 19.8.12.1200.A, which states that ''within 30 days after the applicant or permittee is notified of the final decision of the director concerning the application for a permit, revision or renewal thereof, application for transfer, sale, or assignment of rights, or concerning an application for coal exploration, or pursuant to Paragraph (2) of Subsection E of 19.8.13.1301 NMAC a decision regarding a permit modification, the applicant, permittee or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final decision in accordance with this section. Such request shall be in writing and state with reasonable specificity the reasons for the request and objections to the director's decision''. Part B continues, ''The director shall commence the hearing within 30 days of such request. This hearing shall be of record, adjudicatory in nature, and no person who presided at an informal conference under 19.8.11.1103 NMAC shall either preside at the hearing or participate in the decision following the hearing, or in any administrative appeal therefrom''. Part 19.8.12.1200.B(1) addresses the granting of temporary relief, and is not relevant to this discussion. Part 19.8.12.1200.B(2) continues, ''For the purpose of such hearing, the director may administer oaths and affirmation, subpoena witnesses, written or printed materials, compel attendance of witnesses or production of those materials, compel discovery, and take evidence, including, but not limited to, site inspections of the land to be affected and other surface coal mining and reclamation operations carried on by the applicant in the general vicinity of the proposed operations''. Continuing with the rules at NMAC 1200, NMAC 19.8.12.1200.B(3) requires the director to issue and furnish the applicant and hearing participants with the written findings of fact, conclusions of law, and order of the director (with respect to the appeal) within a specified time period (see section 69–25A–29 New Mexico Statutes 1978 Annotated (NMSA)). These requirements parallel the requirements of 30 CFR 775.11(b)(4). NMAC 19.8.12.1200.B(4) explains that the burden of proof is on the party seeking to reverse the decision of the director. 30 CFR 775.11(b)(5) uses similar language, ''The burden of proof at such hearings shall be on the party seeking to reverse the decision of the regulatory authority''.

We believe that the language at NMAC 19.8.12.1200 adequately replaces the omitted parts of 19.8.11.1103.E and is as effective as the SMCRA counterpart at 775.11. We approve these changes.

9. NMAC 19.8.11.1103.F, 30 CFR 773.6(c)(2), Hearings and Conferences

New Mexico proposed to omit NMAC 19.8.11.1103.F concerning public hearings. The unavailability of an informal conference if a public hearing is held is irrelevant since 19.8.11.1103.E (Public hearings) is proposed to be deleted. We agree with New Mexico's reasoning and therefore approve this change.

10. NMAC 19.8.13.1301.E(2)(a), 30 CFR 773.19(b), Permit Revisions

New Mexico proposed this revision in an attempt to clarify who ''interested parties'' are. The new language specifies that a written copy of decision must now be mailed to ''all persons on a list maintained by the director who have requested notice of applications under the act''. New Mexico borrows this language from its Hard Rock Mining program, where there is an extensive list of people who have requested to be informed of all hard rock permitting activity. This proposed change to NMAC 19.8.13.1301.E(2)(a) offers more clarification and expands upon the Federal counterpart at 30 CFR 773.19(b). For this reason, we find New Mexico's proposed revision to be consistent with and no less effective than its Federal counterpart at 30 CFR 773.19(b) and we approve it.

11. NMAC 19.8.31.3106.B(3)(a), 30 CFR 845.18(b)(3)(i), Procedure for Assessment Conference

30 CFR 845.18(b)(3)(i) requires that the settlement agreement shall be prepared and signed by the conference officer on behalf of the Office and by the person assessed for the civil penalty. New Mexico proposed the addition of inadvertently missing language to 19.8.31.3106.B(3)(a) to make it no less effective than the Federal counterpart at 30 CFR 845.18(b)(3)(i); with the additional requirement that the director, as well as the person assessed, must sign the settlement agreement. We find that this proposed language is no less effective than the Federal counterpart at 30 CFR 845.18(b)(3)(i) and therefore approve this proposed revision to NMAC 19.8.31.3106.B(3)(a).

The following parts have been amended to include the word ''tribal'' any time there is reference to any Federal, State, or local government agency. For example, at 19.8.13.1307.B(2), it is stated that ''Any person whose interests are or may be adversely affected, including, but not limited to, the head of any local, state, *tribal,* or federal government agency may submit written comments on the application * * *''.

12. NMAC 19.8.11.1100.D(1), 30 CFR 773.6(a)(3), Public Notices of Filing of Permit Applications

13. NMAC 19.8.11.1102.A, 30 CFR 773.6(b)(2), Right To File Written Objections

14. NMAC 19.8.11.1103.A, 30 CFR 773.6(c)(1), Hearings and Conferences

15. NMAC 19.8.13.1307.B(2), 30 CFR 774.17(c), Transfer, Assignment or Sale of Permit Rights: Obtaining Approval

16. NMAC 19.8.14.1412.A(2)(f), 30 CFR 800.40(a)(2), Requirement To Release Performance Bonds

17. NMAC 19.8.14.1412.F, 30 CFR 800.40(f), Requirement To Release Performance Bonds

In a conversation with the State (Administrative Record No. OSM–2007–0021–0006, 'Conversation Record'), it was clarified that New Mexico has always considered the tribes to be a local government agency. Historically, New Mexico has shown great concern for the tribes and has included them any time other government agencies have been involved. OSM recognizes the tribes' role and the importance of the tribes' involvement to the State. Although 30 CFR does not include tribes in its language at the above listed Federal counterparts, it supports New Mexico's revisions because they are potentially more inclusive than the Federal regulations.

D. Revisions to New Mexico's Rules With No Corresponding Federal Regulations

1. NMAC 19.8.11.1100.F, Public Notices of Filing of Permit Applications

New Mexico proposed to add the following parts to 19.8.11.1100 NMAC:

F. Public meeting. Within sixty days of receipt of a complete application for a new permit or a permit revision, the director shall hold a public meeting at a location near the proposed mining operation.

(1) The public meeting will serve as an opportunity for the director and applicant to inform the public of the proposed action and to provide an opportunity for the public to identify issues and concerns associated with the application.

(2) The director shall give notice at least fifteen days prior to the meeting date in a newspaper of general circulation and on radio stations serving the mine area.

(3) The director or his representative shall keep a record summarizing issues and concerns raised at the meeting.

(4) Any person attending the meeting may submit written comments to the director up to thirty days after the meeting.

New Mexico proposes to add language that requires a public meeting to be held to afford the community the opportunity to gain information about the permit application. At least fifteen days prior to the public meeting, the director shall give notice of the meeting in a newspaper of general circulation and on radio stations serving the mine area. At this public meeting, the applicant and the State will inform the public of the proposed action. Up to thirty days after the public meeting, attendees may submit written comments to the director.

The public meeting is an addition to the provision at NMAC 19.8.11.1103.A, whereby any person whose interests are or may be adversely affected by the issuance, revision, or renewal of a permit may request an informal conference by rule NMAC 19.8.11.1103.A. New Mexico's informal conference is consistent with opportunities for an informal conference at 30 CFR 773.6(c)(1).

There is no direct 30 CFR counterpart to the added requirement of a public meeting at NMAC 19.8.11.1100.F. However, OSM supports any additional outreach to and informative opportunities for the public during the notification process. Because New Mexico's additions to NMAC result in more public notification than 30 CFR 773.6 requires, they are no less effective than the Federal regulations relating to public notification of permit applications. We approve these changes to New Mexico Administrative Code.

2. 19.8.11.1109.B and 19.8.11.1109.C, Permit Approval or Denial Actions

New Mexico proposed to eliminate references to public hearings at NMAC 19.8.11.1109.B and C, since the proposed deletion of 19.8.11.1103.E (*Hearings and Conferences: Public hearing*) will omit any language about public hearings. The language must now only refer to the informal conference that exists at 19.8.11.1103. We approve this proposed revision.

3. 19.8.13.1301.E(1), Permit Revisions

The State proposed to remove the following language associated with applications for a permit revision: ''(any application for a revision) * * * that proposes significant alterations in the operations described in the materials submitted in the application for the original permit under 19.8.7 NMAC, 19.8.8 NMAC, 19.8.9 NMAC, or 19.8.10 NMAC, or in the conditions of the original permit * * * (shall, at a minimum, be subject to the requirements of 19.8.11 NMAC and 19.8.12 NMAC)''. Rule 19.8.13.1301.A(1) already describes when it is necessary for a permit revision to be obtained, stating that ''a revision to a permit shall be obtained for changes in the surface coal mining or reclamation operation as described in the original application and approved under the original permit, when such changes constitute a significant departure from the method of conducting mining or reclamation operations contemplated by the original permit * * *''. Consequently, this language is repetitive and unnecessary, and OSM approves the removal of this language.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. OSM–2007–0021–0001), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the New Mexico program (Administrative Record No. OSM–2007–0021–0003). We did not receive any comments from other Federal agencies.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that New Mexico proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On January 16, 2008, we requested comments on New Mexico's amendment (Administrative Record No. OSM–2007–0021–0002), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve New Mexico's November 28, 2007, amendment.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 931, which codify decisions

concerning the New Mexico program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

Effect of OSM's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of the New Mexico program, we will recognize only the statutes, regulations and other materials we have approved, together with any consistent implementing policies, directives and other materials. We will require New Mexico to enforce only those approved provisions.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 CFR U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C) *et seq.*).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded Mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the federal

regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 9, 2008.

Allen D. Klein,

Regional Director, Western Region.

■ For the reasons set out in the preamble, 30 CFR part 931 is amended as set forth below:

PART 931—New Mexico

■ 1. The authority citation for part 931 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 931.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 931.15 Approval of New Mexico regulatory program amendments

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
November 28, 2007 ...	November 18, 2008 ..	19 NMAC Parts 1 through 35 (recodification), 19.8.1.7.G(1); 19.8.11.1100.D(1); 19.8.11.1102.A; 19.8.11.1103.A; 19.8.11.1109.B and C; 19.8.13.1301.E(1) and E(2)(b); 19.8.13.1307.B(2); 19.8.14.1412.A(2)(f); 19.8.14.1412.F; 19.8.20.2065.A and B(1); 19.8.20.2068; 19.8.30.3000; 19.8.31.3108.B; 19.8.31.3110.B; 19.8.5.504.D; 19.8.7.701.F; 19.8.8.812.D; 19.8.11.1100.B(1), (2), (3), and (4), D(5), E(3), and F; 19.8.11.1103.B, E, and F; 19.8.13.1301.E(2)(a); 19.8.31.3106.B(3)(a).

[FR Doc. E8–27360 Filed 11–17–08; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–1104]

RIN 1625–AA09

Drawbridge Operation Regulations; Elizabeth River—Eastern Branch, at Norfolk, VA, Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Norfolk Southern Railroad (NS# V2.8) Bridge, at mile 2.7, across the Elizabeth River—Eastern Branch at Norfolk, VA. Under this temporary deviation, the drawbridge may remain in the closed position on specific dates and times to facilitate mechanical repairs.

DATES: This deviation is effective from 7 a.m. on December 8, 2008, to 11 p.m. on December 19, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–1104 and are available online at *www.regulations.gov.* They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6422.

SUPPLEMENTARY INFORMATION: The Norfolk Southern Corporation, who owns and operates this single-leaf bascule drawbridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.1007(a) to facilitate mechanical repairs.

The NS# V2.8 Bridge, a swing-type drawbridge, has a vertical clearance in the closed position to vessels of six feet, above mean high water

To facilitate repairs to the center wedge machinery of the swing span, the drawbridge will be maintained in the closed-to-navigation position from 7 a.m. on December 8, 2008, until and including 11 p.m. on December 19, 2008.

The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners of the opening restrictions of the draw span to minimize transiting delays caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 5, 2008.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch Fifth Coast Guard District.

[FR Doc. E8–27266 Filed 11–17–08; 8:45 am]

BILLING CODE 4910–15–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009–4 and CP2009–5; Order No. 131]

Administrative Practice and Procedure, Postal Service

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Priority Mail Contract 3 (MC2009–4 and CP2009–5) to the Competitive Product List. It is also noticing a related contract. These actions are consistent with changes in a recent law governing postal operations and a related Postal Service request. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective November 18, 2008.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: *Regulatory History*, 73 FR 66075 (November 6, 2008).

The Postal Service seeks to add a new product identified as Priority Mail Contract 3 to the Competitive Product

List. For the reasons discussed below, the Commission approves the Request.

I. Background

On October 27, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Priority Mail Contract 3 to the Competitive Product List.[1] The Postal Service asserts that the Priority Mail Contract 3 product is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2009–4.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009–5.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision authorizing the new product which also includes an analysis of Priority Mail Contract 3 and certification of the Governors' vote;[2] (2) a redacted version of the contract which, among other things, provides that the contract will expire 1 year from the effective date, which is proposed to be 1 day after the Commission issues all regulatory approvals;[3] (3) requested changes in the MCS product list;[4] (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;[5] and (5) certification of compliance with 39 U.S.C. 3633(a).[6]

In the Statement of Supporting Justification, Kim Parks, Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to coverage of institutional costs, and will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Request, Attachment D, at 1. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies, based on the financial analysis provided by the Postal Service, that the contract complies with 39 U.S.C. 3633(a). *See id.* Attachment E.

The Postal Service filed much of the supporting materials, including the Governors' Decision and the specific Priority Mail Contract 3, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections, should remain under seal. *Id.* at 2.

In Order No. 123, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.[7]

II. Comments

Comments were filed by the Public Representative.[8] No filings were submitted by other interested parties. The Public Representative's comments focus principally on confidentiality and pricing under the contract. Public Representative Comments at 2–3.

The Public Representative states that a sufficient rationale for maintaining the confidentiality of the documents under seal has been provided by the Postal Service. The Public Representative reviewed the cost savings measures for the purposes of this contract and determines that the contract is advantageous to the Postal Service and beneficial to the general public. *Id.* He concludes, *inter alia*, that the contract should generate sufficient revenue to cover the product's attributable costs and contribute to the recovery of total institutional costs assigned to competitive products. *Id.* at 3–4.

III. Commission Analysis

The Commission has reviewed the contract, the financial analysis provided under seal that accompanies it, and the comments filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Priority Mail Contract 3 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. In determining whether to assign Priority Mail Contract 3 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

> the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms or offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment D, at 2–3. The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the product list to effectuate the negotiated contractual terms. *Id.* at 3. Finally, the Postal Service states that the market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.*

No commenter opposes the proposed classification of Priority Mail Contract 3 as competitive. Having considered the statutory requirement and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 3 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service's filing seeks to establish a new domestic Priority Mail product. The

[1] Request of the United States Postal Service to Add Priority Mail Contract 3 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, October 27, 2008 (Request).

[2] Attachment A to the Request. The analysis that accompanies the Governors' Decision notes, among other things, that the contract is not risk free, but concludes that the risks are manageable. *See also* Errata to Request of the United States Postal Service to Add Priority Mail Contract 3 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, October 30, 2008.

[3] Attachment B to the Request.

[4] Attachment C to the Request.

[5] Attachment D to the Request.

[6] Attachment E to the Request.

[7] PRC Order No. 123, Notice and Order Concerning Priority Mail Contract 3 Negotiated Service Agreement, October 31, 2008 (Order No. 123).

[8] Public Representative Comments in Response to United States Postal Service Request to Add Priority Mail Contract 3 to Competitive Product List, November 6, 2008 (Public Representative Comments).

contract is predicated on unit costs for major mail functions, *e.g.*, window service, mail processing, and transportation, based on the shipper's mail characteristics.

The Postal Service contends that adding the Priority Mail Contract 3 product will result in processing Priority Mail pieces that are less costly for the Postal Service than the average Priority Mail piece. *See Id.* Attachment A. It believes that its financial analysis shows that these cost savings can be accomplished while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products. *Id.*, Attachment E, at 1.

Based on the data submitted and the comments received, the Commission finds that Priority Mail Contract 3 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of the proposed Priority Mail Contract 3 indicates that it comports with the provisions applicable to rates for competitive products.

The Postal Service shall promptly notify the Commission when the contract terminates but no later than the actual termination date. The Commission will then remove the contract from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves Priority Mail Contract 3 as a new product. The revision to the Competitive Product List is shown below the signature of this Order and is effective upon issuance of this Order.

It Is Ordered:

1. Priority Mail Contract 3 (MC2009–4 and CP2009–5) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Postal Service shall notify the Commission of the termination date of the contract as discussed in this order.

3. The Secretary shall arrange for the publication of this order in the **Federal Register**.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

By the Commission.

Steven W. Williams,

Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to subpart A of part 3020—Mail Classification to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products

1000 Market Dominant Product List

First-Class Mail
- Single-Piece Letters/Postcards
- Bulk Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Single-Piece First-Class Mail International

Standard Mail (Regular and Nonprofit)
- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route
- Letters
- Flats
- Not Flat-Machinables (NFMs)/Parcels

Periodicals
- Within County Periodicals
- Outside County Periodicals

Package Services
- Single-Piece Parcel Post
- Inbound Surface Parcel Post (at UPU rates)
- Bound Printed Matter Flats
- Bound Printed Matter Parcels
- Media Mail/Library Mail

Special Services
- Ancillary Services
- International Ancillary Services
- Address List Services
- Caller Service
- Change-of-Address Credit Card Authentication
- Confirm
- International Reply Coupon Service
- International Business Reply Mail Service
- Money Orders
- Post Office Box Service

Negotiated Service Agreements
- HSBC North America Holdings Inc. Negotiated Service Agreement
- Bookspan Negotiated Service Agreement
- Bank of America corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement

Market Dominant Product Descriptions

First-Class Mail
[Reserved for Class Description]
- Single-Piece Letters/Postcards
  - [Reserved for Product Description]
- Bulk Letters/Postcards
  - [Reserved for Product Description]
- Flats
  - [Reserved for Product Description]
- Parcels
  - [Reserved for Product Description]
- Outbound Single-Piece First-Class Mail International
  - [Reserved for Product Description]
- Inbound Single-Piece First-Class Mail International
  - [Reserved for Product Description]

Standard Mail (Regular and Nonprofit)
[Reserved for Class Description]
- High Density and Saturation Letters
  - [Reserved for Product Description]
- High Density and Saturation Flats/Parcels
  - [Reserved for Product Description]
- Carrier Route
  - [Reserved for Product Description]
- Letters
  - [Reserved for Product Description]
- Flats
  - [Reserved for Product Description]
- Not Flat-Machinables (NFMs)/Parcels
  - [Reserved for Product Description]

Periodicals
[Reserved for Class Description]
- Within County Periodicals
  - [Reserved for Product Description]
- Outside County Periodicals
  - [Reserved for Product Description]

Package Services
[Reserved for Class Description]
- Single-Piece Parcel Post
  - [Reserved for Product Description]
- Inbound Surface Parcel Post (at UPU rates)
  - [Reserved for Product Description]
- Bound Printed Matter Flats
  - [Reserved for Product Description]
- Bound Printed Matter Parcels
  - [Reserved for Product Description]
- Media Mail/Library Mail
  - [Reserved for Product Description]

Special Services
[Reserved for Class Description]
- Ancillary Services
  - [Reserved for Product Description]
- Address Correction Service
  - [Reserved for Product Description]
- Applications and Mailing Permits
  - [Reserved for Product Description]
- Business Reply Mail
  - [Reserved for Product Description]
- Bulk Parcel Return Service
  - [Reserved for Product Description]
- Certified Mail
  - [Reserved for Product Description]
- Certificate of Mailing
  - [Reserved for Product Description]
- Collect on Delivery
  - [Reserved for Product Description]
- Delivery Confirmation
  - [Reserved for Product Description]
- Insurance
  - [Reserved for Product Description]
- Merchandise Return Service
  - [Reserved for Product Description]
- Parcel Airlift (PAL)
  - [Reserved for Product Description]
- Registered Mail
  - [Reserved for Product Description]
- Return Receipt
  - [Reserved for Product Description]
- Return Receipt for Merchandise
  - [Reserved for Product Description]

Restricted Delivery
[Reserved for Product Description]
Shipper-Paid Forwarding
[Reserved for Product Description]
Signature Confirmation
[Reserved for Product Description]
Special Handling
[Reserved for Product Description]
Stamped Envelopes
[Reserved for Product Description]
Stamped Cards
[Reserved for Product Description]
Premium Stamped Stationery
[Reserved for Product Description]
Premium Stamped Cards
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
Address List Services
[Reserved for Product Description]
Caller Service
[Reserved for Product Description]
Change-of-Address Credit Card Authentication
[Reserved for Product Description]
Confirm
[Reserved for Product Description]
International Reply Coupon Service
[Reserved for Product Description]
International Business Reply Mail Service
[Reserved for Product Description]
Money Orders
[Reserved for Product Description]
Post Office Box Service
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Class Description]
HSBC North America Holdings Inc. Negotiated Service Agreement
[Reserved for Product Description]
Bookspan Negotiated Service Agreement
[Reserved for Product Description]
Bank of America Corporation Negotiated Service Agreement
The Bradford Group Negotiated Service Agreement

Part B—Competitive Products

Competitive Product List

Express Mail
Express Mail
Outbound International Expedited Services
Inbound International Expedited Services
Inbound International Expedited Services 1 (CP2008–7)
Priority Mail
Priority Mail
Outbound Priority Mail International
Inbound Air Parcel Post
Parcel Select
Parcel Return Service
International
International Priority Airlift (IPA)
International Surface Airlift (ISAL)
International Direct Sacks—M-Bags
Global Customized Shipping Services
Inbound Surface Parcel Post (at non-UPU rates)
International Money Transfer Service
International Ancillary Services
Special Services
Premium Forwarding Service
Negotiated Service Agreements
Domestic
Express Mail Contract 1 (MC2008–5)
Express Mail Contract 2 (MC2009–3 and CP2009–4)
Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
Priority Mail Contract 1 (MC2008–8 and CP2008–26)
Priority Mail Contract 2 (MC2009–2 and CP2009–3)
Priority Mail Contract 3 (MC2009–4 and CP2009–5)
Outbound International
Global Expedited Package Services (GEPS) Contracts
GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
Global Plus Contracts
Global Plus 1 (CP2008–9 and CP2008–10)
Global Plus 2 (MC2008–7, CP2008–16 and CP2008–17)
Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)
Competitive Product Descriptions
Express Mail
[Reserved for Group Description]
Express Mail
[Reserved for Product Description]
Outbound International Expedited Services
[Reserved for Product Description]
Inbound International Expedited Services
[Reserved for Product Description]
Priority
[Reserved for Product Description]
Priority Mail
[Reserved for Product Description]
Outbound Priority Mail International
[Reserved for Product Description]
Inbound Air Parcel Post
[Reserved for Product Description]
Parcel Select
[Reserved for Group Description]
Parcel Return Service
[Reserved for Group Description]
International
[Reserved for Group Description]
International Priority Airlift (IPA)
[Reserved for Product Description]
International Surface Airlift (ISAL)
[Reserved for Product Description]
International Direct Sacks—M-Bags
[Reserved for Product Description]
Global Customized Shipping Services
[Reserved for Product Description]
International Money Transfer Service
[Reserved for Product Description]
Inbound Surface Parcel Post (at non-UPU rates)
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
International Insurance
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Group Description]
Domestic
[Reserved for Product Description]
Outbound International
[Reserved for Group Description]

Part C—Glossary of Terms and Conditions [Reserved]

Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. E8–27323 Filed 11–17–08; 8:45 am]
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 080219211–81123–01]

RIN 0648–AU98

Sea Turtle Conservation; Fishing Gear Inspection Program

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

ACTION: Final rule.

SUMMARY: NMFS establishes an inspection program for modified pound net leaders in the Virginia waters of the mainstem Chesapeake Bay. Current regulations require modified pound net leaders, as defined in the regulations, in a portion of the Virginia Chesapeake Bay while also allowing them to be used in a different portion of the Chesapeake Bay. This action would help ensure that leaders used in those areas do in fact meet the definition of a modified pound net leader. This action, taken under the Endangered Species Act of 1973 (ESA), as amended, is intended to facilitate compliance with the existing regulation, which is designed to help protect threatened and endangered sea turtles.

DATES: Effective December 18, 2008.

FOR FURTHER INFORMATION CONTACT: Carrie Upite (ph. 978–281–9300 x6525, fax 978–281–9394), or Barbara Schroeder (ph. 301–713–2322, fax 301–427–2522).

SUPPLEMENTARY INFORMATION:

Background

Based upon documented sea turtle interactions with pound net leaders, NMFS issued a final rule on May 5, 2004 (69 FR 24997), that prohibited the use of offshore pound net leaders from

May 6 to July 15 in an area now referred to as ''Pound Net Regulated Area I''. Pound Net Regulated Area I is defined as the Virginia waters of the mainstem Chesapeake Bay, south of 37°19.0' N. lat. and west of 76°13.0' W. long., and all waters south of 37°13.0' N. lat. to the Chesapeake Bay Bridge Tunnel (extending from approximately 37°05' N. lat., 75°59' W. long. to 36°55' N. lat., 76°08' W. long.) at the mouth of the Chesapeake Bay, and the portion of the James River downstream of the Hampton Roads Bridge Tunnel (I–64; approximately 36°59.55' N. lat., 76° 18.64' W. long.) and the York River downstream of the Coleman Memorial Bridge (Route 17; approximately 37°14.55' N. lat, 76°30.40' W. long.). An offshore pound net leader refers to a leader with the inland end set greater than 10 horizontal feet (3 m) from the mean low water line. The May 2004 rule also placed restrictions on nearshore pound net leaders in Pound Net Regulated Area I and on all pound net leaders employed in ''Pound Net Regulated Area II.'' Pound Net Regulated Area II refers to Virginia waters of the Chesapeake Bay, outside of Pound Net Regulated Area I as defined above, extending to the Maryland-Virginia State line (approximately 37°55' N. lat., 75°55' W. long.), the Great Wicomico River downstream of the Jessie Dupont Memorial Highway Bridge (Route 200; approximately 37°50.84' N. lat, 76°22.09' W. long.), the Rappahannock River downstream of the Robert Opie Norris Jr. Bridge (Route 3; approximately 37°37.44' N. lat, 76°25.40' W. long.), and the Piankatank River downstream of the Route 3 Bridge (approximately 37°30.62' N. lat, 76°25.19' W. long.) to the COLREGS line at the mouth of the Chesapeake Bay. Pursuant to the 2004 rule, nearshore pound net leaders in Pound Net Regulated Area I and all pound net leaders in Pound Net Regulated Area II must have mesh size less than 12 inches (30.5 cm) stretched mesh and may not employ stringers.

In 2004 and 2005, NMFS implemented a coordinated research program with pound net industry participants and other interested parties to develop and test a modified pound net leader design with the goal of eliminating or reducing sea turtle interactions while retaining an acceptable level of fish catch. During the two year study, the modified leader was found to be effective in reducing sea turtle interactions as compared to the unmodified leader. The final results of the 2004 study found that out of eight turtles impinged on or entangled in the leaders of pound nets, seven were impinged on or entangled in an unmodified leader. One leatherback turtle was found entangled in a modified leader. In response to the leatherback entanglement, the gear was further modified by increasing the stiffness of the vertical lines for the 2005 experiment. The 2005 experiment found that 15 turtles were entangled in unmodified leaders, but no turtles were impinged on or entangled in modified leaders. Furthermore, results of the finfish catch comparison suggest that the modified leader caught similar quantities and size compositions as the unmodified leader.

Based upon these results, on June 23, 2006, NMFS issued a final rule (71 FR 36024) that required any offshore pound net leader in Pound Net Regulated Area I during the period from May 6 through July 15 to meet the definition of a modified pound net leader. A modified pound net leader is defined as a pound net leader that is affixed to or resting on the sea floor and made of a lower portion of mesh and an upper portion of only vertical lines such that (a) the mesh size is equal to or less than 8 inches (20.3 cm) stretched mesh; (b) at any particular point along the leader the height of the mesh from the seafloor to the top of the mesh must be no more than one-third the depth of the water at mean lower low water directly above that particular point; (c) the mesh is held in place by vertical lines that extend from the top of the mesh up to a top line, which is a line that forms the uppermost part of the pound net leader; (d) the vertical lines are equal to or greater than 5/16 inch (0.8 cm) in diameter and strung vertically at a minimum of every 2 feet (61 cm); and (e) the vertical lines are hard lay lines with a level of stiffness equivalent to the stiffness of a 5/16 inch (0.8 cm) diameter line composed of polyester wrapped around a blend of polypropylene and polyethylene and containing approximately 42 visible twists of strands per foot of line.

Existing mesh size and stringer restrictions on nearshore pound net leaders in Pound Net Regulated Area I and all pound net leaders in Pound Net Regulated Area II remained in place from May 6 through July 15 of each year. However, the June 2006 rule created an exception to those restrictions by allowing the use of modified pound net leaders during that period in nearshore pound net leaders in Pound Net Regulated Area I and all pound net leaders in Pound Net Regulated Area II. The year-round reporting and monitoring requirements for this fishery and the framework mechanism under the existing regulations (50 CFR 223.206(d)(10)) also remained in effect.

After the 2006 final rule was published, NMFS determined that an onshore inspection program that examines a modified leader ready for deployment would help ensure the protection of sea turtles, while limiting the difficulties of and potential costs to fishermen associated with post-deployment inspections at-sea. The modified leader configuration was developed to protect sea turtles, and it is important that the leaders deployed in this fishery meet the standards embodied in the regulations.

Approved Measures

NMFS requires that any fisherman planning to use a modified pound net leader anywhere in Pound Net Regulated Area I or Pound Net Regulated Area II at any time from 12:01 a.m. local time on May 6 through 11:59 p.m. local time on July 15 each year must adhere to the following requirements of the inspection program. First, the pound net fisherman or his/her representative must call NMFS at 757–414–0128 at least 72 hours before deploying modified leaders. During this call, the fisherman or representative and NMFS will discuss a meeting date, time, and location, as well as the fisherman's plans for setting his/her gear. The second component of the inspection program involves NMFS meeting the fisherman at the dock, or another mutually agreeable place, to examine the gear for compliance with the definition of a modified pound net leader. The regulations define a modified pound net leader as a pound net leader that is affixed to or resting on the sea floor and made of a lower portion of mesh and an upper portion of only vertical lines such that (a) the mesh size is equal to or less than 8 inches (20.3 cm) stretched mesh; (b) at any particular point along the leader the height of the mesh from the seafloor to the top of the mesh must be no more than one-third the depth of the water at mean lower low water directly above that particular point; (c) the mesh is held in place by vertical lines that extend from the top of the mesh up to a top line, which is a line that forms the uppermost part of the pound net leader; (d) the vertical lines are equal to or greater than 5/16 inch (0.8 cm) in diameter and strung vertically at a minimum of every 2 feet (61 cm); and (e) the vertical lines are hard lay lines with a level of stiffness equivalent to the stiffness of a 5/16 inch (0.8 cm) diameter line composed of polyester wrapped around a blend of

polypropylene and polyethylene and containing approximately 42 visible twists of strands per foot of line.

During the inspection, NMFS will ascertain whether the leader meets the following four criteria taken from that definition: (1) the lower portion of the leader is mesh and the upper portion consists of only vertical lines; (2) the mesh size is equal to or less than 8 inches (20.3 cm) stretched mesh; (3) the vertical lines are equal to or greater than 5/16 inch (0.8 cm) in diameter and strung vertically at least every 2 feet (61 cm); and (4) the vertical lines are hard lay lines with a level of stiffness equivalent to the stiffness of a 5/16 inch (0.8 cm) diameter line composed of polyester wrapped around a blend of polypropylene and polyethylene and containing approximately 42 visible twists of strands per foot of line. During the inspection, the fisherman must provide accurate and specific latitude and longitude coordinates of the location at which the leader will be deployed. If the fisherman does not know his or her modified pound net leader latitude and longitude coordinates prior to the inspection, NMFS will have a detailed nautical chart available during the inspection for the fisherman to ascertain the specific coordinates of the gear. During the inspection, the fisherman must also provide NMFS with information on the low water depth at each end of the modified leader. NMFS will also measure the height of the mesh in relation to the height of the entire leader. If the leader meets the four criteria previously described, the measurement of the height of the mesh in relation to the total height of the leader is recorded, and the low water depth and the latitude and longitude coordinates of the specific location at which the leader will be deployed are provided and recorded, the leader will pass inspection. If it passes inspection, NMFS will tag the leader with one or more tamperproof tags (supplied by NMFS), each of which will be marked with a unique identification number. Additionally, the fisherman will receive a letter from NMFS noting that the leader has been inspected, the date of the inspection, the license holder's name, the tag number(s) of the attached tag(s), information on the modified leader as collected during the inspection, and the low water depth and the latitude and longitude coordinates for the specific location at which the inspected leader will be deployed. This letter must be retained on the vessel tending the inspected leader at all times it is deployed. The fisherman may set the inspected leader only after passing the inspection; the tags must remain on the gear. After tagging by NMFS, the tags may not be tampered with or removed. If a tag is damaged, destroyed, or lost due to any cause, the fisherman must call NMFS within 48 hours of discovery to report this incident. Any portion of a pound net leader that has been previously tagged must not be altered or replaced so that it fails to meet the modified pound net leader definition, unless that portion of the gear is reinspected, or unless that portion is altered or replaced after the time period from May 6 to July 15. It ultimately remains the fisherman's responsibility to ensure that his or her gear is in compliance with all components of the modified pound net leader definition when the leader is set in the water.

If the onshore inspection indicates that the leader does not meet one or more of the four criteria, NMFS will tell the fisherman how to modify his or her gear in order to meet the criteria. If a fisherman plans on using a modified leader anywhere in Pound Net Regulated Area I or Pound Net Regulated Area II at any time from May 6 through July 15, he or she must schedule another inspection using the same procedure by which the initial inspection was scheduled, and ensure that the leader passes inspection prior to deployment. NMFS can inspect a net at any time prior to deployment, but all modified pound net leaders in Virginia Chesapeake Bay waters from May 6 through July 15 must have been inspected by NMFS. The inspection is only valid for one fishing season (e.g., May 6 to July 15, 2009).

Compared to other gear types and fisheries, the pound net fishery in Virginia has several characteristics that make an inspection program such as this necessary, and possible, to implement. The gear is only deployed once during a season (unless later damaged), and the fact that the leaders are below the surface combined with the low water clarity and visibility in Chesapeake Bay make inspection of the gear during the season difficult. The number of pound nets for which the gear modification is required is relatively small (< 50), which makes the inspection program feasible to implement.

All of the NMFS regulations existing at this time affecting sea turtles and pound net leaders in the Chesapeake Bay remain in effect.

This action is implemented under the authority of ESA sections 4(d) and 11(f) and is necessary and appropriate to conserve threatened sea turtles and to enforce the provisions of the ESA, including the prohibition on takes of endangered sea turtles.

Comments and Responses

On March 1, 2007, NMFS published a proposed rule (72 FR 9297) that would establish an inspection program for those Virginia pound net fishermen who intend to use modified pound net leaders. Comments on this proposed action were requested through April 2, 2007. Three comment letters were received during the public comment period for the proposed rule. Two comment letters supported the action, while one comment letter was neither in favor nor against the proposed action. Additionally, the Virginia Department of Environmental Quality agreed with NMFS that the action is consistent with the enforceable policies of Virginia's Coastal Resources Management Program. NMFS considered the comments on the proposed rule as part of its decision making process. A complete summary of the comments and NMFS' responses, grouped according to general subject matter in no particular order, is provided here.

General Comments

Comment 1: One commenter expressed concern with commercial fishing in general and its impacts on sea turtles and marine birds, recommending that longlines, purse seines, and trawling be prohibited. Two additional commenters urged NMFS to address the documented loggerhead declines in nesting numbers and further reduce the bycatch of loggerhead sea turtles throughout the Atlantic.

Response: NMFS has and will continue to consider the impacts to listed sea turtles and to reduce threats from known sources. NMFS and the United States Fish and Wildlife Service (USFWS) are working to minimize the impacts to sea turtles from activities such as nesting habitat degradation, marine debris, dredging, and power plant impingement, and acknowledge that fishing activities have been recognized as one of the most significant threats to sea turtle survival (Magnuson *et al.*, 1990, Turtle Expert Working Group 2000). To respond to these threats, NMFS is comprehensively evaluating the impacts of fishing gear types on sea turtles throughout the U.S. Atlantic Ocean and Gulf of Mexico, as part of the Strategy for Sea Turtle Conservation and Recovery in Relation to Atlantic Ocean and Gulf of Mexico Fisheries (Strategy) (NMFS 2001). Based on the information developed for the Strategy, NMFS may impose restrictions on or modifications to other activities

that adversely affect sea turtles. For example, NMFS is currently evaluating Atlantic Coast trawl fisheries and considering amendments to the regulatory requirements for Turtle Excluder Devices in trawl fisheries (72 FR 7382, February 15, 2007). While commercial fisheries with impacts to sea turtles may be addressed through other avenues, this final rule involves only Virginia Chesapeake Bay pound net gear and an inspection program to help ensure modified pound net leaders are consistent with the definition of a modified pound net leader (50 CFR 222.102). All impacted marine species were considered in the National Environmental Policy Act review on the action, and no impacts to marine birds are anticipated from this final rule.

NMFS is aware of the reported declines in loggerhead nesting numbers. NMFS and the U.S. Fish and Wildlife Service published a Notice of Availability of the draft revised Loggerhead Recovery Plan on May 30, 2008 (73 FR 31066). The draft revised plan is available at *www.nmfs.noaa.gov/pr/recovery/plans.htm*. Additionally, the Loggerhead Turtle Expert Working Group is currently assessing the status of and preparing a report on the loggerhead population in the Western North Atlantic. These initiatives will help NMFS determine the best course of action to ensure recovery of loggerhead sea turtles. Loggerheads remain listed pursuant to the ESA, and NMFS continues to work to reduce all mortality sources and promote recovery.

Comment 2: One commenter felt the bycatch of dolphins and seabirds should be monitored and minimized.

Response: The purpose of this rule is to establish an inspection program to help ensure compliance with previous regulations established to protect endangered and threatened sea turtles. The effects of pound net regulations (and the pound net fishery in general) on dolphins and seabirds were considered in the National Environmental Policy Act analysis conducted on the 2006 final rule establishing the modified leader requirement (June 2006 Final Environmental Assessment (EA) and Regulatory Impact Review Regulatory Flexibility Act Analysis of Sea Turtle Conservation Measures for the Pound Net Fishery in Virginia Waters of the Chesapeake Bay). This rule was determined to not result in any impacts on the environment that were not already evaluated as part of previous rulemaking and found to be not significant. NMFS also strives to protect marine mammals and seabirds through other programs.

Comment 3: One commenter urged NMFS to undertake an inter-agency consultation to establish incidental take levels in the Chesapeake Bay and Atlantic coast fisheries to avoid jeopardy.

Response: Inter-agency consultations, pursuant to section 7 of the ESA, are completed on actions authorized, funded, or carried out by a Federal agency. NMFS consults on all fisheries actions with a Federal nexus, such as the implementation of a Fishery Management Plan or other Federal rulemaking. As a result, management actions for Federal fisheries in the Atlantic (and state fisheries occurring in the Chesapeake Bay subject to Federal regulation) have already been considered with respect to their impacts on sea turtles, and incidental take statements have been issued for these actions. Specific to this action, a formal consultation pursuant to section 7 of the ESA was previously conducted on the operation of the Virginia pound net fishery, as modified by the implementation of the sea turtle conservation measures enacted in 2004. An incidental take statement was issued as a result of the 2004 consultation. The 2006 modified pound net leader requirement was determined not to trigger reinitiation of formal consultation, as that proposed 2006 action provided the same level of protection as what was considered in the 2004 Biological Opinion. Thus, a formal section 7 consultation (and accompanying incidental take statement) was not completed on the 2006 action. Section 7 consultations on management actions for other state fisheries occurring in the Chesapeake Bay or in the Atlantic Ocean would not be appropriate because there is no Federal action on which to consult.

Pound Net Fishery Comments

Comment 4: Two commenters expressed support for at-sea compliance checks and increased enforcement efforts in the pound net fishery.

Response: The purpose of the on-shore inspection program is not to preclude regular enforcement activities that would have occurred independent of this action. One of the reasons NMFS establishes this inspection program is to aid in enforcement efforts. Regular inspections conducted in the water to evaluate the configuration of modified pound net leaders were determined to be a greater challenge for this fishery as most of the pound net leader is typically set under the water, the water clarity in the Chesapeake Bay is generally poor, and there may be debris in the water that could endanger the inspector. Conducting a land based inspection, and tagging the gear with yellow tamperproof tags along the top of the leader (so they will be visible from the surface), will help law enforcement identify and follow up with those leaders that may not be in compliance with the regulations. Again, at sea compliance checks and enforcement efforts will occur as have been done in previous years, but this inspection program is initiated independent of those activities.

Comment 5: Two commenters suggested that observer coverage/monitoring in the pound net fishery be increased during the regulated period to ensure that the modified leaders are working and to further characterize the fishery. One of those commenters additionally recommended that observer coverage is needed on all fisheries active when sea turtles are present, in particular the previously unobserved haul seine, trawl, and pot fisheries.

Response: When allocating resources and evaluating other fisheries for bycatch, NMFS will continue to consider additional monitoring of the pound net fishery to observe modified pound net leaders. NMFS has characterized the pound net fishery in the past (e.g., in 2002, 2003 and 2004), and while the number of participants in the fishery may have changed slightly since that time, NMFS does not anticipate that changes have occurred that would affect the information in or purpose of this rule. As for observer coverage in other fisheries, on August 3, 2007, NMFS published a final rule (72 FR 43176) that authorizes NMFS to place observers on vessels participating in state or federal fisheries upon NMFS' request. NMFS will make an annual determination identifying which fisheries to observe based on the following criteria: the fishery operates at the same time and in the same place as sea turtles; the fishery operates at the same time or prior to elevated sea turtle strandings; or the fishery uses a gear type or technique known to result in sea turtle bycatch; and NMFS intends to monitor the fishery and anticipates that it will have the funds to do so. That rule allows observers to monitor fisheries (e.g., haul seine, pot gear) specifically for sea turtle bycatch. Additionally, the NMFS Northeast Fisheries Science Center allocates observer coverage in various areas, including Virginia, each year to monitor finfish and protected species bycatch.

Comment 6: One commenter noted that research should continue to be conducted to determine whether more effective gear modifications are available as well as to assess the diving

and foraging behavior of turtles around pound net gear.

Response: In 2004 and 2005, NMFS implemented a coordinated research program with pound net industry participants and other interested parties to develop and test a modified pound net leader design with the goal of eliminating or reducing sea turtle interactions while retaining an acceptable level of fish catch. During the 2–year study, the modified leader was found effective in reducing sea turtle interactions as compared to the unmodified leader. In 2004, out of eight turtles impinged on or entangled in pound net leaders, seven were in an unmodified leader. One leatherback turtle was found entangled in the vertical lines of a modified leader, and as a result, the gear was further modified by increasing the stiffness of the vertical lines for the 2005 experiment. In 2005, 15 turtles entangled in or impinged on the leaders of unmodified leaders, and no turtles were found entangled in or impinged on modified leaders. This two year project tested a realistic, feasible alternative to traditional pound net leaders - one that testing shows to protect sea turtles while retaining fish catch. Note that in 2004, NMFS, through the National Fish and Wildlife Foundation, issued a public request for proposals to further reduce sea turtle interactions with Virginia pound net gear. Few testable ideas were submitted, and emphasis was then put on the modified leader design mentioned above. As such, no additional plans are underway to test alternative pound net gear considering the limited resources available and other fishing gear types that may need bycatch reduction measures and/or testing. Alternative designs or research plans to reduce sea turtle bycatch in pound net gear, as well as any other fishing gear, are always welcomed and can be sent to the NMFS Northeast Region Protected Resources Division at 55 Great Republic Drive, Gloucester, MA 01930.

Previous studies by the Virginia Institute of Marine Science (Mansfield 2006) have tracked sea turtles in the Virginia Chesapeake Bay, but those studies did not specifically focus on sea turtles' foraging and diving around pound net gear (and it is very difficult to do so given the unpredictability of turtle behavior). NMFS will consider additional satellite tracking studies to monitor sea turtle foraging and diving behavior in the future.

Comment 7: One commenter noted that the regulations pertaining to the pound net fishery should be strengthened to better address the bycatch of loggerhead turtles.

Response: NMFS has been researching the bycatch of sea turtles in Virginia fisheries for several years. Based on observed interactions with sea turtles and pound net leaders, NMFS has implemented various regulations in the Virginia pound net fishery since 2001. Regulations have been modified over time, based upon new information obtained on sea turtle interactions in the fishery. While sea turtle strandings and observed interactions in Virginia fishing gear will continue to be evaluated, NMFS does not believe there is a need to further regulate the Virginia pound net fishery at this time.

Comment 8: One commenter noted that the following information should be provided: the reporting of sea turtle takes by pound net fishermen; the results of any at-sea monitoring performed since the regulations have been in place; data on strandings of sea turtles in the Chesapeake Bay; the results of any at-sea compliance checks; and whether there has been any enforcement action taken against nets found to be out of compliance with the regulations. The commenter claimed that the omission of this information in the proposed rule left significant gaps in the public's ability to comment on the impacts of the pound net fishery on threatened and endangered sea turtles.

Response: NMFS requested public comments on the proposal to establish a land-based modified leader inspection program to help determine whether the leaders meet the existing regulatory definition of a modified pound net leader. We believe sufficient information was provided to enable the public to comment on that topic. Nevertheless, data on sea turtle strandings in the Chesapeake Bay were included in the 2006 EA. There have not been any sea turtles in pound net operations reported to NMFS by fishermen since the June 2006 final rule. NMFS concluded that this rule will complement at-sea enforcement efforts. In addition, all NOAA enforcement actions that result in a charge are published monthly in the Commercial Fisheries News.

Inspection Program Logistics

Comment 9: One commenter recommended that NMFS require the modified leader design in any offshore leader fished from early May to mid-July within the geographic range of the Virginia pound net fishery. The commenter recommended all older leaders should be replaced with the new modified design.

Response: When NMFS was considering a rule to require the modified pound net leader in the Virginia pound net fishery, the geographic scope of such a requirement was evaluated. Despite observer coverage throughout the Virginia Chesapeake Bay, all but one observed sea turtle interaction in an offshore leader occurred in the area where the modified leader is currently required. In light of that, NMFS believes the geographic scope of the modified leader requirement is reasonable. Further, the geographic area for the requirement is beyond the scope of this rulemaking to establish an onshore inspection program for Virginia modified pound net leaders.

Comment 10: One commenter felt that fishermen should provide NMFS with information about the depth of the site at which the leader will be set to confirm the modified leader meets the definition in the regulations (e.g., the height of the mesh must be no more than one-third the depth of the water at mean lower low water).

Response: During the inspection process, NMFS will collect information on the low water depth at each end of the fisherman's modified pound net leader. After considering the public comments received and further assessment, NMFS determined that this modification to the measures in the proposed rule is warranted. Fishermen will be required to provide information on the low water depth at each end of their modified pound net leader at the site at which it will be set. This information, in conjunction with NMFS measuring the height of the mesh in relation to the height of the entire leader, will be useful in helping to determine whether the leader, once deployed at the location, meets the requirement that the mesh be no more than one third the depth of mean lower low water. The collection-of-information requirement pursuant to the Paperwork Reduction Act (PRA) has been revised to include collecting specific depth data from fishermen (OMB number 0648–0559).

With respect to the portion of the modified leader definition that states the height of the mesh must be no more than one-third the depth of the water at mean lower low water, the methodology that can be used to calculate mean lower low water is summarized in the Small Entity Compliance Guide, which will be sent to all Virginia pound net licensees. Copies of this document are available upon request by calling 978–281–9300 extension 6525, or can be found on the NMFS Northeast Region Protected Resources Division web site (under Gear Restrictions for the Virginia Pound Net

Fishery - 2008 Modified Leader Inspection Program) at *http://www.nero.noaa.gov/prot_res/seaturtles/regs.html*. In general, the depth at mean lower low water for a particular location can be calculated using the predicted and actual tide measurements located at *http://tidesandcurrents.noaa.gov*.

Comment 11: One commenter recommended that the fishermen should call NMFS at least 96 hours, instead of 72 hours as proposed, before the modified leaders are to be deployed to give the inspectors and fishermen more time to arrange the inspection. Another commenter recommended that NMFS establish set times and locations where fishermen can bring their gear for inspection.

Response: NMFS did not receive any comments from fishermen indicating that 72 hours would be an unrealistic schedule for arranging an inspection. Similarly, the NMFS inspector has noted that 72 hours is an appropriate time frame. The 72 hour window was chosen to allow enough time to arrange the inspection while ensuring the fishermen would not be burdened with having to call too far in advance when their deployment plans may still be unclear. If a fisherman wants to call to arrange the inspection 96 hours in advance of deployment, there is nothing in the regulations that would preclude him/her from doing so.

NMFS does not believe establishing a set time and location for the fishermen to bring in their gear for inspection is realistic. Fishermen may set their gear at any time during the year, and as such, purchase and rig their leaders at varying times as well. It would be more cumbersome on the industry to have them adhere to a rigid schedule for inspections, instead of arranging the inspection when their gear is available and ready for deployment. The NMFS inspector has indicated that the proposed inspection plans are realistic and suitable.

Changes From the Proposed Rule

As a result of the comments received and further assessment, NMFS has determined that two modifications to the measures included in the proposed rule are warranted. First, the proposed rule indicated that during the inspection, fishermen must inform NMFS of the ''specific location where his or her inspected pound net leader will be set.'' The final rule clarifies the type of information sought to identify ''specific location'' by indicating that, during the inspection, fishermen must provide accurate and specific latitude and longitude coordinates of the location at which the leader will be deployed. If the fisherman does not know his or her modified pound net leader latitude and longitude coordinates prior to the inspection, NMFS will have a detailed nautical chart available during the inspection for the fisherman to ascertain the specific coordinates of the gear. Second, during the inspection, fishermen must provide NMFS with information on the low water depth at each end of their modified leader at the location at which it will be set. Knowing the depth, in conjunction with NMFS measuring the height of the mesh in relation to the height of the entire leader, will be useful in helping to determine whether the leader, once deployed at the location, meets the requirement that the mesh be no more than one third the depth of mean lower low water. The collection-of-information requirement pursuant to the PRA has been revised to include collecting latitude and longitude coordinates and specific depth data from fishermen (OMB number 0648–0559).

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS has prepared a final regulatory flexibility analysis that describes the economic impact this final rule will have on small entities. A summary of the analysis follows.

A statement of the need for, and objectives of, this rulemaking are presented in the preamble and not repeated here.

No comments were received on the initial regulatory flexibility analysis or the economic impacts of the proposed rule.

The Final Environmental Assessment (EA) and Regulatory Impact Review/Regulatory Flexibility Act Analysis of Sea Turtle Conservation Measures for the Pound Net Fishery in Virginia Waters of the Chesapeake Bay (June 2006) analyzed the economic impacts of requiring the use of the modified leader for offshore pound nets in Regulated Area I and allowing the use of the modified leader by all other pound nets in the Virginia waters of Chesapeake Bay between May 6 and July 15. The analysis found the rule would increase net revenues for five fishermen in the lower Bay by allowing them to fish offshore pound nets during the regulated period, compared to the previous 2004 rule that prohibited leaders. The cost of fabricating and deploying the modified leader was more than offset by the increase in revenues. Additionally, the EA noted that the public benefits from turtle protection using the modified leader were indistinguishable from the leader prohibition. This rule does not change those conclusions; rather, it would help to support the benefits identified. If the compliance rate for use of the modified leader for offshore pound nets in Regulated Area I is not 100 percent, there is potential for a reduction in the benefits from turtle protection. The economic incentives for a fisherman to decide not to comply with the existing regulations are minor; however, fishermen may not comply with the modified leader design specifications due to an inadvertent error in construction. In either case, benefits from the existing regulation could be reduced if the modified leader does not meet the regulatory definition.

The cost to a fisherman of undergoing a land based inspection is small. Assuming that fishing is not impeded by the regulation[1], and the inspection is arranged at a location convenient to the fisherman, the principal cost to fishermen would be the opportunity cost of their time to arrange and undergo the inspection estimated at $21.50 per leader. Assuming telephone costs of $1.25 to arrange the meeting, the total cost would be $22.75 per leader. Fishermen are also required to notify NMFS by telephone if a tag is lost, damaged, or destroyed. It is estimated such a call, should it be necessary, would take approximately 5 minutes for an estimated cost of $2.90 per lost/damaged/destroyed tag (considering telephone charges and opportunity cost of time). The number of fishermen and leaders affected by this rule will depend on how many fishermen adopt the modified leader. At the low end, if it is assumed that only those fishermen required to use the modified leader in order to fish do so, the estimate is five fishermen in the lower Chesapeake Bay with seven offshore leaders would incur inspection costs. Depending on the number of leaders a fisherman deploys, the cost per fisherman would range from $22.75 to $45.50 or 0.03 to 0.06 percent of average annual revenues per fisherman. A mid-range estimate suggests fishermen would replace all offshore pound net leaders with the modified leader. At the end of five years, 21 fishermen with 32 pound nets would incur costs between $22.75 to

[1]That is, fishermen are able to fish before the regulated period with an existing leader. Alternatively, if fishermen used the modified leader outside the regulated period, they would generally remove the leader for cleaning/maintenance at some time during the year; if inspection services were available during that time, fishing would not be impeded.

$45.50 or 0.03 to 0.08 percent of average annual revenues. At the high end, if it is assumed that during the normal leader replacement cycle, all fishermen adopt the modified leader for all pound nets used in Pound Net Regulated Areas I and II during May 6 to July 15, the estimate at the end of five years would be 21 fishermen and 46 pound nets. The annual cost per fisherman would range from $22.75 to $91.00, or 0.04 to 0.08 percent of average annual revenues. The total annual cost to the pound net industry would be $157.70 at the low level of adoption, or $1,046.50 under full adoption, which are 0.007 to 0.047 percent of industry revenues. Note that the cost of reporting lost, damaged, or destroyed tags is not included in the individual fisherman or industry estimates because there is no verifiable estimate of expected rate of tag loss. If one assumes three tags per leader and a 10 percent loss rate, the total industry cost would increase by $5.80 to $40.60 per year depending on the level of adoption and the year. NMFS also analyzed the ''no action'' alternative, for which there would not be any economic impacts on small entities.

This final rule requires those fishermen who wish to deploy a modified leader from May 6 through July 15, to make their modified leaders available for inspection and tagging. Additionally, fishermen would be required to retain a letter that the leader has passed inspection for the relevant period. Under existing regulations, fishermen had to be familiar with the design requirements for the modified leader; this knowledge continues to be required under this rule. In the event that a tagged leader is damaged or destroyed, fishermen would be required to report the loss to NMFS personnel. To access the inspection program and report lost or damaged tags, fishermen would need access to a telephone. No new skills would be required for compliance.

As stated above, the rule was compared to the status quo, which does not require inspection of modified pound net leaders, but does require compliance of modified leaders with the design specifications described in previous regulation. The alternative contained in this final rule was prepared to help ensure the level of turtle protection anticipated by the June 23, 2006 rule (71 FR 36024) is achieved. The rule was designed to minimize the economic burden to the fisherman by allowing the inspections at a place of convenience (e.g., dock) and by allowing inspection at any point prior to deployment (i.e., leaders could be deployed in months prior to May 6). Additionally, fishermen avoid the potential expense and lost revenues that could occur should a leader need to be removed from the water for inspection or because it did not meet the design requirements for a modified leader described in the existing regulation.

This final rule contains a collection-of-information requirement subject to the PRA and which has been approved by OMB under control number 0648–0559. Public reporting burden for the modified pound net leader inspection program is estimated to average a maximum of 2 and one half hours per fisherman (or 51 hours for all Virginia pound net fishermen), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This final rule contains policies with federalism implications that were sufficient to warrant preparation of a federalism assessment under Executive Order 13132. The Assistant Secretary for Legislative and Intergovernmental Affairs provided notice of the proposed action to the Governor of Virginia on March 7, 2007. No comments were received in response to the March 2007 letter.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Transportation.

Dated: November 12, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set forth in the preamble, 50 CFR part 223 is amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

* * * * *

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701.

■ 2. In § 223.205, paragraphs (b)(16) and (b)(17) are redesignated as (b)(21) and (b)(22), respectively, and new paragraphs (b) (16) - (20) are added to read as follows:

§ 223.205 Sea turtles.

* * * * *

(b) * * *

(16) Set, use, or fail to remove a pound net leader in Pound Net Regulated Area I or Pound Net Regulated Area II at any time from May 6 through July 15 that does not meet the leader construction specifications described in 50 CFR 223.206(d)(10) and 50 CFR 222.102;

(17) Set, use, or haul a modified pound net leader in Pound Net Regulated Area I or Pound Net Regulated Area II defined in 50 CFR 222.102 and referenced in 50 CFR 223.206(d)(10) at any time from May 6 through July 15 unless that leader has been inspected and tagged by NMFS in accordance with 50 CFR 223.206(d)(10)(vii) prior to deploying the leader;

(18) Alter or replace any portion of a pound net leader that has been previously tagged by NMFS in accordance with 50 CFR 223.206(d)(10)(vii) so that the altered or replaced portion is no longer consistent with the modified pound net leader definition in 50 CFR 222.102, unless that altered or replaced portion is inspected and tagged by NMFS in accordance with 50 CFR 223.206(d)(10)(vii) or that alteration or replacement occurs after the regulated period of May 6 through July 15;

(19) Remove, transfer, sell, purchase, affix, or tamper with any tags used by NMFS to mark pound net leaders;

(20) Fish, use, or haul a modified pound net leader at any time from May 6 through July 15 unless the fisherman has on board the vessel a letter issued by NMFS indicating that the leader has passed inspection;

* * * * *

■ 3. In § 223.206, paragraph (d)(10)(vii) is added to read as follows:

§ 223.206 Exemptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(10) * * *

(vii) Modified leader inspection program. Any fisherman planning to use a modified pound net leader in Pound Net Regulated Area I or Pound Net Regulated Area II at any time from May 6 through July 15 must make his/her leader available for inspection and tagging by NMFS according to the following procedures. At least 72 hours prior to deploying a modified pound net leader, the fisherman or his/her representative must call NMFS at 757–414–0128 between 7:00 a.m. and 5:00 p.m. local time and arrange for a

mutually agreeable meeting date, time, and place. The fisherman must meet NMFS at such location at the designated time and allow NMFS to examine his or her gear to help ensure the leader is in compliance with the definition of a modified pound net leader. NMFS will ascertain whether the leader meets the following four criteria taken from that definition: (1) the lower portion of the leader is mesh and the upper portion consists of only vertical lines; (2) the mesh size is equal to or less than 8 inches (20.3 cm) stretched mesh; (3) the vertical lines are equal to or greater than 5/16 inch (0.8 cm) in diameter and strung vertically at least every 2 feet (61 cm); and (4) the vertical lines are hard lay lines with a level of stiffness equivalent to the stiffness of a 5/16 inch (0.8 cm) diameter line composed of polyester wrapped around a blend of polypropylene and polyethylene and containing approximately 42 visible twists of strands per foot of line. NMFS will also measure the height of the mesh in relation to the height of the entire leader. During the inspection, the fisherman must provide accurate and specific latitude and longitude coordinates of the location at which the leader will be deployed, as well as information on the low water depth at each end of the modified leader at the site at which it will be set. If the leader meets the four criteria previously described, the measurement of the height of the mesh in relation to the total height of the leader is recorded, and the low water depth and latitude and longitude coordinates of the specific location at which the leader will be deployed are provided and recorded, the leader will pass inspection. If it passes inspection, NMFS will tag the leader with one or more tamperproof tags. Removing or tampering with any tag placed on the leader by NMFS is prohibited. If a tag is damaged, destroyed, or lost due to any cause, the fisherman must call NMFS at 757–414–0128 within 48 hours of discovery to report this incident. After the leader is determined to have passed inspection, NMFS will issue a letter to the fisherman indicating that the leader passed inspection. The fisherman must retain that letter on board his/her vessel tending the inspected leader at all times it is deployed. Modified pound net leaders must pass inspection prior to being used at any time during the time period from May 6 through July 15 of each year.

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[FR Doc. E8–27344 Filed 11–17–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 070718362–81268–02]

RIN 0648–AV14

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Revisions to Allowable Bycatch Reduction Devices

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

ACTION: Final rule.

SUMMARY: In accordance with the framework procedures for adjusting management measures of the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP), NMFS issues this final rule to decertify the expanded mesh bycatch reduction device (BRD), the ''Gulf fisheye'' BRD, and the ''fisheye'' BRD, as currently specified, for use in the Gulf of Mexico (Gulf) shrimp fishery. NMFS is also certifying a new specification for the fisheye device to be used in the Gulf. In addition, this final rule incorporates a number of minor revisions to remove outdated regulatory text and revise references within regulatory text. The intended effect of this final rule is to improve bycatch reduction in the shrimp fishery and better meet the requirements of national standard 9.

DATES: This final rule is effective May 18, 2009.

ADDRESSES: Copies of the Final Regulatory Flexibility Analysis (FRFA) may be obtained from Steve Branstetter, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; phone: 727–824–5305; fax: 727–824–5308.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, telephone: 727–824–5305, fax: 727–824–5308.

SUPPLEMENTARY INFORMATION: The fishery for shrimp in the exclusive economic zone (EEZ) of the Gulf is managed under the FMP prepared by the Gulf of Mexico Fishery Management Council (Council). The FMP is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On June 3, 2008, NMFS published a proposed rule (73 FR 31669) and requested public comment. The rationale for the measures contained in this final rule are provided in the preamble to the proposed rule and are not repeated here. This final rule is effective approximately 6 months after the publication date to give members of the Gulf shrimp industry enough time to come into compliance with the management measures contained in this rulemaking.

Comments and Responses

NMFS received four comments on the proposed rule, three of which opposed proposed actions or suggested alternate management measures. Following is a summary of the comments and NMFS' responses.

Comment 1: BRD efficacy results used for this rulemaking are not based on best scientific data; preliminary results from a new study released by the Gulf and South Atlantic Fisheries Foundation, Inc. (Foundation) have different outcomes than the results used by NMFS in certifying and decertifying BRDs.

Response: To be certified for unconditional use in the southeastern shrimp fishery, testing must demonstrate that a BRD reduces the weight of finfish bycatch by 30 percent, and that less than a 10–percent probability exists that the reduction rate is less than 25 percent. To be provisionally certified (for 2 years), testing must demonstrate that at least a 50–percent probability exists that the BRD reduces the weight of finfish bycatch by 25 percent.

New data are collected at varying rates for different types of fishery research. The Foundation study includes new data that became available after NMFS initiated this rulemaking. Nevertheless, the preliminary results provided by the Foundation study very closely matched the results available to NMFS at the time the rule was developed. The Foundation study agreed with NMFS results indicating a fisheye-type BRD placed less than 9 ft (2.7 m) from the cod end tie-off rings met the certification criterion; the ''Gulf fisheye'' BRD and the expanded mesh BRD did not meet the certification criterion; and the extended funnel BRD did meet the provisional certification criterion. Therefore, the results of the Foundation study do not contradict the actions in this rulemaking to change the allowable placement of the ''fisheye'' BRD in the Gulf, and to decertify the ''Gulf fisheye'' and expanded mesh BRDs in the Gulf.

The Foundation study had slightly different results for the Jones-Davis, Modified Jones-Davis, and composite

panel BRDs. For the Jones-Davis BRD, the Foundation study only considered a limited data set, consisting of 20 new sample tows, which indicated the BRD did not meet the criterion. This limited data set does not meet the minimum 30–tow sample size requirement for certification consideration, and there are no other data for this BRD design except the data used to originally certify the BRD in 1998. The Foundation study included 510 sample tows (compared to NMFS' analysis of 464 sample tows) for its analysis of the Modified Jones-Davis BRD, and concluded the reduction in finfish biomass was greater than 30 percent, but the probability threshold was not met (p=0.11). However, the Foundation study used a different analytical approach in determining its probability estimates. NMFS would need to examine the ramifications of using different analytical procedures prior to making any further determinations regarding this gear. The Foundation study used 187 sample tows (compared to NMFS' analysis of 146 sample tows) to evaluate the efficacy of the provisionally certified composite panel BRD. Whereas NMFS concluded this BRD met the provisional certification criterion by a very small margin (mean reduction rate of 25.1 percent with a 52–percent probability the mean reduction rate was greater than 25 percent), the Foundation study indicated the BRD has a 23.8–percent reduction rate with a 45–percent probability the reduction rate is greater than 25 percent.

As noted, new data are collected on a continuing basis by NMFS and its cooperating research partners. These data will be reviewed and evaluated, along with other relevant data comprising the best scientific information available, to monitor for any substantial changes in the overall efficacy of the various BRDs. Revisions will be contemplated once sufficient information exists to determine whether revisions are appropriate. However, repeated revisions to the status of certified or non-certified BRDs without a sufficient administrative record would not be consistent with the Magnuson-Stevens Act, the FMP, or other applicable law, and would lead to unnecessary regulatory confusion and economic hardship to the industry. NMFS does not intend, at this time, to modify the list of certified BRDs based on preliminary analyses conducted using different methodologies. However, NMFS will continue to monitor the efficacy of BRDs currently certified for use in the southeastern shrimp fishery.

NMFS provisionally certified the Extended Funnel and composite panel BRDs for a period of 2 years, through March 14, 2010. NMFS, in cooperation with its research partners, is currently collecting additional information on modifications to these BRD designs to determine if such modifications will improve their overall bycatch reduction efficacy.

Comment 2: The benefit of BRDs is a diminishing return as shrimp effort declines. There are no documented bycatch issues where bycatch mortality reduction is needed in the trawl fishery for managed species; the only basis for BRDs is purportedly to meet Magnuson-Stevens Act requirements. Furthermore, there is no basis or sound definition of the 30–percent reduction target over another target; it is arbitrary and maybe capricious. Bycatch reduction credit should include reductions from turtle excluder devices (TEDs).

Response: This rulemaking is limited in scope to revising the list of allowable BRDs, based on the recently revised BRD certification criterion (73 FR 8219, February 13, 2008). In accordance with regulations at 50 CFR 622.41(g)(2)(iv), the Regional Administrator will decertify a BRD when it is determined the BRD does not meet the certification criterion. NMFS' analyses and an independent review of those data by the Foundation agreed the ''Gulf fisheye'' BRD and the expanded mesh BRD do not meet the certification criterion. This rulemaking will decertify those BRDs in the Gulf.

Although there are no species-specific targets for shrimp trawl bycatch reduction, fishing mortality associated with shrimp trawl bycatch has been considered in recent stock assessments for several managed stocks, including red snapper, vermilion snapper, gray triggerfish, and king mackerel. NMFS' analyses and an independent 1997 report by the Foundation indicate BRDs can substantially reduce the catch of numerous finfish species. Therefore, the requirements for BRDs in the southeastern shrimp fishery helps NMFS and the Councils meet national standard 9 and other Magnuson-Stevens Act requirements, including section 303(a) of the Magnuson-Stevens Act by reducing bycatch and bycatch mortality for both managed and non-managed stocks.

The total quantity of bycatch reduced from use of a BRD is dependent on total effort, and shrimp trawl effort, and the resulting level of bycatch, has been reduced substantially in recent years. In addition, TEDs and other fishing gear modifications or fishing behavior modifications may reduce bycatch. However, the BRD certification criterion is not intended to be an overall target or credit for the level of bycatch reduction that may be possible in the fishery. The criterion represents an achievable average rate by which a BRD reduces the finfish biomass captured in the cod end of the trawl, independent of the level of effort or quantity of the catch. Bycatch reduction that might occur from other technological or fishing behavior changes would be in addition to the 30–percent reduction achieved through the use of BRDs.

The definition of the bycatch reduction criterion is clearly described in the Bycatch Reduction Device Testing Manual. During certification testing, a BRD candidate is placed in the cod end (behind the TED) of one outboard net to create an experimental net, and any certified BRD in the other outboard net is either removed or disabled to create a control net. All trawls under tow must be equipped with approved TEDs. The catch and catch rate between the two nets is then compared. The BRD Manual further states: ''The primary assumption in assessing the bycatch reduction efficiency of the BRD candidate during paired-net tests is that the inclusion of the BRD candidate in the experimental net is the only factor causing a difference in catch from the control net.'' In summary, the BRD must demonstrate the ability, on average, to allow 30 percent of the finfish biomass captured in the cod end of a shrimp trawl to escape from the net.

The basis for the 30–percent criterion was established when the Council recommended, and NMFS approved and implemented through regulation, BRD requirements for the eastern Gulf in Amendment 10 to the FMP. Previously, regulations implementing Amendment 9 required BRDs in the western Gulf; however, the focus of the original requirement was to reduce juvenile red snapper bycatch, and juvenile red snapper were not common in the eastern Gulf. The Magnuson-Stevens Act requires measures to avoid and minimize bycatch and bycatch mortality overall; therefore, in developing Amendment 10, the Council chose a more generic goal of reducing overall finfish catch by 30 percent by weight. The Council's decision was supported by information on the bycatch reduction capabilities of BRDs presented in a 1997 report by the Foundation and a 1998 NMFS Report to Congress. All three BRDs (''fisheye'', ''Gulf fisheye'', Jones-Davis) certified at the time for use in the western Gulf (based on a red snapper reduction criterion) met this general finfish reduction criterion. In addition, two other BRDs (extended funnel and expanded mesh), certified for the South Atlantic based on their ability to reduce

the catch of weakfish and Spanish mackerel, also met this general finfish criterion. Thus, this general finfish reduction requirement allowed all BRDs certified at the time under other certification criteria to be certified for use in the eastern Gulf. The intent was to provide maximum flexibility to the shrimp industry to use a BRD most appropriate for the fishing conditions and fishing activities conducted in the eastern Gulf. Subsequently, the South Atlantic Fishery Management Council revised their certification criterion to reflect this general finfish reduction criterion, again noting all BRDs certified for use in the South Atlantic, because of their ability to reduce weakfish and Spanish mackerel, also met this general finfish criterion.

Comment 3: There was a basis for establishing a 74–percent bycatch mortality reduction target for red snapper as part of joint Amendment 27 to the Reef Fish FMP and Amendment 14 to the Shrimp FMP (Amendment 27/14). Currently, the shrimp fishery is meeting the 74–percent target with or without BRDs. It is clear BRDs are not an effective tool for reducing red snapper or rebuilding the stock. In addition, other factors such as natural mortality may play a bigger role in red snapper health than previously thought. Current research has not been able to document the expected inverse relationship between juvenile red snapper abundance and shrimp effort. Finally, the increased survivorship of predatory fish may be impacting red snapper and shrimp. The costs and benefits of reducing bycatch should be considered in a broad ecosystem context.

Response: As noted in the previous response, the scope of this rulemaking is to decertify those BRDs that do not exclude 30 percent of the finfish bycatch, by weight, captured during trawling operations. Although BRDs do contribute to an overall reduction in fishing mortality of red snapper, and other managed and non-managed finfish species, there are no species-specific reduction criteria associated with the certification and decertification of BRDs. However, Amendment 27/14 notes that a 30–percent reduction in finfish roughly corresponds to a 20–25–percent reduction in the catch rate of red snapper. With the implementation of actions in Amendment 27/14, the Council and NMFS have taken a different approach to achieve reductions in red snapper fishing mortality from shrimp trawls through the use of specific time-area closures, as necessary. NMFS is aware of as yet unpublished studies on red snapper natural mortality; these studies will be evaluated and considered in the next red snapper stock assessment, which is currently scheduled for 2010.

Amendments 9, 10, and 14 to the Gulf Council's Shrimp FMP and Amendment 6 to the South Atlantic Council's Shrimp FMP recognized the changes that might occur at an ecosystem level as finfish bycatch and bycatch mortality were reduced. Increased predation on shrimp could reduce shrimp biomass by 6–8 percent, but any negative effects of increased predation would be masked by the large annual fluctuations in recruitment and landings. Even with the substantial reductions in overall shrimp effort in the Gulf, catch rates have increased substantially since 2003, resulting in total landings at levels comparable to previous high-effort years. At this point, it would not appear there have been more than minimal changes in overall shrimp biomass.

Comment 4: The condition of the fishery is worse than when the bycatch practicability analysis was performed for Amendment 27/14, and is not expected to improve in the near future. The analysis should be redone under today's conditions. Because of the worsening economic conditions in the shrimp fishery, the cost in shrimp loss from new BRDs, and the purchase and installation costs is an impact that cannot be absorbed.

Response: Economic conditions in the Gulf shrimp fishery have worsened since the time period considered in Amendment 27/14 and remain very poor, primarily because of low shrimp prices and rising fuel costs. Amendment 27/14 analyzed trends in the economic status of the Gulf shrimp fishery through 2005, which indicated the average Gulf shrimp vessel was experiencing a significant economic loss in 2002 and that such losses had likely continued through 2005.

The Regulatory Impact Review (RIR) for this rulemaking updated the analysis using all available data, including information regarding permitted vessels' operations in 2006 and certain preliminary data for 2007. Based on the updated analysis, NMFS agrees that economic conditions in the Gulf shrimp fishery have likely worsened and remain poor. Further, NMFS does not expect significant improvement in economic conditions or increases in effort in the foreseeable future. More detailed information regarding the updated analysis and response to the above comment is contained in the FRFA classification summary of this rule.

Classification

The Administrator, Southeast Region, NMFS, determined that this rule is necessary for the conservation and management of the shrimp fishery in the Gulf of Mexico and is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be significant for purposes of Executive Order 12866.

A FRFA was prepared in support of this final rule. The FRFA incorporates the IRFA, a summary of the significant economic issues raised by public comments, NMFS responses to those comments, and a summary of the analysis completed to support the action. A copy of this analysis is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

This final rule will revise the list of allowable BRDs used in the Gulf shrimp fishery. Specifically, NMFS is decertifying the expanded mesh BRD, the ''Gulf fisheye'' BRD, and the ''fisheye'' BRD, as currently specified, for use in the Gulf shrimp fishery. The ''fisheye'' BRD with a new, more restrictive specification will be certified for use in the Gulf. The allowable placement of the ''fisheye'' BRD will be restricted to no further forward than 9 ft (2.7 m) from the cod end tie-off rings.

The purpose of this final rule is to further reduce total finfish bycatch in the Gulf shrimp fishery to better address the requirements of national standard 9.

Four comments were made by the public in response to the proposed rule; one stated general support for the proposed action, two expressed general opposition to the rule, and one outlined detailed issues. Four issues associated with the economic analysis were raised through public comment on the proposed rule. A summary of all comments is provided in the previous section of this preamble; NMFS's responses to the issues raised on the economic analysis are discussed further below. No changes were made in the final rule as a result of these comments.

The first issue raised on the economic analysis is that economic conditions in the Gulf shrimp fishery have worsened since the time period considered in the Final Environmental Impact Statement (FEIS) for Amendment 27/14 and remain very poor. The FEIS for Amendment 27/14 analyzed trends in the economic status of the Gulf shrimp fishery through 2005. According to projections available at the time, the FEIS for Amendment 27/14 indicated that the average Gulf shrimp vessel was experiencing an economic loss in 2002 and that such losses had likely

continued through 2005. The RIR for this rule updated this analysis by using all available data, including information regarding permitted vessels' operations in 2006 and certain preliminary data for 2007. This information indicated that, in 2006, average total revenue per permitted vessel increased even though shrimp prices fell. The combination of above average abundance and reduced vessel participation and, therefore, effort, led to an increase in catch per unit of effort and, thus, an increase in landings and revenue per vessel. However, diesel fuel prices also increased significantly, by nearly 16 percent, in 2006. Therefore, the updated analysis concluded it is highly likely that the average permitted vessel was operating at an economic loss in 2006. This conclusion is supported by the fact that the actual decline in effort between 2002 and 2006 was greater than originally projected, reflecting the fact that vessels have been exiting the fishery more quickly than originally forecast which in turn is most likely due to worsening economic conditions. Preliminary data indicate that vessel participation, effort, abundance, landings, and, to a lesser extent, catch per unit of effort likely decreased in 2007. Although the preliminary data indicates that shrimp prices increased slightly in 2007, diesel fuel prices apparently increased at a faster rate and, thus, it is highly likely that the average permitted vessel was operating at an economic loss in 2007 as well. Therefore, NMFS agrees that economic conditions in the Gulf shrimp fishery have likely worsened and remain very poor.

The second issue raised on the economic analysis is that the economics of the Gulf shrimp fishery have been worsening primarily due to declines in shrimp prices and increases in fuel costs. The RIR for this rule states that, on average, Gulf shrimp prices decreased by approximately 50 percent between 2002 and 2006 in nominal terms. Adjusting for inflation, the price decrease in real terms was 58 percent. Preliminary data indicated that shrimp prices increased slightly in 2007, particularly for large shrimp. The RIR also states that the price of diesel fuel increased by nearly 138 percent between 2002 and 2006 and that, according to preliminary data, diesel fuel prices increased by an additional 7 percent in 2007. Such increases in fuel prices have led to comparable increases in the fuel expenses associated with operating a Gulf shrimp vessel. Therefore, NMFS agrees that the combination of lower shrimp prices and higher fuel costs has led to deteriorating economic conditions in the Gulf shrimp fishery over the past several years.

The third issue raised on the economic analysis is that economic conditions in the shrimp fishery are not expected to improve significantly and, as a result, no significant increases in shrimp effort are expected in the next several years. The RIR for this rule states that, primarily as a result of adverse economic conditions, participation in the Gulf shrimp fishery by permitted vessels continually declined between 2002 and 2006 and, according to preliminary data, participation likely decreased further in 2007. Furthermore, the RIR states it is reasonable to conclude that, not only will effort and vessel participation continue to decline for the foreseeable future, but the equilibrium level of effort and fleet size will be lower than originally forecasted, and, thus, the reductions in effort and fleet size at the new equilibrium will be greater than originally predicted. Therefore, NMFS agrees that economic conditions are not expected to improve significantly and significant increases in shrimp effort are not expected in the foreseeable future.

The fourth issue on the economic analysis dealt with the economic impacts associated with the loss of shrimp from and purchase/installation of new BRDs given the fishery's poor economic condition. As previously indicated, the RIR for this rule fully discusses the fishery's poor economic condition and its causes. Regarding the rule's economic impacts, not all of the 1,912 vessels with Gulf shrimp moratorium permits will be directly affected by this rule. Approximately 313 permitted vessels will not be directly impacted since they are not currently participating in the fishery. Further, 478 vessels will not be impacted since, based on the best available data, they are currently using BRDs that will still be allowable under this rule.

In addition, the impacts to 696 other vessels, currently using the ''fisheye'' BRD, are expected to be negligible. Although these vessels are expected to switch to more expensive BRDs, these BRDs also have a lower shrimp loss on average than the BRDs these vessels currently use. Further, the adverse impacts arising from the need to purchase more expensive BRDs would be mitigated in the first year by NMFS' provision of one free BRD to most of these vessels. As a result, the net effect on these vessels is most likely zero and potentially positive.

Conversely, the analysis acknowledges that adverse economic impacts will be imposed on vessels using the ''Gulf fisheye'' BRD and particularly the expanded mesh BRD. Specifically, for the 414 vessels currently using the ''Gulf fisheye'' BRD, the rule is expected to impose a loss equal to 2 percent of their average annual gross revenue. NMFS acknowledges that, under current economic conditions, such losses could cause some vessels to alter their current operations in an effort to either reduce costs or increase revenues. Such changes might include, but not be limited to, reducing effort, the number of crew, or crew revenue shares, or switching to other fisheries. The impact on most of these vessels would be mitigated in the first year by NMFS' provision of one free BRD.

For the 11 vessels currently using the expanded mesh BRD, a more substantial loss is expected. NMFS acknowledges that this loss is expected to create additional operational changes since these losses are likely not sustainable.

Based on the above discussions, NMFS believes that it has fully accounted for all of the economic impacts arising from this rule given the prevailing poor economic conditions in the fishery.

As of March 26, 2007, a Federal Gulf shrimp moratorium permit is required to fish for shrimp in the Gulf EEZ. At the time the analysis for this rule was conducted, the number of vessels possessing a Federal Gulf shrimp moratorium permit was 1,912. While these totals have not been updated for this final rule, an update would not be expected to substantially affect any determinations or average expected impacts contained in the original analysis. Also at the time the analysis for this rule was conducted, 2005 and 2006 were the most recent years for which complete and finalized landings and revenue data for this fishery. In developing the FRFA, NMFS used available preliminary data for 2007 to supplement the 2005 and 2006 data. Complete and finalized landings and revenue data for 2007 are now available, but a review of that information indicates that it would not substantively affect the results of the analysis. Specifically, as expected, the number of vessels participating in the fishery decreased in 2007. Since shrimp prices also increased slightly, average landings and revenue per permitted vessel increased in 2007. However, fuel prices also increased in 2007 and at a faster rate than shrimp prices. Therefore, the increase in vessel revenue was likely offset by a similar increase in operating expenses which in turn implies that the average, permitted vessel participating in the fishery was operating at an

economic loss in 2007 comparable to that experienced in 2006.

Of the 1,912 vessels issued moratorium permits, 1,599 vessels were active in the Gulf food shrimp fishery in either 2005 or 2006, as demonstrated by recorded landings in the Gulf shrimp fishery landings file for the years 2005 and 2006. Between 2003 and 2006, participation in the fishery by permitted vessels has continually declined, particularly in 2006, and preliminary data suggest participation may have decreased further in 2007. This trend is expected to continue in the foreseeable future. It is unknown whether the 313 permitted vessels not active during the 2005 or 2006 seasons fished during the 2007 season, so these vessels have not been included in the analysis of directly impacted vessels. Should these 313 vessels become active in the future, they could be directly impacted at that time.

Of the 1,599 active permitted vessels, an estimated 478 vessels are presently using BRDs that will still be allowable under this final rule. These vessels will not be required to switch to new BRDs or change the placement of their ''fisheye'' BRD. The other 1,121 active permitted vessels presently using BRDs that will not be allowable under this final rule will have to change the location of their current BRDs or switch to other BRDs. Thus, it is estimated that 1,121 vessels will be directly impacted by this final rule.

The average annual gross revenue per active permitted vessel in 2005–2006 was approximately $196,943 (2006 dollars). The maximum average annual gross revenue reported by an active permitted vessel during this period was $965,462. However, substantial differences in average annual revenues exist by vessel size. For the large vessel group (60 ft (18.3 m) in length or greater), the average annual revenue per vessel was approximately $221,017 in 2005–2006. For small active permitted vessels (less than 60 ft (18.3 m) in length), the average annual revenue per vessel was approximately $61,267 in 2005–2006. The distribution of annual revenues for small vessels is also considerably more heterogeneous than for large vessels reflecting the fact that the vast majority of large vessels operate on a full-time basis while, for small vessels, some operate on a full-time basis and others only on a part-time basis.

On average, small active permitted vessels are also smaller in regards to almost all of their physical and operational attributes, such as smaller crews, fewer and smaller nets, and less engine horsepower and fuel capacity. Small vessels are also older on average. Almost all large vessels are steel-hulled. Steel hulls are also the most common hull-type among small vessels, though more than 50 percent of these vessels have fiberglass or wood hulls. More than two-thirds of the large vessels have freezing capabilities while few small vessels have such equipment. Small vessels still rely on ice for refrigeration and storage. A few of the small vessels are so small that they rely on live wells for storage.

Both large and small active permitted Gulf shrimp vessels are highly dependent on Gulf food shrimp landings and revenues. In 2005–2006, the percentage of revenues arising from food shrimp landings was nearly 99 percent for large vessels and approximately 94 percent for small vessels.

Finally, according to previous projections, on average, both small and large Gulf shrimp vessels were experiencing significant economic losses, ranging from a -27 percent rate of return (net revenues/gross revenues) in the small vessel sector to a -36 percent rate of return in the large vessel sector (-33 percent on average for the fishery as a whole). Although more current estimates are not available, preliminary results from a survey of permitted vessels indicate that the average active permitted Gulf shrimp vessel, whether large or small, was still operating at an economic loss in 2006. Therefore, any additional financial burden could hasten additional exit from the fishery.

The Small Business Administration defines a small business in the commercial fishing industry as an entity that is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million annually (NAICS codes 114111 and 114112, finfish and shellfish fishing). Based on the average annual revenues for the fishery provided above, all shrimp vessels expected to be directly impacted by this final rule are determined, for the purpose of this analysis, to be small entities. As explained above, this final rule is expected to directly affect the 1,121 active permitted vessels that are not equipped with BRDs that will be allowed under this final rule, or 59 percent of all permitted vessels and 70 percent of active permitted vessels. Thus, NMFS determines that this rule will affect a substantial number of small entities.

Adverse direct effects expected as a result of this final rule will only accrue to certain vessels in the Gulf EEZ commercial shrimp fishery. The extent to which particular small entities' profits will be reduced by the proposed action is critically dependent on whether the 1,121 potentially impacted shrimp vessel owners decide to employ the predominantly used and produced ''fisheye'' BRD in the allowable position, which would be the most expedient option and minimize immediate out-of-pocket expenses, or switch to the modified Jones-Davis BRD or the extended funnel BRD which have a significantly lower average shrimp loss. Two other BRDs will be available, specifically the Jones-Davis and composite panel BRDs. However, due to the lower average shrimp loss associated with the extended funnel and modified Jones-Davis BRDs, and the lower cost of the modified Jones-Davis BRD relative to the Jones-Davis BRD (but not the composite panel BRD), the extended funnel and modified Jones-Davis BRDs would be economically preferable. Therefore, this analysis assumes that these will be the BRDs of choice.

Assuming all noncompliant BRDs will be replaced, approximately 6,400 replacement BRDs will be required under this final rule. NMFS has contracted for approximately 1,000 of the economically preferable BRDs to be produced for free distribution to vessels that will be forced to change their current BRDs as a result of this final rule. It is expected that one free BRD will be provided to each vessel to ensure that the benefits will be widely distributed. Because there are many more large vessels than small vessels, and the small vessels that will potentially need to switch to new BRDs will likely only need to purchase three BRDs, as compared to six BRDs for large vessels, it is assumed for purposes of this analysis that the free BRDs will be provided only to large vessels.

This analysis considers that the shrimp industry will have approximately six months after publication of the final rule to meet the compliance requirements of the rule. This should allow net shops sufficient time to produce the remaining 5,400 BRDs which are expected to be needed in the shrimp industry.

The delayed effective date of this final rule will help ensure the new requirement occurs during the off-season, which will allow vessel captains additional time to determine the best BRD to use and the best methods to use their new BRDs according to their particular vessel's operations prior to the peak summer season. Thus, while it may take time for vessel captains to learn how to re-configure their gear so that the gear and gear modifications (BRDs and TEDs) operate in an optimal

manner with respect to shrimp retention, the timing of this final rule should minimize the potential for any initial higher than expected shrimp losses as a result of vessel captains moving up the ''learning curve.''

Therefore, in general, the actual impacts of this final rule are expected to be approximated by the impacts associated with use of the extended funnel or modified Jones-Davis BRDs. This general conclusion assumes that vessel owners will make prudent use of the time they are given to test the gear and that the relatively high average shrimp loss associated with the ''fisheye'' BRD in the allowable position will provide sufficient economic incentive to switch to a different BRD as soon as possible.

Regardless of the new BRD adopted, the estimated ten large vessels and one small vessel currently using the expanded mesh BRD are expected to experience a substantial economic loss as a result of this final rule. Even if these vessels switch to the extended funnel BRD or modified Jones-Davis BRD, these vessels are projected to experience an estimated annual loss of approximately $17,000 per vessel, or approximately 8 percent of their average annual gross revenues, as a result of higher costs associated with these relatively more expensive new BRDs and reduced revenues resulting from their higher average shrimp loss relative to the expanded mesh BRD. This loss is expected to be sufficient to cause additional operational changes, since the losses would not likely be sustainable.

For the estimated 70 small and 626 large vessels currently using the ''fisheye'' BRD in the 9-(2.7–m) to 11–ft (3.4–m) position, the expected impacts of this final rule are considerably less burdensome, despite the increased operating costs due to the higher costs of the new BRDs, and potentially even beneficial. Specifically, for the 70 small vessels, a switch to the extended funnel BRD is projected to lead to slightly higher annual revenues, approximately $200, or 0.3 percent of their average annual gross revenues, because of the lower average shrimp loss from these alternative BRDs. A switch to the modified Jones-Davis BRD is projected to result in a slight annual loss of $400, or 0.6 percent of their average annual gross revenues. The effects of either switch would likely be imperceptible and, therefore, are expected to cause no change in these vessels' fishing operations.

For the 626 large vessels, a switch to the extended funnel BRD is projected to result in an annual gain of approximately $2,000, or approximately 1 percent of average annual revenues, again due to the higher average shrimp retention. Under a switch to the modified Jones-Davis BRD, the higher costs associated with purchasing this more expensive BRD are approximately equivalent to the increase in revenues resulting from its relatively lower average shrimp loss, thus resulting in no net change. As with the small vessels, all impacts would be expected to be imperceptible and cause no change in these vessels' fishing operations. Additionally, any potential adverse impacts in the first year should be mitigated by the provision of the one free BRD.

The estimated 27 small and 387 large vessels currently using the ''Gulf fisheye'' BRD are projected to experience greater losses than the vessels currently using the ''fisheye'' BRD in the 9-(2.7–m) to 11–ft (3.4–m) position. Specifically, for the 27 small vessels, a switch to the extended funnel BRD or modified Jones-Davis BRD is projected to result in an estimated annual loss of approximately $1,400, or approximately 2 percent of the vessel's average annual gross revenues. This loss will result from both an increase in operating costs, as these BRDs are relatively more expensive, and a decrease in annual revenues, since they also have a slightly higher average shrimp loss. For the 387 large vessels, a switch to the extended funnel BRD or modified Jones-Davis BRD is projected to result in an estimated annual loss of approximately $4,000, or approximately 2 percent of the vessel's average annual gross revenues. Again, this loss will be due to both an increase in operating costs and higher average shrimp loss. Under current economic conditions, such losses to both the small and large vessels could cause some vessels to alter their current operations in an effort to either reduce costs or increase revenues. Such changes might include, but not be limited to, reducing effort, the number of crew, or crew revenue shares, or switching to other fisheries. The impacts on the large vessels will be slightly mitigated in the first year by the provision of the one free BRD.

In previous rulemaking (73 FR 8219, February 13, 2008) to revise the bycatch reduction criterion, NMFS considered a number of alternatives. For purposes of this rulemaking, however, given the bycatch reduction criterion established in that previous rulemaking, the only alternative considered to this final rule was the status quo, or no action. Since the status quo would not change the existing list of allowable BRDs in the Gulf shrimp fishery, there would be no new impacts associated with this action. However, new information collected between 2001 and 2003 indicated that the expanded mesh BRD, the ''Gulf fisheye'' BRD, and the ''fisheye'' BRD in its standard configuration, as used in the Gulf shrimp fishery, do not meet the 30–percent finfish reduction criterion. According to NMFS' Southeast Fisheries Science Center (SEFSC) estimates, the fisheye device in its most common configurations achieves between a 14- and 23–percent reduction in finfish bycatch by weight, and the expanded mesh BRD achieves a 17–percent reduction in finfish bycatch by weight.

Allowing for the provisional certification of BRDs achieving a 25–percent reduction in finfish bycatch by weight, which has been established via previous rulemaking (73 FR 8219, February 13, 2008), could significantly reduce the potential adverse economic impacts of this final rule on small entities since it will allow for the temporary certification of the extended funnel BRD in the western Gulf. Relative to the other BRDs that meet the 30–percent finfish reduction criterion, the extended funnel BRD's average shrimp loss is considerably lower and, thus, so are the economic impacts potentially resulting from this final rule if shrimp vessel owners switch to this particular BRD. The 6 months vessel owners will be given should be sufficient to allow them to switch to this BRD or the modified Jones-Davis BRD, which will mitigate any adverse economic impacts from the final rule. Additional mitigation in the first year will accrue due to the distribution of the 1,000 free BRDs.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: November 12, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.4, paragraphs (h)(1)(i) through (h)(1)(iv) are removed, and the first sentence of paragraph (a)(2)(v) is revised to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(v) *Gulf reef fish*. For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, as specified in § 622.42(a)(1), or to sell Gulf reef fish in or from the Gulf EEZ, a commercial vessel permit for Gulf reef fish must have been issued to the vessel and must be on board. * * *

* * * * *

§ 622.16 [Amended]

3. In § 622.16, paragraph (b)(2)(iv) is removed.

■ 4. In § 622.33, paragraph (a)(2)(ii)(A) is revised to read as follows:

§ 622.33 Caribbean EEZ seasonal and/or area closures.

(a) * * *

(2) * * *

(ii)* * *

(A) *Bajo de Cico*.

Point A	North lat.	West long.
A	18°15.7′	67°26.4′
B	18°15.7′	67°23.2′
C	18°12.7′	67°23.4′
D	18°12.7′	67°26.4′
A	18°15.7′	67°26.4′

* * * * *

■ 5. In § 622.38, the second sentence of paragraph (d)(1) is revised to read as follows:

§ 622.38 Landing fish intact.

* * * * *

(d) * * *

(1) * * * See § 622.31(n) regarding a prohibition on the use of Gulf reef fish as bait. * * *

* * * * *

■ 6. In § 622.41, paragraphs (g)(3)(i)(A),(B), and (E) are revised to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(g) * * *

(3) * * *

(i) * * *

(A) Fisheye—see Appendix D to part 622 for separate specifications in the Gulf and South Atlantic EEZ.

(B) Gulf fisheye—South Atlantic EEZ only.

* * * * *

(E) Expanded mesh—South Atlantic EEZ only.

* * * * *

■ 7. In Appendix D to part 622, sections C and D are revised to read as follows:

APPENDIX D TO PART 622—SPECIFICATIONS FOR CERTIFIED BRDS

* * * * *

C. *Fisheye*.

1. *Description*. The fisheye BRD is a cone-shaped rigid frame constructed from aluminum or steel rod of at least 1/4 inch (6.35–mm) diameter, which is inserted into the cod end to form an escape opening.

2. *Minimum Construction and Installation Requirements*. The fisheye has a minimum escape opening dimension of 5 inches (12.7 cm) and a minimum total escape opening area of 36 in^2 (91.4 cm^2). When the fisheye BRD is installed, no part of the lazy line attachment system (i.e., any mechanism, such as elephant ears or choker straps, used to attach the lazy line to the cod end) may overlap the fisheye escape opening when the fisheye is installed aft of the attachment point of the cod end retrieval system.

(a) In the Gulf EEZ, the fisheye BRD must be installed at the top center of the cod end of the trawl to create an opening in the trawl facing in the direction of the mouth of the trawl no further forward than 9 ft (2.7 m) from the cod end drawstring (tie-off rings).

(b) In the South Atlantic EEZ, the fisheye BRD must be installed at the top center of the cod end of the trawl to create an escape opening in the trawl facing the direction of the mouth of the trawl no further forward than 11 ft (3.4 m) from the cod end tie-off rings.

D. *Gulf fisheye*.

1. *Description*. The Gulf fisheye is a cone-shaped rigid frame constructed from aluminum or steel rod of at least ¼ inch (6.35–mm) diameter, which is inserted into the top center of the cod end, and is offset not more than 15 meshes perpendicular to the top center of the cod end to form an escape opening.

2. *Minimum Construction and Installation Requirements*. The Gulf fisheye has a minimum escape opening dimension of 5 inches (12.7 cm) and a minimum total escape opening area of 36 in^2 (91.4 cm^2). To be used in the South Atlantic EEZ, the Gulf fisheye BRD must be installed in the cod end of the trawl to create an escape opening in the trawl, facing in the direction of the mouth of the trawl, no less than 8.5 ft (2.59 m) and no further forward than 12.5 ft (3.81 m) from the cod end tie-off rings, and may be offset no more than 15 meshes perpendicular to the top center of the cod end. When the Gulf fisheye BRD is installed, no part of the lazy line attachment system (i.e., any mechanism, such as elephant ears or choker straps, used to attach the lazy line to the cod end) may overlap the fisheye escape opening when the fisheye is installed aft of the attachment point of the cod end retrieval system.

* * * * *

8. In addition to the amendments above, in 50 CFR part 622, remove the word ''codend,'' wherever it occurs, and add in its place the words ''cod end''.

[FR Doc. E8–27351 Filed 11–17–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648–XL77

Atlantic Highly Migratory Species; Inseason Action to Close the Commercial Porbeagle Shark Fishery

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

ACTION: Fishery closures.

SUMMARY: NMFS is closing the commercial fishery for porbeagle sharks in the Atlantic Ocean and Gulf of Mexico. This action is necessary because the porbeagle shark quotas for the 2008 fishing season have reached or are projected to have reached at least 80 percent of the available quota.

DATES: The commercial porbeagle shark fishery is closed effective 11:30 p.m. local time November 18, 2008 until NMFS announces via a notice in the **Federal Register** that additional quota is available.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster–Geisz, 301–713–2347; fax 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its implementing regulations found at 50 CFR part 635 issued under authority of the Magnuson–Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Under 635.5(b)(1), shark dealers are required to report every two weeks. Dealer reports for fish received between the 1st and 15th of any month must be received by NMFS by the 25th of that month. Dealer reports for fish received between the 16th and the end of any month must be received by NMFS by the 10th of the following month. Under

50 CFR 635.28(b)(2), when NMFS projects that fishing season landings for a specific shark quota have reached or are about to reach 80 percent of the available quota, NMFS will file for publication with the Office of the **Federal Register** a notice of closure for that shark species group that will be effective no fewer than 5 days from the date of filing. From the effective date and time of the closure until NMFS announces, via a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fishery for that specific quota is closed, even across fishing years.

On June 24, 2008 (73 FR 35778; corrected July 15, 2008, 73 FR 46058), NMFS announced that the porbeagle quota for the 2008 fishing year would be 1.7 metric tons (mt) dressed weight (dw) (3,748 lbs dw). In the September 23, 2008, landings update, sharks reported as unknowns were apportioned to species or species groups using observer data by number rather than weight. This method was originally used because it follows the procedures used in the stock assessment. However, while the stock assessment is done in number of sharks, quota monitoring is done by weight. As such, for this and all future updates, sharks reported as unknowns will be apportioned to species or species groups by weight. Thus, landings for some groups may differ from previous landings updates. Additionally, NMFS worked with the State of North Carolina to try to determine the amount of double reporting between state and federal landings. While doing this, NMFS discovered that many of North Carolina's landings of spiny dogfish were incorrectly reported as unknown or sandbar sharks. The latest update corrects this reporting error. Dealer reports through the October 15, 2008, reporting period indicated that 2.0 mt dw or 116.0 percent of the available quota for porbeagle sharks has been taken. Accordingly, NMFS is closing the commercial porbeagle shark fishery as of 11:30 p.m. local time November 18, 2008.

During the closure, retention of porbeagle sharks is prohibited for persons fishing aboard vessels issued a commercial shark limited access permit under 50 CFR 635.4, unless the vessel is permitted to operate as a charter vessel or headboat for HMS and is engaged in a for–hire trip, in which case the recreational retention limits for sharks and no sale provisions may apply (50 CFR 635.22(a) and (c)). The sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of carcasses and/or fins of porbeagle sharks harvested by a person aboard a vessel that has been issued a commercial shark limited access permit under 50 CFR 635.4, is prohibited, except for those that were harvested, offloaded, and sold, traded, or bartered prior to the closure, and were held in storage by a dealer or processor.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA), finds that providing for prior notice and public comment for this action is impracticable and contrary to the public interest because the fishery is currently underway, and any delay in this action would cause further overharvest of the quota and be inconsistent with management requirements and objectives. Similarly, affording prior notice and opportunity for public comment on this action is contrary to the public interest because if the quota is exceeded, the affected public is likely to experience reductions in the available quota and a lack of fishing opportunities in future seasons. Thus, for these reasons, the AA also finds good cause to waive the 30–day delay in effective date pursuant to 5 U.S.C. 553 (d)(3). This action is required under 50 CFR 635.28(b)(2) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 12, 2008.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–27327 Filed 11–13–08; 4:45 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 0808051050–81421–02]

RIN 0648–XJ42

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the annual harvest guideline (HG) for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of July 1, 2008, through June 30, 2009. This HG has been calculated according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and establishes allowable harvest levels for Pacific mackerel off the Pacific coast. The HG for the 2008–2009 fishing season is 40,000 metric tons (mt). If this total is reached, Pacific mackerel fishing will be closed to directed harvest and only incidental harvest will be allowed at a 45 percent by weight incidental catch rate when landed with other CPS, except that up to one mt of Pacific mackerel can be landed without landing any other CPS.

DATES: Effective December 18, 2008 through June 30, 2009.

ADDRESSES: Copies of the report *Pacific Mackerel (Scomber japonicus) Stock Assessment for U.S. Management in the 2008–2009 Fishing Year* may be obtained from the Southwest Regional Office by contacting Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, Southwest Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: The CPS FMP, which was implemented by publication of the final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into two categories: actively managed and monitored. Harvest guidelines for actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

During public meetings each year, the biomass for each actively managed species within the CPS FMP is presented to the Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (Team), the Council's Coastal Pelagic Species Advisory Subpanel (Subpanel) and the CPS Subcommitee of the Scientific and Statistical Committee (SSC). At that time, the biomass, the acceptable biological catch (ABC) and the status of the fisheries are reviewed and discussed. This information is then presented to the Council along with HG recommendations and comments from the Team and Subpanel. Following review by the Council and after hearing public comments, the Council makes its HG recommendation to NMFS.

For the 2008–2009 Pacific mackerel management season an updated assessment for Pacific mackerel was

conducted and then reviewed by the SSC CPS Subcommittee, the Team and the Subpanel during a series of meetings May 13–15, 2008, in Long Beach, California. During these meetings the current stock assessment for Pacific mackerel, which included a preliminary biomass estimate and ABC, were presented and reviewed in accordance with the procedures of the FMP. Based on a total stock biomass estimate of 264,732 mt the harvest control rule in the CPS FMP produces an ABC of 51,772 mt for the 2008–2009 management season.

In June, the Council held a public meeting in Foster City, California, during which time the Council reviewed the current stock assessment, biomass numbers and ABC as well as heard statements from the SSC, Team and Subpanel. The SSC endorsed the assessment as the best available science for use in management. Both the Team and Subpanel recommended setting the 2008–2009 HG below ABC and no higher than 40,000 mt.

Following the SSC, Team and Subpanel reports the Council adopted a HG of 40,000 mt for the 2008–2009 fishing year. This HG recommendation is the same as the one recommended and implemented by NMFS for the 2007–2008 fishing season. Establishing a HG for the directed fishery substantially below the ABC was recommended in response to uncertainty associated with changes to assessment modeling parameters and the estimate made in the FMP that the domestic fishery appears to be market limited to roughly 40,000 mt. The Council also adopted the Subpanel recommendation that in the event that the 40,000 mt is attained by the fishery, that Pacific mackerel fishing be closed to directed harvest and only incidental harvest be allowed. The proposed incidental fishery would be constrained to a 45 percent by weight incidental catch rate when Pacific mackerel are landed with other CPS, except that up to one mt of Pacific mackerel could be landed per trip without landing any other CPS.

The Council may schedule an in-season review of the Pacific mackerel fishery at the nearest appropriate Council meeting, towards a possible consideration of either releasing a portion of the incidental allotment to the directed fishery or further constraining incidental landings to ensure total harvest remains below the ABC.

A proposed rule was published for this action that solicited public comments (73 FR 49156). No comments were received.

Information on the fishery and the stock assessment are found in the report *Pacific mackerel (Scomber japonicus) Stock Assessment for U.S. Management in the 2008–09 Fishing Season* (see **ADDRESSES**).

Classification

The Administrator, Southwest Region, NMFS, determined that this final rule is necessary for the conservation and management of the CPS fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule is exempt from Office of Management and Budget review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule (73 FR 49156) and is not repeated here.

No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 10, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E8–27224 Filed 11–17–08; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 223
Tuesday, November 18, 2008

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1776

RIN 0572–AC12

Amending the Household Water Well System Grant Program Regulations

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS), an agency delivering the United States Department of Agriculture's (USDA) Rural Development Utilities Programs, hereinafter referred to as Rural Development or the Agency, is amending its regulations to administer the Household Water Well System Grant Program. This action implements provisions of the 2008 Farm Bill for limits on loans that nonprofit organizations may make to homeowners for private well systems. The 2008 Farm Bill raises the loan limit to $11,000 from $8,000. The intended effect is to make part 1776 current with statutory authority. The Agency will also amend the regulation to enable existing grant recipients to amend their grant agreements for the new $11,000 loan limit.

In the final rule section of the **Federal Register**, the Agency is publishing this action as a direct final rule without prior proposal because Rural Development views this as a non-controversial action and expects no adverse comments. If no adverse comments are received in response to the direct final rule, no further action will be taken on this proposed rule, and the action will become effective at the time specified in the direct final rule. If the Agency receives adverse comments, a timely document will be published withdrawing the direct final rule, and all public comments received will be addressed in a subsequent final rule based on this action.

DATES: Comments on this proposed action must be received by Rural Development or carry a postmark or equivalent no later than December 18, 2008.

ADDRESSES: You may submit comments to this rule by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. In the ''Search Documents'' box, enter RUS–08–WATER–03, check the box under the Search box labeled ''Select to find documents accepting comments or submissions,'' and click on the GO>> key. To submit a comment, choose ''Send a comment or submission,'' under the Docket Title. In order to submit your comment, the information requested on the ''Public Comment and Submission Form,'' must be completed. (If you click on the hyperlink of the docket when the search returns it, you will see the docket details. Click on the yellow balloon to receive the ''Public Comment and Submission Form.'') Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''How to Use this Site'' link.
- *Postal Mail/Commercial Delivery:* Please send your comment addressed to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Avenue, STOP 1522, Room 5159, Washington, DC 20250–1522.

Other Information: Additional information about Rural Development and its programs is available at *http://www/rurdev.usda.gov/index.html*.

FOR FURTHER INFORMATION CONTACT: Cheryl Francis, Loan Specialist, Water and Environmental Programs, USDA Rural Development, 1400 Independence Avenue, STOP 1570, Room 2229 South Building, Washington, DC 20250–1570. *Telephone:* (202) 720–9589; FAX: (202) 690–0649; *e-mail: cheryl.francis@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION: See the Supplementary Information provided in the direct final rule located in the Rules and Regulations direct final rule section of the **Federal Register** for the applicable Supplementary Information on this action.

Dated: October 20, 2008.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E8–26770 Filed 11–17–08; 8:45 am]

BILLING CODE 3410–15–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–75; NRC–2002–0018]

Anthony R. Pietrangelo, Nuclear Energy Institute; Consideration of Petition in the Rulemaking Process; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Resolution and closure of petition docket; Correction.

SUMMARY: The Nuclear Regulatory Commission (NRC) is correcting a document that appeared in the **Federal Register** on November 6, 2008 (73 FR 66000). The NRC is considering the issues raised in a petition for rulemaking submitted by Anthony R. Pietrangelo, on behalf of the Nuclear Energy Institute, in the ongoing ''Risk-Informed Redefinition of Large Break Loss-of-Coolant Accident (LOCA) Emergency Core Cooling System (ECCS) Requirements'' rulemaking. This document corrects an erroneous NRC docket number and date.

DATES: Effective November 18, 2008.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rulemaking, Directives, and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–7163, e-mail *Michael.Lesar@nrc.gov.*

SUPPLEMENTARY INFORMATION: In FR doc. E8–26463 appearing on page 66000 in the **Federal Register** of Thursday, November 6, 2008, the following corrections are made:

1. On page 66000, in the first column, under the **ADDRESSES** section, second paragraph, seventh line, ''2008–0332'' is corrected to read ''2004–0006''.

2. On page 66000, in the center column, under the **SUPPLEMENTARY INFORMATION**, 17th line, ''April 8, 2005 (67 FR 16654)'' is corrected to read ''November 7, 2005 (70 FR 67598)''.

Dated at Rockville, Maryland, this 12th day of November 2008.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rulemaking, Directives, and Editing Branch, Division of Administrative Services, Office of Administration.

[FR Doc. E8–27304 Filed 11–17–08; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. FHWA–2008–0038]

RIN 2125–AF24

National Tunnel Inspection Standards

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance Notice of Proposed Rulemaking (ANPRM); request for comments.

SUMMARY: The FHWA is soliciting comments concerning the creation of a regulation establishing National Tunnel Inspection Standards (NTIS). The FHWA is considering the establishment of NTIS by adding Subpart E to 23 CFR Part 650. The NTIS would set minimum tunnel inspection standards that apply to all Federal-aid highway tunnels on public roads. The FHWA anticipates that NTIS could be modeled after the existing National Bridge Inspection Standards (NBIS) regulation, found at 23 CFR Part 650, Subpart C, as applicable. The NTIS likely would include requirements for inspection procedures for structural, mechanical, electrical, hydraulic and ventilation systems, and other major elements specific to tunnels such as tunnel finishes; the qualification and training of inspectors; and a National Tunnel Inventory.

DATES: Comments must be received on or before February 17, 2009. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Mail or hand deliver comments to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, or submit electronically at *http://www.regulations.gov*, or fax comments to (202) 493–2251.

All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., *e.t.*, Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review the U.S. Department of Transportation's (DOT) complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78), or you may visit *http://DocketsInfo.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Jesus M. Rohena, P.E., Office of Bridge Technology, HIBT–10, (202) 366–4593, or Mr. Robert Black, Office of the Chief Counsel, HCC–30, (202) 366–1359, Federal Highway Administration, 1200 New Jersey Ave., SE., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Federal Docket Management System at *http://www.regulations.gov*. It is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: *http://www.archives.gov* or the Government Printing Office's Web page at *http://www.gpoaccess.gov/nara*.

Background

The safety and security of our Nation's tunnels are of paramount importance to the FHWA. Recognizing that tunnel owners are not mandated to routinely inspect tunnels and that inspection methods vary among entities that inspect tunnels, the FHWA and the Federal Transit Administration developed guidelines for the inspection of tunnels in 2003. The guidelines, known as the ''Highway and Rail Transit Tunnel Inspection Manual,'' [1] were updated in 2005. In addition, the FHWA developed Tunnel Management Software to help tunnel owners manage their tunnel inventory, but tunnel owners have not adopted the software uniformly.

After investigating the fatal July 2006 suspended ceiling collapse in the Central Artery Tunnel in Boston, Massachusetts, the National Transportation Safety Board (NTSB) stated in its report that, ''had the Massachusetts Turnpike Authority, at regular intervals between November 2003 and July 2006, inspected the area above the suspended ceilings in the D Street portal tunnels, the anchor creep that led to this accident would likely have been detected, and action could have been taken that would have prevented this accident.'' Among its recommendations, the NTSB suggested that the FHWA seek legislative authority to establish a mandatory tunnel inspection program similar to the NBIS that would identify critical inspection elements and specify an appropriate inspection frequency. Additionally, the DOT Inspector General (IG), in testimony before Congress in October 2007, highlighted the need for a tunnel inspection and reporting system to ensure the safety of the Nation's tunnels, stating that the FHWA ''should develop and implement a system to ensure that States inspect and report on tunnel conditions.'' Additionally, the IG stated that ''FHWA should move aggressively on this rulemaking and establish rigorous inspection standards as soon as possible.''

The NTIS would implement these NTSB and IG recommendations. The FHWA anticipates that NTIS could be modeled after the existing NBIS, contained at 23 CFR 650, Subpart C. The FHWA likely would revise 23 CFR Part 650—Bridges, Structures, and Hydraulics, by adding the NTIS under Subpart E.

The NTIS would require the proper safety inspection and evaluation of all Federal-aid highway tunnels on public roads. National Tunnel Inspection Standards are needed to ensure that all structural, mechanical, electrical, hydraulic and ventilation systems, and other major elements of our Nation's tunnels are inspected and tested on a regular basis. The NTIS would also ensure safety for the surface transportation users of our Nation's highway tunnels, and would make tunnel inspection standards consistent across the Nation. Additionally, tunnel inspections would help protect Federal investment in such key infrastructure.

Timely tunnel inspection is vital to uncovering safety problems and preventing failures. When corrosion or leakage occur, electrical or mechanical systems malfunction, or concrete

[1] Federal Highway Administration and Federal Transit Administration, United States Department of Transportation, *Highway and Rail Transit Tunnel Inspection Manual* (2005) *available at www.fhwa.dot.gov/bridge/tunnel/inspectman00.cfm.*

cracking and spalling signs appear, they may be symptomatic of dire problems. The importance of tunnel inspection was demonstrated in the summer of 2007 in the I–70 Hanging Lake tunnel in Colorado. After the Central Artery ceiling collapse in Boston, the Colorado Department of Transportation moved promptly to inspect the ceiling and roof of the I–70 Hanging Lake tunnel and uncovered a crack in the roof that was compromising the structural integrity of the tunnel. This discovery prompted the closure of the tunnel for several months for needed repairs. The repairs included removal of more than 30 feet of soil fill material from the top of the tunnel roof, temporary support of the roof from the inside of the tunnel, removal of the suspended ceiling, and the design and construction of a new slab cast on top of the existing roof to reinforce and add extra structural capacity. To accomplish the repair, the eastbound tube under the cracked roof was closed to traffic, and the adjacent westbound tube was converted to a tube with bi-directional traffic. The eastbound tunnel was closed for 7 months, and the repair cost approximately $6 million, but the repairs helped prevent a potential safety incident.

The FHWA estimates that there are more than 300 highway tunnels in the Nation, although no national inventory for tunnels currently exists. The FHWA additionally estimates that tunnels represent more than 100 linear miles of Interstates, State routes and local routes. The majority of these tunnels range in age from 51 to 100 years. Some tunnels, like the Caldecott Tunnel in California, were constructed in the 1930's and 1940's. The FHWA anticipates that the NTIS could help create a national inventory of tunnels that would lead to a more accurate assessment of the number and condition of tunnels in the Nation.

Because tunnels are vital to the local, regional, and national economies, and to our national defense, it is imperative these facilities are properly maintained and inspected to ensure the safe passage of the traveling public and goods. Tunnels like the Central Artery tunnel in Massachusetts, the Lincoln Tunnel in New York, the Fort McHenry and the Baltimore Harbor tunnels in Maryland, just to mention a few, are a vital part of the national transportation infrastructure. These tunnels handle a huge volume of daily traffic. For example, according to the Port Authority, the Lincoln Tunnel carries approximately 120,000 vehicles per day, making it the busiest vehicular tunnel in the world. The Fort McHenry Tunnel handles a daily traffic volume of more than 115,000 vehicles. Any disruption of traffic in these or other highly traveled tunnels would result in lost productivity and adversely impact the environment.

Currently, there is no uniformity with respect to how frequently tunnels are inspected. The frequency of tunnel inspections varies from daily to every 10 years. Some inspectors in colder climates walk through air ducts on a daily basis to identify potential icing problems due to water leakage. Some inspectors examine mechanical and electrical equipment on a daily basis, while others perform such inspections on a monthly basis. Under the proposed NTIS, State departments of transportation would be responsible for ensuring compliance with tunnel standards. The NTIS could ensure that tunnels are inspected routinely, that the findings of such inspections are reported to the FHWA, and that deficiencies are corrected in a timely manner.

Purpose

The FHWA is acting proactively in developing NTIS. The NTIS are important to assure safety and security of the Nation's Federal-aid highway tunnels. The purpose of this ANPRM is to seek feedback from the public to help the FHWA develop NTIS.

Applicability

The NTIS would apply to all Federal-aid funded highway tunnels in the 50 States, District of Columbia, and Puerto Rico.

Categories of Information

The FHWA has identified 14 categories of information regarding the NTIS. The FHWA seeks comments from our partners and interested parties on the following questions.

1. Definition of ''Tunnel''

The NTIS would apply to structures receiving Federal-aid highway funds that meet the NTIS definition of a ''tunnel.'' What requirements should the FHWA incorporate into the definition of a ''tunnel''?

A. Should the definition of a ''tunnel'' contain a minimum length requirement?

B. Should the definition of a ''tunnel'' contain requirements other than tunnel length?

C. The National Fire Protection Association defines a tunnel as an ''enclosed roadway for motor vehicle traffic with vehicle access that is limited to portals.'' [2] The American Association of State Highway and Transportation Officials (AASHTO) Technical Committee for Tunnels (T–20) defines tunnels as ''enclosed roadways with vehicle access that is restricted to portals regardless of type of structure or method of construction. Tunnels do not include highway bridges, railroad bridges or other bridges over a roadway. Tunnels are structures that require special design considerations that may include lighting, ventilation, fire protection systems, and emergency egress capacity based on the owner's determination.'' Should the FHWA adopt one of these definitions or another definition of tunnel?

2. Inspection Procedures

Inspections should assess the condition of all structural elements of a tunnel and assess the condition and performance of a tunnel's structural, mechanical, electrical, hydraulic and ventilation systems, including operational procedures.

A. Should the NTIS adopt the inspection techniques and standards in the Highway and Rail Transit Tunnel Inspection Manual?

B. What additional sources of inspection standards should the FHWA consider?

C. Should inspections include evaluation of emergency response and non-emergency operational procedures?

D. Are there any special inspection procedures for new tunnels that should be included in inspection manuals for all new tunnels?

3. Frequency and Types of Inspections

The inspection of highway tunnels likely would include collecting information on the condition of all structural elements and systems.

A. What tunnel elements and systems should be inspected routinely?

B. What inspection frequency should be established for these elements and systems?

C. Should a minimum frequency for tunnel inspection be established?

D. Is there a need to identify various types of inspections? If so, what types of inspections should be defined?

E. Should the frequency of each type of inspection vary according to the type of inspection?

F. Should we establish a risk-based frequency to account for the complexity of each tunnel?

G. What factors (*e.g.*, age, traffic, length, ventilation, urban or rural location) should be included in a risk-based frequency inspection system?

4. Equipment and System Inspection

The NTIS likely would include requirements for inspection procedures for structural, mechanical, electrical, hydraulic and ventilation systems, and other major tunnel elements. For several

[2] NFPA 502: Standard for Road Tunnels, Bridges, and Other Limited Access Highways § 3.3.38 (National Fire Protection Association 2007).

of these elements and systems, the inspections could include the following provisions:

A. The mechanical inspection could consist of verifying the condition and operation of tunnel mechanical equipment and systems. Examples of mechanical equipment and systems include, but are not limited to, ventilation fans, control room air conditioning and heating, plumbing systems and tunnel drainage and waterproofing systems.

B. The structural inspection could include suspended ceilings, structural attachments, lining, exposed rock, roadway slabs, and tunnel finishes.

C. The safety inspection could consist of verifying the condition and operation of various safety equipment and systems, such as variable message signs, overhead warning systems, carbon monoxide detection systems, fire protection systems, signage, geometry, traffic signals, and normal operations and emergency response procedures.

D. The security inspection could consist of verifying the condition and operation of security equipment and systems that are used to detect and coordinate responses to natural or man-made emergencies. These systems include video cameras, monitors, alarms, telephones, security gates, and portal flood gates.

E. The electrical inspection could consist of verifying the condition and operation of electrical equipment and systems used for power distribution, emergency power, and lighting.

5. Qualifications and Required Training of Inspectors

A. Should the qualification requirements for transit tunnel inspectors contained in the Highway and Rail Transit Tunnel Inspection Manual be adopted as the qualifications required for Federal-aid highway tunnel inspectors? Are the qualifications in the Highway and Rail Transit Tunnel Inspection Manual sufficiently specific for all tunnel elements and systems?

B. What education and training should be required for tunnel inspectors? Should the NTIS incorporate a requirement for periodic training for tunnel inspectors?

C. What experience should be required for tunnel inspectors? Should there be multiple levels of qualifications depending upon the role of the team member (*i.e.*, leader, inspector) and the type of inspection?

6. Recordkeeping

A. Should States be required to keep records of all highway tunnel inspections performed within the State? If not, where and with whom should the inspection records reside?

B. Are inspection record requirements such as those contained in the Highway and Rail Transit Tunnel Inspection Manual sufficient for the NTIS?

C. For how long should tunnel inspection records be maintained?

7. Rating

A. Should the NTIS incorporate a condition-based rating system for Federal-aid highway tunnels, under which the tunnels in the best condition receive a high rating and the tunnels in the poorest condition receive a low rating?

B. Should a tunnel rating system be the basis for possible funding decisions?

8. National Tunnel Inventory Database

A. What tunnel data elements should be collected for all Federal-aid highway tunnels (*e.g.*, tunnel name, age, length, finishes, width, height, number of lanes, ventilation, truck traffic, automobile traffic)?

B. How often should data be collected and reported?

C. Should this data be reported to the FHWA?

D. Should a tunnel be identified using a tunnel inventory number (TIN) in a manner similar to how bridges are identified under the NBIS?

E. What criteria should be used to assign a TIN?

9. Organization of Inspection Teams

A. How should the inspection teams be organized?

B. Should inspection teams be established with differing levels of responsibility?

C. Should one person on the team have overall responsibility for the program?

10. Technical References

What technical publications, if any, should be incorporated by reference?

11. Quality Control/Quality Assurance (QC/QA)

Should QC/QA procedures similar to the procedures required under the NBIS be implemented for the NTIS?

12. Cost of Inspections

The FHWA requests information regarding the costs associated with tunnel inspections, particularly the typical inspection costs per linear foot of tunnel.

13. Tunnel Repairs

The FHWA requests information associated with tunnel rehabilitation projects (*e.g.*, costs of repairs, dates of work, scope of work).

14. Research

The FHWA and others have conducted extensive research related to tunnel design, construction, rehabilitation, and inspection. The following is a list of research projects related to tunnel safety that either have been conducted or are ongoing.

A. The Memorial Tunnel Fire Ventilation Test Program

The FHWA and the Massachusetts Highway Department sponsored the Memorial Tunnel Fire Ventilation Test Program (MTFVTP) in 1993. This research project consisted of a series of full-scale fire tests conducted in an abandoned road tunnel. As part of this project, a total of 98 tests were conducted considering various smoke management strategies. Various tunnel ventilation systems and configurations of such systems were operated to evaluate their respective smoke and temperature management capabilities. These tests generated a significant database relevant to the design and operation of road tunnel ventilation systems under fire emergency conditions.

Proper ventilation of highway tunnels is necessary to provide a safe and secure environment for the traveling public during normal and emergency situations in tunnels. The NTIS would set standards for the inspection of tunnels, including ventilation systems, to assure safe, reliable and efficient operation.

B. Prevention and Control of Highway Tunnel Fires

The FHWA sponsored a study related to tunnel fires in 1984. This study investigated: (1) Steps that can be taken to reduce the risk, damage, and number of fatalities from fires in existing and future highway tunnels; and (2) effects of unrestricted transport of hazardous materials through tunnels. This study examined the history of highway tunnel fires to determine the design and operating features that influenced ignition and spread of fire; detection, alarm transmission, and notification of appropriate authorities; response; control, extinguishment, and suppression; and resultant fatalities and damage. Operators in major domestic highway tunnels were interviewed about tunnel fires, and their responses were tabulated and compared. The study examined the procedures used in, and results of, several tunnel fire tests and evaluated their recommendations in light of historical evidence and operating experience concerning tunnel fires. This study led to the development of comprehensive design and operating recommendations for prevention, detection, alarm, notification, control, extinguishment, suppression, and survival. The report is available at *http://ntl.bts.gov/lib/2000/2400/2416/708.pdf.*

Tunnel components that relate to the prevention, detection, alarm, notification, control, extinguishment,

suppression, and survival systems need to be maintained and inspected to ensure these critical systems are working properly at all times. The NTIS could set the standards for inspection of these key components.

C. Underground Transportation Systems in Europe: Safety, Operations, and Emergency Response

In 2005, the FHWA, AASHTO, and the National Cooperative Highway Research Program (NCHRP) sponsored a scanning study of equipment, systems, and procedures used in tunnels in several countries (Austria, Denmark, France, Germany, Italy, Norway, the Netherlands, Sweden, and Switzerland).

The scan team learned that Europeans are conducting research to develop innovative design and emergency management plans that consider how people react in tunnel emergencies. Because motorist behavior is unpredictable in tunnel incidents, Europeans make instructions for drivers, passengers, and tunnel operators as straightforward as possible.

The team's recommendations for U.S. implementation include conducting research on tunnel emergency management that includes human factors; developing tunnel design criteria that promote optimal driver performance during incidents; developing more effective visual, audible, and tactile signs for escape routes; and using a risk-management approach to tunnel safety inspection and maintenance.

The report states that ''only limited national guidelines, standards, or specifications are available for tunnel design, construction, safety inspection, traffic and incident management, maintenance, security, and protection against natural or manmade disasters.'' The report also notes that, ''[t]hrough knowledge of the systems and the structure gained from intelligent monitoring and analysis of the collected data, the owner can use a risk-based approach to schedule the time and frequency of inspections and establish priorities.'' The final scan report is available on at *http://international.fhwa.dot.gov/uts/uts.pdf.*

The NTIS could assist owners in establishing priorities for the management of their tunnel inventories.

D. NCHRP Project 04–37, Long-Term Performance of Epoxy Adhesive Anchors

The FHWA and AASHTO have initiated a NCHRP project to investigate the long-term behavior of epoxy adhesive anchors. Common transportation applications for epoxy bonded anchors include bridge widening, concrete repair and rehabilitation, barrier retrofitting, utility installation on existing structures, and tunneling. Despite widespread use, the suppliers of these systems provide little guidance on how the adhesives perform under sustained, long-term loading.

The NTIS could set standards for inspection of adhesive anchors, as well as all other structural components in tunnels.

E. NCHRP Project 20–07/Task 261, Best Practices for Implementing Quality Control and Quality Assurance for Tunnel Inspection

In response to the NTSB's preliminary safety recommendations resulting from the Central Artery tunnel ceiling collapse in Boston, the FHWA and AASHTO initiated this NCHRP project. The objective of this project is to develop guidelines for owners to use in selecting quality control and quality assurance practices for tunnel inspection, operational safety and emergency response systems testing, and inventory procedures to improve the safety of highway tunnels.

F. FHWA Control of Highway Tunnel Fire Workshop

In response to OIG's August 2007 report on the CAT Project's Stem to Stern Safety Review, FHWA conducted a workshop on ''Control and Modeling of Fires in Highway Tunnels.'' The workshop was held on July 22–23, 2008, and was attended by national and international experts in tunnel design, tunnel operation, emergency response, and fire modeling. The objectives of the workshop were to: Share information about gaps in the current standards for design of tunnels; share best practices for response to incidents; identify the parameters needed to start a pilot program to model fires of 60 Megawatts and higher in highway tunnels; and identify other research needs. The results of the pilot program could be used to update the current national tunnel standards. The proposed NTIS could ensure that all systems needed for highway tunnel fire protection are maintained, inspected and repaired on a timely basis.

We welcome information regarding other existing or ongoing research related to tunnel inspections. What additional research should be undertaken?

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA also will continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A Notice of Proposed Rulemaking (NPRM) may be published at any time after close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has preliminarily determined that this action would be a significant regulatory action within the meaning of Executive Order 12866 and within the meaning of the DOT regulatory policies and procedures because the proposed action concerns a matter about which there is substantial public interest. Because of the preliminary nature of this document and lack of necessary information regarding costs as well as benefits, FHWA is unable to evaluate the impact of potential changes.

Based upon the information received in response to this notice, FHWA intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information, and data are solicited on the economic impact of any proposed recommendation for establishment of NTIS.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), and based upon the information received in response to this ANPRM, FHWA will evaluate the effects of any action proposed on small entities. This action merely seeks information regarding the establishment of NTIS. Therefore, FHWA is unable to certify at this time whether or not NTIS will have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

Because of the preliminary nature of this document and lack of necessary information on costs, FHWA is unable to evaluate the effects of the potential regulatory changes in regard to imposing a Federal mandate involving expenditure by State, local, and Indian tribal governments, in the aggregate, or by the private sector, of $136.1 million or more in any one year (2 U.S.C. 1532). Nevertheless, FHWA will evaluate any

regulatory action that might be proposed in subsequent stages of this rulemaking to assess the effects on State, local, and Indian tribal governments and the private sector.

Executive Order 12988 (Civil Justice Reform)

The FHWA will evaluate any rule that may be proposed in response to comments received to ensure that such action meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

The FHWA will evaluate any rule that may be proposed in response to comments received to ensure that such action meets the requirements of Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The Agency does not, however, anticipate that any such rule would be economically significant or would present an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

The FHWA will evaluate any rule that may be proposed in response to comments received to ensure that any such rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

The FHWA will analyze any action that might be proposed in accordance with the principles and criteria contained in Executive Order 13132, and FHWA anticipates that any action contemplated will not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA will consult with public authorities regarding any proposed NTIS regulations. The FHWA also anticipates that any action taken will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. We encourage commenters to consider these issues.

Executive Order 13175 (Tribal Consultation)

The FHWA will analyze any proposal under Executive Order 13175, dated November 6, 2000. The FHWA preliminarily believes that any proposal will not have substantial direct effects on one or more Indian tribes, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Therefore, a tribal summary impact statement may not be required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. Any action that might be contemplated in subsequent phases of this proceeding will be analyzed for the purpose of the PRA for its impact upon information collection. The FHWA would be required to submit any proposed collections of information to OMB for review and approval at the time the NPRM is issued, and, accordingly, seeks public comments. Interested parties are invited to send comments regarding any aspect of any proposed information collection requirements, including, but not limited to: (1) Whether the collection of information would be necessary for the performance of the functions of FHWA, including whether the information would have practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collection of information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

National Environmental Policy Act

The FHWA will analyze any action that might be proposed for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347) to assess whether there would be any effect on the quality of the environment.

Executive Order 13211 (Energy Effects)

The FHWA will analyze any proposed action under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use, to assess whether there would be any adverse effect on the supply, distribution, or use of energy.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this section with the Unified Agenda.

List of Subjects in 23 CFR Part 650

Bridges, Grant programs—transportation, Highways and roads, Incorporation by reference, Reporting and recordkeeping requirements.

Authority: Title 23, United States Code, Sections 116 and 315; 23 CFR 1.27; 49 CFR 1.48(b).

Issued on: November 7, 2008.

Thomas J. Madison, Jr.,

Federal Highway Administrator.

[FR Doc. E8–27265 Filed 11–17–08; 8:45 am]

BILLING CODE 4910–22–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2008–0566; FRL–8741–7]

Revisions to the California State Implementation Plan, Great Basin Unified Air Pollution Control District, Kern County Air Pollution Control District, Mohave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a disapproval of revisions to the Great Basin Unified Air Pollution Control District (GBUAPCD) portion of the California State Implementation Plan (SIP), and limited approval and limited disapproval of revisions to the Kern County Air Pollution Control District (KCAPCD) and Mohave Desert Air Quality Management District (MDAQMD) portions of the SIP. These revisions concern particulate matter (PM) emissions from fugitive dust sources. We are proposing action on local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by December 18, 2008.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2008–0566, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the online instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jerry Wamsley, EPA Region IX, (415) 947–4111, *wamsley.jerry@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
GBUAPCD	401	Fugitive Dust	12/04/06	03/07/07
KCAPCD	402	Fugitive Dust	11/03/04	01/13/05
MDAQMD	403.1	Fugitive Dust Control	11/25/96	03/03/97

On July 23, 2007, February 16, 2005, and August 12, 1997 respectively, EPA found that the GBUAPCD Rule 401, KCAPCD Rule 402, MDAQMD Rule 403.1 submittals met the completeness criteria in 40 CFR Part 51, Appendix V. These criteria must be met before formal EPA review begins.

B. Are there other versions of these rules?

On June 6, 1977, EPA approved a prior version of GBUAPCD Rule 401 into the State Implementation Plan (SIP); see 42 **Federal Register** (FR) 28883. There have been no intervening submittals of Rule 401. We have not approved prior versions of KCAPCD Rule 402 and MDAQMD 403.1 into the SIP and there have been no intervening submittals of these rules to consider and we are acting on the most recent submittal of these two rules.

C. What is the purpose of the submitted rules?

PM contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control PM emissions. These rules are designed to limit the emissions of visible air contaminants, usually but not always particulate matter (PM) emissions at industrial sites, unpaved roads, and open areas. EPA's technical support document (TSD) for each rule has more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating these rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193). In addition, SIP rules must implement Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), in moderate PM nonattainment areas, and Best Available Control Measures (BACM), including Best Available Control Technology (BACT), in serious PM nonattainment areas (see CAA sections 189(a)(1) and 189(b)(1)).

The GBUAPCD regulates a PM nonattainment area classified as serious (see 40 CFR part 81). The overwhelming significant source of PM emissions in the Owens Valley Planning Area (OVPA) is the Owens dry lakebed. Consequently, BACM measures are required for the lakebed sources of emissions (see 68 FR 48305). At present, Rule 401 regulates other sources of fugitive dust emissions that are not determined to be significant within the 1998 BACM SIP and in comparison with PM emissions from the Owens dry lakebed. Consequently, Rule 401 must meet our enforceability criteria in implementing its requirements, but not specific BACM or RACM requirements for its sources of PM emissions. Also, Rule 401 is not a required Clean Air Act PM submittal.

KCAPCD regulates a PM attainment area in the Indian Wells Valley, formerly classified as a moderate PM nonattainment area. (see 40 CFR part 81). The Indian Wells Valley maintenance plan did not assign Rule 402 to its list of six RACM measures and the rule is not cited as being a principal SIP control measure in attaining and maintaining the PM–10 standard (see 68

FR 24386). Subsequently, the Kern County portion of the Indian Wells Valley has maintained its attainment of the 24 hour and annual PM–10 standard. Consequently, Rule 402 need not fulfill RACM and the rule is not a required CAA submittal. However, to be approved into the SIP, the rule must meet the enforceability criteria as described by Section 110(a) of the CAA.

MDAQMD regulates a PM nonattainment area in the Trona subregion of the Searles Valley, classified as a moderate PM nonattainment area. (*see* 40 CFR part 81). On August 5, 2002, EPA found that the Trona area met the 24 hour and annual PM–10 standard as of December 31, 1994 (*see* 67 FR 50805 and 66 FR 31873), meaning that between 1992 and 1994 no violations of either PM standard were recorded. Subsequently, the area has maintained its attainment of the 24 hour and annual PM–10 standards. Rule 403.1 need not fulfill RACM because the area was in attainment of the standard at the time of designation and the rule would not advance the area's attainment date (*see* 57 FR 13560, April 16, 1992). To be approved into the SIP, the rule must meet the enforceability criteria as described by Section 110(a) of the CAA. For the purposes of a maintenance plan, Rule 403.1 contains contingency measure provisions; however, EPA has neither approved a maintenance plan for the Trona subregion, nor has EPA invoked the need to implement these contingency measures.

Guidance and policy documents that we use to help evaluate specific enforceability and RACM or BACM requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

4. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

5. ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 59 FR 41998 (August 16, 1994).

6. ''PM–10 Guideline Document,'' EPA 452/R–93–008, April 1993.

7. ''Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures,'' EPA 450/2–92–004, September 1992.

B. Do the rules meet the evaluation criteria?

GBUAPCD Rule 401 contains provisions which do not meet the evaluation criteria concerning enforceability. These provisions are summarized below and discussed further in the TSD.

KCAPCD Rule 402 improves the SIP by establishing more stringent emission limits, control measures, and monitoring requirements. The rule is largely consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. However, the rule has provisions which do not meet the evaluation criteria regarding enforceability. These provisions are summarized below and discussed further in the TSD.

MDAQMD Rule 403.1 improves the SIP by establishing more stringent emission limits, control measures, and monitoring requirements. The rule is largely consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. However, the rule has provisions which do not meet the evaluation criteria regarding enforceability. These provisions are summarized below and discussed further in the TSD.

C. What are the rule deficiencies?

Regarding Rule GBUAPCD Rule 401, the provisions listed below conflict with section 110 and part D of the Act and prevent full approval of the SIP revision.

1. The rule lacks a 20% opacity limit. GBUAPCD should either incorporate or reference such a 20% opacity limit.

2. The rule lacks a clear description of required control measures for meeting the rule's opacity and property line PM emission limits. GBUAPCD should also remove the ''reasonable precautions'' language.

3. GBUAPCD should either provide a precise wind speed exemption from the rule's emission standards, or delete the language concerning ''normal wind conditions''.

4. GBUAPCD should remove director's discretionary language in Section D.1.

5. As specified by the PM–10 plan, GBUAPCD should define required BACM provisions beyond those already adopted to reduce Owens dry lakebed dust emissions, and specify an enforceable implementation schedule.

Regarding Rule KCAPCD Rule 402, the provisions listed below conflict with section 110 and part D of the Act and prevent full approval of the SIP revision.

1. The definitions for ''open storage piles'' and ''prevailing wind direction'' contain instances of APCO discretion that should be delimited by specific criteria for adjudicating the issues within these definitions.

2. The rule provides an overly broad exemption for agricultural operations.

3. The rule provides an overly broad exemption for actions required by federal or state endangered species legislation, or the Surface Mining and Reclamation Act.

4. The rule provides an overly broad exemption for public parks and recreation areas such as county, state, and national parks, recreation areas, forests, and monuments.

5. The rule provides exemptions for contractors provided reasonably available control measures were implemented prior to a contract termination date and a final grading inspection. However, no records are required to demonstrate implementation of reasonably available control measures.

6. Monitoring provisions are set aside for large operations for a calendar quarter. This exemption from monitoring is not justified or explained.

7. The rule states that no visible emissions are allowed beyond the property line of an active operation; however, the rule does not specify an opacity limit and the test methods for determining compliance for unpaved roads which are exempted from the property line limit.

8. The suggested reasonably available control measures for fugitive dust listed in Table 1 are not specific and lack standards for determining compliance and allied test methods.

9. Large operations may set aside applying control measures if the APCO concurs that ''special technical, e.g., non-economic circumstances'' prevent control measure implementation. This exemption is vague and allows for inappropriate Director's Discretion. KCAPCD should define the circumstances that may prevent control measure implementation and the criteria the APCO will use to decide these issues.

10. The rule should specify that all records demonstrating compliance

should be maintained for two years and made available to the Control Officer upon request.

Regarding Rule MDAQMD Rule 403.1, the provisions listed below conflict with section 110 and part D of the Act and prevent full approval of the SIP revision.

1. The following terms should be defined: Brackish water, paved roads used for industrial activity, Dust Control Plan, industrial fugitive dust sources, industrial fugitive dust sources, and exterior transfer lines.

2. Sections C.2.(a)(i), C.2.(b)(i), C.2(d)(i), C.4(d)(i) state that weekly brackish water treatments or biweekly sweeping and collection are presumed to be sufficient for meeting the required Road Surface Silt Loading standard. However, compliance with the rule's silt loading standard needs to be confirmed by observations using the appropriate test method.

3. At Section C.4.(b), there is a requirement to permanently eliminate 2,750 square feet of bulk material storage piles that were exposed during 1990; however, it is unclear how this provision can be enforced effectively given the lack of specificity within the rule concerning these storage piles.

4. Section C.5 does not provide a date certain by which the BLM and the District jointly prepare a dust control plan that reduces BLM PM–10 emissions by at least 20 percent relative to 1990 levels.

5. The exemption for agricultural operations at Section D(1)(a) should be removed.

6. In Section F.1(c), the rule should state explicitly what the freeboard requirements are instead of incorporating the California Vehicle Code by reference. Also, these requirements should be incorporated within the appropriate paragraph in Section C.

D. EPA Recommendations To Further Improve the Rules

We have no additional recommendations.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) of the Act, we are proposing a disapproval of the submitted GBUAPCD Rule 401. If finalized, this action would retain the existing 1977 SIP rule in the SIP and sanctions, pursuant to section 179 of the Act, would not be imposed because Rule 401 is not a required CAA submittal. Note that the submitted rule has been adopted by the GBUAPCD, and EPA's final disapproval would not prevent the local agency from enforcing it. Our disapproval sets aside incorporation of the submitted rule within the SIP.

EPA is proposing a limited approval of KCAPCD Rule 402 to improve the SIP, as authorized in sections 110(k)(3) and 301(a) of the Act. If finalized, this action would incorporate the submitted Rule 402 into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3). If this disapproval is finalized, sanctions will not be imposed under section 179 of the Act, because Rule 402 is not a required submittal under the CAA and is not an essential RACM under the Indian Wells Maintenance Plan. Note that the submitted rule has been adopted by the KCAPCD, and EPA's final limited disapproval would not prevent the local agency from enforcing it.

EPA is proposing a limited approval of MDAQMD Rule 403.1 to improve the SIP, as authorized in sections 110(k)(3) and 301(a) of the Act. If finalized, this action would incorporate the submitted Rule 403.1 into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3). If this disapproval is finalized, sanctions will not be imposed under section 179 of the Act, because Rule 403.1 is not an essential RACM given the ongoing clean data observed in the Trona subregion since 1992. Note that the submitted rule has been adopted by the MDAQMD, and EPA's final limited disapproval would not prevent the local agency from enforcing it.

We will accept comments from the public on the proposed disapproval of GBUAPCD Rule 401 and the proposed limited approvals and limited disapprovals of KCAPCD Rule 402 and MDAQMD Rule 403.1 for the next 30 days.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing

requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a state rule implementing a Federal standard.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 20, 2008.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E8–27301 Filed 11–17–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 12, 39, and 52

[FAR Case 2008–019; Docket 2008–0001; Sequence 1]

RIN 9000–AL11

Federal Acquisition Regulation; FAR Case 2008–019, Authentic Information Technology Products

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Advance notice of proposed rulemaking and public meeting.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are seeking comments from both Government and industry on whether the Federal Acquisition Regulation (FAR) should be revised to include a requirement that contractors selling information technology (IT) products (including computer hardware and software) represent that such products are authentic. The Councils are also interested in comments regarding contractor liability if IT products sold to the Government, by contractors, are not authentic. Additionally, the Councils are seeking comments on whether contractors who are resellers or distributors of computer hardware and software should represent to the Government that they are authorized by the original equipment manufacturer (OEM) to sell the information technology products to the Government. Finally, the Councils invite comments on (1) whether the measures contemplated above should be extended to other items purchased by the Government; and (2) whether the rule should apply when information technology is a component of a system or assembled product.

DATES: *Public Meeting*: A public meeting will be held on December 11, 2008, from 9:00 a.m. to 3 p.m. EST, in the National Aeronautics and Space Administration James E. Webb Memorial Auditorium, 300 E Street SW, Washington, DC 20546. The visitors' entrance is on the west end of the building at the corner of 4th and E Streets SW. Attendees are encouraged to arrive at least thirty minutes early to accommodate security procedures.

If you wish to make a presentation on this topic, please contact and submit a copy of your presentation by December 1, 2008, to General Services Administration, Contract Policy Division (VPC), 1800 F Street, NW, Room 4040, Attn: Edward N. Chambers, Washington, DC 20405. Telephone: 202–501–3221.

Submit electronic materials via e-mail to *Chambers.Edward@gsa.gov*. Please submit presentations only and cite Public Meeting 2008–019 in all correspondence related to this public meeting. The submitted presentations will be the only record of the public meeting. If you intend to have your presentation considered as a public comment in the formulation of the proposed rule, the presentation must be submitted separately as a written comment as instructed below.

Special Accommodations: The public meeting is physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Edward N. Chambers, at 202–501–3221, at least 5 working days prior to the meeting date.

Comments: Interested parties should submit written comments to the FAR Secretariat on or before January 20, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2008–019 by any of the following methods:

- Regulations.gov: *http://www.regulations.gov*. Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2008–019'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with FAR Case 2008–019. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''FAR Case 2008–019'' on your attached document.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4041, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2008–019 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAR case 2008–019.

SUPPLEMENTARY INFORMATION: The widespread availability of counterfeit Information Technology (IT) products presents a multidimensional threat to our nation. While it is estimated that our nation's industries and governments lose millions of dollars each year to counterfeiters, the trade in counterfeit IT products also presents serious threats to our national security and consumer safety.

Today, IT products, such as computer network hardware, (the infrastructure of business, healthcare, education, and communication and information networks) and integrated circuits (IC), are used in a wide range of applications; including automobiles, aircraft, computers, telecommunications, medical devices, and consumer electronics. These IT products are also essential to our national infrastructure systems; such as air traffic control, financial and telecommunication networks, and government and military communications, information, and operating systems.

Counterfeit network hardware and ICs pose a risk in that they frequently do not meet the quality standards of genuine equipment. Various information indicates that these products have a higher failure rate than genuine equipment, and often fail upon installation, or weeks or months after installation. Thus, these counterfeit IT products pose a threat to the national security and consumer safety because when they fail, the entire systems in which they are embedded may also fail.

The Councils believe requiring contractors to represent that the IT products they sell to the Government are authentic, will aid in efforts to combat counterfeit IT products. In addition to commenting on the Government proposal, the public and industry are invited to offer suggestions on other ways to limit the risk to the Government from acquiring counterfeit IT products.

To facilitate public comment, the Councils have attached provisional FAR text.

While the focus of this notice is IT products, comments are invited on (1) whether the measures proposed herein should be expanded to include other items sold to the Government and (2) whether the rule should apply when information technology is a component of a system or assembled product. Further, the provisional text places the OEM in the role of ''gatekeeper'' as to who is an authorized distributor or reseller. Is there another party or process which would be more appropriate to this role? Also, through what means should authorized status be substantiated? By a letter from the OEM, or a reference on an OEM website?

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

List of Subjects in 48 CFR Parts 2, 4, 12, 39, and 52

Government procurement.

Dated: November 12, 2008.

Al Matera,

Director, Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 4, 12, 39, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 4, 12, 39, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 in paragraph (b) in the definition ''Information technology'' by revising paragraph (2) to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Information technology * * *

(2) The term ''information technology'' includes—

(i) Computers;

(ii) Ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance);

(iii) Peripheral equipment designed to be controlled by the central processing unit of a computer;

(iv) Software, firmware and similar products;

(v) Services (including support services); and

(vi) Related resources.

* * * * *

PART 4—ADMINISTRATIVE MATTERS

3. Amend section 4.1202 by adding paragraph (cc) to read as follows:

4.1202 Solicitation provisions and contract clauses.

* * * * *

(cc) 52.239–XX, Authentic Information Technology Products—Representation.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

4. Amend section 12.301 by adding paragraphs (d)(3) and (d)(4) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(d) * * *

(3) Insert the provision at 52.239–XX, Authentic Information Technology Products—Representation, as prescribed at 39.107(b)(1).

(4) Insert the clause at 52.239–YY, Authentic Information Technology Products, as prescribed at 39.107(b)(2).

* * * * *

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

5. Amend section 39.002 by adding, in alphabetical order, the definition ''Counterfeit information technology product'' to read as follows:

39.002 Definitions.

* * * * *

Counterfeit information technology product means any item of information technology (IT), including hardware and software, that is an unauthorized copy, replica, or substitute.

* * * * *

6. Amend section 39.101 by adding paragraph (e) to read as follows:

39.101 Policy.

* * * * *

(e) To protect the Government from procuring counterfeit IT products, agencies shall ensure that all acquisitions for IT products are procured from the original equipment manufacturer (OEM), software developer, or authorized distributor or reseller. Agencies shall ensure that all solicitations and contracts for the acquisition of IT products include a requirement for the offeror or contractor to represent that the IT products being sold under its contract to the Government are not counterfeit.

39.102 [Amended]

7. Amend section 39.102 by removing from paragraph (b) ''availability,'' and adding ''availability, counterfeit IT products, performance, security,'' in its place.

8. Amend section 39.107 by designating the undesignated paragraph as paragraph (a); and adding paragraph (b) to read as follows:

39.107 Contract clause.

* * * * *

(b)(1) The contracting officer shall insert the provision at 52.239–XX, Authentic Information Technology Products—Representation, in all solicitations for the acquisition of IT products.

(2) The contracting officer shall insert the clause at 52.239–YY, Authentic Information Technology Products, in all contracts for the acquisition of IT products.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.239–1 [Amended]

9. Amend section 52.239–1 by removing from the introductory paragraph ''39.107'' and adding ''39.107(a)'' in its place.

10. Add sections 52.239–XX and 52.239–YY to read as follows:

52.239–XX Authentic Information Technology Products—Representation.

As prescribed in 39.107(b)(1), insert the following provision:

AUTHENTIC INFORMATION TECHNOLOGY PRODUCTS—REPRESENTATION (DATE)

(a) *Definition. Counterfeit information technology product* means any item of information technology (IT), including hardware and software, that is an unauthorized copy, replica, or substitute.

(b) To be eligible for award of the proposed contract, an offeror must—

(1) Be either the original equipment manufacturer (OEM); or

(2) Have written authorization from the OEM or software developer to function as a distributor or reseller of the subject products.

(c) By submission of this offer, the offeror represents that—

(1) The IT products to be sold or leased to the Government under the proposed contract are authentic and not counterfeit; and

(2) It is the original equipment manufacturer or software developer, or an authorized distributor or reseller for the IT products.

(End of provision)

52.239–YY Authentic Information Technology Products.

As prescribed in 39.107(b)(2), insert the following clause:

AUTHENTIC INFORMATION TECHNOLOGY PRODUCTS (DATE)

(a) *Definition. Counterfeit information technology product* means any item of information technology (IT), including hardware and software, that is an unauthorized copy, replica, or substitute.

(b) The Contractor shall sell to the Government only IT products that are authentic and not counterfeit. In the event that such IT products are determined to be counterfeit, there is no limitation to the Contractor's liability.

(End of clause)

[FR Doc. E8–27275 Filed 11–17–08; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 605

[Docket No. FTA–2008–0044]

RIN 2132–AB00

School Bus Operations

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Through this notice, the Federal Transit Administration (FTA) proposes to amend its school bus operations regulations. Most notably, FTA proposes to clarify several definitions, amend the school bus operations complaint procedures, and implement Section 3023(f) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). FTA seeks comment on this notice from interested parties.

DATES: Comments must be received by February 17, 2009. FTA will consider late filed comments to the extent practicable.

ADDRESSES: You may submit comments by one of the following methods.

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *U.S. Post or Express Mail:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* The West Building of the U.S. Department of

Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name (Federal Transit Administration) and the Docket number (FTA–2008–0044) or the Regulatory Identification Number (RIN) (2132–AB00) for this notice at the beginning of your comment. You should include two copies of your comment if you submit it by mail. If you wish to receive confirmation that FTA received your comment, you must include a self-addressed stamped postcard. Note that FTA will post all comments that it receives, including any personal information provided therein, without change, to *http://www.regulations.gov.*

Due to security procedures in effect since October 2001 regarding mail deliveries, mail received through the U.S. Postal Service may be subject to delays. A party that submits a comment responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand.

FOR FURTHER INFORMATION CONTACT: Michael L. Culotta, Attorney, Office of Chief Counsel, Federal Transit Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., East Building—5th Floor, Washington, DC 20590. *E-mail: Michael.Culotta@dot.gov. Telephone:* (202) 366–1936.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

FTA issues this Notice of Proposed Rulemaking regarding its school bus operations regulations at 49 CFR part 605 pursuant to the changes Congress requires in section 3023(f) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU),[1] to provide clarification in the context of the U.S. District Court for the Western District of New York's decision in *Rochester-Genesee Regional Transportation Authority* v. *Hynes-Cherin,*[2] and generally, to update the regulation. Through this Notice of Proposed Rulemaking, FTA intends to provide its grantees with a regulatory basis which will allow them to continue to provide the service that FTA historically has allowed through administrative adjudications, while simultaneously satisfying the statutory requirements of 49 U.S.C. 5323(f). To the extent that FTA departs from any previous guidance with respect to its school bus operations regulations, FTA sets forth its reasons below.

B. Statutory and Regulatory History

In 1973, Congress passed the Federal-Aid Highway Act, which authorizes FTA to provide financial assistance to a grantee under 49 U.S.C. Chapter 53 only if the grantee agrees ''not to provide school bus transportation that exclusively transports students and school personnel in competition with a private school bus operator.'' [3] Congress's intent in enacting this provision was to prevent unfair competition between federally funded public transportation systems and private school bus operators.[4]

In 1976, the Urban Mass Transportation Administration, now FTA, codified regulations at 49 CFR part 605 which implemented the above statutory provision.[5] Under 49 CFR 605.14, FTA may not provide financial assistance to a grantee ''unless the applicant and the Administrator shall have first entered into a written agreement that the applicant will not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators.'' [6] FTA defines ''school bus operations'' as ''transportation by bus exclusively for school students, personnel and equipment. * * *'' [7]

FTA exempts ''tripper service'' from the prohibition of school bus operations.[8] FTA defines ''tripper service'' as ''regularly scheduled mass transportation service which is open to the public, and which is designed or modified to accommodate the needs of school students and personnel, using various fare collections or subsidy systems.'' [9]

On August 10, 2005, President George W. Bush signed SAFETEA–LU into law. Section 3023(f)(3) of SAFETEA–LU provides, ''If the Secretary finds that an applicant, governmental authority, or publicly owned operator has violated the [school bus] agreement * * * the Secretary shall bar a recipient or an operator from receiving Federal transit assistance in an amount the Secretary considers appropriate.'' [10] Prior to SAFETEA–LU, Congress required the Secretary of Transportation to completely bar a violator of 49 CFR part 605 of all Federal transit funds to which it was entitled.[11]

C. Rochester-Genesee Regional Transportation Authority v. Hynes-Cherin

On January 24, 2008, the U.S. District Court for the Western District of New York issued a decision in *Rochester-Genesee Regional Transportation Authority* which set aside FTA's interpretation of its school bus operations regulations at 49 CFR part 605.[12] The Court allowed the Rochester-Genesee Regional Transportation Authority (RGRTA) to restructure its public transportation operation through the addition of 240 new express school bus routes proposed to serve the Rochester City School District (RCSD) and its students.[13]

In its decision, the Court narrowly interpreted the word ''exclusively'' in FTA's definition of ''school bus operations'' and concluded that technically, because a member of the general public hypothetically could board a bus along one of RGRTA's proposed 240 routes, RGRTA did not propose to ''exclusively'' transport students, and therefore, RGRTA's proposed express school bus service did not constitute an impermissible school bus operation.[14] Additionally, the Court broadly interpreted FTA's definition of ''tripper service'' citing *United States ex rel. Lamers* v. *City of Green Bay* for the proposition that a grantee may ''completely redesign its transit system to accommodate school children as long as all routes are accessible to the public and the public is kept informed of route changes.'' [15]

D. School Bus Operations Policy Statement

On September 16, 2008, in the context of the Court's decision in *Rochester-Genesee Regional Transportation Authority,* FTA issued a ''Final Policy Statement on FTA's School Bus

[1] Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) sec. 3023, 49 U.S.C. 5323(f) (2006).

[2] 531 F.Supp.2d 494 (W.D.N.Y. 2008).

[3] Federal Aid Highway Act of 1973, Public Law No. 93–87, sec. 164(b), 87 Stat. 250, 281–82 (1973) (codified as amended at 49 U.S.C. 5323(f) (2006)).

[4] *Chicago Transit Auth.* v. *Adams,* 607 F.2d 1284, 1292–93 (7th Cir. 1979) (citing H.R. REP. NO. 93–410, at 87 (1973) (Conf. Rep.); S. REP. NO. 93–355, at 87 (1973) (Conf. Rep.)).

[5] *See* Codification of Charter Bus Operations Regulations, 41 FR 14,122 (Apr. 1, 1976) (codified at 49 CFR part 605 (2007)).

[6] 49 CFR 605.14 (2007).

[7] 49 CFR 605.3(b).

[8] 49 CFR 605.13.

[9] 49 CFR 605.3(b).

[10] SAFETEA–LU sec. 3023(f)(3).

[11] *See* 49 CFR 605.33(b) (2004).

[12] *See Rochester-Genesee Reg'l Transp. Auth.,* 531 F.Supp.2d 521–22.

[13] *Id.* at 507–17.

[14] *Id.* at 507–09.

[15] *Id.* at 512 (citing *United States ex rel. Lamers* v. *City of Green Bay,* 168 F.3d 1013, 1019 (7th Cir. 1999)).

Operations Regulations.'' [16] In the policy statement, FTA noted that it respects the Court's decision in the Western District of New York; however, FTA found the Court's decision problematic because, if applied elsewhere in the United States, the decision could obstruct FTA's ability to execute and implement Congress' school bus prohibition and its express intent regarding that prohibition.[17] FTA found that if it permitted a grantee to provide school bus operations so long as the service is technically open to the public, then Congress's purpose of protecting private school bus operators would be nullified.[18] Such an interpretation would create a loophole in the statutory and regulatory scheme which would permit FTA's grantees to displace private school bus operators with ease.[19] Clearly, Congress did not intend this result, otherwise, Congress would not have passed the statutory provision at 49 U.S.C. 5323(f).[20]

Thus, in the policy statement, FTA interpreted the term ''tripper service'' as it historically has interpreted that definition to allow a grantee to (1) utilize various fare collections or subsidy systems, (2) modify the frequency of service, and (3) make *de minimis* route alterations from route paths in the immediate vicinity of schools to stops located at or in close proximity to the schools.[21] FTA interpreted the term ''exclusively'' as used in FTA's definition of school bus operations at 49 CFR 605.3(b) to encompass any service that a reasonable person would conclude was primarily designed to accommodate students and school personnel, and only incidentally to serve the non-student general public.[22] In the policy statement, FTA expressed its intention to issue a Notice of Proposed Rulemaking to amend the regulatory text at 49 CFR part 605.[23]

II. Notice of Proposed Rulemaking

A. Introduction

FTA issues this Notice of Proposed Rulemaking regarding its school bus operations regulations at 49 CFR part 605 pursuant to the changes Congress requires in section 3023(f) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU),[24] to provide clarification in the context of the U.S. District Court for the Western District of New York's decision in *Rochester-Genesee Regional Transportation Authority* v. *Hynes-Cherin,*[25] and generally to update the regulation. Through this Notice of Proposed Rulemaking, FTA intends to provide its grantees with a regulatory basis which will allow them to continue to provide the service that FTA historically has allowed through administrative adjudications, while simultaneously satisfying its statutory requirements under 49 U.S.C. 5323(f). To the extent that FTA departs from any previous guidance with respect to its school bus operations regulations, FTA sets forth its reasons below.

When drafting this Notice of Proposed Rulemaking, FTA sought comment from interested parties on the existing school bus operations regulation at 49 CFR part 605. On June 11, 2008, FTA met with representatives from the National School Transportation Association to discuss viewpoints from private school bus operators on the existing school bus operations regulation. On July 29, 2008, FTA met with representatives from the American Public Transportation Association, the Washington Metropolitan Area Transit Authority, the Champaign-Urbana Mass Transit District, the Greater Cleveland Regional Transit Authority, the Alameda-Contra Costa Transit District, The Rapid, and the Council of the Great City Schools to discuss viewpoints from operators of public transportation systems and public school districts on the existing school bus operations regulation. FTA intends to post on docket number FTA–2008–0044 information from the meetings mentioned above, such as attendance sheets and rulemaking proposals.

On September 16, 2008, FTA issued a ''Final Policy Statement on FTA's School Bus Operations Regulations'' that clarifies FTA's interpretation of its school bus operations regulations at 49 CFR part 605.[26] The public provided FTA with over 600 comments at docket number FTA–2008–0015 regarding FTA's proposed policy statement, and FTA considered those comments in developing this Notice of Proposed Rulemaking.

B. Section-by-Section Analysis

In this section, FTA discusses the differences between the existing regulation and the proposed regulation. In addition to seeking general comments on the proposed regulation, FTA requests comments on the specific issues indicated below.

1. Subpart A—General

a. Purpose (§ 605.1)

FTA proposes to amend 49 CFR 605.1 to update statutory citations. Additionally, FTA proposes to amend 49 CFR 605.1 to include the language of 49 U.S.C. 5323(f), specifically, ''Financial assistance under this chapter may be used for a capital project, or to operate public transportation equipment or a public transportation facility, only if the applicant agrees not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator.''

b. Scope (§ 605.2)

FTA proposes to amend 49 CFR 605.2 to update statutory citations.

c. Definitions (§ 605.3)

i. General

FTA proposes to amend 49 CFR 605.3 to update statutory citations.

FTA proposes to add a definition of the term ''Chief Counsel'' to provide clarification with respect to FTA's proposed procedures under Subpart B and Subpart C.

FTA proposes to delete the term ''grant contract'' because it is no longer applicable under FTA's proposed agreement requirements at 49 CFR 605.11.

FTA proposes to update the term ''grantee'' to include subrecipients of federal financial assistance under 49 U.S.C. Chapter 53 and 23 U.S.C. 133 and 142.

FTA proposes to delete the term ''incidental'' because it is no longer applicable to 49 CFR part 605. FTA cautions grantees, however, that FTA Circular 5010.1 defines ''incidental use'' as:

> [T]he authorized use of real property and equipment acquired with FTA funds for the purposes of transit service but which also has limited non-transit use due to transit operating circumstances. Such use must be compatible with the approved purposes of the project and not interfere with intended public transportation uses of project assets.

FTA proposes to delete the term ''tripper service.'' FTA discusses this proposal in section (II)(B)(2)(d) below.

FTA proposes to delete the term ''urban area'' and replace it with the term ''geographic service area'' which means ''the area in which a recipient is authorized to provide public transportation service under appropriate

[16] Final Policy Statement on FTA's School Bus Operations Regulations, 73 FR 53,384 (Sept. 16, 2008).

[17] 73 FR 53,390.

[18] 73 FR 53,387.

[19] 73 FR 53,387.

[20] 73 FR 53,387.

[21] 73 FR 53,390.

[22] 73 FR 53,390.

[23] 73 FR 53,385.

[24] SAFETEA–LU sec. 3023.

[25] 531 F.Supp.2d 494.

[26] 73 FR 53,384.

local, state, and Federal law.'' FTA no longer uses the term ''urban area,'' but instead, FTA uses the term ''geographic service area'' to refer to the local area in which a grantee operates.

ii. ''School Bus Operations''

FTA proposes to amend the definition of the term ''school bus operations.'' Under 49 U.S.C. 5323(f), FTA may provide financial assistance to a grantee only if the grantee agrees ''not to provide school bus transportation that exclusively transports students and school personnel in competition with a private school bus operator.'' [27] Congress's intent in enacting this provision was to prevent unfair competition between federally funded public transportation systems and private school bus operators.[28]

In its school bus operations regulations, FTA defines ''school bus operations'' as ''transportation by bus exclusively for school students, personnel and equipment * * *'' [29] In Rochester-Genesee Regional Transportation Authority, the Court narrowly interpreted the word ''exclusively'' and concluded that, technically, because a member of the general public hypothetically could board a bus along one of RGRTA's proposed 240 routes, RGRTA did not propose to ''exclusively'' transport students, and therefore, RGRTA's proposed express school bus service did not constitute an impermissible school bus operation.[30]

FTA finds the Court's decision in Rochester-Genesee Regional Transportation Authority problematic. FTA believes that a grantee, pursuant to the Court's interpretation of ''school bus operations,'' may believe that it could restructure substantially its public transportation operation to accommodate the needs of a local school district and its students, which might have the effect of displacing private school bus operators and their employees, provided the system keeps the service open to the public even though members of the public unlikely will board these buses. This practice would produce unfair competition for private school bus operators which is precisely the result Congress sought to prevent when enacting 49 U.S.C. 5323(f).

FTA proposes to add a definition of the term ''exclusively'' as used in 49 U.S.C. 5323(f) and the definition of ''school bus operations'' at 49 CFR 605.3 to mean ''transportation that a reasonable person would conclude was designed primarily to accommodate students and school personnel, without regard to demand from the non-student general public.'' FTA intends its proposed definition of ''exclusively'' to effectuate Congress's intent of protecting private school bus operators from unfair competition with federally subsidized grantees.

FTA relies, in part, on the subsequent qualifying language of 49 U.S.C. 5323(f)—''in competition with a private schoolbus operator''—to justify this definition. To illustrate, if FTA permitted a grantee to provide school bus operations so long as the service is advertised as generally open to the public, then Congress's purpose of protecting private school bus operators would be nullified. Such an interpretation would create a loophole in the statutory and regulatory scheme which would permit FTA's grantees to displace private school bus operators with ease. As noted earlier, Congress did not intend this result; otherwise, Congress would not have enacted this statutory provision.

Additionally, the relevant language of the regulation prohibits service that is ''exclusively for'' students and school personnel, and therefore, FTA concludes that it is reasonable and proper to consider whether service is, in fact, ''for'' such riders.

With respect to the ''reasonable person'' standard, FTA points out that this standard has nearly a two hundred year history in the common law.[31] Courts have held that the reasonable person standard is an objective standard, and that a ''reasonable person'' is a person: (1) Of ordinary prudence, (2) who has knowledge of the law and is aware of its consequences, and (3) who exercises caution in similar circumstances.[32] Accordingly, FTA proposes to utilize this objective, rather than subjective, standard when analyzing issues involving school bus operations.

FTA also uses the reasonable person standard in a similar definition of ''exclusive'' in its charter service regulations at 49 CFR part 604. Under 49 CFR 604.3(h), '' 'Exclusive' means service that a reasonable person would conclude is intended to exclude members of the public.'' [33] Employing a similar reasonable person standard in the school bus regulation would afford FTA and the public consistency throughout its regulations.

In addition to utilizing a reasonable person standard, FTA proposes to identify a non-exhaustive list of factors that it intends to consider when evaluating a school bus operations issue. FTA discusses these factors at section (II)(B)(4)(a)(v) below.

Finally, FTA does not intend to discourage grantees from creating new routes to serve new demand, so long as a reasonable person would conclude that the grantees designed the routes to serve some segment of the non-student general public. Therefore, FTA proposes to define ''school bus operations'' to allow a grantee to create a new route to serve school students and personnel if a reasonable person would conclude that the grantee also designed the route to serve some segment of the non-student general public.

d. Public Hearing Requirement (§ 605.4)

FTA proposes to delete the public hearing requirement for applicants that engage or wish to engage in school bus operations at 49 CFR 605.4 and replace it with the proposed procedures in Subpart B as discussed in section (II)(B)(2) below.

2. Subpart B—School Bus Agreements

a. Purpose (§ 605.10)

Under 49 CFR 605.10, FTA explains that the purpose of Subpart B is ''to formulate procedures for the development of an agreement concerning school bus operations.'' [34] FTA proposes to delete this statement of purpose. FTA includes a statement of purpose regarding its school bus operations regulations at 49 CFR 605.1.

Instead, FTA proposes to amend 49 CFR 605.10 to include an express prohibition on school bus operations. Under FTA's current school bus operations regulations, FTA does not have a separate, express provision which prohibits school bus operations. Instead, FTA requires applicants to enter into an agreement with FTA stating that they will not provide school bus operations. With an express prohibition on school bus operations at 49 CFR 605.10, FTA intends to clarify its regulatory scheme.

Additionally, FTA proposes to prohibit grantees from contracting to provide school bus operations. Under the current regulatory scheme, FTA only may entertain a school bus operations case if a potential violation has occurred, that is, if a grantee provided

[27] 49 U.S.C. 5323(f).

[28] *Chicago Transit Auth.,* 607 F.2d at 1292–93.

[29] 49 CFR 605.3.

[30] *Rochester-Genesee Reg'l Transp. Auth.,* 531 F.Supp.2d at 507–09.

[31] *See Vaughan* v. *Menlove,* (1837) 132 Eng. Rep. 490, and its progeny.

[32] *See* William L. Prosser & W. Page Keeton, Prosser and Keeton On Torts 173–93 (5th ed. 1984).

[33] 49 CFR 604.3(h).

[34] 49 CFR 605.10.

service that was a potential school bus operation. Currently, if a grantee contracted to provide service, but has not yet provided it, then the case is not ripe for FTA's adjudication.[35] FTA believes that this scenario is problematic because, at the point when a case becomes ripe, the academic year likely is in session, and FTA's decision on the merits could potentially disrupt school transportation for that academic year. By considering cases in which a grantee contracted to provide service that potentially constitutes a school bus operation, but has not yet provide the service, FTA proposes to mitigate the risk of disrupting school transportation for the academic year by providing the grantees, private operators, and school districts with time to create a system that complies with FTA's school bus operations regulations.

b. Exemptions (§ 605.11)

i. Existing Provisions

Pursuant to 49 U.S.C. 5323(f), FTA provides exemptions to its prohibition on school bus operations where (1) a grantee or applicant operates a school system and a separate and exclusive school bus program for that school system; (2) private school bus operators in the local area are unable to provide adequate transportation, at a reasonable rate, and in conformance with applicable safety standards; and (3) a grantee or applicant is a state or local public body or agency that previously was engaged in school bus operations.[36]

In the existing regulation, a grantee or applicant that wishes to provide school bus operations under an exemption must follow the procedures set forth in 49 CFR 605.16–605.19. In sum, a grantee or applicant must (1) provide notice to local private school bus operators of its proposed or existing school bus operation,[37] (2) publish in a local newspaper a description of its proposed or existing school bus operation,[38] (3) hold public hearings regarding the proposed or existing school bus operation,[39] and (4) submit an application to FTA setting forth reasons why FTA should allow the grantee or applicant to provide school bus operations.[40] If no private school bus operator operates in the grantee's or applicant's local area, then the grantee or applicant may so certify in lieu of providing the notice required above.[41] Private school bus operators have an opportunity to comment on the grantee's or applicant's proposed or existing school bus operations.[42] The FTA Administrator subsequently issues a decision regarding the grantee's or applicant's application for an exemption.[43] Since FTA promulgated its school bus operations regulations in 1976, grantees and applicants rarely have applied for an exemption under 49 CFR 605.11.

ii. Proposed Exemptions

FTA proposes to restructure its regulatory scheme with regard to exemptions. First, FTA proposes to move its list of exemptions from 49 CFR 605.11 to 49 CFR 605.12.

Second, FTA proposes to delete from 49 CFR 605.3(b) its definition of ''tripper service'' and its provision regarding tripper service at 49 CFR 605.13. FTA proposes to add exemptions to the school bus operations prohibition for service that FTA historically has considered to be tripper service. This amendment is discussed in detail in Section (II)(B)(2)(d) below.

Third, FTA proposes to remove from its list of exemptions the exemption located at 49 CFR 605.11(b) which allows a grantee or applicant to provide school bus operations if the grantee or applicant demonstrates to the satisfaction of the Administrator, ''That private school bus operators in the urban area are unable to provide adequate transportation, at a reasonable rate, and in conformance with applicable safety standards.''[44] FTA proposes to make this ''exemption'' a new ''exception,'' and FTA discusses this proposal in detail in Section (II)(B)(2)(b)(iii) below.

Fourth, FTA proposes to eliminate the procedural requirements that a grantee or applicant must follow at 49 CFR 605.16–605.19 to provide service pursuant to an exemption. FTA intends its proposed exemptions to serve as defenses for grantees in the context of a school bus operations complaint filed under proposed Subpart C.

iii. New Exceptions

As mentioned above, FTA proposes to amend 49 CFR 605.13 to provide exceptions to the proposed prohibition on school bus operations at 49 CFR 605.10. Here, FTA borrows from, and modifies, the current procedures corresponding to a petition for an exemption.

FTA proposes to allow an applicant or grantee to petition the Chief Counsel for an exception to the school bus operations prohibition ''where private school bus operators in the applicant's or grantee's geographic service area are unable to provide adequate transportation at a reasonable rate and in conformance with applicable safety standards.''

To provide service pursuant to this proposed exception, an applicant or a grantee must follow a series of proposed procedural requirements. FTA proposes to require an applicant or a grantee to formally apply to FTA for a ''Petition for an Exception.'' First, the applicant or grantee must provide notice to the Chief Counsel that it intends to apply for a Petition for an Exception. This notice must include a description of the proposed school bus operations, including a description of (1) the geographic service area that the applicant or grantee intends to serve; (2) the schools and school districts that the applicant or grantee intends to serve; (3) the anticipated ridership related to the school bus operation; (4) an estimation of the number and types of buses that the applicant or grantee intends to utilize to provide the school bus operation; (5) the duration of the school bus operation; (6) the frequency of daily service related to the school bus operation; (7) an analysis regarding the extent to which the proposed school bus operation complies with local, state, and Federal safety laws; (8) a summary of the fully allocated costs related to the school bus operation; and (9) the rate that the applicant or grantee intends to charge for the school bus operation. FTA believes that this information will help it determine whether the proposed service is adequate, safe, and at a reasonable rate. FTA invites the public to comment on the components of a fully allocated cost analysis that it should require from its applicants and grantees.

Second, FTA will open an electronic docket, entitled ''Petition for an Exception Docket,'' at *http://www.regulations.gov* corresponding to the Petition for an Exception. Instead of requiring applicants and grantees to provide notices in local newspapers, FTA intends to utilize current technology, particularly the electronic docket, to provide more accessibility to the public regarding a Petition for an Exception. FTA also believes that the utilization of this technology will make FTA action more transparent.

Third, FTA will transmit a copy of the notice and its docket number to the

[35] *See, e.g., Laidlaw Transit, Inc.* v. *Rochester-Genesee Reg'l Transp. Auth.,* FTA School Bus Operations Docket Number 2007–01 1, 3 (2007).

[36] 49 CFR 605.11.

[37] 49 CFR 605.16(a)(1).

[38] 49 CFR 605.16(a)(2).

[39] 49 CFR 605.18.

[40] 49 CFR 605.11.

[41] 49 CFR 605.17.

[42] 49 CFR 605.18.

[43] 49 CFR 605.19.

[44] 49 CFR 605.11.

applicant or grantee and to the National School Transportation Association (NSTA). NSTA may circulate the notice to any appropriate private school bus operators that provide school bus operations in a particular geographic service area. Furthermore, persons interested in monitoring petitions submitted to FTA for which a docket is opened may sign up for the Regulations.gov list serv. Through this service, Regulastions.gov will notify subscribers each time a party submits a document to the docket.

Fourth, any private operator having a place of business in the applicant's or grantee's geographic service area may, within thirty days of the notice's docketing date, submit comments on the Petition for an Exception Docket demonstrating the extent to which it can provide school bus operations that constitute adequate transportation at a reasonable rate and in conformance with applicable safety standards. FTA invites the public to comment on whether it should allow a private operator a different timeframe for commenting on a proposed school bus operation.

Fifth, the applicant or grantee, after evaluating any comments from private school bus operators, may petition the Chief Counsel for an exception to the school bus operations prohibition at 49 CFR 605.10. The applicant or grantee must demonstrate to the satisfaction of the Chief Counsel that no private operator having a place of business in the applicant's or grantee's geographic service area can provide school bus operations that constitute adequate transportation at a reasonable rate and in conformance with applicable safety standards. The Chief Counsel subsequently will issue a decision that either grants or denies the applicant's or grantee's Petition for an Exception.

c. Use of Project Equipment (§ 605.12)

FTA proposes to delete the regulatory provision at 49 CFR 605.12 regarding the use of project equipment. FTA recently amended its charter service regulations at 49 CFR part 604, and FTA believes that the current provision at 49 CFR 605.12 is no longer applicable.[45]

d. Tripper Service (§ 605.13)

FTA proposes to delete the regulatory provision at 49 CFR 605.13 regarding tripper service. Although there is no statutory definition for the term, FTA included the concept of ''tripper service'' in its school bus operations regulations.[46] FTA defines ''tripper service'' as:

> [R]egularly scheduled mass transportation service which is open to the public, and which is designed or modified to accommodate the needs of school students and personnel, using various fare collections or subsidy systems. Buses used in tripper service must be clearly marked as open to the public and may not carry designations such as ''school bus'' or ''school special.'' These buses may stop only at a grantee or operator's regular service stop. All routes traveled by tripper buses must be within a grantee's or operator's regular route service as indicated in their published route schedules.[47]

Under this definition of tripper service, FTA originally allowed grantees to accommodate students only with respect to ''different fare collections and subsidy systems.'' However, through administrative decisions over the years, FTA broadened its interpretation of its tripper service definition to allow grantees to make accommodations beyond subsidies and fare collection systems. Specifically, FTA began to allow its grantees to make minor modifications to its route paths and frequency of service. As FTA stated in one matter concerning the Erie Metropolitan Transit Authority:

> Read narrowly, ''modification of regularly scheduled mass transportation service to accommodate the needs of school students and personnel'' means using different fare collections and subsidy systems. In practice, ''modification of mass transportation service'' has been broadened to include minor modifications in route or frequency of scheduling to accommodate the extra passengers that may be expected to use particular routes at particular times of day.[48]

For example, in *Travelways, Inc.* v. *Broome County Department of Transportation,* FTA stated that, ''A familiar type of modification would be where the route deviates from its regular path and makes a loop to a school returning back to the point of deviation to complete the path unaltered.'' [49] FTA reaffirmed this particular interpretation of tripper service in its October 12, 2007 RGRTA determination by permitting RGRTA to operate four loop-like route extensions, each only several blocks in length, to accommodate the needs of school students.[50]

FTA has not, however, allowed a grantee to restructure its public transportation operation solely to accommodate the needs of school students—such a modification would be a major modification. Thus, in its October 12, 2007 letter to RGRTA, FTA rejected RGRTA's proposed addition of 240 new routes because it would have constituted a major overhaul of RGRTA's public transportation system solely to accommodate the needs of school students.[51]

In addition to minor modifications to route paths, FTA previously has allowed grantees to modify route schedules and the frequency of service. For example, in *Travelways,* FTA stated, ''Other common modifications include operating the service only during school months, on school days, and during school and opening and closing periods.'' [52]

Jurisprudence in United States courts has broadened the scope of FTA's tripper service definition to include essentially any modification. In *United States* ex rel. *Lamers* v. *City of Green Bay,* the Seventh Circuit stated, arguably in dicta, ''[T]he City may completely redesign its transit system to accommodate school children as long as all routes are accessible to the public and the public is kept informed of route changes.'' [53] Citing *Lamers,* the Court in *Rochester-Genesee Regional Transportation Authority* allowed RGRTA to restructure its public transportation system by adding 240 new routes to accommodate the needs of RCSD and its students.[54]

FTA finds the definition of tripper service and its subsequent interpretations problematic. FTA believes that a grantee, pursuant to the jurisprudence of the Courts in *Lamers* and *Rochester-Genesee Regional Transportation Authority,* may believe that it could substantially restructure its public transportation operation solely to accommodate the needs of a local school district and its students while displacing private school bus operators and their employees provided the system keeps the service open to the public even though no member of the public likely will ride those particular

[45] *See* Charter Service Final Rule, 73 FR 2,326 (Jan. 14, 2008).

[46] The Urban Mass Transportation Administration (UMTA), now the Federal Transit Administration (FTA), did not include the term ''tripper service'' in its proposed school bus operations regulation. *See* 40 FR 25,309–14 (June 13, 1975). UMTA introduced the term ''tripper service'' into its final rule with no explanation as to why it inserted that regulatory term. *See* 41 FR 128 (Apr. 1, 1976).

[47] 49 CFR 605.3.

[48] *See In re* Erie Metropolitan Transit Authority 1, 4 (1989).

[49] *Travelways, Inc.* v. *Broome County Dep't of Transp.* 1, 7 (1985) (allowing a grantee to run a bus to a point and express to a school from that point if the grantee ran a second bus along the regular route path from the point at which the first bus expressed to the school).

[50] Letter from Federal Transit Administration to Rochester-Genesee Regional Transportation Authority at 6 (Oct. 12, 2007).

[51] *Id.* at 2–6.

[52] *Travelways* at 7.

[53] United States *ex rel. Lamers* v. *City of Green Bay,* 168 F.3d 1013, 1019 (7th Cir. 1999).

[54] *Rochester-Genesee Reg'l Transp. Auth.,* 531 F.Supp.2d 494, 509.

routes. This practice would produce unfair competition for private school bus operators which is precisely the result Congress sought to prevent when enacting 49 U.S.C. 5323(f).

In this notice, FTA proposes to codify in regulatory text the type of service that it historically has allowed through administrative adjudications. FTA proposes to eliminate the term ''tripper service,'' and instead, create exemptions to FTA's proposed school bus operations prohibition at 49 CFR 605.11. This regulatory scheme would allow a grantee to continue to use various fare collection or subsidy systems, modify the frequency of its service, and make *de minimis* route alterations to accommodate the needs of school students and personnel.

To illustrate, FTA would allow a grantee to issue fare cards to students and school personnel and it would allow a grantee to accept a payment from a school or a school district in exchange for service. FTA would allow a grantee to modify the frequency of its service, meaning, FTA would allow a grantee to run more buses on routes in the morning when school begins and more buses in the afternoon when school ends. With respect to the *de minimis* route alterations, FTA would allow a grantee to make one-half mile or less route alterations from routes within a one-half mile or less radius of a school building to accommodate the needs of students and school personnel.[55] FTA invites the public to comment on whether it should utilize a different measurement, such as time traveled or route percentage. For example, should FTA allow route deviations where a bus makes a five minute deviation from a route? Should FTA allow route deviations that constitute ten percent of the route? Alternatively, should FTA allow route deviations that are greater than one-half mile? FTA also invites public comment on whether it should allow grantees to make route deviations at multiple portions of routes or only within the immediate vicinity of school buildings.

FTA notes that, through this proposed regulatory scheme, a grantee may provide services pursuant to an exemption without a formal application to FTA, similar to a grantee's existing opportunity to provide ''tripper service'' without a formal application to FTA. FTA's intent here is to clarify in regulatory text the type of service that it will allow and to simplify the organization of its school bus operations regulatory scheme—FTA's intent is not to overhaul the types of service that it historically has allowed. FTA does not intend to create additional regulatory burdens for grantees that wish to provide this type of service.

e. Agreement (§ 605.14)

FTA proposes to consolidate the regulatory provisions at 49 CFR 605.14 and 49 CFR 605.15 regarding a school bus agreement and move those provisions to a new 49 CFR 605.11. Through this proposed provision, FTA intends to simplify the requirements regarding school bus agreements.

Under the current regulatory scheme, FTA requires an applicant to enter into an agreement with the Administrator whereby the applicant agrees ''that the applicant will not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators.'' [56] Under current practice, FTA's grantees and applicants submit and certify to FTA an ''Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements'' and grantees subscribe to FTA's ''Master Agreement.'' Under the terms of these documents, the applicants and grantees agree not to provide school bus operations.

To simplify FTA's requirements regarding school bus agreements and to codify current practice, FTA proposes to allow applicants to satisfy the requirements regarding school bus agreements by submitting and certifying to FTA an ''Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements'' and by subscribing to FTA's ''Master Agreement.'' No separate school bus agreement is necessary under this proposal.

f. Content of Agreement (§ 605.15)

For the reasons discussed above, FTA proposes to consolidate the regulatory provisions at 49 CFR 605.14 and 49 CFR 605.15 regarding a school bus agreement and move those provisions to a new 49 CFR 605.11. FTA intends to simplify the requirements regarding school bus agreements and proposes to provide financial assistance to an applicant or a grantee only if ''the applicant or grantee agrees not to provide school bus operations exclusively for students and school personnel in competition with a private school bus operator.''

g. Notice (§ 605.16)

FTA proposes to delete 49 CFR 605.16 regarding the notice requirements for an exemption to FTA's school bus operations prohibition in light of FTA's proposed procedures in Subpart B explained above.

h. Certification in Lieu of Notice (§ 605.17)

FTA proposes to delete 49 CFR 605.17 regarding the opportunity for a certification in lieu of notice corresponding to an exemption to FTA's school bus operations prohibition in light of FTA's proposed procedures in Subpart B explained above.

i. Comments by Private School Bus Operators (§ 605.18)

FTA proposes to delete 49 CFR 605.18 regarding comments from private school bus operators on an applicant's petition for an exemption in light of FTA's proposed procedures in Subpart B explained above.

j. Approval of School Bus Operations (§ 605.19)

FTA proposes to delete 49 CFR 605.19 regarding FTA's approval of an applicant's school bus operations in light of FTA's proposed procedures in Subpart B explained above.

3. Subpart C—Modification of Prior Agreements and Amendment of Application for Assistance

a. Modification of Prior Agreements (§ 605.20)

FTA proposes to delete the regulatory provision at 49 CFR 605.20 regarding the modification of prior school bus agreements in light of FTA's proposed school bus agreement requirements in Subpart B explained above. FTA proposes to replace this provision with amended complaint procedures as explained in Subpart D below.

b. Amendment of Applications for Assistance (§ 605.21)

FTA proposes to delete the regulatory provision at 49 CFR 605.21 regarding the amendment of applications for assistance in light of FTA's proposed school bus agreement requirements in Subpart B explained above. FTA proposes to replace this provision with amended complaint procedures as explained in Subpart D below.

4. Subpart D—Complaint Procedures and Remedies

Generally, FTA proposes to reorganize its complaint procedures and remedies under a proposed ''Subpart C—Complaint Procedures and Remedies'' at 49 CFR 605.20–605.31.

[55] Historically, FTA has allowed grantees to make route deviations that are several blocks in length within the immediate vicinity of school buildings. *See Travelways* at 7; Letter from Federal Transit Administration to Rochester-Genesee Regional Transportation Authority at 6 (Oct. 12, 2007).

[56] 49 CFR 605.14.

a. Filing a Complaint (§ 605.30)

i. Centralized Decision-Making Through the Chief Counsel

Under FTA's existing school bus operations regulations, any interested party may file a written complaint with the Administrator alleging a violation of 49 CFR part 605.[57] FTA requires the complainant to write its complaint, to specify in detail the potential violation, and to provide evidence substantiating the allegation.[58]

FTA proposes to restructure and modify this section. Under the existing regulation, the Administrator issues school bus operations decisions. In practice, the Administrator delegates this authority to each of FTA's ten Regional Administrators. FTA finds that this practice may breed inconsistencies in decision-making and school bus operations guidance. Different regions, under different administrations, may issue conflicting decisions.

To remedy this potential conflict, FTA proposes to issue decisions centrally through the Chief Counsel. This system will ensure consistency in decision-making and school bus operations guidance.

ii. Time Limit for Filing a Complaint

Under the current regulatory scheme, FTA does not impose a time limit on parties that wish to file a complaint alleging a violation of 49 CFR part 605. FTA finds this regulatory scheme problematic because a party may believe that it may file a complaint alleging a school bus operations violation years after the potential violation occurred. At that point, valuable evidence may be lost or destroyed. Under FTA's proposal, the complainant must file its complaint with the Chief Counsel within ninety days after the alleged event giving rise to the complaint occurred. FTA invites the public to comment on whether it should impose a different time limit on parties wishing to file a complaint under 49 CFR part 605.

iii. Burden of Persuasion

Under the current regulatory scheme, FTA does not identify which party carries the burden of persuasion in a school bus operations adjudication. In this notice, FTA proposes to impose on the complainant the burden of persuasion, that is, the complainant loses if the evidence is equally balanced. FTA notes that this is the default rule in an administrative adjudication,[59] and FTA invites the public to comment on whether it should utilize some other standard.

iv. Standard of Proof

Under the current regulatory scheme, FTA does not identify a standard of proof in a school bus operations administrative adjudication. In this notice, FTA proposes to utilize a preponderance of the evidence standard. FTA notes that the preponderance of the evidence standard is the default standard in administrative adjudications,[60] and to hold something by a preponderance of the evidence means that something is more likely so than not so. FTA invites the public to comment on whether it should utilize some other standard of proof.

v. School Bus Operations Factors

In practice, when evaluating a school bus operations issue under 49 CFR part 605, FTA weighs and considers a series of factors when determining whether a grantee provided school bus operations. In this notice, FTA presents factors that should provide clearer guidance in its school bus operations regulations. FTA's intent is to codify an objective standard for evaluating a potential school bus operations violation. The non-exhaustive list of factors is as follows.

(1) Whether and to what extent a grantee designed and intended to design its service to meet the demands of a school or school district. If a grantee designed and intended its service to meet the demands of a school or school district, then the service is more likely to be a school bus operation.

(2) Whether and to what extent the grantee controls its routes and schedules. If the grantee does not control its routes and schedules, but instead, a school or school district controls the routes and schedules at issue, then the service is more likely to be a school bus operation.

(3) Whether and to what extent students' residences and schools serve as the starting or ending points of a route. If students' residences and schools serve as the starting or ending points of a route, then the service is more likely to be a school bus operation.

(4) Whether and to what extent the grantee publicizes the service at issue. If the grantee does not publicize the service at issue, for example by not publicizing the service in its regularly published route schedules and maps, then the service is more likely to be a school bus operation.

(5) Whether and to what extent the grantee's service displaces private school bus operators. If the grantee's service displaces private school bus operators, then the service is more likely to be a school bus operation.

(6) Whether and to what extent the grantee's service is open to the public. If the grantee's service is open to the public, then the service is less likely to be a school bus operation.

(7) The extent to which non-students use the grantee's service. If a significant portion of non-students use the grantee's service at issue, then the service is less likely to be a school bus operation.

(8) Whether and to what extent the grantee operates its service during times when school is not in session. If the grantee operates the service at issue during times when school is not in session, then the service is less likely to be a school bus operation.

(9) The frequency of the grantee's service during times when school is in session. If the grantee frequently operates the service at issue during times when school is in session, then the service is less likely to be a school bus operation.

(10) Whether and the extent to which buses stop at clearly marked regular route stops. If buses stop at clearly marked regular route stops, then the service is less likely to be a school bus operation.

FTA invites the public to comment on whether it should utilize these factors or some of these factors in its analysis of a school bus operations issue.

vi. Previous Oversight Findings

Under 49 U.S.C. 5307(h)(2), Congress mandates FTA to conduct periodic, triennial reviews of its grantees to ensure that the grantees are in compliance with the conditions imposed on them as recipients of Federal funds.[61] As a practical matter, however, a triennial review is a constrained means of monitoring compliance.

In a triennial review, if FTA finds that a grantee has complied with its school bus operations regulations, then that finding should not preclude FTA from later finding, pursuant to a complaint filed under 49 CFR part 605, that a grantee has violated the school bus operations prohibition. At the time of a triennial review, FTA may not have all the pertinent facts when it makes a school bus operations finding. FTA may find new facts in a complaint proceeding. Therefore, FTA proposes to add a provision in its school bus operations regulations that, ''Any previous oversight findings of compliance with the Federal Transit Administration's school bus operations regulations will not preclude the Chief Counsel from finding a violation of this part.''

vii. Independent Investigation

Under the current regulatory scheme, the Administrator may investigate a grantee if the Administrator believes

[57] 49 CFR 605.30.

[58] 49 CFR 605.30.

[59] *See, e.g.,* Schaffer *ex rel Schaffer* v. *Weast,* 546 U.S. 49, 56 (2005).

[60] *See, e.g., Yzaguirre* v. *Barnhart,* 58 F.App'x 460, 462 (10th Cir. 2003) (quoting Jones *ex rel Jones* v. *Chater,* 101 F.3d 509, 512 (7th Cir. 1996)).

[61] 49 U.S.C. 5307(h)(2).

that it has violated 49 CFR part 605.[62] FTA proposes to amend this section to allow the Chief Counsel to initiate and conduct an investigation if it has reasonable suspicion to believe that a grantee violated 49 CFR part 605.

b. Notification to the Respondent (§ 605.31)

Pursuant to 49 CFR 605.31, when a complainant files a complaint, or if the Administrator has reason to believe that grantee violated FTA's school bus operations regulations, the Administrator notifies the grantee that it may have violated this 49 CFR part 605.[63] FTA proposes to overhaul this provision and insert new complaint procedures at 49 CFR 605.21.

i. Complaint Procedures

Under the current regulatory scheme, FTA imposes few requirements on parties with respect to the format and content of their submissions in a school bus operations proceeding. FTA finds that this system is problematic because parties often do not provide FTA with the facts that it needs to make well-informed decisions. Furthermore, the parties often do not apply the facts of their cases to applicable laws. Therefore, FTA proposes to update its school bus operations regulations to require parties to provide clarity in their submissions.

Under FTA's proposal, FTA would require a complainant to identify a potential violator of 49 CFR part 605, the specific provisions of 49 CFR part 605 that were violated, any relevant documentation, a brief statement of the relevant facts, and the harm suffered by the complainant. Additionally, FTA would require parties, in their responses, replies, and rebuttals, to provide FTA with a brief statement of the relevant facts, admissions or denials where appropriate, affirmative defenses where appropriate, and any supporting documentation. FTA also proposes to allow parties to request extensions of time, not to exceed thirty days for good cause, to file a submission under this section.

Furthermore, under the current regulatory scheme, a respondent has only one opportunity—in its response—to make its case to FTA. A respondent is unable to rebut a complainant's reply which may include additional facts or arguments that may merit an additional opportunity for the respondent to file a submission. In FTA's proposal, FTA would allow a respondent to file a rebuttal to a complainant's reply within ten days of the date of service of the reply.

Additionally, under the current regulatory scheme, FTA allows a respondent thirty (30) days to respond to a complaint.[64] FTA allows the complainant a ''like time'' to reply to the response. FTA finds that this timeframe is ambiguous because FTA does not specify the duration of the ''like time.'' In this notice, to provide clarity, FTA proposes to allow a complainant to reply to a response within twenty (20) days from the date of service of the respondent's response.

ii. Third Party Intervention

Under the current regulatory scheme, FTA has no explicit authority to allow third parties to intervene in a school bus operations proceeding. In some instances, a third party may be integral to a proceeding because the existing parties may not adequately represent the third party's interests and the third party consequently may suffer harm. Therefore, FTA proposes to add 49 CFR 605.22 to explicitly allow a third party to intervene in a school bus operations proceeding if it demonstrates to the satisfaction of the Chief Counsel that the parties to the proceeding do not adequately represent the third party's interests and that it will suffer harm if the Chief Counsel does not grant its motion to intervene.

iii. Dismissal of a Complaint

FTA proposes to add 49 CFR 605.23 to provide the Chief Counsel with authority to dismiss a complaint or any claim in a complaint, with prejudice, if the complaint or claim is outside FTA's jurisdiction, the complainant does not state a claim, or the complainant lacks standing.

iv. Incomplete Complaint

FTA proposes to add 49 CFR 605.24 to provide the Chief Counsel with authority to dismiss a complaint without prejudice if the complaint is deficient as to one or more of the requirements set forth in FTA's proposed 49 CFR 605.21.

v. Filing of a Complaint

Under the current regulatory scheme, FTA requires parties to submit to FTA paper submissions in a school bus operations proceeding. Since 1976, the year that FTA promulgated its school bus operations regulations, technology has undergone huge advancements. For example, electronic dockets available through Regulations.gov provide opportunities for Federal agencies to conduct adjudicative proceedings electronically. FTA believes that electronic dockets promote transparency in the Federal government, preserve public documents in an easily accessible public forum, and provide parties with a simple and efficient method of filing submissions in administrative adjudications. For these reasons, FTA proposes to add 49 CFR 605.25 to create an electronic filing system for its complaint process through Regulations.gov.

vi. Service

Under the current regulatory scheme, FTA does not require parties to serve copies of their submissions to opposing parties. FTA finds this system problematic because parties may not be aware of complaints and other submissions filed with FTA on a timely basis. In this notice, FTA proposes to require parties to serve copies of all submissions that they file with FTA on all other opposing parties.

vii. Appeal From Chief Counsel's Decision

Under the current regulatory scheme, a party adversely affected by a decision may not file an appeal with FTA before filing an action in United States District Court. FTA finds that this system has prevented FTA from remedying issues administratively so that parties need not seek relief in expensive and protracted litigation before United States courts. In this notice, FTA proposes to add 49 CFR 605.29 to allow parties adversely affected by a decision of the Chief Counsel to file an appeal with the Administrator. On appeal, the Administrator shall review the entire administrative record within the context of any issue on appeal, and the Administrator shall issue a final decision. FTA also proposes to amend 49 CFR 605.30 to authorize the Administrator to review the Chief Counsel's decision at his or her own motion. FTA invites the public to comment on whether it should utilize a different standard of review on appeal.

c. Accumulation of Evidentiary Material (§ 605.32)

Under the current regulatory scheme, the Administrator allows the respondent to respond to a complaint within thirty days of receipt of the complaint.[65] The Administrator allows the complainant to reply to the respondent's response within ''a like period.''[66] The Administrator may undertake such

[62] 49 CFR 605.31.

[63] 49 CFR 605.31.

[64] 49 CFR 605.32.

[65] 49 CFR 605.32.

[66] 49 CFR 605.32.

further investigation as the Administrator deems necessary.[67]

FTA proposes to amend its procedures for accumulating evidentiary material with its provisions at 49 CFR 605.20–605.26 as discussed above.

d. Adjudication (§ 605.33)

Under the current regulatory scheme, the Administrator issues a written decision at the conclusion of a school bus operations proceeding.[68] If the Administrator determines that a grantee violated 49 CFR part 605, then the Administrator shall order such remedial measures as the Administrator deems appropriate.[69] FTA proposes to reorganize this section by moving the provision regarding the Administrator's remedial measures to 49 CFR 605.28—the proposed section that outlines the remedies available to FTA.

e. Remedy Where There Has Been a Violation of the Agreement (§ 605.34)

FTA proposes to amend the provisions at 49 CFR 605.34 regarding remedies for a violation of the school bus agreement. Under the Federal-Aid Highway Act of 1973, Congress instructed the Urban Mass Transportation Administration (UMTA), now FTA, that if it found a violation of the school bus operations prohibition, then it ''shall bar such applicant from receiving any other federal financial assistance. * * *''[70] FTA subsequently implemented this statutory provision at 49 CFR 605.34 which states, ''If the Administrator determines * * * that there has been a violation of the terms of the agreement, he may bar a grantee or operator from the receipt of further financial assistance for mass transportation facilities and equipment.''[71]

Under this framework, the Administrator did not exercise the remedy provision at 49 CFR 605.34 because such an action would completely bar a grantee or operator from the receipt of financial assistance and significantly obstruct their ability to provide public transportation. That changed when Congress enacted the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, and amended 49 U.S.C. 5323(f) as follows, ''If the Secretary finds that an applicant, governmental authority, or publicly owned operator has violated the agreement * * * the Secretary shall bar a recipient or an operator from receiving Federal transit assistance in an amount the Secretary considers appropriate.''[72]

FTA intends to implement the amended statutory provision at 49 U.S.C. 5323(f). Using the language of 49 U.S.C. 5323(f), FTA proposes the following remedies provision at 49 CFR 605.28, ''If the Chief Counsel determines, pursuant to this subpart, that a grantee has violated this part or the terms of the agreement, then the Chief Counsel shall bar the grantee from the receipt of further financial assistance for public transportation in an amount that the Chief Counsel considers appropriate.''

Additionally, FTA proposes to authorize the Chief Counsel to issue cease and desist orders where appropriate. FTA believes that this remedy will allow the Chief Counsel some additional flexibility when issuing remedies and tailoring those remedies to the severity of the violation.

Finally, FTA proposes to authorize the Chief Counsel to issue any other such remedies that the Chief Counsel believes are appropriate. FTA currently authorizes the Administrator to issue such remedies at 49 CFR 605.33(b). To illustrate, FTA may require a violator of 49 CFR part 605 to submit a remediation plan to FTA whereby it would outline a plan to restructure its service so that it complies with FTA's school bus operations regulations. FTA believes that this remedy will allow the Chief Counsel some additional flexibility when issuing remedies and tailoring those remedies to the severity of the violation.

f. Judicial Review (§ 605.35)

FTA proposes to restructure its regulatory scheme by moving the judicial review provisions at 49 CFR 605.35 to a proposed 49 CFR 605.31.

5. Subpart E—Reporting and Records

a. Reports and Information (§ 605.40)

Under the current regulatory scheme, ''The Administrator may order any grantee or operator for the grantee, to file special or separate reports setting forth information relating to any transportation service rendered by such grantee or operator, in addition to any other reports required by this part.''[73] FTA does not propose to amend this section.

b. Proposed Subpart E—Grandfathering of Existing School Bus Operations

FTA proposes to add 49 CFR 605.50 to include grandfathering provisions in its amended regulatory framework. FTA recognizes that some grantees may need significant time to modify their school bus operations to comply with FTA's amended 49 CFR part 605. Therefore, FTA proposes to allow these grantees to modify their school bus operations to comply with FTA's amended 49 CFR part 605 by June 30, 2010. With this timeframe, FTA proposes to give these grantees until the end of the next academic year to comply with this part.

FTA also proposes to allow grantees to provide school bus operations to schools or school districts if the grantee provided the school bus operations without payment from the schools or school districts prior to August 1, 2008. If a grantee receives payment from a school or school district for school bus operations on or after August 1, 2008, then this grandfathering provision no longer would apply.

6. Appendix A to Part 605

Under the current regulatory scheme, FTA attaches Appendix A to 49 CFR part 605 which is an opinion of the Comptroller General of the United States dated December 7, 1966. The Comptroller General discusses the definition of the term ''incidental.'' FTA used this discussion to clarify its definition of the term ''incidental'' as used in its charter service regulations at 49 CFR part 604 and its school bus operations regulations at 49 CFR part 605. FTA recently promulgated amended charter service regulations at 49 CFR part 604, and FTA proposes to delete Appendix A to 49 CFR part 605 because it is no longer applicable in light of FTA's amended charter service regulations.

III. Rulemaking Analyses and Notices

A. Executive Order 12866: Regulatory Planning and Review/DOT Regulatory Policies and Procedures

Under Executive Order 12866, the U.S. Department of Transportation (DOT) must examine whether this proposed rule is a ''significant regulatory action.'' A significant regulatory action is subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. Executive Order 12866 defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $120 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or state, local, or tribal governments or communities; (2) Create a serious

[67] 49 CFR 605.32.

[68] 49 CFR 605.33(a).

[69] 49 CFR 605.33(b).

[70] Federal-Aid Highway Act sec. 164(b).

[71] 49 CFR 605.34.

[72] SAFETEA–LU sec. 3023.

[73] 49 CFR 605.40.

inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking is not a significant regulatory action within the meaning of Executive Order 12866, and, therefore, this rulemaking was not reviewed by OMB. Further, this rule is not significant under DOT's regulatory policies and procedures. This Notice of Proposed Rulemaking contains revisions that are clarifying in nature.

FTA does not anticipate this rule to adversely affect, in a material way, any sector of the economy. Through this rulemaking, FTA proposes to effectuate the purpose of 49 U.S.C. 5323(f) and to clarify provisions to protect private school bus operators from unfair competition by federally subsidized public transit agencies; thus, these changes should increase economic opportunities for private school bus operators. Additionally, this proposed rule would not create a serious inconsistency with another agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required. FTA also estimates the costs associated with this rule to be minimal because the rule clarifies definitions and exemptions.

B. Executive Order 13132: Federalism

Executive Order 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of regulatory policies that may have a substantial, direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. FTA has analyzed this Notice of Proposed Rulemaking in accordance with the principles and criteria contained in Executive Order 13132, and FTA has determined that this Notice of Proposed Rulemaking would not have sufficient federalism implications to warrant the preparation of a federalism assessment. FTA has also determined that this Notice of Proposed Rulemaking would not preempt any state law or regulation or affect a state's ability to discharge traditional state governmental functions.

C. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that ''significantly or uniquely affect'' Indian communities and that impose ''substantial and direct compliance costs'' on such communities. FTA has analyzed this proposed rule under Executive Order 13175 and FTA believes that the proposed action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal laws. Therefore, a tribal impact statement is not required.

D. National Environmental Policy Act

As a rulemaking process, FTA concludes that this proposed action is categorically excluded from the requirements of the National Environmental Policy Act (NEPA) and FTA's NEPA regulation at 23 CFR 771.117(c)(20). Although FTA's NEPA regulation requires some level of environmental review even for those activities that are categorically excluded if they involve ''unusual circumstances,'' 23 CFR 771.117(b), FTA finds that the proposed action, if finalized, would not result in the unusual circumstances that would cause FTA to perform an environmental review. Although commenters on FTA's Notice of Proposed Policy Statement on FTA's School Bus Operations Regulations [74] raised concerns about the environmental effects of the operation of school buses relative to the operation of transit buses, FTA lacks the evidence and data on the numerous variables necessary to predict differences between operating the various types of buses that are used in both public and private school transportation. Furthermore, it is impossible to predict the likely minor changes in the types of buses used that would result from FTA's proposal.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 [75] (PRA), a Federal agency must obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. This Notice of Proposed Rulemaking does not impose any paperwork collection requirements.

F. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' which will ''describe the impact of the proposed rule on small entities.'' [76] Under section 605 of the RFA, Congress allows an agency to certify a rule, in lieu of preparing an analysis, if the agency does not expect the proposed rulemaking to have a significant economic impact on a substantial number of small entities.

The nature of this rulemaking is to effectuate the purpose of 49 U.S.C. 5323(f) and to prevent unfair competition by federally subsidized public transit agencies with private school bus operators. FTA invites comment on the economic impact of the proposed regulations on small entities.

G. Unfunded Mandates Reform Act of 1995

In this notice, FTA does not propose to impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995.[77] This Notice of Proposed Rulemaking will not result in the expenditure of non-Federal funds by state, local, and Tribal governments, in the aggregate, or by the private sector, of $120.7 million in any one year.[78]

List of Subjects in 49 CFR Part 605

School bus operations.

In consideration of the foregoing, FTA amends Chapter VI of Title 49 of the Code of Federal Regulations as set forth below.

Title 49—Transportation

1. Revise part 605 to read as follows:

PART 605—SCHOOL BUS OPERATIONS

Subpart A—General

Sec.
605.1 Purpose.
605.2 Scope.
605.3 Definitions.

Subpart B—School Bus Operations Prohibition and Agreement

605.10 Prohibition.
605.11 Agreement.
605.12 Exemptions.
605.13 Exceptions.

Subpart C—Complaint Procedures and Remedies

605.20 General.
605.21 Complaint Procedures.

[74] 73 FR 28,790 (May 19, 2008).

[75] *See* 44 U.S.C. Chapter 35 (2006).

[76] 5 U.S.C. 603(a) (2006).

[77] Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48 (1995).

[78] *See* 2 U.S.C. 1532 (2006).

605.22 Third Party Intervention.
605.23 Dismissal of a Complaint.605.24 Incomplete Complaint.
605.25 Filing of a Complaint.
605.26 Service.
605.27 Adjudication.
605.28 Remedies.
605.29 Appeal from the Chief Counsel's Decision.
605.30 Administrator's Discretionary Review of the Chief Counsel's Decision.
605.31 Judicial Review of a Final Decision and Order.

Subpart D—Reporting and Records

605.40 Reports and Information.

Subpart E—Grandfathering of Existing School Bus Operations

605.50 Grandfathering Provisions.

Authority: 49 U.S.C. 5323(f); 49 CFR 1.51.

Subpart A—General

§ 605.1 Purpose.

(a) The purpose of this part is to prescribe policies and procedures to implement 49 U.S.C. 5323(f).

(b) By the terms of 49 U.S.C. 5323(f), financial assistance under this chapter may be used for a capital project, or to operate public transportation equipment or a public transportation facility, only if the applicant agrees not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator.

§ 605.2 Scope.

These regulations apply to all recipients of financial assistance for the construction or operation of facilities and equipment for use in providing public transportation under 49 U.S.C. Chapter 53 and 23 U.S.C. 133 and 142.

§ 605.3 Definitions.

(a) Terms defined at 49 U.S.C. Chapter 53 shall have the same meaning in this part.

(b) For purposes of this part:

The Acts means the Urban Mass Transportation Act of 1964, as amended and codified at 49 U.S.C. Chapter 53, and 23 U.S.C. 133 and 142.

Administrator means the Federal Transit Administration Administrator or his or her designee.

Adequate transportation means transportation for students and school personnel which the Chief Counsel determines conforms to applicable safety laws, is on time, poses a minimum of discipline problems, is not subject to fluctuating rates, and is operated efficiently and in harmony with state educational goals and programs.

Agreement means an agreement required under 49 U.S.C. 5323(f).

Applicant means applicant for assistance under the Acts.

Assistance means Federal financial assistance for the purchase, financing, leasing, or operation of buses and equipment and the construction, financing, leasing, or operation of facilities for use in providing public transportation services under the Acts, but does not include research, development, and demonstration projects funded under the Acts.

Chief Counsel means the Federal Transit Administration Chief Counsel or his or her designee.

Exclusively means transportation that a reasonable person would conclude was designed primarily to accommodate school students, personnel, or equipment, without regard to demand from the non-student general public.

Geographic service area means the area in which a recipient is authorized to provide public transportation service under appropriate local, state, and Federal law.

Government means the Government of the United States of America.

Grantee means a recipient, including a subrecipient, of assistance under the Acts.

Interested party means an individual, partnership, corporation, association, public organization, private organization, or its duly authorized representative, that has a financial interest which is adversely affected by the act or acts of a grantee with respect to school bus operations.

Reasonable rates means rates which are fair and equitable taking into consideration the local conditions which surround the geographic service area where the rate is in question, including the portion of Federal assistance that a grantee uses or intends to use to provide school bus operations.

School bus operations means transportation by bus exclusively for school students, personnel, and equipment.

Subpart B—School Bus Operations Prohibition and Agreement

§ 605.10 Prohibition.

A grantee shall not provide, or contract to provide, school bus operations, except as provided in § 605.12 and § 605.13.

§ 605.11 Agreement.

(a) The Federal Transit Administration shall not provide assistance under the Acts unless the applicant or grantee agrees not to provide school bus operations exclusively for students and school personnel in competition with a private school bus operator, except as provided in § 605.12 and § 605.13.

(b) A grantee shall satisfy § 605.11(a) by submitting and certifying to the Federal Transit Administration its ''Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements'' and by subscribing to the Federal Transit Administration's ''Master Agreement.''

(c) The ''Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements'' and the Federal Transit Administration's ''Master Agreement'' shall state as follows:

> The [Grantee, Recipient, or Applicant] agrees that it will not provide school bus operations exclusively for students and school personnel in competition with a private school bus operator, except as provided in 49 U.S.C. 5323(f), 49 CFR Part 605, and any relevant Federal Transit Administration directives. The [Grantee, Recipient, or Applicant] agrees that it will comply with all the provisions of 49 U.S.C. 5323(f), 49 CFR Part 605, and any relevant Federal Transit Administration directives.

§ 605.12 Exemptions.

(a) The school bus operations prohibition at § 605.10 shall not apply where:

(1) The grantee uses various fare collection or subsidy systems for students, the grantee modifies the frequency of service, and the grantee makes a one-half mile or less route deviation from a route within a one-half mile or less radius of a school building;

(2) The grantee operates a school system in a grantee's geographic service area and also operates a separate and exclusive school bus program for that school system; or

(3) The grantee is a state or local public body or agency thereof, or a direct predecessor in interest which has acquired the function of transporting school students and personnel along with facilities to be used therefor, which provided school bus operations:

> (i) In the case of a grant involving the purchase of buses—anytime during the twelve (12) month period immediately prior to August 13, 1973; or
>
> (ii) In the case of a grant for construction or operating of facilities and equipment made pursuant to 49 U.S.C. Chapter 53, anytime during the twelve (12) month period immediately prior to November 26, 1974.

§ 605.13 Exceptions.

(a) *Exceptions.* An applicant or grantee may petition the Chief Counsel for an exception to the school bus operations prohibition at § 605.10 where private school bus operators in the applicant's or grantee's geographic

service area are unable to provide adequate transportation at a reasonable rate and in conformance with applicable safety standards.

(b) *Procedures.* An applicant or grantee shall provide notice to the Chief Counsel that it intends to apply for a ''Petition for an Exception,'' and the applicant or grantee shall complete the following:

(1) An applicant or grantee shall send the notice required under § 605.13(b)(1) by electronic mail to the Chief Counsel at *FTA.SchoolBusOperations@dot.gov.*

(2) An applicant or grantee shall include the following information in its notice:

(i) A description of the geographic service area that the applicant or grantee intends to serve;

(ii) A description of the schools and school districts that the applicant or grantee intends to serve;

(iii) A description of the anticipated ridership related to the school bus operation;

(iv) An estimation of the number and types of buses that the applicant or grantee intends to utilize for the school bus operation;

(v) A description of the duration of the school bus operation;

(vi) A description of the frequency of daily service related to the school bus operation;

(vii) An analysis regarding the extent to which the proposed school bus operation complies with local, state, and Federal safety laws;

(vii) A summary of the fully allocated costs related to the school bus operation; and

(viii) The rate that the applicant or grantee intends to charge for the school bus operation.

(c) The Federal Transit Administration shall open an electronic Petition for an Exception Docket and file the notice at *http://www.regulations.gov.*

(d) The Federal Transit Administration shall transmit a copy of the notice and its docket number to the applicant or grantee and the National School Transportation Association.

(e) Any private operator having a place of business in the applicant's or grantee's geographic service area may, within thirty (30) days of the notice's docketing date, submit comments on the Petition for an Exception Docket demonstrating the extent to which it can provide school bus operations that constitute adequate transportation at a reasonable rate and in conformance with applicable safety standards.

(f) *Petition for an Exception.* After the thirty (30) day comment period closes, an applicant or grantee may petition the Chief Counsel for an exception to the school bus operations prohibition at § 605.10 after completing the following steps:

(1) The applicant or grantee shall title the petition ''Petition for an Exception'';

(2) The applicant or grantee shall file the Petition for an Exception electronically in the appropriate Petition for an Exception Docket at *http://www.regulations.gov* or mail it to the Docket Office at 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590;

(3) The applicant or grantee shall send an executed original copy of the Petition for an Exception by U.S. mail to the Chief Counsel at 1200 New Jersey Avenue, SE., East Building—5th Floor, Washington, DC 20590; and

(4) The applicant or grantee shall include in its Petition for an Exception the applicant's or grantee's response to any comments filed in the docket before the close of the thirty (30) day comment period.

(g) To qualify for an exception under this section, the applicant or grantee shall demonstrate to the satisfaction of the Chief Counsel that no private operator having a place of business in the applicant's or grantee's geographic service area can provide school bus operations that constitute adequate transportation at a reasonable rate and in conformance with applicable safety standards.

(h) The Chief Counsel shall issue a written decision that either grants or denies the applicant's or grantee's Petition for an Exception.

(i) If the applicant or grantee fails to satisfy any of the requirements in this section, then the Chief Counsel may dismiss the Petition for an Exception with or without prejudice.

Subpart C—Complaint Procedures and Remedies

§ 605.20 General.

(a) *Standing.* Any interested party affected by an alleged noncompliance of this part may file a complaint with the Chief Counsel alleging a violation or violations of this part.

(b) *Time Limit for Filing a Complaint.* The complainant shall file its complaint with the Chief Counsel within ninety (90) days after the alleged event giving rise to the complaint occurred.

(c) *Burden of Persuasion.* The complainant bears the burden of persuasion in a proceeding under this subpart, that is, the complainant loses if the evidence is equally balanced.

(d) *Standard of Proof.* The standard of proof in a proceeding under this subpart is a preponderance of the evidence standard. To hold something by a preponderance of the evidence means that something is more likely so than not so.

(e) *School Bus Operations Factors.* The Chief Counsel may weigh and consider a variety of factors in determining whether a grantee provided, or contracted to provide, school bus operations, including, but not limited to, the following:

(1) Whether and to what extent the grantee designed and intended to design its service to meet the demands of a school or school district;

(2) Whether and to what extent the grantee controls its routes and schedules;

(3) Whether and to what extent students' residences and schools serve as the starting or ending points of a route;

(4) Whether and to what extent the grantee publicizes the service at issue;

(5) Whether and to what extent the grantee's service displaces private school bus operators;

(6) Whether and to what extent the grantee's service is open to the public;

(7) The extent to which students and non-students utilize the grantee's service;

(8) Whether and to what extent the grantee operates its service during times when school is not in session;

(9) The frequency of the grantee's service during times when school is in session; and

(10) Whether and the extent to which buses stop at clearly marked regular route stops.

(f) *Previous Oversight Findings.* Any previous oversight findings of compliance with the Federal Transit Administration's school bus operations regulations will not preclude the Chief Counsel from finding a violation of this part, particularly when the Chief Counsel finds new facts during the course of a proceeding under this subpart which were not known or available during a triennial review.

(g) *Independent Investigation.* If the Chief Counsel, at any time, has reasonable suspicion to believe that a grantee violated this part, then the Chief Counsel may initiate and conduct an investigation and take appropriate action pursuant to this part.

§ 605.21 Complaint Procedures.

(a) *Complaint.* In its complaint, the complainant shall:

(1) Title its complaint ''School Bus Operations Complaint'';

(2) State the name and address of each grantee that is the subject of the complaint, and, with respect to each

grantee, state the specific provision(s) of this part that the complainant believes were violated;

(3) Serve the complaint in accordance with § 605.26, along with all documents then available in the exercise of reasonable diligence that are offered in support of the complaint, upon each grantee named in the complaint as being responsible for the alleged actions(s) or omission(s) upon which the complaint is based;

(4) Provide a concise but complete statement of the facts relied upon to substantiate each allegation; and

(5) Describe how the complainant was directly and substantially affected by the action(s) or omission(s) of the grantee(s).

(b) *Withdrawal of Complaint.* The complainant may withdraw a complaint at any time by serving a ''Notification of Withdrawal'' on the Chief Counsel and the respondent.

(c) *Docketing of Complaint.* Unless the Chief Counsel dismisses the complaint pursuant to this subpart, the Chief Counsel shall notify the complainant and respondent that the Chief Counsel received the complaint and that the complaint has been docketed.

(d) *Response.* (1) The respondent shall have thirty (30) days from the date of service of the Chief Counsel's notification under § 605.21(a)(3) to file a response.

(2) In its response, the respondent shall provide a concise but complete statement of the facts upon which the respondent relies to substantiate its answers, admissions, denials, or averments.

(3) In its response, the respondent shall provide supporting documentation upon which the respondent relies.

(4) In its response, the respondent shall admit or deny each allegation made in the complaint or state that it is without sufficient knowledge or information to admit or deny an allegation.

(5) In its response, the respondent shall assert any affirmative defense.

(6) In its response, the respondent may make a motion to dismiss the complaint, or any portion thereof, with a supporting memorandum of points and authorities.

(e) *Reply.* (1) The complainant may file a reply within twenty (20) days of the date of service of the respondent's response.

(2) In its reply, the complainant shall provide a concise but complete statement of the facts upon which the complainant relies to substantiate its answers, admissions, denials, or averments.

(3) In its reply, the complainant shall provide supporting documentation upon which the complainant relies.

(f) *Rebuttal.* (1) The respondent may file a rebuttal within ten (10) days of the date of service of the reply.

(2) In its rebuttal, the respondent shall provide a concise but complete statement of the facts upon which the respondent relies to substantiate its answers, admissions, denials, or averments.

(3) In its rebuttal, the respondent shall provide supporting documentation upon which the respondent relies.

(g) *Extensions of Time.* A party may request from the Chief Counsel an extension of time, not to exceed thirty (30) days, for good cause, to file a submission with the Chief Counsel under this section. The Chief Counsel may grant an extension of time to a party as he or she deems appropriate.

(h) *Evidentiary Hearing.* The Chief Counsel, as he or she deems appropriate, may hold an evidentiary hearing to allow each party to submit evidence under this part.

§ 605.22 Third Party Intervention.

(a) Any interested party may submit a motion to the Chief Counsel requesting intervention in a proceeding under this subpart.

(b) The party requesting intervention shall demonstrate to the satisfaction of the Chief Counsel that the parties to the proceeding do not adequately represent the third party's interests and that it will suffer harm if the Chief Counsel does not grant its motion to intervene.

(c) The Chief Counsel may grant or deny the motion to intervene.

§ 605.23 Dismissal of a Complaint.

(a) The Chief Counsel may dismiss a complaint or any claim in a complaint, with prejudice, if:

(1) On its face, it appears to be outside the jurisdiction of the Federal Transit Administration under the Acts;

(2) On its face, it does not state a claim that warrants an investigation or further action by the Federal Transit Administration; or

(3) The complainant lacks standing to file a complaint under this part.

(b) The Chief Counsel shall provide reasons for dismissing a complaint or any claim in the complaint.

§ 605.24 Incomplete Complaint.

(a) If the Chief Counsel does not dismiss a complaint under § 602.23, but the complaint is deficient as to one or more of the requirements set forth in § 605.21, then the Chief Counsel may dismiss the complaint.

(b) If the Chief Counsel dismisses a complaint under this section, then the Chief Counsel shall dismiss the complaint without prejudice and the complainant may re-file a complaint after amendment to correct the deficiency.

(c) The Chief Counsel shall include in the dismissal under this section the reasons for the dismissal without prejudice.

§ 605.25 Filing of a Complaint.

(a) *Filing Address and Method of Filing.* (1) The complainant shall file the complaint electronically in the School Bus Operations Complaint docket at *http://www.regulations.gov* or mail it to the Docket Office at 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

(2) Parties shall file responses, replies, rebuttals, appeals, and responses to appeals electronically in the School Bus Operations Complaint docket at *http://www.regulations.gov* or mail it to the Docket Office at 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

(b) *Date.* Unless the date is shown to be inaccurate, documents filed with the Federal Transit Administration shall be deemed filed, on the earliest of:

(1) The date that the party filed the document electronically in the School Bus Operations Complaint docket at *http://www.regulations.gov;*

(2) The date of personal delivery;

(3) The mailing date shown on the certificate of service;

(4) The date shown on the postmark if there is no certificate of service; or

(5) The mailing date shown by other evidence if there is no certificate of service and no postmark.

(c) *Electronic Mail or Facsimile.* A document sent by electronic mail or facsimile shall not constitute service as described in this subpart.

(d) *Number of Copies.* Each party shall send to the Chief Counsel by personal delivery or by U.S. mail return receipt requested an executed original copy of each document that it electronically files on the School Bus Operations Complaint docket. Each party shall send the executed original copy to the Chief Counsel at 1200 New Jersey Avenue SE., East Building—5th Floor, Washington, DC 20590.

(e) *Form.* Each party shall type or legibly print each document that it files with the Office of Chief Counsel. In the case of docketed proceedings, the document shall include a title and the docket number, as established by the Chief Counsel, of the proceeding on the front page.

(f) *Signing of Documents and Other Papers.* Either the complainant or a duly

authorized representative of the complainant shall sign the original copy of each document that it files with the Office of Chief Counsel. The signature shall serve as a certification that the signer has read the document, and, based on reasonable inquiry, to the best of the signer's knowledge, information, and belief, that the document is:

(1) Consistent with this part;

(2) Warranted by existing law or that a good faith argument exists for extension, modification, or reversal of existing law; and

(3) Not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the administrative process.

§ 605.26 Service.

(a) *Designation of Person to Receive Service.* (1) In its complaint, the complainant shall:

(i) State the complainant's name, post office address, and telephone number;

(ii) State the complainant's facsimile number, if any, and e-mail addresses, if any; and

(iii) Designate a person to receive service on behalf of the complainant.

(2) If any of the items in paragraph (a) of this section change during the proceeding, then the complainant promptly shall file notice of the change with the Chief Counsel and shall serve the notice on each party to the proceeding.

(b) *Who Must be Served.* Each party shall serve a copy of each document that it files with the Chief Counsel to each other party to the proceeding. Each party shall include a certificate of service on each document when the party tenders it for filing and shall certify concurrent service on each other party. Certificates of service shall be in substantially the following form:

I hereby certify that I have this day served the foregoing [name of document] on the following persons at the following addresses by [specify method of service]:

[list persons and addresses]

Dated this ____day of _____, 20__.

[signature], for [party]

(c) *Method of Service.* Unless otherwise agreed by the parties, as appropriate, the method of service is personal delivery or U.S. mail.

(d) *Presumption of Service.* There shall be a presumption of lawful service:

(1) When a person who customarily or in the ordinary course of business receives mail at the address of the party or the person designated under this section acknowledges receipt; or

(2) When a properly addressed envelope, sent to the last known address, has been returned as undeliverable, unclaimed, or refused.

§ 605.27 Adjudication.

(a) Upon the conclusion of a proceeding under this subpart, the Chief Counsel shall issue a written determination as to whether a grantee has committed a violation of this part.

(b) The Chief Counsel shall include an analysis and explanation of his or her findings in the determination.

§ 605.28 Remedies.

(a) If the Chief Counsel determines that a grantee has violated this part or the terms of the agreement, then the Chief Counsel shall bar the grantee from the receipt of financial assistance for public transportation in an amount that the Chief Counsel considers appropriate.

(b) If the Chief Counsel determines that a grantee has violated this part or the terms of the agreement, then the Chief Counsel may issue a cease and desist order requiring the grantee to cease and desist from the provision of the service at issue.

(c) If the Chief Counsel determines, pursuant to this subpart, that a grantee has violated this part or the terms of the agreement, then the Chief Counsel may issue other remedies as the Chief Counsel determines are appropriate.

§ 605.29 Appeal from the Chief Counsel's Decision.

(a) Each party adversely affected by a decision of the Chief Counsel may file an appeal with the Administrator within thirty (30) days of the date of the Chief Counsel's decision.

(b) *Procedures.* (1) The appellant shall file the appeal electronically and consistently with § 605.25.

(2) The appellant shall serve a copy of the appeal on each appellee by either personal delivery or U.S. mail consistent with § 605.26.

(3) Each appellee may file a response to an appeal within twenty (20) days after the appellant serves the appeal on the appellee.

(c) If a party files an appeal, then the Administrator shall review the entire administrative record and issue a final agency decision based on the administrative record that either accepts, rejects, or modifies the Chief Counsel's decision. If a party does not file an appeal, then the Administrator may review the Chief Counsel's decision on his or her own motion. If the Administrator finds that a party is not in compliance with this part, then the final agency order shall include a statement of corrective action, if appropriate, and identify remedies.

(d) If a party does not file an appeal, and the Administrator does not review the Chief Counsel's decision on the Administrator's own motion, then the Chief Counsel's decision shall take effect as the final agency decision and order on the thirtieth day after the date that the Chief Counsel issued the decision.

(e) The failure to file an appeal is deemed a waiver of any right to seek judicial review of the Chief Counsel's decision that becomes a final agency decision by operation of paragraph (c) of this section.

§ 605.30 Administrator's Discretionary Review of the Chief Counsel's Decision.

(a) If the Administrator reviews the Chief Counsel's decision on the Administrator's own motion, then the Administrator shall issue a notice of review to each party by the thirtieth day after the date that the Chief Counsel issued the decision.

(1) In the notice of review, the Administrator shall set forth the specific findings of fact and conclusions of law in the Chief Counsel's decision subject to review.

(2) Each party may file one brief on review to the Administrator or rely on its post-hearing briefs to the Chief Counsel. Each party shall file a brief on review no later than ten (10) days after the Administrator serves notice of the review. Each party shall file and serve its brief on review by personal delivery or U.S. mail consistent with § 605.26.

(3) The Administrator shall issue a final agency decision and order within thirty (30) days after the due date of the briefs on review. If the Administrator finds that a party is not in compliance with this part, then the final agency order shall include a statement of corrective action, if appropriate, and identify remedies.

(b) If the Administrator reviews a decision of the Chief Counsel on the Administrator's own motion, then the Administrator shall stay the Chief Counsel's decision pending a final decision by the Administrator.

§ 605.31 Judicial Review of a Final Decision and Order.

(a) A party may seek judicial review in an appropriate United States District Court of a final decision and order as provided in 5 U.S.C. 701–706.

(b) The Chief Counsel's decision to dismiss a complaint under § 605.24 does not constitute a final decision and order subject to judicial review.

Subpart D—Reporting and Records

§ 605.40 Reports and Information.

The Administrator may order any grantee or operator for the grantee to file special or separate reports setting forth information relating to any transportation service rendered by such grantee or operator, in addition to any other reports required by this part.

Subpart E—Grandfathering of Existing School Bus Operations

§ 605.50 Grandfathering Provisions.

(a) Each grantee shall have until June 30, 2010, to modify its school bus operations to comply with this part.

(b) If a grantee provided school bus operations for a school or school district and received no payment from that school or school district for the school bus operations prior to August 1, 2008, then that grantee may continue to provide the school bus operations for that particular school or school district. If a grantee receives payment from a school or school district for school bus operations on or after August 1, 2008, then this grandfathering provision does not apply.

Issued in Washington, DC, on this 3rd day of November, 2008.

James S. Simpson,

Administrator.

[FR Doc. E8–26683 Filed 11–17–08; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 070719384–7386–01]

RIN 0648–AV80

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 30B

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 30B to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This proposed rule would establish annual catch limits (ACLs) and accountability measures (AMs) for commercial and recreational gag, red grouper, and shallow-water grouper (SWG); establish a commercial quota for gag; adjust the commercial quotas for red grouper and shallow-water grouper; establish an incidental bycatch allowance trip limit for commercial gag and red grouper; reduce the commercial minimum size limit for red grouper; reduce the gag bag limit and the aggregate grouper bag limit; increase the red grouper bag limit; extend the closed season for recreational shallow-water grouper; establish a new reef fish seasonal-area closure; eliminate the end date for the Madison-Swanson and Steamboat Lumps marine reserves; and require that federally permitted reef fish vessels comply with the more restrictive of Federal or state reef fish regulations when fishing in state waters. In addition, Amendment 30B would establish management targets and thresholds for gag consistent with the requirements of the Sustainable Fisheries Act; set the gag and red grouper total allowable catch (TAC); and establish interim allocations for the commercial and recreational gag and red grouper fisheries. This proposed rule is intended to end overfishing of gag and maintain catch levels of red grouper consistent with achieving optimum yield.

DATES: Written comments must be received on or before January 2, 2009.

ADDRESSES: You may submit comments on the proposed rule, identified by ''0648–AV80'' by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov*.
- Fax: 727–824–5308; Attention: Peter Hood.
- Mail: Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov*, enter ''NOAA-NMFS–2008–0203'' in the keyword search, then select ''Send a Comment or Submission.'' NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 30B, which includes an environmental impact statement, an initial regulatory flexibility analysis (IRFA), and a regulatory impact review (RIR) may be obtained from the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone 813–348–1630; fax 813–348–1711; e-mail gulfcouncil@gulfcouncil.org; or may be downloaded from the Council's website at *http://www.gulfcouncil.org/*.

FOR FURTHER INFORMATION CONTACT: Peter Hood, 727–824–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield (OY) from federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to specify their strategy to rebuild overfished stocks to a sustainable level within a certain time frame, and to minimize bycatch and bycatch mortality to the extent practicable. The reauthorized Magnuson-Stevens Act as amended through January 12, 2007, requires the councils to establish ACLs for each stock or stock complex and AMs to ensure these ACLs are not exceeded. This proposed rule addresses these requirements for gag and red grouper.

NMFS has published proposed guidelines to address the new Magnuson-Stevens Act requirements for ACLs and AMs. A proposed rule for these guidelines was published in the **Federal Register** on June 9, 2008 (73 FR 32526), and requested public comment. According to these guidelines, stocks in the fishery should have quantitative reference points, including status determination criteria, maximum

sustainable yield (MSY), overfishing limit (OFL), acceptable biological catch (ABC), an annual catch limit (ACL), and an annual catch target (ACT). These reference points have been defined in the proposed guidelines and have not been repeated here. NMFS recommends a management approach where the OFL > ABC > ACL > ACT, however, the relationship between these reference points could also be OFL ≥ ABC ≥ ACL ≥ ACT. The intent of the proposed guidance is to establish a system of limits and targets that account for scientific and management uncertainty and reduce the likelihood that overfishing will occur. The Magnuson-Stevens Act also requires each Council to develop ACLs that may not exceed the fishing level recommendations of the Science and Statistical Committee (SSC) or peer review process. In this proposed rule, NMFS identifies these recommended reference points for gag, red grouper, and SWG, and how they comply with the proposed guidance.

Status of Stocks

The most recent gag stock assessment completed in 2006 concluded that the stock is not overfished, but is undergoing overfishing. Following a re-analysis in 2007, overfishing was still determined to be occurring in 2004 under the maximum fishing mortality threshold (MFMT). The Council's Reef Fish SSC concurred with the overfishing determination at its June 2007 and May 2008 meetings. This proposed rule is necessary to end overfishing of gag by defining benchmarks and thresholds for gag, adjusting TAC, and implementing new management measures to reduce gag fishing mortality to sustainable levels. Although the gag stock would not be overfished under any of the alternatives for minimum stock size threshold (MSST) considered by the Council in Amendment 30B, the stock was recognized to be below the biomass levels associated with harvesting the stock at OY (B_{OY}, or biomass at OY). Therefore, proposed management measures are designed to end overfishing and allow the stock to increase to B_{OY}.

In 2002, red grouper were determined to be undergoing overfishing, but not overfished. At that time, stock biomass was below B_{MSY} (biomass at MSY), requiring a rebuilding plan be established in 2004. In 2007, red grouper were re-assessed. Using data through 2005, the new stock assessment determined overfishing had ended and stock biomass had increased to optimum yield. The assessment showed the stock had recovered, in large part due to strong recruitment year classes in the late 1990s and 2000. This proposed rule would increase TAC and revise management measures to reflect the improved condition of the red grouper stock.

Reference Points and Thresholds for Gag

The Magnuson-Stevens Act requires that each FMP define reference points in the form of MSY and OY, and specify objective and measurable criteria for identifying when a fishery is overfished (MSST) or undergoing overfishing (MFMT). Together, these four parameters are intended to provide fishery managers with the tools to measure fishery status and performance. Amendment 30B would establish MSST, MFMT, and OY for gag based on the biomass reference point corresponding to maximum yield per recruit (MAX), which in this instance is the proxy for MSY. MFMT would be the fishing mortality rate (F) equal to F_{MAX}. MSST would be defined as $(1-M)*SSB_{MAX}$ (M=0.15), where M is the natural mortality rate, and SSB is the spawning stock biomass. To be consistent with NMFS' technical guidance, Amendment 30B would also revise the current specification of OY, 20 percent spawning potential ratio, to be the yield corresponding to an F defined as $F_{OY} = 0.75*F_{MAX}$.

Gag and Red Grouper TAC

National standard 1 of the Magnuson-Stevens Act requires management measures prevent overfishing, while achieving, on a continuing basis, the OY for the fishery. To end overfishing of gag, but still achieve the OY in the fishery, the SSC recommended the ACL for gag to be the yield no greater than that associated with fishing at F_{MAX}. For 2009, this value would be no greater than 4.25 million lb (1.92 million kg). However, in Amendment 30B, the Council proposes to set TAC under a more conservative constant F_{oy} management approach. Under this scenario, TAC for gag would be set at 3.38 million lb (1.53 million kg) for 2009. In 2010, it would increase to 3.62 million lb (1.64 million kg), and in 2011, it would increase again to 3.82 million lb (1.73 million kg). TAC would remain at the 2011 level until revised based on a subsequent stock assessment and appropriate rulemaking.

For red grouper, the SSC recommended an ABC range from 7.57 million lb (3.43 million kg), which equals the long-term OY, to 7.72 million lb (3.50 million kg), which is equal to the long-term MSY. Under Amendment 30B, the Council proposes to set the red grouper TAC at the more conservative equilibrium OY level for the years 2009 through 2011. TAC would remain at the 2011 level until revised based on a subsequent stock assessment and appropriate rulemaking. This increase in TAC from the current 6.56 million lb (2.97 million kg) would allow the species to be fished at the OY level because the stock has been rebuilt.

Allocations

National standard 4 of the Magnuson-Stevens Act requires that fisheries be managed in a fair and equitable manner across all sectors. This is true of both the commercial and recreational components of gag and red grouper. However, management measures differ between commercial and recreational sectors, due to differences inherent in the fisheries (e.g., fishing gear, fishing effort). Recognizing the difficulties involved in allocating resources across fishery sectors, the Council appointed an Ad Hoc Allocation Committee composed of Council members to examine fair and equitable ways to allocate reef fish resources. Amendment 30B includes interim allocations, which would be in effect until the Council and NMFS could implement separate rulemaking to allocate grouper resources between recreational and commercial components of the SWG fishery on a permanent basis.

In the interim, Amendment 30B proposes allocations for commercial and recreational gag and red grouper based on the average landings during the years 1986 through 2005. For gag, the allocation would be 61 percent recreational and 39 percent commercial. For red grouper, the allocation would be 24 percent recreational and 76 percent commercial.

Proposed Management Measures for Gag, Red Grouper, and SWG

Commercial Measures

The proposed rule would establish commercial quotas and ACLs for gag, red grouper, and SWG, and reduce the commercial minimum size limit for red grouper. The quotas are ACTs and the ACLs are OFLs, which is consistent with the proposed NMFS guidelines. Also consistent with the NMFS proposed guidance, the quotas, or ACT levels, are less than the ACLs. The ACLs are based on the yield associated with fishing at F_{MAX} (gag) or equilibrium MSY (red grouper). The gag and red grouper quotas are associated with the yields from fishing at the more conservative F_{OY} (gag) or equilibrium OY (red grouper). The gag and red grouper quotas are calculated by multiplying the TAC for a specific year

by each species' commercial interim allocations. The gag quota would be set at 1.32 million lb (598,742 kg) in 2009, 1.41 million lb (639,565 kg) in 2010, and 1.49 million lb (675,853 kg) in 2011. The red grouper quota would be set at 5.75 million lb (2.61 million kg) for all three years. The SWG quota includes gag, red grouper, and the other SWG species that make up the SWG complex, namely black grouper, yellowfin grouper, rock hind, red hind, yellowmouth grouper, and scamp before the SWG quota is reached, at which time scamp is considered a DWG. The other SWG species allowance would be 0.41 million lb (0.19 million kg) for all three years, which is based on the average landings for the baseline years of 2001 through 2004. Therefore, the SWG quota would be the sum of the gag and red grouper quotas and the other SWG species allowance and be set at 7.48 million lb (3.39 million kg) in 2009, 7.57 million lb (3.43 million kg) in 2010, and 7.65 million lb (3.47 million kg) in 2011. These commercial quotas would remain at the 2011 level until revised based on a subsequent stock assessment and appropriate rulemaking.

The commercial minimum size limit for red grouper would be reduced from 20 inches (50.8 cm) to 18 inches (45.7 cm) total length (TL). Reducing the commercial minimum size limit for red grouper would decrease the number of discarded fish and is estimated to increase yield-per-recruit.

The proposed management measures for gag, including the quota reduction, in combination with the recreational restrictions and accountability measures, are intended to end overfishing of gag immediately. The increase in the red grouper quota, in combination with reduction in the commercial minimum size limit, would help to ensure the fishery achieves OY for the red grouper stock.

To prevent an early season closure of the SWG fishery, this proposed rule would authorize the Assistant Administrator for Fisheries, NOAA, (AA) to file a notification with the Office of the **Federal Register** to implement an incidental bycatch allowance trip limit when 80 percent of the gag or red grouper quota is reached or projected to be reached. Harvest of the remaining shallow-water species would continue with an incidental harvest allowance on the closed species of 200 lb (91 kg) until either the gag, red grouper, or SWG quota is reached or projected to be reached, upon which the entire SWG fishery would close. The incidental harvest provision would not be implemented unless the quota for the applicable species is projected to be harvested prior to the end of the fishing year.

Recreational Measures

This proposed rule would establish new grouper bag limits and extend the Gulf grouper recreational closed season. These recreational measures would reduce gag landings by 26 percent and increase red grouper landings by 17 percent. The aggregate grouper bag limit would be reduced from 5 fish to 4 fish per person per day. Within this aggregate bag limit, there is a 2–fish gag bag limit and a 2–fish red grouper bag limit per person per day. Lowering the aggregate grouper bag limit is intended to slow or prevent a shift in effort from gag to other SWG and deep-water grouper (DWG) species as a result of actions to constrain the harvest of gag. Although DWG and SWG species other than gag and red grouper represent a small portion of the recreational harvest, they could be significantly affected by shifts in fishing effort resulting from changes to gag and red grouper regulations. Reducing the aggregate bag limit to 4 fish will slightly reduce the likelihood that AMs in the proposed rule will be triggered. Few recreational anglers (approximately 3 percent) currently land on average more than 4 grouper per trip.

The recreational closed season would be extended from a one month closed season, namely February 15 through March 15, to a two month closed season, from February 1 through March 31 each year and would include all SWG species instead of just gag, black, and red grouper. This would allow for a 291 day open season for SWG species. Although regional differences in the distribution of gag, red grouper, and other SWG exist, in general, the various species are caught in the same geographic areas, depth, and habitat. For this reason, seasonal closures that pertain to the entire recreational SWG fishery are proposed to minimize bycatch and prevent effort shifting. DWG species were not included in the seasonal closure because they are infrequently caught when fishing for SWG, account for a small percentage of the recreational grouper harvest, and suffer from severe barotrauma upon ascent from the deep depths where they are caught, increasing the likelihood of discard mortality. Warsaw grouper and speckled hind are further protected by a 1–fish per vessel per day bag limit.

The proposed rule would also establish ACLs and ACTs for the recreational fishery. ACLs are equal to OFLs, which is consistent with the proposed NMFS guidelines. Also consistent with the proposed NMFS guidance, the ACTs are less than the ACLs. The ACLs are based on yield associated with fishing at F_{MAX} (gag) or equilibrium MSY (red grouper) but the ACTs are based on the yields from fishing at the more conservative F_{OY} (gag) or equilibrium OY (red grouper). Harvests exceeding the ACLs would trigger implementation of the AMs. For gag, the respective ACTs and ACLs would be 2.06 million lb (934,400 kg) and 2.59 million lb (1.17 million kg) for 2009; 2.14 million lb (969,648 kg) and 2.64 million lb (1.20 million kg) for 2010; and 2.20 million lb (997,903 kg) and 2.67 million lb (1.21 million kg) for 2011, and subsequent fishing years. For red grouper, the ACT and ACL would be 1.82 million lb (824,642 kg) and 1.85 million lb (838,235 kg), respectively. These ACTs and ACLs could be revised in the future based on subsequent stock assessment results and through appropriate rulemaking.

Accountability Measures (AMs) for Gag, Red Grouper, and SWG

This proposed rule would establish AMs for gag, red grouper, and SWG. These AMs are intended to ensure landings do not exceed the TACs proposed for gag, red grouper, and SWG.

If commercial landings, as estimated by the Southeast Fisheries Science Center (SEFSC), reach or are projected to reach the commercial quotas for gag, red grouper, or SWG, the proposed rule would authorize the AA to file a notification with the Office of the Federal Register to close the SWG fishery, in accordance with the application of quota closures described in the ''Commercial Measures'' section above, for the remainder of that fishing year. In addition, if the in-season closure does not prevent commercial landings from exceeding the applicable ACL, this proposed rule would authorize the AA to file a notification with the Office of the Federal Register maintaining the prior year's gag, red grouper, or SWG commercial quota in the following fishing year.

If recreational landings, as estimated by the SEFSC, exceed the red grouper or gag ACLs, this proposed rule would authorize the AA to file a notification with the Office of the Federal Register maintaining the prior year's gag or red grouper target catch level the following fishing year. In addition, the notification would reduce the length of the recreational SWG fishing season in the following year by the amount necessary to ensure recreational gag and red grouper landings do not exceed the recreational target catch level for that fishing year. Recreational landings would be evaluated relative to the

applicable ACL as follows. For 2009, only 2009 recreational landings for gag and red grouper will be compared to the ACL; in 2010, the average of 2009 and 2010 recreational landings for gag and red grouper will be compared to the ACL; and in 2011 and subsequent fishing years, the 3-year running average recreational landings for gag and red grouper will be compared to the ACL. By averaging across multiple years, year-to-year fluctuations in landings resulting from recruitment variability, regulatory restrictions on other species, and prevailing economic conditions would be diminished. Using 3-year averages of landings for ACLs is consistent with the proposed NMFS guidelines. Target catches, quotas, and ACLs would remain at 2011 levels unless revised based on subsequent stock assessment results and through appropriate rulemaking.

Gulf Seasonal and Area Closures

The Madison-Swanson and Steamboat Lumps marine reserves were established in 2000, and reauthorized in 2004 to protect spawning areas for gag and other reef fish species. The proposed rule would allow the Madison-Swanson and Steamboat Lumps marine reserves to remain in effect until terminated by a subsequent amendment.

This proposed rule would also create a seasonal/area closure called the ''Edges'' to protect grouper spawning aggregations. This closure is implemented in lieu of the February 15 through March 15 commercial closure for gag, red grouper, and black grouper. Within this new seasonal/area closure, fishing for any species under Council jurisdiction would be prohibited from January 1 through April 30 each year. Closing this area to all fishing for any species under Council jurisdiction, will aid enforcement, reduce poaching, and benefit other reef fish stocks undergoing overfishing or that are overfished (e.g. red snapper, greater amberjack, gray triggerfish).

Federal Regulatory Compliance in State Waters

NMFS and state fishery management agencies usually work cooperatively to implement consistent regulations in Federal and state waters, making it easier for enforcement capabilities and for managing the fisheries. However, there are some situations in which Federal and state regulations differ. When there are less restrictive regulations in state waters, the effectiveness of Federal regulations diminishes. In developing regulations, analyses for Council amendments and FMPs assume that Gulf states will comply with proposed Federal regulations. If some of the states do not adopt consistent regulations, then projected reductions in harvest and fishing mortality may not occur, compromising the Council's ability to end overfishing and rebuild overfished stocks. To prevent overfishing, or stay within rebuilding schedules, NMFS and the remaining states, may be forced to implement even stricter regulations. Therefore, to improve the effectiveness of Federal management measures, federally permitted reef fish vessels, as a condition of their permit, would be required to comply with the more restrictive of state or Federal reef fish regulations when fishing in state waters.

Availability of Amendment 30B

Additional background and rational for the measures discussed above are contained in Amendment 30B. The availability of Amendment 30B was announced in the **Federal Register** on October 28, 2008 (73 FR 63932). Written comments on Amendment 30B must be received by December 29, 2008. All comments received on Amendment 30B or on this proposed rule during their respective comment periods will be addressed in the preamble of the final rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the AA has determined that this proposed rule is consistent with Amendment 30B, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a Draft Environmental Impact Statement (DEIS) for this amendment. A notice of availability for the DEIS was published on August 8, 2008 (73 FR 46269).

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, for this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from the Council (see **ADDRESSES**). A summary of the IRFA follows.

The proposed rule would set thresholds and benchmarks for gag, with MFMT equated to F_{MAX}, MSST equated to $(1–M)*SSB_{MAX}$, and OY equated to the yield at 75 percent of F_{MAX}; set gag TACs in 2009, 2010, and 2011 at 3.38 million lb (1.53 million kg), 3.62 million lb (1.64 million kg), and 3.82 million lb (1.73 million kg), respectively, with 3.82 million (1.73 million kg) being the TAC for subsequent years until changed by another amendment; set red grouper TAC at 7.57 million lb (3.43 million kg); set the recreational:commercial allocation of TACs at 61:39 for gag and 24:76 for red grouper; set SWG ACLs and AMs; set the commercial gag and red grouper quotas based on the commercial allocation ratio, the other SWG allowance at 0.41 million lb (0.19 million kg), and the aggregate grouper quota as the sum of the gag, red grouper, and other SWG allowance; implement an incidental harvest of 200 lb (90.8 kg) per trip for gag or red grouper when 80 percent of its quota is projected to be reached until either the gag, red grouper, or SWG quota is reached or projected to be reached, upon which the SWG fishery would close; establish an aggregate grouper bag limit of 4 grouper per person, establish a gag and a red grouper bag limit of 2 fish per person for each species within the aggregate bag limit, and close the recreational SWG fishery February 1–March 31; reduce the red grouper minimum size limit to 18 inches TL for the commercial fishery; prohibit all fishing under the Council's jurisdiction January-April, but allow all fishing in other months, within the Edges closed area; allow the Madison-Swanson and Steamboat Lumps reserves to remain in effect indefinitely; and, require all vessels with Federal commercial or charter vessel/headboat reef fish permits to comply with the more restrictive of state or Federal reef fish regulations when fishing in state waters. The Magnuson-Stevens Act provides the statutory basis for the proposed rule.

No duplicative, overlapping, or conflicting Federal rules have been identified. This proposed rule would not alter existing reporting, record-keeping, or other compliance requirements.

This proposed rule would be expected to directly affect vessels that operate in the Gulf of Mexico commercial reef fish fishery and for-hire reef fish fisheries, and reef fish dealers or processors. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S. including fish harvesters, for-hire operations, fish processors, and fish dealers. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its

affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all affiliated operations worldwide. For for-hire operations, the other qualifiers apply and the annual receipts threshold is $6.5 million (NAICS code 713990, recreational industries). For seafood processors and dealers, rather than a receipts threshold, the SBA uses an employee threshold of 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all affiliated operations for a seafood processor and 100 or fewer persons for a seafood dealer.

A Federal commercial reef fish permit is required to operate in the Gulf of Mexico commercial reef fish fishery, and a moratorium on the issuance of new permits has been in effect since 1992. A total of 1,209 vessels with commercial reef fish permits is estimated to comprise the universe of commercial harvest operations in the fishery. For the period 2001–2006, an average of 631 vessels harvested varying amounts of gag, 732 vessels harvested varying amounts of red grouper, and 888 vessels harvested varying amounts of SWG. These numbers are not additive because some of these vessels harvested a combination of grouper species. The SWG complex includes red grouper and gag, therefore there is substantial overlap in harvest of grouper species among these vessels.

The annual average gross revenue and net income per vessel for vessels in the SWG fishery is unknown. For all vessels in the commercial reef fish fishery, the average annual gross revenue, respectively, for vertical line vessels is estimated to range from approximately $24,100 (2005 dollars; $6,800 net income) to $110,100 ($28,500 net income), while the values for bottom longline vessels are approximately $87,600 (2005 dollars; $15,000 net income) to $117,000 ($25,500 net income). Some fleet behavior is known to exist in the commercial reef fish fishery, but the extent of such is unknown, though the maximum number of permits reported to be owned by the same entity is six. Additional permits in this and other fisheries (and associated revenues) may be linked through affiliation rules but these links cannot be made using existing data. Nevertheless, based on the average annual gross revenue information for all commercial reef fish vessels, NMFS determines, for the purpose of this analysis, that all commercial reef fish entities potentially affected by this proposed rule are small business entities.

An estimated 1,692 vessels are permitted to operate in the Gulf of Mexico reef fish for-hire fishery. It is unknown how many of these vessels operate as headboats or charterboats, a distinction which is based on pricing behavior, and individual vessels may operate as both types of operations at different times. However, 76 vessels participate in the Federal headboat logbook program. Several entities own multiple for-hire permits, and at least one entity is determined to own as many as 12 permits.

The average charterboat is estimated to generate approximately $77,000 (2005 dollars) in annual revenues, while the comparable figure for an average headboat is approximately $404,000 (2005 dollars). Based on the average annual gross revenue information for these vessels, NMFS determines, for the purpose of this analysis, that all for-hire entities potentially affected by this proposed rule are small business entities.

Based on vessel logbook records for 2004–2006, an average of 156 dealers actively bought and sold gag and 172 dealers actively bought and sold red grouper. All reef fish processors would be included in this total because a processor must be a dealer. Dealers often hold multiple types of permits and operate in both Federal and state fisheries. It is unknown what percentage of any of the average dealer's business comes from SWG.

Average employment information per reef fish dealer is unknown. Although dealers and processors are not synonymous entities, total employment for reef fish processors in the Southeast is estimated at approximately 700 individuals, both part and full time. Although all processors must be dealers, a dealer need not be a processor. Further, processing is a much more labor-intensive exercise than dealing. Therefore, given the employment estimate for the processing sector and the total number of dealers operating in the reef fish fishery, NMFS determines that the average number of employees per dealer and processor does not surpass the SBA employment benchmark and, NMFS determines, for the purpose of this analysis, that all dealers potentially affected by this rule are small entities.

Relative to the baseline consisting of all no action alternatives, the proposed action would reduce the net operating revenues of commercial vessels by $5.3 million (in 2005 dollars) over the period 2008–2013. It would be equivalent to an annual loss of $0.88 million. If this loss were equally shared by all 888 vessels landing any species of SWG, the loss per vessel would be $991 annually. Of the 888 vessels landing any grouper species during the period 2001–2006, 114 vessels landed less than 100 lb (45.4 kg), 232 vessels landed between 100 and 1,000 lb (454 kg), 229 vessels landed between 1,000 lb and 5,000 lb (2,270 kg), 271 vessels landed between 5,000 lb and 50,000 lb (22,700 kg), and 42 vessels landed more than 50,000 lb. Although the estimated reduction in net operating income could be accommodated by the 42 highest and even 271 next highest volume vessels, it could be quite burdensome to others, particularly the 114 lowest volume vessels.

Although for-hire vessels do not derive revenues from grouper sales, most vessels target these species at some time during the year. Assuming angler demand declines in response to the proposed restrictions for these species, revenue and profit reductions can be projected. As a result of the proposed action on grouper, the for-hire sector is projected to experience a loss in net income of approximately $405 thousand to $794 thousand per year. If these losses were distributed equally across all the 1,692 for-hire vessels in the fishery, the resulting loss per vessel would be between $239 and $469 per vessel. Some for-hire vessels, such as those in Florida, are likely more dependent on grouper than other vessels due to where they fish and client preferences and, thus, may be more severely affected by the proposed action.

Three alternatives, including no action, were considered for the action to set thresholds and benchmarks for gag. The first alternative (no action) to the proposed action would not comply with the Sustainable Fisheries Act requirement to establish more scientifically-based thresholds and benchmarks. The other alternative to the proposed action would provide a less conservative proxy for MSY, and would likely result in catch levels in excess of the true MSY. Each of the alternatives, including the proposed action, would not have direct impacts on small entities, but would serve as a platform for the development of specific management measures.

Five alternatives, including no action, were considered for the action to set gag TACs. The first alternative (no action) to the proposed action would not provide for a gag TAC, and thus would allow continued overfishing of the stock. The second alternative to the proposed action uses a stepped approach to managing TAC levels by setting TAC at three-year intervals. This alternative, however, is susceptible to providing

management measures that could result in overages in years 2 and 3 of the interval. It could, thus, trigger AMs that would have potentially larger adverse impacts on small entities. The third alternative to the proposed action is similar to the proposed action, but it would set fishing mortality rate right at the threshold. This is more likely to generate overfishing situations that would only require more stringent regulations. The fourth alternative to the proposed action is similar to the second alternative and thus would be saddled with similar problems. In addition, it is also susceptible to providing management measures that would result in overages in years 2 and 3 of each interval, setting the stage for application of AMs.

Three alternatives, including no action, were considered for the action to set a red grouper TAC. The first alternative (no action) to the proposed action would retain the red grouper TAC at 6.56 million lb (2.98 million kg). The proposed red grouper TAC of 7.57 million lb (3.43 million kg) would provide more benefits to small entities than the no action alternative. The second alternative to the proposed action would set a higher TAC of 7.72 million lb (3.50 million kg) corresponding to fishing at equilibrium FMSY as opposed to equilibrium FOY in the proposed action. Although this higher TAC would be more beneficial to small entities, it is right at the threshold when AMs would set in. This higher TAC, then, would place at higher probability the imposition of stringent management measures that would essentially undo the initial benefits received by small entities.

Three alternatives, including no action, were considered for the action to set gag and red grouper allocations. The first alternative (no action) to the proposed action would revert the recreational:commercial allocation to that of Amendment 1 65:35 for gag and 23:77 for red grouper. The second alternative to the proposed action would set the recreational:commercial allocation at 59:41 for gag and 24:76 for red grouper. The proposed recreational:commercial allocation would be 61:39 for gag and 24:76 for red grouper. The general nature of any allocation is that it would favor one group of small entities at the expense of another group of small entities. The Council's choice for the proposed action considered the longest and most robust time series of data compared to the other alternatives.

Five alternatives, including no action, were considered to set SWG ACLs and AMs. The first alternative (no action) to the proposed action would not provide for ACLs and AMs. By not specifying AMs, harvests could likely exceed target catch levels and would thereby reduce the likelihood overfishing would be ended or prevented. The second alternative to the proposed action would have identical target catches as the proposed action but would set the ACLs lower than those of the proposed action. It would then likely result in potentially more adverse impacts on small entities. The third alternative to the proposed action would set the same commercial target catches as, but some higher ACLs than, the proposed action. This alternative would set higher recreational target catches and ACLs for gag than the proposed action, but would set the same target catches and ACLs for red grouper. On average, this alternative would result in lower adverse impacts on small entities than the proposed action. The fourth alternative to the proposed action would set the same target catches as, but lower ACLs than, the proposed action. It may then be expected to result in higher adverse impacts on small entities than the proposed action.

Four alternatives, including no action, were considered for the action to set gag, red grouper, and SWG quotas. The first alternative (no action) to the proposed action would maintain the red grouper and SWG quotas. Although this alternative would potentially allow the largest SWG quota, it would not provide specific protection to gag so that overfishing of this stock would continue. In addition, it would not provide flexibility to increase the red grouper quota due to stock improvements. The second alternative to the proposed action would be similar to the proposed action, except that the proposed action would provide for a higher quota for other SWG. Hence, small entities would be provided a better economic environment under the proposed action.

Four alternatives, including no action, were considered for the action on commercial quota closures. The first alternative (no action) to the proposed action would maintain the red grouper or SWG quota, whichever comes first, as a trigger to close the SWG fishery. Given all preferred alternatives for all other actions, this alternative would provide the largest benefits to small entities. However, it would not provide sufficient protection to gag so that overfishing of the stock could continue. The second alternative to the proposed action would add the gag quota as a closure trigger. With the gag quota most likely to be met first, the entire SWG fishery would close early in the year. This alternative would yield the largest negative effects on small entities. The third alternative to the proposed action is similar to the second, except that it would impose gag trip limits at the start of the fishing year. This alternative would allow the SWG fishery to remain open much longer than the second alternative so that it would result in less adverse impact on small entities. The third alternative differs from the proposed action, which would impose the incidental harvest trip limit only when 80 percent of the gag or red grouper quota is reached. Due to the generally longer closure under the proposed action, the third alternative would turn out to result in less adverse economic impact on small entities. The third alternative, however, would impose more adverse effects on the gag fishery so that in general it would adversely affect hook-and-line vessel trips more than longline trips. The opposite would generally occur under the proposed action.

Seven alternatives, including no action, were considered for the action on measures to control the recreational harvests of gag and red grouper. The first alternative (no action) to the proposed action would maintain current recreational regulations so that it would likely allow overfishing of gag to continue. All other alternatives to the proposed action would eliminate the recreational red grouper bag limit, establish a gag grouper bag limit (except one alternative), establish a recreational closure, and reduce the aggregate grouper bag limit to 3 fish. These other alternatives would reduce gag harvest by a greater amount than the proposed action and either increase red grouper harvest (3 alternatives) or reduce red grouper harvest (2 alternatives), relative to the proposed action. These alternatives would be expected to, therefore, result in greater adverse economic impacts than the proposed action.

Three alternatives, including no action, were considered for the action on reducing the discard mortality of groupers. The first alternative (no action) to the proposed action would not require any new equipment or implement new measures to reduce bycatch, and would retain the size limit for grouper species subject to size limits. This would not address the bycatch problem in the grouper fishery. The second alternative would require pamphlets or placards providing instructions on venting, proper handling, and release methods. The presence of these pamphlets or placards on board would provide convenient resource materials for reducing bycatch mortality, but the extent of their effects

cannot be determined. The proposed action, on the other hand, would reduce the size limit for red grouper and thus may be expected to result in positive effects on small entities.

Four alternatives, including no action, were considered for the action on establishing additional or expanding current marine reserves or closed areas and attendant management measures. The first alternative (no action) to the proposed action would not create additional marine reserves or closed areas, and thus would have no immediate negative effects on small entities. However, this alternative would allow continued adverse impacts of gears on bottom habitats which could eventually lead to habitat degradation particularly in areas suitable as marine reserves or closed areas. The second alternative to the proposed action would expand the Madison-Swanson marine reserve. However, the area for expansion is relatively close to shore and likely would be the most heavily fished area. Its short-run adverse impacts on small entities would be larger than those of the proposed action. The third alternative to the proposed action would expand both the Madison-Swanson and Steamboat Lumps marine reserves, and thus would result in more adverse impacts on small entities than the proposed action.

Four alternatives were considered for the action pertaining to the duration of time/area closures and marine reserves. Three of these alternatives, including no action, were specific to time/area closures. The fourth alternative, with three sub-options inclusive of no action, directly addressed the two existing marine reserves. With respect to time/area closures, two alternatives to the proposed action would set specific expiration dates. These alternatives would have about similar effects as the proposed action, particularly considering the ability and history of the Council in changing time/area closure regulations. With respect to the duration of the two existing marine reserves, two alternatives to the proposed action would allow the reserves to expire within a certain number of years. These two alternatives would provide relatively inadequate time for full evaluation of the effectiveness of the existing marine reserves, as compared to the proposed action.

Two alternatives, including no action, were considered for the action on Federal regulatory compliance. The first alternative (no action) to the proposed action would retain any existing inconsistencies between state and Federal regulations in state waters for operators of vessels with Federal reef fish permits. This would be particularly problematic for species considered overfished or undergoing overfishing, that have relatively substantial presence in state waters. Although in this case, the no action alternative would provide better economic prospects for small entities in the short run, the long-run sustainability of the fishery and economic benefits derivable from the fishery would be jeopardized.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: November 12, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.2, the definitions of ''Deep-water grouper (DWG)'' and ''Shallow-water grouper (SWG)'' are added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Deep-water grouper (DWG) means yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, and speckled hind. After the shallow-water grouper (SWG) commercial quota is reached, as specified in § 622.42(a)(1)(iii), scamp is also considered a DWG for purposes of the commercial fishery.

* * * * *

Shallow-water grouper (SWG) means gag, red grouper, black grouper, scamp, yellowfin grouper, rock hind, red hind, and yellowmouth grouper. However, after the SWG commercial quota is reached, as specified in § 622.42(a)(1)(iii), scamp is considered a DWG for the commercial fishery only.

* * * * *

3. In § 622.4, paragraph (a)(1)(iv) is added and paragraph (a)(2)(v) is revised to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(1) * * *

(iv) If Federal regulations for Gulf reef fish in subparts A, B, or C of this part are more restrictive than state regulations, a person aboard a charter vessel or headboat for which a charter vessel/headboat permit for Gulf reef fish has been issued must comply with such Federal regulations regardless of where the fish are harvested.

(2) * * *

(v) *Gulf reef fish.* For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, as specified in § 622.42(a)(1), or to sell Gulf reef fish in or from the Gulf EEZ, a commercial vessel permit for Gulf reef fish must have been issued to the vessel and must be on board. If Federal regulations for Gulf reef fish in subparts A, B, or C of this part are more restrictive than state regulations, a person aboard a vessel for which a commercial vessel permit for Gulf reef fish has been issued must comply with such Federal regulations regardless of where the fish are harvested. See paragraph (a)(2)(ix) of this section regarding an additional IFQ vessel endorsement required to fish for, possess, or land Gulf red snapper. To obtain or renew a commercial vessel permit for Gulf reef fish, more than 50 percent of the applicant's earned income must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during either of the 2 calendar years preceding the application. See paragraph (m) of this section regarding a limited access system for commercial vessel permits for Gulf reef fish and limited exceptions to the earned income requirement for a permit.

* * * * *

4. In § 622.34, paragraph (o) is removed and reserved; and the introductory heading of paragraph (k), paragraph (k)(1)(iii), paragraph (k)(3), the first sentence of paragraph (k)(5), and paragraph (u) are revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(k) *Closure provisions applicable to the Madison and Swanson sites, Steamboat Lumps, and the Edges.*

(1) * * *

(iii) The Edges is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°51′	85°16′
B	28°51′	85°04′
C	28°14′	84°42′
D	28°14′	84°54′
A	28°51′	85°16′

* * * * *

(3) Within the Madison and Swanson sites and Steamboat Lumps during November through April, and within the Edges during January through April, all fishing is prohibited, and possession of any fish species is prohibited, except for such possession aboard a vessel in transit with fishing gear stowed as specified in paragraph (k)(4) of this section. The provisions of this paragraph, (k)(3), do not apply to highly migratory species.

* * * * *

(5) Within the Madison and Swanson sites and Steamboat Lumps, during May through October, surface trolling is the only allowable fishing activity. * * *

* * * * *

(u) *Seasonal closure of the recreational fishery for shallow-water grouper (SWG).* The recreational fishery for SWG, in or from the Gulf EEZ, is closed from February 1 through March 31, each year. During the closure, the bag and possession limit for SWG in or from the Gulf EEZ is zero.

5. In § 622.37, paragraph (d)(2)(ii) is revised and paragraph (d)(2)(iv) is added to read as follows:

§ 622.37 Size limits.

* * * * *

(d) * * *

(2) * * *

(ii) Yellowfin grouper—20 inches (50.8 cm), TL.

* * * * *

(iv) Red grouper—(A) For a person not subject to the bag limit specified in § 622.39 (b)(1)(ii)—18 inches (45.7 cm), TL.

(B) For a person subject to the bag limit specified in § 622.39(b)(1)(ii)—20 inches (50.8 cm), TL.

* * * * *

6. In § 622.39, the first sentence of paragraph (b)(1)(ii) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(ii) Groupers, combined, excluding goliath grouper and Nassau grouper -4 per person per day, but not to exceed 1 speckled hind or 1 warsaw grouper per vessel per day, or 2 gag or 2 red grouper per person per day. * * *

* * * * *

7. In § 622.42, revise paragraphs (a)(1)(ii) and (iii) to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(1) * * *

(ii) Deep-water groupers (DWG) and, after the quota for SWG is reached, scamp, combined -1.02 million lb (0.46 million kg), gutted weight, that is, eviscerated but otherwise whole.

(iii) Shallow-water groupers (SWG), including scamp before the quota for SWG is reached, have a combined quota as specified in paragraph (a)(1)(iii)(A) of this section. Within the SWG quota there are separate quotas for gag and red grouper as specified in paragraphs (a)(1)(iii)(B) and (C) of this section, respectively. The quotas specified in paragraphs (a)(1)(iii)(A) through (C) of this section are all in gutted weight, that is eviscerated but otherwise whole.

(A) *SWG combined.* (*1*) For fishing year 2009—7.48 million lb (3.39 million kg).

(*2*) For fishing year 2010—7.57 million lb (3.43 million kg).

(*3*) For fishing year 2011 and subsequent fishing years—7.65 million lb (3.47 million kg).

(B) *Gag.* (*1*) For fishing year 2009 —1.32 million lb (0.60 million kg).

(*2*) For fishing year 2010—1.41 million lb (0.64 million kg).

(*3*) For fishing year 2011 and subsequent fishing years—1.49 million lb (0.68 million kg).

(C) Red grouper—5.75 million lb (2.61 million kg).

* * * * *

8. In § 622.44, paragraph (g) is revised and paragraph (h) is added to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(g) *Gulf deep-water grouper (DWG) and shallow-water grouper (SWG), combined.* For vessels operating under the quotas specified in § 622.42(a)(1)(ii) or (a)(1)(iii), the trip limit for DWG and SWG combined is 6,000 lb (2,722 kg), gutted weight. However, when the quotas specified in § 622.42(a)(1)(ii) or (a)(1)(iii) are reached and the respective fishery is closed, the commercial trip limit for the species subject to the closure is zero.

(h) *Gulf gag and red grouper.* For vessels operating under the quota specifications in§ 622.42(a)(1)(iii)(B) or (a)(1)(iii)(C), once 80 percent of either the gag or red grouper quota is reached, or projected to be reached, and the quota for the applicable species is projected to be reached prior to the end of the fishing year, the AA will file a notification with the Office of the **Federal Register** to implement a trip limit for the applicable species of 200 lb (90.7 kg), gutted weight. However, when the SWG, gag, or red grouper quota as specified in§ 622.42(a)(1)(iii)(A), (B), or (C), respectively, is reached, or projected to be reached, the commercial trip limit for the species subject to the closure is zero.

9. In § 622.49, paragraphs (a)(3) through (a)(5) are added to read as follows:

§ 622.49 Accountability measures.

(a) * * *

(3) *Shallow-water grouper (SWG) combined*—(i) *Commercial fishery.* If either gag, red grouper, or SWG commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(a)(1)(iii), the AA will file a notification with the Office of the **Federal Register** to close the entire SWG commercial fishery for the remainder of the fishing year. In addition, if despite such closure, SWG commercial landings exceed the applicable ACL as specified in this paragraph (a)(3)(i), the AA will file a notification with the Office of the **Federal Register**, at or near the beginning of the following fishing year, to maintain the SWG commercial quota for that following year at the level of the prior year's quota. The applicable commercial ACLs for SWG, in gutted weight, are 7.94 million lb (3.60 million kg) for 2009, 7.99 million lb (3.62 million kg) for 2010, and 8.04 million lb (3.65 million kg) for 2011 and subsequent fishing years.

(ii) [Reserved]

(4) *Gag*—(i) *Commercial fishery.* If gag commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(a)(1)(iii)(B), the AA will file a notification with the Office of the **Federal Register** to close the SWG commercial fishery for the remainder of the fishing year. In addition, if despite such closure, gag commercial landings exceed the applicable ACL as specified in this paragraph (a)(4)(i), the AA will file a notification with the Office of the **Federal Register**, at or near the beginning of the following fishing year, to maintain the gag commercial quota for that following year at the level of the prior year's quota. The applicable commercial ACLs for gag, in gutted weight, are 1.66 million lb (0.75 million kg) for 2009, 1.71 million lb (0.78 million kg) for 2010, and 1.76 million lb (0.80 million kg) for 2011 and subsequent fishing years.

(ii) *Recreational fishery.* If gag recreational landings, as estimated by the SRD, exceed the applicable ACL specified in this paragraph (a)(4)(ii), the AA will file a notification with the Office of the **Federal Register**, at or near the beginning of the following fishing year, to maintain the gag target catch level for that following year at the level of the prior year's target catch. In

addition, the notification will reduce the length of the recreational SWG fishing season the following fishing year by the amount necessary to ensure gag recreational landings do not exceed the recreational target catch level in that following fishing year. The applicable recreational ACLs for gag, in gutted weight, are 2.59 million lb (1.17 million kg) for 2009, 2.64 million lb (1.20 million kg) for 2010, and 2.67 million lb (1.21 million kg) for 2011 and subsequent fishing years. The recreational target catch levels for gag, in gutted weight, are 2.06 million lb (0.93 million kg) for 2009, 2.14 million lb (0.97 million kg) for 2010, and 2.20 million lb (1.00 million kg) for 2011 and subsequent fishing years. Recreational landings will be evaluated relative to the applicable ACL as follows. For 2009, only 2009 recreational landings will be compared to the ACL; in 2010, the average of 2009 and 2010 recreational landings will be compared to the ACL; and in 2011 and subsequent fishing years, the 3-year running average recreational landings will be compared to the ACL.

(5) *Red grouper*—(i) *Commercial fishery*. If red grouper commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(a)(1)(iii)(C), the AA will file a notification with the Office of the **Federal Register** to close the SWG commercial fishery for the remainder of the fishing year. In addition, if despite such closure, red grouper commercial landings exceed the ACL, 5.87 million lb (2.66 million kg) gutted weight, the AA will file a notification with the Office of the **Federal Register**, at or near the beginning of the following fishing year, to maintain the red grouper commercial quota for that following year at the level of the prior year's quota.

(ii) *Recreational fishery*. If red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in this paragraph (a)(5)(ii), the AA will file a notification with the Office of the **Federal Register**, at or near the beginning of the following fishing year, to maintain the red grouper target catch level for that following year at the level of the prior year's target catch. In addition, the notification will reduce the length of the recreational SWG fishing season the following fishing year by the amount necessary to ensure red grouper recreational landings do not exceed the recreational target catch level the following fishing year. The recreational ACL for red grouper, in gutted weight, is 1.85 million lb (0.84 million kg). The recreational target catch level for red grouper, in gutted weight, is 1.82 million lb (0.82 million kg). Recreational landings will be evaluated relative to the applicable ACL as follows. For 2009, only 2009 recreational landings will be compared to the ACL; in 2010, the average of 2009 and 2010 recreational landings will be compared to the ACL; and in 2011 and subsequent fishing years, the 3-year running average recreational landings will be compared to the ACL.

* * * * *

[FR Doc. E8–27335 Filed 11–17–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 080404529–81431–01]

RIN 0648–AW61

Atlantic Highly Migratory Species; Atlantic Swordfish Quotas

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would adjust the North and South Atlantic swordfish quotas for the 2008 fishing year (January 1, 2008, through December 31, 2008) to account for underharvests, and to transfer 18.8 metric tons (mt) dressed weight (dw) to Canada per the 2006 International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations 06–02 and 06–03. The North Atlantic 2008 directed baseline quotas plus the 2007 underharvest would be divided equally between the semiannual periods of January through May and June through December. In addition, NMFS proposes to modify the vessel chartering regulations to potentially allow Atlantic Highly Migratory Species (HMS) limited access permit (LAP) holders to charter foreign vessels under a chartering arrangement where catches taken would count against U.S. Atlantic HMS quotas or entitlements.

DATES: Comments on this proposed rule may be submitted at the public hearing (oral or written), or must be received via mail, or fax by December 18, 2008.

The public hearing dates and times are:

1. Monday, December 8, 4–6 p.m., Silver Spring, MD.

2. Tuesday, December 16, 2:30–4:30 p.m., Gloucester, MA.

ADDRESSES: You may submit comments, identified by [0648–AW61], by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- Fax: 301–713–1917, Attn: LeAnn Southward Hogan
- Mail: 1315 East–West Highway, Silver Spring, MD 20910

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the supporting documents including the 2007 Environmental Assessment (EA), Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), and the Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) are available from the HMS website at *http://www.nmfs.noaa.gov/sfa/hms/* or by contacting LeAnn Southward Hogan (see **FOR FURTHER INFORMATION CONTACT**).

The public hearing locations are:

1. Silver Spring – National Oceanic and Atmospheric Administration, SSMC III, room 1311B, 1301 East–West Highway, Silver Spring, MD 20910; and

2. Gloucester – National Oceanic and Atmospheric Administration, National Marine Fisheries Service Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: LeAnn Southward Hogan or Karyl Brewster–Geisz by phone: 301–713–2347 or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery is managed under the 2006 Consolidated HMS FMP. Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act), 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* Regulations issued under the

authority of ATCA carry out the recommendations of ICCAT.

1. Swordfish Quota

a. North Atlantic

ICCAT recommendation 06–02 established the current north Atlantic swordfish total allowable catch (TAC) of 14,000 metric tons (mt) whole weight (ww), through 2008. Of the 14,000 mt ww, the United States is allocated 3,907 mt ww (2,937.6 mt dw). This allocation is the same the United States received during 2004, 2005, 2006, and 2007. ICCAT recommendation 06–02 also limits the amount of North Atlantic swordfish underharvest that can be carried forward by all Contracting Parties, non–Contracting Cooperating Parties, Entities and Fishing Entities (CPCs) to 50 percent of the baseline quota allocation for 2007 and 2008. Therefore, the United States could carryover a maximum of 1,468.8 mt dw of underharvests from the previous year to be added to the baseline quota.

This proposed rule would adjust the total available quota for the 2008 fishing year to account for the 2007 underharvests. The 2008 North Atlantic swordfish baseline quota is 2,937.6 mt dw. The total North Atlantic swordfish underharvest for 2007 was 3,220 mt dw, which exceeds the maximum carryover cap of 1,468.8 mt dw. Therefore, NMFS is carrying forward the capped amount per the ICCAT recommendation. Thus, the baseline quota plus the underharvest carryover maximum of 1,468.8 mt dw equals an adjusted quota of 4,406.4 mt dw for the 2008 fishing year. The directed category would be allocated 3,601.9 mt dw that would be split into two seasons in 2008. The incidental category would be allocated 300 mt dw, and the reserve category would be reduced from a quota of 504.5 mt dw to 485.7 due to the transfer of 18.8 mt dw to Canada (Table 1).

b. South Atlantic

ICCAT recommendation 06–03 established the South Atlantic swordfish TAC at 17,000 mt ww for 2007, 2008, and 2009. This TAC is slightly higher than that of previous years of 15,631 mt ww in 2003, 15,776 mt ww in 2004, 15,956 mt ww in 2005, and 16,055 mt ww in 2006. Of the 17,000 mt ww TAC, the United States is allocated 100 mt ww (75.2 mt dw). As with the North Atlantic swordfish recommendation, ICCAT recommendation 06–03 establishes a cap on the amount of underharvest that can be carried forward during the defined management period (2007–2009). For South Atlantic swordfish, the United States is limited to carrying forward 100 mt ww (75.2 mt dw). The 2008 South Atlantic swordfish baseline quota is 75.2 mt dw. The total South Atlantic swordfish underharvest for 2007 was 150.4 mt dw, which exceeds the maximum carryover cap of 75.2 mt dw. Therefore, NMFS is carrying forward the capped amount per ICCAT recommendation 06–03. As a result, the baseline quota plus the underharvest carryover maximum of 75.2 mt dw equals an adjusted quota of 150.4 mt dw for the 2008 fishing year (Table 1).

c. Impacts

In recent years, the PLL fleet has not caught its entire swordfish quota, and as a result, underharvest carryovers have grown significantly from year to year (3,528.8 mt dw, 4,806.1 mt dw, and 6,905.9 mt dw for 2004–2006, respectively). The proposed adjusted quota for the North and South Atlantic swordfish, after accounting for the 2007 underharvests and annual transfer to Canada, would be the same in 2008 as the 2007 adjusted quota specifically examined in the Environmental Assessment (EA) that was prepared for the 2007 Swordfish Quota Specification Final Rule published on October 5, 2007 (72 FR 56929). The quota adjustments would not increase overall quotas and is not expected to increase fishing effort or protected species interactions beyond those considered in the EA mentioned above. Therefore, because there would be no changes to the swordfish management measures in this proposed rule, or the affected environment or any environmental consequences that have not been previously analyzed, NMFS has determined that the proposed rule and impacts to the human environment as a result of the quota adjustments are not significant and would not require additional NEPA analysis.

TABLE 1—LANDINGS AND QUOTAS FOR THE ATLANTIC SWORDFISH FISHERIES (2005 – 2008) APPLYING THE PREFERRED ALTERNATIVES

North Atlantic Swordfish Quota (mt dw)		**2005**	**2006**	**2007 preliminary**	**2008 to date**
Baseline Quota		2,937.6	2,937.6	2,937.6	2,937.6
Quota Carried Over		3,359.1	4,691.2	1,468.8	1,468.8
Adjusted quota		**6,296.7**	**7,628.8**	**4,406.4**	**4,406.4**
Quota Allocation	Directed Category	5,895.2	7,246.1	3,601.9	3,601.9
	Incidental Category	300.0	300.0	300.0	300.0
	Reserve Category	101.5	82.7	504.5	485.7
Utilized Quota	Landings	1,471.8	1,291.5	1,167.5	962.7 to date
	Reserve Transfer to Canada	18.8	18.8	18.8	18.8
Total Underharvest		4,806.1	6,318.5	3,220.1	TBD
Dead Discards		114.9	154.9	149.2	TBD
Carryover Available+		4,691.2	1,468.8	1,468.8	TBD
South Atlantic Swordfish Quota (mt dw)		**2005**	**2006**	**2007 preliminary**	**2008 to date**

TABLE 1—LANDINGS AND QUOTAS FOR THE ATLANTIC SWORDFISH FISHERIES (2005 – 2008) APPLYING THE PREFERRED ALTERNATIVES—Continued

Baseline Quota	75.2	90.2	75.2	75.2
Quota Carried Over	319.3	394.5	75.2	75.2
Adjusted quota	**394.5**	**484.7**	**150.4**	**150.4**
Landings	0.0	0.0	0.0	0.0 to date
Carryover Available+	394.5	75.2	75.2	75.2

2. Vessel Chartering

This proposed rule would also modify regulations regarding vessel chartering. At its 2002 annual meeting, ICCAT adopted a chartering recommendation (ICCAT Recommendation 02–21) allowing Contracting Parties to the ICCAT Convention to charter fishing vessels registered to responsible CPCs that explicitly agree to apply ICCAT conservation and management measures and enforce them on their vessels. Under such chartering arrangements, the chartered fishing vessels do not change their flag, but catches taken under the arrangement count against the quota or fishing possibilities of the chartering ICCAT Contracting Party.

Pursuant to this recommendation, NMFS implemented regulations on December 6, 2004 (69 FR 70396). These regulations took a limited approach to chartering by allowing entities from ICCAT Contracting Parties to charter U.S. fishing vessels but not allowing U.S. entities to charter foreign vessels in the same way. Current regulations allow chartering arrangements between U.S. fishing vessel owners and foreign entities under which a U.S. fishing vessel can fish in waters beyond national jurisdiction without reflagging the vessel, and the U.S. fishing vessel's catch counts against the ICCAT quota of the Contracting Party of the chartering foreign entity. These regulations require the owner of a U.S. fishing vessel to apply for and obtain a chartering permit from NMFS before fishing under such a chartering arrangement. In addition, under these regulations, U.S. fishing vessels owners issued a chartering permit may not fish against U.S. Atlantic HMS quota or entitlements until the chartering permit expires or is terminated.

When NMFS developed and implemented the current chartering regulations, interest was expressed in allowing U.S. fishing vessels to be chartered by foreign entities of an ICCAT Contracting Party and to allow the catch taken to count against the ICCAT Contracting Party's quota. However, due to legal and policy concerns related to foreign vessels and foreign fishing in the U.S. exclusive economic zone (EEZ) and little public interest in chartering arrangements where a foreign vessel's catch would count against U.S. Atlantic HMS quotas or entitlements, NMFS did not implement regulations that would allow U.S. entities to charter foreign vessels to catch ICCAT–managed species that would count against U.S. quotas.

Since implementing the chartering regulations, there has been increased public interest in allowing U.S. entities to charter foreign vessels of ICCAT CPCs where the catch taken would count against the Atlantic HMS quotas or entitlements of the United States, possibly as a step toward revitalizing certain HMS fisheries. This type of chartering arrangement could also help utilize Atlantic HMS quotas and facilitate flexibility within the vessel chartering program, which would in turn enhance quota management within the Atlantic HMS fisheries. Thus, NMFS is proposing changes to the current chartering regulations that would allow U.S. chartering of foreign vessels of ICCAT CPCs to fish on the high seas against U.S. Atlantic HMS quota or entitlements.

The proposed chartering regulations would establish a process and criteria for NMFS's evaluation of proposed chartering arrangements and certain limitations on such chartering arrangements. Under the proposed regulations, only Atlantic HMS LAP holders would be allowed to enter these types of chartering arrangements with foreign entities of ICCAT CPCs. NMFS is proposing to limit these chartering arrangements to Atlantic HMS LAP holders, who are allowed to harvest Atlantic HMS from the U.S. EEZ and on the high seas. As noted earlier, with regard to U.S. chartering of foreign vessels, this proposed rule would only allow such activities on the high seas. Under the rule as proposed, only those Atlantic HMS LAP holders who are currently authorized to harvest HMS on the high seas would be chartering vessels to, essentially, exercise that harvesting privilege on their behalf. This approach should, generally, keep any resulting chartering arrangements within the scope of existing analyzed effects of utilizing Atlantic HMS quotas on the high seas. For the duration of the chartering arrangement, the Atlantic HMS LAP holder would not be permitted to fish under U.S. Atlantic HMS quotas or otherwise utilize the LAPs themselves. In addition, under the proposed regulations, foreign vessel owners who enter into a chartering arrangement with an Atlantic HMS LAP holder would be required to follow all U.S. regulations that would have otherwise applied to the Atlantic HMS LAP holder. Lastly, the proposed regulations would establish data reporting requirements consistent with the ICCAT recommendation.

Since implementing the chartering regulations in 2004, NMFS has only received three requests for chartering permits, only one of which was issued. NMFS has not received a specific chartering request in 2008. Upon receipt of any such request, NMFS would conduct the necessary ecological, economic, and social analysis, including any necessary NEPA analysis, to consider the impacts of the specific chartering request on the HMS fishery and its participants. NMFS does not expect this regulatory modification to result in many additional requests, and NMFS does not expect these potential chartering arrangements to increase fishing mortality or increase fishing effort significantly.

For the chartering portion of this proposed rule, NMFS has determined that the proposed regulatory modification is administrative in nature and is consistent with the 2006 Consolidated HMS FMP and its related Environmental Impact Statement and the ICCAT Chartering Recommendation. As defined in Sections 5.05 and Section 6.03c.3(i) of NAO 216–6, the proposed action is an amendment of existing chartering regulations that are administrative and technical in nature that would not have significant environmental impacts and for which

any cumulative effects are negligible. As such, it is categorically excluded from the need to prepare an Environmental Assessment.

3. Request for Comments

Comments on this proposed rule may be submitted at public hearings (see **DATES** and **ADDRESSES**), or via mail, or fax by December 18, 2008. NMFS will hold two public hearings to receive comments from fishery participants and other members of the public regarding this proposed rule. These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to LeAnn Southward Hogan at (301) 713–2347 at least 5 days prior to the hearing date.

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each meeting, a representative of NMFS will explain the ground rules (e.g., alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they register to speak; the attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending member of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the meeting. For individuals unable to attend a hearing, NMFS also solicits written comments on this proposed rule (see **DATES** and **ADDRESSES**).

4. Classification

The Acting Assistant Administrator has determined that this proposed rule is consistent with the Consolidated HMS FMP, the Magnuson–Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The certification reads:

Swordfish Quotas

The final 2007 and 2008 North and South Atlantic swordfish baseline quotas were published in the **Federal Register** on October 5, 2007 (72 FR 56929). This proposed rule would adjust the 2008 baseline quotas for the North and South Atlantic swordfish fisheries for the 2008 fishing year (January 1, 2008, through December 31, 2008) to account for 2007 underharvests per 50 part 635.27(c) and transfer 18.8 metric tons (mt) dressed weight (dw) to Canada from the reserve category. Consistent with Federal regulations (50 CFR part 635.27(c)(1)), the 2008 North Atlantic swordfish directed baseline quotas plus the 2007 underharvests would be divided equally between the semiannual periods of January through May and June through December, 2008. The 2007 total underharvest for North Atlantic swordfish was 3,220.1 mt dw and 150.4 mt dw for South Atlantic swordfish. However, since the underharvest carryover amount has been capped (for the North Atlantic swordfish at 1468.8 mt dw, and 75.2 mt dw for South Atlantic swordfish), the proposed 2008 adjusted quotas for the North and South Atlantic swordfish would be 4,406.4 mt dw and 150.4 mt dw, respectively. These 2008 adjusted quotas are the same as the adjusted quotas for the 2007 fishing year which were analyzed in the Final Regulatory Flexibility Analysis (EA) prepared for the 2007 Swordfish Specifications Final Rule published on October 5, 2007 (FR 72 56929).

The commercial swordfish fishery is comprised of fishermen who hold a swordfish directed, incidental, or handgear limited access permits (LAP) and the related industries including processors, bait houses, and equipment suppliers, all of which NMFS considers to be small entities according to the size standards set by the Small Business Administration. As of May 2007, there were approximately 180 fishermen with a directed swordfish LAP, 78 fishermen with an incidental swordfish (LAP), and 88 fishermen with a handgear (LAP) for swordfish. Based on the 2006 swordfish ex–vessel price per pound of $3.58, the 2008 North Atlantic swordfish baseline quota could result in revenues of $23,184, 913 (6,476,232 lbs dw * $3.58) and $593,513 (165,785 lbs dw * 3.58) for South Atlantic quota if the quota was fully utilized. As proposed in this action, the 2008 baseline quotas would be adjusted to account for the 2007 underharvest which could result in additional revenues for the North and South Atlantic swordfish fisheries of $34,777,370 and $1,187,027, respectively, for fully utilized quotas. Potential revenues on a per vessel basis, considering a total of 346 swordfish permit holders, could be $100,512 for the North Atlantic swordfish fishery and $3,431 for the South Atlantic swordfish fishery. However, in both the North and South Atlantic swordfish fisheries, the pelagic longline fleet has not caught the entire U.S. swordfish quota for many years. For example, the total 2007 North Atlantic swordfish landings were 1,167.5 mt dw and the current 2008 landings for North Atlantic swordfish, as of April 30, 2008, are 443.3 mt dw. Therefore, because the United States is not expected to catch its entire quota, and the quotas adjustments are the same in 2008 as in 2007, NMFS does not expect these quota adjustments to have a significant economic impact on a large number of small entities.

Chartering Regulations

This proposed rule would also modify regulations regarding vessel chartering. At its 2002 annual meeting, ICCAT adopted a chartering recommendation (ICCAT Recommendation 02–21) allowing Contracting Parties to the ICCAT Convention to charter fishing vessels registered to responsible Contracting Parties, Cooperating non–Contracting Parties, Entities or Fishing Entities (CPCs) that explicitly agree to apply ICCAT conservation and management measures and enforce them on their vessels.

Pursuant to this recommendation, NMFS implemented regulations on December 6, 2004 (69 FR 70396). These regulations took a limited approach to chartering by allowing entities from ICCAT Contracting Parties to charter U.S. fishing vessels but not allowing U.S. entities to charter foreign vessels in the same way. Current regulations allow chartering arrangements between U.S. fishing vessel owners and foreign entities under which a U.S. fishing vessel can fish in waters beyond national jurisdiction without reflagging the vessel, and the U.S. fishing vessel's catch counts against the ICCAT quota of the Contracting Party of the chartering foreign entity. These regulations require the owner of a U.S. fishing vessel to apply for and obtain a chartering permit from NMFS before fishing under such a chartering arrangement.

When NMFS developed and implemented the current chartering regulations, interest was expressed in allowing U.S. fishing vessels to be chartered by foreign entities of an ICCAT Contracting Party and to allow the catch taken to count against the ICCAT Contracting Party's quota. However, due to legal and policy concerns related to foreign vessels and foreign fishing in the U.S. exclusive economic zone (EEZ) and little public interest in chartering arrangements where a foreign vessel's catch would count against U.S. Atlantic HMS quotas or entitlements, NMFS did not implement regulations that would allow U.S. entities to charter foreign vessels to catch ICCAT–managed species that would count against U.S. quotas or entitlements.

Since implementing the chartering regulations, there has been increased public interest in allowing U.S. entities to charter foreign vessels of ICCAT CPCs where the catch taken would count against the U.S. Atlantic HMS quotas or entitlements, possibly as a step toward revitalizing certain HMS fisheries. This type of chartering arrangement could also help utilize Atlantic HMS quotas and facilitate flexibility within the vessel chartering program, which would in turn enhance quota management within the Atlantic HMS fisheries. Thus, NMFS is proposing changes to the current chartering regulations that would allow chartering of foreign vessels of ICCAT CPCs to fish on the high seas against U.S. Atlantic HMS quota or entitlements.

The proposed chartering regulations would establish a process and criteria for NMFS's evaluation of proposed chartering arrangements and certain limitations on such chartering arrangements. Under the proposed regulations, only Atlantic HMS LAP holders would be allowed to enter these types of

chartering arrangements with foreign entities of ICCAT CPCs. NMFS is proposing to limit these chartering arrangements to Atlantic HMS LAP holders because, by having been issued an Atlantic HMS LAP, these permitees are allowed to harvest Atlantic HMS from the U.S. EEZ and on the high seas. Under the rule as proposed, only those Atlantic HMS LAP holders who currently are authorized to harvest HMS on the high seas would be chartering vessels to, essentially, exercise that harvesting privilege on their behalf. This approach should, generally, keep any resulting chartering arrangements within the scope of existing analyzed effects of utilizing Atlantic HMS quotas on the high seas. During the length of the chartering arrangement, the Atlantic HMS LAP holder would not be permitted to fish under Atlantic HMS quotas or otherwise utilize the LAPs themselves. In addition, under the proposed regulations, foreign vessel owners who enter into a chartering arrangement with an Atlantic HMS LAP holder would be required to follow all U.S. regulations that would have otherwise applied to the Atlantic HMS LAP holder.

Since implementing the chartering regulations in 2004, NMFS has only received three requests for chartering permits, only one of which was issued. NMFS has not received a specific chartering request in 2008. Upon receipt of any such request, NMFS would conduct the necessary ecological, economic, and social analysis, including any necessary NEPA analysis, to consider the impacts of the specific chartering request on the HMS fishery and its participants. NMFS does not expect this regulatory modification to result in many additional requests, and NMFS does not expect these potential chartering arrangements to increase fishing mortality or increase fishing effort significantly. It is unlikely that activities conducted by foreign vessels under a chartering agreement would result in any economic impacts on domestic small businesses. Therefore, NMFS does not expect this regulatory modification to result in significant impacts on a substantial number of small entities.

Conclusion

This proposed rule would not result in any increase in fishing mortality, change basic fishing practices, or pose any significant impacts to the human environment. Therefore, NMFS does not expect the minor regulatory modifications to the vessel chartering regulations or the carryover of underharvests to have significant economic impacts on small entities.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Management, Reporting and recordkeeping requirements, Treaties.

Dated: November 12, 2008.

Samuel D. Rauch III

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.5, paragraph (a)(5) is revised to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(a) * * *

(5) *Chartering arrangements.* (i) Where a U.S. vessel is chartered by a foreign entity (e.g., government, company, person) of an ICCAT Contracting Party.

(A) For the purposes of paragraph (a)(5)(i) of this section, a chartering arrangement means any contract, agreement, or commitment between a U.S. fishing vessel owner and a foreign entity of an ICCAT Contracting Party by which the control, use, possession, or services of a U.S. fishing vessel are secured, for a period of time for fishing targeting Atlantic HMS against the ICCAT quota of the chartering foreign entity's Contracting Party. Chartering arrangements under this part do not include bareboat charters under which a vessel enters into a fishing agreement with a foreign entity, changes registration to fish under another country's registration then, once the agreed–upon fishing is completed, reverts back to the vessel's original registration.

(B) If a foreign entity of an ICCAT Contracting Party wants to enter into a chartering arrangement with a U.S. fishing vessel owner, the ICCAT Contracting Party and the U.S vessel owner must be in full compliance with ICCAT conservation and management measures.

(C) Before fishing under a chartering arrangement under paragraph (a)(5)(i) of this section, the owner of a U.S. fishing vessel must apply for, and obtain, a chartering permit as specified in § 635.32(e). If a chartering permit is obtained, the U.S. fishing vessel owner must submit catch information as specified in the terms and conditions of that permit. All catches will be recorded and counted against the applicable ICCAT quota of the chartering foreign entity's Contracting Party and, unless otherwise provided in the chartering permit, must be offloaded in the ports of the chartering foreign entity's ICCAT Contracting Party or offloaded under the direct supervision of the chartering foreign entity's ICCAT Contracting Party.

(D) If the chartering arrangement terminates before the expiration of the chartering permit, the U.S. fishing vessel owner must notify NMFS immediately and in writing. Such notification requirements shall also apply to situations where the chartering arrangement is temporarily suspended and during intermittent periods where the vessel may be fishing under Atlantic HMS quotas.

(ii) Where a foreign vessel is chartered by an Atlantic HMS LAP holder.

(A) For the purposes of paragraph (a)(5)(ii) of this section, a chartering arrangement means any contract, agreement, or commitment between an Atlantic HMS LAP holder and a foreign vessel owner of an ICCAT CPC by which the control, use, possession, or services of a foreign vessel are secured, for a period of time for fishing targeting Atlantic HMS on the high seas against the Atlantic HMS quota or entitlements of the United States. Atlantic HMS LAP holders shall not fish using their LAP permit(s) during the duration of the chartering arrangement.

(B) NMFS will consider on a case–by–case basis and must approve in writing, any proposed chartering arrangement under paragraph (a)(5)(ii) of this section. Both the ICCAT CPC and a foreign vessel owner of an ICCAT CPC wishing to enter into a chartering arrangement with an Atlantic HMS LAP holder must be in full compliance with ICCAT conservation and management measures. Vessels on the ICCAT IUU vessel list may not be chartered.

(C) Atlantic HMS LAP holders who are interested in chartering foreign vessels of an ICCAT CPC under a chartering arrangement should include the following information in their request to NMFS:

(*1*) Information regarding the proposed chartering operation, including the ICCAT CPC's vessel name, vessel registration, and flag of the vessel;

(*2*) A copy of the proposed chartering arrangement between the Atlantic HMS LAP holder and the ICCAT CPC's vessel owner;

(*3*) The species to be fished, amount of fishing expected, and gear types to be used;

(*4*) The general geographic areas to be fished;

(*5*) A letter of consent from the government of the ICCAT CPC vessel's flag state;

(*6*) The timeframe of the chartering arrangement; and

(*7*) Anticipated benefits to the United States, including, but not limited to, the use of U.S. processing facilities/personnel, and specific positive effects on U.S. employment.

(D) After reviewing the information submitted, NMFS will evaluate whether the proposed chartering arrangement provides adequate benefit to the United States and will consider the implications of the arrangement for Atlantic HMS quota management. Atlantic HMS LAP holders who submit chartering arrangement requests to NMFS will be contacted if the chartering arrangement is authorized and will be notified of the requirements and terms of approval, including data submission requirements. NMFS may decide to deny a chartering arrangement request.

* * * * *

3. In § 635.32, paragraphs (e) (1) through (4) and (e)(6) are revised to read as follows:

§ 635.32 Specifically authorized activities.

* * * * *

(e) * * *

(1) For activities consistent with the purposes of this section, § 635.5(a)(5)(i), and § 600.745(b)(1) of this chapter, NMFS may issue chartering permits to a U.S. fishing vessel owner. An application for a chartering permit must include all information required under § 600.745(b)(2) of this chapter and, in addition, written notification of: the species of fish covered by the chartering arrangement and quota allocated to the chartering foreign entity's ICCAT Contracting Party; duration of the arrangement; measures adopted by the chartering foreign entity's ICCAT Contracting Party to implement ICCAT chartering provisions; copies of fishing licenses, permits, and/or other authorizations issued by the chartering foreign entity for the U.S. fishing vessel to fish under the arrangement; a copy of the High Seas Fishing Compliance Act Permit pursuant to § 300.10 of this title; documentation regarding interactions with protected resources; and documentation regarding the legal establishment of the chartering entity. To be considered complete, an application for a chartering permit from a U.S. fishing vessel owner must include all information specified in § 600.745(b)(2) of this chapter and in this paragraph (e).

(2) Notwithstanding the provisions of § 600.745 of this chapter and other provisions of this part, a valid chartering permit is required to fish for, take, retain, or possess ICCAT–regulated species under chartering arrangements as specified in § 635.5(a)(5)(i). A valid chartering permit must be on board the U.S. fishing vessel, must be available when ICCAT–regulated species are landed, and must be presented for inspection upon request of an authorized officer. A chartering permit is valid for the duration of the chartering arrangement or until the expiration date specified on the permit, whichever comes first. U.S. fishing vessel owners issued a chartering permit shall not be authorized to fish under applicable U.S. Atlantic HMS quotas or entitlements until the chartering permit expires or is terminated.

(3) Chartering permit holders must submit logbooks and comply with reporting requirements as specified in § 635.5. NMFS will provide specific conditions and requirements in the chartering permit, so as to ensure consistency, to the extent possible, with laws of the ICCAT Contracting Party, the Consolidated HMS FMP, as well as ICCAT recommendations.

(4) Observers may be placed on board U.S. fishing vessels issued chartering permits as specified under § 635.7.

* * * * *

(6) A U.S. fishing vessel shall be authorized to fish under only one chartering arrangement at a time.

* * * * *

4. In § 635.71:

A. Paragraphs (a)(42), (43), and (44) are revised.

B. Paragraphs (a)(45) through (a)(53) are redesignated as paragraphs (a)(46) through (a)(54), respectively.

C. A new paragraph (a)(45) is added.

The revisions and addition read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(42) Count chartering arrangement catches against quotas other than those defined in § 635.5(a)(5).

(43) Fail to submit catch information regarding fishing activities conducted under a chartering arrangement with a foreign vessel owner, as specified in § 635.5(a)(5).

(44) Offload catch taken under a chartering arrangement in ports other than the ports of the chartering foreign entity's ICCAT Contracting Party or offload catch without the direct supervision of the chartering foreign entity's ICCAT Contracting Party as specified § 635.5(a)(5).

(45) Fish for, take, retain, or possess ICCAT–regulated species under a chartering arrangement as specified in § 635.5(a)(5)(i) without a valid chartering permit on board the vessel and available upon the request of an authorized officer.

* * * * *

[FR Doc. E8–27337 Filed 11–17–08; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 73, No. 223

Tuesday, November 18, 2008

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Bureau for Democracy, Conflict and Humanitarian Assistance; Office of Food for Peace; Announcement of Food for Peace Public Law 480 Title II Program Policies and Proposal Guidelines Fiscal Year 2009; Notice

Pursuant to the Agricultural Trade Development and Assistance Act of 1954 (Pub. L. 480, as amended), notice is hereby given that the final Food for Peace Public Law 480 Title II Program Policies and Proposal Guidelines Fiscal Year 2008 are available to interested parties for general viewing.

Individuals who wish to access the current guidelines should visit the Food for Peace Web site at *http://www.usaid.gov/our_work//humanitarian_assistance/ffp/*, or contact the Office of Food for Peace, U.S. Agency for International Development, RRB 7.06–102, 1300 Pennsylvania Avenue, NW., Washington, DC 20523–7600.

Juli Majernik,

Grants Manager, Policy and Technical Division, Office of Food for Peace, Bureau for Democracy, Conflict and Humanitarian Assistance.

[FR Doc. E8–27290 Filed 11–17–08; 8:45 am]

BILLING CODE 6116–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 13, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Grain Inspection, Packers & Stockyards Administration

Title: Regulations and Related Reporting and Recordkeeping Requirements—Packers and Stockyards Programs.

OMB Control Number: 0580–0015.

Summary of Collection: The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers the provisions of the Packers and Stockyards Act of 1921 (7 U.S.C. 181–229) and the regulations under the Act. The Act is designed to protect the financial interests of livestock and poultry producers engaged in commerce of livestock and live poultry sold for slaughter. It also protects members of the livestock and poultry marketing, processing, and merchandising industries from unfair competitive practices. GIPSA will collect information using several forms.

Need and Use of the Information: GIPSA will collect information to monitor and examine financial, competitive and trade practices in the livestock, meatpacking, and poultry industries. Also, the information will help assure that the regulated entities do not engage in unfair, unjustly discriminatory, or deceptive trade practices or anti-competitive behavior.

Description of Respondents: Business or other for-profit.

Number of Respondents: 18,684.

Frequency of Responses: Recordkeeping; Third party disclosure; Reporting: On occasion; Semi-annually; Annually.

Total Burden Hours: 318,630.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E8–27315 Filed 11–17–08; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 13, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or

fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Uniform Grant Application for Non-Entitlement Discretionary Grants.

OMB Control Number: 0584–0512.

Summary of Collection: The Food and Nutrition Service (FNS) has established a process for a uniform grant application usable for all of the non-entitlement discretionary grant programs to collect the information from grant applicants needed to evaluate and rank applicants and protect the integrity of the grantee selection process. All FNS discretionary grant programs will be eligible, but not required to use the uniform grant application package. The authorities for these grants vary. The term ''grant'' in this submission refers only to non-entitlement discretionary grants or cooperative agreements. Discretionary grant announcements include a number of information collections, including a ''project description'' (program narrative), budget information, assurances, and certifications. An optional faith-based survey form may also be included for the purpose of helping the Federal government determine the organizational nature of the applicant population, specifically when dealing with nonprofit organizations. The requirements for the program narrative statement are based on the requirements for program narrative statements described in section 1.c(5) of OMB Circular A–102 and OMB A–110 (as implemented at USDA 7 CFR Part 3015, 3016 and 3019); and will apply to all types of grantees—State and local governments, non-profit organizations, institutions of higher education, hospitals, and for-profit organizations.

Need and Use of the Information: As the primary users of the information collected, FNS will review, evaluate and approve grant and cooperative agreement applications. The uniform grant application package will include general information and instructions; a checklist; a requirements for the program narrative statement describing how the grant objectives will be reached as well as a description of the budget; the Standard Form 424 series that requests basic information, budget information and assurances regarding Nonprocurement Debarment and Suspension, the Drug-Free Workplace rule, general assurances, a lobbying certification, and an optional survey form to ensure equal opportunity for applicants. Without this information, FNS will not have adequate data to select appropriate grantees or evaluate which grants should be continued.

Description of Respondents: State, Local, or Tribal Government; Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 572.

Frequency of Responses: Reporting: Other (one-time).

Total Burden Hours: 31,340.

Food and Nutrition Service

Title: FNS User Access Request Form.

OMB Control Number: 0584–0532.

Summary of Collection: The Office of Management and Budget Circular No. A–130, Appendix III, Security of Federal Automated Information Resources, dated February 8, 1996, established a minimum set of controls to be included in Federal automated information security programs. Establishing personal controls to screen users to allow access to an authorized system is directed in this appendix. The Food and Nutrition Service (FNS) User Access Request Form, FNS–674, is designed for this purpose and will be used in all situations where access to an FNS computer system is required, where current access is required to be modified, or where access is no longer required and must be deleted. Users who access FNS systems are: State agencies, other Federal agencies, FNS Regional offices, FNS Field offices, FNS Compliance Offices, staff contractors, and FNS headquarters staff.

Need and Use of the Information: The State Coordinator is responsible for ensuring that State users and entities comply with the FNS Information Systems Security Guidelines and the Procedures Handbook 702 developed for State systems for their use in maintaining proper controls over FNS security features used by State clients. The information to be collected is: Name, e-Authentication ID, telephone number, home zip code, email address, contract expiration date, temporary employee expiration date, office address, State/locality codes, system name, form type, type of access, action requested, comments and special instructions. If access were not granted, users would be denied access to systems needed to deliver FNS programs.

Description of Respondents: State, Local, or Tribal Government; Federal Government; Businesses or other for-profit.

Number of Respondents: 225.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 73.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E8–27316 Filed 11–17–08; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet at the Trinity County Office of Education in Weaverville, California, December 8, 2008 beginning at 6:30 p.m. The purpose of this meeting is to discuss proposed projects under Title H of the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: Monday, December 8, 2008.

ADDRESSES: Trinity County Office of Education, 201 Memorial Drive, Weaverville, California 96093.

FOR FURTHER INFORMATION CONTACT: Resource Advisory Committee Coordinator John Heibel at (530) 226–2524 or *jheibel@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public input sessions will be provided and individuals will have the opportunity to address the Trinity County Resource Advisory Committee.

Dated: November 10, 2008

Scott G. Armentrout,

Deputy Forest Supervisor, Shasta-Trinity National Forest.

[FR Doc. E8–27159 Filed 11–17–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and

Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security.

Title: Import, End-User, and Delivery Verification Certificates.

OMB Control Number: 0694–0093.

Form Number(s): BIS–645P and BIS–647P.

Type of Request: Regular submission.

Burden Hours: 744.

Number of Respondents: 2,421.

Average Hours per Response: 15 to 30 minutes.

Needs and Uses: This collection of information provides the certification of the overseas importer to the U.S. Government that specific commodities will be imported from the U.S. and will not be reexported, except in accordance with U.S. export regulations.

Affected Public: Business and other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefit.

OMB Desk Officer: Jasmeet Seehra, Fax number (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov)*.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Fax number (202) 395–7285 or via the Internet at *Jasmeet_K._Seehra@omb.eop.gov*.

Dated: November 12, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–27296 Filed 11–17–08; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 60–2008]

Foreign-Trade Zone 267—Fargo, ND Request for Manufacturing Authority CNH America, LLC (Construction and Agricultural Equipment)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Fargo Municipal Airport Authority, grantee of FTZ 267, requesting authority on behalf of CNH America, LLC (CNH) to perform construction and agricultural equipment manufacturing under FTZ procedures within FTZ 267. The application was filed on October 23, 2008.

The CNH facilities (about 800 employees) consist of a manufacturing plant located at 3401 1st Avenue N. and a warehouse located at 3000 7th Avenue N., within the Midtown Industrial Complex (FTZ 267—Site 2). CNH could produce up to 4,000 construction wheel loaders (HTSUS 8429.51) and 7,200 agricultural tractors (8701.90) annually. Foreign-sourced components (representing about 30% of material value) that would be used in production include: Vehicle glass (HTSUS 7007.11), motor controls (8537.10), switches (8536.50), and transmissions (8483.40).

FTZ procedures would exempt CNH from customs duty payments on foreign components used in export production (estimated to be some 30 percent of the plant's shipments). On its domestic shipments, CNH could defer duty until the products are entered for consumption, and choose the duty-free rate that applies to the finished product for the foreign components used in production (duty rates ranging from 2.5% to 5.5%). The company may also realize certain logistical/procedural savings as well as savings on materials that become scrap/waste during manufacturing.

In accordance with the Board's regulations, Diane Finver of the FTZ staff is designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 20, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 2, 2009.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: U.S. Department of Commerce Export Assistance Center, 51 Broadway, Suite 505, Fargo, North Dakota 58102; and, Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002.

For further information, contact Diane Finver at (202) 482–1367.

Dated: October 23, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–27343 Filed 11–17–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Secretary for Industry and Security

[Docket Nos. 07–BIS–0026; 07–BIS–0027]

In the Matters of: Peter Goldsmith, Michele Geslin, Respondents; Final Decision and Order

This matter is before me upon a Recommended Decision and Order (''RDO'') of an Administrative Law Judge (''ALJ''), as further described below.

In a charging letter filed on December 18, 2007, the Bureau of Industry and Security (''BIS'') alleged that Respondent Michele Geslin committed one violation of the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (2008) (''Regulations'')), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (the ''Act''),[1] when she aided and abetted the unlicensed export of a vessel to Cuba during a regatta she had helped to organize. Specifically, the charge against Respondent Michele Geslin is as follows:

Charge 1 15 CFR 764.2(b)—Aiding or Abetting the Export of a Vessel Without the Required License

Between on or about April 10, 2003 through on or about May 31, 2003, Geslin aided and/or abetted the doing of an act prohibited by the Regulations. Specifically, Geslin aided and/or abetted the export of the vessel Kailuana, an item classified on the Commerce Control List under Export Control Classification Number (ECCN) 8A992.f, to Cuba without the required Department of Commerce authorization. Geslin aided and/or abetted the export

[1] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA''). On November 13, 2000, the Act was reauthorized and remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of July 23, 2008 (73 FR 43603, July 25, 2008), has continued the Regulations in effect under IEEPA.

of the vessel to Cuba by organizing a regatta to Cuba and by traveling on board the Kailuana and assisting with the vessel's export to Cuba during the regatta. Geslin, as organizer of the regatta, was advised by the BIS Office of Export Enforcement in a letter dated April 24, 2003, that a Department of Commerce export license was required for all participants in the regatta who were to take a vessel to Cuba. On May 22, 2003, the Office of Export Enforcement met with Geslin and other regatta participants at the regatta's pre-launch party and again informed Geslin that a license was required for the temporary export of vessels to Cuba during the regatta. On May 23, 2003, the Office of Export Enforcement provided Geslin, as co-organizer of the regatta, with an additional letter indicating that an export license was required by all regatta participants who took their vessels to Cuba and that a particular license that had been identified by some participants as authority to take their vessel to Cuba during the regatta did not in fact authorize the temporary export of a vessel. Pursuant to Section 746.2 of the Regulations, a license is required for the export of vessels to Cuba and no license was obtained for the export of the Kailuana to Cuba. In aiding and abetting this unlicensed export, Geslin committed one violation of Section 764.2(b) of the Regulations.

December 18, 2007 Charging Letter against Michele Geslin, at 1–2 (originally included as Ex. E in BIS's Motion for Summary Decision).

Furthermore, in a separate charging letter filed on December 18, 2007, BIS alleged that Respondent Peter Goldsmith also committed one violation of the Regulations when he aided and abetted the unlicensed export of a vessel to Cuba during the same regatta, which he also helped to organize. Specifically, the charge against Respondent Peter Goldsmith is as follows:

Charge 1 15 CFR 764.2(b)—Aiding or Abetting the Export of a Vessel without the Required License

Between on or about April 10, 2003 through on or about May 31, 2003, Goldsmith aided and/or abetted the doing of an act prohibited by the Regulations. Specifically, Goldsmith aided and/or abetted the export of the vessel Eu-Bett, an item classified on the Commerce Control List under Export Control Classification Number (ECCN) 8A992.f, to Cuba without the required Department of Commerce authorization. Goldsmith aided and/or abetted the export of the vessel to Cuba by organizing a regatta to Cuba and by traveling on board the Eu-Bett and assisting with the vessel's export to Cuba during the regatta. Goldsmith, as organizer of the regatta, was advised by the BIS Office of Export Enforcement in a letter dated April 10, 2003, that a Department of Commerce export license was required for all participants in the regatta who were to take a vessel to Cuba. Further, the Office of Export Enforcement contacted Goldsmith on or about April 28, 2003 via telephone to again state the need of regatta participants to obtain a Department of Commerce export license before exporting a vessel to Cuba. On or about May 22, 2003, the Office of Export Enforcement met with Goldsmith and other regatta participants at the regatta's pre-launch party and again informed Goldsmith that a license was required for the temporary export of vessels to Cuba during the regatta. Pursuant to Section 746.2 of the Regulations, a license is required for the export of vessels to Cuba and no license was obtained for the export of the Eu-Bett to Cuba. In aiding and abetting this unlicensed export, Goldsmith committed one violation of Section 764.2(b) of the Regulations.

December 18, 2007 Charging Letter against Peter Goldsmith, at 1–2 (originally included as Ex. F in BIS's Motion for Summary Decision).

By separate letters, each dated ''02/10/2008,'' Geslin and Goldsmith responded to these charges indicating an intention to contest the charges. These responses were treated as answers to the Charging Letters, and on February 11, 2008, these cases were assigned to AU Brudzinski of the U.S. Coast Guard. On April 1, 2008, the cases against Geslin and Goldsmith were consolidated.[2] In accordance with the Scheduling Order of ALJ Brudzinski, BIS propounded discovery requests, including Requests for Admission, upon both Geslin and Goldsmith. Neither responded to any the discovery requests, including the Requests for Admission, thus admitting the matters of fact therein. 15 *CFR* 766.9(b).

On September 8, 2008, BIS filed a motion for summary decision against Respondents Geslin and Goldsmith as to the above charges. On October 15, 2008, based on the record before him, ALJ Brudzinski issued an RDO in which he determined that BIS was entitled to summary decision as to both of the charges at issue, finding that Geslin committed one violation of § 764.2(b) when she aided and abetted an unlicensed export to Cuba of the vessel Kailuana, an item subject to the Regulations and classified under ECCN 8A992.f, and that Goldsmith also committed one violation of § 764.2(b) when he aided and abetted an unlicensed export to Cuba of the vessel Eu-Bett, also an item subject to the Regulations and classified under ECCN 8A992.f. ALJ Brudzinski also recommended, following consideration of the record, that Geslin and Goldsmith each be assessed a monetary penalty of $11,000.00 and a denial of export privileges for three years. The ALJ further recommended that the denial of export privileges for each respondent be suspended for the entire three year period provided that each respondent pays the monetary penalty within 30 days of the Final Decision and Order and that each respondent commits no further violations during the period of suspension. In his RDO, ALJ Brudzinski indicated that, should either Geslin or Goldsmith fail to abide by any of the conditions of suspension, then the denial order will become active with regard to whichever respondent has failed to meet the terms of the suspension.

The RDO, together with the entire record in this case, has been referred to me for final action under § 766.22 of the Regulations. I find that the record supports the ALJ's findings of fact and conclusions of law, including the conclusion that the movement of a vessel from the United States to Cuba is considered an export, even if the vessel remains in Cuba only temporarily. RDO at 7.

I also find that the penalty recommended by ALJ Brudzinski based upon his review of the entire record is appropriate, given the nature of the violations, the facts of this case, and the importance of deterring future unauthorized exports, and especially given the multiple warnings that the respondents received from BIS agents.[3]

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the RDO.

Accordingly, it is therefore ordered

First, that a civil penalty of $11,000.00 is assessed against Michele Geslin and that a civil penalty of $11,000 is also assessed against Peter Goldsmith, each of which shall be paid to the U.S. Department of Commerce within (30) thirty days from the date of entry of this Order.

[2] These cases were consolidated with a case against a third respondent. BIS has not moved for summary decision against this third respondent and, accordingly, that claim is not addressed in the RDO nor will it be addressed in this Final Decision and Order.

[3] The sanction recommended by the ALJ also is consistent with the sanction proposed by BIS, which based its request on the facts, as admitted, and circumstances of the case as a whole.

Second, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Geslin and/or Goldsmith, will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and administrative charge.

Third, for a period of three (3) years from the date that this Order is published in the **Federal Register**, Michele Geslin, 2627 Staples Avenue, Key West, FL 33040, and Peter Goldsmith, 2627 Staples Avenue, Key West, FL 33040, and their successors or assigns, and when acting for or on behalf of Geslin and/or Goldsmith, their representatives, agents, or employees (hereinafter collectively known as the ''Denied Persons'') may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Fourth, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Persons any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Persons of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Persons acquire or attempt to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Persons of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Persons in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Persons, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Persons if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Fifth, that, after notice and opportunity for comment as provided in § 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Persons by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order.

Sixth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Seventh, that, as authorized by § 766.17(c) of the Regulations, the denial period set forth above with regard to each respondent shall be suspended in its entirety, and shall thereafter be waived, provided that: (1) Within thirty days of the effective date of this Order, the respondent pays the monetary penalty imposed against him or her of $11,000.00 in full, and (2) for a period three years from the effective date of this Order, the respondent commits no further violations of the Act or Regulations.

Eighth, that the final Decision and Order shall be served on both Geslin and Goldsmith and shall be published in the **Federal Register**. In addition, the ALJ's Recommended Decision and Order, except for the section related to the Recommended Order, shall also be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective upon publication in the **Federal Register**.

Dated: November 11, 2008.

Daniel O. Hill,

Acting Under Secretary of Commerce for Industry and Security.

United States Department of Commerce
Bureau of Industry and Security
Washington, *DC* 20230

Recommended Decision and Order [1]

Issued: October 15 2008.

Issued by: Hon. Walter J. Brudzinski, Administrative Law Judge.

Preliminary Statement

This Recommended Decision and Order is issued in response to the Agency's September 8, 2008 Motion for Summary Decision in the above captioned matters. Pursuant to the undersigned's Scheduling Order of May 7, 2008, Respondents had until October 8, 2008 to respond to the Agency's motion. Since that time has passed with no response, this matter is now ripe for decision.

On April 1, 2008, I consolidated the following BIS cases: (1) In the Matter of Peter Goldsmith, Docket: 07–BIS–0026; (2) In the Matter of Michele Geslin, Docket: 07–BIS–0027; and (3) In the Matter of Wayne LaFleur, Docket: 07–BIS–0028. This Recommended Decision and Order pertains only to Respondents Michele Geslin and Peter Goldsmith (hereinafter, collectively, ''Respondents''). The Agency is not seeking summary decision with regard to Respondent LaFleur. Accordingly, the matter involving Respondent LaFleur has been excluded from the case caption.

On December 18, 2007, the Bureau of Industry and Security, U.S. Department of Commerce (''BIS'' or ''Agency''), issued separate Charging Letters initiating administrative enforcement proceedings against Michele Geslin and Peter Goldsmith. The Charging Letter addressed to Ms. Geslin alleged that she committed one violation of the Export Administration Regulations, currently codified at 15 *CFR* Parts 730–774 (2008)

[1] For proceedings involving violations not relating to Part 760 of the Export Enforcement Regulations, 15 *CFR* 766.17(b) and (b)(2) prescribe that the Administrative Law Judge's decision be a ''Recommended Decision and Order.'' The violations alleged in this case are found in Part 764. Therefore, this is a ''Recommended'' decision. That section also prescribes that the Administrative Law Judge make recommended findings of fact and conclusions of law that the Under Secretary for Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, must affirm, modify or vacate. 15 *CFR* 766.22. The Under Secretary's action is the final decision for the U.S. Commerce Department. 15 *CFR* 766.22(e).

(the ''Regulations''),[2] issued under the Export Administration Act of 1979, as amended (50 U.S.C. App. §§ 2401–2420 (2000)) (the ''Act'').[3] The Charging Letter addressed to Goldsmith alleged that he also committed one violation of the Regulations.

Specifically, the Charging Letters allege that, between on or about April 10, 2003 through on or about May 31, 2003, each respondent aided and abetted an unlawful export to Cuba in violation of the Regulations. BIS alleged that Geslin and Goldsmith organized a regatta during that time period and that Geslin assisted the passage of the vessel Kailuana, an item classified on the Commerce Control List under Export Control Classification Number (ECCN) 8A992.f, to Cuba during that regatta. BIS further alleges that Goldsmith assisted the passage of the vessel Eu-Bett, also an item classified under ECCN 8A992.f to Cuba during that regatta. BIS alleges that these acts violate 15 CFR 764.2 (2003), which prohibits the causing, aiding, or abetting of a violation of the Regulations, because the exports of the vessel Kailuana and the vessel Eu-Bett to Cuba were not authorized by the required Department of Commerce export licenses.

In a letter dated February 10, 2008, Respondent Geslin responded to BIS's Charging Letter in which she stated ''I do not feel that the charges are viable.'' Moreover, in a similar letter dated February 10, 2008, Respondent Goldsmith responded to BIS's Charging Letter in which he stated ''I would like to contest these charges.'' Subsequently, in a letter dated March 20, 2008, the Respondents, collectively, demanded a hearing.

On February 25, 2008, this case was assigned to the undersigned Administrative Law Judge (''ALJ'') for adjudication pursuant to an Interagency Agreement with the Bureau of Industry and Security. As previously mentioned above, on April 1, 2008, the proceedings against Michele Geslin and Peter Goldsmith were consolidated. The matter involving Wayne LaFleur was also consolidated with these cases. However, BIS has stated that it will move for resolution of the case against LaFleur at a later time.

On April 14, 2008, the undersigned issued an Order granting BIS's Motion to Strike or Deny Respondents' Demand for a Hearing because the demand for hearing was deemed untimely. I further ordered that because of the untimely filing of the demand for hearing by the Respondents, this matter will be decided on the record by the undersigned ALJ, in accordance with 15 CFR 766.15.

On May 7, 2008, I issued a Scheduling Order for filing various motions and Discovery. On May 14, 2008, BIS issued to the Respondents its Requests for Admission. Responses to the Requests for Admission were due on June 6, 2008. Respondents Geslin and Goldsmith both failed to respond to these requests. Thus, all requests for admission must be deemed admitted under 15 U.S.C. 766.9. Further, on May 14, 2008, BIS issued to the Respondents its Requests for Interrogatories and Production of Documents. The answers to all interrogatories and the requested documents were due on July 11, 2008. Again, Respondents Geslin and Goldsmith were unresponsive to these requests.

On September 8, 2008, BIS filed its Motion for Summary Decision together with 12 exhibits listed in Appendix A. BIS moved for summary decision on the charges against Geslin and Goldsmith based on the evidence contained in the exhibits and Respondents' admissions. That evidence demonstrates that there are no genuine issues of material fact and that under the facts presented, BIS is entitled to summary decision as a matter of law. Section 766.8 of the Regulations provides that the Administrative Law Judge may render a recommended summary decision and order disposing of some or all of the issues if the entire record shows as to the issues under consideration ''[t]hat there is no genuine issue as to any material fact[,]'' and ''[t]hat the moving party is entitled to a summary decision as a matter of law.'' 15 CFR 766.8 (2008). A dispute over a material fact is ''genuine'' if the evidence is such that a reasonable fact finder could render a ruling in favor of the non-moving party. *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Substantive law dictates which facts are material, and only disputes that might affect the outcome of the litigation will properly preclude the entry of summary decision. *Id.* at 247.

Section 764.3 of the Regulations sets forth the sanctions BIS may seek for violations of the Regulations. The applicable sanctions are: (i) a monetary penalty, (ii) a denial of export privileges under the Regulations, and (iii) suspension from practice before the Bureau of Industry and Security. 15 CFR 764.3. Pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA''), as amended, the maximum monetary penalty in this case is $250,000 per violation. International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110–96, 121 Stat. 1011 (2007); see also In the Matter of: Kabba &; Amir Investments, Inc., d.b.a. International Freight Forwarders, 73 FR 25649, 25653 (May 7, 2008), aff'd 73 FR 25648. BIS requests that the ALJ recommend to the Under Secretary of Commerce for Industry and Security[4] that Respondents each (1) be assessed a civil penalty in the amount of $11,000 and (2) be made subject to a denial of export privileges for a period of three years which shall be suspended if each respondent pays the monetary fine against him or her within thirty days from the date of the final Decision and Order and does not commit any further violations of the Regulations during the three year period of the suspension.

BIS seeks this sanction because the Respondents, while they were organizing the regatta during which the vessels in question were exported to Cuba, were, advised on numerous occasions by federal agents that taking a vessel to Cuba without the proper Department of Commerce authorization was a violation of U. S. law.[5] In addition, the items exported in this case involved vessels controlled for anti-terrorism reasons to a country that the United States Government has designated a state sponsor of international terrorism.[6]

[2] The charged violations occurred in 2003. The Regulations governing the violations at issue are found in the 2003 version of the Code of Federal Regulations (15 *CFR* Parts 730–774 (2003)). The 2008 Regulations establish the procedures that apply to this matter.

[3] Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 *CFR*, 2001 Comp. 783 (2002)), as extended by the Notice of July 23, 2008 (73 *FR* 43,603 (July 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)).

[4] Pursuant to Section 13(c)(1) of the Export Administration Act and Section 766.17(b)(2) of the Regulations, in export control enforcement cases, the ALJ makes recommended findings of fact and conclusions of law that the Under Secretary must affirm, modify or vacate. The Under Secretary's action is the final decision for the U.S. Department of Commerce.

[5] See 15 CFR Part 766, Supp. No. 1, § III.A. (discussing the factors that BIS considers in the context of settling an enforcement action and stating that ''[i]n cases involving gross negligence, willful blindness to the requirements of the EAR, or knowing or willful violations, BIS is more likely to seek a denial of export privileges * * * and/or a greater monetary penalty than BIS would otherwise typically seek'').

[6] See 15 CFR Part 766, Supp. No. 1, § III.A. (discussing the factors that BIS considers in the context of settling an enforcement action and stating that ''BIS is more likely to seek a greater monetary penalty and/or denial or export privileges * * * in cases involving: (1) exports or reexports to countries subject to anti-terrorism controls * * *''). Cuba has been designated as a Terrorist Supporting Country and is subject to such anti-terrorism controls. See 15 CFR Part 740, Supp. No.

Continued

Pursuant to the undersigned's Scheduling Order of May 7, 2008, the deadline for serving and filing a response to Motions for Summary Decision is 30 days from the date of the motion. In this matter, the Respondents' responses were due no later than October 8, 2008. Prior to issuing this Recommended Decision and Order, the undersigned waited an additional week for Respondents to submit a response in the event of unexpected delays in mail delivery. To date, the Respondents have failed to submit a response.

I find that the entire record before me shows that there are no genuine issues of material fact and that BIS is entitled to summary decision against Respondents Geslin and Goldsmith as a matter of law. Through their failure to answer BIS's Requests for Admissions, Respondents admitted that they aided and abetted the export of the vessels Kailuana and Eu-Bett to Cuba.6 Section 746.2 of the Regulations, requires a license to export these vessels from the United States to Cuba. Under the Regulations, the movement of the vessels from the United States to Cuba is considered an export, even if the vessels remained in Cuba only temporarily.[7, 8]

The Respondents have admitted, and BIS has confirmed by searching its licensing database, that no such licenses were obtained. Ex. L, Ex. J (Requests 6 &; 15). Respondents have also both admitted to receiving multiple letters from BIS agents prior to the regatta in question informing them that the export of a vessel to Cuba required an export license. Ex, J (Requests 7–9, 16–18), Exs. A–D. In addition to admitting the facts described in the Charging Letters against them, the Respondents have also failed to raise any defenses to the charges in their answers to the respective Charging Letters, thus precluding them from any attempt to raise any new defense at this time.[9]

After admitting the facts against them and waiving any defenses to the charges, it is clear that no genuine issues of material fact remain in this case and that BIS is entitled to summary decision as a matter of law with regard to the charges against Geslin and Goldsmith.

Recommended Findings of Fact and Conclusions of Law

Based upon the record before me, I make following findings of fact and conclusions of law:

Findings of Fact

1. The vessel Kailuana was classified under Export Control Classification Number 8A992.f on the Commerce Control List at the time of the alleged violations. Ex. K.

2. The vessel Kailuana traveled to Cuba during the regatta described in the charging letter. Ex. J (Request 3).

3. Prior to the regatta that began on May 23, 2003, BIS specifically warned Michele Geslin on multiple occasions that a Department of Commerce license is required for a vessel to travel to Cuba. Ex. J (Requests 7–9).

4. No Department of Commerce authorization was obtained for the Kailuana to travel to Cuba. Ex. J (Request 6); Ex. L.

5. Michele Geslin organized and/or promoted the regatta that is referenced in the charging letter and which began on May 23, 2003. Ex J (Request 1).

6. In addition, Michele Geslin traveled onboard the vessel Kailuana to Cuba during the regatta that began on May 23, 2003 and assisted its passage to Cuba as a crew member or through assistance to the captain and crew of that vessel. Ex. J (Requests 2 &; 4).

7. The vessel Eu-Bett was classified under Export Control Classification Number 8A992.f on the Commerce Control List at the time of the alleged violations. Ex. K.

8. The vessel Eu-Bett traveled to Cuba during the regatta described in the charging letter. Ex. J (Request 12).

9. Prior to the regatta that began on May 23, 2003, BIS specifically warned Peter Goldsmith on multiple occasions that a Department of Commerce license is required for a vessel to travel to Cuba. Ex. J (Requests 16–18).

10. No Department of Commerce authorization was obtained for the vessel Eu-Bett to travel to Cuba. Ex. J (Requests 15); Ex. L.

11. Peter Goldsmith organized and/or promoted the regatta that is referenced in the charging letter and which began on May 23, 2003. Ex J (Request 10).

12. Peter Goldsmith traveled on board the vessel Eu-Bett to Cuba during the regatta that began on May 23, 2003 and assisted its passage to Cuba as a crew member or through assistance to the captain and crew of that vessel. Ex. J (Requests 11 & 13).

Conclusions of Law

1. The vessel Kailuana's passage to Cuba was an export and as such it required an export license from the Department of Commerce. See Ex. L; See also, Ex. J (Requests 5 & 14).

2. Geslin aided and/or abetted an act prohibited by the Regulations by assisting the vessel Kailuana's passage to Cuba as a crew member or through assistance to the captain and crew of that vessel.

3. The vessel Eu-Bett's passage to Cuba was an export and as such it required an export license from the Department of Commerce. See Ex. L; See also, Ex. J (Request 14).

4. Goldsmith aided and/or abetted an act prohibited by the Regulations by assisting the vessel Eu-Bett's passage to Cuba as a crew member or through assistance to the captain and crew of the vessel.

Respondents' role in aiding and abetting the export of vessels from the United States to Cuba demonstrates indifference to U.S. export control laws. Therefore, I find BIS's penalty recommendation entirely reasonable, especially given the repeated efforts made by BIS agents to specifically advise Respondents of the proper export licensing requirements.

Accordingly, I recommend that the Under Secretary enter an Order imposing, for each respondent, an $11,000 civil penalty and a denial of export privileges for three years. Further, I recommend the Order state that the denial of export privileges with regard to each Respondent be suspended for the three year period provided that each respondent pays the monetary penalty within 30 days of the final Decision and Order and that each respondent commits no further violations during the period of the suspension. Should either Geslin or Goldsmith fail to abide by any of the conditions of suspension, then the denial order will become active with regard to whichever respondent has failed to meet the terms of the suspension. This penalty is consistent with prior cases decided by this Court.

1 Country Group E:1 (2003); 15 CFR 742.1, 746.2 (2003).

[7] See 15 CFR 766.9 (noting that ''matters of fact or law of which admission is requested shall be deemed admitted unless, within a period designated in the request * * * the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party to whom the request is directed cannot truthfully either admit or deny such matters'').

[8] See 15 *CFR* 734.2 (defining ''export'' to include ''an actual shipment or transmission of items subject to the [Regulations] out of the United States. * * *''). As BIS noted in its Motion, temporary exports have been subject to export control laws for more than 60 years. See, *e.g.*, 7 FR 5007 (July 2, 1942) (amending Part 802 of title 32 of the Code of Federal Regulations to authorize the export of certain stores and spare parts that are carried abroad on vessels and planes for use or consumption by the crew); cf. 15 *CFR* 740.15(b)(2008).

[9] 15 CFR 766.6(b). See In the Matter of BiB and Malte Mangelsen, 71 FR 37042, 37050 (June 29, 2006) (affirming that defenses not specifically set forth in the answer shall be deemed waived in accordance with 15 CFR 766.6(a)) (aff'd by Under Secretary at 37042).

In the Matter of: Kabba &; Amir Investments, Inc., d.b.a. International Freight Forwarders, 73 FR 25649, 25652 (May 7, 2008), aff'd at 73 FR 25648 (imposing a monetary penalty of $6,000 and a conditional denial of export privileges for three years against a freight forwarder that aided and abetted an attempted export of medical equipment to Cuba).

The terms of the export privileges denial against the Respondents should be consistent with the standard language used by BIS in such orders with modifications as necessary to comply with the conditional nature of the denial of export privileges described above:

Wherefore,

[REDACTED SECTION]

[REDACTED SECTION]

[REDACTED SECTION]

[REDACTED SECTION]

This Order, which constitutes the final agency action in this matter, is effective upon publication in the **Federal Register**.

Accordingly, I am referring this Recommended Decision and Order to the Under Secretary of Commerce for Industry and Security for review and final action for the agency, without further notice to the Respondents, as provided in Section 766.7 of the Regulations.

Within thirty (30) days after receipt of this Recommended Decision and Order, the Under Secretary will issue a written order affirming, modifying or vacating the Recommended Decision and Order. See 15 CFR 766.22(c). A copy of the Agency's regulations for Review by the Under Secretary is attached as Appendix B.

Done and dated this 15th day of October, 2008 at New York, New York.

HON. Walter J. Brudzinski,

Administrative Law Judge.

APPENDIX A

List Of Exhibits

A. Agency's Exhibits

Exhibit A Letter to Michele Geslin dated April 24, 2003, with copy of certified mail receipt signed by Michele Geslin. (3 pages)

Exhibit B Letter to race participants from BIS Special Agent dated April 22, 2003. (1 page)

Exhibit C Letter to All Third Annual Conch Republic Cup Race Participants dated May 23, 2003; letter to race participants, dated May 23, 2003. (2 pages)

Exhibit D Letter to Peter Goldsmith dated April 10, 2003, with copy of certified mail receipt initialed by Peter Goldsmith. (3 pages)

Exhibit E Charging Letter addressed to Michele Geslin dated December 18, 2007. (3 pages)

Exhibit F Charging Letter addressed to Peter Goldsmith dated December 18, 2007. (3 pages)

Exhibit G Michele Geslin's Answer to Charging Letter dated February 10, 2008. (1 page)

Exhibit H Peter Goldsmith's Answer to Charging Letter dated February 10, 2008. (1 page)

Exhibit I BIS Interrogatories and Requests for Production of Documents, with certificate of service dated May 14, 2008. (14 pages)

Exhibit J BIS Requests for Admission, with certificate of service dated May 14, 2008. (9 pages)

Exhibit K Certified Licensing Determination dated September 4, 2008. (2 pages)

Exhibit L Certified copy of letter indicating results of BIS's search of its electronic licensing database for records of export licenses or applications related to the transactions in question. (2 pages)

B. Respondents' Exhibits

Respondents did not file any exhibits.

APPENDIX B

NOTICE TO THE PARTIES REGARDING REVIEW BY UNDER SECRETARY

TITLE 15—COMMERCE AND FOREIGN TRADE

SUBTITLE B—REGULATIONS RELATING TO COMMERCE AND FOREIGN TRADE

CHAPTER VII—BUREAU OF INDUSTRY AND SECURITY, DEPARTMENT OF COMMERCE

SUBCHAPTER C—EXPORT ADMINISTRATION REGULATIONS

PART 766—ADMINISTRATIVE ENFORCEMENT PROCEEDINGS

15 CFR 766,22

Section 766.22 Review by Under Secretary.

(a) Recommended decision. For proceedings not involving violations relating to part 760 of the EAR, the administrative law judge shall immediately refer the recommended decision and order to the Under Secretary. Because of the time limits provided under the EAA for review by the Under Secretary, service of the recommended decision and order on the parties, all papers filed by the parties in response, and the final decision of the Under Secretary must be by personal delivery, facsimile, express mail or other overnight carrier. If the Under Secretary cannot act on a recommended decision and order for any reason, the Under Secretary will designate another Department of Commerce official to receive and act on the recommendation.

(b) Submissions by parties. Parties shall have 12 days from the date of issuance of the recommended decision and order in which to submit simultaneous responses. Parties thereafter shall have eight days from receipt of any response(s) in which to submit replies. Any response or reply must be received within the time specified by the Under Secretary.

(c) Final decision. Within 30 days after receipt of the recommended decision and order, the Under Secretary shall issue a written order affirming, modifying or vacating the recommended decision and order of the administrative law judge. If he/she vacates the recommended decision and order, the Under Secretary may refer the case back to the administrative law judge for further proceedings. Because of the time limits, the Under Secretary's review will ordinarily be limited to the written record for decision, including the transcript of any hearing, and any submissions by the parties concerning the recommended decision.

(d) Delivery. The final decision and implementing order shall be served on the parties and will be publicly available in accordance with § 766.20 of this part.

(e) Appeals. The charged party may appeal the Under Secretary's written order within 15 days to the United States Court of Appeals for the District of Columbia pursuant to 50 U.S.C. app. § 24l2(c)(3).

[FR Doc. E8–27160 Filed 11–17–08; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice and call for applications for the Environmental and Clean Energy Technologies Trade Mission to Croatia, Italy, and Greece, March 30 to April 5, 2009

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice and call for applications for the Environmental and Clean Energy Technologies Trade Mission to Croatia, Italy, and Greece, March 30 to April 5, 2009.

Mission Description

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (USFCS) is organizing an Environmental and Clean Energy Technologies Trade Mission to Zagreb, Croatia; Milan, Italy; and Athens, Greece, from March 30 to April 4, 2009. All three fast growing markets hold promising potential for U.S. firms offering equipment, services, and technologies in the target sectors. The mission will introduce participating U.S. firms to prospective representatives, distributors, end-users, and partners through one-on-one appointments in all three cities and will include participation in the EcoTec Environmental Tradeshow (EcoTec 2009) in Athens, where the USFCS will provide entry to the trade show, manage a booth, and organize meetings with business and industry contacts for each of the mission participants.

Commercial Setting

Greece

Environmental protection is a priority issue in Greece, where the market for environmental equipment and services is expected to far outstrip local capacity in the future. The Greek Ministry of Environment estimates the country's environmental market to be about US$2.2 billion, or 1.5 percent of GDP. Investment in environmental infrastructure through European Union (EU) and national programs has been the centerpiece of environmental progress in Greece. These investments have been used to construct numerous wastewater and solid waste treatment facilities, as well as new recycling plants, composting facilities, and treatment plants for industrial and hazardous waste materials.

The implementation of EU environmental legislation in national laws has created the institutional basis for successfully facing environmental protection challenges. In January 2007, the Minister of Environment announced a US$6.3 billion investment plan for 2007–2013 for the upgrading, modernization and maintenance of environmental projects in waste management, recycling, and water treatment, to be implemented under the ''Environment and Sustainable Development'' program.

Following EU directives and practices, Greece is committed to introducing the necessary legislative framework for promoting the use of ''clean'' or ''green'' technologies. Renewable energy will play a major role in these initiatives. Furthermore, in an effort to catch up with commitments under the Kyoto Protocol, Greece's Minister of Environment has approved a National Allocation Plan for Emission Trading for 2008–2012, which aims to bring about a 16.6 percent reduction in greenhouse gas emissions.

Areas holding the greatest potential for U.S. firms in the Greek environmental market include waste management, recycling and biomass facilities; hazardous waste treatment and disposal; water treatment; air and sea pollution control; clean coal plants; ''green'' building materials; emissions monitoring and reduction; and photovoltaic plants.

At the EcoTec Environmental Tradeshow, to be held April 3–6, 2009, mission members will have opportunities to meet with business and industry contacts in a range of sectors, including renewable energy, recycling, ecoconstruction, waste management, wastewater treatment, environmental restoration, energy conservation, and alternative fuels. EcoTec 2009 is expected to attract technical experts, local and national management councils, large commercial entities, construction companies, government procurement executives, investors, researchers, and various business representatives from all over Greece and neighboring countries (for details, *see: http://www.EcoTec.gr/Site%20EcoTec%20final/Hekthesh_eng.html*).

Italy

Italy's US$6 billion environmental market—of which machinery and equipment account for approximately US$1 billion—offers significant opportunities to U.S. firms providing innovative technologies. Waste management is a major issue driving Italy's environmental policy. While the practices of waste minimization and separate waste collection, waste re-use, recycling, and recovery are growing, urban and industrial waste disposal in Italy still depends largely on landfills. Investments of several billion dollars are expected over the next few years to adopt innovative recycling technologies and to build near-to-zero emission waste-to-energy plants. Recent implementation of the EU directive on waste and electronic equipment recycling of is expected to expand opportunities for U.S. firms offering technological innovation.

Italy's water collection and distribution systems, as well as its urban wastewater sewage and purification systems, are also inadequate. Measures to encourage more sustainable use of water resources include new legislation for water reuse and investments in innovative technologies to prevent and detect water losses. The total investment to implement an integrated water system comprising aqueducts, sewage systems and treatment services could reach US$55 billion countrywide in the next ten years.

With regard to soil remediation, specific legislation has established the criteria, procedures, and methods for safety and clean-up actions for environmental restoration of contaminated sites. The Italian Government has identified 40 Italian sites of ''National Interest'' in need of urgent clean up. It is estimated that at least 15,000 areas in Italy are currently subject to environmental investigation and/or remediation actions. Innovative technologies in this sector are in high demand.

Italy has implemented restrictive air pollution control legislation in compliance with stringent EU regulations to cut greenhouse gas emissions by 20 percent. The environmental impact of private and public transportation remains a major problem. Italy's major municipalities have implemented a large number of projects, and the Italian Government is offering incentives to substitute older vehicles with new vehicles with lower environmental impact, but there is still much to be done.

As far as energy is concerned, Italy depends on foreign suppliers for about 80 percent of its needs. Interest in renewable energy has become an important issue on the Italian Government's agenda, and there is substantial effort in research and development to expand the use of alternative sources of energy, especially biomass, geothermal, solar (both photovoltaic and solar thermal), and wind energy.

Green building also represents an increasingly promising market, as European and local norms steer builders in that direction. Italy lags behind other European countries, but the trend is positive, and green building represents a very dynamic market niche.

While competition in Italy is fierce, U.S. environmental and energy technologies are highly regarded there. Moreover, Italy's strategic Mediterranean location makes it an ideal gateway to the emerging markets of Eastern Europe, North Africa, and the Middle East. Several Italian firms specializing in turnkey operations have strengthened their position in foreign markets. The right Italian partner could assist U.S. firms not only in penetrating the Italian market, but also in effectively entering other foreign markets.

Croatia

EU accession is the primary force affecting planning and procurement in the Croatian environmental sector. Croatia's Ministry of Environmental Protection, Physical Planning and Construction and the World Bank estimate that Croatia needs to invest more than US$10 billion in the environmental sector prior to accession, including about US$2.2 billion for waste management, US$5 billion for wastewater treatment, and US$56 million for air protection. So far, less than US$35 million has been directly invested in environmental protection in Croatia. Expected increases in these investments, in addition to over US$186 million from EU Pre-Accession Funds delivered over the next three years, make Croatia an attractive market for U.S. suppliers of environmental equipment and services.

Four primary environmental subsectors—waste management,

wastewater treatment, air protection and renewable energy—hold opportunities for U.S. firms. Waste management is currently the largest challenge in Croatia's environmental sector. Key issues are increases in solid waste, very limited recycling, unreliable data on waste flows and quantities, and lack of organized disposal sites. According to plans, by 2025 most of the population will be included in an organized municipal waste collection system; recycling and waste treatment will grow significantly; and municipal and bio-degradable waste will be significantly reduced. To meet these goals, Croatia is organizing four regional and 21 county waste management centers with treatment plants and landfills. Remediation of 176 landfills is also underway, and two upcoming tenders offer possibilities for U.S. firms. The first, the Zagreb Waste Management Center, will include an incinerator, recycling yard, and heat and electricity generating plants at an approximate cost of US$580 million. The incinerator will be constructed next to the central wastewater treatment plant, and the resultant sewage sludge, together with municipal waste, will be used for energy generation. The second, a hazardous waste incinerator, is estimated to cost US$22 million.

Wastewater management is a key concern in Croatia, particularly in coastal municipalities. While water supply coverage, 73 percent, is high compared to other countries in the region, coverage for sewage is only about 40 percent, and less than 12 percent of all collected wastewater is being treated. Objectives for bringing Croatian water management in line with EU regulations include creating a Water Information System; extending public water supply to 90 percent of the population; providing wastewater collection, treatment and disposal systems for 10.5 million people; and implementing flood control and multi-purpose projects. Other opportunities include three large wastewater projects currently underway: The US$250 million Coastal Cities Pollution Control project, sponsored by the World Bank; the US$38 million Karlovac Wastewater Management Project, financed by the European Bank for Reconstruction and Development; and the US$18 million Inland Waters Project, financed by the World Bank.

The Air Protection Act (2005) governs air quality management in line with the EU Framework Directive 96/62/EC on ambient air quality assessment and management. Although Croatia ratified the Kyoto Protocol in May 2007, efforts are still needed to limit the growth of greenhouse gas emissions in order to meet Croatia's Kyoto target for the period of 2008 through 2012. Another priority is reduction of acid and other polluting gaseous emissions from major industrial premises such as refineries, petrochemical plants, cement factories, and large combustion plants.

In 2007, Croatia adopted important regulations to support development of renewable energy projects required to meet the goal of the minimal 5.8 percent renewable energy share in the total electric energy supply by 2010. The overall size of the renewable electric energy projects is about 330 megawatts of new capacity in the next three years, estimated to cost approximately US$700 million. Numerous private sector investors have submitted over a hundred projects for preliminary approval to the Ministry of Economy, 90 percent of which are for wind farms. Other renewable energy best prospects include biomass cogeneration plants, solar thermal collectors, and bio-fuel plants.

While the Croatian environmental and clean energy markets are relatively small on the global scale, EU accession has strengthened emphasis on these sectors, pointing to opportunities for U.S. firms that are able to offer specialized equipment and services in the near term to help alleviate Croatia's existing environmental challenges and thereby position themselves for long-term market access.

Mission Goals

The goals of the Environmental and Clean Energy Technologies Trade Mission to Italy, Croatia, and Greece are threefold: (1) To help U.S. firms explore supplier opportunities under various environmental programs; (2) to help U.S. firms initiate or expand their exports to these markets by providing business-to-business introductions and market access information; and (3) to facilitate an effective U.S. presence at EcoTec in Athens.

Mission Scenario

The mission will stop in Zagreb, proceed to Milan, and conclude in Athens, at EcoTec 2009. The USFCS in Athens will provide entry to the trade show, manage a booth, and organize meetings with business and industry contacts for each of the mission participants. Activities at all stops will include market briefings; pre-scheduled appointments with potential partners, distributors, representatives, and end users; networking receptions; and meetings with USFCS environmental technology specialists. The USFCS in Athens will continue to maintain a presence at EcoTec Sunday, April 5, and will assist any mission members wishing to remain to take advantage of visitor traffic at the show, expected to be highest that day. This assistance is offered to the delegation at no additional cost.

Proposed Timetable

Monday, March 30—Zagreb: Briefing, one-on-one appointments, evening reception.
Tuesday, March 31—Morning, conclude appointments/Depart for Milan.
Wednesday, April 1—Milan: Briefing, appointments, evening reception.
Thursday, April 2—Appointments, site visits/Depart for Athens.
Friday, April 3—Athens: Briefing, appointments, trade show opening, late afternoon reception.
Saturday, April 4—Appointments, show activities/Mission concludes.
Sunday, April 5—Bonus day.

Participation Requirements

All parties interested in participating in the Environmental and Clean Energy Technologies Trade Mission to Italy, Croatia and Greece must complete and submit an application for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. The mission will open on a first come first served basis to minimum of seven and maximum of 10 qualified U.S. companies.

Fees and Expenses

After a company has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The fee for participation in the entire mission will be US$5,400 for large firms and US$3,975 for a small or medium-sized enterprise (SME), which includes one principal representative.* The fee for each additional firm representative (large firm or SME) is $450. Expenses for lodging, some meals, incidentals, and travel (except for in-country arrangements previously noted) will be the responsibility of each mission participant. While priority will be given to firms applying to take part in all three cities on the mission itinerary, firms

* An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (*see http://www.sba.gov/services/contracting_opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing schedule reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (for additional information see *http://www.export.gov/newsletter/march2008/initiatives.html*).

may opt to visit only one or two markets on the itinerary for the following fees:

Option	SME	Large company
One stop	US$2,000	US$3,000
Two stops	US$3,000	US$4,000

Conditions for Participation

An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation.

• Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content.

Selection Criteria for Participation

Selection will be based on the following criteria:

• Suitability of the company's products or services to the three target markets and sectors

• Applicant's potential for business in the target markets, including likelihood of exports resulting from the mission

• Consistency of the applicant's goals and objectives with the stated scope of the mission

• Applicant's stated intent to participate in all three markets on the mission itinerary

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Recruitment for this trade mission will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet Web sites, press releases to general and trade media, e-mail blasts, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than February 12, 2009. Applications received after that date will be considered only if space and scheduling constraints permit.

Contacts in the United States

Bill Cline, Director, U.S. Commercial Service, Reno, Team Leader, Global Environmental Team, U.S. Department of Commerce, *Tel:* 775.784.5203/*Fax:* 775.784.5343, *e-mail: envirotechmission@mail.doc.gov*.

Jessica Arnold, Global Environmental Team Project Officer, U.S. Department of Commerce, Washington, DC 20004, *Tel:* (202) 482–2026/*Fax*: (202) 482–9000, *e-mail: envirotechmission@mail.doc.gov.*

Contacts in Europe

Milan, Italy: Nicoletta Postiglione, American Consulate General, *Tel:* 011–39–02–626–8851, *Fax:* 011–39–02–659–6561, *e-mail: envirotechmission@mail.doc.gov*.

Zagreb, Croatia: Pamela Ward, American Embassy/Zagreb, *Tel:* 011–385–1–661–2224, *Fax:* 011–385–1–661–2446, *e-mail: envirotechmission@mail.doc.gov*.

Athens, Greece: William Kutson, U.S. Embassy/Athens, *Tel:* 30/210/720–2303/720–2302, *Fax:* 30/210/721–8660, *e-mail: envirotechmission@mail.doc.gov*.

Jessica Arnold,

International Trade Specialist, U.S. Commercial Service, U.S. Department of Commerce.

[FR Doc. E8–27348 Filed 11–17–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Application Form for Membership on a National Marine Sanctuary Advisory Council

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before January 20, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Karen M. Brubeck, 206–842–6084 or *karen.brubeck@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 315 of the National Marine Sanctuaries Act (16 U.S.C. 1445a) allows the Secretary of Commerce to establish one or more advisory councils to provide advice to the Secretary regarding the designation and management of national marine sanctuaries. The councils are individually chartered for each sanctuary to meet the needs of the sanctuary. Once a council has been chartered, the sanctuary manager starts a process to recruit members for that Council by providing notice to the public and requesting interested parties to apply for the available seats.

II. Method of Collection

An application form and guidelines for a narrative submission must be submitted to the sanctuary manager. Submissions may be made electronically.

III. Data

OMB Control Number: 0648–0397.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; business or other for-profit organizations; not-for-profit *institutions.*

Estimated Number of Respondents: 500.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 500 hours.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 7, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–27297 Filed 11–17–08; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Intent

AGENCY: National Estuarine Research Reserve System, Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce.

ACTION: Notice of intent to prepare a draft environmental impact statement on the proposed St. Louis River National Estuarine Research Reserve (reserve) in Superior, Wisconsin. Notice of a public scoping meeting in Superior, Wisconsin, to solicit comments on significant issues related to the preparation of a Draft Environmental Impact Statement/Draft Management Plan (DEIS/DMP) for the proposed reserve. The DEIS/DMP will address the research, education, and stewardship needs of the proposed reserve.

DATES: Monday, December 1, 2008 at 7 p.m.

ADDRESSES: University of Wisconsin—Superior Multicultural Center, Old Main—Rm 232, Superior, WI 54880.

SUMMARY: In accordance with section 315 of the Coastal Zone Management Act of 1972, as amended, the State of Wisconsin and the National Oceanic and Atmospheric Administration intend to conduct a public scoping meeting on December 1, 2008, in Superior, Wisconsin, as part of NOAA's Draft Environmental Impact Statement/Draft Management Plan (DEIS/DMP) process to solicit comments for the preparation of a DEIS/DMP.

SUPPLEMENTARY INFORMATION: The decision to be made by NOAA is whether or not to designate the proposed St. Louis River National Estuarine Research Reserve. University of Wisconsin-Extension (UW–EX), Wisconsin Department of Administration (WI DOA), and NOAA are working to determine what the boundaries of the reserve will be, how the reserve will be managed, and the policies of the proposed reserve. These decisions will be made through an analysis process and spelled out in the reserve management plan.

The St. Louis River freshwater estuary constitutes a relatively intact and wetland rich area, and is an excellent representative area in the Great Lakes biogeographic region with a diversity of coastal habitat types. The unique physical and hydrological features of the proposed site is expected to attract a broad range of research interests from multiple scientific disciplines. Beginning in 2004, the WI DOA and UW–EX organized a number of partners and stakeholders to explore the feasibility of a reserve on the Lake Superior coast. In 2006, the State of Wisconsin undertook a site selection process to determine appropriate areas of Wisconsin's Lake Superior coast that might be nominated for inclusion in the Reserve System. This process and a parallel public participation process generated advice from public and private experts in estuarine science and input from the public.

On June 1, 2008, the Governor of the State of Wisconsin nominated the St. Louis River Freshwater Estuary for consideration as a Lake Superior Reserve. In October of 2008, NOAA approved the site nomination document for the proposed Lake Superior reserve and began working with UW–EX and WI DOA to develop a management plan and environmental impact statement for the proposed reserve.

The St. Louis River reserve is proposed to be administered by the UW–EX in cooperation with partner landholders including the Wisconsin Department of Natural Resources and the City of Superior. WI DOA and UW–EX are jointly developing an outline of a preliminary draft management plan. The outline is intended to identify specific needs and priorities related to research, education and stewardship. At the public meeting, WI DOA, UW–EX, and NOAA will provide a synopsis of the process for developing a DEIS/DMP and will solicit comments on significant environmental issues that will be incorporated into a DEIS.

Interested parties who wish to submit suggestions or comments regarding the scope or content of the proposed DEIS/DMP are invited to attend the above meeting.

FOR FURTHER INFORMATION CONTACT: Travis Olsen, Wisconsin Department of Administration at (608) 266–3687 or *travis.olson@wisconsin.gov* or Laurie McGilvray, Chief, Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–3155 ext 158 or *Laurie.McGilvray@noaa.gov.*

Federal Domestic Assistance Catalog Number 11.420, (Coastal Zone Management) Research Reserves.

Dated: November 11, 2008.

David M. Kennedy,

Office of Ocean and Coastal Resource Management.

[FR Doc. E8–27273 Filed 11–17–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management, National Ocean Service, Commerce.

ACTION: Notice of intent to evaluate and notice of availability of final findings.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Hudson River (New York) National Estuarine Research Reserve and the California Coastal Commission Coastal Management Program.

The Coastal Zone Management Program evaluation will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA) and regulations at 15 CFR part 923, Subpart L. The National Estuarine Research Reserve evaluation will be conducted pursuant to sections 312 and 315 of the CZMA and regulations at 15 CFR Part 921, Subpart E and Part 923, Subpart L. The CZMA requires continuing review of the performance of states with respect to coastal program implementation. Evaluation of Coastal Management Programs and National Estuarine Research Reserves requires findings concerning the extent to which a state has met the national objectives, adhered to its Coastal Management Program document or Reserve final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

Each evaluation will include a site visit, consideration of public comments, and consultations with interested Federal, state, and local agencies and members of the public. A public meeting will be held as part of the site visit. Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of the public meetings during the site visits.

DATES AND TIMES: The Hudson River (New York) National Estuarine Research Reserve evaluation site visit will be held December 1–4, 2008. One public meeting will be held during the week. The public meeting will be held on Tuesday, December 2, 2008, at 7 p.m. at the Hudson River National Estuarine Research Reserve, Norrie Point Environmental Center, 256 Norrie Point Way, Staatsburg, New York.

The California Coastal Commission evaluation site visit will be held December 8–12, 2008. Two public meetings will be held during the week. The first public meeting will be held on Monday, December 8, 2008, at 7 p.m. at the Ventura County Board of Supervisors Chambers, 800 South Victoria Avenue, Ventura, California. The second public meeting will be held on Friday, December 12, 2008, at 9 a.m. at San Francisco City Hall, Legislative Chamber Room 250, 1 Dr. Carlton B. Goodlett Place, San Francisco, California.

ADDRESSES: Copies of states' most recent performance reports, as well as OCRM's evaluation notification and supplemental information request letters to the states, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the last public meeting held for a Program. Please direct written comments to Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the availability of the final evaluation findings for the Florida, Alaska, and Alabama Coastal Management Programs (CMP) and the San Francisco Bay (CA) National Estuarine Research Reserve (NERR). Sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended, require a continuing review of the performance of coastal states with respect to approval of CMPs and the operation and management of NERRs.

The states of Florida, Alaska, and Alabama were found to be implementing and enforcing their federally approved coastal management programs, addressing the national coastal management objectives identified in CZMA Section 303(2)(A)–(K), and adhering to the programmatic terms of their financial assistance awards. The San Francisco Bay NERR was found to be adhering to programmatic requirements of the NERR System.

Copies of these final evaluation findings may be obtained upon written request from: Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, or *Kate.Barba@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, (301) 563–1182.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration.

Dated: November 4, 2008.

Christopher C. Cartwright,

CFO/CAO, NOAA's National Ocean Service.

[FR Doc. E8–27256 Filed 11–17–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XL79

Marine Mammals; File No. 87–1851

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

ACTION: Notice; receipt of application for amendment.

SUMMARY: Notice is hereby given that Dr. Daniel P. Costa, Department of Biology and Institute of Marine Sciences, University of California Santa Cruz, Santa Cruz, CA, has applied for an amendment to Scientific Research Permit No. 87–1851–00.

DATES: Written, telefaxed, or e-mail comments must be received on or before December 18, 2008.

ADDRESSES: The application and related documents are available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 87–1851.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 87–1851–00, issued on January 29, 2007 (72 FR 5680), authorizes tagging studies and physiological research on seals in Antarctica, including crabeater seals (*Lobodon carcinophagus*), southern elephant seals (*Mirounga leonina*), leopard seals (*Hydrurga leptonyx*), Weddell seals (*Leptonychotes weddellii*), and Ross seals (*Ommatophoca rossii*). The permit also authorizes research on California sea lions (*Zalophus californianus*) to investigate foraging, diving, energetics, food habits, and at-sea distribution along the California coast. Incidental harassment of California sea lions, harbor seals (*Phoca vitulina*), northern elephant seals (*Mirounga augustirostris*), and northern fur seals (*Callorhinus ursinus*) is authorized. The permit expires on January 31, 2012.

The permit holder is requesting the permit be amended to expand the geographic area where research is conducted in Antarctica to include the Weddell Sea. No other changes are requested. The permit holder requests the changes proposed in the amendment be for the duration of the permit.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: November 13, 2008.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–27336 Filed 11–17–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XL73

Caribbean Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

DATES: The meetings will be held on December 9–10, 2008. The Council will convene on Tuesday, December 9, 2008, from 9 a.m. to 5 p.m., and the Administrative Committee will meet from 5:15 p.m. to 6 p.m., on that same day. The Council will reconvene on Wednesday, December 10, 2008, from 9 a.m. to 5 p.m., approximately.

ADDRESSES: The meetings will be held at the Marriott Frenchman's Reef & Morning Star Hotel, 5 Estate Bakkeroe, St. Thomas, U.S.V.I.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920; telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 129th regular Council meeting to discuss the items contained in the following agenda:

December 9, 2008, 9 a.m. to 5 p.m.

Call to Order
Adoption of Agenda
Consideration of the 128th Council Meeting Verbatim Transcription
Executive Director's Report
Bajo de Sico Scoping Meeting Results
Queen Conch Manual - Final Report
Nassau Grouper Initiative Report
-Nassau Grouper Workshop Report
-WECAFC
-Aquaculture Project in Colombia
Scientific and Statistical Committee (SSC) National Workshop
ACLs National Guidelines Update

December 9, 2008, 5:15 p.m. to 6 p.m.

Administrative Committee Meeting
-Advisory Panel (AP)/SSC/Habitat AP Membership
-Budget 2008/09
-SOPPs Amendment(s)
-Other Business

December 10, 2008, 9 a.m. to 5 p.m.

PARFISH Update
Lion Fish Update
Enforcement Reports
-Puerto Rico - DNER
-U.S. Virgin Islands - DPNR
-NOAA/NMFS
-U.S. Coast Guard
Administrative Committee Recommendations
Meetings Attended by Council Members and Staff
PUBLIC COMMENT PERIOD (5-minute presentations)
Other Business
Next Council Meeting

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be subjects for formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/or other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920; telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: November 13, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–27333 Filed 11–17–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XL71

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings, December 10–16, 2008, in Anchorage, AK.

DATES: The Council will begin its plenary session at 8 a.m. on Wednesday, December 10 continuing through Tuesday, December 16, 2008. The Council's Advisory Panel (AP) will begin at 8 a.m., Monday, December 8 and continue through Friday December 12. The Scientific and Statistical Committee (SSC) will begin at 8 a.m. on Monday, December 8 and continue through Wednesday, December 10, 2008. The Ecosystem Committee will meet Tuesday, December 9, from 9 a.m. to 12 p.m. The Enforcement Committee will meet Tuesday, December 9, from 1 p.m. to 5 p.m. in the. All meetings are open to the public, except executive sessions.

ADDRESSES: The meetings will be held at the Hilton Hotel, 500 West 3rd Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell, Council staff, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: Council Plenary Session: The agenda for the Council's plenary session will include

the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports

Executive Director's Report

NMFS Management Report (including Draft plan for Essential Fish Habitat (EFH) 5-year review)

Alaska Department of Fish & Game Report (includes report on Board of Fisheries proposals)

U.S. Coast Guard Report

U.S. Fish & Wildlife Service Report

Protected Species Report

2. Report on the Marine Protected area nomination process.

3. Gulf of Alaska (GOA) Groundfish Management: Initial review of GOA fixed gear License Limitation Program (LLP) recency; Initial review of GOA pacific cod sector split.

4. Groundfish Catch Specifications: Receive Plan Team reports; Approve final BSAI groundfish specifications and Stock Assessment Fishery Evaluation (SAFE) reports; Approve final GOA groundfish specifications and SAFE reports; review and discussion papers on Pacific cod area split (BS and AI).

5. BSAI Crab Issues: Receive BSAI Crab Program 3-year review report; receive Crab Committee report/crew proposals; review of BSAI 90/10 Amendment alternatives and analysis outline; receive report on Crab Economic Data report metadata.

6. Observer Program: Review discussion paper on program restructuring; review NMFS letter on Level 2 observer issues.

7. Aleutian Islands Sideboards: discussion paper on sideboards for AI cod processing; discussion paper on sideboards for AI Pacific ocean perch/Atka mackerel processing.

8. Miscellaneous Groundfish Management: Committee report on comprehensive data collection (T); discussion paper on GOA Rockfish program; discussion paper on BSAI Chum Salmon Bycatch alternatives (Council only); Discussion paper on GOA salmon and crab bycatch.

9. Arctic Fishery Management Plan (FMP): Progress report to SSC on Arctic FMP; Council action if necessary.

10. Staff Tasking: Review Committees and tasking; receive report on Alaska Native/Community Outreach.

11. Other Business

The SSC agenda will include the following issues:

1. Groundfish specifications

2. Committee reports on data collection

3. Arctic FMP

The Advisory Panel will address most of the same agenda issues as the Council, except for #1 reports. The Agenda is subject to change, and the latest version will be posted at *http://www.fakr.noaa.gov/npfmc/*.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: November 13, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–27331 Filed 11–17–08; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR Agreement)

November 12, 2008.

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement.

EFFECTIVE DATE: November 18, 2008.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain 100% polyester mini stripe fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA-DR countries. The product will be added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3651.

FOR FURTHER INFORMATION ONLINE: *http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf.*Reference number: 92.2008.10.09.Fabric.SharrettsPaley forFishman&Tobin.

SUPPLEMENTARYINFORMATION:

Authority: Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA-DR Act); the Statement of Administrative Action (SAA), accompanying the CAFTA-DR Act; Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

BACKGROUND:

The CAFTA-DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA-DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA-DR Agreement provides that this list may be modified pursuant to Article 3.25(4)-(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. See Annex 3.25, Note; see also section 203(o)(4)(C) of the CAFTA-DR Act.

The CAFTA-DR Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA-DR Act for modifying the Annex 3.25 list. On September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list (73 FR 53200) (''procedures'').

On October 9, 2008, the Chairman of CITA received a request for a commercial availability determination (''Request'') under the CAFTA-DR from Sharretts, Paley, Carter & Blauvelt, P.C., on behalf of Fishman & Tobin, for certain 100% polyester mini stripe fabrics. On October 10, 2008, in accordance with CITA's procedures, CITA notified interested parties of the Request and posted the Request on the dedicated website for CAFTA-DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply (''Response'') must be submitted by October 24, 2008, and any Rebuttal be submitted by October 30, 2008. No interested entity submitted a Response advising CITA of its objection to the Request and its ability to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA-DR Act, and CITA's procedures, as no interested entity submitted a Response objecting to the Request and demonstrating its ability to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA-DR Agreement.

The subject product has been added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted

quantities. A revised list has been posted on the dedicated website for CAFTA-DR Commercial Availability proceedings.

Specifications: Certain Polyester Mini Stripe Fabric

HTS: 5512.19.00; 5515.12.00

Fiber Content: 100% Polyester

Warp Yarn:
English: 30/2 or 30/1 to 50/2 or 50/1 spun polyester staple fibers combined with polyester filament of 100-300 denier.
Metric: 51/2 or 51/1 to 85/2 or 85/1 spun polyester staple fibers combined with polyester filament of 90 to 30 decitex.

Fill Yarn:
English: English: 30/1 to 50/1 spun polyester staple fibers.
Metric: 51/1 to 85/1 spun polyester staple fibers.

Construction:
English: 180-210 warp ends x 90-100 filling picks per inch.
Metric: 71-83 warp ends x 35-40 filling picks per centimeter.

Weave: Various.

Weight:
English: 6.2 to 8.6 oz/sq. yd.
Metric: 210 to 290 g/sq. m.

Width:
English: 56 to 64 inches.
Metric: 142 to 163 centimeters.

Finish: Containing at least 2 different color yarns, each of which is dyed a different color, with either cationic or disperse dyes or any combinations of both.

Janet E. Heinzen,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E8–27338 Filed 11–17–08; 8:45 am]

BILLING CODE 3510–DS

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR Agreement)

November 12, 2008.

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement.

EFFECTIVE DATE: November 18, 2008.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain 100% polyester sharkskin fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA-DR countries. The product will be added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3651.

FOR FURTHER INFORMATION ONLINE: *http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf.*Reference number: 91.2008.10.09.Fabric.SharrettsPaley forFishman&Tobin.

SUPPLEMENTARY INFORMATION:

Authority: Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA-DR Act); the Statement of Administrative Action (SAA), accompanying the CAFTA-DR Act; Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

BACKGROUND:

The CAFTA-DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA-DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA-DR Agreement provides that this list may be modified pursuant to Article 3.25(4)-(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. See Annex 3.25, Note; see also section 203(o)(4)(C) of the CAFTA-DR Act.

The CAFTA-DR Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA-DR Act for modifying the Annex 3.25 list. On September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list (73 FR 53200) (''procedures'').

On October 9, 2008, the Chairman of CITA received a request for a commercial availability determination (''Request'') under the CAFTA-DR from Sharretts, Paley, Carter & Blauvelt, P.C., on behalf of Fishman & Tobin, for certain 100% polyester sharkskin fabrics. On October 10, 2008, in accordance with CITA's procedures, CITA notified interested parties of the Request and posted the Request on the dedicated website for CAFTA-DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply (''Response'') must be submitted by October 24, 2008, and any Rebuttal be submitted by October 30, 2008. No interested entity submitted a Response advising CITA of its objection to the Request and its ability to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA-DR Act, and CITA's procedures, as no interested entity submitted a Response objecting to the Request and demonstrating its ability to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA-DR Agreement.

The subject product has been added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated website for CAFTA-DR Commercial Availability proceedings.

Specifications: Certain Polyester Sharkskin Fabric

HTS: 5515.12.00; 5407.93.20

Fiber Content: 100% Polyester

Warp Yarn:
English: 30/2 or 30/1 to 50/2 or 50/1 spun polyester staple fibers combined with polyester filament of 100-300 denier.
Metric: 51/2 or 51/1 to 85/2 or 85/1 spun polyester staple fibers combined with polyester filament of 90 to 30 decitex.

Fill Yarn:
English: 30/2 or 30/1 to 50/2 or 50/1 spun polyester staple fibers combined with polyester filament of 100-300 denier.
Metric: 51/2 or 51/1 to 85/2 or 85/1 spun polyester staple fibers combined with polyester filament of 90 to 30 decitex.

Construction:
English: 180-210 warp ends x 85-95 filling picks per inch.
Metric: 70-82 warp ends x 33-37 filling picks per centimeter.

Weave: Various.

Weight:
English: 6.2 to 7.5 oz/sq. yd.
Metric: 210 to 255 g/sq. m.

Width:
English: 56 to 64 inches.
Metric: 142 to 163 centimeters.

Finish: Containing at least 2 different color yarns, each of which is dyed a different color, with either cationic or disperse dyes or any combinations of both.

Janet E. Heinzen,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E8–27340 Filed 11–17–08; 8:45 am]

BILLING CODE 3510–DS

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR Agreement)

November 12, 2008.

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement.

EFFECTIVE DATE: November 18, 2008.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain 100% polyester pin dot dobby fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA-DR countries. The product will be added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3651.

FOR FURTHER INFORMATION ONLINE: *http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf.*Reference number: 95.2008.10.09.Fabric.SharrettsPaley forFishman&Tobin.

SUPPLEMENTARY INFORMATION:

Authority: Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA-DR Act); the Statement of Administrative Action (SAA), accompanying the CAFTA-DR Act; Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

BACKGROUND:

The CAFTA-DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA-DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA-DR Agreement provides that this list may be modified pursuant to Article 3.25(4)-(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. See Annex 3.25, Note; see also section 203(o)(4)(C) of the CAFTA-DR Act.

The CAFTA-DR Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA-DR Act for modifying the Annex 3.25 list. On September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list (73 FR 53200) (''procedures'').

On October 9, 2008, the Chairman of CITA received a request for a commercial availability determination (''Request'') under the CAFTA-DR from Sharretts, Paley, Carter & Blauvelt, P.C., on behalf of Fishman & Tobin, for certain 100% polyester pin dot dobby fabrics. On October 10, 2008, in accordance with CITA's procedures, CITA notified interested parties of the Request and posted the Request on the dedicated website for CAFTA-DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply (''Response'') must be submitted by October 24, 2008, and any Rebuttal be submitted by October 30, 2008. No interested entity submitted a Response advising CITA of its objection to the Request and its ability to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA-DR Act, and CITA's procedures, as no interested entity submitted a Response objecting to the Request and demonstrating its ability to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA-DR Agreement.

The subject product has been added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated website for CAFTA-DR Commercial Availability proceedings.

Specifications: Certain Polyester Pin Dot Dobby Fabric

HTS: 5515.12.00; 5407.93.20

Fiber Content: 100% Polyester

Warp Yarn:
- English: 30/2 or 30/1 to 50/2 or 50/1 spun polyester staple fibers combined with polyester filament of 100-300 denier.
- Metric: 51/2 or 51/1 to 85/2 or 85/1 spun polyester staple fibers combined with polyester filament of 90 to 30 decitex.

Fill Yarn:
- English: 30/2 or 30/1 to 50/2 or 50/1 spun polyester staple fibers combined with polyester filament of 100-300 denier.
- Metric: 51/2 or 51/1 to 85/2 or 85/1 spun polyester staple fibers combined with polyester filament of 90 to 30 decitex.

Construction:
- English: 180-210 warp ends x 85-95 filling picks per inch.
- Metric: 70-82 warp ends x 33-37 filling picks per centimeter.

Weave: Various.

Weight:
- English: 6.2 to 7.5 oz/sq. yd.
- Metric: 210 to 255 g/sq. m.

Width:
- English: 56 to 64 inches.
- Metric: 142 to 163 centimeters.

Finish: Containing at least 2 different color yarns, each of which is dyed a different color, with either cationic or disperse dyes or any combinations of both.

Janet E. Heinzen,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E8–27341 Filed 11–18–08; 8:45 am]

BILLING CODE 3510–DS

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR Agreement)

November 12, 2008.

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement.

EFFECTIVE DATE: November 18, 2008.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain 100% polyester stripe fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA-DR countries. The product will be added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3651.

FOR FURTHER INFORMATION ONLINE: *http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf.*Reference number: 94.2008.10.09.Fabric.SharrettsPaley forFishman&Tobin.

SUPPLEMENTARY INFORMATION:

Authority: Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA-DR Act); the Statement of Administrative Action (SAA), accompanying the CAFTA-DR Act; Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

BACKGROUND:

The CAFTA-DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA-DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA-DR Agreement provides that this list may be modified pursuant to Article 3.25(4)-(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. See Annex 3.25, Note; see also section 203(o)(4)(C) of the CAFTA-DR Act.

The CAFTA-DR Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA-DR Act for modifying the Annex 3.25 list. On September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list (73 FR 53200) (''procedures'').

On October 9, 2008, the Chairman of CITA received a request for a commercial availability determination (''Request'') under the CAFTA-DR from Sharretts, Paley, Carter & Blauvelt, P.C., on behalf of Fishman & Tobin, for certain 100% polyester stripe fabrics. On October 10, 2008, in accordance with CITA's procedures, CITA notified interested parties of the Request and posted the Request on the dedicated website for CAFTA-DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply (''Response'') must be submitted by October 24, 2008, and any Rebuttal be submitted by October 30, 2008. No interested entity submitted a Response advising CITA of its objection to the Request and its ability to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA-DR Act, and CITA's procedures, as no interested entity submitted a Response objecting to the Request and demonstrating its ability to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA-DR Agreement.

The subject product has been added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated website for CAFTA-DR Commercial Availability proceedings.

Specifications: Certain Polyester Stripe Fabric

HTS: 5512.19.00; 5515.12.00

Fiber Content: 100% Polyester

Warp Yarn:
- English: 30/2 or 30/1 to 50/2 or 50/1 spun polyester staple fibers combined with polyester filament of 100-300 denier.
- Metric: 51/2 or 51/1 to 85/2 or 85/1 spun polyester staple fibers combined with polyester filament of 90 to 30 decitex.

Fill Yarn:
- English: 30/1 to 50/1 spun polyester staple fibers.
- Metric: 51/1 to 85/1 spun polyester staple fibers.

Construction:
- English: 90-105 warp ends x 95-115 filling picks per inch.
- Metric: 35-41 warp ends x 37-45 filling picks per centimeter.

Weave: Various.

Weight:
- English: 6.2 to 7.5 oz/sq. yd.
- Metric: 210 to 255 g/sq. m.

Width:
- English: 56 to 64 inches.
- Metric: 142 to 163 centimeters.

Finish: Containing at least 2 different color yarns, each of which is dyed a different color, with either cationic or disperse dyes or any combinations of both.

Janet E. Heinzen,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E8–27342 Filed 11–17–08; 8:45 am]

BILLING CODE 3510–DS

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0052, Establishing Procedures for Designated Contract Markets and Applicants Seeking Designation, Comment Request

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and the expected costs and burden; it includes the actual data collection instruments [if any].

DATES: Comments must be submitted on or before December 18, 2008.

FOR FURTHER INFORMATION OR A COPY, CONTACT: Riva Spear Adriance, Division Of Market Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5494; *Fax:* (202) 418–5527; *e-mail: radriance@cftc.gov* and refer to OMB Control No. 3038–0052.

SUPPLEMENTARY INFORMATION:

Title: Part 38—Designated Contract Markets, OMB Control No. 3038–0052. This is a request for extension of a currently approved information collection.

Abstract: Designated contract markets are fully regulated commodity futures and options exchanges. Such markets, prior to registration and on an ongoing basis, must demonstrate compliance with the criteria for designation (set forth in Section 5(b) of the Commodity Exchange Act, 7 U.S.C. 7(b)), the core principles for operation (set forth in Section 5(d) of the Act, 7 U.S.C. 7(d)), and the provisions of Part 38 of the Commission's regulations, 17 CFR Part 38. Part 38 of the Commission's regulations governs the activities of designated contract markets. The information collected thereunder is necessary for the Commission to evaluate whether entities operating as, or applying to become, designated contract markets are in compliance with the designation criteria and the core principles delineated in the Act and the Commission's regulations adopted thereunder. Appendix A to Part 38 provides guidance to applicants on how the specific conditions for initial designation may be met by an applicant. Appendix B to Part 38 provides guidance to applicants on how designated contract markets can remain in compliance with the core principles.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the Commission's regulations were initially published on December 30, 1981. *See* 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on September 12, 2008 (73 FR 52959). No comments were received in response to this publication.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

Report	Estimated number of respondents	Reports annually by each	Total annual responses	Estimated average number of hours per response	Annual reporting burden
Designation and Compliance	13	NA	NA	300	3900

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0052 in any correspondence.

Riva Spear Adriance, Division Of Market Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5494; *Fax:* (202) 418–5527; *e-mail: radriance@cftc.gov*, and Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* Desk Officer for CFTC, 725 17th Street, NW., Washington, DC 20503.

Dated: November 13, 2008.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E8–27345 Filed 11–17–08; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0051, Part 39 Derivatives Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of intent to renew.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments [if any].

DATES: Comments must be submitted on or before December 18, 2008.

FOR FURTHER INFORMATION CONTACT OR A COPY CONTACT: Lois Gregory, Commodity Futures Trading Commission, Division of Clearing and Intermediary Oversight, (202) 418–5569; *Fax:* (202) 418–5536; *e-mail: lgregory@cftc.gov,* and refer to OMB Control No. 3038–0051.

SUPPLEMENTARY INFORMATION:

Title: Part 39 Derivatives Clearing Organizations (OMB Control No. 3038–0051). This is a request for extension of a currently approved information collection.

Abstract: The information collected pursuant to this rule is used to evaluate compliance with criteria pursuant to which entities apply for and obtain registration as a derivatives clearing organization.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30,1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on September 9, 2008 (73 FR 52330).

Burden Statement: The respondent burden for this collection is estimated to average 200 hours per response. These estimates include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 10.

Estimated Number of Responses: 10.

Estimated Total Annual Burden on Respondents: 2,000.

Frequency of Collection: On Occasion.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0051 in any correspondence.

Lois J. Gregory, Special Counsel, Division of Clearing and Intermediary Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581; and Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* Desk Officer for CFTC, 725 17th Street, NW., Washington, DC 20503.

Dated: November 13, 2008.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E8–27346 Filed 11–17–08; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of intent to renew.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments [if any].

DATES: Comments must be submitted on or before December 18, 2008.

For Further Information or a Copy Contact: Gary Martinaitis, Division of Market Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5209; *Fax:* (202) 418–5527; e-mail: *gmartinaitis@cftc.gov* and refer to OMB Control No. 3038–0015.

SUPPLEMENTARY INFORMATION:

Title: Copies of Crop and Market Information Reports (OMB Control No. 3038–0015). This is a request for extension of a currently approved information collection.

Abstract: Copies of Crop and Market Information Reports, OMB Control No. 3038–0015—Extension.

The information collected pursuant to this rule, 17 CFR Part 140, is in the public interest and is necessary for market surveillance. These rules are promulgated pursuant to the Commission's rulemaking authority contained in Sections 4a(a), 4i, and 8a(5) of the Commodity Exchange Act, 7 U.S.C. 6a(1), 6i, and 12a(5).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. *See* 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on September 9, 2008 (73 FR 52330).

Burden Statement: The respondent burden for this collection is estimated to average .16 hours per response.

Respondents/Affected Entities: 15.

Estimated Number of Responses: 15.

Estimated Total Annual Burden on Respondents: 2.5 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0015 in any correspondence.

Gary Martinaitis, Division of Market Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581; and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, NW., Washington, DC 20503.

Dated: November 13, 2008.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E8–27347 Filed 11–17–08; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of intent to renew.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments (if any).

DATES: Comments must be submitted on or before December 18, 2008.

FOR FURTHER INFORMATION CONTACT: William Penner, Division of Clearing and Intermediary Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5407; Fax: (202) 418–5536; *e-mail: wpenner@cftc.gov* and refer to OMB Control No. 3038–0021.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing Bankruptcies of Commodity Brokers (OMB Control No. 3038–0021). This is a request for extension of a currently approved information collection.

Abstract: Regulations Governing Bankruptcies of Commodity Brokers, OMB Control No. 3038–0021—Extension.

The information collected pursuant to part 190 of the Commission's regulations under the Commodity Exchange Act (Act) is intended to protect, to the extent possible, the property of the public in the case of the bankruptcy of a commodity broker. These rules are promulgated pursuant to the Commission's rulemaking authority contained in sections 4a(a), 4i, and 8a(5) of the Act, 7 U.S.C. 6a(1), 6i, and 12a(5).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. *See* 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on September 9, 2008 (73 FR 52331).

Burden Statement: The respondent burden for this collection is estimated to average .20 hours per response.

Respondents Affected Entities: 301.

Estimated Number of Responses: 4,951.

Estimated Total Annual Burden on Respondents: .20 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0021 in any correspondence.

William Penner, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581; and Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* Desk Officer for CFTC, 725 17th Street, NW., Washington, DC 20503.

Dated: November 13, 2008.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E8–27349 Filed 11–17–08; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

DoDEA FY 2009 Grant Competition Announcement

AGENCY: Department of Defense Education Activity, Department of Defense.

ACTION: Notice of grant competition announcement.

SUMMARY: The Department of Defense Education Activity (DoDEA) is announcing the Promoting Student Achievement at Schools Impacted by Military Force Structure Changes grant competition and requesting letters of intent and concept papers. Approximately $30 million is expected to be awarded, depending on availability of funding. The period of performance is expected to be 39 months (01 Jul 2009–30 Sept 2012). Awards will be based on military student enrollment and will range in size from $300,000 to $2,000,000, depending on the number of military students at the target schools. The Department's aim is to enhance the education of military students, but funds may be used to raise student achievement for all students at the target school(s).

Projects will enhance student learning opportunities, student achievement, and educator professional development at military-connected schools that are experiencing significant military growth between 2007 and 2009 due to force structure changes based on the Report to Congress (March 2008). The Department has a priority of awarding grants to schools with low student achievement. This solicitation is open only to school districts serving 22 military

installations, as shown in the list of eligible school districts below.

Concept papers are expected to be reviewed in March, 2009; full proposals, in June, 2009. Awards are expected to be made on or about July 1, 2009. The Department will take into account geographic distribution and Military Service representation when making grant awards.

Authorization

- Section 574 (c) of Public Law 109–364, as amended by Section 553 of Public Law 110–417; Title 10 U.S.C. Section 2192(b) and Title 10 U.S.C. Section 2193a.

CFDA Number (Pending)

- CFDA 12.030: Support for K–12 Student Achievement at Military-Connected Schools.

K–12 Education

The Department of Defense (DoD) considers the education of the dependents of members of the Armed Forces to be a critical quality of life issue. K–12 education concerns are often cited as a key reason for requesting changes in assignment and for deciding not to reenlist.

Eligibility

The determination of eligible military installations was based on the Report to Congress (March 2008). Impact Aid data and DoD expertise were used to determine the school districts associated with those installations. If a school district can substantiate that it meets the eligibility requirements but is not named on the appended list, it may submit its concept paper to the DoDEA Point-of-Contact (below). DoDEA will make the final eligibility determination.

DoDEA Point-of-Contact

- Mr. Brian Pritchard, Contracts and Grants Liaison, Department of Defense Education Activity (DoDEA) *E-mail: brian.pritchard@hq.dodea.edu.*

Proposals

Eligible school districts may submit one proposal. Each district's proposal will target one or more schools that meet the following military student enrollment requirements. First, each target school's SY08–09 enrollment must include at least 15 percent military students. Second, the number of military students served by the project must total at least 200. Although the Department's aim is to enhance the education of military students, project funds may be used to raise student achievement for all students in the target school(s).

Definition of Military Student

Military student is defined as an elementary or secondary school student who is a dependent of a member of the Armed Forces or a civilian employee of the DoD who is employed on Federal property.

Proposal Topics

DoDEA seeks proposals that enhance student learning opportunities, student achievement, and educator professional development. Proposals serving schools with low student achievement will receive preference. Student achievement in the area(s) being addressed in the projects should include measurements of performance on state norm-and/or criterion-referenced assessments.

Projects must use nationally recognized (or equivalent), research-based practices to enhance student achievement in the following areas: Reading, English language arts, science, mathematics, technology, engineering, foreign language, and social studies. Proposals must have a strong evaluation plan with data disaggregated at the school level for the military student population.

Anticipated Awards

It is anticipated grants will be funded at the rate of $1,200 per military student (for the entire grant period) with a minimum award of $300,000 and a maximum award of $2,000,000. A maximum of 25 percent of grant funds may be used for equipment and the employment of full-time equivalent (FTE) staff. No grants funds may be allocated for administrative or indirect costs. Awards are expected to take the form of grants to each selected organization. It is anticipated that awards will be announced on or about June 15, 2009, and that the funding period will begin on or about July 1, 2009.

Proposal Evaluation and Selection

Concept papers, limited to six pages in length, will consist of an overview of the district, needs assessment, project concept, evaluation concept, and sustainability and budget. Full proposals will consist of two abstracts (50 and 200 words), 15-page narrative (needs assessment, project concept, evaluation concept, and sustainability and budget), bibliography, up to three resumes, and up to two letters of support.

Each proposal will be evaluated by a team of professionals. Approximately one month after the submission of the concept papers, DoDEA will inform districts whether or not they have been invited to submit a full proposal.

Expected Dates and Procedures

Application Available: 02 Jan 09
Deadline for Submission of Letter of Intent (optional): 26 Jan 09, 5 p.m. (EST)
Deadline for Submission of Concept Papers: 20 Feb 09, 5 p.m. (EST)
Deadline for Submission of Full Proposals: 01 May 09, 5 p.m. (EST)

Concept papers will be emailed to DoDEA. Full proposals must be submitted online through *www.Grants.gov.* Detailed submission procedures will be presented in the solicitation.

Proposal Compliance

Failure to adhere to deadlines to be specified in the forthcoming application may result in proposal rejection. Any proposal received after the exact time and date specified for receipt will not be considered. DoDEA, in its sole discretion, may accept a late proposal if it determines that no competitive advantage has been conferred and that the integrity of the competitive grants process will not be compromised.

SUPPLEMENTARY INFORMATION:

Local Educational Agencies (LEA)* Associated With Military Installations Experiencing Significant Military Student Growth, 2007–09, per the Report to Congress (March 2008)

Randolph Air Force Base, Texas (14)

Alamo Heights ISD, Comal ISD, East Central ISD, Edgewood ISD, Harlandale ISD, Judson ISD, Northeast ISD, Northside ISD, Randolph Field ISD, San Antonio ISD, Schertz-Cibolo-University City ISD, Sommerset ISD, Southeast ISD, Southwest ISD.

Fort Lewis, Washington (20)

Auburn SD, Bethel SD, Clover Park SD, Dieringer SD, Eatonville SD, Federal Way PS, Fife PS, Franklin Pierce Schools, Griffin SD, North Thurston SD, Orting SD, Olympia SD, Peninsula SD, Puyallup SD, Steilacoom Historical SD, Tacoma SD, Sumner SD, Turnwater SD, University Place SD, Yelm CS.

Fort Bragg, North Carolina (5)

Cumberland County SD, Harnett County SD, Hoke County SD, Lee County SD, Moore County SD.

Fort Carson, Colorado (23)

Academy SD, Calhan SD RJ–1, Canon City Fremont RE–1, Cheyenne Mountain District #2, Colorado Springs District #11, Douglas SD RE, Edison SD 54–J, Elbert SD #200, Elizabeth SD C, Ellicott SD #22, Falcon SD #49, Fountain Fort Carson, Fremont RE–2, Hanover SD #38, Harrison District #2, Lewis Palmer,

Manitou Springs District #14, Miami-Yoder 60 JT, Peyton SD 23–J, SD #60, SD #70, Widefield District #3, Woodland Park SD.

Fort Knox, Kentucky (5)

Breckinridge County SD, Bulitt County PS, Elizabethtown IS, Hardin County Schools, Meade County SD.

Cannon Air Force Base, New Mexico (2)

Clovis Municipal SD, Portales Municipal SD.

Fort Bliss, Texas (9)

Anthony SD, Canutillo SD, Clint SD, El Paso ISD, Fabens SD, San Elizario SD, Socorro ISD, Tomillo SD, Ysleta ISD.

MacDill Air Force Base, Florida (4)

Hillsborough County PS, Manatee County SD, Pasco County SD, Pinellas County SD.

Scott Air Force Base, Illinois (28)

Belle Valley SD #119, Belleville Public SD #118, Belleville Township High SD #201, Central SD #104, Collinsville Community Unit SD #10, Edwardsville Community Unit SD #7, Freeburg Community Consolidated SD #77, Freeburg Community High School, Grant Community Consolidated SD #110, Harmony Emge SD #175, High Mount SD #116, Highland Community Unit SD #5, Lebanon Community Unit SD #9, Mascoutah Community Unit SD #19, Millstadt Consolidated School #160, New Athens Community Unit District #60, O'Fallon Community Consolidated SD #90, O'Fallon Township High SD #203, Pontiac-Wm Holliday District #105, Shiloh Village SD #85, Signal Hill SD #181, Smithton CCSD #130, St. Libory SD #30, St. Louis Public SD, Triad Community Unit SD #2, Wesclin Unit District #3, Whiteside SD #115, Wolf Branch SD #113.

Fort Sill, Oklahoma (9)

Bishop PS, Boone-Apache SD, Cache PS, Duncan PS, Elgin PS, Fletcher PS, Flower Mound School, Indiahoma PS, Lawton PS.

Fort Campbell, Kentucky (6)

Cheatham County Schools, Christian County PS, Clarksville-Montgomery County Schools, Stewart County School System, Todd County PS, Trigg County PS.

Fort Lee, Virginia (6)

Chesterfield County PS, Colonial Heights PS, Dinwiddie County PS, Hopewell City PS, Petersburg City PS, Prince George County PS.

Dover Air Force Base, Delaware (6)

Caesar Rodney SD, Capital SD, Lake Forest SD, Milford SD, Poly Tech SD, Smyrna SD.

Fort Leonard Wood, Missouri (7)

Crocker R–2 SD, Dixon R–1 Schools, Laquey R–V SD, Newburg SD, Phelps County R–III School, Richland R–IV SD, Waynesville R–VI SD.

Fort Sam Houston, Texas (14)

Alamo Heights ISD, East Central ISD, Edgewood ISD, Fort Sam Houston ISD, Harlandale ISD, Judson ISD, Lackland ISD, Northeast ISD, Northside ISD, Randolph-Field ISD, San Antonio ISD, Schertz-Cibolo Universal City ISD, South San Antonio ISD, Southwest ISD.

Naval Station San Diego, California (32)

Cajon Valley Union, Cardiff Elementary, Carlsbad Unified, Chula Vista Elementary, Coronado Unified, Del Mar Union, Encinitas Union, Escondido Union, Escondido Union High, Grossmont Union High, Jamul-Dulzura Union, La Mesa-Spring Valley, Lakeside Union, Lemon Grove, National, Oceanside Unified, Poway Unified , Ramona Unified, Rancho Santa Fe, San Diego Unified, San Dieguito Union High, San Marcos Unified, San Pasqual Union, Santee, Solana Beach, South Bay Union, Spencer Valley, Sweetwater Union High, Vallecitos, Valley Center-Pauma Unified, Vista Unified, Warner Unified.

National Training Center—Fort Irwin, California (2)

Barstow Unified SD, Silver Valley Unified SD.

Fort Polk, Louisiana (2)

Beauregard Parish SD, Vernon Parish SD.

Camp Lejeune, North Carolina (2)

Craven County SD, Onslow County SD.

Fort Benning, Georgia (7)

Bryan County Schools, Chattahoochee County SD, Harris County SD, Lee County SD, Muscogee County SD, Phenix City, Russell County.

McConnell Air Force Base, Kansas (2)

Derby SD—USD 260, Wichita USD 259.

Schofield Barracks, Hawaii (1)

Hawaii Department of Education.

* Being named on this list does not guarantee eligibility. In order to apply, the LEAs on the list must also meet the eligibility requirements stated in the application. LEAs that believe they are eligible, but are not listed above, need to provide the relevant eligibility information to DoDEA, per the directions in the announcement.

Dated: November 12, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–27306 Filed 11–17–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to Section 10 (a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS). The purpose of the Committee meeting is to review and edit the second draft of the 2008 Report, review findings, and vote on recommendations. The meeting is open to the public, subject to the availability of space.

DATES: December 2–3, 2008, 8:30 a.m.–5 p.m.

ADDRESSES: Double Tree Hotel Crystal City National Airport, 300 Army Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: MSgt Robert Bowling, USAF, DACOWITS, 4000 Defense Pentagon, Room 2C548A, Washington, DC 20301–4000. *Robert.bowling@osd.mil* Telephone (703) 697–2122. Fax (703) 614–6233.

SUPPLEMENTARY INFORMATION: Meeting agenda.

Tuesday, December 2, 2008: 8:30 a.m.–5 p.m.

—Welcome & Administrative Remarks
—Review and edit draft of 2008 report
—Review and Vote on recommendations for Women's Success Strategies

Wednesday, December 3, 2008: 8:30 a.m.–5 p.m.

—Welcome and Administrative Remarks
—Educational Opportunities for Military Children

Interested persons may submit a written statement for consideration by the Defense Department Advisory Committee on Women in the Services. Individuals submitting a written statement must submit their statement

to the Point of Contact listed above at the address detailed above NLT 5 p.m., Monday, December 1, 2008. If a written statement is not received by Monday, December 1, 2008 prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Department Advisory Committee on Women in the Services until its next open meeting. The Designated Federal Officer will review all timely submissions with the Defense Department Advisory Committee on Women in the Services Chairperson and ensure they are provided to the members of the Defense Department Advisory Committee on Women in the Services. If members of the public are interested in making an oral statement, a written statement must be submitted as above. After reviewing the written comments, the Chairperson and the Designated Federal Officer will determine who of the requesting persons will be able to make an oral presentation of their issue during an open portion of this meeting or at a future meeting. Determination of who will be making an oral presentation will depend on time available and if the topics are relevant to the Committee's activities. Two minutes will be allotted to persons desiring to make an oral presentation. Oral presentations by members of the public will be permitted only on Tuesday, December 2, 2008 from 4:30 p.m. to 5 p.m. before the full Committee. Number of oral presentations to be made will depend on the number of requests received from members of the public.

Dated: November 12, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–27305 Filed 11–17–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

November 12, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–3–001.

Applicants: Texas Gas Transmission. LLC.

Description: Texas Gas Transmission, LLC submits First Revised Original Sheet 36 *et al.* to FERC Gas Tariff, Third Revised Volume 1, to be effective 11/1/08.

Filed Date: 11/06/2008.

Accession Number: 20081110–0262.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 18, 2008.

Docket Numbers: RP09–59–000.

Applicants: Chandeleur Pipe Line Company.

Description: Chandeleur Pipe Line Company submits a Request for Temporary Waiver of Certain Tariff Provisions re FERC Gas Tariff Second Revised Volume No 1.

Filed Date: 11/07/2008.

Accession Number: 20081110–0253.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 19, 2008.

Docket Numbers: RP09–60–000.

Applicants: Gulf States Transmission Corporation.

Description: Gulf States Transmission Corporation submits Fifth Revised Sheet 1 *et. al.* to FERC Gas Tariff Original Volume 1, to be effective 12/1/08.

Filed Date: 11/07/2008.

Accession Number: 20081110–0254.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 19, 2008.

Docket Numbers: RP09–61–000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Gulf Crossing Pipeline Company LLC submits Original Sheet 1 to FERC Gas Tariff Original Volume 1, to be effective 12/20/08.

Filed Date: 11/07/2008.

Accession Number: 20081110–0255.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 19, 2008.

Docket Numbers: RP09–62–000.

Applicants: Dominion Cove Point LNG, LP.

Description: Dominion Cove Point LNG, LP submits Seventh Revised Sheet 200 *et al.* to FERC Gas Tariff, Original Volume 1, to be effective 12/11/08.

Filed Date: 11/10/2008.

Accession Number: 20081112–0115.

Comment Date: 5 p.m. Eastern Time on Monday, November 24, 2008.

Docket Numbers: RP09–63–000.

Applicants: North Baja Pipeline, LLC.

Description: North Baja Pipeline, LLC submits Second Revised Sheet 232 *et al.* to FERC Gas Tariff, Original Volume 1, to be effective 12/11/08.

Filed Date: 11/10/2008.

Accession Number: 20081112–0114.

Comment Date: 5 p.m. Eastern Time on Monday, November 24, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–27329 Filed 11–17–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

November 7, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP04–274–011. RP00–157–02.1.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Company submits a refund report detailing refunds paid on October 1, 2008, and October 3, 2008, pursuant to the Settlement filed September 30, 2008, in accordance with 18 CFR 154.501(e).

Filed Date: 10/31/2008.

Accession Number: 20081031–5153.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 12, 2008.

Docket Numbers: RP09–55–000.

Applicants: Midwestern Gas Transmission Company.

Description: Midwestern Gas Transmission Co submits its cashout report for September 2007 through August 2008.

Filed Date: 11/05/2008.

Accession Number: 20081106–0104.

Comment Date: 5 p.m. Eastern Time on Monday, November 17, 2008.

Docket Numbers: RP09–56–000.

Applicants: Algonquin Gas Transmission Company.

Description: Algonquin Gas Transmission, LLC submits its Fifth Revised Sheet 507 to FERC Gas Tariff, Fifth Revised Volume 1.

Filed Date: 11/05/2008.

Accession Number: 20081106–0103.

Comment Date: 5 p.m. Eastern Time on Monday, November 17, 2008.

Docket Numbers: RP09–57–000.

Applicants: Texas Eastern Transmission LP.

Description: Texas Eastern Transmission, LP submits Twenty-Ninth Revised Sheet 25 et al. to FERC Gas Tariff, Seventh Revised Volume 1 and First Revised Volume 2 under RP09–57.

Filed Date: 11/03/2008.

Accession Number: 20081107–0003.

Comment Date: 5 p.m. Eastern Time on Monday, November 17, 2008.

Docket Numbers: RP09–58–000.

Applicants: CenterPoint Energy Gas Transmission Co.

Description: CenterPoint Energy Gas Transmission Co submits its ''Annual Report of Penalty Revenue Credits'' covering activity during period ended 7/31/08.

Filed Date: 11/06/2008.

Accession Number: 20081107–0002.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 18, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–27332 Filed 11–17–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

November 13, 2008.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: November 20, 2008. 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* **Note**—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400. For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

941st—Meeting

REGULAR MEETING

[November 20, 2008; 10 a.m.]

Item No.	Docket No.	Company
	ADMINISTRATIVE	
A–1	AD02–1–000	Agency Administrative Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD06–3–000	Energy Market Update.

REGULAR MEETING—Continued

[November 20, 2008; 10 a.m.]

Item No.	Docket No.	Company
	ELECTRIC	
E–1	RM08–16–000	Electric Reliability Organization Interpretations of Frequency Response and Bias and Voltage and Reactive Control Reliability Standards.
E–2	RR08–4–001, RR08–4–002	North American Electric Reliability Corporation.
E–3	OMITTED.	
E–4	RC08–7–000	Constellation Energy Commodities Group, Inc.
E–5	RM08–12–000	Western Electricity Coordinating Council Regional Reliability Standard Regarding Automatic Time Error Correction.
E–6	RM05–35–000	Standard of Review for Modifications to Jurisdictional Agreements.
E–7	ER07–521–003, ER07–521–004	New York Independent System Operator, Inc.
E–8	ER08–1606–000	ISO New England Inc.
E–9	EL00–95–164, EL00–95–200	San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange Corporation.
	EL00–98–184, EL00–98–185	Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange Corporation.
E–10	OMITTED.	
E–11	EL07–81–001	NSTAR Electric Company v. ISO New England Inc.
E–12	ER05–6–089	Midwest Independent Transmission System Operator, Inc.
	ER05–6–034.	
	ER05–6–102.	
	ER05–6–105.	
	ER05–6–106.	
	EL04–135–092	Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.
	EL04–135–110.	
	EL04–135–105.	
	EL04–135–108.	
	EL04–135–109.	
	EL02–111–109	Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.
	EL02–111–127.	
	EL02–111–122.	
	EL02–111–125.	
	EL02–111–126.	
	EL03–212–105	Ameren Services Company.
	EL03–212–123.	
	EL03–212–118.	
	EL03–212–121.	
	EL03–212–122.	
E–13	OMITTED.	
E–14	ER08–1567–000	Southern California Edison Company.
E–15	OMITTED.	
E–16	EC08–124–000	SUEZ Energy North America, Inc. SUEZ Bidco, LLC. Energy Capital Partners GP I, LLC. FirstLight Power Enterprises, Inc.
E–17	ER02–2001–009, ER07–559–000	Electric Quarterly Reports Flat Earth Energy, LLC.
E–18	PL09–2–000	Material Changes in Facts that Require Notifications Under Commission Regulations Under the Public Utility Holding Company Act of 2005.
E–19	EC08–91–000, EC08–91–001	Horizon Asset Management, Inc.
E–20	ER08–209–001	Midwest Independent Transmission System Operator, Inc.
E–21	ER00–3251–015, ER00–3251–017	Exelon Generation Company, LLC.
	ER99–754–016, ER99–754–017	AmerGen Energy Company, LLC.
	ER98–1734–014, ER98–1734–016	Commonwealth Edison Company.
	ER01–1919–011, ER01–1919–013	Exelon Energy Company.
	ER01–1147–006, ER01–1147–007	PEPCO Energy Company.
	ER01–513–021	Exelon West Medway, LLC.
	ER01–513–022	Exelon Wyman, LLC. Exelon New Boston, LLC. Exelon Framingham, LLC.
	ER99–2404–011, ER99–2404–012	Exelon New England Power Marketing, L.P.
E–22	ER08–412–002	Commonwealth Edison Company and Exelon Generation Company, LLC.
	GAS	
G–1	RM08–2–000	Pipeline Posting Requirements under Section 23 of the Natural Gas Act.
G–2	RM08–1–001	Promotion of a More Efficient Capacity Release Market.
G–3	CP07–405–002	Texas Gas Transmission, LLC.
G–4	IS05–82–004, IS05–82–005	BP Pipelines (Alaska) Inc.

REGULAR MEETING—Continued

[November 20, 2008; 10 a.m.]

Item No.	Docket No.	Company
	IS05–80–004, IS05–80–005	ConocoPhillips Transportation Alaska Inc.
	IS05–72–004, IS05–72–005	ExxonMobil Pipeline Company.
	IS05–96–004, IS05–96–005	Koch Alaska Pipeline Company LLC.
	IS05–107–003, IS05–107–004	Unocal Pipeline Company.
	OR05–2–003, OR05–2–004	State of Alaska v. BP Pipelines (Alaska) Inc.
		ExxonMobil Pipeline Company.
		ConocoPhillips Transportation Alaska, Inc.
		Unocal Pipeline Company.
		Koch Alaska Pipeline Company.
	OR05–3–014, OR05–3–015	Anadarko Petroleum Corporation v. TAPS Carriers.
	OR05–10–003, OR05–10–004	BP Pipelines (Alaska) Inc.
	IS06–70–002, IS06–70–003	BP Pipelines (Alaska) Inc.
	IS06–71–002, IS06–71–003	ExxonMobil Pipeline Company.
	IS06–63–002, IS06–63–003	ConocoPhillips Transportation Alaska, Inc.
	IS06–82–002, IS06–82–003	Unocal Pipeline Company.
	IS06–66–002, IS06–66–003	Koch Alaska Pipeline Company.
	OR06–2–002, OR06–2–003	Anadarko Petroleum Corporation v. TAPS Carriers.
G–5	RM09–2–000	Contract Reporting Requirements of Intrastate Natural Gas Companies.
G–6	RP08–606–000	SG Resources Mississippi, L.L.C.
G–7	RM07–20–000	Fuel Retention Practices of Natural Gas Companies.
	HYDRO	
H–1	P–1417–229	Central Nebraska Public Power and Irrigation District.
H–2	P–1490–048	Brazos River Authority.
H–3	P–6066–033	McCallum Enterprises I, Limited Partnership.
H–4	P–9300–021	James Lichoulas, Jr.
H–5	P–2082–049	PacifiCorp.
	CERTIFICATES	
C–1	CP02–229–004	SG Resources Mississippi, L.L.C.

Kimberly D. Bose,

Secretary.

A free webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. E8–27410 Filed 11–17–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2008–0368; FRL–8741–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Calciners and Dryers in Mineral Industries, (Renewal), EPA ICR Number 0746.07, OMB Control Number 2060–0251

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before December 18, 2008.

ADDRESSES: Submit your comments, referencing docket ID number EPA–OECA–2008–0368, to (1) EPA online using *www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sounjay Gairola, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4003; e-mail address: *gairola.sounjay@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 30, 2008 (73 FR 31088), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no

comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2008–0368, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NSPS for Calciners and Dryers in Mineral Industries (Renewal).

ICR Numbers: EPA ICR Number 0746.07, OMB Control Number 2060–0251.

ICR Status: This ICR is scheduled to expire on January 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The New Source Performance Standards (NSPS) for Calciners and Dryers in Mineral Industries (40 CFR part 60, subpart UUU) were proposed on April 23, 1986 and promulgated on September 28, 1992.

The affected entities are subject to the General Provisions of the NSPA at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart UUU.

These standards apply to new, modified and reconstructed calciners and dryers at mineral processing plants that process or produce any of the following minerals and their concentrates or any mixture of which the majority is any of the following minerals or a combination of these minerals: Alumina, ball clay, bentonite, diatomite, feldspar, fire clay, fuller's earth, gypsum, industrial sand, kaolin, lightweight aggregate, magnesium compounds, perlite, roofing granules, talc, titanium dioxide, and vermiculite. Particulate matter is the pollutant regulated under this subpart. Feed and product conveyors are not considered part of the affected facility. Facilities subject to NSPS subpart LL, Metallic Mineral Processing Plants are not subject to this standard. There are additional processes and process units at mineral processing plants listed at 60.730(b) which are not subject to the provisions of this subpart.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually. These notifications, reports, and records are essential in determining compliance, and are required, in general, of all sources subject to NSPS.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 20 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Calciners and dryers at mineral processing plants that process or produce any of the following minerals and their concentrates or any mixture of which the majority is any of the following minerals or a combination of these minerals: Alumina, ball clay, bentonite, diatomite, feldspar, fire clay, fuller's earth, gypsum, industrial sand, kaolin, lightweight aggregate, magnesium compounds, perlite, roofing granules, talc, titanium dioxide, and vermiculite.

Estimated Number of Respondents: 167.

Frequency of Response: Initially, occasionally, and semi-annually.

Estimated Total Annual Hour Burden: 6,955.

Estimated Total Annual Cost: $674,485, which includes $561,485 in Labor costs, $4,000 in annualized capital costs, and $109,000 in Operations & Maintenance (O&M) costs.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: November 12, 2008.

John Moses,

Acting Director, Collection Strategies Division.

[FR Doc. E8–27311 Filed 11–17–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0397]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; State Enforcement Notifications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by December 19, 2008.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira__submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0275. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

State Enforcement Notifications—(OMB Control Number 0910–0275—Extension)

Section 310(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 337(b)) authorizes States to enforce certain sections of the act in their own names, but provides that States must notify FDA before doing so. Section 100.2(d) (21 CFR 100.2(d)) sets forth the information that a State must provide to FDA in a letter of notification when it intends to take enforcement action under the act against a particular food located in the State. The information required under § 100.2(d) will enable FDA to identify the food against which the State intends to take action and advise the State whether Federal action has been taken against it. With certain narrow exceptions, Federal enforcement action precludes State action under the act.

In the **Federal Register** of July 18, 2008 (73 FR 41360), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours Per Response	Total Hours
100.2(d)	1	1	1	10	10

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated reporting burden for § 100.2(d) is minimal because enforcement notifications are seldom used by States. During the last 3 years, FDA has not received any new enforcement notifications; therefore, the agency estimates that one or fewer notifications will be submitted annually. Although FDA has not received any new enforcement notifications in the last 3 years, it believes these information collection provisions should be extended to provide for the potential future need of a State government to submit enforcement notifications informing FDA when it intends to take enforcement action under the act against a particular food located in the State.

Dated: November 10, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–27258 Filed 11–18–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0559]

Draft Guidance for Industry on Process Validation: General Principles and Practices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Process Validation: General Principles and Practices.'' FDA is revising its guidance for industry entitled ''Guideline on General Principles of Process Validation,'' which issued in May 1987 (the 1987 guidance). The revised draft guidance promotes a ''lifecycle'' approach to process validation that includes scientifically sound design practices, robust qualification, and process verification. When finalized, this draft guidance will replace the 1987 guidance.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comments on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by January 20, 2009.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448; or to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Brian Hasselbalch, Center for Drug Evaluation and Research (HFD–320), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4364, Silver Spring, MD 20993–0002, 301–796–3279;

Grace McNally, Center for Drug Evaluation and Research (HFD–320), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4374, Silver Spring, MD 20993–0002, 301–301–796–3286;

Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–1), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–0373; or

Dennis Bensley, Center for Veterinary Medicine (HFV–140), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6956.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Process Validation: General Principles and Practices.'' This guidance outlines the general principles and approaches that FDA considers to be appropriate elements of process validation for the manufacture of human and animal drug and biological products, including active pharmaceutical ingredients (API or drug substance). This guidance incorporates principles and approaches that all manufacturers can use in validating a manufacturing process.

In the **Federal Register** of May 11, 1987 (52 FR 17638), FDA issued a notice announcing the availability of a guidance entitled ''Guideline on General Principles of Process Validation'' (the 1987 guidance). Since then, we have obtained additional experience through our regulatory oversight that allows us to update our recommendations to industry on this topic. The draft guidance conveys FDA's current thinking on process validation and is consistent with basic principles first introduced in the 1987 guidance. The draft guidance also provides recommendations that reflect some of the goals of FDA's initiative entitled ''Pharmaceutical CGMPs for the 21st Century—A Risk-Based Approach,'' particularly with regard to the use of technological advances in pharmaceutical manufacturing, as well as implementation of modern risk management and quality system tools and concepts. When finalized, this guidance will replace the 1987 guidance.

FDA's current good manufacturing practice (CGMP) regulations for validating pharmaceutical (drug) manufacturing require that drug products be produced with a high degree of assurance that they meet all the attributes they are intended to possess (21 CFR 211.100(a) and 211.110(a)). Effective process validation contributes significantly to the assurance of drug quality. FDA has the authority and responsibility to inspect and evaluate process validation performed by manufacturers.

This guidance aligns process validation activities with the product lifecycle concept and with existing FDA guidance, including International Conference on Harmonisation (ICH) guidance documents, ''Q8 Pharmaceutical Development,'' ''Q9 Quality Risk Management,'' and when it is finalized, ''Q10 Pharmaceutical Quality System'' (a notice of availability for the May 2007 ICH Q10 draft guidance published in the **Federal Register** on July 13, 2007 (72 FR 38604)) (the guidances are available on the Internet at *http://www.fda.gov/cder/guidance/index.htm*). The lifecycle concept links product and process development, qualification of the commercial manufacturing process, and maintenance of the process in a state of control during routine commercial production. This guidance promotes modern manufacturing principles, process improvement innovation, and sound science.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the general principles and practices of process validation. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information requested in the draft guidance is covered under FDA regulations at 21 CFR part 211, and is approved under OMB Control Number 0910–0139.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cder/guidance/index.htm*, *http://www.fda.gov/cber/guidelines.htm*, *http://www.fda.gov/cvm/guidance/published.htm*, or *http://www.regulations.gov*.

Dated: November 10, 2008.

Jeffery Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–27321 Filed 11–17–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0038]

Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 9, 2008, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Ronald P. Jean, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–3676, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512521. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss, make recommendations and vote on a premarket approval application for

Synvisc-One, sponsored by Genzyme Corp. This device is indicated for the treatment of pain in osteoarthritis of the knee in patients who have failed to respond adequately to conservative nonpharmacologic therapy and simple analgesics, e.g., acetaminophen.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 25, 2008. Oral presentations from the public will be scheduled for 30 minutes at the beginning of the committee deliberations and for 30 minutes near the end of the deliberations. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 19, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 20, 2008.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, 240–276–8932, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 10, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–27255 Filed 11–18–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Council of Councils, November 20, 2008, 8:30 a.m. to November 21, 2008, 12:00 p.m., National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892 which was published in the **Federal Register** on November 6, 2008, 73 FR 66052.

The closed session of the meeting has been cancelled. The meeting will be held on November 20–21, 2008. The meeting is open to the public.

Dated: November 10, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–27264 Filed 11–17–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Evaluation of Fetal Structural Malformations.

Date: November 17, 2008.

Time: 3 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg. Rm. 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 10, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–27253 Filed 11–17–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group, Heart, Lung, and Blood Program Project Review Committee.

Date: December 5, 2008.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jeffrey H Hurst, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7208, Bethesda, MD 20892–7924, 301–435–0303, *hurstj@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 10, 2008

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–27260 Filed 11–17–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis Panel, November 24, 2008, 8:00 AM to November 24, 2008, 5:00 PM, Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814 which was published in the **Federal Register** on November 3, 2008, FR E8–26098.

The panel name was changed from Research Projects in Lung Failure to Heart, Lung and Blood Supplemental Studies in Clinical Trials. The rest of the information remains the same. The meeting is closed to the public.

Dated: November 10, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–27262 Filed 11–17–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, POOLED STATE ADMINISTRATIVE DATA RFA.

Date: December 2, 2008.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Aileen Schulte, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, NRSA Training Grants

Date: December 17, 2008.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Serena P. Chu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Rockville, MD 20892, 301–443–0004, *sechu@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 7, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–27261 Filed 11–17–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Biobehavioral Foundations and Development of Cognitive Competence.

Date: December 11, 2008.

Time: 12:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Blvd., 5B01, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 7, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–27263 Filed 11–17–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2008–0178]

Privacy Act of 1974; Customs and Border Protection Advanced Passenger Information System Systems of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) gives notice that it is expanding its system of records for collecting certain biographical information on all passengers and crew members who arrive in or depart from, or transit through (and crew that over fly) the United States on a covered air or vessel carrier, and, in the case of crew members, those who continue domestically on a foreign air or vessel carrier, to additionally encompass private aircraft, rail, and bus travel. The system of records is the Advance Passenger Information System.

DATES: The system of records will be effective December 18, 2008.

ADDRESSES: You may submit comments, identified by docket number DHS–2008–0178 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–866–466–5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Laurence E. Castelli (202–572–8790), Chief, Privacy Act Policy and Procedures Branch, U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Mint Annex, 1300 Pennsylvania Ave., NW., Washington, DC 20229. For privacy issues contact: Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

The Aviation and Transportation Security Act of 2001 and the Enhanced Border Security and Visa Entry Reform Act of 2002 provides specific authority for the mandatory collection of certain information on all passenger and crewmembers that arrive in or depart from the United States via private aircraft, commercial air or vessel carrier. Pursuant to existing regulations the information is required to be collected and submitted to CBP as APIS data. Additionally, rail and bus carriers may provide, voluntarily, similar information pertaining to their passengers and crew, who arrive in or depart from the United States. References to the types of information required to be submitted in the air or vessel environment also pertain to the types of information that may be voluntarily provided in the rail and bus environments.

The information that is required to be collected and submitted to APIS, as well as information which may be provided voluntarily by bus and rail carriers, can be found on routine arrival/departure documents that passengers and crewmembers must provide to CBP, when entering or departing the United States. APIS includes complete name, date of birth, gender, country of citizenship, passport/alien registration number and country of issuance, passport expiration date, country of residence, status on board the aircraft, vessel, or train, travel document type, United States destination address (for all private aircraft passengers and crew, and commercial air, rail, and vessel passengers except for U.S. Citizens, lawful permanent residents, crew and those in transit), place of birth and address of permanent residence (commercial flight crew only), pilot certificate number and country of issuance (flight crew only, if applicable) and the Passenger Name Record (PNR) locator number. The PNR locator number allows CBP to access PNR consistent with its regulatory authority under 19 CFR 122.49d and the system of records notice for the Automated Targeting System, DHS/CBP–006, published August 6, 2007, 72 FR 43650.

Additionally, commercial air and vessel carriers must provide the airline carrier code, flight number, vessel name, vessel country of registry/flag, International Maritime Organization number or other official number of the vessel, voyage number, date of arrival/departure, foreign airport/port where the passengers and crew members began their air/sea transportation to the United States; for commercial aviation passengers and crew members destined for the United States, the location where the passenger and crew members will undergo customs and immigration clearance by CBP; and for commercial passengers and crew members that are transiting through (and crew on flights over flying) the United States and not clearing CBP, the foreign airport/port of ultimate destination, and status on board (whether an individual is crew or non-crew); and for commercial passengers and crew departing the United States, the final foreign airport/port of arrival. Lastly, pilots of private aircraft must provide the aircraft registration number, type of aircraft, call sign (if available), CBP issued decal number (if available), place of last departure (ICAO airport code, when available), date and time of aircraft arrival (or departure, for departure notice), estimated time and location of crossing U.S. border/coastline, name of intended airport of first landing,[2] owner/lessee name (first, last and middle, if available, or business entity name), owner/lessee address (number and street, city, state, zip code, country, telephone number, fax number and email address, pilot/private aircraft pilot name (last, first and middle, if available), pilot license number, pilot street address (number and street, city state, zip code, country, telephone number, fax number and email address), pilot license country of issuance, operator name (for individuals: Last, first and middle, if available, or name of business entity, if available), operator street address (number and street, city, state, zip code, country, telephone number, fax number and email address), aircraft color(s), complete itinerary (foreign airport landings within 24 hours prior to landing in the United States), and 24-hour Emergency point of contact (*e.g.*, broker, dispatcher, repair shop or other third party who is knowledgeable about this particular flight, etc.) name (first, last, and middle (if available) and telephone number (as applicable).

CBP will collect the passengers' and crewmembers' information that is supplied by the pilot and/or air, vessel, bus, or rail carrier in advance of a passenger's and crewmember's arrival in or departure from (and, for crew on flights over flying) the United States and

[2] As listed in 19 CFR 122.24, if applicable, unless an exemption has been granted under 19 CFR 122.25, or the aircraft was inspected by CBP Officers in the U.S. Virgin Islands.

maintains this information in the Advance Passenger Information System. The information will be used to perform counterterrorism and/or intelligence, law enforcement, and public security queries to identify risks to the aircraft or vessel, to its occupants, or to the United States and to expedite CBP processing.

Under a previous revision to the APIS rule (72 FR 48342 (Aug. 23, 2007)), CBP mandated pre-departure transmission by air and vessel carriers of personally identifiable information about passengers and crewmembers (including ''non-crew'' as defined in the 2005 APIS Final Rule) traveling by air or sea, and arriving in, or departing from (and, in the case of crew, flights overflying), the United States. *See* also (70 FR 17852 (Apr. 7, 2005). Under the most recent Final Rule revision to APIS, CBP amended its regulations to extend this requirement to private aircraft passengers and crew as well. This information is often collected and maintained on what is referred to as the manifest. The information that is required to be collected and submitted to APIS, or which may be provided voluntarily by carriers in the rail and bus environments, can be found on routine travel documents that passengers and crewmembers must provide when processed into or out of the United States.

The purpose of the information collection is to screen passengers and crew members arriving from foreign travel points and departing the United States to identify those persons who may pose a risk to border, aviation or public security, may be a terrorist or suspected terrorist or affiliated with or suspected of being affiliated with terrorists, may be inadmissible, may be a person of interest, or may otherwise be engaged in activity in violation of U.S. law, or the subject of wants or warrants. The system allows CBP to facilitate effectively and efficiently the entry and departure of legitimate travelers into and from the United States. Using APIS, DHS officers can quickly reference the results of the advanced research that has been conducted through CBP's law enforcement databases, including information from the TSDB and information on individuals with outstanding wants or warrants, confirm the accuracy of that information by comparison with information obtained from the traveler (passenger and crew) and from the carriers, and make immediate determinations as to a traveler's security risk, admissibility and other determinations bearing on CBP's inspectional and screening processes.

Information collected in APIS is maintained for a period of no more than twelve months from the date of collection at which time the data is erased from APIS. Following CBP processing, a copy of certain information is transferred to the Border Crossing Information System, a subsystem of the Information Technology platform, TECS. During physical processing at the border, primary inspection lane and ID inspector are added to APIS and the APIS information is verified. This information derived from APIS includes (or in the case of rail/bus, may include): Complete name, date of birth, gender, date of arrival, date of departure, time arrived, means of arrival (air/sea/rail/bus), travel document, departure location, airline code, flight number, and the result of the CBP processing. Additionally, for individuals subject to US–VISIT requirements, a copy of certain APIS data is transferred to the Arrival and Departure Information System (ADIS) for effective and efficient tracking of foreign nationals, including the identification of lawfully admitted non-immigrants who remain in the United States beyond the period of authorized stay. US–VISIT currently applies to all visitors (with limited exemptions). The SORN for ADIS was last published on August 22, 2007 (72 FR 47057). The information transferred from APIS to ADIS includes: Complete name, date of birth, gender, citizenship, country of residence, status on board the vessel, U.S. destination address, passport number, expiration date of passport, country of issuance (for non-immigrants authorized to work), alien registration number, port of entry, entry date, port of departure, and departure date.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. APIS involves the collection of information that will be maintained in a system of records. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist the individual to more easily find such files within the agency. Below is the description of system of records referred to as the Advanced Passenger Information System.

In accordance with 5 U.S.C. 552a(r), a report concerning this record system has been sent to the Office of Management and Budget and to the Congress.

SYSTEM OF RECORDS:

DHS/CBP–005.

SYSTEM NAME:

Advanced Passenger Information System (APIS).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

This computer database is located at U.S. Customs and Border Protection (CBP) National Data Center in Washington, DC. Computer terminals are located at customhouses, border ports of entry, airport inspection facilities under the jurisdiction of the Department of Homeland Security (DHS) and other locations at which DHS authorized personnel may be posted to facilitate DHS's mission. Terminals may also be located at appropriate facilities for other participating government agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this notice consist of:

A. Passengers who arrive and depart the United States by air, sea, rail, and bus, including those in transit through the United States or beginning or concluding a portion of their international travel by flying domestically within the United States,

B. Crew members who arrive and depart the United States by air, sea, rail, and bus, including those in transit

through the United States or beginning or concluding a portion of their international travel by flying domestically within the United States, and

C. Crew members on aircraft that over fly the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in the database are comprised of the following information: complete name, date of birth, gender, country of citizenship, passport/alien registration number and country of issuance, passport expiration date, country of residence, status on board the aircraft, travel document type, United States destination address (for all private aircraft passengers and crew, and commercial air, rail, bus, and vessel passengers except for U.S. Citizens, lawful permanent residents, crew and those in transit), place of birth and address of permanent residence (commercial flight crew only), pilot certificate number and country of issuance (flight crew only, if applicable), the PNR locator number, primary inspection lane, ID inspector, and records containing the results of comparisons of individuals to information maintained in CBP's law enforcement databases, as well as information from the TSDB, information on individuals with outstanding wants or warrants, and information from other government agencies regarding high risk parties.

In addition, air and sea carriers or operators, covered by the APIS rules, and rail and bus carriers, to the extent voluntarily applicable, transmit or provide, respectively, to CBP the following information: Airline carrier code, flight number, vessel name, vessel country of registry/flag, International Maritime Organization number or other official number of the vessel, voyage number, date of arrival/departure, foreign airport/port where the passengers and crew members began their air/sea transportation to the United States; for passengers and crew members destined for the United States, the location where the passengers and crew members will undergo customs and immigration clearance by CBP; and for passengers and crew members that are transiting through (and crew on flights over flying) the United States and not clearing CBP, the foreign airport/port of ultimate destination; and for passengers and crew departing the United States, the final foreign airport/port of arrival.

Lastly, pilots of private aircraft must provide the aircraft registration number, type of aircraft, call sign (if available), CBP issued decal number (if available), place of last departure (ICAO airport code, when available), date and time of aircraft arrival, estimated time and location of crossing U.S. border/coastline, name of intended airport of first landing,[2] owner/lessee name (first, last and middle, if available, or business entity name), owner/lessee address (number and street, city, state, zip code, country, telephone number, fax number and email address, pilot/private aircraft pilot name (last, first and middle, if available), pilot license number, pilot street address (number and street, city, state, zip code, country, telephone number, fax number and email address), pilot license country of issuance, operator name (for individuals: Last, first and middle, if available, or name of business entity, if available), operator street address (number and street, city, state, zip code, country, telephone number, fax number and email address), aircraft color(s), complete itinerary (foreign airport landings within 24 hours prior to landing in the United States), and 24-hour Emergency point of contact (e.g., broker, dispatcher, repair shop or other third party who is knowledgeable about this particular flight, etc.) name (first, last, and middle (if available) and telephone number. Incident to the transmission of required information via eAPIS, records will also incorporate the pilot's email address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Aviation and Transportation Security Act of 2001, the Enhanced Border Security and Visa Reform Act of 2002, and the Intelligence Reform and Terrorism Prevention Act of 2004, also the Tariff Act of 1930, as amended, including 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, and 1644a.

PURPOSE(S):

The purpose of the collection is to screen passengers and crew arriving in, transiting through and departing from (and in the case of crew, overflying) the United States to identify those passengers and crew who may pose a risk to border, aviation, vessel, rail, bus, or public security, may be a terrorist or suspected terrorist or affiliated with or suspected of being affiliated with terrorists, may be inadmissible, may be a person of interest, or may otherwise be engaged in activity in violation of U.S. law, or the subject of wants or warrants.

APIS allows CBP to facilitate more effectively and efficiently the entry of legitimate travelers into the United States and the departure of legitimate travelers from the United States. As travelers prepare to depart for or from the United States, DHS officers, using APIS, can quickly cross-reference the results of the advanced research that has been conducted through CBP's law enforcement databases, as well as using information from the TSDB, information on individuals with outstanding wants or warrants, and information from other government agencies regarding high risk parties, confirm the accuracy of that information by comparison of it with information obtained from the traveler and from the carriers, and make immediate determinations with regard to the traveler's security risk, admissibility and other determinations bearing on CBP's inspectional and screening processes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the U.S. Department of Justice (including U.S. Attorney offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation: (1) DHS, or (2) any employee of DHS in his/her official capacity, or (3) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent said employee, or (4) the United States or any agency thereof;

B. To a Congressional office, for the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the record pertains;

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. Sections 2904 and 2906;

D. To an agency, organization, or individual for the purposes of performing audit or oversight operations as authorized by law but only such information as is necessary and relevant to such audit or oversight function;

E. To appropriate agencies, entities, and persons when (1) it is suspected or confirmed that the security or confidentiality of information in the

[2] As listed in 19 CFR 122.24, if applicable, unless an exemption has been granted under 19 CFR 122.25, or the aircraft was inspected by CBP Officers in the U.S. Virgin Islands.

system of records has been compromised; (2) CBP has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by CBP or another agency or entity) or harm to the individual that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons when reasonably necessary to assist in connection with the CBP's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government, when necessary to accomplish an agency function related to this system of records, in compliance with the Privacy Act of 1974, as amended;

G. To appropriate Federal, State, local, international, tribal, or foreign governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, license, or treaty where DHS determines that the information would assist in the enforcement of civil or criminal laws.

H. To a Federal, State, or local agency, or other appropriate entity or individual, or through established liaison channels to selected foreign governments, in order to provide intelligence, counterintelligence, or other information for the purposes of intelligence, counterintelligence, or antiterrorism activities authorized by U.S. law, Executive Order, or other applicable national security directive.

I. To a Federal, State, tribal, local or foreign government agency or organization, or international organization, lawfully engaged in collecting law enforcement intelligence information, whether civil or criminal, or charged with investigating, prosecuting, enforcing or implementing civil or criminal laws, related rules, regulations or orders, to enable these entities to carry out their law enforcement responsibilities, including the collection of law enforcement intelligence.

J. To Federal and foreign government intelligence or counterterrorism agencies or components where DHS reasonably believes there to be a threat or potential threat to national or international security for which the information may be useful in countering the threat or potential threat, when DHS reasonably believes such use is to assist in anti-terrorism efforts, and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure.

K. To an organization or individual in either the public or private sector, either foreign or domestic, where there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, to the extent the information is relevant to the protection of life, property or other vital interests of a data subject and disclosure is proper and consistent with the official duties of the person making the disclosure;

L. To appropriate Federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations, for the purpose of protecting the vital interests of a data subject or other persons, including to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantinable disease or for combating other significant public health threats; appropriate notice will be provided of any identified health threat or risk;

M. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in response to a subpoena, or in connection with criminal law proceedings;

N. To third parties during the course of an law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate in the proper performance of the official duties of the officer making the disclosure;

O. To an appropriate Federal, state, local, tribal, territorial, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit and when disclosure is appropriate to the proper performance of the official duties of the person making the request;

P. To appropriate Federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations where CBP is aware of a need to utilize relevant data for purposes of testing new technology and systems designed to enhance border security or identify other violations of law;

Q. To the carrier who submitted traveler, passenger, or crew information to CBP, but only to the extent that CBP provides a message indicating that the individual is ''cleared'' or ''not cleared'' to board the aircraft or depart on the vessel in response to the initial transmission of information (including, where applicable, the individual's ESTA status as discussed in The System of Record Notice for ESTA, DHS/CBP–009, published at 73 FR 32720 (June 10, 2008)), or is identified as a ''selectee''.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The data is stored electronically at the CBP Data Center for current data and offsite at an alternative data storage facility for historical logs and system backups.

RETRIEVABILITY:

The data is retrievable by name or other unique personal identifier from an electronic database.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules, and policies. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include role-based access provisions, restricting access to authorized personnel who have a need-to-know, using locks, and password protection identification features. DHS file areas are locked after normal duty hours and the facilities are protected from the outside by security personnel.

The system manager, in addition, has the capability to maintain system back-ups for the purpose of supporting continuity of operations and the discrete need to isolate and copy specific data access transactions for the purpose of conducting security incident investigations.

All communication links with the CBP datacenter are encrypted. The Databases are fully Certified and Accredited in accordance with the requirements of the Federal Information Security Management Act (FISMA).

Although separate notice is being provided for APIS, it continues to operate within the TECS information technology system architecture; therefore APIS's technical infrastructure is covered by the approved TECS Certification and Accreditation under the National Institute of Standards and Technology. The last certification was in January 2006.

RETENTION AND DISPOSAL:

Information collected in APIS is maintained in this system for a period of no more than twelve months from the date of collection at which time the data is erased from APIS. As part of the vetting and CBP clearance (immigration and customs screening and inspection) of a traveler, information from APIS is copied to the Border Crossing Information System, a subsystem of TECS. Additionally, for individuals subject to US–VISIT requirements, a copy of certain APIS data is transferred to the Arrival and Departure Information System (ADIS) for effective and efficient processing of foreign nationals. The SORN for ADIS was last published on August 22, 2007 (72 FR 47057). Different retention periods apply for APIS data contained in those systems.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Automated Systems, U.S. Customs and Border Protection Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

NOTIFICATION PROCEDURE:

DHS allows persons (including foreign nationals) to seek administrative access under the Privacy Act to information maintained in APIS. Persons may only seek access to APIS data that has been provided by the carrier and of which they are the subject. To determine whether APIS contains records relating to you, write to the Customer Service Center, OPA-CSC-Rosslyn, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229 (phone: 877–CBP–5511).

RECORD ACCESS PROCEDURES:

Requests for notification or access must be in writing and should be addressed to the Customer Service Center, OPA-CSC-Rosslyn, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229 (*phone:* 877–CBP–5511). Requests should conform to the requirements of 6 CFR Part 5, Subpart B, which provides the rules for requesting access to Privacy Act records maintained by DHS and can be found at *http://www.dhs.gov/foia.* The envelope and letter should be clearly marked ''Privacy Act Access Request.'' The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury.

If individuals are uncertain what agency handles the information, they may seek redress through the DHS Traveler Redress Program (''TRIP'') (See 72 FR 2294, dated January 18, 2007). Individuals who believe they have been improperly denied entry, refused boarding for transportation, or identified for additional screening by CBP may submit a redress request through the TRIP. TRIP is a single point of contact for individuals who have inquiries or seek resolution regarding difficulties they experienced during their travel screening at transportation hubs—like airports, seaports and train stations or at U.S. land borders. Through TRIP, a traveler can request correction of erroneous stored in other DHS databases through one application. Redress requests should be sent to: DHS Traveler Redress Inquiry Program (TRIP), 601 South 12th Street, TSA–901, Arlington, VA 22202–4220 or online at *http://www.dhs.gov/trip.*

CONTESTING RECORD PROCEDURES:

Individuals may seek redress and/or contest a record through several different means that will be handled in the same fashion. If the individual is aware the information is specifically handled by CBP, requests may be sent directly to CBP at the Customer Service Center, OPA-CSC-Rosslyn, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229 (*phone:* 877–CBP–5511). If the individual is uncertain what agency is responsible for maintaining the information, redress requests may be sent to DHS TRIP at DHS Traveler Redress Inquiry Program (TRIP), 601 South 12th Street, TSA–901, Arlington, VA 22202–4220 or online at *http://www.dhs.gov/trip.*

RECORD SOURCE CATEGORIES:

The system contains data received from private and commercial aircraft pilots, operators/carriers, and vessel carriers regarding passengers and crewmembers who arrive in, depart from, transit through or overfly (in the case of flight crew only) the United States on private aircraft, air, or, vessel carriers covered by APIS regulations. The system also contains data to the extent voluntarily submitted by rail and bus carriers regarding passengers and crewmembers who arrive in, and/or depart from the United States. During physical processing at the border, primary inspection lane and ID inspector are added to APIS, and the APIS information is verified using the travel documents. Additionally, records contain the results of comparisons of individuals to information maintained in CBP law enforcement databases, as well as information from the TSDB, information on individuals with outstanding wants or warrants, and information from other government agencies regarding high risk parties

EXEMPTIONS CLAIMED FOR THE SYSTEM:

No exemption shall be asserted with respect to information maintained in the system that is collected from a person and submitted by that person's air or vessel carrier, if that person, or his or her agent, seeks access or amendment of such information.

This system, however, may contain records or information recompiled from or created from information contained in other systems of records, which are exempt from certain provision of the Privacy Act. This system may also contain accountings of disclosures made with respect to information maintained in the system. For these records or information only, in accordance with 5 U.S.C. 552a(j)(2), and (k)(2), DHS will also claim the original exemptions for these records or information from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (5), and (8); (f), and (g) of the Privacy Act of 1974, as amended, as necessary and appropriate to protect such information.

Dated: November 10, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–27205 Filed 11–17–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5268–D–01]

Consolidated Delegation of Authority to the General Counsel

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: On January 31, 1989, HUD published a notice of delegation of authority that became effective January 19, 1989. That delegation, from the

Secretary of HUD to the General Counsel, consolidated and updated past delegations. Since the January 31, 1989, publication, additional delegations and updates have been issued and published independently. In order to provide greater guidance to the public concerning Secretarial delegations of authority to the General Counsel, this delegation of authority consolidates all delegations to the General Counsel within and since the January 31, 1989, **Federal Register** notice.

EFFECTIVE DATE: November 3, 2008.

FOR FURTHER INFORMATION CONTACT: John P. Opitz, Associate General Counsel, Office of Finance and Regulatory Compliance, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 9256, Washington, DC 20410–0500, telephone number 202–402–5178. (This is not a toll-free number.) Individuals with speech or hearing impairments may access this number through TTY by calling 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

This notice consolidates into one document the authority delegated by the Secretary to the General Counsel and supersedes all prior delegations of authority from the Secretary to the General Counsel. This consolidated delegation of authority restates existing authority currently delegated by the Secretary to the General Counsel and does not provide the General Counsel with any new authority. Published elsewhere in today's **Federal Register** is a redelegation of authority from the General Counsel to subordinate employees within the Office of General Counsel.

In addition to the authority published in today's consolidated delegation of authority, the Secretary has delegated other authorities to the General Counsel by regulation. These delegations include:

1. Naming the General Counsel as HUD's Designated Agency Ethics Official; 5 CFR 7501.

2. Authorizing the General Counsel, and in some instances, the appropriate Associate General Counsel or Regional Counsel, to respond to subpoenas and or other demands from the courts or other authorities; 24 CFR part 15.

3. Designating the General Counsel as the source selection authority for the procurement of outside legal services through either the lowest price technically acceptable or tradeoff process; 48 CFR 2415.303(a)(3).

4. Designating the General Counsel as a responsible official to ensure the implementation of the policies of the National Environmental Policy Act (NEPA) and other environmental requirements of the Department, including the performance of the responsibilities of an Environmental Clearance Officer pursuant to 24 CFR 50.10(a), 50.16.

5. Authorizing the General Counsel, as set forth in 24 CFR parts 103 and 180, to exercise authority pertaining to civil rights statutes, including the Fair Housing Act, 42 U.S.C. 3601 *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791 *et seq.*; the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*; and Section 109 of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5301 *et seq.*

6. Authorizing the General Counsel to initiate a civil money penalty action pursuant to Sections 102 and 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a(c), 3545); 24 CFR part 4 in accordance with the provisions of 24 CFR part 30.

7. Authorizing the General Counsel to appoint, and fix the compensation of a foreclosure commissioner or commissioners and alternate commissioners, in accordance with the Multifamily Mortgage Foreclosure Act of 1981 (12 U.S.C. 3701 *et seq.*); 24 CFR 27.10.

HUD's Program Assistant Secretaries have also delegated authority to the General Counsel. The Assistant Secretary for Housing—Federal Housing Commissioner has delegated authority to the General Counsel to issue a notice of violation under the terms of a regulatory agreement; to issue a notice of default under the terms of housing assistance payments contracts (HAPs); to impose civil money penalties, and to take all actions permitted under 24 CFR 30.36, 30.45, and 30.68. (71 FR 60168, October 12, 2006).

Section 30.36 of HUD's regulations (24 CFR 30.36) authorizes the Assistant Secretary for Housing—Federal Housing Commissioner, or designee, to initiate civil money penalty action against any principal, officer, or employee of a mortgagee or lender, or other participant or any provider of assistance to a borrower in connection with any such mortgage or loan, including: Sellers, borrowers, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents, dealers, consultants, contractors, subcontractors, and inspectors.

Section 30.45 of HUD's regulations (24 CFR 30.45) authorizes the Assistant Secretary for Housing—Federal Housing Commissioner, or designee, to initiate civil money penalty action against any mortgagor of a multifamily property with a mortgage insured, co-insured, or held by the Secretary, pursuant to Title II of the National Housing Act or to Section 202 of the Housing Act of 1959.

Section 30.68 of HUD's regulations (24 CFR 30.68) authorizes the Assistant Secretary for Housing—Federal Housing Commissioner, or designee, to initiate civil money penalty action against any owner, general partner of a partnership, or agent employed to manage the property that has an identity of interest with the owner or general partner receiving project-based assistance under Section 8 of the United States Housing Act of 1937 for a knowing and material breach of HAP contracts.

Section A. Authority

The Secretary of Housing and Urban Development hereby delegates the following authorities to the General Counsel:

1. To interpret the authority of the Secretary and to determine whether the issuance of any rule, regulation, statement of policy, or standard promulgated by HUD is consistent with that authority.

2. To direct all litigation affecting HUD and to sign, acknowledge, and verify on behalf of and in the name of the Secretary all declarations, bills, petitions, pleas, complaints, answers, and other pleadings in any court proceeding brought in the name of or against the Secretary or in which the Secretary is a named party.

3. To direct the referral of cases and other matters to the Attorney General for appropriate legal action and to transmit information and material pertaining to the violation of law or HUD rules and regulations. There are excepted from this authority, however, those referrals and transmittals that the Inspector General is authorized to make by law or by delegation of authority.

4. To accept, on behalf of the Secretary, service of all summons, subpoenas, and other judicial, administrative, or legislative processes directed to the Secretary or to an employee of HUD in an official capacity, and to execute affidavits asserting HUD's deliberative process privilege.

5. Where not inconsistent with other regulations pertaining to proceedings before administrative law judges, to approve the issuance of subpoenas or interrogatories pertaining to investigations for which responsibility is vested in the Secretary.

6. To consider, ascertain, adjust, determine, compromise, allow, deny, or otherwise dispose of claims under the Federal Tort Claims Act, 28 U.S.C.

1346(b), 2671 *et seq.* and the Military Personnel and Civilian Employees' Claims Act of 1974, 31 U.S.C. 3721 *et seq.*

7. To act upon the appeals and issue final determinations on appeals of denial of access or record correction under the Privacy Act of 1974, except appeals regarding records maintained by the Office of Inspector General (Pub. L. 93–579), 5 U.S.C. 552(c).

8. To make written requests, for purposes of civil or criminal law enforcement activities, to other agencies for the transfer of records or copies of records maintained by such agencies under subsection (b)(7) of the Privacy Act of 1974, as amended (5 U.S.C. 552a(b)(7)).

9. To act upon appeals under the Freedom of Information Act, 5 U.S.C. 552, except appeals from decisions of the Office of Inspector General.

10. To appoint a foreclosure commissioner or commissioners, or a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner under Section 805 of the Single Family Mortgage Foreclosure Act of 1994, 12 U.S.C. 3754; the power to fix compensation for the foreclosure commissioner under Section 812 of the Single Family Mortgage Foreclosure Act of 1994, 12 U.S.C. 3761; and to promulgate regulations necessary to carry out the provisions of the Single Family Mortgage Foreclosure Act.

11. To make determinations and certifications required under Section 1114 of the Right to Financial Privacy Act, 12 U.S.C. 3401, *et seq.*

12. To designate authorized officials to exercise the powers or perform the duties of the General Counsel, through an order of succession (subject to the provisions of the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345–3349d), during any period when, by reason of absence, disability, or vacancy in office, the General Counsel for HUD is not available.

13. To serve as an Attesting Officer and to cause the seal of HUD to be affixed to such documents as may require its application and to certify that a copy of any book, paper, microfilm, or other document is a true copy of that in the files of HUD.

14. To act as the designated official under Section 5(a) of Executive Order 12630, *Governmental Actions and Interference With Constitutionally Protected Property Rights*, issued March 15, 1987, (53 FR 8859, March 18, 1988) consistent with Executive Order 13406, *Protecting the Property Rights of the American People*, issued June 23, 2006 (71 FR 36973, June 28, 2006).

15. To make determinations of federalism implications, preemption, or the need for consultations with state and local officials as required by Executive Order 13131, Federalism, issued August 4, 1999 (64 FR 43255, August 10, 1999).

Section B. Authority To Redelegate

The General Counsel is authorized to redelegate to employees of HUD any of the authority delegated under Section A above.

Section C. Authority Superseded

This delegation supersedes all previous delegations of authority from the Secretary to the General Counsel including, but not limited to, those listed below:

1. 45 FR 67779 (October 14, 1980) [Docket No. D–80–623], as amended by 54 FR 4913 (January 31, 1989) [Docket No. D–89–893; FR–2595];

2. 54 FR 4913 (January 31, 1989) [Docket No. D–89–893; FR–2595];

3. 54 FR 13121 (March 30, 1989) [Docket No. D–89–894; FR–2614];

4. 54 FR 46654 (November 6, 1989) [Docket No. D–89–893, FR–2595];

5. 56 FR 52557 (October 21, 1991) [Docket No. D–91–963; FR–3170–D–01];

6. 58 FR 8057 (February 11, 1993) [Docket No. D–93–1017; FR–3445–D–01];

7. 59 FR 9761 (March 1, 1994) [Docket No. D–94–1051; FR–3667–D–01];

8. 59 FR 39955 (August 5, 1994) [Docket No. R–94–1744; FR–3754–F–01];

9. 59 FR 53522 (October 24, 1994) [Docket No. D–94–1075; FR–3791–D–01];

10. 60 FR 57526 (November 15, 1995) [Docket No. FR–3951–D–01];

11. 61 FR 50215 (September 24, 1996) [Docket No. FR–4022–F–02];

12. 61 FR 53382 (October 11, 1996) [Docket No. FR–4147–D–01], as amended by 68 FR 37170 (June 23, 2003) [Docket No. FR–4837–D–36]; and

13. 68 FR 41840 (July 15, 2003) [Docket No. FR–4837–D–33].

Authority: Section 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: *November 3, 2008.*

Steven C. Preston,

Secretary.

[FR Doc. E8–27285 Filed 11–17–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5268–D–02]

Consolidated Redelegation of Authority to the Office of General Counsel

AGENCY: Office of General Counsel, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: This redelegation of authority consolidates and updates past redelegations of authority from the General Counsel to subordinate employees.

DATES: *Effective Date:* November 6, 2008.

FOR FURTHER INFORMATION CONTACT: John P. Opitz, Associate General Counsel, Office of Finance and Regulatory Compliance, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 9256, Washington, DC 20410–7000; 202–402–5178. (This is not a toll-free number.) For those needing assistance, this number may be accessed through TTY by calling 202–708–1455.

SUPPLEMENTARY INFORMATION: Elsewhere in today's **Federal Register** is a notice of a consolidated delegation of authority from the Secretary of HUD to the General Counsel. In that notice, the General Counsel was given the authority to redelegate to employees of HUD any authority delegated by the Secretary to the General Counsel. Through this notice, the General Counsel is redelegating certain authority to other employees of the Office of General Counsel.

Section A contains concurrent redelegations from the General Counsel to the General Deputy General Counsel, the Deputy General Counsel for Operations and the Deputy General Counsel for Housing Programs. Section B contains redelegations from the General Counsel to specific positions within the Office of General Counsel. Section C contains redelegations to the Departmental Enforcement Center within the Office of General Counsel. These redelegations revoke and supersede all previous delegations of authority from the General Counsel to subordinate employees.

Section A. Authority Delegated to the General Deputy General Counsel and Deputy General Counsels

The General Counsel retains and redelegates the following authority concurrently to the General Deputy General Counsel, the Deputy General

Counsel for Operations, and the Deputy General Counsel for Housing Programs.

1. To interpret the authority of the Secretary and to determine whether the issuance of any rule, regulation, statement of policy, or standard promulgated by HUD is consistent with that authority.

2. To direct all litigation affecting HUD and to sign, acknowledge and verify on behalf of and in the name of the Secretary all declarations, bills, petitions, pleas, complaints, answers, and other pleadings in any court proceeding brought in the name of or against the Secretary or in which he/she is a named party.

3. To direct the referral of cases and other matters to the Attorney General for appropriate legal action and to transmit information and material pertaining to the violation of law or HUD rules and regulations. There are excepted from this authority, however, those referrals and transmittals that the Inspector General is authorized to make by law or by delegation of authority.

4. To accept, on behalf of the Secretary, service of all summons, subpoenas, and other judicial, administrative, or legislative processes directed to the Secretary or to an employee of HUD in an official capacity and to execute affidavits asserting HUD's deliberative process privilege.

5. Where not inconsistent with other regulations pertaining to proceedings before administrative law judges, to approve the issuance of subpoenas or interrogatories pertaining to investigations for which responsibility is vested in the Secretary.

6. To consider, ascertain, adjust, determine, compromise, allow, deny or otherwise dispose of claims under the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2671 *et seq.* and the Military Personnel and Civilian Employees' Claims Act of 1974, 31 U.S.C. 3721 *et seq.*

7. To act upon the appeals and issue final determinations on appeals of denial of access or record correction under the Privacy Act of 1974, except appeals regarding records maintained by the Office of Inspector General (Pub. L. 93–579), 5 U.S.C. 552(c).

8. To make written requests, for purposes of civil or criminal law enforcement activities, to other agencies for the transfer of records or copies of records maintained by such agencies under subsection (b)(7) of the Privacy Act of 1974, as amended (5 U.S.C. 552a(b)(7)) (''Privacy Act'').

9. To act upon appeals under the Freedom of Information Act, 5 U.S.C. 552, except appeals from decisions of the Office of Inspector General.

10. To appoint a foreclosure commissioner or commissioners, or a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner under:

(a) Section 805 of the Single Family Mortgage Foreclosure Act of 1994, 12 U.S.C. 3754; the power to fix compensation for the foreclosure commissioner under Section 812 of the Single Family Mortgage Foreclosure Act of 1994; 12 U.S.C. 3761, and to promulgate regulations necessary to carry out the provisions of the Single Family Mortgage Foreclosure Act of 1994; and

(b) Section 365 of the Multifamily Mortgage Foreclosure Act of 1981, 12 U.S.C. 3701, *et seq.*; the power to fix compensation for the foreclosure commissioner under Section 369(c) of the Multifamily Mortgage Foreclosure Act of 1981; 12 U.S.C. 3701, *et seq.*, and to promulgate regulations necessary to carry out the provisions of the Multifamily Mortgage Foreclosure Act of 1981.

11. To make determinations and certifications required under Section 1114 of the Right to Financial Privacy Act, 12 U.S.C. 3401, *et seq.*

12. To designate authorized officials to exercise the powers or perform the duties of the General Counsel, through an order of succession (subject to the provisions of the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345–3349d), during any period when by reason of absence, disability, or vacancy in office, the General Counsel for HUD is not available.

13. To serve as an Attesting Officer and to cause the seal of HUD to be affixed to such documents as may require its application and to certify that a copy of any book, paper, microfilm, or other document is a true copy of that in the files of HUD.

14. To act as the designated official under Section 5(a) of Executive Order 12630, *Governmental Actions and Interference With Constitutionally Protected Property Rights*, issued March 15, 1987 (53 FR 8859, March 18, 1988), consistent with Executive Order 13406, *Protecting the Property Rights of the American People*, issued June 23, 2006 (71 FR 36973, June 28, 2006).

15. To make determinations of federalism implications, preemptions, or the need for consultation with state and local officials as required by Executive Order 13131, Federalism, issue August 4, 1999 (64 FR 43255, August 10, 1999).

Section B. Authority Redelegated to Specific Positions Within the Office of General Counsel

The General Counsel hereby retains and redelegates the following authority to the General Deputy General Counsel, the Deputy General Counsels and to specific positions within the Office of General Counsel. This authority may not be further redelegated unless expressly stated in the redelegation.

1. To the Associate General Counsel for Litigation and to Regional Counsel, the authority to accept, on behalf of the Secretary, service of all summons, subpoenas, and other judicial, administrative, or legislative processes directed to the Secretary or to an employee of HUD Headquarters in an official capacity. The Associate General Counsel for Litigation may redelegate this authority within the Office of Litigation and the Regional Counsel may redelegate this authority to Chief Counsels within their operating jurisdiction.

2. To the Associate General Counsel for Finance and Regulatory Compliance, or designee, the authority to implement the policies of the National Environmental Policy Act (NEPA) and other environmental requirements of HUD, including the performance of the responsibilities of the Program Environmental Clearance Officer for the Office of General Counsel; 24 CFR 50.10(a), 50.16. The Associate General Counsel retains and redelegates this authority to the Assistant General Counsel, GSE/RESPA Division, and to the Senior Environmental Attorney.

3. To the Associate General Counsel for Fair Housing and to Regional Counsel, the authority to process cases arising under the Fair Housing Act and other Civil Rights statutes, as set forth in 24 CFR parts 103 and 180 (with the exception of 24 CFR 180.675). The Associate General Counsel for Fair Housing retains this authority and further redelegates it to the Assistant General Counsel for Fair Housing Enforcement.

4. To the Associate General Counsel for Fair Housing, the authority under 24 CFR 180.675 concerning petitions for review. The Associate General Counsel for Fair Housing retains and redelegates this authority to the Assistant General Counsel for Fair Housing Enforcement.

5. To the Associate General Counsel for Program Enforcement, the Associate General Counsel for Finance and Regulatory Compliance, the Associate General Counsel for Human Resources Law, the Associate General Counsel for Litigation, and the Associate General Counsel for Fair Housing, the authority

to make written requests, for purposes of civil or criminal law enforcement activities, to other agencies for the transfer of records or copies of records maintained by such agencies under subsection (b)(7) of the Privacy Act of 1974, as amended (5 U.S.C. 552a(b)(7)) (''Privacy Act''), except appeals involving records maintained by the Office of Inspector General.

6. To the Associate General Counsel for Human Resources Law, the authority to make determinations and certifications required under section 1114 of the Right to Financial Privacy Act, 12 U.S.C. 3401, *et seq.*

7. To the Associate General Counsel for the Office of Assisted Housing and Community Development, the authority to make legal determinations on behalf of the Department of Housing and Urban Development on matters involving the financing of obligations guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5308.

8. To the Senior Counsel, the authority to act upon appeals under the Freedom of Information Act (''FOIA''), 5 U.S.C. 552, except appeals from decisions of the Office of Inspector General.

9. To Regional Counsel, in each Regional Office, the authority to serve as Deputy Agency Ethics Official responsible for undertaking Standards of Conduct program duties as directed by the General Counsel. The Regional Counsel may redelegate their duties to Deputy Regional Counsel upon the written approval of the General Counsel.

10. To Regional Counsel, the authority to appoint a foreclosure commissioner or commissioners, or a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner under section 805 of the Single Family Mortgage Foreclosure Act of 1994, 12 U.S.C. 3754; the power to fix compensation for the foreclosure commissioner under section 812 of the Single Family Mortgage Foreclosure Act of 1994, 12 U.S.C. 3761; and to promulgate regulations necessary to carry out the provisions of the Single Family Mortgage Foreclosure Act of 1994. This authority may be redelegated to the Deputy Regional Counsel with the approval of the General Counsel.

11. To Regional Counsel, the authority to appoint a foreclosure commissioner or commissioners, or a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner, under section 365 of the Multifamily Mortgage Foreclosure Act of 1981 and the power to fix compensation for the foreclosure commissioner under Section 369C of the Multifamily Mortgage Foreclosure Act of 1981 (12 U.S.C. 3701, et seq.). This authority may be redelegated to the Deputy Regional Counsel with the approval of the General Counsel.

12. To Regional Counsel for Region I (Boston, MA), through the Federal Tort Claims Center, the power and authority to consider, ascertain, adjust, determine, compromise, allow, deny or otherwise dispose of claims under the Federal Tort Claims Act and the Military Personnel and Civilian Employees' Claims Act of 1964.

13. To Regional Counsel, the authority to concur on the issuance and settlement of limited denials of participation (LDPs) issued by HUD Field Offices pursuant to 2 CFR part 2424.

14. To the positions listed below, the authority to serve as Attesting Officers and to cause the seal of HUD to be affixed to such documents as may require its application and to certify that a copy of any book, paper, microfilm, or other document is a true copy of that in the files of HUD:

(a) Each Associate General Counsel;
(b) Each Assistant General Counsel;
(c) Each Regional Counsel;
(d) Each Deputy Regional Counsel; and
(e) Each Chief Counsel.

This authority may be redelegated.

Section C. Authority Redelegated to the Departmental Enforcement Center

The General Counsel retains and redelegates the following authority to the Director of the Departmental Enforcement Center, the Deputy Director, and the Directors of the satellite Departmental Enforcement Centers. This authority may not be further redelegated unless expressly stated in the redelegation.

1. The authority to take all actions permitted under 24 CFR 30.36, not to include the authority to waive any regulations issued under the authority of the Assistant Secretary for Housing—Federal Housing Commissioner.

2. The authority to take all actions permitted under 24 CFR 30.45, not to include the authority to waive any regulations issued under the authority of the Assistant Secretary for Housing—Federal Housing Commissioner.

3. The authority to take all actions permitted under 24 CFR 30.68, not to include the authority to waive any regulations issued under the authority of the Assistant Secretary for Housing—Federal Housing Commissioner or the Assistant Secretary for Public and Indian Housing.

4. The authority to issue notice of default under the terms of a section 8 housing assistance payments contract issued under the authority of the Assistant Secretary for Housing—Federal Housing Commissioner.

5. The authority to issue notice of violation under the terms of a regulatory agreement and notice of default under contract issued under the authority of the Assistant Secretary for Housing—Federal Housing Commissioner.

6. The authority to initiate a civil money penalty action against:

(a) Employees who improperly disclose information pursuant to section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a(c)) and 24 CFR part 4, subpart B in accordance with the provisions of 24 CFR part 30.

(b) Applicants for assistance, as defined in 24 CFR part 4, subpart A, who knowingly and materially violate the provisions of subsections (b) or (c) of section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) in accordance with the provisions of 24 CFR part 30.

Section D. Authority Superseded

This delegation supersedes all previous delegations of authority from the General Counsel to subordinate positions within the Office of General Counsel including, but not limited to, all delegations listed below:

1. 45 FR 67779 (October 14, 1980) [Docket No. D–80–623], as amended by 54 FR 4913 (January 31, 1989) [Docket No. D–89–893; FR–2595];
2. 54 FR 4913 (January 31, 1989) [Docket No. D–89–893; FR–2595];
3. 54 FR 13121 (March 30, 1989) [Docket No. D–89–894; FR–2614];
4. 54 FR 46654 (November 6, 1989) [Docket No. D–89–893, FR–2595];
5. 58 FR 8057 (February 11, 1993) [Docket No. D–93–1017];
6. 58 FR 8057 (February 11, 1993) [Docket No. D–93–1017; FR–3445-D01];
7. 59 FR 9761 (March 1, 1994) [Docket No. D–94–1051; FR–3667-D01];
8. 59 FR 52986 (October 20, 1994) [Docket No. D–94–1074; FR–3801–D–01];
9. 65 FR 4619 (January 31, 2000) [Docket No. FR–4572–D–01];
10. 67 FR 44234 (July 1, 2002) [Docket No. FR–4752–D–01];
11. 68 FR 41840 (July 15, 2003) [Docket No. FR–4837–D–33].

Authority: Section 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: November 6, 2008.

Robert M. Couch,

General Counsel.

[FR Doc. E8–27286 Filed 11–17–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

President's Council on Integrity and Efficiency, Executive Council on Integrity and Efficiency; Senior Executive Service: Performance Review Board Membership

AGENCY: Office of Inspector General, Department of the Interior.

ACTION: Correction.

SUMMARY: The Office of Inspector General, Department of the Interior, published a document in the **Federal Register** of September 17, 2008, concerning the membership of the Senior Executive Service Performance Review Board for the President's Council on Integrity and Efficiency. We are correcting this document to include references to the Executive Council on Integrity and Efficiency.

DATES: *Effective Date:* September 17, 2008.

FOR FURTHER INFORMATION CONTACT: Elizabeth Bakken, 703–487–5410.

SUPPLEMENTARY INFORMATION: This correction notice makes only the changes necessary to add references to the Executive Council on Integrity and Efficiency. For readers' convenience, we are reprinting the entire **SUPPLEMENTARY INFORMATION** text with the corrections. In notice document E8–21660 beginning on page 53900 in the issue of Wednesday, September 17, 2008, make the following corrections:

1. In the document heading, revise agency and document title lines to read as follows:

President's Council on Integrity and Efficiency, Executive Council on Integrity and Efficiency

Senior Executive Service Performance Review Board Membership

2. Correct the **SUMMARY** section to read as follows:

SUMMARY: This notice sets forth the names and titles of the current Senior Executive Service membership of the President's Council on Integrity and Efficiency (PCIE) and of the Executive Council on Integrity and Efficiency (ECIE) Performance Review Board as of September 11, 2008.

3. Correct the **SUPPLEMENTARY INFORMATION** section to read as follows:

SUPPLEMENTARY INFORMATION:

I. Background

The Inspector General Act of 1978, as amended, created the Offices of Inspectors General as independent and objective units to conduct and supervise audits and investigations relating to Federal programs and operations. Executive Order 12301 (March 26, 1981) established the President's Council on Integrity and Efficiency (PCIE). On May 11, 1992, Executive Order 12805 reaffirmed the PCIE and also established the Executive Council on Integrity and Efficiency (ECIE). Both councils are interagency committees chaired by the Office of Management and Budget's Deputy Director for Management. Their mission is to coordinate and enhance governmental efforts to promote integrity and efficiency and to detect and prevent fraud, waste, and abuse in Federal programs. The PCIE is comprised principally of Presidentially-appointed Inspectors General (IGs). ECIE members include the Inspectors General appointed by their respective agency heads.

II. PCIE/ECIE Performance Review Board

Under 5 U.S.C. 4314(c)(1)–(5), and in accordance with regulations prescribed by the Office of Personnel Management, each agency is required to establish one or more Senior Executive Service (SES) performance review board(s). The purpose of these boards is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive. The current members of the PCIE/ECIE Review Board, as of September 11, 2008, are as follows:

Thomas R. Moyle,

Deputy Assistant Inspector General for Management, Office of Inspector General, Department of the Interior.

[FR Doc. E8–27334 Filed 11–17–08; 8:45 am]

BILLING CODE 3110– 01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–F–2008–N0297; 97600–1660–2600–5d]

Sporting Conservation Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We announce a meeting of the Sporting Conservation Council (Council). The meeting agenda includes: (1) The status of the Final White Papers Document associated with the White House Conference on North American Wildlife Policy, (2) the 10-year Action Plan mandated by Executive Order 13443, and (3) a report on the comparative risk modeling being developed at Michigan State University. This Council meeting is open to the public, and will include a session for the public to comment.

DATES: We will hold the meeting on December 2, 2008, from 9 a.m. to 3 p.m.; the public comment session will be from 1 p.m. to 1:30 p.m. If you wish to attend the meeting, notify Phyllis Seitts by Friday, November 21, 2008.

ADDRESSES: The meeting will be held in Room 350, Eisenhower Executive Office Building, 1650 Pennsylvania Avenue, NW., Washington, DC 20504.

FOR FURTHER INFORMATION CONTACT: Phyllis T. Seitts, 9828 North 31st Avenue, Phoenix, AZ 85051–2517; 602–906–5603 (phone); or *Twinkle_Thompson-Seitts@blm.gov* (e-mail).

SUPPLEMENTARY INFORMATION: The Secretary of the Interior established the Council in February 2006 (71 FR 11220, March 6, 2006). The Council's mission is to provide advice and guidance to the Federal Government through the Department of the Interior on how to increase public awareness of: (1) The importance of wildlife resources, (2) the social and economic benefits of recreational hunting, and (3) wildlife conservation efforts that benefit recreational hunting and wildlife resources.

The Secretary of the Interior and the Secretary of Agriculture signed an amended charter for the Council in June 2006 and July 2006, respectively. The revised charter states that the Council will provide advice and guidance to the Federal Government through the Department of the Interior and the Department of Agriculture.

The Council will hold a meeting on the date shown in the **DATES** section at the address shown in the **ADDRESSES** section. The meeting will include a session for the public to comment. Previous Council meetings this year occurred on April 8 in Denver, CO (73 FR 14997, March 20, 2008); on June 17 in Washington, DC (73 FR 31501, June 2, 2008); on September 17 in Washington, DC (73 FR 51645, September 4, 2008); on October 3 in Reno, NV (73 FR 21793, September 18, 2008); and, on October 28 via teleconference (73 FR 61159, October 15, 2008).

November 13, 2008.

Phyllis T. Seitts,

Designated Federal Officer, Sporting Conservation Council.

[FR Doc. E8–27446 Filed 11–17–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–956–1420–BJ–TRST; ES–055575, Group No. 195, Minnesota]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; Minnesota.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calender days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands we surveyed are:

Fifth Principal Meridian, Minnesota

T. 146 N., R. 42 W.

The plat of survey represents the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and the dependent resurvey and survey of the subdivision of sections 21 and 24, in Township 146 North, Range 42 West, of the Fifth Principal Meridian, in the State of Minnesota, and was accepted November 6, 2008. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: November 10, 2008.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. E8–27313 Filed 11–17–08; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–930–1310–F1; MSES 51187]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease, Mississippi

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of Public Law 97–451, the Bureau of Land Management—Eastern States (BLM–ES) received a petition for reinstatement of oil and gas lease MSES 51187 from Denbury Onshore, LLC for lands in the DeSoto National Forest, in Perry County, Mississippi. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Robyn Shoop, Supervisory Land Law Examiner, BLM–ES, 7450 Boston Boulevard, Springfield, Virginia, at (703) 440–1512.

SUPPLEMENTARY INFORMATION: No valid lease has been issued affecting these lands. The lessee has agreed to the new lease terms for rental and royalties at rates of $10.00 per acre or fraction thereof, per year, and 16⅔ percent, respectively. The lessee has paid the required $500.00 administrative fee and $163.00 to reimburse the BLM for the cost of publishing this Notice in the **Federal Register**. The lessee has met all the requirements for reinstatement as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate the lease effective December 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: October 16, 2008.

Steven R. Wells,

Deputy State Director, Division of Natural Resources.

[FR Doc. E8–26924 Filed 11–17–08; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before November 8, 2008. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by the United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th Floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by December 3, 2008.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ARIZONA

Yavapai County

North Prescott Townsite Historic District, Between Gurley, Sheldon, Alarcon and Summit Sts., Prescott, 08001188

CONNECTICUT

Fairfield County

Five Mile River Landing Historic District, Rowayton Ave. to Jo's Barn Way, Norwalk, 08001189

New London County

William Clark Company Thread Mill, 21 Pawcatuck Ave., 12 and 22 River Rd., Stonington, 08001190

MASSACHUSETTS

Norfolk County

Medway Village Historic District, Bounded by former New York and Boston railroad right of way, Oakland St., and Charles River, Medway, 08001191

MISSOURI

Callaway County

Oakley Chapel African Methodist Episcopal Church, Co. Rd. 485 at jct. of Co. Rd. 486, Tebbetts, 08001192

Jackson County

Walnut Street Warehouse and Commercial Historic District (Boundary Increase II), 1526, 1524, 1520, 1516–18, 1512–14, and 1508 Grand Blvd., Kansas City, 08001193

MONTANA

Park County

Chicken Creek Farmstead Historic District, 790 Rock Creek Rd. N., Clyde Park, 08001194

OHIO

Clark County

Masonic Temple, 125 W. High St., Springfield, 08001195

Fairfield County

Fairfield County Children's Home, 1743 E. Main St., Lancaster, 08001196

Hamilton County

Pinecroft, 2336 Kipling Ave., Cincinnati, 08001197

Montgomery County

Bull, Jonah, House, 2233 Wayne Ave., Dayton, 08001198

Warren County

King, Ahimaaz, House, 1720 E. King Ave., Kings Mills, 08001199

WASHINGTON

Chelan County

Downtown Wenatchee Historic District, Roughly bounded by Clumbia St., Mission St., N. 1st St., and Kittitas St., Wenatchee, 08001200

Grant County

Reiman, Samuel and Katherine, House, 415 F. St. SW., Quincy, 08001201

WISCONSIN

La Crosse County

Gund Brewing Company Bottling Works, 2130 S. Ave., La Crosse, 08001202

Request for removal has been made for the following resources:

PENNSYLVANIA

Centre County

Bellefonte Academy, 225 E. Bishop St., Bellefonte, 76001617

[FR Doc. E8–27291 Filed 11–17–08; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Weekly Listing of Historic Properties

Pursuant to (36CFR60.13(b,c)) and (36CFR63.5), this notice, through publication of the information included herein, is to appraise the public as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties added to, or determined eligible for listing in, the National Register of Historic Places from October 14 to October 17, 2008.

For further information, please contact Edson Beall via: United States Postal Service mail, at the National Register of Historic Places, 2280, National Park Service, 1849 C St., NW., Washington, DC 20240; in person (by appointment), 1201 Eye St. NW., 8th floor, Washington DC 20005; by fax, 202–371–2229; by phone, 202–354–2255; or by e-mail, *Edson_Beall@nps.gov*.

Dated: November 12, 2008.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

KEY: State, County, Property Name, Address/Boundary, City, Vicinity, Reference Number, Action, Date, Multiple Name

ALABAMA

Chambers County

Vines Funeral Home and Ambulance Service, 211 B St. SW., Lafayette, 08000434, LISTED, 10/15/08

ARKANSAS

Cleburne County

Rector House, 603 W. Quitman St., Heber Springs, 08000486, LISTED, 10/17/08

COLORADO

Hinsdale County

Tobasco Mine and Mill, South of San Juan County Rd. 5 and Hinsdale County Rd. 34, Lake City vicinity, 08000983, LISTED, 10/16/08, (Hinsdale Metal Mining MPS)

CONNECTICUT

Hartford County

Ambassador Apartments, 206–210 Farmington Ave., Hartford, 08000859, LISTED, 10/16/08

KANSAS

Marshall County

Waterville Opera House, 200 E. Front St., Waterville, 08000984, LISTED, 10/16/08 (Theaters and Opera Houses of Kansas MPS)

KANSAS

McPherson County

Farmers State Bank, 101 S. Main, Lindsborg, 08000985, LISTED, 10/16/08

KANSAS

Ness County

Lion Block, 216 West Main, Ness City, 08000986, LISTED, 10/16/08

KANSAS

Shawnee County

St. John African Methodist Episcopal Church, 701 SW Topeka Blvd., Topeka, 08000987, LISTED, 10/16/08

KANSAS

Wyandotte County

Northeast Junior High School, 400 Troup Ave., Kansas City, 08000988, LISTED, 10/16/08 (Public Schools of Kansas MPS)

LOUISIANA

Orleans Parish

Blue Plate Building, 1315 S. Jefferson Davis Parkway, New Orleans, 08000989, LISTED, 10/16/08

LOUISIANA

St. Martin Parish

Voorhies, D.W. House, 410 Washington St., St. Martinsville, 08001011, LISTED, 10/16/08

MAINE

Hancock County

Surry Town Hall, 1217 Surry Rd., Surry, 08000993, LISTED, 10/16/08

MAINE

Oxford County

Soldiers Memorial Library, 85 Main St., Hiram, 08000992, LISTED, 10/16/08, (Maine Public Libraries MPS)

MONTANA

Flathead County

Lake McDonald Lodge Coffee Shop, Lake McDonald Lodge Blvd., Lake McDonald, Glacier National Park, 08001014, LISTED, 10/14/08

NORTH DAKOTA

Griggs County

Oscar-Zero Missile Alert Facility, St. Hwy. 45, Cooperstown vicinity, 08000994, LISTED, 10/14/08

OHIO

Franklin County

Temperance Row Historic District, Vicinity of Park, Grove, Walnut and University Sts., Westerville, 08000995, LISTED, 10/16/08

VERMONT

Chittenden County

House at 44 Front Street, 42–44 Front St., Burlington, 08000997, LISTED, 10/16/08 (Burlington, Vermont MPS)

WISCONSIN

Columbia County

Byrns, Daniel and Nellie, House, 221 Mill St., Lodi, 08001000, LISTED, 10/16/08

WISCONSIN

Columbia County

Pruyn, Joel M., Block, 146 S. Main St., Lodi, 08001001, LISTED, 10/14/08

WYOMING

Campbell County

Gillette Post Office, 301 S. Gillette Ave., Gillette, 08001002, LISTED, 10/14/08

(Historic U.S. Post Offices in Wyoming, 1900–1941, TR)

WYOMING

Converse County

Hotel LaBonte, 206 Walnut St., Douglas, 08001003, LISTED, 10/10/08

WYOMING

Natrona County

Grant Street Grocery and Market, 815 S. Grant St., Casper, 08001005, LISTED, 10/15/08

WYOMING

Platte County

Platte County Courthouse, 800 9th St., Wheatland, 08001004, LISTED, 10/15/08

[FR Doc. E8–27292 Filed 11–17–08; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Office on Violence Against Women

Notice of Meeting

AGENCY: Office on Violence Against Women, United States Department of Justice.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming public meeting of the Section 904 Violence Against Women in Indian Country Task Force (hereinafter ''the Task Force'').

DATES: The meeting will take place on December 8, 2008 from 8:30 a.m. to 5 p.m. and on December 9, 2008 from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will take place at Agua Caliente Spa Resort Hotel, 100 North Indian Canyon Drive, Palm Springs, California 92262. The public is asked to preregister by December 1, 2008 for the meeting (*see* below for information on pre-registration).

FOR FURTHER INFORMATION CONTACT: Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, 800 K Street, NW., Suite 920, Washington, DC 20530; *by telephone at:* (202) 514–8804; *e-mail: Lorraine.edmo@usdoj.gov*; or *fax*: (202) 307–3911. You may also view information about the Task Force on the Office on Violence Against Women Web site at: *http://www.ovw.usdoj.gov/siw.htm.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. Title IX of the Violence Against Women Act of 2005 (VAWA 2005) requires the Attorney General to establish a Task Force to assist the National Institute of Justice (NIJ) to develop and implement a program of research on violence against American Indian and Alaska Native women, including domestic violence, dating violence, sexual assault, stalking, and murder. The program will evaluate the effectiveness of the Federal, State, and tribal response to violence against Indian women, and will propose recommendations to improve the government response. The Attorney General, acting through the Director of the Office on Violence Against Women, established the Task Force on March 31, 2008.

This meeting will be the second meeting of the Task Force and will include a presentation of the Title IX, Section 904 Research Plan Proposal and facilitated Task Force discussion of the proposal. In addition, the Task Force is also welcoming public oral comment at this meeting and has reserved an estimated 45 minutes for this purpose. Members of the public wishing to address the Task Force must contact Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, 800 K Street, NW., Suite 920, Washington, DC 20530; *by telephone at:* (202) 514–8804; *e-mail: Lorraine.edmo@usdoj.gov*; or *fax:* (202) 307–3911.

The meeting will take place on December 8, 2008 from 8:30 a.m. to 5 p.m. and on December 9, 2008 from 8:30 a.m. to 5 p.m. and will include breaks and a working lunch on December 8, 2008. Time will be reserved for public comment on December 9, 2008 from 4 p.m. to 4:45 p.m. See the section below for information on reserving time for public comment.

Access: This meeting will be open to the pubic but registration on a space available basis is required. Persons who wish to attend must register at least six (6) days in advance of the meeting by contacting Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, by *e-mail: Lorraine.edmo@usdoj.gov;* or *fax:* 202 307–3911. All attendees will be required to sign in at the meeting registration desk.

The meeting site is accessible to individuals with disabilities. Individuals who require special accommodation in order to attend the meeting should notify Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, by *e-mail: Lorraine.edmo@usdoj.gov;* or fax: 202 307–3911 no later than December 1, 2008. After this date, we will attempt to satisfy accommodation requests but cannot guarantee the availability of any requests.

Written Comments: Interested parties are invited to submit written comments by December 1, 2008 to Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, 800 K Street, NW., Suite 920, Washington, DC 20530 by mail; or by *e-mail: Lorraine.edmo@usdoj.gov; or by fax:* 202 307–3911.

Public Comment: Persons interested in participating during the public comment period of the meeting, which will address the Title IX, Section 904 Research Plan Proposal, are requested to reserve time on the agenda by contacting Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, by *e-mail: Lorraine.edmo@usdoj.gov;* or *fax:* 202 307–3911.

Requests must include the participant's name, organization represented, if appropriate, and a brief description of the subject of the comments. Each participant will be permitted approximately 3 to 5 minutes to present comments, depending on the number of individuals reserving time on the agenda. Participants are also encouraged to submit written copies of their comments at the meeting. Comments that are submitted to Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, 800 K Street, NW., Suite 920, Washington, DC 20530 by mail; by *e-mail: Lorraine.edmo@usdoj.gov;* or fax: 202 307–3911 before December 1, 2008 will be circulated to Task Force members prior to the meeting.

Given the expected number of individuals interested in presenting comments at the meeting, reservations should be made as soon as possible. Persons unable to obtain reservations to speak during the meeting are encouraged to submit written comments, which will be accepted at the meeting location or may be mailed to the Section 904 Violence Against Women in Indian Country Task Force, to the attention of Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, 800 K Street, NW., Suite 920, Washington, DC, 20530.

Cindy Dyer,

Director, Office on Violence Against Women.

[FR Doc. E8–27355 Filed 11–17–08; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

Antitrust Division

[OMB Number 1105–0025]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Federal coal lease request.

The Department of Justice (DOJ), Antitrust Division (ATR), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 20, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments (especially regarding the estimated public burden or associated response time), suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jill Ptacek, Antitrust Division, United States Department of Justice, 450 5th Street, NW., Suite 4000, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Federal Coal Lease Reserves.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Numbers: ATR–139 and ATR–140, Antitrust Division, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for Profit. Other: None. The Department of Justice evaluates the competitive impact of issuances, transfers and exchanges of federal coal leases. These forms seek information regarding a prospective coal lessee's existing coal reserves. The Department uses this information to determine whether the issuance, transfer or exchange of the federal coal lease is consistent with the antitrust laws.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond. It is estimated that 20 respondents will complete each form, with each response taking approximately two hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 40 annual burden hours associated with this collection, in total.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: November 12, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E8–27324 Filed 11–17–08; 8:45 am]

BILLING CODE 4410–01–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0005]

Agency Information Collection Activities: Proposed Collection, Comments Requested

ACTION: 60-day notice of information collection; under review: extension of a currently approved collection; age, sex, and race of persons arrested 18 years of age and over; age, sex, and race of persons arrested under 18 years of age.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division (CJIS) will be submitting the following Information Collection Request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until January 20, 2009. This process is conducted in accordance with 5 CFR 1320.10.

All comments, suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mr. Gregory E. Scarbro, Unit Chief, Federal Bureau of Investigation, CJIS Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, or facsimile to (304) 625–3566.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Age, Sex, and Race of Persons Arrested 18 Years of Age and Over; Age, Sex, and Race of Persons Arrested Under 18 Years of Age.

(2) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Forms 1–708 and 1–708a; CJIS Division, Federal Bureau of Investigation, Department of Justice.

(3) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, state, federal, and tribal law enforcement agencies.

These forms gather data obtained from law enforcement in which an arrest has occurred.

(4) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 17,738 law enforcement agency respondents at 12 minutes for 1–708a and 15 minutes for 1–708.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 95,785 hours, annual burden, associated with this information collection.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: November 12, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E8–27326 Filed 11–17–08; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs; Office of Juvenile Justice and Delinquency Prevention

[OMB Number 1121–0218]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review; census of juveniles in residential placement (extension, without change, of a currently approved collection).

The Department of Justice (DOJ), Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 20, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Janet Chiancone, (202) 353–9258, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Census of Juveniles in Residential Placement.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is CJ–14, Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal Government, State, Local or Tribal. Other: Not-for-profit institutions; Business or other for-profit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 3,500 respondents will complete a 3-hour questionnaire.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 10,500 hours.

If additional information is required, contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: *November 12, 2008.*

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E8–27322 Filed 11–17–08; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Comment Request

ACTION: Notice of solicitation of comments.

SUMMARY: The Department of Labor through the Bureau of Labor Statistics (BLS) is responsible for the development and publication of occupational employment projections and related career information, including the education or training requirements for detailed occupations. These requirements are identified and estimated using one of two different systems developed by the Employment Projections program and are published in the Occupational Projections and Training Data bulletin and in a searchable database on the Employment Projections web site. Presenting data using two different systems has led to some confusion among customers of the Employment Projections program about which system to use and how to use them. BLS is currently soliciting comments on a proposal to revise the two systems into one integrated system.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before December 18, 2008.

ADDRESSES: Send comments to Roger Moncarz, Office of Occupational Statistics and Employment Projections, Bureau of Labor Statistics, Room 2135, 2 Massachusetts Avenue, NE., Washington, DC 20212 or by e-mail to: *educfeedback@bls.gov.*

FOR FURTHER INFORMATION CONTACT: Roger Moncarz, Office of Occupational Statistics and Employment Projections, Bureau of Labor Statistics, telephone number 202–691–5694, or by e-mail at *educfeedback@bls.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor through the Bureau of Labor Statistics (BLS) is responsible for the development and publication of occupational employment projections and related career information, including the education or training requirements for detailed occupations. These requirements are identified and estimated using one of two different systems developed by the Employment Projections program: the ''education or training category'' system and the ''educational attainment cluster'' system. Results from both systems are published in the Occupational Projections and Training Data and in a searchable database on the Employment Projections web site. Presenting data using two different systems has led to some confusion among customers of the Employment Projections program about which system to use and how to use them. BLS is currently soliciting comments on a proposal to revise the two systems into one integrated system.

II. Current Action

BLS proposes modifications to both the education or training category and the educational attainment cluster systems to more fully integrate the two. The old systems assigned an education cluster and/or an education, work experience, or on-the-job training category to each occupation. The modifications include eliminating the cluster data and rating each occupation on all three categories: education, on-the-job training, and work experience.

Access the detailed description of the proposed modification to the Employment Projections program education and training classification systems and examples of the new system at the following internet address: *http://www.bls.gov/emp/edunotice.htm.*

III. Desired Focus of Comments

Comments and recommendations are requested from the public on the following aspects of the proposed education and training system:

- The clarity of the new system of assigning an education, on-the-job training, and work experience category to each occupation.
- The clarity of the proposed education categories.
- The suitability of the new system to meet the needs of customers.
- The understanding of how the new system is to be used.
- The usefulness of the new integrated system compared to the old ones.

Signed at Washington, DC, this 12th day of November 2008.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E8–27330 Filed 11–17–08; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 10 a.m., Thursday, November 20, 2008.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. NCUA's Examination Program.
2. NCUA's 2009/2010 Operating Budget.
3. NCUA's Overhead Transfer Rate.
4. NCUA's Operating Fee Scale.
5. Final Rule—Part 702 of NCUA's Rules and Regulations, Prompt Corrective Action.
6. Final Rule—Parts 701 and 705 of NCUA Rules and Regulations, Low Income Definition.
7. Final Rule—Part 701 of NCUA Rules and Regulations, Interpretive Ruling and Policy Statement (IRPS) 08–2, Criteria to approve service to underserved areas.
8. Quarterly Insurance Fund Report.

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Hattie Ulan,

Acting Board Secretary.

[FR Doc. E8–27393 Filed 11–14–08; 11:15 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Temporary Corporate Credit Union Liquidity Guarantee Program

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: This notice contains information about the National Credit Union Administration's Temporary Corporate Credit Union Liquidity Guarantee Program (TCCULGP).

ADDRESSES: 1775 Duke Street, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: David Shetler, Senior Corporate Analyst, Office of Corporate Credit Unions, at the above address or telephone (703) 518–6646.

SUPPLEMENTARY INFORMATION:

On October 16, 2008, the National Credit Union Administration Board approved the TCCULGP. Under the terms of the TCCULGP, the National Credit Union Share Insurance Fund will guarantee certain unsecured debt of participating corporate credit unions issued from October 16, 2008 through June 30, 2009. Types of qualifying debt obligations generally include federal funds purchased, promissory notes, commercial paper, and unsubordinated unsecured notes.

NCUA's guarantee is subject to terms and conditions. In addition, corporate credit unions may elect not to participate in the TCCULGP, and those credit unions that do participate may elect not to offer the NCUA guarantee on all qualifying debt obligations.

To ensure that a particular debt obligation is covered by the guarantee, creditors wishing to take advantage of the NCUA guarantee must:

(1) Ensure the corporate credit union has elected to participate in the TCCULP;

(2) Ensure the debt obligation qualifies for coverage under the terms and conditions of the TCCULGP, and

(3) Obtain and record a confirmation, issued by the participating corporate credit union contemporaneous with the issuance of the debt obligation, that the credit union intends that particular obligation to be guaranteed by the NCUA.

Once guaranteed by NCUA, qualifying debt will remain guaranteed until the debt is fully repaid.

NCUA will publish a list of participating corporate credit unions on the web on November 18, 2008 at *http://www.ncua.gov/CorporateCU/index.htm.*

For more information about the TCCULGP, including terms, conditions, and participants, interested parties may contact Senior Analyst Dave Shetler of the NCUA Office of Corporate Credit Unions.

Authority: 12 U.S.C. 1766(a), 1766(i)(2), 1783(a), 1788(a)(1), and 1789(a)(7).

Dated: November 12, 2008.

Hattie Ulan,

Acting Secretary of the Board.

[FR Doc. E8–27274 Filed 11–17–08; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 23, 2008, to November 5, 2008. The last biweekly notice was published on November 4, 2008 (73 FR 65685).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-Filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one

contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearingdocket@nrc.gov,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendment request: October 1, 2008.

Description of amendment request: The amendment would modify Technical Specification (TS) 5.5.16, Containment Leakage Rate Testing Program, by adding exceptions to Regulatory Guide (RG) 1.163, ''Performance-Based Containment Leak-Test Program,'' that would allow the next integrated leak rate test (ILRT) (Type A test) to be performed at a 15-year interval at Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2, and 3. The proposed amendment is risk-informed and follows the guidance in RG 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to extend the next ILRT interval from 10 to 15 years one time does not involve a physical change to PVNGS[,] Units 1, 2, and 3, or a change in the manner in which the plant is operated or controlled. The containment vessel is designed to provide an essentially leak-tight barrier against the uncontrolled release of radioactivity to the environment for any postulated accidents. As such, the reactor containment itself and the testing guidelines invoked to periodically demonstrate the integrity of the containment exist to ensure the containment can mitigate the consequences of any accident and do not involve the prevention or identification of any precursors of any accidents. There is no design basis accident that is initiated by a failure of the containment leakage mitigation function. The extension of the ILRT will not create any adverse interactions with other systems that could result in initiation of a design basis accident. Therefore, the probability of occurrence of an accident previously evaluated is not significantly increased.

Based on a completed probability risk assessment of the affects of this change to the ILRT interval there is a slight increase in risk dose. This increase in risk in terms of person-rem year within 50 miles of the plant resulting from design basis accidents is significantly less than one percent and of a magnitude that NUREG–1493 indicates is imperceptible. The risk assessment also analyzed the increase in risk in terms of the frequency of large early releases from accidents. The increase in the large early release frequency resulting from the proposed extension was determined to be within the guidelines published in Regulatory Guide 1.174. Additionally, the proposed change maintains defense-in-depth by preserving a reasonable balance among prevention of core damage, prevention of containment failure, and consequence mitigation. The increase in the conditional containment failure probability from reducing the ILRT frequency from one test per 10 years to one test per 15 years is less than one percent and considered insignificant. Continued containment integrity is assured by the history of successful ILRTs, and the established programs for local leakage rate testing and in-service inspections which are not affected by the proposed change. Therefore, the consequences of an accident previously analyzed are not significantly increased.

In summary, the probability of occurrence and the consequences of an accident previously evaluated are not significantly increased.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to extend the ILRT interval from 10 to 15 years does not create any new or different accident initiators or precursors. The length of the ILRT interval does not affect the manner in which any accident begins. The proposed change does not physically change the plant, does not create any new failure modes for the containment and does not affect the interaction between the containment and any other system. Thus, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The risk-based margins of safety associated with the containment ILRT are those associated with the estimated person-rem per year, the large early release frequency, and the conditional containment failure probability. The potential effect of the proposed change on the parameters have been quantified and it has been determined that the effect is considered insignificant. The non-risk-based margins of safety associated with the containment ILRT are those involved with its structural integrity and leak tightness. The proposed change to extend the ILRT interval from 10 to 15 years does not adversely affect either of these attributes. The proposed change only affects the frequency at which these attributes are verified. Therefore, the proposed change does not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Michael G. Green, Senior Regulatory Counsel, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Station 8695, Phoenix, Arizona 85072–2034.

NRC Branch Chief: Michael T. Markley.

Entergy Nuclear Operations, Inc., Docket No. 50–155, Big Rock Point Plant, Charleviox County, Michigan

Date of amendment request: September 22, 2008.

Description of amendment request: The proposed amendment would amend the facility operating license by changing the names of the licensees from Entergy Nuclear Operations, Inc., and Entergy Nuclear Palisades, LLC to EquaGen Nuclear LLC and Enexus Nuclear Palisades, LLC, respectively.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment would only change the names of the licensees and reflect associated order requirements. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes do not create the possibility of a new or different kind of accident from an accident previously evaluated. The proposed changes do not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Ave., White Plains, NY 10601.

NRC Branch Chief: Lois M. James.

Entergy Nuclear Operations, Inc., Docket Nos. 50–003, 50–247, and 50–286, Indian Point Nuclear Generating Unit Nos. 1, 2 and 3, Westchester County, New York

Date of amendment request: September 30, 2008 (2 letters).

Description of amendment request: This is an administrative change which would reflect the creation of new companies as approved by the NRC Order dated July 28, 2008. The amendments would not be implemented until the restructuring transactions have been completed. The amendments would revise the names on the plant licenses to match the names of the new companies. Entergy Nuclear Indian Point 2, LLC would be changed to Enexus Nuclear Indian Point 2, LLC. Entergy Nuclear Indian Point 3, LLC

would be changed to Enexus Nuclear Indian Point 3, LLC. Entergy Nuclear Operations, Inc. would be changed to EquaGen Nuclear LLC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment would only change the names of the licensees and reflect associated order requirements. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Mark G. Kowal.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: September 22, 2008.

Description of amendment request: The proposed amendment would amend the renewed facility operating license and Technical Specifications Design Features, Section 4, by changing the names of the licensees from Entergy Nuclear Operations, Inc. and Entergy Nuclear Palisades, LLC to EquaGen Nuclear LLC and Enexus Nuclear Palisades, LLC, respectively.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment would only change the names of the licensees and reflect associated order requirements. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes do not create the possibility of a new or different kind of accident from an accident previously evaluated. The proposed changes do not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Ave., White Plains, NY 10601.

NRC Branch Chief: Lois M. James.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: September 22, 2008.

Description of amendment request: The proposed amendment would relocate the contents of the Vermont Yankee (VY) Technical Specification (TS) relating to the Reactor Building crane to the VY Technical Requirements Manual (TRM).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station (VY) in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change relocates the VY TS and associated Bases related to the Reactor Building crane to the VY TRM. The proposed amendment does not impact the operability of any structure, system or component that affects the probability of an accident or that supports mitigation of an accident previously evaluated. The proposed amendment does not affect reactor operations or accident analysis and has no radiological consequences. The operability requirements for accident mitigation systems remain consistent with the licensing and design basis. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station (VY) in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change relocates the VY TS and associated Bases related to the Reactor Building crane to the VY TRM. The proposed amendment does not change the design or function of any component or system. No new modes of failure or initiating events are being introduced. Therefore, operation of VY in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station (VY) in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

This proposed change relocates the VY TS and associated Bases related to the Reactor Building crane to the VY TRM. The proposed amendment does not change the design or function of any component or system. The proposed amendment does not involve any safety limits, safety settings or safety margins. The ability of the Reactor Building crane to perform its intended functions will continue to be required in accordance with the VY TRM.

Since the proposed controls are adequate to ensure the operability of the Reactor Building crane, there will still be high assurance that the components are operable and capable of performing their respective functions. Therefore, operation of VY in accordance with the proposed amendment will not involve a significant reduction in [a] margin to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Mark G. Kowal.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: September 22, 2008.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) to change requirements related to Battery Systems specified in TS Section 3.10 resulting in removing the Limiting Condition for Operation pertaining to 345 kV switchyard batteries, chargers and associated direct current distribution panel.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The change does not impact the function of any Structure, System or Component (SSC)

that affects the probability of an accident or that supports mitigation or consequences of an accident previously evaluated. The proposed change removes unnecessary information from the Technical Specifications that is not required in accordance with 10 CFR 50.36. The proposed change does not affect any plant equipment operation or accident analysis and has no radiological consequences. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve any physical alteration of plant equipment and does not change the method by which any safety related system performs their function. The proposed change removes unnecessary information from the Technical Specifications that is not required in accordance with 10 CFR 50.36. As such, no new or different types of equipment will be installed or removed from the facility. Operation of existing installed equipment is unchanged. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change does not change any existing design or operational requirements and does not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. As such, there are no changes being made to safety analysis assumptions, safety limits or safety system settings that would adversely affect plant operation as a result of the proposed change. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Mark G. Kowal.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: June 3, 2008.

Description of amendment request: The proposed amendment would revise the analysis methodology in the Final Safety Analysis Report, Section 5.4.3, ''Structural Design Criteria,'' and Section 5.4.5.3, ''Missile Analysis.'' The amendment would allow the licensee to use the yield line theory methodology to qualify the east wall of the Auxiliary Building for tornado wind and missile loading.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed LAR [license amendment request] will revise the methodology used to qualify the east wall of the CR–3 [Crystal River Unit 3 Nuclear Generating Plant] Auxiliary Building for all expected and postulated loads including tornado wind and missile loading. The Yield Line Theory methodology is an industry standard that is used for the design and analysis of concrete slabs. The Yield Line Theory methodology is used for investigating the failure mechanisms of flat reinforced concrete slabs at the ultimate limit (failure point). In other words, this methodology determines either the moments in a slab at the point of failure or the load at which the slab will fail. A change in the methodology of an analysis used to verify qualification of an existing structure will not have any impact on the probability of accidents previously evaluated.

The analysis performed demonstrates that the CR–3 Auxiliary Building east wall will remain structurally intact following the worst case loadings assumed in the calculation. Therefore, this proposed change does not involve a significant increase in the probability or consequences previously evaluated.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The function of the CR–3 Auxiliary Building wall is to house and protect the equipment that is important to safety from damage during normal operation, transients and design basis accidents. The use of the Yield Line Theory methodology for qualifying the east wall of the CR–3 Auxiliary Building has no impact on the capability of the structure. A calculation that uses the Yield Line Theory methodology demonstrated that the structure meets required design criteria. This ensures that the wall is capable of performing its design function without alteration or compensatory actions of any kind. No changes to any plant system, structure, or component (SSC) are proposed. No changes to any plant operating practices, procedures, computer firmware/software will occur.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does not involve a significant reduction in a margin on safety.

The design basis of the plant requires structures to be capable of withstanding normal and accident loads including those from a design basis tornado. The Yield Line Theory methodology, as applied in an approved plant calculation, has demonstrated that the east wall of the CR–3 Auxiliary Building is capable of performing its design function. There is a slight reduction in conservatism between the method used for the remaining Class 1 structures, American Concrete Institute (ACI) standard 318–63 and the Yield Line Theory methodology, but the calculation performed with the Yield Line Theory methodology validates the requirement that the east wall of the CR–3 Auxiliary Building will protect the important to safety SSCs located in proximity to the wall from damage.

ACI 318–63 utilizes conservative methods, and due to the assumptions and technique, results in a Code defined value for strength that is not the maximum limit. The Yield Line Theory methodology uses assumptions and techniques that will define the failure point. However, the calculation performed for the east wall of the CR–3 Auxiliary Building demonstrates that there is margin to this ''failure point,'' and the strength of the wall exceeds the applied loads, including the tornado wind and pressure drop loads, and will not fail due to tornado missile impact.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Branch Chief: Thomas H. Boyce.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: July 31, 2008.

Description of amendment request: The proposed amendments would change the PPL Susquehanna, LLC (PPL) Units 1 and 2 Technical Specification (TSs) 3.6.1.3 ''Primary Containment Isolation Valves (PCIVs).'' It proposes to revise the Secondary Containment Bypass Leakage (SCBL) limit in Surveillance Requirement 3.6.1.3.11 from ''less than or equal to 9 standard cubic foot/feet per hour (scfh)'' to ''less than or equal to 15 scfh when pressurized to greater than or equal to P_a.''

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The structures, systems and components affected by the proposed change act as mitigators to the consequences of accidents. These components are not initiators of any accident analyzed in the Final Safety Analysis Report (FSAR). As such, the proposed change does not increase the probability of an accident previously evaluated. Based on the revised analysis, the proposed change does revise the performance requirement; however, the proposed change does not involve a revision to the parameters or conditions that could contribute to the initiation of a DBA [design-basis accident] discussed in Chapter 15 of the FSAR.

Plant-specific radiological analysis has been performed using the increased Secondary Containment Bypass Leakage (SCBL) limit. This analysis demonstrates that the CRHE [control room habitability envelope] dose consequences meet the regulatory guidance provided for use with the Alternative Source Term (AST), and the offsite doses are well within acceptable limits (10 CFR 50.67, Regulatory Guide (RG) 1.183, and Standard Review Plan Section (SRP) 15.0.1).

Therefore, the proposed amendment does not result in a significant increase in the consequences of any previously evaluated accident.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of any plant equipment. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change does not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No alterations in the procedures that ensure the plant remains within analyzed limits are being proposed, and no changes are being made to the procedures relied upon to respond to an off-normal event as described in the FSAR. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The results of the revised accident analysis are subject to the acceptance criteria in 10 CFR 50.67. The revised Secondary Containment Bypass Leakage rate limit is used in the LOCA [loss-of-coolant accident] radiological analysis. The analysis has been performed using conservative methodologies. Safety margins and analytical conservatisms have been evaluated and have been found acceptable. The analyzed LOCA event has been carefully selected and margin has been retained to ensure that the analysis adequately bounds postulated event scenarios. The dose consequences of the limiting event is within the acceptance criteria presented in 10 CFR 50.67, RG 1.183, and SRP 15.0.1. The effect of the revision to the Technical Specification requirements has been analyzed and doses resulting from the pertinent design basis accident have been found to remain within regulatory limits. The change continues to ensure that the doses at the exclusion area and low population zone boundaries, as well as the control room, are within the corresponding regulatory limits. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Branch Chief : Mark Kowal.

Tennessee Valley Authority, Docket No. 50–259, Browns Ferry Nuclear Plant, Unit 1, Limestone County, Alabama

Date of amendment request: July 18, 2008.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) 2.1.1.2 to decrease the safety limit minimum critical power ratio (SLMCPR) from 1.11 to 1.09 for single recirculation loop operation and from 1.09 to 1.07 for two recirculation loop operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed Technical Specification change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendment establishes a revised SLMCPR value for single and two recirculation loop operation. The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The proposed SLMCPR values preserve the existing margin to transition boiling and the probability of fuel damage is not increased. Since the change does not require any physical plant modifications or physically affect any plant components, no individual precursors of an accident are affected and the probability of an evaluated accident is not increased by revising the SLMCPR values.

The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. The revised SLMCPR values have been determined using NRC-approved methods and procedures. The basis of the MCPR Safety Limit is to ensure no mechanistic fuel damage is calculated to occur if the limit is not violated. These calculations do not change the method of operating the plant and have no effect on the consequences of an evaluated accident. Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed Technical Specification change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed license amendment involves a revision of the SLMCPR value for single and two recirculation loop operation based on the results of an analysis of the Unit 1 Cycle 8 core. Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration, including changes in the allowable methods of operating the facility. This proposed license amendment does not involve any modifications of the plant configuration or changes in the allowable methods of operation. Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed Technical Specification change involve a significant reduction in a margin of safety?

No. The margin of safety as defined in the TS bases will remain the same. The new SLMCPR values were calculated using referenced fuel vendor methods and procedures, which are in accordance with the fuel design and licensing criteria. The SLMCPR remains high enough to ensure that greater than 99.9 percent of all fuel rods in the core are expected to avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity. Therefore, the proposed TS change does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: Thomas H. Boyce.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: September 27, 2007, as supplemented by letter dated September 5, 2008.

Brief description of amendment: The amendment modified the technical specifications (TS) by relocating references to specific American Society for Testing and Materials standards for fuel oil testing to licensee-controlled documents as part of the implementation of Technical Specification Task Force (TSTF) Traveler No. 374. This proposed change to the standard technical specifications was submitted by the TSTF in TSTF–374, ''Revision to TS 5.5.13 and Associated TS Bases for Diesel Fuel Oil,'' and is applicable to all nuclear power reactors.

Date of issuance: October 30, 2008.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 182.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register***: December 18, 2007 (72 FR 71705). The September 5, 2008 supplement, contained clarifying information, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 30, 2008.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., et al., Docket Nos. 50–336 and 50–423, Millstone Power Station, Unit Nos. 2 and 3, New London County, Connecticut

Date of application for amendment: March 25, 2008, as supplemented by letter dated September 30, 2008.

Brief description of amendment: The amendment revises the reactor coolant system (RCS) specific activity to utilize a new indicator, Dose Equivalent Xenon-133 and only take into account the noble gas activity in the primary coolant, instead of using the average disintegration energy (E Bar). Specifically, the Technical Specification 3.4.8, ''Specific Activity,'' limit on RCS gross specific activity has a new limit on RCS noble gas specific activity. The changes are based on Technical Specification Task Force (TSTF) change traveler TSTF–490, ''Deletion of E Bar Definition and Revision to RCS Specific Activity Tech. Spec. [Technical Specification].''

Date of issuance: October 27, 2008.

Effective date: As of the date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: 307 and 246.

Renewed Facility Operating License Nos. DPR–65 and NPF–49: Amendment revised the License and Technical Specifications.

Date of initial notice in ***Federal Register***: July 29, 2008 (73 FR 43955–43956). The supplement dated September 30, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 27, 2008.

No significant hazards consideration comments received: No.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: October 16, 2007, as supplemented May 7, September 2 and October 23, 2008.

Brief description of amendments: The amendments revised the Technical Specifications to accommodate plant modifications that address water hammer concerns described in Generic Letter 96–06, ''Assurance of Equipment Operability and Containment Integrity During Design-Basis Conditions,'' dated September 30, 1996.

Date of Issuance: October 29, 2008.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 363, 365, 364.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the licenses and the technical specifications.

Date of initial notice in ***Federal Register***: November 20, 2007 (72 FR 65364). The supplements dated May 7, September 2 and October 23, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 29, 2008.

No significant hazards consideration comments received: No.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: October 22, 2007, supplemented July 14, September 17, and October 27, 2008.

Brief description of amendments: The amendments revised the Technical Specifications related to accommodate the use of AREVA NP Mark-B-HTP fuel.

Date of Issuance: October 29, 2008.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 362, 364, 363.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the licenses and the technical specifications.

Date of initial notice in ***Federal Register***: November 20, 2007 (72 FR 65365). The supplements dated July 14, September 17, and October 27, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 29, 2008.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: December 13, 2007, as supplemented by letter dated July 10, 2008.

Brief description of amendment: The amendment revises the Technical Specifications (TSs) by adding three Emergency Core Cooling System (ECCS) valves and removing four ECCS valves from a TS surveillance requirement for checking valve position every 7 days.

Date of issuance: October 29, 2008.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 256.

Facility Operating License No. DPR–26: The amendment revised the License and the TSs.

Date of initial notice in ***Federal Register***: March 25, 2008 (73 FR 15784). The July 10, 2008, supplement provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 2008.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendment: October 19, 2007, supplemented by letters dated March 14, 2008, March 26, 2008, and July 18, 2008.

Brief description of amendment: The amendments consist of changes to the technical specifications of each unit, increasing the allowed surveillance interval for local power range monitor calibrations from 1000 effective full power hours (EFPH) to 2000 EFPH.

Date of issuance: October 28, 2008.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 195 and 156.

Facility Operating License Nos. NPF–39 and NPF–85. These amendments revised the license and the technical specifications.

Date of initial notice in ***Federal Register***: July 8, 2008 (73 FR 39055). The supplements dated March 14, 2008, March 26, 2008 and July 18, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed and did not change the NRC staff's original proposed no significant hazards determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 28, 2008.

No significant hazards consideration comments received: No.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: April 4, 2008, as supplemented by letter dated August 6, 2008.

Brief description of amendment: The amendment revised the Technical Specifications by adding a new Limiting Condition for Operation (LCO), LCO 3.0.9. This LCO establishes conditions under which systems would remain operable when required physical barriers are not capable of providing their related support function. This amendment is consistent with approved Technical Specification Task Force (TSTF) Improved Standard Technical Specifications Change Traveler, TSTF–427, Revision 2.

Effective date: As of the date of issuance and shall be implemented within 90 days following startup from the 2009 Refueling Outage.

Amendment No.: 157.

Facility Operating License No. DPR–22. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: September 9, 2008 (73 FR 52418).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 22, 2008.

No significant hazards consideration comments received: None.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: October 29, 2007, as supplemented by letters dated April 24 and June 13, 2008.

Brief description of amendments: The amendments revise the Technical Specifications (TSs) for Prairie Island Nuclear Generating Plants, Units 1 and 2. The amendments revise TS 3.8.1 ''AC Sources—Operating'' by revising Surveillance Requirement 3.8.1.9 to require the emergency diesel generator 24-hour load test be performed at or below a power factor of 0.85.

Date of issuance: October 21, 2008.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 189, 178.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: December 18, 2007 (72 FR 71713). The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in Safety Evaluation dated October 21, 2008.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: October 15, 2007, as supplemented by letter dated July 8, 2008.

Brief description of amendments: The amendments relocate surveillance frequencies of most surveillance tests from the Technical Specifications (TS) to a licensee-controlled document, the Surveillance Frequency Control Program (SFCP). Once relocated, changes to the surveillance frequencies may be made using a risk-informed methodology, Nuclear Energy Institute (NEI) document NEI 04–10 Rev. 1, as specified in the Administrative Controls of the TS. The NRC staff has previously approved NEI 04–10 Rev. 1, as acceptable for referencing in licensing applications.

Date of issuance: October 30, 2008.

Effective date: As of its date of issuance and shall be implemented within 360 days from the date of issuance.

Amendment Nos.: Unit 1–200; Unit 2–201.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** November 20, 2007 (72 FR 65370). The supplement dated July 8, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 30, 2008.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: January 17, 2008, as supplemented August 15, 2008.

Brief description of amendment: The amendment will strengthen the control room envelope habitability requirements, adds a new administrative controls program, and adds an additional condition as described in Technical Specification Task Force traveler 448, Revision 3, ''Control Room Habitability.''

Date of issuance: October 27, 2008.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 180.

Renewed Facility Operating License No. NPF–12: Amendment revises the Appendix A Technical Specifications and the Appendix C Additional Conditions.

Date of initial notice in ***Federal Register:*** February 12, 2008 (73 FR 8071). The supplement dated August 18, 2008, provided clarifying information that did not change the scope of the January 17, 2008, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 27, 2008.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: October 23, 2007, as supplemented by letter dated May 20, 2008.

Brief description of amendments: The amendments revised the Technical Specifications (TS) to relocate surveillance frequencies of most surveillance tests from the TS to a licensee-controlled surveillance frequency control program (SFCP). Once relocated, the surveillance frequency changes are permitted based on the risk-informed methodology as specified in the Administrative Controls section of the TS.

Date of issuance: October 31, 2008.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: Unit 1–188; Unit 2–175.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** December 18, 2007 (72 FR 71716). The supplemental letter dated May 20, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 31, 2008.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Unit Nos. 1 and 2, Hamilton County, Tennessee

Date of amendment request: October 26, 2007.

Description of amendment request: The amendments modify the Technical Specifications (TSs) to establish more effective and appropriate action, surveillance, and administrative requirements related to ensuring the habitability of the control room envelope in accordance with NRC-approved Technical Specification Task Force (TSTF) Standard Technical Specification change traveler TSTF–448, Revision 3, ''Control Room Habitability.'' Specifically, the amendments modify TS 3.7.7, ''Control Room Emergency Ventilation System'' and TS Section 6, ''Administrative Controls.'' The amendments also add a new license condition regarding initial performance of the new surveillance and assessment requirements of the revised TSs.

Date of issuance: October 28, 2008.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos: 321 and 313.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revised the license and the TSs.

Date of initial notice in ***Federal Register:*** December 4, 2007 (72 FR 68219).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 28, 2008.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: October 31, 2007, as supplemented by letters dated February 21, March 7, April 17, May 6, July 10, and August 13, 2008.

Brief description of amendment: The amendment revises Technical Specifications to extend for one time the Completion Times for both essential service water trains and the emergency diesel generators from 72 hours to 14 days. The revision to TS would apply when each train of ESW system is inoperable during respective ESW system piping replacements.

Date of issuance: October 31, 2008.

Effective date: As of its date of issuance and shall be implemented by December 31, 2008.

Amendment No.: 186.

Facility Operating License No. NPF–30: The amendment revised the Operating License and Technical Specifications.

*Date of initial notice in **Federal Register:*** December 31, 2008 (72 FR 74362). The supplements dated February 21, March 7, April 17, May 6, July 10, and August 13, 2008, provided additional information that clarified the application did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 31, 2008.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 6th day of November 2008.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–27110 Filed 11–17–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on December 3, 2008, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b (c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: *Wednesday, December 3, 2008, 12 noon–1 p.m.*

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Mr. Sam Duraiswamy (*Telephone:* 301–415–7364) between 7:30 a.m. and 4 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008, (73 FR 58268–58269).

Further information regarding this meeting can be obtained by contacting the Designated Federal Officer between 7:30 a.m. and 4 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: *November 10, 2008.*

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. E8–27303 Filed 11–17–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Subcommittee Meeting on Materials, Metallurgy & Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Materials, Metallurgy & Reactor Fuels will hold a meeting on Tuesday, December 2, 2008, at 11545 Rockville Pike, Rockville, Maryland, Room T–2B3.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, December 2, 2008, 8:30 a.m.–5 p.m.

The Subcommittee will receive an update on the staff's activities associated with the potential revision to 10 CFR 50.46(b) Emergency Core Cooling System acceptance criteria. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC and the industry. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Mr. Christopher L. Brown (*Telephone:* 301–415–7111) 5 days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008, (73 FR 58268–58269).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 6:45 a.m. and 4 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: *November 6, 2008.*

Cayetano Santos,

Chief, Reactor Safety Branch A, ACRS.

[FR Doc. E8–27308 Filed 11–17–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS)

Meeting of the Subcommittee on Early Site Permits; Notice of Meeting

The ACRS Subcommittee on Early Site Permits will hold a meeting on December 3, 2008, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Wednesday, December 3, 2008—8:30 a.m. until 5 p.m.*

The Subcommittee will review and discuss the Early Site Permit (ESP) and Limited Work Authorization application submitted by Southern Nuclear Operating Company (Southern Nuclear or SNC—the applicant) for the Vogtle ESP Site (Docket 52–011) and the associated NRC staff safety evaluation report (SER) and closure of open items. The Committee will review the application and the final SER to fulfill the requirement of 10 CFR 52.23 that the ACRS report on those portions of an ESP application that concern safety. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Southern Nuclear Operating Company, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Derek Widmayer (telephone 301–415–7366) 5 days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2007, (73 FR 58268–58269).

Further information regarding this meeting can be obtained by contacting the Designated Federal Officer between 8 a.m. and 4:45 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: *November 10, 2008.*

Girija Shukla,

Acting Chief, Reactor Safety Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. E8–27318 Filed 11–17–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS)

Meeting of the ACRS Subcommittee on ESBWR; Notice of Meeting

The ACRS Subcommittee on the Economic Simplified Boiling Water Reactor (ESBWR) will hold a meeting on December 3, 2008, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is proprietary to General Electric-Hitachi (GEH) Nuclear Energy and its contractors pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows: *Wednesday, December 3, 2008—1 p.m.–5 p.m.*

The Subcommittee will review Chapter 7 of the Safety Evaluation Report with Open Items associated with the ESBWR Design Certification Application. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, GEH, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Dr. Harold J. VanderMolen, (Telephone: 301–415–6236) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008 (73 FR 58268–58269).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:30 a.m. and 5 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: *November 10, 2008.*

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. E8–27312 Filed 11–17–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of November 17, 24, December 1, 8, 15, 22, 2008.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of November 17, 2008

There are no meetings scheduled for the week of November 17, 2008.

Week of November 24, 2008—Tentative

There are no meetings scheduled for the week of November 24, 2008.

Week of December 1, 2008—Tentative

There are no meetings scheduled for the week of December 1, 2008.

Week of December 8, 2008—Tentative

Tuesday, December 9, 2008

9:30 a.m.
Briefing on Equal Employment Opportunity (EEO) Programs (Public Meeting) (Contact: Sandy Talley, 301–415–8059).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Thursday, December 11, 2008

9:30 a.m.
Briefing on Uranium Recovery—Part 1 (Public Meeting).

1:30 p.m.
Briefing on Uranium Recovery—Part 2 (Public Meeting).
(Contact for both parts: Dominick Orlando, 301–415–6749).

Both parts of this meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Friday, December 12, 2008

9:30 a.m.
Discussion of Management Issues (Closed—Ex. 2).

Week of December 15, 2008—Tentative

Monday, December 15, 2008

1 p.m.
Discussion of Management Issues (Closed—Ex. 2).

Wednesday, December 17, 2008

2 p.m.
Briefing on Threat Environment Assessment (Closed—Ex. 1).

Week of December 22, 2008—Tentative

There are no meetings scheduled for the week of December 22, 2008.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.*, braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *darlene.wright@nrc.gov.*

November 13, 2008.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. E8–27467 Filed 11–14–08; 4:15 pm]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Data Collection(s) Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collections are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. Title and Purpose of Information Collection

Request to Non-Railroad Employer for Information About Annuitant's Work and Earnings; OMB 3220–0107.

Under Section 2 of the Railroad Retirement Act (RRA), a railroad employee's retirement annuity or an annuity paid to the spouse of a railroad employee is subject to work deductions in the Tier II component of the annuity and any employee supplemental annuity for any month in which the annuitant works for a Last Pre-Retirement Non-Railroad Employer (LPE). LPE is defined as the last person, company, or institution, other than a railroad employer, that employed an employee or spouse annuitant. In addition, the employee, spouse or divorced spouse Tier I annuity benefit is subject to work deductions under Section 2(F)(1) of the RRA for earnings from any non-railroad employer that are over the annual exempt amount. The regulations pertaining to non-payment of annuities by reason of work are contained in 20 CFR 230.1 and 230.2.

The RRB utilizes Form RL–231–F, Request to Non-Railroad Employer for Information About Annuitant's Work and Earnings, to obtain the information needed for determining if any work deductions should be applied because an annuitant worked in non-railroad employment after the annuity beginning date. One response is requested of each respondent. Completion is voluntary. The RRB is proposing no changes to Form RL–231–F.

The estimated annual respondent burden is as follows:

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form #(s)	Annual responses	Time (minutes)	Burden (hours)
RL–231–F	300	30	150
Total	300		150

2. Title and Purpose of Information Collection

Supplemental Information on Accident and Insurance; OMB 3220–0036. Under Section 12(o) of the Railroad Unemployment Insurance Act (RUIA), the Railroad Retirement Board is entitled to reimbursement of the sickness benefits paid to a railroad employee if the employee receives a sum or damages for the same infirmity for which the benefits are paid. Section 2(f) of the RUIA requires employers to reimburse the RRB for days in which salary, wages, pay for time lost or other remuneration is later determined to be payable. Reimbursements under section 2(f) generally result from the award of pay for time lost or the payment of guaranteed wages. The RUIA prescribes that the amount of benefits paid be deducted and held by the employer in a special fund for reimbursement to the RRB.

The RRB currently utilizes Form(s) SI–1c, (Supplemental Information on Accident and Insurance), SI–5 (Report of Payments to Employee Claiming Sickness Benefits Under the RUIA), ID–3s (Request for Lien Information), ID–3s–1, (Lien Information Under Section 12(o) of the RUIA), ID–3u (Request for Section 2(f) Information), ID–30k (Form Letter Asking Claimant for Additional Information on Injury or Illness), and ID–30k–1 (Request for Supplemental Information on Injury or Illness—3rd Party), to obtain the necessary information from claimants and railroad employers. The RRB proposes minor non-burden impacting changes to all of the forms in the collection. Completion is required to obtain benefits. One response is requested of each respondent.

The estimated annual respondent burden for this collection is as follows:

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form #(s)	Annual responses	Time (minutes)	Burden (hours)
SI–1c	1,000	5	93
SI–5	2,500	5	208
ID–3s	18,500	3	926
ID–3s.1	500	3	25
ID–3u	1,500	3	76
ID–30k	2,000	5	208
ID–30k.1	2,500	5	167
Total	28,500		1,693

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV.* Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E8–27317 Filed 11–17–08; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Regulation S–K, OMB Control No. 3235–0071, SEC File No. 270–2.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation S–K (17 CFR 229.101–229.103, 229.201–229.202, 229.301–229.308T, 229.401–229.407, 229.501–229.512, 229.601, 229.701–229.703, 229.801–229.802, 229.901–229.915) specifies the non-financial disclosure requirements applicable to registration statements under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and registration statements under Section 12, annual and other reports under Section 13 and 15(d), going-private transaction statements under Section 13, tender offer statements under Section 13 and 14, annual reports to security holders and proxy and information statements under Section 14 and any other documents required to be filed under the Securities Exchange Act of 1934 (15 U.S.C. 78*l*, 78m, 78n, 78o(d)). Regulation S–K is assigned one burden hour for administrative convenience.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Lewis W. Walker, Acting Director/CIO, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: November 6, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–27252 Filed 11–17–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 34b–1; File No. 270–305; OMB Control No. 3235–0346.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 34b–1 under the Investment Company Act (17 CFR 270.34b–1) governs sales material that accompanies or follows the delivery of a statutory prospectus (''sales literature'').[1] Rule 34b–1 deems to be materially misleading any investment company sales literature required to be filed with the Commission by Section 24(b) of the Investment Company Act (15 U.S.C. 80a–24(b))[2] that includes performance data, unless the sales literature also includes the appropriate uniformly computed data and the legend disclosure required in investment company advertisements by rule 482 under the Securities Act of 1933 (17 CFR 230.482). Requiring the inclusion of such standardized performance data in sales literature is designed to prevent misleading performance claims by funds and to enable investors to make meaningful comparisons among fund performance claims.

The Commission estimates that 3,210 respondents file approximately 13,001 responses with the Commission that include the information required by rule 34b–1. The burden from rule 34b–1 requires 2.41 hours per response resulting from creating the information required under rule 34b–1. The total burden hours for rule 34b–1 is 31,332 per year in the aggregate (13,001 responses × 2.41 hours per response). Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collection of information under rule 34b–1 is mandatory. The information provided under rule 34b–1 is not kept confidential. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given

[1] A ''statutory prospectus'' is a prospectus that meets the requirements of Section 10(a) of the Securities Act of 1933 (15 U.S.C. 77j(a)).

[2] Sales literature addressed to or intended for distribution to prospective investors is deemed filed with the Commission for purposes of Section 24(b) of the Investment Company Act upon filing with a national securities association registered under Section 15A of the Securities Exchange Act of 1934 that has adopted rules providing standards for the investment company advertising practices of its members and has established and implemented procedures to review that advertising. See Rule 24b–3 under the Investment Company Act (17 CFR 270.24b–3).

to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Lewis W. Walker, Acting Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: November 10, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–27429 Filed 11–17–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Form N–2; SEC File No. 270–21; OMB Control No. 3235–0026.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is ''Form N–2 (17 CFR 239.14 and 274.11a–1) under the Securities Act of 1933 and under the Investment Company Act of 1940, Registration Statement of Closed-End Management Investment Companies.'' Form N–2 is the form used by closed-end management investment companies (''closed-end funds'') to register as investment companies under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') and to register their securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (''Securities Act''). The primary purpose of the registration process is to provide disclosure of financial and other information to investors and potential investors for the purpose of evaluating an investment in a security. Form N–2 also permits closed-end funds to provide investors with a prospectus containing information required in a registration statement prior to the sale or at the time of confirmation of delivery of securities. The form also may be used by the Commission in its regulatory review, inspection, and policy-making roles.

The Commission estimates that there are 140 initial registration statements and 60 post-effective amendments to initial registration statements filed on Form N–2 annually and that the average number of portfolios referenced in each initial filing and post-effective amendment is 1. The Commission further estimates that the hour burden for preparing and filing a post-effective amendment on Form N–2 is 116.5 hours per portfolio. The total annual hour burden for preparing and filing post-effective amendments is 6,990 hours (60 post-effective amendments × 1 portfolios × 116.5 hours per portfolio). The estimated annual hour burden for preparing and filing initial registration statements is 79,478 hours (140 initial registration statements × 1 portfolios × 567.7 hours per portfolio). The total annual hour burden for Form N–2, therefore, is estimated to be 86,468 hours (6,990 hours + 79,478 hours).

The information collection requirements imposed by Form N–2 are mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *nfraser@omb.eop.gov*; and (ii) Lewis W. Walker, Acting Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an *e-mail to: PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 12, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–27431 Filed 11–17–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, November 20, 2008, at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (8), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, November 20, 2008, will be:

Formal orders of investigation;
Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings of an enforcement nature;
An adjudicatory matter;
Consideration of amicus participation;
Regulatory matters regarding financial institutions; and
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: November 13, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–27405 Filed 11–17–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58924; File No. SR–CBOE–2008–96]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change To Permit $1 Strikes for MNX Options

November 10, 2008.

I. Introduction

On September 16, 2008, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission

(''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] this proposed rule change. The proposed rule change was published for comment in the **Federal Register** on October 8, 2008.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The proposed rule change amends Rule 24.9, *Terms of Index Option Contracts,* by adding a new interpretation that will allow the Exchange to list options on the Mini-Nasdaq-100 Index (''MNX'' or ''Mini-NDX''), which is based on 1/10th the value of the Nasdaq-100 Index, at $1 or greater strike price intervals.[4] For initial series, the Exchange will be able to list at least two strike prices above and two strike prices below the current value of the MNX at or about the time a series is opened for trading on the Exchange. As part of this initial listing, the Exchange will be able to list strike prices that are within five points from the closing value of the MNX on the preceding day.

The Exchange will be permitted to list additional series when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when the underlying MNX moves substantially from the initial exercise price or prices. To the extent that any additional strike prices are listed by the Exchange, such additional strike prices shall be within thirty percent (30%) above or below the closing value of the MNX. The Exchange also will be permitted to open additional strike prices that are more than 30% above or below the current MNX value provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account will not be considered when determining customer interest. In addition to the initial listed series, the Exchange may list up to sixty (60) additional series per expiration month for each series in Mini-NDX options. The Exchange proposes that it shall not list LEAPS on Mini-NDX options at intervals less than $5.

The Exchange also is proposing to set forth a delisting policy with respect to Mini-NDX options. The Exchange will, on a monthly basis, review series that are outside a range of five (5) strikes above and five (5) strikes below the current value of the MNX and delist series with no open interest in both the put and the call series having a: (i) Strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month. Notwithstanding the proposed delisting policy, customer requests to add strikes and/or maintain strikes in Mini-NDX options in series eligible for delisting shall be granted.

III. Commission's Findings and Order Granting Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[6] in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

Specifically, the Commission believes that the proposal to permit listing of $1 strike prices for Mini-NDX options will provide investors with added flexibility in the trading of Mini-NDX options and further the public interest by allowing investors to establish positions that are better tailored to meet their investment objectives. The Commission also believes that the proposal strikes a reasonable balance between the Exchange's desire to accommodate market participants by offering a wider array of investment opportunities and the need to avoid unnecessary proliferation of options series and the corresponding increase in quotes. The Commission notes that the existing restrictions on listing $1 strike price intervals will continue to apply, *e.g.*, no $1 strike price may be listed (a) that is greater than $5 from MNX's closing price on the preceding day, or (b) that would result in strike prices being $0.50 apart.

In approving the proposed rule change, the Commission has relied on the Exchange's representation that it has the necessary systems capacity to support the new options series that will be listed under this proposal. The Commission expects the Exchange to continue to monitor for options with little or no open interest and trading activity and to act promptly to delist such options. In addition, the Commission expects that CBOE will continue to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CBOE–2008–96) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–27280 Filed 11–17–08; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58659 (September 26, 2008), 73 FR 58998 (''Notice'').

[4] Currently, under Interpretation and Policy .01(a)(xxv) to Rule 24.9, the Exchange has authority to list Mini-NDX options at $2.50 strike price intervals. The Commission notes that the Exchange rules currently allow the Exchange to list series at $1 or greater strike price intervals in similar options products. For example, Rule 24.9.01(b) allows the Exchange to list series on options based on one-one hundredth (1/100th) of the value of the Dow Jones Industrial Average Index at no less than $0.50 intervals. Similarly, Rule 24.9.01(f) allows the Exchange to list strike price intervals at no less than $1 for options on the CBOE S&P 500 BuyWrite Index (1/10th value). In addition, Rule 24.9.11 allows the Exchange to list strike price intervals at no less than $1 for the reduced-value version of the Standard & Poor's S&P 500 Stock Index option (''Mini-SPX option''), which is based on 1/10th the value of the S&P 500 Index. *See* Securities Exchange Act Release Nos. 39011 (September 3, 1997), 62 FR 47840 (September 11, 1997); 58207 (July 29, 2008), 73 FR 43963 (July 22, 2008); 52625 (October 18, 2005), 70 FR 61479 (October 24, 2005); and 57049 (December 27, 2007), 73 FR 528 (January 3, 2008).

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58910; File No. SR–DTC–2008–07]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change To Implement Processing Enhancements to the Profile Modification System Used in the Direct Registration System

November 6, 2008.

I. Introduction

On July 7, 2008, The Depository Trust Company (''DTC'') filed with the

Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on August 11, 2008.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

As the use of the Direct Registration System (''DRS'') continues to grow, attention has centered on reducing the number of rejected instructions submitted through the Profile Modification System (''Profile''), a facility administered by DTC that allows an investor's DRS position to be transferred from the records of the transfer agents[3] to a broker-dealer and vice versa. In order to effectively transfer an investor's securities position using Profile, the broker-dealer DTC participant must enter into Profile an instruction containing certain identifying criteria of the investor, such as share quantity and a taxpayer identification number (''TIN'') or Social Security Number. If the submitted information does not match the information the DRS Limited Participant (*i.e.*, the transfer agent) has on its file, the Profile instruction is rejected, which may result in a rejection fee assessed by the DRS Limited Participant. More importantly, the rejection can also result in delays in transferring the position, which could possibly cause financial harm to an investor.

Today, nearly 25% of all Profile instructions are rejected by the transfer agents. The two most common reasons for rejections are the Profile instruction not matching the share quantity or the investor's TIN or Social Security number on the transfer agent's records. The DRS Ad Hoc Committee, an industry committee established to address operational issues related to DRS, believes that by implementing certain system and processing improvements, about 7,000 Profile rejections per month could potentially be eliminated.

A. Proposed Changes to Profile

In an effort to decrease the number of rejections in Profile, DTC will make the following enhancements to Profile functionality.

Move All Instruction. Currently, Profile requires a participant to enter a specific share quantity or dollar value (in the case of debt) in its Profile instruction. Under the rule change, a participant submitting an instruction in Profile will be allowed to select one of the following options: (1) Enter a specific share quantity or dollar value; (2) ''move all'' of the investor's whole shares[4] to the requesting participant's account at DTC; (3) ''move all'' of the investor's whole shares to the requesting participant's account at DTC, liquidate any fractional share positions remaining in the account at the transfer agent, and have the cash proceeds mailed directly to the investor; (4) ''move all'' of the investor's whole shares to the requesting participant's account at DTC, liquidate any fractional share positions remaining in the account at the transfer agent, have the cash proceeds mailed directly to the investor, and close the investor's DRS and Dividend Reinvestment Plan (''DRIP'') account.[5] By using the ''move-all'' functionality, participants can forgo referencing a specific share quantity in the Profile instruction, which DTC believes should eliminate a major cause of Profile rejections.[6]

Dual TIN or Social Security Numbers. Currently, participants are permitted to enter only one TIN or Social Security number in its Profile instruction. Under the rule change, participants may elect to submit a Profile instruction with two TINs or Social Security numbers instead of one. The option to submit a Profile instruction with two TIN or Social Security numbers may be necessary, for example, where the investor's account is a joint account. For those Profile instructions with two TINs or Social Security Numbers, the transfer agent will only need to match on one of the TIN or Social security numbers on the Profile instruction to the its records for the investor account.

The rule change will require broker-dealers and transfer agents that process their DRS transactions through a direct electronic computer-to-computer link with DTC to make internal system enhancements to accommodate DTC's changes to Profile.[7] Specifically, internal systems will need to be enhanced so that they are able to accept DRS Profile instructions to ''move all'' shares from the investor's account at the transfer agent to the investor's broker-dealer's account at DTC. They will also need to be enhanced to provide for the processing of a Profile instruction with a second TIN/Social Security Number.

B. Proposed Remuneration

Pursuant to the new rule, broker-dealers will be required to pay transfer agents two types of remuneration: (1) Reimbursement to compensate for the initial system development of the enhancements contemplated under the move-all proposal and (2) a transaction fee to pay for the on-going administration of the proposed new functions. Accordingly, broker-dealers will pay for seventy-five percent of all system costs with a maximum payment of $200,000 per transfer agent for project plans submitted by transfer agents to DTC by September 1, 2008. For project plans that will be managed by a third party vendor, broker-dealers will be required to pay a remuneration based on the vendor's total project cost. DTC will act as a conduit to collect and distribute the remuneration from the broker-dealers to transfer agents.

Under the ''move all'' proposal, transfer agents were required to submit a project plan to DTC by September 1, 2008, and should be ready to implement the ''move all'' Profile functionality by November 1, 2008, in order to be eligible to receive the system cost remuneration. DTC will make a one time payment to eligible transfer agents no later than ninety calendar days after the completion of the move all and dual TIN or Social Security Number functionality going live. DTC will collect a surcharge of $1.00 from broker-dealers for no more than twenty-four calendar months for each Profile transaction submitted by a broker-dealer in order to offset the up-front remuneration made by DTC to transfer agents. DTC will eliminate the surcharge at the end of twenty-four calendar months or sooner if the total amount of up-front remuneration paid by DTC is collected before the twenty-four month period has expired.

DTC will also charge broker-dealers $.75 per Profile transaction to offset the transfer agents' on-going costs of

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 58292 (August 1, 2008), 73 FR 46693 (August 11, 2008) [File No. SR–DTC–2008–07].

[3] Transfer agents must be designated as DRS Limited Participants by DTC in order to facilitate DRS instructions through Profile.

[4] DTC's systems only process and allow whole shares to be processed and held in participants' accounts at DTC. They do not accommodate fractional shares.

[5] Some transfer agents maintain separate investor accounts for DRIP shares and DRS positions. The participant's instruction through Profile to close the account would require a DRS Limited Participant to close both the DRIP and the DRS account.

[6] Although DRS Limited Participants are able to enter Profile instructions to move DRS positions from a broker-dealer's account at DTC to the investor's account on the books of the transfer agent, the proposed rule change will not permit the ''move all'' function in Profile to be available to the DRS Limited Participant at this time.

[7] It is anticipated that for those users that communicate Profile instructions through DTC through a dedicated terminal (PTS or PBS), they will only need to update their internal procedures and workflow.

supporting the ''move all'' function. The transaction fee will be adjusted annually to reflect DRS Profile transactional volume changes. The rule change will require transfer agents that wish to receive a transaction fee to have submitted their project plan by September 1, 2008. The transfer agents represented on the DRS Ad Hoc Committee have agreed that the remunerations from the transactional fee will be no more than $25,000 per year per transfer agent. DTC will pay each eligible transfer agent with 2,000 or more Profile transactions monthly a set monthly amount of $2,080, or $24,960 annually. DTC will pay each eligible transfer agent with at least 200 transactions monthly but less than 2,000 transactions monthly a set monthly amount of $800, or $9,600 annually. DTC will not pay transfer agents with less than 200 transactions a month.

C. DRS Limited Participant Eligibility Requirements

DTC will amend its DRS Limited Participant rules to require transfer agents to be able to process Profile instructions requesting the ''move all'' options and instructions including dual TIN or Social Security Numbers. To maintain eligibility as a DRS Limited Participant, all current DRS Limited Participants must provide ''move all'' and dual TIN or Social Security number processing capability by no later than December 31, 2008.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.[8] The rule change is consistent with the provisions of the Act because it improves efficiency and reduces risks in DRS.

Accordingly, for the reasons stated above the Commission finds that the rule change, is consistent with DTC's obligation under Section 17A of the Act to promote the prompt and accurate clearance and settlement of securities transactions, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC–2008–07) be and hereby is approved.[9]

For the Commission by the Division of Trading and Practices, pursuant to delegated authority.[10]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–27278 Filed 11–17–08; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78q(b)(3)(F).

[9] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58909; File No. SR-FINRA–2008–046]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Realign the Representation of Industry Members on the National Adjudicatory Council To Follow More Closely the Categories of Industry Representation on the FINRA Board

November 6, 2008.

On September 8, 2008, Financial Industry Regulatory Authority, Inc. (''FINRA,'' f/k/a National Association of Securities Dealers, Inc. and NASD) filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the By-Laws of FINRA's regulatory subsidiary, FINRA Regulation, Inc. (''FINRA Regulation,'' f/k/a NASD Regulation, Inc.). On September 17, 2008, FINRA filed Amendment No. 1 to the proposed rule change. The proposed rule change was published in the **Federal Register** on September 30, 2008.[3] The Commission received one comment on the proposal.[4] This order approves the proposed rule change.

I. Background and Description of the Proposal

A. Background

On July 30, 2007, NASD and the New York Stock Exchange, Inc. consolidated their member firm regulation operations into a combined organization, FINRA. As part of the consolidation, the Commission approved amendments to the NASD By-Laws to implement governance and related changes.[5] The approved changes included a FINRA Board governance structure that balanced public and industry representation and designated seven governor seats to represent member firms of various sizes based on the criteria of firm size.[6]

FINRA Regulation is a subsidiary of FINRA that operates according to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries, as amended, which NASD adopted first in 1996 when it formed NASD Regulation. FINRA Regulation's By-Laws were not amended at the time of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 58626 (September 23, 2008), 73 FR 56872 (''Notice'').

[4] The commenter stated that FINRA's proposal seemed reasonable and that he generally favored it. However, he expressed concern about the elimination of the regional representation on the National Adjudicatory Council (''NAC''). *See* letter from Neal E. Nakagiri, Esq., NPB Financial Group, LLC, to Florence E. Harmon, Acting Secretary, Commission, dated October 20, 2008.

[5] *See* Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007), as amended by Securities Exchange Act Release No. 56145A (May 30, 2008), 73 FR 32377 (June 6, 2008) (File No. SR–NASD–2007–023).

[6] The FINRA Board consists of eleven Public Governors (who are appointed), ten Industry Governors (seven of whom are elected by industry members), the current Chief Executive Officer (''CEO'') of NYSE Regulation, and the current CEO of FINRA. The ten Industry Governors include: (a) Three elected Governors who are registered with member firms that employ 500 or more registered persons (Large Firm Governors); (b) one elected Governor who is registered with a member firm that employs at least 151 and no more than 499 registered persons (Mid-Size Firm Governor); (c) three elected Governors who are registered with member firms that employ at least one and no more than 150 registered persons (Small Firm Governors); (d) one appointed Governor who is associated with a floor member of the New York Stock Exchange; (e) one appointed Governor who is associated with an independent contractor financial planning member firm or an insurance company affiliate; and (f) one appointed Governor who is associated with an affiliate of an investment company. *See* FINRA By-Laws, Article VII (Board of Governors).

consolidation, other than in a few sections where those By-Laws conflicted with the new FINRA By-Laws.

B. Description of the Proposal

The proposed rule change would amend the FINRA Regulation By-Laws (''By-Laws'') to: (1) Restructure the industry representation on the NAC to parallel the firm-size criteria for industry representation on the FINRA Board; (2) modify the nomination process for certain industry member seats on the NAC by using the FINRA Nominating Committee (''Nominating Committee'') and by discontinuing the Regional Nominating Committees; and (3) adopt conforming changes to reflect the corporate name change and similar matters.[7]

1. Changes to the NAC

The NAC reviews all disciplinary decisions issued by Hearing Panels and presides over disciplinary matters that have been appealed to or called for review by the NAC. The NAC also reviews statutory disqualification matters and considers appeals of membership proceedings and exemption requests.[8]

a. Composition

Under the current By-Laws, the NAC must consist of no fewer than 12 and no more than 14 members, and the number of non-industry members, including at least three public members, must equal or exceed the number of industry members.[9] Since 1999, each of five geographic regions, which had been established by the NASD Board of Governors, has been represented on the NAC. Consistent with Article V of the FINRA Regulation By-Laws, the current NAC consists of 14 members [10] and includes seven industry and seven non-industry members.[11] Five of the industry NAC members represent the five geographic regions, and the remaining two industry seats are ''at-large'' seats, which NASD historically used (and FINRA currently uses) to add balance to the types of firms being represented on the NAC.[12]

FINRA proposes to eliminate the size range of the NAC (12–14 members) prescribed by the current By-Laws and instead provide that the NAC consist of 14 members. Additionally, FINRA proposes that the NAC be divided equally between industry and non-industry members, and thereby eliminate the possibility that the number of non-industry members exceed the number of industry members.

The proposed rule change also would eliminate regional representation on the NAC and instead provide for representation of the various firm sizes. Specifically, FINRA would replace the five region-based industry members of the NAC with two small firm, one mid-size firm, and two large firm industry representatives.

In summary, the restructured NAC would consist of 14 members, including seven industry members, two of whom would be ''at large,'' and five of whom would be designated specifically as representatives of large firms, mid-size firms, and small firms, and seven non-industry members, three of whom are public.[13] The tenure of NAC members generally is three years and the terms of the members are staggered. The proposal would not disrupt the process of approximately one-third of the NAC members completing their service in a particular year and being replaced with newly appointed NAC members. The proposal would result in a Small Firm and a Large Firm NAC Member joining the NAC near the beginning of 2009; a Mid-Size Firm NAC Member joining in 2010; and a Small Firm and Large Firm NAC Member joining in 2011.[14]

b. Nomination and Election Process

Currently, non-industry members of the NAC and two ''at-large'' industry members are nominated to serve on the NAC by the Nominating Committee and then appointed by the FINRA Regulation Board.[15] The five industry members of the NAC who are drawn from the five geographic regions are selected through Regional Nominating Committees (through either an uncontested or a contested nomination process), then nominated by the Nominating Committee, and finally appointed by the FINRA Regulation Board.

In conjunction with its proposed transition to representation on the NAC based on firm size, FINRA would simplify the NAC appointment process for industry representatives and follow more closely the procedures for electing industry members of the FINRA Board. FINRA proposes to eliminate the five Regional Nominating Committees and have the Nominating Committee perform their function. Instead of relying on Regional Nominating Committees to identify possible industry candidates and submit candidates to the Nominating Committee and the FINRA Regulation Board, FINRA proposes that the Nominating Committee would identify and solicit candidates for all NAC seats, including the five industry-member positions that are to be based on firm size.[16] FINRA states that the Nominating Committee would be free to consult with or receive recommendations for industry NAC members from other FINRA committees, such as the District Nominating Committees, before communicating its nominations to the FINRA Board.

Individuals who seek to serve on the NAC but who were not nominated (''Additional Candidates'') would still be allowed to gather petitions in support of their candidacy and potentially compete in a contested election. The proposed rule change permits Additional Candidates to petition for consideration as Small, Mid-Size, or Large Firm NAC Members, based on the size of the firm with which they are registered. Additional Candidates would be able to qualify for a contested election by gathering petitions from three percent (or ten percent in the case of petitions in support of more than one person) of the firms in their size category.[17] In the event of a contested election, FINRA members would have an opportunity to vote for a NAC candidate based on firm size.[18]

[7] The proposed rule change would revise, delete, and/or renumber various provisions of the FINRA Regulation By-Laws. Renumbered sections are referred to herein as ''proposed FINRA Regulation By-Laws.'' All other sections (that is, sections for which new numbering did not result from the proposed revisions) are referred to as ''current FINRA Regulation By-Laws.''

[8] *See* current FINRA Regulation By-Laws, Article V, Section 5.1 (Appointment and Authority).

[9] *See* current FINRA Regulation By-Laws, Article V, Section 5.2 (Number of Members and Qualifications).

[10] *See* Notice, *supra* note 3, 73 FR 56872, 56873, n.6.

[11] *See* Notice, *supra* note 3, 73 FR at 56873.

[12] *Id.*

[13] A public member of the NAC has no material business relationship with a broker or dealer or a self-regulatory organization registered under the Act.

[14] A Large Firm is any broker or dealer admitted to membership in FINRA which, at the time of determination, has 500 or more registered persons. A Mid-Size Firm is any broker or dealer admitted to membership in FINRA which, at the time of determination, has at least 151 and no more than 499 registered persons. A Small Firm is any broker or dealer admitted to membership in FINRA which, at the time of determination, has at least 1 and no more than 150 registered persons. *See* proposed FINRA Regulation By-Laws, Article I (Definitions) (defining Small Firm, Small Firm NAC Member, Large Firm, Large Firm NAC Member, Mid-Size Firm, and Mid-Size Firm NAC Member, respectively).

[15] *See supra* note 13.

[16] *See* proposed FINRA Regulation By-Laws, Article V, Section 5.3 (Appointments).

[17] *See* proposed FINRA Regulation By-Laws, Article V, Section 6.2 (Designation of Additional Candidates).

[18] *See* proposed FINRA Regulation By-Laws, Article VI, Section 6.3 (List of FINRA Members

Specifically, small, mid-size, or large firms would vote for NAC candidates only if the contested election was for a NAC seat designated for a firm of corresponding size.

The proposed rule change authorizes the FINRA Secretary to collect information from candidates to determine that the nominee or Additional Candidate, as applicable, satisfies the definition of an Industry, Small Firm, Mid-Sized Firm, Large Firm, Non-Industry, or Public Member of the NAC.[19]

The proposed rule change also ensures that the winner of a contested election serves on the NAC. While all NAC members would continue to be recommended initially by the Nominating Committee and appointed by the FINRA Board,[20] the candidate who receives the most votes in any contested election for a Small, Mid-Size, or Large Firm NAC Member seat would be required under the FINRA Regulation By-Laws to be appointed to the NAC.[21] FINRA does not propose to change the NAC selection process if no Additional Candidates reach the threshold to qualify for a contested election; when there are no Additional Candidates, the industry NAC members selected by the Nominating Committee would not have a contested election and would be recommended for appointment to the NAC.[22]

Additionally, FINRA proposes to modify the provision that restricts NAC members and certain committees from communicating in an official capacity in support of a candidate in a contested election. The current provisions that permit individuals who are Directors or NAC or other committee members to communicate their views regarding a candidate in an individual capacity would remain the same. The modification would specify the narrow circumstances under which the Nominating Committee may support its candidate by sending a maximum of two mailings in support of its nominee.[23] The proposal clarifies that this limited support is available during contested NAC elections by referring to support allowed ''under these By-Laws,'' which includes the support allowed under Article IV, Section 4.16.[24]

The proposed rule change would designate the Secretary of FINRA, instead of the FINRA Regulation Secretary, as the person who would: send notice to FINRA members announcing a contested NAC election; assist in preparing ballots; prepare a list of FINRA members eligible to vote; arrange for the location for counting of ballots by an independent agent; resolve ballots that were set aside, if necessary; extend a time period regarding elections for good cause; and perform similar duties.[25]

2. Other Changes

FINRA proposes to allow the NAC to continue to function while a vacancy is being filled. More specifically, the By-Laws would be changed to provide that a vacancy on the NAC lasting six months or less does not result in a violation of the compositional requirements of the NAC.

FINRA proposes to amend provisions of the By-Laws governing resignation, removal, appointment, and disqualification of NAC members and the NAC's authority to act on FINRA's behalf to designate the FINRA Board as the body authorized to oversee the NAC.[26] Under the proposal, the FINRA Board would have authority to remove all NAC members (for refusal, failure, neglect, or inability to discharge duties), accept their resignations, appoint them, and declare them disqualified.

The proposed rule change would eliminate the By-Laws provision that requires the Chair of the NAC to serve as a Director of the FINRA Regulation Board for a one-year term.

The proposed rule change would modify the By-Laws' definition of ''Industry Member'' by limiting the look-back test that measures whether a NAC or committee member is considered ''industry.'' Currently, a person who has served as an officer, director, or employee of a broker or dealer, within the past three years is considered to be ''industry.'' The proposal would shorten that period to one year.

The proposal also would add the term ''independent director'' to the portion of the definition of ''Industry Member'' that excludes outside directors of a broker or dealer. According to FINRA, ''independent director'' is synonymous with outside director, but would be added to the exclusionary clause of the definition to harmonize the FINRA Regulation By-Laws with the FINRA By-Laws' use of the term ''independent director'' when defining an Industry Governor. In addition, the definitions of ''Public Director'' and ''Public Member,'' which refer to NAC or committee members, would be modified to clarify that, for example, a Public Director's service on FINRA Regulation's Board or a Public Member's service on the NAC does not disqualify that person from satisfying the definition of Public Director or Public Member.[27]

Finally, the proposed rule change would make certain non-substantive changes to several articles of the FINRA Regulation By-Laws as follows:

- ''The NASD'' or ''NASD'' is to be replaced with ''FINRA'' or ''the Corporation;''
- ''NASD Regulation'' is to be changed to ''FINRA Regulation;''
- ''The Rules of the Association'' is to be replaced with ''the Rules of the Corporation;'' and
- ''National Nominating Committee'' is to be replaced with ''Nominating Committee.''

II. Discussion and Commission's Findings

After careful review, including consideration of the comment letter received[28] and FINRA's response thereto,[29] the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

Eligible to Vote) and Article VI, Section 6.7 (Ballots).

[19] *See* proposed FINRA Regulation By-Laws, Article V, Section 5.4 (Nomination Process).

[20] The Exchange states that the seven non-industry members and two at-large industry members would continue to follow the nomination and Board appointment process currently employed for non-industry and at-large industry NAC members. *See* Notice, *supra* note 3, 73 FR at 56874, n. 14.

[21] *See* proposed FINRA Regulation By-Laws, Article V, Section 5.3 (Appointments) and 5.5 (Rejection of Nominating Committee Nominee).

[22] The proposed FINRA Regulation By-Laws would continue to allow the Nominating Committee to propose two or more candidates for a single open small, mid-size, or large firm NAC seat. *See* proposed FINRA Regulation By-Laws, Article VI, Section 6.5 (Notice of Contested Nomination). In such a case, there would be a contested election. The proposed rule change would clarify that only when the Nominating Committee nominates two or more candidates for the same open seat would the Nominating Committee trigger a contested election.

[23] *See* proposed FINRA Regulation By-Laws, Article IV, Section 4.16(b) (Communication of Views Regarding Contested Election or Nomination). Section 4.16(b) would also mirror the language of the FINRA By-Law provision that allows, in contested elections, the appropriate FINRA committee to communicate a responsive message in reply to an additional candidate's communication. *See* FINRA By-Laws, Article VII, Section 11(b) (Communication of Views).

[24] *See* proposed FINRA Regulation By-Laws, Article VI, Section 6.6 (Administrative Support).

[25] *See* proposed FINRA Regulation By-Laws, Article VI, Sections 6.5, 6.7, 6.8, 6.10, 6.11, 6.13, and 6.14.

[26] *See* current FINRA Regulation By-Laws, Article V, Sections 5.1 (Appointment and Authority), and proposed Sections 5.7–5.9.

[27] *See* proposed FINRA Regulation By-Laws, Article I(hh) and (ii).

[28] *See supra* note 4.

[29] *See* letter from Carla Carloni, Associate Vice President, FINRA, to Florence E. Harmon, Acting Secretary, Commission, dated October 22, 2008, at 1 (''FINRA Response Letter'').

association.[30] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(4) of the Act,[31] which requires that FINRA rules are designed to assure a fair representation of FINRA's members in the administration of its affairs. Additionally, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[32] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

A. Changes to the NAC

1. Composition

FINRA proposes that the restructured NAC consist of 14 members, including seven industry members, two of whom will be ''at large'' and five of whom will be designated specifically as representatives of large firms, mid-size firms, and small firms, and seven non-industry members, three of whom are public.[33] As noted above, the Commission received one letter regarding this proposal.[34] The commenter expressed support for the proposal, although he noted a concern that NAC members no longer would be required to come from different geographic regions of the country. In response, FINRA stated that it will ''remain sensitive'' to the commenter's concern.[35] FINRA also pointed out that, under the proposed nomination process, which is discussed further below, the District Nominating Committees, which currently select the five industry members on the NAC that come from the five geographic regions, are permitted to recommend candidates to the Nominating Committee.

The Commission finds that the proposed composition of the NAC satisfies the fair representation requirement of Section 15A(b)(4) of the Act because five of the 14 NAC members will be industry members, elected by member firms of similar size.[36] The proposed rule change aligns the representation of industry members on the NAC to follow more closely the industry representation of the FINRA Board. Previously, the Commission found that the composition of the FINRA Board satisfies the fair representation requirement of Section 15A(b)(4) of the Act.[37]

2. Nomination and Election

FINRA proposes that the Nominating Committee identify and solicit candidates for all NAC seats, including the five industry-member positions that are based on firm size. The Nominating Committee would be free to consult with and receive recommendations for industry NAC members from other FINRA committees, including the District Nominating Committees, before submitting nominees to the FINRA Board.

Under the proposed rule change, Additional Candidates would be: (a) Permitted to petition for consideration as Small, Mid-Size, or Large Firm NAC Members, based on the size of the firm with which they are registered; and (b) able to qualify for a contested election by gathering petitions from three percent of the firms in their size category. In the event of a contested election, FINRA members would have an opportunity to vote for a NAC candidate based on firm size.[38] Specifically, small, mid-size, or large firms would vote for NAC candidates only if the contested election was for a NAC seat designated for a firm of corresponding size.

The proposed rule change authorizes the FINRA Secretary to collect information from candidates to determine that the nominee or Additional Candidate, as applicable, satisfies the definition of an Industry, Small Firm, Mid-Sized Firm, Large Firm, Non-Industry, or Public Member of the NAC.[39] The proposed rule change also ensures that the winner of a contested election would serve on the NAC. While all NAC members would continue to be recommended initially by the Nominating Committee and appointed by the FINRA Board,[40] the candidate who receives the most votes in any contested election for a Small, Mid-Size, or Large Firm NAC Member seat would be required under the FINRA Regulation By-Laws to be appointed to the NAC.[41] FINRA does not propose to change the NAC selection process if no Additional Candidates reach the threshold to qualify for a contested election. When there are no additional candidates, the industry NAC members selected by the Nominating Committee would not have a contested election and would be recommended for appointment to the NAC.[42]

The Commission finds that the proposed petition process, coupled with the proposed By-Law provisions on the NAC's composition, also are consistent with the fair representation requirement of Section 15A(b)(4) of the Act. As noted above, the Commission previously approved a proposed rule change relating to the composition of the FINRA Board that similarly provided firms with the right to petition for and vote on FINRA Board candidates industry members, according to firm size.[43] The Commission also notes that FINRA's proposal to permit Additional Candidates to qualify for a contested election by gathering petitions from three percent of the firms in their size category (or ten percent in the case of petitions in support of more than one person) is lower than the ten percent threshold that has been in place under the By-Laws to qualify a FINRA member as an Additional Candidate for a regional NAC seat.[44]

In addition, FINRA proposes to: (a) The narrow circumstances under which the Nominating Committee may support its candidate by sending a maximum of two mailings in support of its nominee; and (b) assign to the Secretary of FINRA the duties of sending notice to FINRA members announcing a contested NAC election, assisting in preparing ballots; preparing a list of FINRA members eligible to vote, arranging for the location for counting of ballots by an independent agent; resolving ballots that were set aside, as necessary,

[30] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[31] 15 U.S.C. 78o–3(b)(4).

[32] 15 U.S.C. 78o–3(b)(6).

[33] A public member of the NAC has no material business relationship with a broker or dealer or a self-regulatory organization registered under the Act.

[34] *See supra* note 4.

[35] *See* FINRA Response Letter, *supra* note 29.

[36] *See infra* note 43 and accompanying text.

[37] *See* Securities Exchange Act Release No. 56145, *supra* note 5, 72 FR at 42182.

[38] *See* proposed FINRA Regulation By-Laws, Article VI, Section 6.3 (List of FINRA Members Eligible to Vote) and Article VI, Section 6.7 (Ballots).

[39] *See* proposed FINRA Regulation By-Laws, Article V, Section 5.4 (Nomination Process).

[40] The seven non-industry members and two at-large industry members would continue to follow the nomination and Board appointment process currently employed for non-industry and at-large industry NAC members.

[41] *See* proposed FINRA Regulation By-Laws, Article V, Section 5.3 (Appointments) and 5.5 (Rejection of Nominating Committee Nominee).

[42] The proposed FINRA Regulation By-Laws would continue to allow the Nominating Committee to propose two or more candidates for a single open small, mid-size, or large firm NAC seat. *See* proposed FINRA Regulation By-Laws, Article VI, Section 6.5 (Notice of Contested Nomination). In such a case, there would be a contested election. The proposed rule change would clarify that only when the Nominating Committee nominates two or more candidates for the same open seat would the Nominating Committee trigger a contested election.

[43] *See supra* note 37.

[44] *Compare* current FINRA Regulation By-Laws, Article VI, Section 6.15 (Requirement for Petition Supporting Additional Candidate) *with* proposed FINRA Regulation By-Laws, Article VI, Section 6.2 (Designation of Additional Candidates).

extending a time period regarding elections for good cause, and similar duties. The Commission finds that these proposals are consistent with Section 15A(b)(6) of the Act,[45] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

3. Other Changes

FINRA proposes to allow NAC to continue to function for a period of 6 months or less while a vacancy is being filled.

FINRA proposes to broaden the FINRA Board's oversight authority over the NAC.[46] The proposed rule change grants the FINRA Board authority to remove all NAC members (for refusal, failure, neglect, or inability to discharge duties), accept their resignations, appoint them, and declare them disqualified. FINRA believes that this change will benefit the appellate portion of the disciplinary process.[47]

The proposed rule change eliminates the reference to the Chair of the NAC serving as a Director of the FINRA Regulation Board for a one-year term. FINRA explains that this provision is obsolete because the NAC Chair is no longer an automatic member of the FINRA Regulation Board.

FINRA proposes to narrow the pool of people qualified to be an ''Industry Member,'' requiring that a person who has served as an officer, director, or employee of a broker or dealer, within the past year (instead of three years) is considered to be ''industry.'' The proposed change is consistent with the definitions of ''Industry Governor'' and ''Industry committee member'' in the FINRA By-Laws.[48]

The proposal also adds the term ''independent director'' to the portion of the definition of ''Industry Member'' that excludes outside directors of a broker or dealer. FINRA states that the goal of this proposal is to harmonize use of the term ''independent director'' when defining an Industry Governor in the FINRA Regulation By-Laws and the FINRA By-Laws.

In addition, FINRA would modify the qualifications for ''Public Director'' and ''Public Member.'' Currently, only someone with no material business relationship with a broker, dealer, or the NASD, NASD Regulation, or a market for which NASD provides regulation is eligible for those positions. Alternatively, FINRA proposes to require that Public Directors and Public Members have no material business relationship with a broker, dealer, or a self regulatory organization registered under the Act (''SRO''), provided that service as a public director of an SRO or as a public member on an SRO committee is not disqualifying.

Finally, FINRA proposes to make the following non-substantive replacements in the FINRA Regulation By-Laws:

- Substitute ''the NASD'' or ''NASD'' with ''FINRA'' or ''the Corporation;''
- Substitute ''NASD Regulation'' with ''FINRA Regulation;''
- Substitute ''the Rules of the Association'' with ''the Rules of the Corporation;'' and
- Substitute ''National Nominating Committee'' with ''Nominating Committee.''

The Commission finds that these proposed changes are consistent with Section 15A(b)(6) of the Act,[49] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[50] that the proposed rule change (SR–FINRA–2008–046) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[51]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–27249 Filed 11–17–08; 8:45 am]

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[45] 15 U.S.C. 78o–3(b)(6).

[46] The authority of the FINRA Board to establish disciplinary procedures, impose sanctions, and review disciplinary decisions of the NAC are discussed in the Notice. *See* Notice, *supra* note 3, 73 FR at 56875.

[47] *See id.*

[48] *See* FINRA By-Laws, Article I(t).

[49] 15 U.S.C. 78o–3(b)(6).

[50] 15 U.S.C. 78s(b)(2).

[51] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58929; File No. SR–Phlx–2008–75]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the NASDAQ OMX PHLX, Inc. Relating to the Definition of ''Market for the Underlying Security''

November 12, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 [2] thereunder, notice is hereby given that on November 3, 2008, the NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Section 19(b)(1) of the Act [3] and Rule 19b–4 thereunder,[4] proposes to amend Exchange Rule 1017, Openings in Options, to replace references to the ''primary market'' in respect of an underlying security with references to the ''market for the underlying security.''

The text of the proposed rule change is available on the Exchange's Web site at *http://www.phlx.com/regulatory/reg_rulefilings.aspx.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify the circumstances under which the Exchange's electronic trading platform for options, Phlx XL,[5] would initiate an automated opening in a particular option series upon receipt of the opening trade or quote in the primary market for the underlying security, by more specifically defining ''primary market'' in the Exchange's rules.

Current Definition of ''Primary Market''

Currently, Exchange Rule 100(b)31 defines the term ''primary market'' in respect of an underlying stock or Exchange-Traded Fund Share as the principal market in which the underlying stock or Exchange-Traded Fund Share is traded.

The Exchange believes that the current definition of ''primary market'' in respect of an underlying security is not sufficiently specific to capture the various marketplaces that might be determined to be the ''primary market'' for such underlying security. Because underlying securities trade on multiple exchange platforms and various Electronic Commerce Networks (''ECNs'') and other venues, the term ''primary market'' has become increasingly difficult to define in determining the principal market in which the underlying stock or Exchange-Traded Fund Share is traded. In order to account for this respecting openings in options, the Exchange intends to code its automated opening system to open trading in options upon receipt of an opening price on the ''market for the underlying security,'' as defined more specifically below.

Market for the Underlying Security

The Exchange proposes to amend Exchange Rule 1017 by eliminating the requirement that the Phlx XL automated opening system must receive an opening price in the ''primary'' market for the underlying security in order to open trading in the overlying options, and accordingly, to adopt a definition of ''market for the underlying security'' in proposed Rule 1017(k). Under the proposal, the term ''market for the underlying security'' would mean either the primary listing market, the primary volume market (defined as the market with the most liquidity in that underlying security for the previous two calendar months), or the first market to open the underlying security, as determined by the Exchange on an issue-by-issue basis and communicated to members on the Exchange's Web site.

Openings in Options

The Exchange believes that this proposed definition should more accurately capture the manner in which the Phlx XL system determines to open a particular option series based on the opening trade or quote on the primary market in the underlying security.

Exchange Rule 1017, Openings in Options, currently lists various scenarios that take place when a quote or trade has been disseminated by the primary market for the underlying security. For example, respecting the pre-opening phase of the Phlx XL automated opening system, Rule 1017(b) states that the system will calculate an Anticipated Opening Price (''AOP'') and Anticipated Opening Size (''AOS'') in equity options when a quote or trade has been disseminated by the primary market for the underlying security.[6] Other sections of Rule 1017 require an opening quote or trade in the ''primary market'' for the underlying security in order to open, and base the timing of the opening on the dissemination of such a quote or trade by the primary market for the underlying security.[7]

The Exchange has experienced situations where the ''primary market'' for the underlying security in a particular series has been delayed in disseminating an opening quote or trade when other markets for the underlying security for the series have already disseminated an opening quote or trade in such underlying security. If the Exchange were to limit its definition of ''primary market'' for the underlying security to mean the ''principal market in which the underlying stock or Exchange-Traded Fund Share is traded,'' it would risk the possibility that other options markets with more specific definitions of the market in the underlying security whose opening quote or trade would initiate an automated opening[8] could open the particular series, while the Exchange could not. This would place (and has placed) the Exchange and its market participants at a distinct competitive disadvantage concerning openings in options, because market prices for options trading on other options exchanges would be established through free trading while the Exchange establishes its options pricing on the ''primary market'' for the underlying security, which may not yet be open for the affected series. Exchange participants could thus open an option series at an opening price that is inferior to the price established in free trade on away markets.

The Exchange believes that the elimination of the term ''primary market'' from the rule, together with the proposed definition of ''market for the underlying security,'' should capture the manner in which the Phlx XL system will evaluate underlying prices, thus preserving the Exchange's ability to compete with other options exchanges respecting openings.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by adopting a definition of ''market for the underlying security,'' thus ensuring that

[5] *See* Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 44612 (August 3, 2004) (SR–Phlx–2003–59).

[6] The rule goes on to state generally that an AOP can only be calculated when either (A) the specialist's quote has been submitted; (B) the quotes of at least two Phlx XL participants have been submitted within two minutes of the opening trade or quote on the primary market for the underlying security in the case of equity options; or (C) if neither the specialist's quote nor the quotes of two Phlx XL participants have been submitted within two minutes of the opening trade or quote on the primary market for the underlying security in the case of equity options, one Phlx XL participant has submitted their quote.

[7] Rule 1017(b)(iii) provides that the system will open the series for trading within a time period not to exceed 5 seconds (as determined by the Exchange and disseminated to membership via Exchange circular) following: (A) respecting equity options, the dissemination of an opening quote or trade in the primary market for the underlying security; or (B) respecting index options, following the dissemination of a quote or trade by the primary markets for underlying securities constituting 100% of the index value.

[8] For example, Chicago Board Options Exchange Rule 6.2B, on which the instant proposal is based, states, ''[U]nless unusual circumstances exists (sic), at a randomly selected time within a number of seconds after the opening trade and/or the opening quote is disseminated in the market for the underlying security (or after 8:30 a.m. for index options), the System initiates the opening rotation procedure and sends a notice (''Rotation Notice'') to market participants. For purposes of this paragraph, the ''market for the underlying security'' shall be either the primary listing market, the primary volume market (defined as the market with the most liquidity in that underlying security for the previous two calendar months), or the first market to open the underlying security, as determined by the Exchange on a class-by-class basis and announced to the membership via Regulatory Circular.''

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

the Exchange is on an even playing field with competing options exchanges concerning openings.

The Exchange believes that the proposed definition of ''market for the underlying security'' should enable Exchange options participants to price options promptly and accurately at the opening of trading, resulting in narrower spreads and deeper markets on the Exchange.

The Exchange further believes that the proposed rule change will provide it with more flexibility to determine when to permit the Phlx XL automated opening system to begin, which should contribute to the Exchange's ability to conduct openings in a fairly and orderly manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is being designated by the Exchange as a ''non-controversial'' rule pursuant to Section 19(b)(3)(A) [11] of the Act and subparagraph (f)(6) of Rule 19b–4 thereunder,[12] because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing of the proposed rule change.[13]

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposed rule change is based on the rules of another self-regulatory organization,[16] and this proposal does not raise any novel issues. In addition, the Exchange states that it is being placed at a competitive disadvantage because other exchanges are able to open trading in an options series at times when the Exchange cannot. Allowing the proposed rule change to become operative on filing will ensure that the Exchange is on an even playing field with competing options exchanges concerning openings. For these reasons, the Commission designates the proposed rule change as operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2008–75 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2008–75. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2008–75 and should be submitted on or before December 9, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–27282 Filed 11–17–08; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] As required under Rule 19b–4(f)(6)(iii), the Exchange has provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing of the proposed rule change.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] *See* Securities Exchange Act Release No. 56600 (October 2, 2007), 72 FR 57619 (October 10, 2007) (SR–CBOE–2007–88).

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's effect on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58911; File No. SR–NASDAQ–2008–085]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Procedures Applicable to Listed Companies That Are Late in Filing a Required Periodic Report With the Commission

November 6, 2008.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934

[1] 15 U.S.C. 78s(b)(1).

(''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on October 30, 2008, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Nasdaq. Nasdaq has designated the proposed rule change as effecting a change described under Rule 19b–4(f)(6) under the Act,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to modify the procedures applicable to listed companies that are late in filing a required periodic report with the Commission.

The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in brackets.[5]

4802. Purpose and General Provisions

(a) No change.

(b) *(1)* An issuer may file a written request for an exception to any of the standards set forth in the Rule 4000 Series at any time during the pendency of a proceeding under the Rule 4800 Series.

(2)(A) Subject to the limitation in subparagraph (B), below, a [A] Listing Qualifications Panel may grant exceptions for a period not to exceed 180 days from the date of the Staff Determination with respect to the deficiency for which the exception is granted, and the Listing Council may grant exceptions for a period not to exceed 360 days from the date of the Staff Determination with respect to the deficiency for which the exception is granted, in each case where it deems appropriate.

(B) In the case of a company that fails to file a periodic report (e.g., Form 10–K, 10–Q, 20–F, 40–F, or N–CSR), neither a Listing Qualifications Panel nor the Listing Council may grant an exception for a period to exceed 360 days from the due date of the first such late periodic report. The company can regain compliance with the requirement by filing that periodic report and any other delinquent reports with due dates falling before the end of the exception period. In determining whether to grant an exception, and the length of any such exception, the Panel and Listing Council will consider the company's specific circumstances, including the likelihood that the filing can be made within the exception period, the company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the company's general financial status, and the company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

(c)–(f) No change.

4803. Staff Review of Deficiency

(a) Whenever staff of the Listing Department determines that an issuer does not meet a listing standard set forth in the Rule 4000 Series, staff shall immediately notify the issuer. The issuer shall make a public announcement through the news media disclosing the receipt of this notice, including the Rule(s) upon which it was based. Prior to the release of the public announcement, the issuer shall provide such disclosure to Nasdaq's Market Watch Department, the Listing Department, and the Hearings Department. The public announcement shall be made as promptly as possible, but not more than four business days following receipt of the notice from the Listing Department.

(1) No change.

(2) *In the case of deficiencies from the standards of Rules 4310(c)(14) and 4320(e)(12), staff's notice shall provide the issuer with 60 calendar days to submit a plan to regain compliance with the listing standard; provided, however, that the issuer shall not be provided with an opportunity to submit such a plan if review under the Rule 4800 Series of a prior Staff Determination (other than a Staff Determination that serves as a public reprimand letter as described in Section 4801(k)(2)) with respect to the issuer is already pending. Staff in the Listing Department may extend this deadline for up to an additional 15 calendar days upon good cause shown and may request such additional information from the issuer as is necessary to make a determination regarding whether to grant such an extension.*

(2)–(3) Renumbered as (3) and (4).

(b)*(1)* Unless review under the Rule 4800 Series of a prior Staff Determination (other than a Staff Determination that serves as a public reprimand letter as described in Rule 4801(k)(2)) with respect to the issuer is already pending, the Listing Department may grant the issuer additional time to regain compliance with a listing standard described in paragraph (a)(1) *and (a)(2). The maximum amount of time that the Listing Department may provide is described in paragraph (b)(2), below. Staff in the Listing Department may request such additional information from the issuer as is necessary to make a determination regarding whether to grant an exception.* [; provided, however, that the additional time provided by all such exceptions shall not exceed 105 calendar days from the date of staff's notification pursuant to paragraph (a).] The Listing Department shall prepare a written record describing the basis for granting any exception, and shall provide the issuer with written notice as to the terms of the exception. If the issuer does not regain compliance within the time period provided by all applicable exceptions, the Listing Department shall immediately issue a Staff Determination pursuant to Rule 4804(a). If the Listing Department determines not to grant the issuer additional time to regain compliance, the Listing Department shall immediately issue a Staff Determination pursuant to Rule 4804(a) that includes a description of the basis for denying the exception.

(2)(A) The maximum additional time provided by all exceptions granted by the Listing Department for a deficiency described in Rule 4803(a)(1) is 105 calendar days from the date of staff's notification pursuant to paragraph (a).

(B) The maximum additional time provided by all exceptions granted by the Listing Department for a deficiency described in Rule 4803(a)(2) is 180 calendar days from the due date of the first late periodic report (as extended by Rule 12b–25, if applicable). In determining whether to grant an exception, and the length of any such exception, the Listing Department will consider, and the company should address in its plan of compliance, the company's specific circumstances, including the likelihood that the filing can be made within the exception period, the company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the company's general financial status, and the company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the company, its audit committee, its

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 17 CFR 240.19b–4(f)(6).

[5] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaqomx.cchwallstreet.com.*

outside auditors, the staff of the SEC and any other regulatory body.

* * * * *

4805. Request for Hearing

(a) An issuer may, within seven calendar days of the date of the Staff Determination, request either a written or oral hearing to review the Staff Determination. Requests for hearings should be filed with the Hearings Department. *Subject to the limitation in paragraph (b), a* [A] request for a hearing shall stay the delisting action pending the issuance of a Panel Decision. If no hearing is requested within the seven calendar day period, the right to request review is waived, and the Staff Determination shall take immediate effect. All hearings shall be held before a Listing Qualifications Panel as described in Rule 4806. All hearings shall be scheduled, to the extent practicable, within 45 days of the date that the request for hearing is filed, at a location determined by the Hearings Department. The Hearings Department shall make an acknowledgment of the issuer's hearing request stating the date, time, and location of the hearing, and the deadline for written submissions to the Listing Qualifications Panel. The issuer shall be provided at least 10 calendar days notice of the hearing unless the issuer waives such notice.

(b) *A request for a hearing shall ordinarily stay the delisting action pending the issuance of a Panel Decision. However, if the Staff Determination relates to deficiencies from the standards of Rules 4310(c)(14) or 4320(e)(12), which require an issuer to timely file its periodic reports with the Commission, the delisting action will only be stayed for 15 calendar days from the deadline to request a hearing unless the issuer specifically requests and the Panel grants a further stay. A request for a further stay must include an explanation of why such a stay would be appropriate and should be included in the issuer's request for a hearing. Based on that submission and any recommendation provided by staff of the Listing Department, the Panel will determine whether to grant the issuer a further stay. In determining whether to grant the stay, the Panel will consider the company's specific circumstances, including the likelihood that the filing can be made within any exception period that could subsequently be granted, the company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the company's general financial status, and the company's disclosures to the market. The Panel will notify the company of its conclusion as soon as is practicable, but in no event more than 15 calendar days following the deadline to request the hearing. In the event the Panel determines not to grant the issuer a stay, the issuer's securities will be immediately suspended and will remain suspended unless the Panel Decision issued after the hearing determines to reinstate the securities.*

(b)–(c) Renumbered as (c) and (d).

* * * * *

4809. Discretionary Review by Nasdaq Board

(a) A Listing Council Decision *or a Panel Decision, in a matter where the Listing Qualifications Panel has granted the maximum exception period and the Listing Council is precluded from granting additional time under Rule 4802(b)(2)(B),* may be called for review by the Nasdaq Board solely upon the request of one or more Directors not later than the next Nasdaq Board meeting that is 15 calendar days or more following the date of the Listing Council *or Panel* Decision. Such review shall be undertaken solely at the discretion of the Nasdaq Board and will not operate as a stay of the Listing Council *or Panel* Decision, unless the call for review specifies to the contrary. At the sole discretion of the Nasdaq Board, the call for review of a Listing Council *or Panel* Decision may be withdrawn at any time prior to the issuance of a decision.

(b) If the Nasdaq Board conducts a discretionary review, the review generally shall be based on the written record considered by the Listing Council or *Listing Qualifications Panel.* However, the Nasdaq Board may, at its discretion, request and consider additional information from the issuer and/or from staff of the Listing Department. If the Board considers additional information, the record of proceedings before the Nasdaq Board shall be kept by the Nasdaq Office of Appeals and Review.

(c) If the Nasdaq Board conducts a discretionary review, the issuer shall be provided with a written decision that meets the requirements of Rule 4811. The Nasdaq Board may affirm, modify or reverse the Listing Council *or Panel* Decision and may remand the matter to the Listing Council, Listing Qualifications Panel, or staff of the Listing Department with appropriate instructions. The decision of the Nasdaq Board will take immediate effect, unless it specifies to the contrary, and represents the final action of Nasdaq. If the Nasdaq Board determines to delist the issuer, the securities of the issuer will be immediately suspended, unless the Nasdaq Board specifies to the contrary, and Nasdaq will follow the procedures described in IM–4800 and submit an application on Form 25 to the Commission to strike the security from listing.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to modify its process relating to companies that are late in filing a required periodic report with the Commission.

Currently, when a Nasdaq-listed company is late in filing a required periodic report with the Securities and Exchange Commission or other appropriate regulatory authority, Nasdaq staff immediately sends the company a delisting letter pursuant to Nasdaq Rule 4310(c)(14) or 4320(e)(12).[6] Nasdaq rules do not allow a company any compliance period to make a late filing and Nasdaq staff does not have the authority to consider a company's plan to regain compliance or otherwise grant the company any additional time. While a Nasdaq-listed company may receive a short ''exception'' to the filing requirement, such exceptions are only granted by a Listing Qualification Panel after a hearing and cannot exceed 180 days from the staff's delisting letter.[7] If a company cannot file within that period, it typically would be delisted from Nasdaq[8] and its securities would

[6] Rule 4310(c)(14) is applicable to domestic and Canadian issuers. Rule 4320(e)(12) is applicable to non-U.S. companies, other than Canadian companies.

[7] Pursuant to Rule 4805(a), a request for a hearing stays the security's delisting pending the issuance of a decision by the Panel.

[8] Pursuant to Rule 4807(b), the Nasdaq Listing and Hearing Review Council (the ''Listing Council'') can call for review a Panel decision to delist a company for this reason and stay the delisting. The Listing Council has recently exercised this

Continued

be ineligible to trade on any other exchange or on the OTC Bulletin Board.

While Nasdaq believes that the availability of timely financial statements is vitally important for investors, recent changes in the regulatory environment have made it increasingly difficult for companies to prepare, obtain auditor review, and file their periodic financial statements on time. Heightened scrutiny by independent auditors and increasingly complex technical accounting standards result in better financial disclosure, but they also may delay the filing process. Further, when a company does delay its filing, the formal process required to investigate the underlying issues causing the delay and, if necessary, to restate its financial statements, can be a laborious time-consuming process. In these situations, companies often publish whatever financial information they can and inform investors of the reasons for the delay. Generally speaking, Nasdaq believes that delisting a company that is taking all appropriate steps to regain compliance and file financial statements, while keeping the public informed, is not in the best interest of the company or its investors. In addition, Nasdaq has found that receipt of a delisting letter immediately upon being late in a required filing is disruptive to the Company and can be misleading to shareholders and prospective investors.

As a result, Nasdaq has determined to modify its rules to allow companies to submit a plan to regain compliance to the staff of the Listing Qualifications Department and to allow staff to grant the company up to 180 days from the due date for a periodic report (as extended by Exchange Act Rule 12b–25, if applicable) to regain compliance. Nasdaq will notify companies promptly upon determining that they are delinquent and companies will have to publicly disclose receipt of that notification both under Nasdaq Rules [9] and the Commission's Form 8–K rules.[10] Nasdaq will also disseminate the fact that the company is late in filing a periodic report [11] and the company will be included on a list of deficient and delinquent companies on Nasdaq's Web site.[12]

In determining whether to grant a company additional time, staff will consider the company's specific circumstances, including the company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the company's general financial status, the company's disclosures to the market, and the likelihood that the filing can be made within the exception period. This review will be based on information provided by a variety of sources, which may include the company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

If the company has not regained compliance during any additional periods granted by the Listing Qualifications Department,[13] or if staff determines that it is not appropriate to grant additional time, the company will receive a delisting notification from Nasdaq staff and, to avoid being delisted, can request review by a Nasdaq Listing Qualifications Panel.[14] Under the proposed rules, such a request will stay the delisting for 15 calendar days to permit the Panel to make a determination as to whether a further stay is appropriate.[15] In the event the Panel determines not to grant the issuer a further stay, the issuer's securities will be suspended and will remain suspended unless the Panel Decision issued after the hearing determines to reinstate the securities. If the Panel grants the issuer a further stay, that stay would remain in effect until the Panel issues a Panel Decision, which could permit the company to remain listed for up to 180 days from the date of the staff's delisting determination but in no event more than 360 days from the due date of the company's first late filing, or could deny any further exception and delist the company.

If the staff and the Panel each grant the maximum time available for the company to regain compliance, the Nasdaq Listing and Hearing Review Council would be unable to grant any additional time regardless of whether the company appeals or the Listing Council calls the matter for review.[16] In these cases, however, Nasdaq is modifying Rule 4809 to permit the Nasdaq Board of Directors to call the Panel decision for review, at the Board's sole discretion.[17] Nasdaq believes that this modification will help assure that there is an opportunity for meaningful review of a Panel decision, if the Board believes that it is appropriate. If, on the other hand, either the staff or the Panel grant less than the maximum time available for the company to regain compliance, the company could appeal to the Listing Council or the Listing Council could call the matter for review, and the Listing Council could grant an exception for the company to stay listed for up to 360 days from the date of the staff's delisting letter, but in no event more than 360 days from the due date of the company's first late filing.

Nasdaq understands that the Commission is considering additional changes that may be appropriate to the listing rules of all the Self-Regulatory Organizations (''SROs'') that would result in substantially uniform treatment of delinquent filers by all the SROs. Nonetheless, Nasdaq believes that this interim change is appropriate now and will significantly reduce an existing burden of Nasdaq's rules on its listed companies. Nasdaq is committed to working with the Commission in conjunction with the other SROs to adopt other changes that the Commission feels appropriate.

Implementation

Nasdaq proposes to implement the proposed rule immediately for companies that have not yet received a

discretion in certain late filing cases. Pursuant to Rule 4802(b), the Listing Council cannot grant an exception for such a company to stay listed longer than 360 days from the date of the staff's delisting letter.

[9] *See* Rule 4803(a).

[10] *See* Item 3.01(a) of Form 8-K and Instruction 2 thereto.

[11] Nasdaq includes an indicator in the daily issue symbol directory, which notes that the company is delinquent in filing a periodic report, for data vendors to display on their single security quotation screens.

[12] *See http://www.nasdaq.com/services/DelDefOpenReport.pdf.*

[13] If staff initially grants a company less than 180 days from the due date of the delinquent periodic report, staff may subsequently grant additional time, up to the full extent of its discretion.

[14] Nasdaq staff could also terminate an exception based on superseding events or if the company fails to comply with another listing requirement during the exception period.

[15] The decision to continue the stay may be made by different panel members than those who ultimately hear the company's appeal at the hearing. In determining whether to grant the stay, the Panel will consider the company's specific circumstances, including the likelihood that the filing can be made within any exception period that could subsequently be granted, the company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the company's general financial status, and the company's disclosures to the market.

[16] Nasdaq does not propose to change the existing rules that allow a company to appeal such a matter to the Listing Council or for the Listing Council to call such a matter for review. Nonetheless, in a situation where the staff and the Panel each exercise the full extent of their discretion and grant the maximum time available under the rules, Rule 4802(b)(2)(B) would preclude the Listing Council from granting any additional time to the company to regain compliance.

[17] If the Nasdaq Board exercises its authority to call a Panel decision for review, that call for review will not automatically stay the Panel's decision. If there is a concurrent review of the Panel decision pending by the Listing Council, whether initiated by a company appeal or a Listing Council call for review, the Board will decide whether to permit that review to continue or to assert sole jurisdiction over the matter.

delisting notification. Nasdaq proposes no changes to the process for companies that have already received a delisting notification and therefore are already in the review process. As such, these companies can receive a Panel exception for a maximum of 180 days from the date of the staff's delisting determination. Thereafter, if the Listing Council calls the matter for review, the Listing Council can stay the delisting and grant the company an exception for a maximum of 360 days from the date of the staff's delisting letter.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[18] in general and with Sections 6(b)(5) of the Act,[19] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is designed to remove uncertainty regarding the ability of companies to remain listed on Nasdaq, thereby protecting investors and removing an impediment to a free and open market, and provide additional transparency to Nasdaq's process surrounding delinquent periodic reports.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[20] and Rule 19b–4(f)(6) thereunder.[21]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative for 30 days after the date of filing.[22] However, Rule 19b–4(f)(6)(iii)[23] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive the 30-day operative delay and designate the proposed rule change to become operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change will not allow companies to remain listed on Nasdaq longer than 360 days from the due date of the first late annual or quarterly report, the maximum period currently allowed under Nasdaq rules. While the procedures for issuing delisting notices for Nasdaq late filers will be changed, as Nasdaq has stated in its filing, the changes are based on, and similar to, the NYSE's current procedures for NYSE issuers that are late in filing their annual report, and do not in any way extend the amount of time a late filer of both annual and quarterly reports can remain listed on Nasdaq.[24] Further, consistent with investor protection, under the new rules any extension of a stay granted by the Nasdaq staff (which cannot exceed 180 days from the due date of the filing), would have to be considered by an independent panel. Finally, waiving the 30 day operative delay will allow Nasdaq to apply the proposed change to upcoming company filings due for the quarter ended September 30, 2008.[25] Based on the above, the Commission designates the proposal to become operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2008–085 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–085. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Nasdaq has satisfied this requirement.

[23] *Id.*

[24] Unlike Nasdaq, NYSE delisting rules only apply to late filers of annual reports. *See* Securities Exchange Act Release No. 51777 (June 2, 2005), 70 FR 33573 (June 8, 2005).

[25] For purposes only of waiving the 30-day operative delay, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2008–085 and should be submitted on or before December 9, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–27250 Filed 11–17–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58921; File No. SR–NYSE–2008–111]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC To Establish System of Rebates for Designated Market Makers

November 7, 2008.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on October 30, 2008, New York Stock Exchange LLC (the ''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a schedule of fees and rebates applicable to Designated Market Makers (''DMMs''). While the change to the Exchange's 2008 Price List pursuant to this proposal will be effective upon filing, the change will become operative as of November 3, 2008. The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a schedule of fees and rebates applicable to DMMs. While the change to the Exchange's 2008 Price List pursuant to this proposal will be effective upon filing, the change will become operative as of November 3, 2008.

DMMs are a new category of market makers that the Exchange has created as a replacement for the specialists.[1] As was the case historically for the specialists, the DMMs will not be charged any fees on transactions executed on the Exchange for their own account in their capacity as DMMs that remove liquidity from the Exchange. However, as was the case with specialists in the period immediately prior to the adoption of the new market model, DMMs will be charged a $0.0030 per share routing fee for orders routed to away markets, which is the same rate charged to all other market participants.[2]

Prior to the adoption of the new market model, the Exchange operated a revenue sharing program for the specialists (the ''liquidity provision payments'' or ''LPPs'') that was structured to provide incentives to the specialists to add liquidity to the Exchange. The Exchange is discontinuing the LPP program in connection with the adoption of the new market model. The Exchange proposes to provide incentives to the DMMS that will be similar in effect to the LPPs, by awarding rebates to the DMMs when they add liquidity to the Exchange.[3] The following liquidity-adding activities will qualify a DMM for a rebate:

- Posting displayed and non-displayed orders on the Display Book, including s-quote and s-quote reserve orders;
- Providing liquidity on non-displayed interest using the Capital Commitment Schedule; or, prior to the implementation of the Capital Commitment Schedule, using the following message activities: price improvement, size improvement (PRIN FILL), matching away market quotes;
- Executing trades in the crowd and at Liquidity Replenishment Points; and
- Providing liquidity on market-at-the-close and limit-at-the-close transactions.

Rebates will not apply to executions at the open, as trades at the open are free to all Exchange users and the DMM is therefore not generating any revenue for the Exchange from the DMM's counterparty in the transaction.

DMMs will receive (i) a rebate of $0.0030 per share when adding liquidity in round lots in active securities (*i.e.*, securities with a consolidated average daily trading volume (''ADV'') of greater than or equal to one million shares) (''Active Securities);[4] and (ii) a rebate of $0.0035 per share when they add liquidity in round lots in securities with a consolidated ADV of less than one million shares (''Less Active Securities'').3 The Exchange will also pay DMMS a rebate of $0.0004 per share for executions at the close. This rebate equals the $0.0004 fee the Exchange charges other Exchange users for executions at the close.

In addition, each DMM will also receive all of the market data quote revenue (the ''Quoting Share'') received by the Exchange from the Consolidated Tape Association under the Revenue Allocation Formula of Regulation NMS with respect to any Less Active Security in any month in which the DMM meets the quoting requirement of Rule 104(a)(1)(A) for that individual stock.[5]

DMMs will receive a rebate of $0.0004 per share when providing liquidity with respect to odd lots and the odd lot

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.19b–4.

[1] *See* 34–58845 (October 24, 2008).

[2] Except floor brokers, who pay $0.0029 per share.

[3] Not all stocks will be traded under the DMM model immediately. For a brief transitional period, some stocks will continue to be traded under the specialist model. Commencing November 3, 2008, continuing for the duration of this transition, specialists will be subject to the same pricing and rebate regime as DMMs.

[4] The Exchange will determine whether a security is an Active Security or Less Active Security based on the previous month's consolidated ADV.

[5] For Less Active Securities, a DMM must maintain a bid and an offer at the National Best Bid (''NBB'') and National Best Offer (''NBO'') (collectively herein ''NBBO'') for an aggregate average monthly NBBO of 10% or more during a calendar month. For purposes of passing through the Quoting Share with respect to an individual stock, the Exchange will require the DMM to maintain the average monthly NBBO of 10% or more for that individual stock.

portions of partial round lots. This rebate equals the $0.0004 fee the Exchange charges other Exchange users for executions in odd lots and partial round lots.

The Exchange is making a number of changes to the Price List to reflect the replacement of the specialists by the DMMs. The Specialist License Fee, the Specialist Marketing and Investor Education Fee and the various fees payable by specialists set forth under the heading ''Registration and Regulatory Fees'', will be payable by the DMMs in place of the specialists upon adoption of the new market model. In addition, the Exchange is removing a footnote from the ''Registration and Regulatory Fees'' section of the Price List that makes reference to a 75% reduction in the amount of certain regulatory fees as of January 1, 2008, which is no longer relevant because the reduction in those fees is already reflected in the Price List.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 [6] of the Act in general and furthers the objectives of Section 6(b)(4) [7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of dues, fees and other charges as it provides the DMMs appropriate incentives to act as liquidity providers and supports them in performing their central function in the Exchange's market model.

B. Self Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [8] of the Act and Rule 19b–4(f)(2) [9] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2008–111 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–111. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–111 and should be submitted on or before December 9, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Acting Secretary.

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[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58920; File No. SR–NYSEArca–2008–123]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to the Listing and Trading of Trust Certificates

November 7, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 4, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NYSE Arca. On November 6, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or the ''Corporation''), proposes to amend its rules governing NYSE Arca, LLC, which is the equities trading facility of NYSE Arca Equities. NYSE Arca is proposing to adopt new NYSE Arca Equities Rule 5.2(j)(7) to permit listing of Trust Certificates. The Exchange proposes to list 14 issues of Trust Certificates, as described herein, which are currently listed and traded on NYSE Alternext U.S. LLC (NYSE Alternext U.S.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(formerly, the American Stock Exchange LLC (''Amex'')). The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office, and the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca is proposing to adopt new NYSE Arca Equities Rule 5.2(j)(7) to permit listing and trading of Trust Certificates. Pursuant to new NYSE Arca Equities Rule 5.2(j)(7), the Exchange proposes to list 14 issues of Trust Certificates, as described herein, which are currently listed and traded on NYSE Alternext U.S. (formerly, Amex).

Trust Certificates are certificates representing an interest in a special purpose trust (''Trust'') created pursuant to a trust agreement. The Trust will only issue Trust Certificates, which may or may not provide for the repayment of the original principal investment amount. The sole purpose of the Trust will be to invest the proceeds from its initial public offering to provide for a return linked to the performance of specified assets and to engage only in activities incidental to these objectives. Trust Certificates pay an amount at maturity based upon the performance of specified assets, including an index or indexes or equity securities, index warrants, or a combination thereof, as set forth in proposed Rule 5.2(j)(7).

Proposed Rule 5.2(j)(7) provides that the Exchange will consider trading, whether by listing or pursuant to unlisted trading privileges, of Trust Certificates based on the following: (i) An underlying index or indexes of equity securities (an ''Equity Index Reference Asset'');[3] (ii) instruments that are direct obligations of the issuing company, either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style), entitling the holder to a cash settlement in U.S. dollars to the extent that the foreign or domestic index has declined below (for put warrant) or increased above (for a call warrant) the pre-stated cash settlement value of the index (''Index Warrants'');[4] or (iii) a combination of two or more Equity Index Reference Assets or Index Warrants.

Commentary .01 provides criteria for continued listing and provides that the Corporation will commence delisting or removal proceedings with respect to an issue of Trust Certificates (unless the Commission has approved the continued trading of such issue): (i) If the aggregate market value or the principal amount of the securities publicly held is less than $400,000; (ii) if the value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis with respect to indexes containing only securities listed on a national securities exchange, or on at least a 60-second basis with respect to indexes containing foreign country securities; or (iii) if such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

Commentary .02 provides that the term of the Trust shall be as stated in the Trust prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus. Commentary .03 sets forth requirements applicable to the trustee of a Trust including that the trustee must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. Commentary .04 provides that voting rights shall be as set forth in the applicable Trust prospectus.

Commentary .05 provides that the Exchange will implement written surveillance procedures for Trust Certificates. Trust Certificates will be subject to the Exchange's equity trading rules (Commentary .06). Prior to the commencement of listing and trading of a particular issue of Trust Certificates, the Corporation will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to ETP Holders providing guidance regarding compliance responsibilities (including suitability recommendations and account approval) when handling transactions in Trust Certificates (Commentary .07).

Trust Certificates may be exchangeable at the option of the holder into securities that participate in the return of the applicable underlying asset. In the event that the Trust Certificates is exchangeable at the option of the holder and contains an Index Warrant, then, the ETP Holder must ensure that the holders account is approved for options trading in accordance with NYSE Arca Rule 9.2 in order to exercise such rights (Commentary .08). Trust Certificates may pass-through periodic payments of interest and principle of the underlying securities (Commentary .09). Trust payments may be guaranteed pursuant to a financial guaranty insurance policy which may include swap agreements (Commentary .10). Commentary .11 provides that Trust Certificates may be subject to early termination or call features.

The Exchange also proposes to amend footnote 4 to the NYSE Arca Equities Schedule of Fees and Charges to include Trust Certificates as ''Structured Products'' for purposes of such schedule.

Issues of Trust Certificates To Be Listed on NYSE Arca

The Exchange proposes to list and trade 14 issues of Trust Certificates, as described below. The Trust Certificates are currently listed and traded on NYSE Alternext US LLC (NYSE Alternext US (formerly, the American Stock Exchange LLC (''Amex'')). The proposed rule change is intended to provide rules to permit the listing and trading on the Exchange of the Trust Certificates described below in a timely manner at the same time that all equities trading is relocated from the Amex legacy trading systems and facilities located at 86 Trinity Place, New York, New York, to New York Stock Exchange trading facilities and systems located at 11 Wall Street, New York, New York. The Exchange does not currently list Trust Certificates and this proposed rule change is intended only to accommodate listing of the 14 issues of Trust Certificates currently listed on NYSE Alternext US on the Exchange.[5] Prior to listing on the Exchange, the

[3] The Exchange notes that the description of Equity Reference Asset is identical to the description of Equity Reference Asset in Rule 5.2(j)(6)(i) for Equity Index-Linked Securities.

[4] The definition of Index Warrants in proposed Rule 5.2(j)(7) is identical to the definition of ''index warrants'' in Rule 8.2(e).

[5] The Exchange will not list an additional issue of Trust Certificates unless the Exchange has previously filed with the Commission a proposed rule change pursuant to Rule 19b–4 under the Act to permit such listing.

Trust Certificates would be required to satisfy the applicable delisting procedures of NYSE Alternext US and applicable statutory and regulatory requirements, including, without limitation, Section 12 of the Securities Exchange Act of 1934 (''Exchange Act''),[6] relating to listing the Trust Certificates on the Exchange.[7]

Descriptions of the Trust Certificates are included in their respective Registration Statements, as noted below. The Exchange represents that the Trust Certificates satisfy the requirements of proposed Rule 5.2(j)(7) and thereby qualify for listing on the Exchange.

Safety First Trust Series 2007–1 (symbol: AZP). According to the prospectus for the Principal-Protected Trust Certificates Linked to the U.S.-Europe-Japan Basket, the certificates are preferred securities of Safety First Trust Series 2007–1 and will mature on November 22, 2010. Investors will receive at maturity for each certificate held an amount in cash equal to $10 plus a supplemental distribution amount, which may be positive or zero. The supplemental distribution amount will be based on the percentage change of the value of the U.S.-Europe-Japan Basket comprised of the S&P 500® Index, the Dow Jones EUROSTOXX 50 Index® and the Nikkei 225 Stock Average®, each initially equally weighted, during the term of the certificates. The supplemental distribution amount for each certificate will equal the product of (a) $10 and (b) the percentage change in the value of the U.S.-Europe-Japan Basket, provided that the supplemental distribution amount will not be less than zero.[8]

The assets of the trust will consist of equity index participation securities and equity index warrants Citigroup Funding Inc. The equity index participation securities will mature on November 22, 2010. At maturity, each security will pay an amount equal to $10 plus a security return amount, which could be positive, zero or negative. The security return amount for each security will equal the product of (a) $10 and (b) the percentage change in the value of the U.S.-Europe-Japan Basket.

The equity index warrants will be automatically exercised on November 22, 2010. If the value of the U.S.-Europe-Japan Basket increases or does not change, the warrants will pay zero. If the value of the U.S.-Europe-Japan Basket decreases, the warrants will pay a positive amount equal to the product of (a) $10 and (b) the percentage decrease in the value of the U.S.-Europe-Japan Basket.

Investors will have the right to exchange, at any time ending on the date that is one business day prior to the valuation date, each $10 principal amount of certificates the investor then holds for one equity index participation security with a $10 face amount and one equity index warrant with a $10 notional amount. The securities and warrants will be separate transferable by the investor after exercise of the exchange right. In order to exercise the exchange right, the investor's brokerage account must be approved for options trading. An investor who exercises the exchange right and holds only the securities or warrants will lose the benefit of principal protection at maturity.[9]

Safety First Investments TIERS® Principal-Protected Minimum Return Trust Certificates, Series Nasdaq 2003–13 (symbol: NAS). According to the prospectus for the certificates, the certificates are securities of TIERS® Principal-Protected Minimum Return Asset Backed Certificates Trust, Series Nasdaq 2003–13 and will mature on January 30, 2009. Investors will receive at maturity for each certificate held principal amount ($10 per certificate) plus an interest distribution amount. The interest distribution amount will be based on the return of the Nasdaq-100 Index, subject to a monthly appreciation cap of 5.5%. However, the interest distribution amount will be at least $0.70 per certificate at maturity regardless of the performance of the Nasdaq-100 Index.

The assets of the trust primarily consist of a specified aggregate principal amount of asset backed securities issued by various issuers (''term assets''), the swap agreement described below, and rights under the insurance policy described below. The certificates do not provide for early redemption by the investor.

On the closing date, the trustee and Citigroup Global Market Holdings, Inc., the swap counterparty, entered into a swap agreement. The swap agreement is a contract which provides that the swap counterparty will pay the trustee an amount equal to the distribution scheduled to be made on the certificates on the final scheduled distribution date. The obligations of the swap counterparty under the swap agreement on a swap termination date or upon the occurrence of a term assets credit event will be insured pursuant to the terms of a financial guaranty insurance policy issued by Ambac Assurance Corporation.

The index return used to determine the interest distribution amount payable to the investor on the final scheduled distribution date is based on the return of the Nasdaq-100 Index subject to the monthly appreciation cap. The Index return will be calculated by compounding the periodic capped returns, as determined over the term of the certificates. The interest distribution amount payable to the investor on the final scheduled distribution date will equal the product of the principal amount of each certificate and the compounded index return over the term of the certificate (but will not be less than $0.70 per certificate).[10]

Safety First Trust Series 2008–1 (symbol: ATA). According to the prospectus for the Principal-Protected Trust Certificates, Linked to the U.S.-Europe-Japan Basket, the certificates are preferred securities of Safety First Trust Series 2008–1 and will mature on March 6, 2014. Investors will receive at maturity for each certificate an amount in cash equal to $10 plus a supplemental distribution amount, which may be positive or zero. The supplemental distribution amount will be based on the percentage change of the value of the U.S.-Europe-Japan Basket comprised of the SP 500® Index, the Dow Jones EUROSTOXX 50 Index® and the Nikkei 225 Stock Average®, each initially equally weighted, during the term of the certificates. The supplemental distribution amount for each certificate will equal the product of (a) $10, and (b) the percentage change in the value of the U.S.-Europe-Japan Basket and (c) the participation rate, which is equal to 92.5% of the basket return, provided that the supplemental distribution amount will not be less than zero.

The assets of the trust consist of equity index participation securities and equity index warrants of Citigroup Funding Inc. The equity index participation securities will mature on March 6, 2014. At maturity, each security will pay an amount equal to $10 plus a security return amount,

[6] 15 U.S.C. 78(*l*).

[7] The Exchange will seek the voluntary consent of the issuer of the Trust Certificates to be delisted from NYSE Alternext US and listed on the Exchange. The Exchange notes that its approval of the Trust Certificates' listing applications would be required prior to listing.

[8] Terms relating to each issue of Trust Certificates described in this filing that are referred to, but not defined, herein are defined in the applicable Registration Statement.

[9] *See* prospectus for Safety First Trust Series 2007–1, dated February 22, 2007 (Registration No. 333–135867/135867–09/135867–11).

[10] *See* prospectus for Safety First Investments TIERS® Principal-Protected Minimum Return Trust Certificates, Series Nasdaq 2003–13, dated July 28, 2003 (Registration No. 333–57357).

which could be positive, zero or negative. If the value of the U.S.-Europe-Japan Basket on the third index business day before maturity (the ''valuation date'') is greater than the value on the date on which the certificates were priced for initial sale to the public (the ''pricing date''), the security return amount for each security will equal the product of (a) $10, (b) the percentage increase in the value of U.S.-Europe-Japan Basket and (c) the participation rate, which is equal to 92.5% of the basket return. If the closing value of the U.S.-Europe-Japan Basket date (the ''ending value'') is less than or equal to the value on the pricing date (the ''starting value''), the security return amount for each security will equal the product of (a) $10 and (b) the percentage decrease in the U.S.-Europe-Japan Basket. The equity index warrants will be automatically exercised on March 6, 2014. If the ending value of the U.S.-Europe-Japan Basket is greater than or equal to the starting value, the warrants will pay zero. If the ending value of the U.S.-Europe-Japan Basket is less than the starting value, the warrants will pay a positive amount equal to the product of (a) $10 and (b) the percentage decrease in the value of the U.S.-Europe-Japan Basket.

Investors will have the right to exchange, at any time beginning on the date on which the certificates are issued and ending on the date that is one business day prior to the valuation date, each $10 principal amount of certificates the investor then holds for one equity index participation security with a $10 face amount and one equity index warrant with a $10 notional amount. The securities and warrants will be separately transferable by the investor after the exercise of the investor's exchange right. In order to exercise such exchange right, the investor's brokerage account must be approved for options trading. An investor who exercises the exchange right and holds only the securities or warrants will lose the benefit of principal protection at maturity.[11]

Safety First Trust Series 2007–2 (symbol: AFO). According to the prospectus for the Principal-Protected Trust Certificates Linked to the Nikkei 225 Stock Average, the certificates are preferred securities of Safety First Trust Series 2007–2 and will mature on March 23, 2011. Investors will receive at maturity for each certificate an amount in cash equal to $10 plus a supplemental distribution amount, which may be positive or zero. The supplemental distribution amount will be based on the percentage change of the Nikkei 225 Stock Average® during the term of the certificates. The supplemental distribution amount for each certificate will equal the product of (a) $10 and (b) the percentage change in the Nikkei 225 Stock Average, provided that the supplemental distribution amount will not be less than zero.

The assets of the trust consist of equity index participation securities and equity index warrants of Citigroup Funding Inc. The equity index participation securities will mature on March 23, 2011. At maturity, each security will pay an amount equal to $10 plus a security return amount, which could be positive, zero or negative. The security return amount for each security will equal the product of (a) $10 and (b) the percentage change in the value of the Nikkei 225 Stock Average. The equity index warrants will be automatically exercised on March 23, 2011. If the Nikkei 225 Stock Average increases or does not change, the warrants will pay zero. If the Nikkei 225 Stock Average decreases, the warrants will pay a positive amount equal to the product of (a) $10 and (b) the percentage decrease in the value of the Nikkei 225 Stock Average.

Investors have the right to exchange, at any time ending on the date that is one business day prior to the valuation date, each $10 principal amount of certificates the investor then holds for one equity index participation security with a $10 face amount and one equity index warrant with a $10 notional amount. The securities and warrants will be separately transferable by the investor after the exercise of the investor's exchange right. In order to exercise such exchange right, the investor's brokerage account must be approved for options trading. An investor who exercised the exchange right and holds only the securities or warrants will lose the benefit of principal protection at maturity.[12]

Safety First Investments TIERS® Principal-Protected Minimum Return Trust Certificates, Series S&P 2003–33 (symbol: SYP). According to the prospectus for the certificates, the certificates are securities of TIERS® Principal-Protected Minimum Return Asset Backed Certificates Trust, Series S&P 2003–33 and will mature on January 7, 2009. Investors will receive at maturity for each certificate held the principal amount ($10 per certificate) plus an interest distribution amount. The interest distribution amount will be based on the return of the S&P 500 Index, subject to a monthly appreciation cap of 4.5%. However, the interest distribution amount will be at least $0.90 per certificate at maturity regardless of the performance of the S&P 500 Index.

The assets of the trust primarily consist of a specified aggregate principal amount of asset backed securities of various issuers (''term assets''), the swap agreement described below, and rights under the insurance policy described below. The certificates do not provide for early redemption by the investor.

On the closing date, the trustee and Citigroup Global Market Holdings, Inc., the swap counterparty, entered into a swap agreement. The swap agreement is a contract which provides that the swap counterparty will pay the trustee an amount equal to the distribution scheduled to be made on the certificates on the final scheduled distribution date. The obligations of the swap counterparty under the swap agreement on a swap termination date or upon the occurrence of a term assets credit event will be insured pursuant to the terms of a financial guaranty policy issued by Ambac Assurance Corporation.

The index return will be calculated by compounding the periodic capped returns, as determined over the term of the certificates. The index return used to determine the interest distribution amount payable to the investor on the final scheduled distribution date will equal the product of the principal amount of each certificate and the compounded index return over the term of the certificate (but will not be less than $0.90 per certificate).[13]

Safety First Investments TIERS® Principal-Protected Minimum Return Trust Certificates, Series S&P 2003–23 (symbol: SPO). According to the prospectus for the certificates, the certificates are securities of TIERS® Principal-Protected Minimum Return Asset Backed Certificates Trust Series S&P 2003–23 and will mature on January 6, 2009. Investors will receive at maturity for each certificate held a principal amount ($10 per certificate) plus an interest distribution amount (which will equal at least $0.90 per certificate), regardless of the performance of the S&P 500® Index. The interest distribution amount will be based on the return of the S&P 500® Index, subject to a monthly appreciation

[11] *See* prospectus for Safety First Trust Series 2008–1, dated February 25, 2008 (Registration Nos. 333–135867/135867–05/135867–11).

[12] *See* prospectus for Safety First Trust Series 2007–2, dated April 24, 2007 (Registration Nos. 333–135867/135867–08/135867–11).

[13] *See* prospectus for Safety First Investments TIERS® Principal-Protected Minimum Return Trust Certificates, Series S&P 2003–33, dated July 28, 2003 (Registration No. 333–89080).

cap of 4.5%. However, the interest distribution amount will be at least $0.90 per certificate at maturity.

The assets of the trust primarily consist of a specified aggregate principal amount of asset backed securities of various issuers, which, as of the closing date, will be rated in the highest rating category of at least one nationally recognized rating agency, and rights under a swap agreement and a financial guaranty insurance policy issued by Ambac Assurance Corporation. The certificates do not provide for early redemption by the investor.

On the closing date, the trustee and Citigroup Global Market Holdings Inc., the swap counterparty, entered into a swap agreement. The swap agreement is a contract which provides that the swap counterparty will pay the trustee an amount equal to the distribution scheduled to be made on the certificates on the final scheduled distribution date. The obligations of the swap counterparty under the swap agreement on a swap termination date or upon the occurrence of a term assets credit event will be insured under the financial guaranty policy.

The index return used to determine the interest distribution amount, if any, payable to the investor on the final scheduled distribution date is based on the return of the S&P 500® Index subject to a monthly appreciation cap. The interest distribution amount is capped and, therefore, even if the value of the S&P 500® Index has increased at one or more times during the term of the certificates or if the value of the S&P 500® Index as of the final scheduled distribution date is greater than the value of the S&P 500® Index on the date the certificates are priced, investors will not receive more than the capped amount.[14]

Safety First Investments TIERS® Principal-Protected Minimum Return Trust Certificates, Series Nasdaq 2003–12 (symbol: SFH). According to the prospectus for the certificates, the certificates are securities of TIERS® Principal-Protected Minimum Return Asset Backed Certificates, Trust Series Nasdaq 2003–12 and will mature on January 5, 2009. Investors will receive at maturity for each certificate held a principal amount ($10 per certificate) plus an interest distribution amount (which will equal at least $0.70 per certificate), regardless of the performance of the Nasdaq-100 Index. The interest distribution amount will be based on the return of the Nasdaq-100 Index, subject to a monthly appreciation cap of 5.5%. However, the interest distribution amount will be at least $0.70 per certificate at maturity.

The assets of the trust primarily consist of a specified aggregate principal amount of asset backed securities of various issuers, which, as of the closing date, will be rated in the highest rating category of at least one nationally recognized rating agency, and rights under a swap agreement and a financial guaranty insurance policy issued by Ambac Assurance Corporation. The certificates do not provide for early redemption by the investor.

On the closing date, the trustee and Citigroup Global Markets Holdings Inc., the swap counterparty, entered into a swap agreement. The swap agreement is a contract which provides that the swap counterparty will pay the trustee an amount equal to the distribution scheduled to be made on the certificates on the final scheduled distribution date. The obligations of the swap counterparty under the swap agreement on a swap termination date or upon the occurrence of a term assets credit event will be insured under the financial guaranty insurance policy.

The index return used to determine the interest distribution amount, if any, payable to the investor on the final scheduled distribution date is based on the return of the Nasdaq-100 Index subject to a monthly appreciation cap. The interest distribution amount is capped and, therefore, even if the value of the Nasdaq-100 Index has increased at one or more times during the term of the certificates or if the value of the Nasdaq-100 Index as of the final scheduled distribution date is greater than the value of the Nasdaq-100 Index on the date the certificates are priced, investors will not receive more than the capped amount.[15]

Safety First Investments TIERS® Principal-Protected Minimum Return Trust Certificates, Series Russell 2004–1 (symbol: RUD). According to the prospectus for the certificates, the certificates are securities of the TIERS® Principal-Protected Minimum Return Asset Backed Certificates Trust Series Russell 2004–1, and will mature on April 29, 2009. Investors will receive at maturity for each certificate held a principal amount ($10 per certificate) plus an interest distribution amount (which will equal at least $0.70 per certificate) regardless of the performance of the Russell 2000 Index. The interest distribution amount will be based on the return of the Russell 2000 Index subject to a monthly appreciation cap of 3.5%. However, the interest distribution amount will be at least $0.70 per certificate at maturity regardless of the performance of the Russell 2000 Index.

The assets of the trust primarily consist of a specified aggregate principal amount of asset backed securities issued by various issuers (''term assets''), the swap agreement described below, and rights under the insurance policy described below. The certificates do not provide for early redemption by the investor.

On the closing date, the trustee and Citigroup Global Market Holdings, Inc., the swap counterparty, entered into a swap agreement. The swap agreement is a contract which provides that the swap counterparty will pay the trustee an amount equal to the distribution scheduled to be made on the certificates on the final scheduled distribution date. The obligations of the swap counterparty under the swap agreement on a swap termination date or upon the occurrence of a term assets credit event will be insured pursuant to the terms of a financial guaranty insurance policy issued by Ambac Assurance Corporation.

The index return used to determine the interest distribution amount, if any, payable to the investor on the final scheduled distribution date is based on the return of the Russell 2000 Index subject to a monthly appreciation cap. The interest distribution amount is capped and, therefore, even if the value of the Russell 2000 Index has increased at one or more times during the term of the certificates or if the value of the Russell 2000 Index as of the final scheduled distribution date is greater than the value of the Russell 2000 Index on the date the certificates are priced, investors will not receive more than the capped amount.[16]

Safety First Trust Series 2008–2 (symbol: AMM). According to the prospectus for the Principal-Protected Trust Certificates Linked to the S&P 500® Index, the certificates are preferred securities of Safety First Trust Series 2008–2 and will mature on July 11, 2013. Investors will receive at maturity for each certificate held an amount in cash equal to $10 plus a supplemental distribution amount, which may be positive or zero, but in no circumstance

[14] *See* prospectus for Safety First Investments TIERS® Principal-Protected Minimum Return Trust Certificates, Series S&P 2003–23, dated July 28, 2003 (Registration No. 333–57357–03).

[15] *See* prospectus for Safety First Investments TIERS® Principal-Protected Minimum Return Trust Certificates, Series Nasdaq 2003–12, dated May 19, 2003 (Registration No. 333–57357).

[16] *See* prospectus for Safety First Investments TIERS® Principal-Protected Minimum Return Trust Certificates, Series Russell 2004–1, dated July 28, 2003 (Registration 333–89080).

more than $7 dollars. The supplemental distribution amount will be based on the percentage change of the value of the S&P 500® Index, during the term of the certificates. The supplemental distribution amount for each certificate will equal the product of (a) $10 and (b) the percentage increase in the value of the S&P 500® Index, provided that the supplemental distribution amount will be limited to 70%.

The assets of the trust will consist of Citigroup Funding Inc.'s equity index participation securities and equity index warrants. The equity index participation securities will mature on July 11, 2013. At maturity, each security will pay an amount equal to $10 plus a security return amount, which could be positive, zero or negative. The security return amount for each security will equal the product of (a) $10 and (b) the percentage decrease in the value of the S&P 500® Index.

The equity index warrants will be automatically exercised on July 11, 2013. If the value of the S&P 500® Index increases or does not change, the warrants will pay zero. If the value of the S&P 500® Index decreases, the warrants will pay a positive amount equal to the product of (a) $10 and (b) the percentage decrease in the value of the S&P 500® Index.

Investors will have the right to exchange, at any time ending on the date that is one business day prior to the valuation date, each $10 principal amount of certificates the investor then holds for one equity index participation security with a $10 face amount and one equity index warrant with a $10 notional amount. The securities and warrants will be separately transferable by the investor after exercise of the exchange right. In order to exercise the exchange right, the investor's account must be approved for options trading.[17]

Safety First Trust Series 2008–3 (symbol: AHB). According to the prospectus for the Principal-Protected Trust Certificates Linked to the Global Basket, the certificates are preferred securities of Safety First Trust Series 2008–3 and will mature on September 12, 2013. Investors will receive at maturity for each certificate held an amount in cash equal to $10 plus a supplemental distribution amount, which may be positive or zero. The supplemental distribution amount will be based on the percentage change of the value of the Global Index Basket comprised of the S&P 500® Index, the Dow Jones EUROSTOXX 50® Index and the S&P BRIC 40® Index, each initially equally weighted one-third each, during the term of the certificates. The supplemental distribution amount for each certificate will equal the product of (a) $10 and (b) the percentage change in the value of the Global Index Basket and (c) the participation rate which is 85%, provided that the supplemental distribution amount will not be less than zero.

The assets of the trust will consist of equity index participation securities and equity index warrants of Citigroup Funding Inc. The equity index participation securities will mature on September 12, 2013. At maturity, each security will pay an amount equal to $10 plus a security return amount, which could be positive, zero or negative. If the value of the Global Index Basket on the valuation date is greater than the value on the pricing date, the security return amount for each security will equal the product of (a) $10, (b) the percentage increase in the Global Index Basket and (c) the participation rate, which is 85%. If the value of the Global Index Basket on the valuation date is less than or equal to the value on the pricing date, the security return amount for each security will equal the product of (a) $10 and (b) the percentage decrease in the Global Index Basket.

The equity index warrants will be automatically exercised on September 12, 2013. If the value of the Global Index Basket increases or does not change, the warrants will pay zero. If the value of the Global Index Basket decreases, the warrants will pay a positive amount equal to the product of (a) $10 and (b) the percentage decrease in the value of the Global Index Basket.

Investors will have the right to exchange, at any time ending on the date that is one business day prior to the valuation date, each $10 principal amount of certificates the investor then holds for one equity index participation security with a $10 face amount and one equity index warrant with a $10 notional amount. The securities and warrants will be separately transferable by the investor after exercise of the exchange right. In order to exercise the exchange right, the investor's account must be approved for options trading.[18]

Safety First Trust Series 2008–4 (symbol: AHY). According to the prospectus for the Principal-Protected Trust Certificates Linked to the S&P 500® Index, the certificates are preferred securities of Safety First Trust Series 2008–4 and will mature on October 10, 2013. Investors will receive at maturity for each certificate held an amount in cash equal to $10 plus a supplemental distribution amount, which may be positive or zero. The supplemental distribution amount will be based on the percentage change of the value of the S&P 500® Index during the term of the certificates. The supplemental distribution amount for each certificate will equal the product of (a) $10, (b) the percentage change in the value of the S&P 500® Index and (c) the participation rate, which is 90%, provided that the supplemental distribution amount will not be less than zero.

The assets of the trust will consist of equity index participation securities and equity index warrants of Citigroup Funding Inc. The equity index participation securities will mature on October 10, 2013. At maturity, each security will pay an amount equal to $10 plus a security return amount, which could be positive, zero or negative. If the value of the S&P 500® Index on the valuation date is greater than its value on the pricing date, the security return amount for each security will equal the product of (a) $10, (b) the percentage increase in the S&P 500® Index and (c) the participation rate, which equals 90%. If the value of the S&P 500® Index on the valuation date is less than or equal to its value on the pricing date, the security return amount for each security will equal the product of (a) $10 and (b) the percentage decrease in the S&P 500® Index. If the value of the S&P 500® Index on the valuation date is less than its value on the pricing date, investors will participate fully in the depreciation of the S&P 500® Index.

The equity index warrants will be automatically exercised on October 10, 2013. If the value of the S&P 500® Index increases or does not change, the warrants will pay zero. If the value of the S&P 500® Index decreases, the warrants will pay a positive amount equal to the product of (a) $10 and (b) the percentage decrease in the value of the S&P 500® Index.

Investors will have the right to exchange, at any time ending on the date that is one business day prior to the valuation date, each $10 principal amount of certificates the investor then holds for one equity index participation security with a $10 face amount and one equity index warrant with a $10 notional amount. The securities and warrants will be separately transferable by the investor after exercise of the exchange right. In order to exercise the

[17] *See* prospectus for Safety First Trust Series 2008–2, dated June 24, 2008 (Registration Nos. 333–135867/135867–04/135867–11).

[18] *See* prospectus for Safety First Trust Series 2008–3, dated August 25, 2008 (Registration Nos. 333–135867/135867–03/135867–11)

exchange right, the investor's account must be approved for options trading.[19]

Safety First Trust Series 2007–3 (symbol: AKE). According to the prospectus for the Principal-Protected Trust Certificates Linked to the Global Index Basket, the certificates are preferred securities of Safety First Trust Series 2007–3 and will mature on July 11, 2012. Investors will receive at maturity for each certificate held an amount in cash equal to $10 plus a supplemental distribution amount, which may be positive or zero. The supplemental distribution amount will be based on the percentage change of the value of the Global Index Basket comprised of the Dow Jones Industrial Average, the Dow Jones EUROSTOXX 50 Index®, the Nikkei 225 Stock Average® and the S&P BRIC® Index during the term of the certificates. The Dow Jones Industrial Average and the Dow Jones EUROSTOXX 50 Index®, each initially will comprise 30% of the value of the Global Index Basket, the Nikkei 225 Stock Average® and the S&P BRIC® Index will compose 20% of the value of the Global Index Basket. The supplemental distribution amount for each certificate will equal the product of (a) $10 and (b) the weighted percentage increase in the value of the Global Index Basket.

The assets of the trust will consist of equity index participation securities and equity index warrants of Citigroup Funding Inc. The equity index participation securities will mature on July 11, 2012. At maturity, each security will pay an amount equal to $10 plus a security return amount, which could be positive, zero or negative. The security return amount for each security will equal the product of (a) $10 and (b) the percentage change in the value of the Global Basket Index.

The equity index warrants will be automatically exercised on July 11, 2012. If the value of the Global Basket Index increases or does not change, the warrants will pay zero. If the value of the Global Basket Index decreases, the warrants will pay a positive amount equal to the product of (a) $10 and (b) the weighted average percentage decrease in the value of the Global Basket Index.

Investors will have the right to exchange, at any time ending on the date that is one business day prior to the valuation date, each $10 principal amount of certificates the investor then holds for one equity index participation security with a $10 face amount and one equity index warrant with a $10 notional amount. The securities and warrants will be separately transferable by the investor after exercise of the exchange right. In order to exercise the exchange right, the investor's account must be approved for options trading.[20]

Safety First Trust Series 2007–4 (symbol: AKN). According to the prospectus for the Principal-Protected Trust Certificates Linked to the U.S.-Europe-Japan Basket, the certificates are preferred securities of Safety First Trust Series 2007–4 and will mature on May 23, 2013. Investors will receive at maturity for each certificate held an amount in cash equal to $10 plus a supplemental distribution amount, which may be positive or zero. The supplemental distribution amount will be based on the percentage change of the value of the U.S.-Europe-Japan Basket comprised of the S&P 500® Index, the Dow Jones EUROSTOXX 50 Index® and the Nikkei 225 Stock Average®, each initially equally weighted one-third each, during the term of the certificates. The supplemental distribution amount for each certificate will equal the product of (a) $10 and (b) the weighted percentage increase in the value of the U.S.-Europe-Japan Basket provided the supplemental distribution amount is not less than zero.

The assets of the trust will consist of equity index participation securities and equity index warrants of Citigroup Funding Inc. The equity index participation securities will mature on May 23, 2013. At maturity, each security will pay an amount equal to $10 plus a security return amount, which could be positive, zero or negative. The security return amount for each security will equal the product of (a) $10 and (b) the percentage change in the value of the U.S.-Europe-Japan Basket Basket.

The equity index warrants will be automatically exercised on May 23, 2013. If the value of the U.S.-Europe-Japan Basket increases or does not change, the warrants will pay zero. If the value of the U.S.-Europe-Japan Basket decreases, the warrants will pay a positive amount equal to the product of (a) $10 and (b) the weighted average percentage decrease in the value of the U.S.-Europe-Japan Basket.

Investors will have the right to exchange, at any time ending on the date that is one business day prior to the valuation date, each $10 principal amount of certificates the investor then holds for one equity index participation security with a $10 face amount and one equity index warrant with a $10 notional amount. The securities and warrants will be separately transferable by the investor after exercise of the exchange right. In order to exercise the exchange right, the investor's account must be approved for options trading.[21]

Safety First Trust Series 2006–1 (symbol: AGB). According to the prospectus for the Principal-Protected Trust Certificates Linked to the Dow Jones Industrial Average and the Nikkei 225 Stock Average®, the certificates are preferred securities of Safety First Trust Series 2006–1 and will mature on May 26, 2010. Investors will receive at maturity for each certificate held an amount in cash equal to $10 plus a supplemental distribution amount, which may be positive or zero. The supplemental distribution amount will be based on the percentage change of the value of a underlying basket comprised of the Dow Jones Industrial Average and the Nikkei 225 Stock Average®, each initially equally weighted during the term of the certificates. The supplemental distribution amount for each certificate will equal the product of (a) $10 and (b) the percentage increase in the value of the underlying basket provided the supplemental distribution amount is not less than zero.

The assets of the trust will consist of equity index participation securities and equity index warrants of Citigroup Funding Inc. The equity index participation securities will mature on May 26, 2010. At maturity, each security will pay an amount equal to $10 plus a security return amount, which could be positive, zero or negative. The security return amount for each security will equal the product of (a) $10 and (b) the percentage change in the value of the underlying basket.

The equity index warrants will be automatically exercised on May 26, 2010. If the value of the underlying basket increases or does not change, the warrants will pay zero. If the value of the underlying basket decreases, the warrants will pay a positive amount equal to the product of (a) $10 and (b) the weighted average percentage decrease in the value of the underlying basket.

Investors will have the right to exchange, at any time ending on the date that is one business day prior to the valuation date, each $10 principal amount of certificates the investor then holds for one equity index participation

[19] *See* prospectus for Safety First Trust Series 2008–4, dated September 24, 2008 (Registration Nos. 333–135867/135867–02/135867–11).

[20] *See* prospectus for Safety First Trust Series 2007–3, dated June 28, 2007 (Registration Nos. 333-135867/135867–07/135867–11).

[21] *See* prospectus for Safety First Trust Series 2007–4, dated November 21, 2007 (Registration Nos. 333–135867/135867–06/135867–11).

security with a $10 face amount and one equity index warrant with a $10 notional amount. The securities and warrants will be separately transferable by the investor after exercise of the exchange right. In order to exercise the exchange right, the investor's account must be approved for options trading.[22]

Exchange Rules Applicable to Trust Certificates

The Trust Certificates will be subject to all Exchange rules governing the trading of equity securities. The Exchange's equity margin rules will apply to transactions in Trust Certificates. Trust Certificates will trade during trading hours set forth in Rule 7.34(a).[23]

The Exchange notes that none of the indexes related to the 14 issues of Trust Certificates described above is maintained by a broker-dealer. The Exchange notes further that, with respect to such indexes, any advisory committee, supervisory board or similar entity that advises an index licensor or administrator or that makes decisions regarding the index composition, methodology and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable index.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in Trust Certificates. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in Trust Certificates inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying securities; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[24]

Information Dissemination

The value of the applicable index relating to an issue of Trust Certificates, or, for Trust Certificates based on multiple indexes, the composite value of the indexes, will be calculated and disseminated on at least a 15-second basis with respect to indexes containing only securities listed on a national securities exchange, or on at least a 60-second basis with respect to indexes containing foreign country securities.[25] If the index or composite value applicable to an issue of Trust Certificates is not being disseminated as required, the Exchange may halt trading during the day on which the interruption first occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

Quotation and last-sale information will be disseminated by the Exchange via the Consolidated Tape. In addition, the Exchange will disseminate the composite value of the indexes, as applicable, via the Consolidated Tape. The values of the indexes noted above relating to the Trust Certificates to be listed on the Exchange are widely disseminated by major market data vendors and financial publications.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which will include Trust Certificates, to monitor trading in the securities. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the securities in all trading sessions and to deter and detect violations of Exchange rules.

The Exchange's current trading surveillance focuses on detecting when securities trade outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via ISG from other exchanges who are members of the ISG.[26]

In addition, the Exchange also has a generally policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading an issue of Trust Certificates and suitability recommendation requirements.

Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Trust Certificates; (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading an issue of Trust Certificates; and (3) trading information.

In addition, the Information Bulletin will reference that an issue of Trust Certificates is subject to various fees and expenses described in the applicable prospectus.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[27] of the Act in general and furthers the objectives of Section 6(b)(5)[28] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest. The Exchange believes that the proposal will facilitate the listing and trading of additional types of commodity and currency-based investments that will enhance competition among market participants, to the benefit of investors and the marketplace.

In addition, the proposed rule change is consistent with Rule 12f–5[29] under

[22] See prospectus for Safety First Trust Series 2006–1, dated November 24, 2006 (Registration No. 333–135867/135867–10/135867–11).

[23] Pursuant to NYSE Arca Rule 7.34(a), the NYSE Arca Marketplace will have three trading sessions each day the Corporation is open for business unless otherwise determined by the Corporation:

Opening Session—begins at 1 a.m. (Pacific Time) and concludes at the commencement of the Core Trading Session. The Opening Auction and the Market Order Auction shall occur during the Opening Session. Core Trading Session—begins for each security at 6:30 a.m. (Pacific Time) or at the conclusion of the Market Order Auction, whichever comes later, and concludes at 1 p.m. (Pacific Time).

Late Trading Session—begins following the conclusion of the Core Trading Session and concludes at 5 p.m. (Pacific Time).

[24] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[25] For issues of Trust Certificates based on multiple indexes, the Exchange will cause to be calculated and disseminated a composite value for such indexes.

[26] For a list of current members of the ISG, *see http://www.isgportal.org.* The Exchange notes that some of the index components on which the Trust Certificates are valued may trade on markets that are not ISG members. The Exchange notes further that, as of October 30, 2008, with the exceptions noted below, for all issues of Trust Certificates described above, no more than 20% of the dollar weight in the aggregate of the index or composite indexes, as applicable, consists of component securities having their primary trading market outside the United States on foreign trading markets that are not members of ISG or parties to comprehensive surveillance sharing agreements with the Exchange. As of October 30, 2008, for AZP, ATA, AHB and AKN, 20.56% of the applicable composite index weights consisted of non-U.S. securities having a primary trading market that is not an ISG member or is not a party to a comprehensive surveillance sharing agreement with the Exchange.

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] 17 CFR 240.12f–5.

the Exchange Act because it deems the Shares to be equity securities, thus rendering the Shares subject to the Exchange's rules governing the trading of equity securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof. The Commission has determined that a 15-day comment period is appropriate in this case.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2008–123 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–123. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–123 and should be submitted on or before December 3, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–27251 Filed 11–17–08; 8:45 am]

BILLING CODE 8011–01–P

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58925; File No. SR–NYSEArca–2008–104]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change Relating to Continued Listing Criteria Applicable to Equity Linked Notes and ''Other Securities''

November 10, 2008.

I. Introduction

On September 30, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to to adopt NYSE Arca Equities Rules 5.5(i) and 5.5(j) to specify continued listing criteria applicable to securities listed on the Exchange pursuant to NYSE Arca Equities Rules 5.2(j)(1) and 5.2(j)(2), respectively. The proposed rule change was published in the **Federal Register** on October 10, 2008.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description

The Exchange proposes to adopt NYSE Arca Equities Rules 5.5(i) and 5.5(j) to specify continued listing criteria applicable to securities listed on the Exchange pursuant to NYSE Arca Equities Rules 5.2(j)(1) (''Other Securities'') and 5.2(j)(2) (''Equity Linked Notes'' or ''ELNs''), respectively.

NYSE Arca Equities Rule 5.2(j)(1) provides that the Exchange will consider listing any security not otherwise covered by the requirements of NYSE Arca Equities Rule 5.2 subject to specified initial listing requirements, including minimum number of publicly held trading units and minimum principal amount/market value, the required minimum number of public beneficial holders, and required issuer's total assets and net worth. NYSE Arca Equities Rule 5.2(j)(2) sets forth initial listing requirements applicable to ELNs, including numerical listing standards applicable to the ELN's issuer, the issue itself, and the underlying security for the ELN.

Securities listed under NYSE Arca Equities Rules 5.2(j)(1) and 5.2(j)(2) are subject to trading suspension or delisting pursuant to standards set forth in NYSE Arca Equities Rule 5.5(l) (''Other Reasons for Suspending or Delisting''). Proposed NYSE Arca Equities Rules 5.5(i) and 5.5(j) would provide that NYSE Arca Equities will commence delisting or removal proceedings (unless the Commission has approved the continued trading of an issue of securities listed pursuant to Rule 5.2(j)(1) or Rule 5.2(j)(2), respectively), if the aggregate market value or the principal amount of the securities publicly held is less than

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58720 (October 2, 2008), 73 FR 60385.

$400,000, or if such other event shall occur or condition exists which in the opinion of the NYSE Arca Equities makes further dealings on NYSE Arca Equities inadvisable.

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6(b)[4] of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5)[6] of the Act, which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed $400,000 dollar threshold should help to ensure a minimum level of liquidity for products listed under NYSE Arca Equities Rules 5.2(j)(1) and 5.2(j)(2), respectively. The Commission also believes that the proposed rule change should provide the Exchange the flexibility to commence delisting proceedings for these securities should other events or conditions exist that call for such action. The Exchange has represented that securities listed under NYSE Arca Equities Rules 5.2(j)(1) and 5.2(j)(2) are subject to trading suspension or delisting pursuant to standards set forth in Rule 5.5(l). Taken together, the Commission believes that such criteria should help ensure the maintenance of fair and orderly markets for such securities. Additionally, the Commission notes that the proposed criteria are similar to those continued listing standards currently applicable to certain classes of securities listed pursuant to NYSE Arca Equities Rule 5.2(j).[7]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSEArca–2008–104) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–27281 Filed 11–17–08; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78f(b).

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] *See, e.g.*, NYSE Arca Equities Rule 5.2(j)(4).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11449 and #11450]

Indiana Disaster Number IN–00026

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Indiana (FEMA–1795–DR), dated 09/23/2008.

Incident: Severe Storms and Flooding.

Incident Period: 09/12/2008 through 10/06/2008.

DATES: *Effective Date:* 11/05/2008.

Physical Loan Application Deadline Date: 11/24/2008.

EIDL Loan Application Deadline Date: 06/23/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of INDIANA, dated 09/23/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Franklin, Gibson, Jasper, Ohio, Orange, Posey, Ripley, St. Joseph, Vanderburgh, Warrick.

Contiguous Counties: (Economic Injury Loans Only):

Indiana: Benton, Elkhart, Fayette, Marshall, Pulaski, Rush, Union, White.

Illinois: Gallatin, White.

Kentucky: Henderson, Union.

Michigan: Cass.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–27269 Filed 11–17–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11432 and #11433]

Louisiana Disaster Number LA–00021

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–1792–DR), dated 09/13/2008.

Incident: Hurricane Ike.

Incident Period: 09/11/2008 and continuing.

EFFECTIVE DATE: 11/04/2008.

Physical Loan Application Deadline Date: 12/11/2008.

EIDL Loan Application Deadline Date: 06/15/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Louisiana, dated 09/13/2008 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 12/11/2008.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–27268 Filed 11–17–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11464 and #11465]

Puerto Rico Disaster Number PR–00003

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA–1798–DR), dated 10/01/2008.

Incident: Severe Storms and Flooding.

Incident Period: 09/21/2008 through 10/03/2008.

DATES: *Effective Date:* 11/05/2008.

Physical Loan Application Deadline Date: 12/01/2008.

EIDL Loan Application Deadline Date: 07/01/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of PUERTO RICO, dated 10/01/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Municipalities: (Physical Damage and Economic Injury Loans): Las Piedras, Naguabo.

Contiguous Municipalities: (Economic Injury Loans Only):

Puerto Rico: Ceiba, Rio Grande.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–27270 Filed 11–17–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11488]

Texas Disaster Number TX–00312

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Texas (FEMA–1791–DR), dated 09/13/2008.

Incident: Hurricane Ike.

Incident Period: 09/07/2008 through 10/02/2008.

DATES: *Effective Date:* 11/05/2008.

Physical Loan Application Deadline Date: 11/12/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 06/15/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Texas, dated 09/13/2008, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Brazos, Calhoun, Cass, Gregg, Harrison, Marion, Morris, Panola, Robertson, Upshur.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–27271 Filed 11–17–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6427]

In the Matter of the Review of the Designations of the Revolutionary People's Liberation Party/Front (DHKP/C), the Revolutionary Armed Forces of Colombia (FARC), and the Shining Path (SL), and All Designated Aliases, as Foreign Terrorist Organizations Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Records assembled in this matter pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) (''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the 2003 re-designations of the aforementioned organizations as foreign terrorist organizations have not changed in such a manner as to warrant revocation of the designations and that the national security of the United States does not warrant a revocation.

Therefore, I hereby determine that the designations of the aforementioned organizations as foreign terrorist organizations, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: November 7, 2008.

John D. Negroponte,

Deputy Secretary of State, Department of State.

[FR Doc. E8–27328 Filed 11–17–08; 8:45 am]

BILLING CODE 4710–10–P

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Public Hearing and Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of public hearing and commission meeting.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing as part of its regular business meeting beginning at 8:30 a.m. on December 4, 2008, in Bel Air, Maryland. At the public hearing, the Commission will consider: (1) Approval of certain water resources projects; (2) a request for extension of an emergency certificate issued on October 30, 2008; and (3) adjustments to the SRBC Project Fee Schedule. Details concerning the matters to be addressed at the public hearing and business meeting are contained in the Supplementary Information section of this notice.

DATES: December 4, 2008.

ADDRESSES: Harford Community College—Chesapeake Center, 401 Thomas Run Road, Bel Air, Maryland 21015.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, *telephone:* (717) 238–0423, ext. 306; *fax:* (717) 238–2436; *e-mail: rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, *telephone:* (717) 238–0423, ext. 304; *fax:* (717) 238–2436; *e-mail: srichardson@srbc.net.*

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the business meeting also includes actions or presentations on the following items: (1) ''Water for Maryland's Future: What We Must Do Today'' by SRBC Maryland Member Dr. Robert Summers, (2) present hydrologic conditions of the basin, (3) a revised Comprehensive Plan for the Water Resources of the Susquehanna River Basin, (4) a final rulemaking action regarding consumptive use by gas well development projects, (5) certain grant applications and contracts; (6) the FY

2008 Audit Report; (7) an additional expenditure of up to $500,000 for the Whitney Point Lake Section 1135 Project Modification, and (8) an expenditure of up to $65,000 to replace three main computer servers. The Commission will also hear a Legal Counsel's report.

Public Hearing—Projects Scheduled for Action

1. *Project Sponsor and Facility:* Chesapeake Appalachia, LLC (for operations in Broome, Chenango, Cortland, Delaware, Steuben, and Tomkins Counties, N.Y., and Blair, Cambria, Cameron, Centre, Clearfield, Clinton, Columbia, Elk, Lackawanna, Luzerne, Lycoming, Sullivan, Tioga, and Wayne, Counties, Pa.) (previously approved for operations in Chemung and Tioga Counties, N.Y., and Bradford, Susquehanna, and Wyoming Counties, Pa.). Modification to increase consumptive water use from 2.075 mgd (peak day) up to 20.000 mgd from various surface water sources and the following previously approved public water suppliers: Towanda Municipal Authority, Aqua Pennsylvania, Inc.—Susquehanna Division, Canton Borough Authority, and Borough of Troy.

2. *Project Sponsor and Facility:* Chief Oil & Gas LLC (for operations in Clearfield County, Pa.). Application for consumptive water use of up to 5.000 mgd from various surface water sources and the following public water suppliers: BCI Municipal Authority and Jersey Shore Joint Water Authority.

3. *Project Sponsor and Facility:* Chief Oil & Gas LLC (Clearfield Creek), Boggs Township, Clearfield County, Pa. Application for surface water withdrawal of up to 2.000 mgd.

4. *Project Sponsor and Facility:* Chief Oil & Gas, LLC (Pine Creek), Cummings Township, Lycoming County, Pa. Application for surface water withdrawal of up to 0.099 mgd.

5. *Project Sponsor and Facility:* Citrus Energy (for operations in Wyoming County, Pa.). Application for consumptive water use of up to 5.000 mgd from various surface water sources.

6. *Project Sponsor and Facility:* Citrus Energy (North Branch Susquehanna River), Washington Township, Wyoming County, Pa. Application for surface water withdrawal of up to 0.499 mgd.

7. *Project Sponsor and Facility:* Dillsburg Area Authority, Franklin Township, York County, Pennsylvania. Application for groundwater withdrawal of 0.022 mgd from Well 1.

8. *Project Sponsor and Facility:* Dillsburg Area Authority, Franklin Township, York County, Pennsylvania. Application for groundwater withdrawal of 0.101 mgd from Well 3.

9. *Project Sponsor and Facility:* EXCO–North Coast Energy, Inc. (for operations in Centre County, Pa.). Application for consumptive water use of up to 5.000 mgd from various water sources.

10. *Project Sponsor and Facility:* EXCO-North Coast Energy, Inc. (unnamed tributary to Sandy Run), Burnside Township, Centre County, Pa. Application for surface water withdrawal of up to 0.300 mgd.

11. *Project Sponsor and Facility:* Fortuna Energy Inc. (Towanda Creek), Franklin Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.250 mgd.

12. *Project Sponsor and Facility:* J–W Operating Company (for operations in Cameron, Clearfield, and Elk Counties, Pa.). Application for consumptive water use of up to 4.500 mgd from various surface water sources and the following public water supplier: Emporium Water Company.

13. *Project Sponsor and Facility:* J–W Operating Company (Abandoned Mine Pool), Shippen Township, Cameron County, Pa. Application for surface water withdrawal of up to 0.090 mgd.

14. *Project Sponsor:* J–W Operating Company (Driftwood Branch—Sinnemahoning Creek), Lumber Township, Cameron County, Pa. Application for surface water withdrawal of up to 0.245 mgd.

15. *Project Sponsor and Facility:* J–W Operating Company (Sterling Run), Lumber Township, Cameron County, Pa. Application for surface water withdrawal of up to 0.026 mgd.

16. *Project Sponsor:* KBK–HR Associates LLC. Project Facility: Honey Run Golf Club, Dover Township, York County, Pa. Application for consumptive water use of up to 0.382 mgd.

17. *Project Sponsor:* KBK–HR Associates LLC. Project Facility: Honey Run Golf Club, Dover Township, York County, Pa. Application for surface water withdrawal of up to 0.382 mgd from Honey Run.

18. *Project Sponsor:* KBK–HR Associates LLC. Project Facility: Honey Run Golf Club, Dover Township, York County, Pa. Application for surface water withdrawal of up to 1.440 mgd from Little Conewago Creek.

19. *Project Sponsor and Facility:* New Oxford Foods, LLC, New Oxford Borough, Adams County, Pa. Applications for consumptive water use of up to 0.380 mgd and groundwater withdrawal of 0.035 mgd from Well 1.

20. *Project Sponsor:* PPL Holtwood, LLC. Project Facility: Holtwood Hydroelectric Station, Martic and Conestoga Townships, Lancaster County, and Chanceford and Lower Chanceford Townships, York County, Pa. Applications for amendment to existing FERC license (FERC Project No. 1881) and for redevelopment of the project with modification of its operations on the lower Susquehanna River, including the addition of a second power station and associated infrastructure.

21. *Project Sponsor and Facility:* Rex Energy Corporation (Upper Little Surveyor Run), Girard Township, Clearfield County, Pa. Application for surface water withdrawal of up to 0.400 mgd.

22. *Project Sponsor and Facility:* Rex Energy Corporation (Lower Little Surveyor Run), Girard Township, Clearfield County, Pa. Application for surface water withdrawal of up to 0.400 mgd.

23. *Project Sponsor:* Sunbury Generation LP. Project Facility: Sunbury Generation Facility, Monroe Township and Shamokin Dam Borough, Snyder County, Pa. Applications for consumptive water use of up to 6.025 mgd and surface water withdrawal of up to 354.000 mgd.

24. *Project Sponsor and Facility:* Turm Oil, Inc. (for operations in Susquehanna County. Pa.). Application for consumptive water use of up to 5.000 mgd from various surface water sources and the following public water suppliers: Dushore Water Authority and Towanda Municipal Authority.

25. *Project Sponsor and Facility:* Turm Oil, Inc. (Deer Lick Creek), Rush Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.249 mgd.

26. *Project Sponsor and Facility:* Turm Oil, Inc. (East Branch Wyalusing Creek), Rush Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.249 mgd.

27. *Project Sponsor and Facility:* Turm Oil, Inc. (Elk Lake Stream), Rush Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.249 mgd.

28. *Project Sponsor and Facility:* Turm Oil, Inc. (Main Branch Wyalusing Creek), Rush Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.249 mgd.

29. *Project Sponsor and Facility:* Ultra Resources (for operations in Tioga and Potter Counties, Pa.). Application for consumptive water use of up to 4.990 mgd from various surface water sources and the following public water supplier: Galeton Borough Authority.

30. *Project Sponsor and Facility:* Ultra Resources (Cowanesque River),

Deerfield Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.217 mgd.

31. *Project Sponsor and Facility:* Ultra Resources (Elk Run), Gaines Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.020 mgd.

32. *Project Sponsor and Facility:* Ultra Resources (Pine Creek), Pike Township, Potter County, Pa. Application for surface water withdrawal of up to 0.430 mgd.

Public Hearing—Request To Extend Emergency Certificate

1. CAN DO, Inc., Hazle Township, Luzerne County, Pa.—Request to again extend the emergency use of Site 14 Test Well to serve Humbolt Industrial Park, last extended at the September 11, 2008, meeting.

Public Hearing—Project Fee Schedule

1. The Commission will consider CPI and other adjustments to its Project Fee Schedule as directed by Resolution 2005–03.

Opportunity To Appear and Comment

Interested parties may appear at the above hearing to offer written or oral comments to the Commission on any matter on the hearing agenda, or at the business meeting to offer written or oral comments on other matters scheduled for consideration at the business meeting. The chair of the Commission reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing and business meeting. Written comments may also be mailed to the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania 17102–2391, or submitted electronically to Richard A. Cairo, General Counsel, *e-mail: rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, *e-mail: srichardson@srbc.net.* Comments mailed or electronically submitted must be received prior to December 4, 2008, to be considered.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR Parts 806, 807, and 808.

Dated: November 4, 2008.

Thomas W. Beauduy,

Deputy Director.

[FR Doc. E8–27319 Filed 11–17–08; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket Number DOT–OST–2008–0320]

Request for OMB Clearance of an Information Collection

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), the U.S. Department of Transportation invites the general public, industry and other governmental parties to comment on the information collection request (ICR) OMB No. 2105–0009, Advisory Committee Candidate Biographical Information Request Form. The current information collection request approved by the Office of Management and Budget (OMB) expires on March 31, 2009.

DATES: Written comments should be submitted by January 20, 2009.

FOR FURTHER INFORMATION CONTACT: Lisa L. Hough, Committee Management Officer, Executive Secretariat, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001 or *telephone:* (202) 366–4277. Refer to OMB Control No. 2105–0009.

ADDRESSES: You may submit comments to DOT–OST–2008–0320 through one of the following methods: *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20590–001.

Hand Delivery: Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Wednesday and Federal Holidays.

Instructions: All comments must include the agency name and DOT–OST–2008–0320. Note that all comments received will be posted without change to *http://www.regulations.gov*, including personal information provided. You should know that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) You may review DOT's complete Privacy Act Statement in the **Federal Register** published on (insert date of published) (FRN citation) or you may visit *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 a.m., Monday through Friday, except Wednesday and Federal holidays.

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on Docket DOT–OST–2008–0320.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (Internet, fax, or professional delivery service) to submit comments to the docket and ensure their timely receipt at U.S. DOT.

SUPPLEMENTARY INFORMATION:

Title: Advisory Committee Candidate Biographical Information Request.

OMB Control No.: 2105–0009.

Type of Review: Extension without change for currently approved information collection.

Form No.: DOT F1120.1.

Abstract: The requested extension of the approved control number covers the information collection request (ICR) OMB No. 2105–0009, ''Advisory Committee Candidate Biographical Information Request,'' and will be used to gather information from individuals interested in appointment to an advisory committee and individuals who have been recommended for a membership on an advisory committee to ensure fair and balanced membership.

Respondents: Individuals who have contacted DOT to indicate interest in appointment to an advisory committee and individuals who have been recommended for membership on an advisory committee. Only one collection is expected per individual.

Number of Respondents: 100 annually.

Estimated Time per Response: 15 minutes.

Total Annual Burden: 25 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance

of the functions of the Department, including whether the information will be have practical utility; (b) the accuracy of the Department's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information collection; and (d) ways to minimize the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology without reducing the quality of the information collected.

All comments will become a matter of public record.

Issued in Washington, DC, on November 10, 2008.

Tracey M. Jackson,

Office of the Chief Information Officer.

[FR Doc. E8–27325 Filed 11–17–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Office of Commercial Space Transportation; Notice of Availability and Request for Comment on a Final Environmental Impact Statement (EIS) for the Spaceport America Commercial Launch Site, Sierra County, NM

AGENCY: The Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Notice of Availability.

SUMMARY: In accordance with National Environmental Policy Act (NEPA) regulations and FAA Order 1050.1E, Change 1, the FAA is announcing the availability of Final EIS for the Spaceport America Commercial Launch Site, Sierra County, New Mexico. The FAA, Office of Commercial Space Transportation is the lead Federal agency for the development of this EIS. Cooperating agencies include the Bureau of Land Management; the National Park Service; United States Army, White Sands Missile Range (WSMR); and the National Aeronautics and Space Administration.

The Final EIS was prepared in response to an application for a Launch Site Operator License from the New Mexico Spaceport Authority (NMSA). Under the Proposed Action, the FAA would issue a Launch Site Operator License to NMSA to operate a launch facility capable of accommodating both horizontal and vertical launches of suborbital launch vehicles (LVs). The vehicles may carry space flight participants, scientific experiments, or other payloads. The proposed site is located in Sierra County, approximately 30 miles southeast of Truth or Consequences, New Mexico, and 45 miles north of Las Cruces, New Mexico. The Final EIS also addresses the potential environmental impacts of issuing a Launch Site Operator License for horizontal launches only (Alternative 1), vertical launches only (Alternative 2), and the No Action Alternative.

The FAA submitted the Final EIS to the Environmental Protection Agency (EPA). EPA will post a separate notification in the **Federal Register** announcing the availability of the Final EIS. The FAA will issue a Record of Decision no sooner than 30 days following EPA's notice in the **Federal Register**. The Record of Decision will be published in the **Federal Register**.

The FAA has posted the Final EIS on the FAA Web site at *http://ast.faa.gov*. In addition, CDs of the Final EIS were sent to persons and agencies on the distribution list (found in Chapter 8 of the Final EIS). A paper copy and a CD version of the Final EIS may be reviewed for comment during regular business hours at the following locations:

Hatch Public Library, P.O. Box 289, Hatch, NM 87937;
Sunland Park Community Library, 984 McNutt Road, Bldg. F–10, Sunland Park, NM 88063;
Thomas Branigan Memorial Library, 200 E Picacho Ave, Las Cruces, NM 88001;
Valley Public Library, 136 N Main, Anthony, NM 88021;
Alamogordo Public Library, 920 Oregon Ave, Alamogordo, NM 88310;
Mescalero Community Library, 101 Central Ave, Mescalero, NM 88340;
Michael Nivision Library, 90 Swallow Place, Cloudcroft, NM 88317;
Truth or Consequences Public Library, 325 Library Lane, Truth or Consequences, NM 87901;
Truth or Consequences Public Library—Downtown, 401 Foch St, Truth or Consequences, NM 87901.

Additional Information: Under the Proposed Action, the FAA would issue a Launch Site Operator License to NMSA that would allow the State to operate the proposed Spaceport America Commercial Launch Site for both horizontal and vertical suborbital LV launches. Horizontal LVs would launch and land at the proposed Spaceport America airfield. Vertical LVs would launch from Spaceport America and either land at Spaceport America or at WSMR. Rocket-powered vertical landing vehicles would land on either the Spaceport America airfield or a vertical launch/landing pad.

In addition, the Proposed Action includes construction of facilities needed to support the licensed launch activities at the proposed launch site. Development of Spaceport America infrastructure would occur in two phases. The total area of land disturbed by construction would be approximately 970 acres; the total area of the final facilities footprint would be approximately 145 acres. The proposed Spaceport America boundary would encompass approximately 26 square miles. This area currently contains both State and private land.

Operational activities in support of the Proposed Action would begin as soon as the phased construction activities related to the Proposed Action were completed. The operational activities that may have environmental consequences and would support, either directly or indirectly, licensed launches include:

- Transport of Launch Vehicles to the Assembly or Staging Areas.
- Transport and Storage of Rocket Propellants and Other Fuels.
- Launch, Landing and Recovery Activities for Horizontal Vehicles.
- Launch, Landing and Recovery Activities for Vertical Vehicles.
- Other Activities
  —Ground-Based Tests and Static Firings.
  —Training.
  —X Prize Cup Events.

The FAA identified two alternatives and the No Action Alternative to the Proposed Action, which are considered in the Final EIS. Under Alternative 1, FAA would consider issuing a Launch Site Operator License only for the operation of a launch site to support horizontal launches. This is considered a feasible alternative because a significant number of launches of horizontal LVs are projected, and most X Prize Cup activities would be located at the airfield.

Under Alternative 2, FAA would consider issuing a Launch Site Operator License only for the operation of a launch site to support vertical launches. This is considered a feasible alternative because a significant number of launches are projected to be of vertical LVs.

Under the No Action Alternative, the FAA would not issue a Launch Site Operator License to the NMSA. Subsequently, the need to support commercial launches and host the X Prize Cup would not be met by the State of New Mexico.

Resource areas were considered to provide a context for understanding and assessing the potential environmental effects of the Proposed Action, with

attention focused on key issues. The resource areas considered included compatible land use; Section 4(f) lands and farmlands; noise; visual resources and light emissions; historical, architectural, archaeological, and cultural resources; air quality; water quality, wetlands, wild and scenic rivers, coastal resources, and floodplains; fish, wildlife, and plants; hazardous materials, pollution prevention, and solid waste; socioeconomics, environmental justice, and children's environmental health and safety risks; and energy supply and natural resources. Construction impacts and secondary (induced) impacts are also considered. Additional analyses considered in the appendices include geology and soils; mineral resources; air space; health and safety; and transportation.

FOR FURTHER INFORMATION CONTACT: Stacey M. Zee (AST–100), Office of Commercial Space Transportation, 800 Independence Avenue, SW., Room 331, Washington, DC 20591, telephone (202) 267–9305; e-mail *stacey.zee@faa.gov.*

Issued in Washington, DC on November 6, 2008.

Michael McElligott,

Manager, Space Systems Development Division.

[FR Doc. E8–27149 Filed 11–17–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

1st Meeting—Special Committee 221—Aircraft Secondary Barriers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA special committee 221 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 221: Aircraft Secondary Barriers.

DATES: The meeting will be held December 3–4, 2008 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., MacIntosh-NBAA and Hilton-ATA Rooms, 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 221, Aircraft Secondary Barriers. The agenda will include:

- Opening Plenary (Welcome/Introductions/Administrative Remarks, Agenda Overview, RTCA Overview).
- Secondary Barrier—Background/History.
- Current Committee Scope, Terms of Reference Overview.
- Presentation, Discussion, Recommendations.
- Organization of Work, Assign Tasks and Workgroups.
- Presentation, Discussion, Recommendations.
- Assignment of Responsibilities.
- Closing Plenary (Other Business, Establish Agenda for Next Meeting, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 10, 2008.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E8–27276 Filed 11–17–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate for certain steel products used in Federal-aid construction projects in Oregon and the City of San Diego, CA.

DATES: The effective date of the waiver is November 19, 2008.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366–1562, *gerald.yakowenko@dot.gov.* For legal questions, please contact Mr. Michael Harkins, FHWA Office of the Chief Counsel, (202) 366–4928, *michael.harkins@dot.gov.* Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register's** home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate for two specific cases.

In accordance with section 130 of Division K of the ''Consolidated Appropriations Act, 2008'' (Pub. L. 110–161), the FHWA published on its Web site two notices of intent to issue Buy America waivers: (1) A waiver for two custom built motor control centers and stainless steel products for the Siuslaw River moveable bridge project in Oregon *http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=21* on September 23rd; and (2) a waiver for bridge suspender cable, spider fittings, wire mesh, and grade 2205 plate (for experimental research) in the City of San Diego, CA, *http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=20* on September 30th. The FHWA received no comments in response to the two custom built motor control centers in Oregon which suggested that the custom built motor control centers may not be available domestically. Further investigation and inquiry revealed that the product is not available domestically. The FHWA received two comments in response to experimental use of stainless steel products for pedestrian bridges in the City of San Diego, CA. The comments suggested that there are companies capable of manufacturing the products domestically. The City of San Diego contacted the companies and verified that Insteel Industries, Inc., does not manufacture stainless steel suspenders. The spider fittings are available domestically, but the companies do not

produce compatible glassware, making it impossible to secure the required 10-year performance warranty for the spider fitting/glassware system. Salit Specialty Rebar does not produce the stainless steel wire mesh for the decorative railings, and the Talley Metals Company does not produce the grade 2205 stainless steel plate. During the 15-day comment period, the FHWA conducted additional nationwide review to locate potential domestic manufacturers for the products. Based on all the information available to the agency, including the responses received to the notices as well as the agency's nationwide review, the FHWA concludes that there are no domestic manufacturers for the two custom built motor control centers and stainless steel products or the bridge suspender cable, spider fittings, wire mesh and grade 2205 plate.

In accordance with the provisions of section 117 of the ''SAFETEA–LU Technical Corrections Act of 2008'' (Pub. L. 110–244, 122 Stat. 1572), the FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate pursuant to 23 CFR 635.410(c)(1). The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to the FHWA's Web site via the links above to the Oregon and the City of San Diego waiver pages noted above.

(Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410.)

Issued on: November, 10, 2008.

Thomas J. Madison. Jr.,

Federal Highway Administrator.

[FR Doc. E8–27284 Filed 11–17–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of limitation on claims.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for public transportation projects in the following areas: Denver, Colorado, and Jacksonville, Florida. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject projects and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to Title 23, United States Code (U.S.C.), section 139(l). A claim seeking judicial review of the FTA actions announced herein for the listed public transportation projects will be barred unless the claim is filed on or before May 18, 2009.

FOR FURTHER INFORMATION CONTACT: Elizabeth Zelasko, Environmental Protection Specialist, Office of Planning and Environment, 202–366–0244, or Christopher Van Wyk, Attorney-Advisor, Office of Chief Counsel, 202–366–1733. FTA is located at 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation projects listed below. The actions on these projects, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA), and in other documents in the FTA administrative record for the project. The final agency environmental decision documents—Records of Decision (ROD) or Findings of No Significant Impact (FONSI)—for the listed projects are available online at *http://www.fta.dot.gov/planning/environment/planning_environment_documents.html* or may be obtained by contacting the FTA Regional Office for the metropolitan area where the project is located. Contact information for the FTA Regional Offices may be found at *http://www.fta.dot.gov.*

This notice applies to all FTA decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, the National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4375], Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303], Section 106 of the National Historic Preservation Act [16 U.S.C. 470f], and the Clean Air Act [42 U.S.C. 7401–7671q].

The projects and actions that are the subject of this notice are:

1. *Project name and location:* Denver Union Station, Denver, Colorado. *Project sponsor:* Regional Transportation District (RTD). *Project description:* The FTA and RTD have completed a Final Environmental Impact Statement (EIS) for modifications to turn the historic Denver Union Station into a multimodal transportation center for the Metro Denver Region. Modifications to Denver Union Station include construction of two light rail transit tracks near the consolidated mainline track; construction of eight at-grade passenger tracks from Amtrak, Ski Train, and RTD's East, North Metro, Northwest, and Gold Line corridors; construction of a regional and commercial bus facility; and improved pedestrian and bicycle access. RTD also plans to reconstruct street infrastructure around the station to improve traffic flow and build a 150 parking space structure over the passenger rail station. *Final Agency Actions:* ROD signed on October 17, 2008; Section 106 Memorandum of Agreement signed on September 3, 2008; Project-level Air Conformity determination; and Section 4(f) finding. *Supporting documentation:* Denver Union Station Final EIS signed on July 24, 2008.

2. *Project name and location:* Phase One Downtown Environmental Assessment. *Project sponsor:* Jacksonville Transportation Authority, Jacksonville, Florida. *Project description:* Jacksonville Transportation Authority will implement a bus rapid transit project to service downtown Jacksonville. Project elements include reconstructed bus routes, dedicated bus lanes during peak hours of operation, purchase of new low floor vehicles, traffic signal priority, and real-time traveler information. The Phase One project also includes new bus super stops that will include a boarding area between 60 and 120 feet long, will be located every quarter of a mile, and will have shelters with route and schedule information. *Final agency actions:* FONSI signed on October 8, 2008; Section 106 Finding of No Historic Properties Affected. *Supporting documentation:* Jacksonville Rapid Transit System Phase One Environmental Assessment signed on June 9, 2008.

Issued on: November 10, 2008.

Susan Borinsky,

Associate Administrator for Planning and Environment, Washington, DC.

[FR Doc. E8–27272 Filed 11–17–08; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA Docket No. NHTSA–2008–0174]

Meeting Notice

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting notice—Federal Interagency Committee on Emergency Medical Services.

SUMMARY: NHTSA announces a meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS) to be held in Washington, DC. This notice announces the date, time and location of the meeting, which will be open to the public.

DATES: The meeting will be held on December 3, 2008, from 1 p.m. to 3:30 p.m.

ADDRESSES: The meeting will be held at 1120 Vermont Avenue, NW., 4th Floor Conference Room #1 and 2, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Drew Dawson, Director, Office of Emergency Medical Services, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., NTI–140, Washington, DC 20590, Telephone number (202) 366–9966; e-mail *Drew.Dawson@dot.gov.*

SUPPLEMENTARY INFORMATION: Section 10202 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETEA–LU), Public Law 109–59, provided that the FICEMS consist of several officials from Federal agencies as well as a State emergency medical services director appointed by the Secretary of Transportation. SAFETEA–LU directed the Administrator of NHTSA, in cooperation with the Administrator of the Health Resources and Services Administration of the Department of Health and Human Services and the Director of the Preparedness Division, Directorate of Emergency Preparedness and Response of the Department of Homeland Security, to provide administrative support to the Interagency Committee, including scheduling meetings, setting agendas, keeping minutes and records, and producing reports.

This meeting of the FICEMS will focus on addressing the requirements of SAFETEA–LU and the opportunities for collaboration among the key Federal agencies involved in emergency medical services. The agenda will include:

- Consideration of the FICEMS Technical Working Group report and recommendations.
- Follow-up on Evidence-based Practice Guidelines Conference.
- Follow-up on adoption of FICEMS endorsed grant language.
- Reports and updates from Technical Working Group committees.
- Reports, updates, recommendations from FICEMS members.
- Report from National EMS Advisory Council (NEMSAC).

This meeting will be open to the public. Individuals wishing to register must provide their name, affiliation, phone number, and e-mail address to Drew Dawson by e-mail at *Drew.Dawson@dot.gov* or by telephone at (202) 366–9966 no later than November 26, 2008. Pre-registration is necessary to comply with security procedures. Picture I.D. must also be provided to enter the building and it is suggested that visitors arrive 30 minutes early in order to facilitate entry.

Minutes of the FICEMS meeting will be available to the public online through the DOT Document Management System (DMS) at: *http://www.regulations.gov* under the docket number listed at the beginning of this notice.

Issued on: November 13, 2008.

Jeffrey P. Michael,

Acting Associate Administrator for Research & Program Development.

[FR Doc. E8–27314 Filed 11–17–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2008–0171]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes a collection of phase-in information on the Appendix A–1 phase-in requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant crash protection'' for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before January 20, 2009.

ADDRESSES: You may submit comments (identified by the DOT Docket ID Number above) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, *see* the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. It is requested, but not required, that two copies of the comment be provided. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. *Please see* the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mrs. Carla Cuentas, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Room W43–417, Washington, DC 20590–0001.

Mrs. Cuentas' telephone number is (202) 366–4583. Please identify the relevant collection of information by referring to this Docket Number (Docket Number NHTSA–2008–0171).

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before a proposed collection of information is submitted to OMB for approval, Federal agencies must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Appendix A–1 of FMVSS No. 208 Phase-in Reporting Requirements.

OMB Control Number: 2127–NEW.

Form Number: This collection of information uses no standard form.

Requested Expiration Date of Approval: Three years from the approval date.

Type of Request: New collection.

Summary of the Collection of Information: 49 U.S.C. 30111 authorizes the issuance of FMVSSs and regulations. The agency, in prescribing a FMVSS or regulation, considers available relevant motor vehicle safety data, and consults with other agencies, as it deems appropriate. Further, the statute mandates that in issuing any FMVSS or regulation, the agency considers whether the standard or regulation is ''reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed,'' and whether such a standard will contribute to carrying out the purpose of the Act. The Secretary is authorized to invoke such rules and regulations as deemed necessary to carry out these requirements. Using this authority, the agency issued FMVSS No. 208, ''Occupant crash protection,'' to aid the agency in achieving many of its safety goals. This notice requests comments on the collection of information for the phase-in reporting requirements related to the implementation of Appendix A–1 of this standard. Under the phase-in, 50 percent of vehicles manufactured on or after September 1, 2009 must be certified as meeting FMVSS No. 208 when tested with the child restraint systems in Appendix A–1, and all vehicles manufactured on or after September 1, 2010 must be so certified.

Description of the need for the information and proposed use of the information: NHTSA needs this information to ensure that vehicle manufacturers are certifying their applicable vehicles as meeting FMVSS No. 208 when tested with the child restraint systems in Appendix A–1. NHTSA will use this information to determine whether a manufacturer has complied with the requirements during the phase-in period.

Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Response to the Collection of Information): NHTSA estimates that 22 vehicle manufacturers will submit the required information. For each report, the manufacturer will provide, in addition to its identity, address, etc., several numerical items of information. The information includes, but is not limited to, the following items:

(a) The number of vehicles manufactured in the current production year, or, at the manufacturer's option, in each of the three previous production years. A new manufacturer that is, for the first time, manufacturing passenger cars for sale in the United States must report the number of passenger cars manufactured during the current production year.

(b) The number of vehicles that meet the requirements of Standard No. 208 when using the child restraint systems specified in Appendix A–1 of that standard.

Each manufacturer shall maintain records of the Vehicle Identification Number for each vehicle for which information is reported under § 585.36 until December 31, 2013.

Estimate of the Total Annual Reporting and Record Keeping Burden Resulting from the Collection of Information: NHTSA estimates that it will annually take each of the 22 affected manufacturers an average of one hour to comply with these requirements. Using a cost estimate of $35 per hour, this results in a total annual cost of $770 (22 manufacturers × 1 hour per manufacturer × $35 per hour).

Comments are invited on: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Public Participation

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. Your comments must not be more than 15 pages long.[1] We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. If you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using the Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.[2] Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines.

Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.* DOT's guidelines may be accessed at *http://dmses.dot.gov/submit/DataQualityGuidelines.pdf.*

[1] *See* 49 CFR 553.21.

[2] Optical Character Recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

How Can I Be Sure That My Comments Were Received?

If you submit your comments by mail and wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation.[3] In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket by one of the methods set forth above.

Will the Agency Consider Late Comments?

We will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments received after that date.

How Can I Read the Comments Submitted by Other People?

You may read the materials placed in the docket for this document (e.g., the comments submitted in response to this document by other interested persons) at any time by going to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. You may also read the materials at the Docket Management Facility by going to the street address given above under **ADDRESSES**. The Docket Management Facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Issued on: November 13, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E8–27320 Filed 11–17–08; 8:45 am]

BILLING CODE 4910–59–P

[3] *See* 49 CFR 512.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 263X)]

Union Pacific Railroad Company—Abandonment Exemption—in Cook County, IL

Union Pacific Railroad Company (UP), has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon the Weber Industrial Lead from milepost 5.8 near Wilson Avenue, Chicago, to milepost 9.5 near Touhy Avenue, Skokie, in Cook County, IL, a distance of 3.7 miles. The line traverses United States Postal Service Zip Codes 60630, 60646, 60659, 60712, and 60076.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 18, 2008, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 28, 2008. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 8, 2008, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

UP has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by November 21, 2008. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BPRR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by November 18, 2009, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: November 10, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Jeff Herzig,

Clearance Clerk.

[FR Doc. E8–27189 Filed 11–17–08; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Effective July 18, 2008, the filing fee for an OFA increased to $1,500. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2008 update,* STB Ex Parte No. 542 (Sub-No. 15) (STB served June 18, 2008).

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Individuals Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of three newly-designated individuals whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

DATES: The designation by the Director of OFAC of the three individuals identified in this notice, pursuant to Executive Order 13224, is effective on October 30, 2008.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.*: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, *tel.*: 202–622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001, terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On October 30, 2008, the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, three individuals whose property and interests in property are blocked pursuant to Executive Order 13224.

The list of designees is as follows:

1. ABDULRAHIM, Abdulbasit (a.k.a. ABDELRAHIM, Abdelbasit; a.k.a. ABDUL RAHIM, Abdul Basit Fadil; a.k.a. ABOU BASSIR; a.k.a. ABU BASIR; a.k.a. ADBULRAHIM MAHOUD, Abdulbasit Fadil; a.k.a. AL ZAWY, Abdel Bassit Fadil; a.k.a. AL-ZAWI, 'Abd Al-Basit Fadhil; a.k.a. AL-ZWAY, 'Abd Al-Basit Fadil; a.k.a. MANSOUR, Abdallah; a.k.a. MANSOUR, Abdullah; a.k.a. MANSUR, 'Abdallah), undetermined; DOB 2 Jul 1968; POB GDABIA, LIBYA; alt. POB Ajdabiyah, Libya; nationality United Kingdom (individual) [SDGT]

2. ELMABRUK, Maftah Mohamed (a.k.a. AL MABROOK, Muftah; a.k.a. AL-FATHALI, Al-Mabruk; a.k.a. AL-FATHALI, Al-Mabruk Muftah Muhammad; a.k.a. EL MABRUK, Muftah; a.k.a. EL MOBRUK, Maftah; a.k.a. ELMABRUK, Mustah; a.k.a. MAFTAH, Elmobruk; a.k.a. ''AL HAK, Al Haj Abd''; a.k.a. ''AL HAQQ, Al Hajj Abd''; a.k.a. ''AL-HAQ, Haj 'Abd''; a.k.a. ''AL-HAQQ, Al-Hajj 'Abd''), undetermined; DOB 1 May 1950; POB Libya; nationality Libya (individual) [SDGT]

3. ELOSTA, Abdelrazag Elsharif (a.k.a. ABU MU'AWIYA; a.k.a. AL USTA, Abdelrazag Elsharif; a.k.a. AL-MULAY, 'Abd; a.k.a. AL-USTA, 'Abd Al-Razzaq Al-Sharif; a.k.a. SHARIF, 'Abd al-Razzaq), undetermined; DOB 20 Jun 1963; POB SOGUMA, LIBYA; nationality United Kingdom (individual) [SDGT]

Dated: October 30, 2008.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E8–27289 Filed 11–17–08; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF VETERANS AFFAIRS

Increase in Mileage Reimbursement Rate and Deductible Amounts in the Beneficiary Travel Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This Notice is to inform the public of the Secretary's decision to increase the Department of Veterans Affairs (VA) Beneficiary Travel program mileage reimbursement rate under 38 U.S.C. 111 for travel of eligible beneficiaries in connection with VA health care and for other purposes. Effective November 17, 2008, the beneficiary travel mileage reimbursement rate is increased from 28.5 cents to 41.5 cents based upon mileage traveled to or from a Department facility or other place in connection with vocational rehabilitation, counseling required by the Secretary pursuant to 38 U.S.C. Chapter 34, ''Educational Assistance'' or Chapter 35, ''Survivors and Dependents' Education Assistance'' or for the

purpose of examination, treatment or care. The deductible requirements for purposes of beneficiary travel of mileage reimbursement will remain at $7.77 one-way; $15.54 round trip; with a monthly cap of $46.62.

FOR FURTHER INFORMATION CONTACT: Tony A. Guagliardo, Director, Business Policy, Chief Business Office (16), VA Central Office, 810 Vermont, NW., Washington, DC 20420, (202) 461–1591. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In accordance with 38 U.S.C. 111, ''Payments or Allowances for Beneficiary Travel'' the Secretary has authority to establish rates for payment of mileage reimbursement for certain eligible beneficiaries. Funding for beneficiary travel mileage reimbursement comes directly from the annual health care appropriation and General Operating Expenses cover the Chapter 34 and Chapter 35 reimbursement. The 2009 Appropriations Act provided funding in VA's health care appropriation to increase the beneficiary travel mileage reimbursement rate to 41.5 cents per mile and provided instructions to freeze the deductible (currently $7.77 for each one way trip; $15.54 per round trip; with a calendar month cap of $46.62).

Public Law 110–387, ''Veterans' Mental Health and Other Care Improvements Act of 2008'' signed October 10, 2008, revises 38 U.S.C. 111 to establish a mileage reimbursement rate equal to that for Federal employees when a Government vehicle is available, but the individual chooses to use their own vehicle (currently this rate is $.285 per mile). However, this law also provides that, subject to available appropriations, the Secretary may prescribe a rate higher than the mandated Federal employee rate. Further, Public Law 110–387 changes the VA Beneficiary Travel Program (BT) mileage deductible to $3 for each one-way trip; $6 per round trip; with a calendar month cap of $18 as specified in 38 U.S.C. 111 (c)(1) and (2). These provisions apply to travel expenses incurred on or after January 9, 2009. Note: Deductibles may be waived in accordance with 38 CFR 70.31(c) when their imposition would cause severe financial hardship.

The Secretary has thus made the decision to increase VA's beneficiary travel mileage reimbursement rate to 41.5 cents per mile while freezing the current deductible thresholds ($7.77 for each one way trip; $15.54 per round trip; with a calendar month cap of $46.62) effective November 17, 2008, until January 9, 2009, at which time the mileage reimbursement rate will remain at 41.5 cents per mile while the deductibles will revert to $3 for each one-way trip; $6 per round trip; with a calendar month cap of $18, for travel expenses incurred on or after January 9, 2009.

In making this decision, the Secretary also reviewed and analyzed other factors including the increase in the cost of depreciation of vehicles, gasoline and oil, maintenance, accessories, parts, and tires, insurances and taxes; the availability of and time required for public transportation; and the other mileage allowances authorized for Federal employees.

Approved: November 13, 2008.

James B. Peake,

Secretary of Veterans Affairs.

[FR Doc. E8–27339 Filed 11–17–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
November 18, 2008

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 410, 416, and 419

Medicare Program: Changes to the Hospital Outpatient Prospective Payment System and CY 2009 Payment Rates; Changes to the Ambulatory Surgical Center Payment System and CY 2009 Payment Rates; Hospital Conditions of Participation: Requirements for Approval and Re-Approval of Transplant Centers To Perform Organ Transplants—Clarification of Provider and Supplier Termination Policy Medicare and Medicaid Programs: Changes to the Ambulatory Surgical Center Conditions for Coverage; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410, 416, and 419

[CMS–1404–FC; CMS–3887–F; CMS–3835–F–1]

RIN 0938–AP17; RIN 0938–AL80; RIN 0938–AH17

Medicare Program: Changes to the Hospital Outpatient Prospective Payment System and CY 2009 Payment Rates; Changes to the Ambulatory Surgical Center Payment System and CY 2009 Payment Rates; Hospital Conditions of Participation: Requirements for Approval and Re-Approval of Transplant Centers To Perform Organ Transplants—Clarification of Provider and Supplier Termination Policy Medicare and Medicaid Programs: Changes to the Ambulatory Surgical Center Conditions for Coverage

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule with comment period; final rules.

SUMMARY: This final rule with comment period revises the Medicare hospital outpatient prospective payment system to implement applicable statutory requirements and changes arising from our continuing experience with this system, and to implement a number of changes made by the Medicare Improvement for Patients and Providers Act of 2008. In this final rule with comment period, we describe the changes to the amounts and factors used to determine the payment rates for Medicare hospital outpatient services paid under the prospective payment system. These changes are applicable to services furnished on or after January 1, 2009.

In addition, this final rule with comment period updates the revised Medicare ambulatory surgical center (ASC) payment system to implement applicable statutory requirements and changes arising from our continuing experience with this system. In this final rule with comment period, we set forth the applicable relative payment weights and amounts for services furnished in ASCs, specific HCPCS codes to which these changes apply, and other pertinent ratesetting information for the CY 2009 ASC payment system. These changes are applicable to services furnished on or after January 1, 2009.

In this document, we are responding to public comments on a proposed rule and finalizing updates to the ASC Conditions for Coverage to reflect current ASC practices and new requirements in the conditions to promote and protect patient health and safety.

Further, this final rule also clarifies policy statements included in responses to public comments set forth in the preamble of the March 30, 2007 final rule regarding the Secretary's ability to terminate Medicare providers and suppliers (that is, transplant centers) during an appeal of a determination that affects participation in the Medicare program.

DATES: *Effective Dates:* The provisions of this rule are effective January 1, 2009, except for amendments to 42 CFR 416.2, 416.41 through 416.43, and 416.49 through 416.52 are effective on May 18, 2009. The policy clarification set forth in section XVIII of the preamble of this rule is effective December 18, 2008.

Comment Period: We will consider comments on the payment classifications assigned to HCPCS codes identified in Addenda B, AA, and BB to this final rule with comment period with the ''NI'' comment indicator, and on other areas specified throughout this rule, received at one of the addresses provided in the **ADDRESSES** section, no later than 5 p.m. EST on December 29, 2008.

Application Deadline—New Class of New Technology Intraocular Lenses: Request for review of applications for a new class of new technology intraocular lenses must be received by 5 p.m. EST on March 2, 2009.

ADDRESSES: In commenting, please refer to file code CMS–1404–FC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' and enter the file code to find the document accepting comments.

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–1404–FC, P.O. Box 8013, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–1404–FC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses:

a. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call the telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

Applications for a new class of new technology intraocular lenses: Requests for review of applications for a new class of new technology intraocular lenses must be sent by regular mail to: ASC/NTIOL, Division of Outpatient Care, Mailstop C4–05–17, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Alberta Dwivedi, (410) 786–0378, Hospital outpatient prospective payment issues.

Dana Burley, (410) 786–0378, Ambulatory surgical center issues.

Suzanne Asplen, (410) 786–4558, Partial hospitalization and community mental health center issues.

Sheila Blackstock, (410) 786–3502, Reporting of quality data issues.

Jacqueline Morgan, (410) 786–4282, Joan A. Moliki, (410) 786–5526, Steve Miller, (410) 786–6656, and Jeannie Miller, (410) 786–3164, Ambulatory

surgical center Conditions for Coverage issues.

Marcia Newton, (410) 786–5265, and Karen Tritz, (410) 786–8021, Clarification of provider and supplier termination policy issues.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244, on Monday through Friday of each week from 8:30 a.m. to 4 p.m. EST. To schedule an appointment to view public comments, phone 1–800–743–3951.

Electronic Access

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access,* a service of the U.S. Government Printing Office. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents' home page address is *http://www.gpoaccess.gov/index.html,* by using local WAIS client software, or by telnet to *swais.access.gpo.gov,* then login as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

Alphabetical List of Acronyms Appearing in This Final Rule With Comment Period

AAAASF American Association for Accreditation of Ambulatory Surgical Facilities
AAAHC Accreditation Association for Ambulatory Health Care
ACEP American College of Emergency Physicians
AHA American Hospital Association
AHIMA American Health Information Management Association
AMA American Medical Association
AMP Average manufacturer price
AOA American Osteopathic Association
APC Ambulatory payment classification
ASC Ambulatory Surgical Center
ASP Average sales price
AWP Average wholesale price
BBA Balanced Budget Act of 1997, Public Law 105–33
BBRA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999, Public Law 106–113
BCA Blue Cross Association
BCBSA Blue Cross and Blue Shield Association
BIPA Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, Public Law 106–554
CAH Critical access hospital
CAP Competitive Acquisition Program
CBSA Core-Based Statistical Area
CCR Cost-to-charge ratio
CERT Comprehensive Error Rate Testing
CfC Condition for Coverage
CMHC Community mental health center
CMS Centers for Medicare & Medicaid Services
CoP Condition of participation
CORF Comprehensive outpatient rehabilitation facility
CPT [Physicians'] Current Procedural Terminology, Fourth Edition, 2007, copyrighted by the American Medical Association
CRNA Certified registered nurse anesthetist
CY Calendar year
DMEPOS Durable medical equipment, prosthetics, orthotics, and supplies
DMERC Durable medical equipment regional carrier
DRA Deficit Reduction Act of 2005, Public Law 109–171
DSH Disproportionate share hospital
EACH Essential Access Community Hospital
E/M Evaluation and management
EPO Erythropoietin
ESRD End-stage renal disease
FACA Federal Advisory Committee Act, Public Law 92–463
FAR Federal Acquisition Regulations
FDA Food and Drug Administration
FFS Fee-for-service
FSS Federal Supply Schedule
FTE Full-time equivalent
FY Federal fiscal year
GAO Government Accountability Office
GME Graduate medical education
HCPCS Healthcare Common Procedure Coding System
HCRIS Hospital Cost Report Information System
HHA Home health agency
HIPAA Health Insurance Portability and Accountability Act of 1996, Public Law 104–191
HOPD Hospital outpatient department
HOP QDRP Hospital Outpatient Quality Data Reporting Program
ICD–9–CM International Classification of Diseases, Ninth Edition, Clinical Modification
IDE Investigational device exemption
IME Indirect medical education
I/OCE Integrated Outpatient Code Editor
IOL Intraocular lens
IPPE Initial preventive physical examination
IPPS [Hospital] Inpatient prospective payment system
IVIG Intravenous immune globulin
MAC Medicare Administrative Contractors
MedPAC Medicare Payment Advisory Commission
MDH Medicare-dependent, small rural hospital
MIEA-TRHCA Medicare Improvements and Extension Act under Division B, Title I of the Tax Relief Health Care Act of 2006, Public Law 109–432
MIPPA Medicare Improvements for Patients and Providers Act of 2008, Public Law 110–275
MMA Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173
MMSEA Medicare, Medicaid, and SCHIP Extension Act of 2007, Public Law 110–173
MPFS Medicare Physician Fee Schedule
MSA Metropolitan Statistical Area
NCCI National Correct Coding Initiative
NCD National Coverage Determination
NTIOL New technology intraocular lens
OIG [HHS] Office of the Inspector General
OMB Office of Management and Budget
OPD [Hospital] Outpatient department
OPPS [Hospital] Outpatient prospective payment system
PHP Partial hospitalization program
PM Program memorandum
PPI Producer Price Index
PPS Prospective payment system
PPV Pneumococcal pneumonia vaccine
PRA Paperwork Reduction Act
QAPI Quality Assessment and Performance Improvement
QIO Quality Improvement Organization
RFA Regulatory Flexibility Act
RHQDAPU Reporting Hospital Quality Data for Annual Payment Update [Program]
RHHI Regional home health intermediary
SBA Small Business Administration
SCH Sole community hospital
SDP Single Drug Pricer
SI Status indicator
TEFRA Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248
TOPS Transitional outpatient payments
USPDI United States Pharmacopoeia Drug Information
WAC Wholesale acquisition cost

In this document, we address two payment systems under the Medicare program: The hospital outpatient prospective payment system (OPPS) and the revised ambulatory surgical center (ASC) payment system. The provisions relating to the OPPS are included in sections I. through XIV., XVI., XVII., and XIX. through XXIII. of this final rule with comment period and in Addenda A, B, C (Addendum C is available on the Internet only; we refer readers to section XIX. of this final rule with comment period), D1, D2, E, L, and M to this final rule with comment period. The provisions related to the revised ASC payment system are included in sections XV. and XIX. through XXIII. of this final rule with comment period and in Addenda AA, BB, DD1, DD2, and EE

to this final rule with comment period. (Addendum EE is available on the Internet only; we refer readers to section XIX. of this final rule with comment period.)

In this document, we also address changes to the ASC Conditions for Coverage (CfCs). The provisions relating to the ASC CfCs are included in sections XV., XIX., XX.B., and XXIII. of this document. In addition, in this document, we clarify policy regarding the Secretary's ability to terminate Medicare providers and suppliers (in this case, transplant centers) during an appeal of a determination that affects participation in the Medicare Program. This clarification is included in section XVIII. of this document.

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I. Background for the OPPS

A. Legislative and Regulatory Authority for the Hospital Outpatient Prospective Payment System

When the Medicare statute was originally enacted, Medicare payment for hospital outpatient services was based on hospital-specific costs. In an effort to ensure that Medicare and its beneficiaries pay appropriately for services and to encourage more efficient delivery of care, the Congress mandated replacement of the reasonable cost-based payment methodology with a prospective payment system (PPS). The Balanced Budget Act (BBA) of 1997 (Pub. L. 105–33) added section 1833(t) to the Social Security Act (the Act) authorizing implementation of a PPS for hospital outpatient services.

The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act (BBRA) of 1999 (Pub. L. 106–113) made major changes in the hospital outpatient prospective payment system (OPPS). The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000 (Pub. L. 106–554) made further changes in the OPPS. The Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003 (Pub. L. 108–173) also amended Section 1833(t) of the Act. The Deficit Reduction Act (DRA) of 2005 (Pub. L. 109–171), enacted on February 8, 2006, also made additional changes in the OPPS. In addition, the Medicare Improvements and Extension Act under Division B of Title I of the Tax Relief and Health Care Act (MIEA–TRHCA) of 2006 (Pub. L. 109–432), enacted on December 20, 2006, made further changes in the OPPS. Further, the Medicare, Medicaid, and SCHIP Extension Act (MMSEA) of 2007 (Pub. L. 110–173), enacted on December 29, 2007, made additional changes in the OPPS. We also note that the Medicare Improvements for Patients and Providers Act (MIPPA) of 2008 (Pub. L. 110–275), enacted on July 15, 2008, made further changes to the OPPS. A discussion of these changes related to the MMSEA are included in sections I.E., II.C., V., and VII. of this final rule with comment period and those related to the MIPPA are included in sections I.F., II.C., II.E.1., V., VII., and XII.C.

The OPPS was first implemented for services furnished on or after August 1, 2000. Implementing regulations for the OPPS are located at 42 CFR Part 419.

Under the OPPS, we pay for hospital outpatient services on a rate-per-service basis that varies according to the ambulatory payment classification (APC) group to which the service is assigned. We use the Healthcare Common Procedure Coding System (HCPCS) codes (which include certain Current Procedural Terminology (CPT) codes) and descriptors to identify and group the services within each APC group. The OPPS includes payment for most hospital outpatient services, except those identified in section I.B. of this final rule with comment period. Section 1833(t)(1)(B)(ii) of the Act provides for Medicare payment under the OPPS for hospital outpatient services designated by the Secretary (which includes partial hospitalization services furnished by community mental health centers (CMHCs)) and hospital outpatient services that are furnished to inpatients who have exhausted their Part A benefits, or who are otherwise not in a covered Part A stay. Section 611 of Public Law 108–173 added provisions for Medicare coverage for an initial preventive physical examination, subject to the applicable deductible and coinsurance, as an outpatient department service, payable under the OPPS.

The OPPS rate is an unadjusted national payment amount that includes the Medicare payment and the beneficiary copayment. This rate is divided into a labor-related amount and a nonlabor-related amount. The labor-related amount is adjusted for area wage differences using the hospital inpatient wage index value for the locality in which the hospital or CMHC is located.

All services and items within an APC group are comparable clinically and with respect to resource use (section 1833(t)(2)(B) of the Act). In accordance with section 1833(t)(2) of the Act, subject to certain exceptions, services and items within an APC group cannot be considered comparable with respect to the use of resources if the highest median (or mean cost, if elected by the Secretary) for an item or service in the APC group is more than 2 times greater than the lowest median cost for an item or service within the same APC group (referred to as the ''2 times rule''). In implementing this provision, we generally use the median cost of the item or service assigned to an APC group.

For new technology items and services, special payments under the OPPS may be made in one of two ways. Section 1833(t)(6) of the Act provides for temporary additional payments, which we refer to as ''transitional pass-through payments,'' for at least 2 but not more than 3 years for certain drugs, biological agents, brachytherapy devices used for the treatment of cancer, and categories of other medical devices. For new technology services that are not eligible for transitional pass-through payments, and for which we lack sufficient data to appropriately assign them to a clinical APC group, we have established special APC groups based on costs, which we refer to as New Technology APCs. These New Technology APCs are designated by cost bands which allow us to provide appropriate and consistent payment for designated new procedures that are not yet reflected in our claims data. Similar to pass-through payments, an assignment to a New Technology APC is temporary; that is, we retain a service within a New Technology APC until we acquire sufficient data to assign it to a clinically appropriate APC group.

B. Excluded OPPS Services and Hospitals

Section 1833(t)(1)(B)(i) of the Act authorizes the Secretary to designate the hospital outpatient services that are paid under the OPPS. While most hospital outpatient services are payable under the OPPS, section 1833(t)(1)(B)(iv) of the Act excludes payment for ambulance, physical and occupational therapy, and speech-language pathology services, for which payment is made under a fee schedule. Section 614 of Public Law 108–173 amended section 1833(t)(1)(B)(iv) of the Act to exclude payment for screening and diagnostic mammography services from the OPPS. The Secretary exercised the authority granted under the statute to also exclude from the OPPS those services that are paid under fee schedules or other payment systems. Such excluded services include, for example, the professional services of physicians and nonphysician practitioners paid under the Medicare Physician Fee Schedule (MPFS); laboratory services paid under the clinical diagnostic laboratory fee schedule (CLFS); services for beneficiaries with end-stage renal disease (ESRD) that are paid under the ESRD composite rate; and services and procedures that require an inpatient stay that are paid under the hospital inpatient prospective payment system (IPPS). We set forth the services that are excluded from payment under the OPPS in § 419.22 of the regulations.

Under § 419.20(b) of the regulations, we specify the types of hospitals and entities that are excluded from payment under the OPPS. These excluded entities include Maryland hospitals, but only for services that are paid under a

cost containment waiver in accordance with section 1814(b)(3) of the Act; critical access hospitals (CAHs); hospitals located outside of the 50 States, the District of Columbia, and Puerto Rico; and Indian Health Service hospitals.

C. Prior Rulemaking

On April 7, 2000, we published in the **Federal Register** a final rule with comment period (65 FR 18434) to implement a prospective payment system for hospital outpatient services. The hospital OPPS was first implemented for services furnished on or after August 1, 2000. Section 1833(t)(9) of the Act requires the Secretary to review certain components of the OPPS, not less often than annually, and to revise the groups, relative payment weights, and other adjustments that take into account changes in medical practices, changes in technologies, and the addition of new services, new cost data, and other relevant information and factors.

Since initially implementing the OPPS, we have published final rules in the **Federal Register** annually to implement statutory requirements and changes arising from our continuing experience with this system. We published in the **Federal Register** on November 27, 2007 the CY 2008 OPPS/ASC final rule with comment period (72 FR 66580). In that final rule with comment period, we revised the OPPS to update the payment weights and conversion factor for services payable under the CY 2008 OPPS on the basis of claims data from January 1, 2006, through December 31, 2006, and to implement certain provisions of Public Law 108–173 and Public Law 109–171. In addition, we responded to public comments received on the provisions of the November 26, 2006 final rule with comment period (71 FR 67960) pertaining to the APC assignment of HCPCS codes identified in Addendum B to that rule with the new interim (NI) comment indicator; and public comments received on the August 2, 2007 OPPS/ASC proposed rule for CY 2008 (72 FR 42628).

Subsequent to publication of the CY 2008 OPPS/ASC final rule with comment period, we published in the **Federal Register** on February 22, 2008, a correction notice (73 FR 9860) to correct certain technical errors in the CY 2008 OPPS/ASC final rule with comment period.

On July 18, 2008, we issued in the **Federal Register** (73 FR 41416) a proposed rule for the CY 2009 OPPS/ASC payment system to implement statutory requirements and changes arising from our continuing experience with both systems. Subsequent to issuance of the CY 2009 OPPS/ASC proposed rule, we published in the **Federal Register** on August 11, 2008 a correction notice (73 FR 46575) to replace Table 30 included the CY 2009 OPPS/ASC proposed rule.

D. APC Advisory Panel

1. Authority of the APC Panel

Section 1833(t)(9)(A) of the Act, as amended by section 201(h) of the BBRA, and redesignated by section 202(a)(2) of the BBRA, requires that we consult with an outside panel of experts to review the clinical integrity of the payment groups and their weights under the OPPS. The Act further specifies that the panel will act in an advisory capacity. The Advisory Panel on Ambulatory Payment Classification (APC) Groups (the APC Panel), discussed under section I.D.2. of this final rule with comment period, fulfills these requirements. The APC Panel is not restricted to using data compiled by CMS, and it may use data collected or developed by organizations outside the Department in conducting its review.

2. Establishment of the APC Panel

On November 21, 2000, the Secretary signed the initial charter establishing the APC Panel. This expert panel, which may be composed of up to 15 representatives of providers (currently employed full-time, not as consultants, in their respective areas of expertise) subject to the OPPS, reviews clinical data and advises CMS about the clinical integrity of the APC groups and their payment weights. The APC Panel is technical in nature, and it is governed by the provisions of the Federal Advisory Committee Act (FACA). Since its initial chartering, the Secretary has renewed the APC Panel's charter three times: On November 1, 2002; on November 1, 2004; and on November 21, 2006. The current charter specifies, among other requirements, that the APC Panel continues to be technical in nature; is governed by the provisions of the FACA; may convene up to three meetings per year; has a Designated Federal Officer (DFO); and is chaired by a Federal official designated by the Secretary.

The current APC Panel membership and other information pertaining to the APC Panel, including its charter, **Federal Register** notices, membership, meeting dates, agenda topics, and meeting reports can be viewed on the CMS Web site at: *http://www.cms.hhs.gov/FACA/05_AdvisoryPanelonAmbulatoryPaymentClassificationGroups.asp#TopOfPage*.

3. APC Panel Meetings and Organizational Structure

The APC Panel first met on February 27, February 28, and March 1, 2001. Since the initial meeting, the APC Panel has held 15 subsequent meetings, with the last meeting taking place on August 27 and 28, 2008. Prior to each meeting, we publish a notice in the **Federal Register** to announce the meeting and, when necessary, to solicit nominations for APC Panel membership and to announce new members.

The APC Panel has established an operational structure that, in part, includes the use of three subcommittees to facilitate its required APC review process. At its March 2008 meeting, the APC Panel recommended that the Observation and Visit Subcommittee's name be changed to the ''Visits and Observation Subcommittee.'' As stated in the CY 2009 OPPS/ASC proposed rule (73 FR 41421), we are accepting this recommendation and are referring to the subcommittee by its new name, as appropriate, throughout this final rule with comment period. Thus, the three current subcommittees are the Data Subcommittee, the Visits and Observation Subcommittee, and the Packaging Subcommittee. The Data Subcommittee is responsible for studying the data issues confronting the APC Panel and for recommending options for resolving them. The Visits and Observation Subcommittee reviews and makes recommendations to the APC Panel on all technical issues pertaining to observation services and hospital outpatient visits paid under the OPPS (for example, APC configurations and APC payment weights). The Packaging Subcommittee studies and makes recommendations on issues pertaining to services that are not separately payable under the OPPS, but whose payments are bundled or packaged into APC payments. Each of these subcommittees was established by a majority vote from the full APC Panel during a scheduled APC Panel meeting, and their continuation as subcommittees was last approved at the August 2008 APC Panel meeting. At that meeting, the Panel recommended that the work of these three subcommittees continue, and we are accepting that recommendation. All subcommittee recommendations are discussed and voted upon by the full APC Panel.

Discussions of the recommendations resulting from the APC Panel's March and August 2008 meetings are included in the sections of this final rule that are specific to each recommendation. For

discussions of earlier APC Panel meetings and recommendations, we refer readers to previously published hospital OPPS final rules, the Web site mentioned earlier in this section, or the FACA database at *http://fido.gov/facadatabase/public.asp.*

During the comment period for the CY 2009 OPPS/ASC proposed rule, we received several public comments regarding representation on the APC Panel.

Comment: Several commenters requested that CMS include a designated ASC representative on the APC Panel. The commenters believed that, because the ASC payment system is based on the same APC groups and relative payment weights as the OPPS, ASC representation on the APC Panel would ensure input from representatives of all the care settings providing surgical services whose payment groups and payment weights are affected by the OPPS.

Response: We acknowledge that the revised ASC payment system provides Medicare payment to ASCs for surgical procedures that is based, in most cases, on the relative payment weights of the OPPS. However, CMS is statutorily required to have an appropriate selection of representatives of ''providers'' as members of the APC Panel.

Specifically, the current APC Panel charter requires that ''Each Panel member must be employed full-time by a hospital, hospital system, or other Medicare provider subject to payment under the OPPS,'' which does not include ASCs because ASCs are not providers. We refer readers to section 1833(t)(9)(A) of the Act and § 400.202 of our regulations for specific requirements and definitions. The charter must comply with the statute, which does not include representatives of suppliers on the APC Panel. However, we understand the concerns of commenters regarding their interest in ASC input on the APC Panel now that the ASC payment system is based on the OPPS relative payment weights.

E. Provisions of the Medicare, Medicaid, and SCHIP Extension Act of 2007

The Medicare, Medicaid and SCHIP Extension Act (MMSEA) of 2007 (Pub. L. 110–173), enacted on December 29, 2007, includes the following provisions that affect the OPPS and the revised ASC payment system:

1. Increase in Physician Payment Update

Section 101 of the MMSEA provided a 0.5 percent increase in the physician payment update from January 1, 2008 through June 30, 2008; revised the Physician Assistance and Quality Initiative Fund, and extended through 2009 the physician quality reporting system. We refer readers to section XV. of this final rule with comment period for discussion of the effect of this provision on services paid under the revised ASC payment system.

2. Extended Expiration Date for Cost-Based OPPS Payment for Brachytherapy Sources and Therapeutic Radiopharmaceuticals

Section 106 of the MMSEA amended section 1833(t)(16)(C) of the Act, as amended by section 107 of the MIEA–TRCHA, to extend for an additional 6 months, through June 30, 2008, payment for brachytherapy devices at hospitals' charges adjusted to costs and to mandate that the same cost-based payment methodology apply to therapeutic radiopharmaceuticals for the same extended payment period. We refer readers to sections V.B.4. and VII. of this final rule with comment period for discussion of this provision. We also note that section 142 of Public Law 110–275 further extended this provision, as discussed in section I.F.4. of this final rule with comment period.

3. Alternative Volume Weighting in Computation of Average Sales Price (ASP) for Medicare Part B Drugs

Section 112 of the MMSEA amended section 1847A(b) of the Act to provide for application of alternative volume weighting in computing the ASP for payment of Medicare Part B multiple source and single source drugs furnished after April 1, 2008, and for a special rule, beginning April 1, 2008, for payment of single source drugs or biologicals treated as a multiple source drug. This provision is discussed in section V. of this final rule with comment period.

4. Extended Expiration Date for Certain IPPS Wage Index Geographic Reclassifications and Special Exceptions

Section 117 of the MMSEA extended through September 30, 2008, both the reclassifications that were extended by section 106 of MIEA–TRCHA as well as certain special exception wage indices referenced in the FY 2005 IPPS final rule (69 FR 49105 and 49107). We refer readers to section II.C. of this final rule with comment for discussion of this provision. We also note that section 124 of Public Law 110–275 further extended this provision through September 30, 2009, as discussed under section I.F.2. of this final rule with comment period.

F. Provisions of the Medicare Improvements for Patients and Providers Act of 2008

The Medicare, Improvements for Patients and Providers Act (MIPPA) of 2008 (Pub. L. 110–275), enacted on July 15, 2008, includes the following provisions that affect the OPPS and the revised ASC payment system:

1. Improvements to Coverage of Preventive Services

Section 101(b) of the MIPPA amended section 1861 of the Act, as amended by section 114 of the MMSEA, to make several changes to the Initial Preventive Physical Examination (IPPE) benefit, including waiving the deductible and extending the period of eligibility for an IPPE from 6 months to 12 months after the date of the beneficiary's initial enrollment in Medicare Part B. Section 101(b) of the MIPPA also removed the screening electrocardiagram (EKG) as a mandatory requirement that is part of the IPPE and required that there be education, counseling, and referral for an EKG, as appropriate, for a once-in-a-lifetime screening EKG performed as a result of a referral from an IPPE. The facility service for the screening EKG (tracing only) is payable under the OPPS when it is the result of a referral from an IPPE. The amendments apply to services furnished on or after January 1, 2009. We refer readers to section XII.C. of this final rule for discussion of the HCPCS codes to be used for the IPPE and screening EKG and the OPPS payment rates for services under this provision for CY 2009.

2. Extended Expiration Date for Certain IPPS Wage Index Geographic Reclassifications and Special Exceptions

Section 124 of the MIPPA extended through September 30, 2009 the hospital wage index reclassifications for hospitals reclassified under section 508 of the MMA. MIPPA also extended through the last date of the extension of the reclassifications under section 106(a) of the MIEA–TRHCA certain special exception wage indices referenced in the FY 2005 IPPS final rule (69 FR 49105 and 49107) and that were extended by section 117(a)(2) of the MMSEA. We refer readers to section II.C. of this final rule with comment period for discussion of this provision.

3. Increase in Physician Payment Update

Section 131 of MIPPA increased the conversion factor by 1.1 percent for CY 2009 and required that CY 2008 and CY 2009 payment updates have no effect on payment rates for CY 2010 and subsequent years under the MPFS. We

refer readers to section XV.F. of this final rule with comment period for discussion of the effect of this provision on payment for covered office-based surgical procedures and covered ancillary services paid under the ASC payment system.

4. Extension of Expiration Date for Cost-Based OPPS Payment for Brachytherapy and Therapeutic Radiopharmaceuticals

Section 142 of the MIPPA amended section 1833(t)(16)(C) of the Act, as amended by section 106(a) of the MMSEA, and further extended the payment period for brachytherapy devices sources and therapeutic radiopharmaceuticals based on hospital's charges adjusted to cost through December 31, 2009. We refer readers to sections V.B.4. and VII. of this final rule with comment period for discussions of this provision. We also refer readers to section XV.F. of this final rule with comment period for discussion of the effect of this provision on covered ancillary services paid under the ASC payment system.

5. Extension and Expansion of the Medicare Hold Harmless Provision Under the OPPS for Certain Hospitals

Section 147 of the MIPPA amended section 1833(t)(7)(D)(i) of the Act by extending the hold harmless payments (85 percent of the difference between the prospective payment system amount under the OPPS and the pre-BBA amount) for covered OPD services furnished by rural hospitals with 100 beds or less through December 31, 2009. It also expanded the same hold harmless payments to SCHs with 100 beds or fewer for covered OPD services furnished on or after January 1, 2009, and before January 1, 2010. We refer readers to section II.E. of this final rule with comment period for discussion of this provision.

G. Summary of the Major Contents of the CY 2009 OPPS/ASC Proposed Rule

A proposed rule appeared in the July 18, 2008 **Federal Register** (73 FR 41416) that set forth proposed changes to the Medicare hospital OPPS for CY 2009 to implement statutory requirements and changes arising from our continuing experience with the system and to implement certain new statutory provisions. In addition, we proposed changes to the revised Medicare ASC payment system for CY 2009, including updated payment weights and covered ancillary services based on the proposed OPPS update. Finally, we set forth proposed quality measures for the Hospital Outpatient Quality Data Reporting Program (HOP QDRP) for reporting quality data for annual payment rate updates for CY 2010 and subsequent calendar years, the requirements for data collection and submission for the annual payment update, and a proposed reduction in the OPPS payment for hospitals that fail to meet the HOP QDRP requirements for CY 2009, in accordance with the statutory requirement. The following is a summary of the major changes included in the CY 2009 OPPS/ASC proposed rule:

1. Updates Affecting OPPS Payments

In section II. of the proposed rule, we set forth—

- The methodology used to recalibrate the proposed APC relative payment weights.
- The proposed changes to packaged services.
- The proposed update to the conversion factor used to determine payment rates under the OPPS. In this section we set forth changes in the amounts and factors for calculating the full annual update increase to the conversion factor.
- The proposed retention of our current policy to use the IPPS wage indices to adjust, for geographic wage differences, the portion of the OPPS payment rate and the copayment standardized amount attributable to labor-related cost.
- The proposed update of statewide average default CCRs.
- The proposed application of hold harmless transitional outpatient payments (TOPs) for certain small rural hospitals.
- The proposed payment adjustment for rural SCHs.
- The proposed calculation of the hospital outpatient outlier payment.
- The calculation of the proposed national unadjusted Medicare OPPS payment.
- The proposed beneficiary copayments for OPPS services.

2. OPPS Ambulatory Payment Classification (APC) Group Policies

In section III. of the proposed rule, we discussed the proposed additions of new procedure codes to the APCs; our proposal to establish a number of new APCs; and our analyses of Medicare claims data and certain recommendations of the APC Panel. We also discussed the application of the 2 times rule and proposed exceptions to it; proposed changes to specific APCs; and proposed movement of procedures from New Technology APCs to clinical APCs.

3. OPPS Payment for Devices

In section IV. of the proposed rule, we discussed proposed pass-through payment for specific categories of devices and the proposed adjustment for devices furnished at no cost or with partial or full credit.

4. OPPS Payment Changes for Drugs, Biologicals, and Radiopharmaceuticals

In section V. of the proposed rule, we discussed proposed CY 2009 OPPS payment for drugs, biologicals, and radiopharmaceuticals, including the proposed payment for drugs, biologicals, and radiopharmaceuticals with and without pass-through status.

5. Estimate of OPPS Transitional Pass-Through Spending for Drugs, Biologicals, Radiopharmaceuticals, and Devices

In section VI. of the proposed rule, we discussed the estimate of CY 2009 OPPS transitional pass-through spending for drugs, biologicals, and devices.

6. OPPS Payment for Brachytherapy Sources

In section VII. of the proposed rule, we discussed our proposal concerning coding and payment for brachytherapy sources.

7. OPPS Payment for Drug Administration Services

In section VIII. of the proposed rule, we set forth our proposed policy concerning payment and coding for drug administration services.

8. OPPS Payment for Hospital Outpatient Visits

In section IX. of the proposed rule, we set forth our proposed policies for the payment of clinic and emergency department visits and critical care services based on claims paid under the OPPS.

9. Payment for Partial Hospitalization Services

In section X. of the proposed rule, we set forth our proposed payment for partial hospitalization services, including the proposed separate threshold for outlier payments for CMHCs.

10. Procedures That Will Be Paid Only as Inpatient Procedures

In section XI. of the proposed rule, we discussed the procedures that we proposed to remove from the inpatient list and assign to APCs.

11. OPPS Nonrecurring Technical and Policy Clarifications

In section XII. of the proposed rule, we set forth our nonrecurring technical issues and policy clarifications.

12. OPPS Payment Status and Comment Indicators

In section XIII. of the proposed rule, we discussed our proposed changes to the definitions of status indicators assigned to APCs and presented our proposed comment indicators for the final rule with comment period.

13. OPPS Policy and Payment Recommendations

In section XIV. of the proposed rule, we addressed recommendations made by the Medicare Payment Advisory Commission (MedPAC) in its June 2007 and March 2008 reports to Congress, by the APC Panel regarding the OPPS for CY 2009, and by the Office of the Inspector General (OIG) in its June 2007 report.

14. Update of the Revised Ambulatory Surgical Center Payment System

In section XV. of the proposed rule, we discussed the proposed update of the revised ASC payment system payment rates for CY 2009.

15. Reporting of Hospital Outpatient Quality Data for Annual Hospital Payment Rate Updates and CY 2009 Payment Reduction

In section XVI. of the proposed rule, we discussed the proposed quality measures for reporting hospital outpatient quality data for the annual payment update factor for CY 2010 and subsequent calendar years, set forth the requirements for data collection and submission for the annual payment update, and proposed a reduction in the OPPS payment for hospitals that fail to meet the HOP QDRP requirements for CY 2009.

16. Healthcare-Associated Conditions

In section XVII. of the proposed rule, we discussed considerations related to potentially extending the principle of Medicare not paying more for the preventable healthcare-associated conditions acquired during inpatient stays paid under the IPPS to other Medicare payment systems for healthcare-associated conditions that occur or result from care in other settings.

17. Regulatory Impact Analysis

In section XXI. of the proposed rule, we set forth an analysis of the impact the proposed changes would have on affected entities and beneficiaries.

H. Public Comments Received in Response to the CY 2009 OPPS/ASC Proposed Rule

We received approximately 2,390 timely pieces of correspondence containing multiple comments on the CY 2009 OPPS/ASC proposed rule. We note that we received some comments that were outside the scope of the CY 2009 OPPS/ASC proposed rule, including public comments on new CY 2009 HCPCS codes that were not presented in the CY 2009 OPPS/ASC proposed rule. These comments are not addressed in this CY 2009 OPPS/ASC final rule with comment period. New CY 2009 HCPCS codes are designated with comment indicator ''NI'' in Addenda B, AA, and BB to this final rule with comment period, to signify that their CY 2009 interim OPPS and/or ASC treatment is open to public comment on this final rule with comment period. Summaries of the public comments that are within the scope of the proposals and our responses to those comments are set forth in the various sections of this final rule with comment period under the appropriate headings.

I. Public Comments Received on the November 27, 2007 OPPS/ASC Final Rule With Comment Period

We received approximately 507 timely items of correspondence on the CY 2008 OPPS/ASC final rule with comment period, some of which contained multiple comments on the interim APC assignments and/or status indicators of HCPCS codes identified with comment indicator ''NI'' in Addendum B to that final rule with comment period. Summaries of those public comments on topics open to comment in the CY 2008 OPPS/ASC final rule with comment period and our responses to them are set forth in the various sections of this final rule with comment period under the appropriate headings.

J. Proposed Rule on ASC Conditions for Coverage

On August 31, 2007, we published in the **Federal Register** (72 FR 50470) a proposed rule to update the ASC Conditions for Coverage (CfCs) by revising some of the definitions and revising the CfCs on governing body and management and laboratory and radiologic services to reflect current ASC practices; and to add several new CfCs on quality assessment and performance improvement, patient rights, and patient admission, assessment, and discharge to promote and protect patient health and safety.

We received 30 timely items of correspondence on this proposed rule. We present a summary of the provisions of the proposed rule, a summary of the public comments received and our responses, and the final policy provisions in section XV.B. of the preamble of this document. (Hereinafter, we refer to this proposed rule as the 2007 ASC CfCs proposed rule.)

K. Medicare Hospital Conditions of Participation: Requirements for Approval and Re-Approval of Transplant Programs To Perform Transplants—Clarification of Provider and Supplier Termination Policy

In section XVIII. of this document, we are clarifying policy set forth in responses to public comments on a March 30, 2007 final rule (72 FR 15198) regarding the Secretary's ability to terminate Medicare providers and suppliers (in this case, transplant centers) during an appeal of a determination that affects participation in the Medicare program.

II. Updates Affecting OPPS Payments

A. Recalibration of APC Relative Weights

1. Database Construction

a. Database Source and Methodology

Section 1833(t)(9)(A) of the Act requires that the Secretary review and revise the relative payment weights for APCs at least annually. In the April 7, 2000 OPPS final rule with comment period (65 FR 18482), we explained in detail how we calculated the relative payment weights that were implemented on August 1, 2000 for each APC group. As discussed in the November 13, 2000 interim final rule (65 FR 67824 through 67827), except for some reweighting due to a small number of APC changes, these relative payment weights continued to be in effect for CY 2001.

For CY 2009, we proposed to use the same basic methodology that we described in the April 7, 2000 OPPS final rule with comment period to recalibrate the APC relative payment weights for services furnished on or after January 1, 2009, and before January 1, 2010 (CY 2009). That is, we proposed to recalibrate the relative payment weights for each APC based on claims and cost report data for outpatient services. We proposed to use the most recent available data to construct the database for calculating APC group weights. Therefore, for the purpose of recalibrating the final APC relative payment weights for CY 2009, we used approximately 140 million final action

claims for hospital outpatient department (HOPD) services furnished on or after January 1, 2007, and before January 1, 2008. (For exact counts of claims used, we refer readers to the claims accounting narrative under supporting documentation for this final rule with comment period on the CMS Web site at: *http://www.cms.hhs.gov/HospitalOutpatientPPS/HORD/*.)

Of the 140 million final action claims for services provided in hospital outpatient settings used to calculate the CY 2009 OPPS payment rates for this final rule with comment period, approximately 107 million claims were of the type of bill potentially appropriate for use in setting rates for OPPS services (but did not necessarily contain services payable under the OPPS). Of the 107 million claims, approximately 49 million were not for services paid under the OPPS or were excluded as not appropriate for use (for example, erroneous cost-to-charge ratios (CCRs) or no HCPCS codes reported on the claim). From the remaining 58 million claims, we created approximately 99 million single records, of which approximately 67 million were ''pseudo'' single claims (created from 26 million multiple procedure claims using the process we discuss later in this section). Approximately 617,000 claims trimmed out on cost or units in excess of +/−3 standard deviations from the geometric mean, yielding approximately 99 million single bills for median setting. This number of ''pseudo'' and ''natural'' single bills is comparable to the 97 million single bills that we used in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66589). In prior rules, we have reported the percentage of claims that we were able to use to estimate APC median costs. However, our refinement to the bypass process to accommodate the multiple imaging composite methodology described in section II.A.2.e.(5) of this final rule with comment period currently prevents us from providing an accurate percentage. Because our refinement increased the number of ''pseudo'' single bills, we are confident that we are using a high percentage of claims to estimate the final CY 2009 APC median costs. We provide greater detail on this refinement in our claims accounting narrative for this final rule with comment period that is posted on the CMS Web site.

As proposed, the APC relative weights and payments for CY 2009 in Addenda A and B to this final rule with comment period were calculated using claims from CY 2007 that were processed on or before June 30, 2008, and continue to be based on the median hospital costs for services in the APC groups. We selected claims for services paid under the OPPS and matched these claims to the most recent cost report filed by the individual hospitals represented in our claims data. We continue to believe that it is appropriate to use the most current full calendar year claims data and the most recently submitted cost reports to calculate the median costs which we proposed to convert to relative payment weights for purposes of calculating the CY 2009 payment rates.

We did not receive any public comments on our proposal to base the CY 2009 APC relative weights on the most currently available cost reports and on claims for services furnished in CY 2007. Therefore, for this reason and the reasons noted above in this section, we are finalizing our data source for the recalibration of the CY 2009 APC relative payment weights as proposed, without modification, as described in this section of this final rule with comment period.

b. Use of Single and Multiple Procedure Claims

For CY 2009, in general, we proposed to continue to use single procedure claims to set the medians on which the APC relative payment weights would be based, with some exceptions as discussed below (73 FR 41423). We generally use single procedure claims to set the median costs for APCs because we believe that the OPPS relative weights on which payment rates are based should be appropriate when one and only one procedure is furnished and because we are, so far, unable to ensure that packaged costs can be appropriately allocated across multiple procedures performed on the same date of service. We agree that, optimally, it is desirable to use the data from as many claims as possible to recalibrate the APC relative payment weights, including those claims for multiple procedures. As we have for several years, we continued to use date of service stratification and a list of codes to be bypassed to convert multiple procedure claims to ''pseudo'' single procedure claims. Through bypassing specified codes that we believe do not have significant packaged costs, we are able to use more data from multiple procedure claims. In many cases, this enables us to create multiple ''pseudo'' single claims from claims that, as submitted, contained numerous separately paid procedures reported on the same date on one claim. We refer to these newly created single procedure claims as ''pseudo'' single claims because they were submitted by providers as multiple procedure claims. The history of our use of a bypass list to generate ''pseudo'' single claims is well documented, most recently in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66590 through 66597). In addition, for CY 2008, we increased packaging and created the first composite APCs, which also increased the number of bills we were able to use for median calculation by enabling us to use claims that contained multiple major procedures that previously would not have been usable. We refer readers to section II.A.2.e. of this final rule with comment period for discussion of the use of claims to establish median costs for composite APCs.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41423), we proposed to continue to apply these processes to enable us to use as much claims data as possible for ratesetting for the CY 2009 OPPS. This process enabled us to create, for this final rule with comment period, approximately 67 million ''pseudo'' single claims, including multiple imaging composite ''single session'' bills (we refer readers to section II.A.2.e.(5) of this final rule with comment period for further discussion), and approximately 32 million ''natural'' single bills. For this final rule with comment period, ''pseudo'' single procedure bills represent 68 percent of all single bills used to calculate median costs.

In the CY 2009 OPPS/ASC proposed rule (73FR 41424 through 41429), we proposed to bypass 452 HCPCS codes for CY 2009 that were identified in Table 1 of the proposed rule. We proposed to continue the use of the codes on the CY 2008 OPPS bypass list. Since the inception of the bypass list, we have calculated the percent of ''natural'' single bills that contained packaging for each HCPCS code and the amount of packaging in each ''natural'' single bill for each code. We have generally retained the codes on the previous year's bypass list and used the update year's data (for CY 2009, data available for the first CY 2008 APC Panel meeting for services furnished on and after January 1, 2007 through and including September 30, 2007) to determine whether it would be appropriate to add additional codes to the previous year's bypass list. The entire list (including the codes that remained on the bypass list from prior years) was open to public comment. We removed two HCPCS codes from the CY 2008 bypass list for the CY 2009 proposal because the codes were deleted on December 31, 2005, specifically C8951 (Intravenous infusion for therapy/diagnosis; each additional hour (List separately in addition to C8950)) and C8955 (Chemotherapy

administration, intravenous; infusion technique, each additional hour (List separately in addition to C8954)). We updated HCPCS codes on the CY 2008 bypass list that were mapped to new HCPCS codes for CY 2009 ratesetting. We proposed to add to the bypass list all HCPCS codes not on the CY 2008 bypass list that, using the APC Panel data, met the same previously established empirical criteria for the bypass list that are summarized below. We assumed that the representation of packaging in the single claims for any given code was comparable to packaging for that code in the multiple claims. The proposed criteria for the bypass list were:

- There are 100 or more single claims for the code. This number of single claims ensures that observed outcomes are sufficiently representative of packaging that might occur in the multiple claims.
- Five percent or fewer of the single claims for the code have packaged costs on that single claim for the code. This criterion results in limiting the amount of packaging being redistributed to the separately payable procedure remaining on the claim after the bypass code is removed and ensures that the costs associated with the bypass code represent the cost of the bypassed service.
- The median cost of packaging observed in the single claims is equal to or less than $50. This limits the amount of error in redistributed costs.
- The code is not a code for an unlisted service.

In addition, we proposed to continue to include on the bypass list HCPCS codes that CMS medical advisors believe have minimal associated packaging based on their clinical assessment of the complete CY 2009 OPPS proposal. Some of these codes were identified by CMS medical advisors and some were identified in prior years by commenters with specialized knowledge of the services they requested be added to the bypass list. To ensure clinical consistency in our treatment of related services, we also proposed to add the other CPT add-on codes for drug administration services to the CY 2009 bypass list, in addition to the CPT codes for additional hours of infusion that were previously included on the CY 2008 bypass list, because adding them enabled us to use many correctly coded claims for initial drug administration services that would otherwise not be available for ratesetting. The result of this proposal was that the packaged costs associated with add-on drug administration services were packaged into payment for the initial administration service, as has been our payment policy for the past 2 years for the CPT codes for additional hours of infusion.

We also proposed to add HCPCS code G0390 (Trauma response team activation associated with hospital critical care service) because we thought it was appropriate to attribute all of the packaged costs that appear on a claim with HCPCS code G0390 and CPT code 99291 (Critical care, evaluation and management of the critically ill or critically injured patient; first 30–74 minutes) to CPT code 99291. If we had not added HCPCS code G0390 to the bypass list, we would have had many fewer claims to use to set the median costs for APCs 0617 (Critical Care) and 0618 (Trauma Response with Critical Care). By definition, we could not have had any properly coded ''natural'' single bills for HCPCS code G0390. Including HCPCS code G0390 on the bypass list allowed us to create more ''pseudo'' single bills for CPT code 99291 and HCPCS code G0390, and, therefore, to improve the accuracy of the median costs of APCs 0617 and 0618 to which the two codes were assigned, respectively. The Integrated Outpatient Code Editor (I/OCE) logic rejects a line for HCPCS code G0390 if CPT code 99291 is not also reported on the claim. Therefore, we could not assess whether HCPCS code G0390 would meet the empirical criteria for inclusion on the bypass list because we had no ''natural'' single claims for HCPCS code G0390.

As a result of the multiple imaging composite APCs that we proposed to establish for CY 2009 as discussed in section II.A.2.e.(5) of this final rule with comment period, we noted that the ''pseudo'' single converter logic for bypassed codes that are also members of multiple imaging composite APCs would change. When creating the set of ''pseudo'' single claims, claims that contain ''overlap bypass codes,'' that is, those HCPCS codes that are both on the bypass list and are members of the multiple imaging composite APCs, were identified first. These HCPCS codes were then processed to create multiple imaging composite ''single'' bills, that is, claims containing HCPCS codes from only one imaging family, thus suppressing the initial use of these codes as bypass codes. However, these ''overlap bypass codes'' were retained on the bypass list because single unit occurrences of these codes are identified as single bills at the end of the ''pseudo'' single processing logic. For this final rule with comment period, we then reassessed the claims without suppression of the ''overlap bypass codes'' under our longstanding ''pseudo'' single process to determine whether we could convert additional claims to ''pseudo'' single claims. (We refer readers to section II.A.2.c. of this final rule with comment period for further discussion of the treatment of ''overlap bypass codes.'') This process also created multiple imaging composite ''single session'' bills that could be used for calculating composite APC median costs. ''Overlap bypass codes'' that would be members of the proposed multiple imaging composite APCs were identified by asterisks (*) in Table 1 of the CY 2009 OPPS/ASC proposed rule.

Table 1 published in the CY 2009 OPPS/ASC proposed rule included the proposed list of bypass codes for CY 2009. As noted in that proposed rule (73 FR 41424 through 41429), that list contained bypass codes that were appropriate to claims for services in CY 2007 and, therefore, included codes that were deleted for CY 2008. Moreover, there were codes on the proposed bypass list that were new for CY 2008 and which we indicated were appropriate additions to the bypass list in preparation for use of the CY 2008 claims for creation of the CY 2010 OPPS. We specifically requested public comment on the proposed CY 2009 bypass list.

Comment: Several commenters indicated that review of the CY 2007 claims data on which the CY 2009 proposed OPPS was based revealed that fewer than 10 percent of the billed lines for radiation oncology guidance codes were used in setting the proposed CY 2009 OPPS payment rates. They also asserted that more than a third of the billed lines for Image Guided Radiation Therapy (IGRT) services were being packaged into the single bills for services that are totally unrelated to radiation oncology services, such as clinic visits. They believed that this misassignment may have occurred in part as a result of the inclusion of radiation oncology services on the bypass list.

Response: We examined the combinations of codes that occurred on claims that contained guidance codes for radiation oncology services, specifically CPT codes 76950 (Ultrasonic guidance for placement of radiation therapy fields); 76965 (Ultrasonic guidance for interstitial radioelement application); 77014 (Computed tomography guidance for placement of radiation therapy fields); 77417 (Therapeutic radiology port film(s)); and 77421 (Stereoscopic X-ray guidance for localization of target volume for the delivery of radiation therapy), in our proposed rule data. We found that, on some claims, the costs of

image guidance for radiation therapy services were being packaged into the costs of other services such as visits, or were not available to be correctly packaged. Therefore, those costs were not being appropriately packaged into the radiation oncology services to which they were incidental and supportive.

Our analysis indicated that the inclusion of radiation oncology codes that failed to meet the empirical criteria for inclusion of the codes on the bypass list was the most likely source of the problem. We were unable to ensure that the radiation oncology codes that failed the empirical criteria could be retained on the bypass list with confidence that they would not result in incorrect or missing packaging for guidance services. We therefore removed from the proposed CY 2009 bypass list all codes in the radiation oncology series of CPT, specifically ranging from CPT code 77261 (Therapeutic radiology treatment planning; simple) through and including CPT code 77799 (Unlisted procedure, clinical brachytherapy), that did not meet the empirical criteria for inclusion on the bypass list based on CY 2009 proposed rule data. We had added many of these codes to the bypass list after reviewing and accepting the recommendations of several commenters to past OPPS proposed rules who believed that the codes were appropriate for inclusion on the bypass list (71 FR 67970 and 72 FR 66591), although they failed to meet the empirical criteria for inclusion on the bypass list.

Removing these codes from the bypass list for the CY 2009 OPPS resulted in a reduction of approximately 1 million ''pseudo'' single procedure claims but we believe that it resulted in more appropriate assignment of packaged costs. In some cases, the removal of these codes from the bypass list increased the median costs of APCs to which radiation oncology services are assigned (for example, APC 0412 (IMRT Treatment Delivery) and APC 0304 (Level I Therapeutic Radiation Treatment Preparation)) and in other cases it reduced the ''pseudo'' single bills that were available to be used to set median costs and led to decreases in medians that were calculated using the smaller set of single procedure claims (for example, APC 8001 (LDR Prostate Brachytherapy Composite)).

On balance, we believe that removing these codes from the bypass list is the most appropriate approach for this final rule with comment period to ensure that packaged costs are correctly captured in ratesetting. Although we have removed all codes in the radiation oncology series that do not meet the empirical criteria for inclusion on the bypass list for this CY 2009 final rule with public comment period, we will continue to examine the claims data for these codes, and particularly for the APCs for which the number of usable claims declined. We hope to determine if there are specific codes in the radiation oncology series that do not meet the empirical bypass list criteria but which could be safely added back to the bypass list without resulting in inappropriate packaging, in order to enable the use of more claims data for radiation oncology services.

Comment: One commenter expressed support for the ratesetting methodology using single and ''pseudo'' single claims and recommended that CMS continue to use methodologies that improve the overall accuracy of the cost estimate calculations.

Response: We appreciate the commenter's support. We will continue to use our established methodologies and continue to evaluate additional refinements and improvements to our methodologies, with the goal of achieving appropriate and accurate estimates of the costs of services in the HOPD.

Comment: One commenter supported inclusion of HCPCS code G0340 (Image-guided robotic linear accelerator-based stereotactic radiosurgery, delivery including collimator changes and custom plugging, fractionated treatment, all lesion, per session, second through fifth session, maximum) on the bypass list.

Response: We appreciate the commenter's support and have continued to include HCPCS code G0340 on the CY 2009 bypass list.

Comment: One commenter requested clarification regarding the standards by which codes are added to the bypass list, believing that CMS' proposal to include HCPCS code G0390 on the bypass list would affect the billing of the code.

Response: The purpose of the bypass list is to isolate resource costs associated with an individual service through identifying the costs of HCPCS codes with little or no packaging and using that cost data to create ''pseudo'' single claims. The remaining costs of other services on the claim are then evaluated to determine if the claim qualifies as a single bill that can be used for ratesetting. The use of empirical criteria and clinical assessment ensure that there is minimal and infrequent packaging associated with services on the bypass list, making additional ''pseudo'' single claims for the bypass services available for ratesetting and potentially making the claims with the bypass code's costs removed appropriate for ratesetting for other services on the same claim. In the case of HCPCS code G0390 and CPT code 99291, as described above, inclusion of HCPCS code G0390 on the bypass list allows us to develop more accurate estimates of the median costs of CPT code 99291 and HCPCS code G0390 than otherwise would be possible. However, the bypass list is only used for data purposes and has no effect on how hospitals report services on claims. We fully expect hospitals to continue reporting HCPCS code G0390 when a critical care visit qualifies for trauma activation, in accordance with our instructions in the Medicare Claims Processing Manual, Pub. 100–04, Chapter 4, Section 160.1.

Comment: One commenter recommended that CPT code 90768 (Intravenous infusion, for therapy, prophylaxis, or diagnosis (specify substance or drug): Concurrent infusion (List separately in addition to code for primary procedure)) be included on the bypass list in order to ensure consistency with the treatment of other drug administration codes.

Response: We have not added CPT code 90768 to the bypass list because our CY 2009 policy unconditionally packages payment for this service and, therefore, it is not a candidate for the bypass list. The purpose of the bypass list is to develop ''pseudo'' single claims so that there are more data available to determine the median costs of separately payable services for ratesetting purposes. Including packaged codes would be contrary to the purpose of the bypass list. For further discussion of packaged payment in CY 2009 for CPT code 90768, we refer readers to section VIII.B. of this final rule with comment period.

Comment: One commenter suggested that CMS claims data for CY 2007 showed a number of guidance and radiological supervision and interpretation ''dependent'' HCPCS codes are not on claims with paid procedures in many cases, due in part to the interaction with the bypass list, and therefore, their costs are not used in ratesetting. They urged CMS to ensure that the packaging and composite methodologies are meeting the goals of capturing accurate multiple claims data.

Response: The empirical criteria through which most codes are added to the bypass list are set to limit bypass codes to those codes which seldom have packaging, and when packaging exists, ensure limited packaging associated with the code. This is to ensure that any remaining packaging left after removal of the bypass codes would be minimal

and uncommon. As discussed above in response to the comment on image guidance for radiation oncology services, we have made some changes to the final CY 2009 bypass list to remove certain radiation oncology codes from the bypass list that do not meet the empirical criteria. Those bypass list changes ensure that the packaged costs of image guidance services for radiation therapy are not lost or misdirected to payment for other unrelated services. Furthermore, we have reviewed the other guidance HCPCS codes that are unconditionally packaged under the CY 2009 OPPS, and we do not believe that there are other HCPCS codes included on the bypass list that fail to meet the empirical criteria and to which the packaged costs of these other guidance services would be appropriately assigned. Thus, we do not believe that other changes to the bypass list to appropriately capture and assign the costs of other guidance services are necessary.

With regard to the radiological supervision and interpretation HCPCS codes, these codes are conditionally packaged codes assigned status indicator ''Q2'' (''T-packaged'') to reflect that their payment would be packaged when one or more surgical procedures (status indicator ''T'') are provided on the same day, but otherwise they would be separately paid. The determination of packaged versus separately payable status is made for radiological supervision and interpretation codes prior to application of the bypass list to develop ''pseudo'' single claims. Of note, there are only 22 ''T'' status codes on the bypass list, out of a total of 424 final bypass codes, and many of the ''T'' status codes on the bypass list are minor skin treatment procedures. Most of these ''T'' status procedures currently meet the empirical criteria for inclusion on the bypass list, so we do not believe that radiological supervision and interpretation services generally appear on claims with only those ''T'' status procedures or would be appropriately packaged with those procedures. Therefore, we continue to believe that the costs of packaged radiological supervision and interpretation services are being appropriately captured for purposes of ratesetting, and those costs are not being lost or misassigned due to an interaction with the bypass list.

After consideration of the public comments received, we are adopting, as final, the proposed ''pseudo'' single claims process and the final CY 2009 bypass list of 424 HCPCS codes, as displayed in Table 1 below. This list has been modified from the CY 2009 proposed list, with the removal of certain HCPCS codes as discussed above in this section.

TABLE 1—FINAL CY 2009 BYPASS CODES FOR CREATING ''PSEUDO'' SINGLE CLAIMS FOR CALCULATING MEDIAN COSTS

HCPCS code	Short descriptor	''Overlap bypass codes''
0144T	CT heart w/o dye; qual calc.	
11056	Trim skin lesions, 2 to 4.	
11057	Trim skin lesions, over 4.	
11300	Shave skin lesion	
11301	Shave skin lesion	
11719	Trim nail(s)	
11720	Debride nail, 1–5	
11721	Debride nail, 6 or more.	
11954	Therapy for contour defects.	
17000	Destruct premalg lesion.	
17003	Destruct premalg les, 2–14.	
29220	Strapping of low back	
31231	Nasal endoscopy, dx	
31579	Diagnostic laryngoscopy.	
51798	Us urine capacity measure.	
53661	Dilation of urethra	
54240	Penis study	
56820	Exam of vulva w/scope.	
57150	Treat vagina infection	
67820	Revise eyelashes	
69210	Remove impacted ear wax.	
69220	Clean out mastoid cavity.	
70030	X-ray eye for foreign body.	
70100	X-ray exam of jaw	
70110	X-ray exam of jaw	
70120	X-ray exam of mastoids.	
70130	X-ray exam of mastoids.	
70140	X-ray exam of facial bones.	
70150	X-ray exam of facial bones.	
70160	X-ray exam of nasal bones.	
70200	X-ray exam of eye sockets.	
70210	X-ray exam of sinuses.	
70220	X-ray exam of sinuses.	
70250	X-ray exam of skull	
70260	X-ray exam of skull	
70328	X-ray exam of jaw joint.	
70330	X-ray exam of jaw joints.	
70336	Magnetic image, jaw joint.	*

TABLE 1—FINAL CY 2009 BYPASS CODES FOR CREATING ''PSEUDO'' SINGLE CLAIMS FOR CALCULATING MEDIAN COSTS—Continued

HCPCS code	Short descriptor	''Overlap bypass codes''
70355	Panoramic x-ray of jaws.	
70360	X-ray exam of neck	
70370	Throat x-ray & fluoroscopy.	
70371	Speech evaluation, complex.	
70450	Ct head/brain w/o dye	*
70480	Ct orbit/ear/fossa w/o dye.	*
70486	Ct maxillofacial w/o dye.	*
70490	Ct soft tissue neck w/o dye.	*
70544	Mr angiography head w/o dye.	*
70551	Mri brain w/o dye	*
71010	Chest x-ray	
71015	Chest x-ray	
71020	Chest x-ray	
71021	Chest x-ray	
71022	Chest x-ray	
71023	Chest x-ray and fluoroscopy.	
71030	Chest x-ray	
71034	Chest x-ray and fluoroscopy.	
71035	Chest x-ray	
71100	X-ray exam of ribs	
71101	X-ray exam of ribs/chest.	
71110	X-ray exam of ribs	
71111	X-ray exam of ribs/chest.	
71120	X-ray exam of breastbone.	
71130	X-ray exam of breastbone.	
71250	Ct thorax w/o dye	*
72010	X-ray exam of spine	
72020	X-ray exam of spine	
72040	X-ray exam of neck spine.	
72050	X-ray exam of neck spine.	
72052	X-ray exam of neck spine.	
72069	X-ray exam of trunk spine.	
72070	X-ray exam of thoracic spine.	
72072	X-ray exam of thoracic spine.	
72074	X-ray exam of thoracic spine.	
72080	X-ray exam of trunk spine.	
72090	X-ray exam of trunk spine.	
72100	X-ray exam of lower spine.	
72110	X-ray exam of lower spine.	
72114	X-ray exam of lower spine.	

TABLE 1—FINAL CY 2009 BYPASS CODES FOR CREATING "PSEUDO" SINGLE CLAIMS FOR CALCULATING MEDIAN COSTS—Continued

HCPCS code	Short descriptor	"Overlap bypass codes"
72120	X-ray exam of lower spine.	.....
72125	Ct neck spine w/o dye.	*
72128	Ct chest spine w/o dye.	*
72131	Ct lumbar spine w/o dye.	*
72141	Mri neck spine w/o dye.	*
72146	Mri chest spine w/o dye.	*
72148	Mri lumbar spine w/o dye.	*
72170	X-ray exam of pelvis	.....
72190	X-ray exam of pelvis	.....
72192	Ct pelvis w/o dye	*
72202	X-ray exam sacroiliac joints.	.....
72220	X-ray exam of tailbone.	.....
73000	X-ray exam of collar bone.	.....
73010	X-ray exam of shoulder blade.	.....
73020	X-ray exam of shoulder.	.....
73030	X-ray exam of shoulder.	.....
73050	X-ray exam of shoulders.	.....
73060	X-ray exam of humerus.	.....
73070	X-ray exam of elbow	.....
73080	X-ray exam of elbow	.....
73090	X-ray exam of forearm.	.....
73100	X-ray exam of wrist ...	.....
73110	X-ray exam of wrist ...	.....
73120	X-ray exam of hand ..	.....
73130	X-ray exam of hand ..	.....
73140	X-ray exam of finger(s).	.....
73200	Ct upper extremity w/o dye.	*
73218	Mri upper extremity w/o dye.	*
73221	Mri joint upr extrem w/o dye.	*
73510	X-ray exam of hip	.....
73520	X-ray exam of hips ...	.....
73540	X-ray exam of pelvis & hips.	.....
73550	X-ray exam of thigh ..	.....
73560	X-ray exam of knee, 1 or 2.	.....
73562	X-ray exam of knee, 3.	.....
73564	X-ray exam, knee, 4 or more.	.....
73565	X-ray exam of knees	.....
73590	X-ray exam of lower leg.	.....
73600	X-ray exam of ankle	.....
73610	X-ray exam of ankle	.....
73620	X-ray exam of foot	.....

TABLE 1—FINAL CY 2009 BYPASS CODES FOR CREATING "PSEUDO" SINGLE CLAIMS FOR CALCULATING MEDIAN COSTS—Continued

HCPCS code	Short descriptor	"Overlap bypass codes"
73630	X-ray exam of foot	.....
73650	X-ray exam of heel ...	.....
73660	X-ray exam of toe(s)	.....
73700	Ct lower extremity w/o dye.	*
73718	Mri lower extremity w/o dye.	*
73721	Mri jnt of lwr extre w/o dye.	*
74000	X-ray exam of abdomen.	.....
74010	X-ray exam of abdomen.	.....
74020	X-ray exam of abdomen.	.....
74022	X-ray exam series, abdomen.	.....
74150	Ct abdomen w/o dye	*
74210	Contrst x-ray exam of throat.	.....
74220	Contrast x-ray, esophagus.	.....
74230	Cine/vid x-ray, throat/esoph.	.....
74246	Contrst x-ray uppr gi tract.	.....
74247	Contrst x-ray uppr gi tract.	.....
74249	Contrst x-ray uppr gi tract.	.....
76100	X-ray exam of body section.	.....
76510	Ophth us, b & quant a.	.....
76511	Ophth us, quant a only.	.....
76512	Ophth us, b w/non-quant a.	.....
76513	Echo exam of eye, water bath.	.....
76514	Echo exam of eye, thickness.	.....
76516	Echo exam of eye	.....
76519	Echo exam of eye	.....
76536	Us exam of head and neck.	.....
76645	Us exam, breast(s) ...	.....
76700	Us exam, abdom, complete.	*
76705	Echo exam of abdomen.	*
76770	Us exam abdo back wall, comp.	*
76775	Us exam abdo back wall, lim.	*
76776	Us exam k transpl w/doppler.	*
76801	Ob us <14 wks, single fetus.	.....
76805	Ob us >/= 14 wks, sngl fetus.	.....
76811	Ob us, detailed, sngl fetus.	.....
76816	Ob us, follow-up, per fetus.	.....

TABLE 1—FINAL CY 2009 BYPASS CODES FOR CREATING "PSEUDO" SINGLE CLAIMS FOR CALCULATING MEDIAN COSTS—Continued

HCPCS code	Short descriptor	"Overlap bypass codes"
76817	Transvaginal us, obstetric.	.....
76830	Transvaginal us, non-ob.	.....
76856	Us exam, pelvic, complete.	*
76857	Us exam, pelvic, limited.	*
76870	Us exam, scrotum	*
76880	Us exam, extremity ...	.....
76970	Ultrasound exam follow-up.	.....
76977	Us bone density measure.	.....
76999	Echo examination procedure.	.....
77072	X-rays for bone age ..	.....
77073	X-rays, bone length studies.	.....
77074	X-rays, bone survey, limited.	.....
77075	X-rays, bone survey complete.	.....
77076	X-rays, bone survey, infant.	.....
77077	Joint survey, single view.	.....
77078	Ct bone density, axial	.....
77079	Ct bone density, peripheral.	.....
77080	Dxa bone density, axial.	.....
77081	Dxa bone density/peripheral.	.....
77082	Dxa bone density, vert fx.	.....
77083	Radiographic absorptiometry.	.....
77084	Magnetic image, bone marrow.	.....
77301	Radiotherapy dose plan, imrt.	.....
77315	Teletx isodose plan complex.	.....
77336	Radiation physics consult.	.....
77401	Radiation treatment delivery.	.....
80500	Lab pathology consultation.	.....
80502	Lab pathology consultation.	.....
85097	Bone marrow interpretation.	.....
86510	Histoplasmosis skin test.	.....
86850	RBC antibody screen	.....
86870	RBC antibody identification.	.....
86880	Coombs test, direct ...	.....
86885	Coombs test, indirect, qual.	.....
86886	Coombs test, indirect, titer.	.....
86890	Autologous blood process.	.....

TABLE 1—FINAL CY 2009 BYPASS CODES FOR CREATING "PSEUDO" SINGLE CLAIMS FOR CALCULATING MEDIAN COSTS—Continued

HCPCS code	Short descriptor	"Overlap bypass codes"
86900	Blood typing, ABO	
86901	Blood typing, Rh (D)	
86903	Blood typing, antigen screen.	
86904	Blood typing, patient serum.	
86905	Blood typing, RBC antigens.	
86906	Blood typing, Rh phenotype.	
86930	Frozen blood prep	
86970	RBC pretreatment	
86977	RBC pretreatment, serum.	
88104	Cytopath fl nongyn, smears.	
88106	Cytopath fl nongyn, filter.	
88107	Cytopath fl nongyn, sm/fltr.	
88108	Cytopath, concentrate tech.	
88112	Cytopath, cell enhance tech.	
88160	Cytopath smear, other source.	
88161	Cytopath smear, other source.	
88162	Cytopath smear, other source.	
88172	Cytopathology eval of fna.	
88173	Cytopath eval, fna, report.	
88182	Cell marker study	
88184	Flowcytometry/tc, 1 marker.	
88185	Flowcytometry/tc, add-on.	
88300	Surgical path, gross	
88302	Tissue exam by pathologist.	
88304	Tissue exam by pathologist.	
88305	Tissue exam by pathologist.	
88307	Tissue exam by pathologist.	
88311	Decalcify tissue	
88312	Special stains	
88313	Special stains	
88321	Microslide consultation.	
88323	Microslide consultation.	
88325	Comprehensive review of data.	
88331	Path consult intraop, 1 bloc.	
88342	Immunohistochemistry.	
88346	Immunofluorescent study.	
88347	Immunofluorescent study.	
88348	Electron microscopy	

TABLE 1—FINAL CY 2009 BYPASS CODES FOR CREATING "PSEUDO" SINGLE CLAIMS FOR CALCULATING MEDIAN COSTS—Continued

HCPCS code	Short descriptor	"Overlap bypass codes"
88358	Analysis, tumor	
88360	Tumor immunohistochem/manual.	
88361	Tumor immunohistochem/comput.	
88365	Insitu hybridization (fish).	
88368	Insitu hybridization, manual.	
88399	Surgical pathology procedure.	
89049	Chct for mal hyperthermia.	
89230	Collect sweat for test	
89240	Pathology lab procedure.	
90472	Immunization admin, each add.	
90474	Immune admin oral/nasal addl.	
90761	Hydrate iv infusion, add-on.	
90766	Ther/proph/dg iv inf, add-on.	
90767	Tx/proph/dg addl seq iv inf.	
90770	Sc ther infusion, addl hr.	
90771	Sc ther infusion, reset pump.	
90775	Tx/pro/dx inj new drug add-on.	
90801	Psy dx interview	
90802	Intac psy dx interview	
90804	Psytx, office, 20–30 min.	
90805	Psytx, off, 20–30 min w/e&m.	
90806	Psytx, off, 45–50 min	
90807	Psytx, off, 45–50 min w/e&m.	
90808	Psytx, office, 75–80 min.	
90809	Psytx, off, 75–80, w/e&m.	
90810	Intac psytx, off, 20–30 min.	
90811	Intac psytx, 20–30, w/e&m.	
90812	Intac psytx, off, 45–50 min.	
90816	Psytx, hosp, 20–30 min.	
90818	Psytx, hosp, 45–50 min.	
90826	Intac psytx, hosp, 45–50 min.	
90845	Psychoanalysis	
90846	Family psytx w/o patient.	
90847	Family psytx w/patient.	
90853	Group psychotherapy	
90857	Intac group psytx	

TABLE 1—FINAL CY 2009 BYPASS CODES FOR CREATING "PSEUDO" SINGLE CLAIMS FOR CALCULATING MEDIAN COSTS—Continued

HCPCS code	Short descriptor	"Overlap bypass codes"
90862	Medication management.	
90899	Psychiatric service/therapy.	
92002	Eye exam, new patient.	
92004	Eye exam, new patient.	
92012	Eye exam established pat.	
92014	Eye exam & treatment.	
92020	Special eye evaluation.	
92025	Corneal topography	
92081	Visual field examination(s).	
92082	Visual field examination(s).	
92083	Visual field examination(s).	
92135	Ophth dx imaging post seg.	
92136	Ophthalmic biometry	
92225	Special eye exam, initial.	
92226	Special eye exam, subsequent.	
92230	Eye exam with photos.	
92240	Icg angiography	
92250	Eye exam with photos.	
92275	Electroretinography	
92285	Eye photography	
92286	Internal eye photography.	
92520	Laryngeal function studies.	
92541	Spontaneous nystagmus test.	
92546	Sinusoidal rotational test.	
92548	Posturography	
92552	Pure tone audiometry, air.	
92553	Audiometry, air & bone.	
92555	Speech threshold audiometry.	
92556	Speech audiometry, complete.	
92557	Comprehensive hearing test.	
92567	Tympanometry	
92582	Conditioning play audiometry.	
92585	Auditor evoke potent, compre.	
92603	Cochlear implt f/up exam 7 >.	
92604	Reprogram cochlear implt 7 >.	
92626	Eval aud rehab status	
93005	Electrocardiogram, tracing.	

TABLE 1—FINAL CY 2009 BYPASS CODES FOR CREATING "PSEUDO" SINGLE CLAIMS FOR CALCULATING MEDIAN COSTS—Continued

HCPCS code	Short descriptor	"Overlap bypass codes"
93017	Cardiovascular stress test.	
93225	ECG monitor/record, 24 hrs.	
93226	ECG monitor/report, 24 hrs.	
93231	ECG monitor/record, 24 hrs.	
93232	ECG monitor/report, 24 hrs.	
93236	ECG monitor/report, 24 hrs.	
93270	ECG recording	
93271	ECG/monitoring and analysis.	
93278	ECG/signal-averaged	
93727	Analyze ilr system	
93731	Analyze pacemaker system.	
93732	Analyze pacemaker system.	
93733	Telephone analy, pacemaker.	
93734	Analyze pacemaker system.	
93735	Analyze pacemaker system.	
93736	Telephonic analy, pacemaker.	
93741	Analyze ht pace device sngl.	
93742	Analyze ht pace device sngl.	
93743	Analyze ht pace device dual.	
93744	Analyze ht pace device dual.	
93786	Ambulatory BP recording.	
93788	Ambulatory BP analysis.	
93797	Cardiac rehab	
93798	Cardiac rehab/monitor.	
93875	Extracranial study	
93880	Extracranial study	
93882	Extracranial study	
93886	Intracranial study	
93888	Intracranial study	
93922	Extremity study	
93923	Extremity study	
93924	Extremity study	
93925	Lower extremity study	
93926	Lower extremity study	
93930	Upper extremity study	
93931	Upper extremity study	
93965	Extremity study	
93970	Extremity study	
93971	Extremity study	
93975	Vascular study	
93976	Vascular study	
93978	Vascular study	
93979	Vascular study	
93990	Doppler flow testing	
94015	Patient recorded spirometry.	
94690	Exhaled air analysis	

TABLE 1—FINAL CY 2009 BYPASS CODES FOR CREATING "PSEUDO" SINGLE CLAIMS FOR CALCULATING MEDIAN COSTS—Continued

HCPCS code	Short descriptor	"Overlap bypass codes"
95115	Immunotherapy, one injection.	
95117	Immunotherapy injections.	
95165	Antigen therapy services.	
95250	Glucose monitoring, cont.	
95805	Multiple sleep latency test.	
95806	Sleep study, unattended.	
95807	Sleep study, attended	
95808	Polysomnography, 1–3.	
95812	EEG, 41–60 minutes	
95813	EEG, over 1 hour	
95816	EEG, awake and drowsy.	
95819	EEG, awake and asleep.	
95822	EEG, coma or sleep only.	
95869	Muscle test, thor paraspinal.	
95872	Muscle test, one fiber	
95900	Motor nerve conduction test.	
95921	Autonomic nerv function test.	
95925	Somatosensory testing.	
95926	Somatosensory testing.	
95930	Visual evoked potential test.	
95950	Ambulatory eeg monitoring.	
95953	EEG monitoring/computer.	
95970	Analyze neurostim, no prog.	
95972	Analyze neurostim, complex.	
95974	Cranial neurostim, complex.	
95978	Analyze neurostim brain/1h.	
96000	Motion analysis, video/3d.	
96101	Psycho testing by psych/phys.	
96111	Developmental test, extend.	
96116	Neurobehavioral status exam.	
96118	Neuropsych tst by psych/phys.	
96119	Neuropsych testing by tec.	
96150	Assess hlth/behave, init.	
96151	Assess hlth/behave, subseq.	
96152	Intervene hlth/behave, indiv.	

TABLE 1—FINAL CY 2009 BYPASS CODES FOR CREATING "PSEUDO" SINGLE CLAIMS FOR CALCULATING MEDIAN COSTS—Continued

HCPCS code	Short descriptor	"Overlap bypass codes"
96153	Intervene hlth/behave, group.	
96402	Chemo hormon antineopl sq/im.	
96411	Chemo, iv push, addl drug.	
96415	Chemo, iv infusion, addl hr.	
96417	Chemo iv infus each addl seq.	
96423	Chemo ia infuse each addl hr.	
96900	Ultraviolet light therapy.	
96910	Photochemotherapy with UV–B.	
96912	Photochemotherapy with UV–A.	
96913	Photochemotherapy, UV–A or B.	
96920	Laser tx, skin < 250 sq cm.	
98925	Osteopathic manipulation.	
98926	Osteopathic manipulation.	
98927	Osteopathic manipulation.	
98940	Chiropractic manipulation.	
98941	Chiropractic manipulation.	
98942	Chiropractic manipulation.	
99204	Office/outpatient visit, new.	
99212	Office/outpatient visit, est.	
99213	Office/outpatient visit, est.	
99214	Office/outpatient visit, est.	
99241	Office consultation	
99242	Office consultation	
99243	Office consultation	
99244	Office consultation	
99245	Office consultation	
G0008	Admin influenza virus vac.	
G0101	CA screen; pelvic/breast exam.	
G0127	Trim nail(s)	
G0130	Single energy x-ray study.	
G0166	Extrnl counterpulse, per tx.	
G0175	OPPS Service, sched team conf.	
G0340	Robt lin-radsurg fractx 2–5.	
G0344	Initial preventive exam.	
G0365	Vessel mapping hemo access.	
G0367	EKG tracing for initial prev.	

TABLE 1—FINAL CY 2009 BYPASS CODES FOR CREATING ''PSEUDO'' SINGLE CLAIMS FOR CALCULATING MEDIAN COSTS—Continued

HCPCS code	Short descriptor	''Overlap bypass codes''
G0376	Smoke/tobacco counseling >10.	.....
G0389	Ultrasound exam AAA screen.	.....
G0390	Trauma Respons w/ hosp criti.	.....
M0064	Visit for drug monitoring.	.....
Q0091	Obtaining screen pap smear.	.....

c. Calculation of CCRs

(1) Development of the CCRs

We calculated hospital-specific overall CCRs and hospital-specific departmental CCRs for each hospital for which we had CY 2007 claims data. For CY 2009 OPPS ratesetting, we used the set of claims processed during CY 2007. We applied the hospital-specific CCR to the hospital's charges at the most detailed level possible, based on a revenue code-to-cost center crosswalk that contains a hierarchy of CCRs used to estimate costs from charges for each revenue code. That crosswalk is available for review and continuous comment on the CMS Web site at: *http://www.cms.hhs.gov/HospitalOutpatientPPS/03_crosswalk.asp#TopOfPage*. We calculated CCRs for the standard and nonstandard cost centers accepted by the electronic cost report database. In general, the most detailed level at which we calculated CCRs was the hospital-specific departmental level.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41429), we proposed to make a change to the revenue code-to-cost center crosswalk for the CY 2009 OPPS. Specifically, for revenue code 0904 (Activity Therapy), we proposed to make cost center 3550 (Psychiatric/Psychological Services) the primary cost center and to make cost center 6000 (Clinic services) the secondary cost center. For CY 2008, for revenue code 0904, the primary cost center is 3580 (Recreational Therapy), cost center 3550 is secondary; and cost center 6000 is tertiary. We proposed this change to conform the OPPS methodology for hospital claims to the crosswalk that is being used to calculate partial hospitalization costs for CMHCs.

We would like to affirm that the longstanding Medicare principles of cost apportionment at § 413.53 convey that, under the departmental method of apportionment, the cost of each ancillary department is to be apportioned separately rather than being combined with another department. However, CMS does not specify a revenue code-to-cost center crosswalk that hospitals must adopt to prepare the cost report, but instead, requires hospitals to submit their individual crosswalk to the Medicare contractor when the cost report is filed. The proposed CY 2009 OPPS revenue code-to-cost center crosswalk contains several potential cost center locations for a revenue code because it is an attempt to best represent the association of revenue codes with cost centers across all hospitals for modeling purposes. Assignment to cost centers is mutually exclusive and only defaults to the next level when the cost center with higher priority is unavailable. The changes to the crosswalk for revenue code 0904 mentioned above are used by CMS for modeling purposes only, and we fully expect hospitals to comply with the Medicare reimbursement policies when reporting their costs and charges in the cost report.

At the August 2008 APC Panel meeting, we reviewed with the APC Panel's Data Subcommittee the current revenue code-to-cost center crosswalk, as well as other data in preparation for the CY 2009 rulemaking cycle. At this meeting, the APC Panel recommended that the Data Subcommittee continue its work and we are accepting that recommendation. We will continue to work with the APC Panels' Data Subcommittee to prepare and review data and analyses relevant to the APC configurations and OPPS payment policies for hospital outpatient items and services.

We received no public comments on this proposal and, therefore, we are finalizing our proposal for CY 2009, without modification, to calculate hospital-specific overall and departmental CCRs as described above in this section.

(2) Charge Compression

Since the implementation of the OPPS, some commenters have raised concerns about potential bias in the OPPS cost-based weights due to ''charge compression,'' which is the practice of applying a lower charge markup to higher-cost services and a higher charge markup to lower-cost services. As a result, the cost-based weights incorporate aggregation bias, undervaluing high cost items and overvaluing low cost items when an estimate of average markup, embodied in a single CCR, is applied to items of widely varying costs in the same cost center. Commenters expressed increased concern about the impact of charge compression when CMS began setting the relative weights for payment under the IPPS based on the costs of inpatient hospital services, rather than the charges for the services.

To explore this issue, in August 2006 we awarded a contract to RTI International (RTI) to study the effects of charge compression in calculating the IPPS relative weights, particularly with regard to the impact on inpatient diagnosis-related group (DRG) payments, and to consider methods to capture better the variation in cost and charges for individual services when calculating costs for the IPPS relative weights across services in the same cost center. Of specific note was RTI's analysis of a regression-based methodology estimating an average adjustment for CCR by type of revenue code from an observed relationship between provider cost center CCRs and proportional billing of high and low cost services in the revenue codes associated with the cost center in the claims data. RTI issued a report in March 2007 with its findings on charge compression. The report is available on the CMS Web site at: *http://www.cms.hhs.gov/reports/downloads/Dalton.pdf.* Although this report was focused largely on charge compression in the context of the IPPS cost-based relative weights, several of the findings were relevant to the OPPS. Therefore, we discussed the findings and our responses to that interim draft report in the CY 2008 OPPS/ASC proposed rule (72 FR 42641 through 42643) and reiterated them in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66599 through 66602).

We did not propose any changes to address charge compression for CY 2008. RTI noted in its 2007 report that its research was limited to IPPS DRG cost-based weights and that it did not examine potential areas of charge compression specific to hospital outpatient services. We were concerned that the analysis was too limited in scope because typically hospital cost report CCRs encompass both inpatient and outpatient services for each cost center. Further, because both the IPPS and OPPS rely on cost-based weights, we preferred to introduce any methodological adjustments to both payment systems at the same time. We believe that because charge compression affects the cost estimates for services paid under both IPPS and OPPS in the same way, it is appropriate that we would use the same or, at least, similar approaches to address the issue. Finally, we noted that we wished to assess the

educational activities being undertaken by the hospital community to improve cost reporting accuracy in response to RTI's findings, either as an adjunct to or in lieu of regression-based adjustments to CCRs.

We have since expanded RTI's analysis of charge compression to incorporate outpatient services. In August 2007, we again contracted with RTI. Under this contract, we asked RTI to evaluate the cost estimation process for the OPPS relative weights. This research included a reassessment of the regression-based CCR models using hospital outpatient and inpatient charge data, as well as a detailed review of the OPPS revenue code-to-cost center crosswalk and the OPPS' hospital-specific CCR methodology. In evaluating cost-based estimation, in general, the results of RTI's analyses impact both the OPPS APC relative weights and the IPPS MS–DRG (Medicare-Severity) relative weights. With the release of the IPPS FY 2009 proposed rule in April 2008, CMS posted an interim report discussing RTI's research findings for the IPPS MS–DRG relative weights to be available during the public comment period on the FY 2009 IPPS proposed rule. This report can be found on RTI's Web site at: *http://www.rti.org/reports/cms/HHSM-500-2005-0029I/PDF/Refining_Cost_to_Charge_Ratios_200804.pdf*. The IPPS-specific chapters, which were separately displayed in the April 2008 interim report, as well as the more recent OPPS chapters, are included in the July 2008 RTI final report entitled, ''Refining Cost to Charge Ratios for Calculating APC and DRG Relative Payment Weights,'' which became available at the time of the publication of the CY 2009 OPPS/ASC proposed rule. The RTI final report can be found on RTI's Web site at: *http://www.rti.org/reports/cms/HHSM-500-2005-0029I/PDF/Refining_Cost_to_Charge_Ratios_200807_Final.pdf*.

RTI's final report distinguished between two types of research findings and recommendations, those pertaining to the accounting or cost report data itself and those related to statistical regression analysis. Because the OPPS uses a hospital-specific CCR methodology, employs detailed cost report data, and estimates costs at the claim level, CMS asked RTI to closely evaluate the accounting component of the cost-based weight methodology, specifically the revenue code-to-cost center crosswalk. In reviewing the cost report data for nonstandard cost centers used in the crosswalk, RTI discovered some problems concerning the classification of nonstandard cost centers and reclassified nonstandard cost centers by reading providers' cost center labels. Standard cost centers are preprinted in the CMS-approved cost report software and constitute the minimum set of cost centers that must be reported on the Medicare hospital cost report if a hospital includes that cost center in its own internal accounts. Nonstandard cost centers are additional common cost centers available to hospitals for reporting when preparing their Medicare hospital cost report. To the extent hospitals provide services captured by nonstandard cost centers, they should report the relevant nonstandard cost centers as well, if the service is captured in a separate account and qualifies as a cost center in accordance with the Provider Reimbursement Manual (PRM)–I, Section 2302.8. RTI also evaluated the revenue code-to-cost center crosswalk after examining hospitals' cost report and revenue code billing patterns in order to reduce aggregation bias inherent in defaulting to the overall ancillary CCR and generally to improve the empirical accuracy of the crosswalk.

With regard to the statistical adjustments, RTI confirmed the findings of its March 2007 report that regression models are a valid approach for diagnosing potential aggregation bias within selected services for the IPPS and found that regression models are equally valid for setting payments under the OPPS. RTI also suggested that regression-based CCRs could provide a short-term correction for charge compression until accounting data could be refined to support more accurate CCR estimates under both the IPPS and the OPPS. RTI again found aggregation bias in devices, drugs, and radiology and, using combined outpatient and inpatient claims, expanded the number of recommended regression-adjusted CCRs.

In almost all cases, RTI observed that potential distortions in the APC relative weights were proportionally much greater than for MS–DRGs for both accounting-based and statistical adjustments because APC groups are small and generally price a single service. However, just as the overall impacts on MS–DRGs were more moderate because MS–DRGs experienced offsetting effects of changes in cost estimation, a given hospital outpatient visit might include more than one service, leading to offsetting effects in cost estimation for services provided in the outpatient episode as a whole. In general, APC relative weights are more volatile than MS–DRG relative weights from year to year yet OPPS provider impacts are typically quite modest and, in light of this experience, we expect that overall provider impacts could be much more moderate than those suggested by individual APC impacts from the RTI analysis.

Notwithstanding likely offsetting effects at the provider level, RTI asserted that, while some averaging is appropriate for a prospective payment system, extreme distortions in APC payments for individual services bias perceptions of service profitability and may lead hospitals to inappropriately set their charge structure. RTI noted that this may not be true for ''core'' hospital services, such as oncology, but these distortions may have a greater impact in evolving areas with greater potential for provider-induced demand, such as specialized imaging services. RTI also noted that cost-based weights are only one component of a final prospective payment rate. There are other rate adjustments (wage index, indirect medical education (IME), and disproportionate share hospital (DSH)) to payment derived from the revised cost-based weights and the cumulative effect of these components may not improve the ability of final payment to reflect resource cost. With regard to APCs and MS–DRGs that contain substantial device costs, RTI cautioned that other prospective payment system adjustments (wage index, IME, and DSH) largely offset the effects of charge compression among hospitals that receive these adjustments. Although RTI endorsed short-term regression-based adjustments, RTI also concluded that more refined and accurate accounting data are the preferred long-term solution to mitigate charge compression and related bias in hospital cost-based weights.

As a result of this research, RTI made 11 recommendations, 2 of which are specific to IPPS MS–DRGs and were not discussed in the CY 2009 OPPS/ASC proposed rule, nor are they discussed in this final rule with comment. The first set of non-IPPS-specific recommendations concentrates on short-term accounting changes to current cost report data; the second set addresses short-term regression-based and other statistical adjustments. RTI concluded its recommendations with longer-term accounting changes to the cost report. (RTI report, ''Refining Cost to Charge Ratios for Calculating APC and MS–DRG Relative Payment Weights,'' July 2008.) Given the magnitude and scope of impacts on APC relative weights that would result from adopting both accounting and statistical changes, as specifically observed in Chapter 6 of RTI's July 2008 final report and Attachments 4a, 4b, and 5 (RTI report, ''Refining Cost to Charge Ratios for

Calculating APC and MS–DRG Relative Payment Weights,'' July 2008), we did not propose to adopt any short-term adjustments to OPPS payment rate calculations for CY 2009 (73 FR 41430 through 41431). Furthermore, the numerous and substantial changes that RTI recommended have significantly complex interactions with one another and we believe that we should proceed cautiously. In a budget neutral payment system, increases in payment for some services must be countered by reductions to payment for other services.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41431), we did not propose to adopt, but specifically requested general public comments on, several of RTI's recommended accounting-based changes pertaining to the cost report as discussed below because we plan to consider the public comments in our current revision of the Medicare hospital cost report and for CY 2010 OPPS ratesetting. We believe that improved and more precise cost reporting is the best way to improve the accuracy of all cost-based payment weights, including relative weights for the IPPS MS–DRGs. Because both the IPPS and the OPPS rely on cost-based weights derived, in part, from data on the Medicare hospital cost report form, we indicated in the CY 2009 OPPS/ASC proposed rule (73 FR 41431) that the requested public comments on recommended changes to the cost report should address any impact on both the inpatient and outpatient payment systems.

We noted in the FY 2009 IPPS final rule (73 FR 48467 through 48468), that we are updating the cost report form to eliminate outdated requirements in conjunction with the Paperwork Reduction Act (PRA), and that we plan to propose actual changes to the cost reporting form, the attending cost reporting software, and the cost report instructions in Chapter 36 of the PRM–II. We indicated that we now believe the revised cost report may not be available until cost reporting periods starting after the Spring of 2009. Because there is generally a 3-year lag between the availability of cost report data for IPPS and OPPS ratesetting purposes in a given calendar year, we may be able to use data from the revised cost report form for CY 2012 or CY 2013 OPPS relative weights.

In the FY 2009 IPPS final rule, we finalized our proposal for both OPPS and IPPS to add one cost center to the cost report so that, in general, the costs and charges for relatively inexpensive medical supplies would be reported separately from the costs and charges for more expensive implantable devices (such as pacemakers and other implantable devices). Specifically we will create one cost center for ''Medical Supplies Charged to Patients'' and one cost center for ''Implantable Devices Charged to Patients.'' This change ultimately will split the current CCR for Medical Supplies and Equipment into one CCR for medical supplies and another CCR for implantable devices. In response to support from a majority of commenters on the FY 2009 IPPS proposed rule, we finalized a definition of the Implantable Devices Charged to Patients cost center as capturing the costs and charges billed with the following UB–04 revenue codes: 0275 (Pacemaker), 0276 (Intraocular lens), 0278 (Other implants), and 0624 (FDA investigational devices). Identifying most implantable devices based on the existing revenue code definitions is the most straightforward and easiest means of capturing device costs, although some charge compression will remain in the resulting device and supply CCRs. Hospitals are already familiar with National Uniform Billing Committee (NUBC) billing instructions, and we believe this definition will minimize the disruption to hospitals' accounting and billing systems. For a complete discussion of the proposal, public comments, and our responses, we refer readers to section II.E.4. of the FY 2009 IPPS final rule (73 FR 48458 through 45467).

RTI's first set of recommendations for accounting changes addressed improved use of existing cost report and claims data. RTI recommended: (1) Immediately using text searches of providers' line descriptions to identify provider-specific cost centers and ultimately to more appropriately classify nonstandard cost centers in current hospital cost report data; (2) changing cost report preparation software to impose fixed descriptions on nonstandard cost centers; (3) slightly revising CMS' cost center aggregation table to eliminate duplicative or misplaced nonstandard cost centers and to add nonstandard cost centers for common services without one; and (4) adopting RTI's recommended changes to the revenue code-to-cost center crosswalk.

Given the magnitude and scope of impacts resulting from RTI's recommended revisions, we did not propose to adopt any of the short-term accounting changes, including text searches of providers' line descriptions to more appropriately classify nonstandard cost centers and changes to the revenue code-to-cost center crosswalk. As indicated in the CY 2009 OPPS/ASC proposed rule (73 FR 41431), we stated that we would modify the cost report preparation software. This revision will print a brief fixed description next to each nonstandard cost center number, while continuing to allow the hospital to enter a description, and will be incorporated in the 2009 Medicare hospital cost report preparation software.

With regard to revisions to the cost center aggregation table, we specifically invited public comment on whether several identified cost centers are duplicative (RTI report, ''Refining Cost to Charge Ratios for Calculating APC and MS–DRG Relative Payment Weights,'' July 2008). We also specifically requested public comment on creation of new nonstandard cost centers for services that are well represented in line descriptions reported with ''other ancillary services'' and other outpatient nonstandard cost centers, but for which no specific nonstandard cost center currently exists and for which UB–04 revenue codes do exist, including cardiac rehabilitation, hyperbaric oxygen therapy, and patient education (RTI report, ''Refining Cost to Charge Ratios for Calculating APC and MS–DRG Relative Payment Weights,'' July 2008) (73 FR 41431).

Comment: Many commenters expressed support for refining the Healthcare Cost Report Information System (HCRIS) database that CMS uses for ratesetting by using text string searches to reassign cost center lines based on the description entered by the hospital, in order to mitigate hospital error in assigning a nonstandard HCRIS cost center code. Commenters viewed this change as a way to improve the accuracy of the CCRs derived from the cost report for cost estimation, without imposing additional burden on hospitals. Many commenters also supported CMS' modification to add fixed descriptions to nonstandard cost center lines in the cost reporting software, with the caveat that hospitals continue to be allowed to enter their own nonstandard cost center descriptions. The commenters believed that this change would improve the quality and consistency of hospital reporting. One commenter indicated that CMS should clarify instructions about the specific cost centers that should be reported on nonstandard lines. Another commenter noted that a cost center for patient education could be difficult to report because patient education can take place across multiple departments and reclassifying costs could be challenging. Many commenters supported RTI's recommendation to modify the cost aggregation table to

eliminate duplicative or misplaced nonstandard cost centers but emphasized that hospitals should not be required to report the revised cost centers. A number of commenters supported the addition of nonstandard cost centers that also have a UB–04 revenue code, including Cardiac Rehabilitation, Patient Education, Hyperbaric Oxygen Therapy, and Lithotripsy.

Response: With regard to modifying the cost reporting preparation software to impose fixed descriptions for nonstandard cost centers, we stated in the CY 2009 OPPS/ASC proposed rule (73 FR 41431) that we would make this change in the cost reporting preparation software accompanying the revised Medicare hospital cost report form. Should release of the revised form be delayed, we will make this change for the next release of the cost report preparation software. Hospitals will continue to be able to enter their own description of the nonstandard cost center. This modification will act as a quality check for hospitals to review their choice of nonstandard cost center code and encourage hospitals to more accurately report their nonstandard cost centers without significantly increasing provider burden.

We appreciate the commenters' argument that text string searches could refine submitted cost report data without imposing hospital burden. However, we will not implement RTI's recommended text string search algorithm for CY 2009 because it would introduce significant changes in APC median costs in concentrated areas with significant Medicare charges and utilization and because it would represent a major shift in the current way we use cost report data. Our preference in the median cost development process has been to accept the information submitted by hospitals as it is received, only trimming egregiously erroneous data through conservative statistical methods in order to maintain the integrity of the original data set. Modifying the data from its submitted form based on assumptions about the data typically would be contrary to our principle of using the data as submitted by hospitals. Further, implementing an algorithm that reassigns nonstandard cost center lines based on their HCRIS descriptions would entail assumptions about what that hospital's written description means and what the data represent. For example, RTI reassigned cost center lines with combined descriptions, such as ''Radiation and Oncology,'' to the cost center with the highest dollar volume, in this case Radiation Therapy. However, we are not confident that the assumptions underlying these reassignments are correct. We will continue to examine the quality of the data submitted by hospitals and may consider implementing the text string searches in the future.

While many commenters expressed general support for RTI's recommendation to eliminate duplicative nonstandard cost centers with low volume from the cost aggregation table, we continue to consider whether we should retain these cost centers. We note that RTI's analysis only included an examination of the nonstandard cost centers from more recent cost reports. Observing data from older cost reports may have led RTI to conclude that the same nonstandard cost centers would nonetheless be necessary. For continuity with historical cost report data, at this time we do not plan to eliminate any duplicative nonstandard cost centers from the cost center aggregation table.

As part of its recommendation for modifications to the cost aggregation table, RTI suggested adding new nonstandard cost centers for hospital departments that were well represented in the cost report data and had an associated UB–04 revenue code but lacked their own nonstandard cost center, specifically Cardiac Rehabilitation, Patient Education, Hyperbaric Oxygen Therapy, and Lithotripsy. Many commenters were supportive of these changes, believing that these cost centers would result in more accurate cost estimates for the services in question, but they were concerned about additional burden associated with reporting new cost centers. One commenter indicated that reporting patient education could be difficult.

We do not expect additional burden for reporting these new nonstandard cost centers to be significant because hospitals that provide these services and maintain a separate account for each of these services in their internal accounting records to capture the costs and charges are currently required, in accordance with § 413.53(a)(1), to report these cost centers in the cost report, even if CMS does not identify a nonstandard cost center code for the department(s). Specifically, under those regulations defining the departmental method of cost apportionment, the hospital must separately apportion the costs of each ancillary department. CMS defines a cost center in PRM–I, Section 2302.8, as an organizational unit, generally a department or its subunit, having a common functional purpose for which direct and indirect costs are accumulated, allocated, and apportioned. Hospitals that do not maintain distinct departments or accounts in their internal accounting systems for Cardiac Rehabilitation, Hyperbaric Oxygen Therapy, or Lithotripsy would not be required to report these nonstandard cost centers. We plan to include nonstandard cost center codes for Cardiac Rehabilitation, Hyperbaric Oxygen Therapy, and Lithotripsy on the revised Medicare hospital cost report form that we provide to the public for comment through the PRA process, because we believe these changes will facilitate more accurate cost reporting for these services.

With regard to ''patient education,'' we agree with the commenter that ''education'' may not be sufficiently definitive to serve as a useful cost center. We will review RTI's findings on the presence of patient education in the HCRIS data to see if we should narrow the scope of this label to improve its usefulness as a nonstandard cost center. Based on this review, we may include a nonstandard cost center like Patient Education on the revised Medicare hospital cost report form that we provide for public comment through the PRA process.

In summary, CMS continues to examine ways in which it can improve the cost reporting process. We have already implemented the minor change in the cost reporting software by imposing fixed descriptions on nonstandard cost centers. We also plan to add the new nonstandard cost centers for Cardiac Rehabilitation, Hyperbaric Oxygen Therapy, and Lithotripsy, as well as potentially a nonstandard cost center like Patient Education, to the nonstandard list when we revise the Medicare hospital cost report form. We will consider the appropriateness of the text string searches for future ratesetting.

Comment: One commenter requested that CMS issue a detailed written explanation of CMS's processes for collecting, reviewing, and aggregating data, and reviewing and adjusting cost data to arrive at median cost amounts, specifically in the context of hyperbaric oxygen therapy services.

Response: This final rule with comment period contains a comprehensive discussion of the process through which we use cost report and claims data to arrive at median costs in sections II.A.1. and II.A.2. The claims accounting narrative mentioned earlier, available on the CMS Web site, offers a detailed breakdown of the processing logic CMS uses to refine the claims data set, as well as exact

counts of claims involved in each stage of that process.

CMS also requested comment in the CY 2009 OPPS/ASC proposed rule (73 FR 41431) on RTI's recommended changes to the OPPS revenue code-to-cost center crosswalk. We indicated that we may propose to adopt crosswalk changes for CY 2010 based on RTI's analyses and related public comments received on this issue. Although available on the CMS Web site for continuous public comment, we have received relatively few public comments over the last several years on the OPPS revenue code-to-cost center crosswalk, which has undergone only minimal change since the inception of the OPPS. RTI's revised crosswalk in Attachment 2b of its final report reflected all accounting changes, including reclassification of nonstandard cost centers from text searches, removal of duplicative cost centers, and addition of new nonstandard cost centers for common services (RTI report, ''Refining Cost to Charge Ratios for Calculating APC and MS–DRG Relative Payment Weights,'' July 2008). Throughout the July 2008 final report, RTI used a subscripting nomenclature developed from CMS's aggregation table to identify cost centers. To disentangle the combined impact of these changes and clearly communicate RTI's recommended changes in current HCRIS cost center numbers, we made available on the CMS Web site a revised (RTI-recommended) crosswalk using current standard and nonstandard cost centers codes in the same format as the crosswalk proposed for the CY 2009 OPPS. This revised (RTI-recommended) crosswalk may be found on the CMS Web site under supporting documentation for this final rule with comment period at: *http://www.cms.hhs.gov/HospitalOutpatientPPS/HORD/list.asp#TopOfPage*. We did not include RTI's recommended new nonstandard cost centers in this revised crosswalk as they are not yet active.

We specifically requested public comment on the numerous changes included in this crosswalk (73 FR 41431). We were interested in public opinion about the addition of ''default'' CCRs for clinic, cardiology, and therapy services before defaulting to the overall ancillary CCR, as is our current policy. The overall ancillary CCR, which is the traditional default CCR, is charge-weighted and heavily influenced by the relationship between costs and charges for surgical and imaging services. RTI also introduced cost center 4300 (Radioisotope) as a primary cost converter for the nuclear medicine revenue codes (034X). Further, RTI added secondary and tertiary crosswalk maps for services that frequently appear together, such as CCRs for Computed Tomography (CT) Scan as a secondary cost converter for the Magnetic Resonance Imaging (MRI) revenue codes (061X) (RTI report, ''Refining Cost to Charge Ratios for Calculating APC and MS–DRG Relative Payment Weights,'' July 2008).

Comment: Some commenters supported full adoption of the RTI-recommended revenue code-to-cost center crosswalk, which included expanded and revised crosswalks. Others believed that they could not comment on the proposal, including the addition of default CCRs for cardiology, therapy, and clinic services, until CMS provides additional information comparing the cost-based weights under the current and RTI-recommended crosswalks that would illustrate the impact of these changes. Other commenters wondered whether the crosswalk would be applied under both the IPPS for estimating DRG relative weights and the OPPS for estimating APC relative weights.

One commenter requested that CMS update the revenue code-to-cost center crosswalk to reflect the cost report change finalized in the FY 2009 IPPS final rule to create a new implantable device cost center. Some commenters expressed support for using cost center 4300 (Radioisotope) as a primary cost converter for the nuclear medicine revenue code series 0340 to 0349, which includes revenue codes for nuclear medicine and radiopharmaceuticals. One commenter believed that cost center 2500 (Adults and Pediatrics (General Routine Care)) offered the appropriate CCR for estimating costs from charges on revenue code 0762 (Observation Room), instead of cost center 6200 (Observation Beds). Another commenter recommended removing cost center 3540 (Prosthetic Devices) as the primary CCR for revenue code 0275 (Pacemaker) and only keeping cost center 5500 (Medical Supplies Charged to Patients) in the crosswalk. The same commenter pointed out that hospitals frequently bill certain imaging services under revenue code 0361 (Operating Room Services: Minor Surgery) because of billing requirements by Medicare Administrative Contractors (MACs) and non-Medicare payers. This practice ensures that a radiology CCR would not be used to estimate costs for these radiology services under the OPPS cost methodology.

Response: The RTI-recommended revenue code-to-cost center crosswalk included significant changes from the current OPPS crosswalk that would impact the APC relative payment weights considerably. While several of RTI's recommendations to improve CMS' processes for estimating costs from charges would apply to both the IPPS and the OPPS, the revenue code-to-cost center crosswalk is specific to the OPPS. We agree with the commenters that observing the actual median costs associated with the revised crosswalk would help to inform public comment. We note that the majority of the changes detailed under the (RTI_1) column in Attachment 4a of RTI's final report are attributable to the revised crosswalk (RTI report, ''Refining Cost to Charge Ratios for Calculating APC and MS–DRG Relative Payment Weights,'' July 2008). Like many commenters, we also believe that RTI's recommended changes are improvements. For example, we expect that default CCRs for clinic services, cardiology, and therapy that are specific to those types of services would be appropriate for more accurately estimating cost when the hospital has not reported a clinic, cardiology, or therapy cost center. However, we understand that commenters may not have been able to fully absorb the changes discussed in RTI's report and would benefit from a streamlined comparison of median costs that isolates changes attributable to the revenue code-to-cost center crosswalk.

We did not receive many detailed comments about specific revenue code and cost center relationships in the crosswalk, and we will therefore not adopt significant changes to the crosswalk until we provide such a comparison. Informed analysis and public comment regarding the RTI-recommended changes to the revenue code-to-cost center crosswalk would help to ensure that any final changes would be appropriate and likely to result in more accurate data. We will update the revenue code-to-cost center crosswalk when the new device cost centers and new nonstandard cost centers are included in the Medicare hospital cost report form and corresponding HCRIS database.

We appreciate the small number of commenters who provided thoughtful input on specific adjustments to the revenue code-to-cost center crosswalk. We will consider these and any further public comments regarding RTI's recommended revisions to the revenue code-to-cost center crosswalk as we consider crosswalk revisions for future OPPS updates. We are not adopting RTI's revised revenue code-to-cost center crosswalk for the CY 2009 OPPS. Furthermore, we intend to explore

differences between revenue code billing requirements set by contractors and NUBC revenue code definitions.

RTI's second set of recommendations concentrated on short-term statistical regression-based adjustments to address aggregation bias. RTI recommended: (1) Adopting regression-adjusted OPPS CCRs for Devices, Other Supplies Sold, Additional Detail Coded Drugs, and Intravenous (IV) Solutions and Other Drugs Sold; and (2) adopting a set of CCRs that blend corrected cost report and regression-adjusted CCRs for CT scanning, MRI, therapeutic radiology, nuclear medicine, and other diagnostic radiology services for hospitals that did not report these standard and nonstandard cost centers. We agree that improved data for cost estimation in these areas is a desirable goal. However, we historically have received mixed support for regression-adjusted CCRS through both the IPPS and OPPS regulatory process. For this reason, we have chosen to concentrate our efforts on concrete steps to improve the quality of cost report accounting data that ultimately would be used to calculate both hospital inpatient and outpatient prospective payment system relative weights. We specifically did not propose to adopt regression-adjusted CCRs for the CY 2009 OPPS. In the FY 2009 IPPS final rule (73 FR 48457), we emphasized our fundamental goal of improving cost report accounting data through revisions to the cost report and our support of education initiatives, rather than introducing short-term statistical adjustments.

Comment: Many commenters expressed general support for all of RTI's recommended regression-adjusted CCRs to improve the overall accuracy of the OPPS relative weights. One commenter specifically noted that CMS should not delay applying regression-based adjustments to CCRs for APC payment calculations because the agency chose not to implement regression-adjusted CCRs for FY 2009 IPPS payments. Some commenters supported the CMS' decision not to implement the short-term statistical adjustments recommended by RTI. A number of commenters believed that actual hospital data should be used for ratesetting to ensure accuracy in payment rates. Other commenters did not support the adoption of regression-adjusted CCRs until CMS could provide enough information to show the payment impact and redistribution of costs. A few commenters noted that CMS should actually propose specific refinements and discuss the methodology behind such a proposal. Many commenters requested that CMS proceed with caution with regard to making any changes that could significantly affect the payment system.

Numerous commenters expressed support for the use of regression-adjusted CCRs for devices in order to improve short-term accuracy in the OPPS relative payment weights by addressing charge compression arising from use of a single CCR for supplies and devices. These commenters viewed regression-adjusted CCRs as a suitable temporary adjustment for charge compression until CCRs for the new Implantable Devices Charged to Patients cost center, finalized in the FY 2009 IPPS final rule (73 FR 48458 through 48469), become available in CY 2012 or CY 2013. Many commenters saw regression-adjusted CCRs for devices as a necessary solution that would be immediately available and appropriate, especially because they believed that other options, such as provider education, could not address the issue of highly variable markup rates compressed by a single CCR during cost estimation. Those commenters offered varied suggestions for implementing regression-adjusted CCRs for devices, including phasing in adoption of regression-adjusted device CCRs over several years, using the regression-adjusted CCRs to check the validity of early cost report data for the new cost center, and using the device regression-adjusted CCR to soften CCR changes due to new implantable devices cost report data.

Several commenters supported the use of regression-adjusted CCRs for drugs, but most commenters focused their comments about charge compression in drug payment on CMS' proposal to create two new cost centers for drugs with high and low pharmacy overhead costs, respectively, which is discussed in more detail in section V.B.3. of this final rule with comment period. Many commenters specifically opposed the concept of regression-adjusted CCRs for radiology services, noting that RTI's results for the CT Scanning and MRI cost centers were inaccurate due to error in capital cost allocation for specialized imaging services which resulted in inappropriately low relative weights.

Response: As noted above in the preceding three paragraphs, we once again received numerous mixed comments on the use of regression-adjusted CCRs, comparable to the type of comments received on the FY 2009 IPPS proposed rule. While we appreciate commenters' continued thoughtful comments on this issue, we did not propose to adopt regression-adjusted CCRs for the CY 2009 OPPS, as we have received mixed support for this approach in the past. As such, we are not implementing regression-adjusted CCRs for CY 2009. We continue to emphasize our preference for long-term cost reporting changes and broad education initiatives to address the accuracy of the data, rather than short-term statistical adjustments. With regard to devices, CMS finalized a proposal in the FY 2009 IPPS final rule to disaggregate the medical supplies CCR into one cost center for medical supplies and one for implantable devices (73 FR 48458 through 48467). This change to the cost report will influence both the IPPS and OPPS relative weights. We believe that, ultimately, improved and more precise cost reporting is the best way to minimize charge compression and improve the accuracy of the cost weights. With regard to radiology, we agree with the commenters that the hospital community could benefit from education on Medicare hospital cost report requirements for allocation of fixed capital and moveable equipment indirect costs to improve the accuracy of cost reporting for specialized imaging services.

RTI's third and final set of recommendations focused on long-term accounting revisions to the cost report and educational efforts to improve the overall accuracy of accounting data. RTI recommended: (1) Clarifying cost report instructions and requiring hospitals to use all standard lines in the cost report if their facility offers the described services; (2) creating new standard lines in the cost report for CT Scanning, MRI, Cardiac Catheterization, Devices, and Drugs Requiring Additional Coding; and (3) educating hospitals through industry-led educational initiatives directed at methods for capital cost finding, specifically encouraging providers to use direct assignment of equipment depreciation and lease costs wherever possible, or at least to allocate moveable equipment depreciation based on dollar value of assigned depreciation costs.

As noted above in this section, we will assess further steps we can take to educate hospitals about the principle of departmental apportionment of costs at § 413.53, which states that hospitals should apportion separately the costs and charges of each ancillary department for which charges are customarily made separately, rather than combining those costs and charges with another ancillary department. Standard cost centers are preprinted in the CMS-approved cost report software and constitute the minimum set of cost centers that must be reported on the Medicare hospital cost report as

required in Section 2302.8 of the PRM–I if the hospital creates a separate account for the service in its accounting system. RTI noted that many hospitals combine costs and charges for standard costs centers, especially therapeutic radiology and nuclear medicine services, under the diagnostic radiology cost center (RTI report, ''Refining Cost to Charge Ratios for Calculating APC and MS–DRG Relative Payment Weights,'' July 2008). In the CY 2009 OPPS/ASC proposed rule (73 FR 41431 through 41432), we specifically asked for public comment on the reasons for this aggregation and other relatively common deviations from cost reporting instructions, such as a failure to report the standard cost center 4700 (Blood Storing, Processing & Transportation) when the hospital bills Medicare for blood products that have storage and processing costs and charges.

With regard to creating new standard lines in the cost report, in addition to our proposal to add a standard cost center for Implantable Devices Charged to Patients in the FY 2009 IPPS proposed rule, we proposed to add two standard cost centers, one for Drugs with High Overhead Cost Charged to Patients and one for Drugs with Low Overhead Cost Charge to Patients, in the CY 2009 OPPS/ASC proposed rule. We discuss our decision not to finalize this proposal to create two new cost centers for drugs in our discussion of payment for the acquisition and pharmacy overhead costs associated with separately payable drugs and biologicals in section V.B.3. of this final rule with comment period.

As we indicated in the CY 2009 OPPS/ASC proposed rule (73 FR 41432), we believe that standard cost centers for CT Scanning, MRI, and Cardiac Catheterization also may be appropriate as we revise the Medicare hospital cost report form. CMS already has established nonstandard cost centers for these services and many hospitals currently report costs and charges for these cost centers. RTI identified almost 1,000 cost center lines for CT scanning, MRI, and cardiac catheterization each in the one year of HCRIS data used for RTI's study. Many more hospitals than this bill distinct charges for these services, and we are confident that many hospitals maintain a separate account for these services in their accounting system. While we currently use available nonstandard cost center CCRs for cost estimation under the OPPS, creating standard lines for common advanced imaging services, such as CT Scanning and MRI, and a common cardiac diagnostic service, Cardiac Catheterization, would encourage more providers to report cost and charge information separately for these services. Although we did not propose to create these cost centers, in the CY 2009 OPPS/ASC proposed rule (73 FR 41432), we specifically invited public comment on the appropriateness of creating standard cost centers for CT Scanning, MRI, and Cardiac Catheterization to consider in our revision of the Medicare hospital cost report form. We recognize that improved allocation of moveable equipment costs based on dollar value, the recommended allocation statistic, would be important to ensure improved accuracy in ratesetting if we were to make these cost centers standard.

The accuracy of capital cost allocation under Medicare allocation methods remains an issue when discussing the accuracy of CCRs for radiology and other capital-intensive services. We are supportive of industry-led educational initiatives to improve the quality of reporting capital costs in the cost report within the context of the Medicare policies in PRM–I, Section 2307, and PRM–II, Chapter 36, and, as we explained in the FY 2008 IPPS final rule with comment period (72 FR 47196), we are willing to work with the hospital industry to further such initiatives.

We received numerous comments about potential revisions to the cost report and recommendations to improve the cost report form and cost report process. A summary of the comments and our responses follow.

Comment: Many commenters urged CMS to use caution when making incremental changes to the cost report, but also suggested that a more comprehensive effort be made to improve the cost reporting process. Several commenters noted that changes to the cost report to improve the accuracy of prospective payment system weights impose hospital burden without adding additional revenue to the system and may counteract their purpose by requesting a level of precision that hospitals cannot provide. Some commenters requested that CMS make cost report changes consistent across the inpatient and outpatient payment systems. One commenter requested that CMS coordinate cost report requirements with those required by State Medicaid programs. Other commenters suggested that CMS undertake educational efforts providing greater detail on how to comply with regulations and manual instructions, how to file a cost report, how to evaluate a completed cost report for accuracy, and the consequences of noncompliance. Many commenters noted that hospitals do not know what CMS wants them to do when completing the cost report and urged CMS to provide explicit cost report guidance on direct expense assignment, capital expense assignment, allocation of overhead, and matching gross revenue, in order to reduce hospital reporting burden and to ensure that hospitals have both the direction and knowledge to comply. One commenter suggested that even if hospitals recognized problems in their internal cost reporting process, they would continue their erroneous reporting practice in order to achieve base year consistency. A number of commenters also requested that CMS instruct Medicare contractors to audit cost reports more closely.

Several commenters specifically addressed the new Implantable Devices Charged to Patients cost center finalized in the FY 2009 IPPS final rule. These commenters requested that CMS carefully choose an appropriate overhead allocation statistic to ensure that overhead allocation would not undermine the potential accuracy in CCR data behind CMS' proposal to create a new cost center. They requested that CMS undertake an educational campaign to describe appropriate practices for distinguishing between devices and supplies. Some commenters also requested that CMS develop mechanisms to validate the accuracy of data from the new cost center.

In response to CMS' inquiry regarding the failure of hospitals to report costs and charges for cost center 4700 (Blood Storing, Processing, and Transfusion), several commenters indicated that even though hospitals are required to bill costs and charges under revenue code 0391 (Administration, Processing and Storage for Blood and Blood Components; Administration (eg, Transfusion)) and capture those costs in cost center 4700 in the cost report, as indicated in the FY 2009 IPPS final rule (73 FR 48466), hospitals do not report costs and charges for cost center 4700 because there are no specific cost report instructions. The commenters suggested that CMS define a formula-driven expense reclassification method.

Response: We appreciate the thoughtful public input on clarifying cost report instructions and the cost reporting process. We recognize that there are areas of concern with the cost report, and we are taking steps to address some of them. These include finalizing a new cost center for implantable devices, adding fixed descriptions to HCRIS cost center codes in the cost report preparation software, and engaging in provider educational efforts to help educate providers

regarding the proper accounting of costs in the cost report. While these efforts are being made to help address charge compression and improve the accuracy of cost report data, more fundamentally, they will improve the cost reporting process itself.

We are currently in the process of making revisions to the Medicare cost report form, and we will consider the commenters' many concerns and recommendations summarized above in our revisions. Changes to the Medicare hospital cost report will be incorporated into both the IPPS and OPPS relative weights. Under the effort to update the cost report and eliminate outdated requirements in conjunction with the PRA, changes to the cost report form and cost report instructions will be made available to the public for comment. The commenters will have an opportunity to suggest more comprehensive reforms and to request more detailed instructions, and similarly will be able to make suggestions for ensuring that these reforms are made in a manner that is not disruptive to hospitals' billing and accounting systems and are within the guidelines of Medicare principles of reimbursement and generally accepted accounting principles (GAAP). We welcome further comment on changes to the revised Medicare hospital cost report through the PRA process.

Many State Medicaid programs use the Medicare cost report to determine Medicaid payments, including Medicaid Disproportionate Share Hospital (DSH) payments. Therefore, it is important for hospitals to complete the Medicare cost report in accordance with the Medicare reimbursement and cost reporting policies. With regard to reporting costs and charges for cost center 4700, we note that CMS provides instructions in PRM–II, Section 3610, Line 47 for this cost center.

While we always are open to incorporating refinements in our cost report instructions as requested by numerous commenters, we note that CMS cannot provide as much specificity in instructions as some commenters have requested, as discussed below. While CMS is responsible for issuing cost reporting instructions that are clear, hospitals are required to complete the cost report in a manner that is appropriate for their internal accounting system structure (42 CFR 413.20) and that is within the framework of Medicare reimbursement principles and cost report instructions. With regard to the overhead allocation basis for the new implantable devices cost center, CMS will recommend an allocation basis as it does with all overhead allocation. However, hospitals may use a different statistic if approved by the hospital's Medicare contractor, in accordance with PRM–I, Section 2313.

Comment: Many commenters did not support requiring hospitals to report all standard cost centers that describe services the hospitals provide.

Response: In accordance with the principle of departmental apportionment of costs at § 413.53, hospitals are required to report separately the costs and charges for each ancillary department for which charges are customarily billed. Section 2302.8 of the PRM–I defines a cost center as an organizational unit, generally a department or its subunit, having a common functional purpose for which direct and indirect costs are accumulated, allocated and apportioned. Language in the PRM–II, Chapter 36, incorporated these policies when establishing the standard ancillary cost centers in the cost report. Therefore, the standard cost centers constitute the most minimum set of common cost centers hospitals are required to report, assuming they maintain a separate account for those services in the internal accounting systems.

We recognize that not all cost centers, whether standard or nonstandard, apply to all providers. For example, where a provider furnishes all radiological services in a single department and their records are maintained in that manner, the provider would currently enter a single entry identifying all radiological services on the Radiology-Diagnostic line of Worksheet A and make no entries on the Radiology-Therapeutic line and Radioisotopes line of the cost report. However, currently, if these radiological services were furnished in three separate departments (cost centers), then the corresponding department data should also be accumulated as such in the provider's accounting system and recorded similarly in the cost report.

Comment: While some commenters expressed agreement in theory with establishing standard cost centers for CT Scanning, MRI, and Cardiac Catheterization, many expressed significant concern with their actual implementation. The commenters believed that allocating costs for these services to specific cost centers could prove difficult, especially for cardiac catheterization, and would in most cases be an estimate. Some commenters warned that smaller hospitals might not have accounting systems that allow matching costs to revenue in departments for these diagnostic services. One commenter suggested that hospitals frequently are slow to adopt new cost centers and that CMS should consider requiring all providers to use the new cost centers. Some commenters wanted to ensure that these services met CMS' definition for reporting as a separate and distinct cost center. A number of commenters requested that CMS delay implementation of these changes to the cost report to allow industry-led initiatives to improve cost reporting, especially capital cost finding, to take effect. Other commenters believed that the agency should fully understand hospital costs for CT and MRI before adding the standard cost centers. One commenter suggested that failure to establish cost centers for CT Scanning and MRI would amount to a violation of the Administrative Procedures Act (APA) because the final regulation must have some rational connection with the facts.

Response: RTI recommended these standard cost centers in order to separately capture cost and charge data for high volume services contributing to aggregation bias in the OPPS relative weights. Although we did not propose to adopt these cost centers as standard cost centers, we believe that doing so would help provide more accurate cost estimates for CT scans, MRI, and Cardiac Catheterization, coupled with improved hospital allocation of moveable equipment costs based on dollar value or direct assignment, if the criteria in PRM–I, Section 2307 are met. All of these departments already are nonstandard cost centers, and, therefore, we believe that they meet CMS' definition of separate and distinct cost centers, if a hospital maintains separate departments for these services and establishes separate accounts for them in its internal accounting system.

We will review these comments again, should we consider proposing additional standard cost centers in the cost report in future years.

We do not understand the comments concerning the APA. We did not propose to adopt these three cost centers; we only requested comment on RTI's recommendation. Further, RTI and commenters acknowledge that hospitals do not appear to be appropriately allocating capital costs to these specialized imaging cost centers, potentially using ''square feet'' as the allocation basis rather than the recommended allocation basis of ''dollar value.'' Finally, commenters will have an opportunity to provide further input on revisions to the Medicare hospital cost report form through a notice and comment process as we pursue changes to the cost report through the PRA process.

Comment: Many commenters asked CMS to consider whether separate cost centers for a variety of services should be created, such as Type B emergency departments, in order to develop more accurate CCRs, particularly in the context of potentially significant changes to the cost report form. Other commenters recommended that CMS limit cost report changes to cost center lines that have significant accuracy problems in their current CCRs, so as not to place undue burden on hospitals.

Response: The commenters will have an opportunity to provide further input on revisions to the Medicare hospital cost report form through the PRA notice and comment process anticipated later this year. We note that RTI could not consider Type B emergency department visits specifically in its analysis because Type B visits do not have a unique UB–04 revenue code. Still, most commenters believed that the issue of medical devices and supplies represented the most significant area of charge compression and further changes to the cost report and associated hospital reporting burden would not be warranted by potential improvements in payment accuracy. We understand the hospital's increased administrative burden that may result from changes to the cost report because we have been told that changes to the cost report involve significant accounting and billing modifications. However, we note that most of the cost centers discussed in this section are for departments or accounts that cost report data indicate are already established within many hospitals' internal accounting systems. As to the potential new billing requirements, we do not believe most cost report changes would require significant billing modifications if the hospital uses the most detailed UB–04 revenue codes available. In summary, we will keep these comments in mind as we consider other revisions to the Medicare hospital cost report.

Comment: Some commenters were very concerned with the results of RTI's analysis, which observed very low CCRs for CT scanning and MRI. They attributed this finding to a common hospital practice of allocating fixed capital and moveable equipment costs using a per square footage allocation statistic, rather than one that more appropriately associates the high capital and equipment costs with the CT and MRI cost centers. Some commenters believed that RTI's conclusions were unjustified because RTI assumed that the full cost of these specialized imaging services was fully captured by the CT and MRI nonstandard cost centers. Many commenters requested more guidance regarding how to properly allocate moveable equipment capital costs, including the practice of direct assignment of equipment depreciation and lease costs, and generally supported an educational initiative about capital cost finding. Most commenters supported allocating overhead based on direct assignment or dollar value of depreciation and lease costs.

Response: We agree that cost allocation of the capital costs (for example, depreciation or rental) of expensive moveable equipment using ''square feet'' as the allocation basis may lead to inaccuracies in cost estimates, as the allocation basis bears no direct relationship to the cost being allocated. Because the CMS-recommended allocation basis for moveable equipment capital costs is ''dollar value,'' we suggest that hospitals use that basis rather than ''square feet'' to allocate the moveable equipment capital costs. (We refer readers to Section 3617 of PRM–II and column header on Worksheet B–1.) We note that ''dollar value'' in the context of PRM–II, Section 3617 means the ''cost of the equipment'' rather than ''depreciation expense and lease costs'' as the commenters mentioned. We fully support industry-led hospital educational initiatives related to capital cost finding, including direct assignment. As to the cost finding, the policies in PRM–I, Section 2313 permit a hospital to request that its Medicare contractor approve a different allocation basis than the CMS-recommended basis if the use of the basis results in more appropriate and more accurate allocations. Hospitals may also directly assign the capital-related cost if such assignment meets all the criteria of PRM–I, Section 2307. However, we specify in PRM–I, Section 2307.A that, ''Direct assignment of cost is the process of assigning directly allocable costs of a general service cost center (we refer readers to Section 2302.9 of PRM–I) to all cost centers receiving service from that cost center based upon actual auditable usage'' and that, ''The direct assignment of costs must be made as part of the provider's accounting system with costs recorded in the ongoing normal accounting process.'' Therefore, these policies prohibit a hospital from directly assigning moveable equipment capital or building and fixture costs to, for example, only a CT Scanning, MRI, or Radiology-Diagnostic cost center(s), and allocating those moveable equipment capital or building and fixture costs applicable to all the other cost centers through the stepdown process. We note that these policies for allocating moveable equipment and building and fixture costs not only impact the accuracy of the OPPS cost estimates, but also impact the calculation of reimbursement for hospitals paid under cost reimbursement (such as cancer hospitals or CAHs).

2. Calculation of Median Costs

In this section of this final rule with comment period, we discuss the use of claims to calculate the final OPPS payment rates for CY 2009. The hospital OPPS page on the CMS Web site on which this final rule with comment period is posted provides an accounting of claims used in the development of the final rates at: *http://www.cms.hhs.gov/HospitalOutpatientPPS.* The accounting of claims used in the development of this final rule with comment period is included on the Web site under supplemental materials for the CY 2009 final rule with comment period. That accounting provides additional detail regarding the number of claims derived at each stage of the process. In addition, below we discuss the files of claims that comprise the data sets that are available for purchase under a CMS data user contract. Our CMS Web site, *http://www.cms.hhs.gov/HospitalOutpatientPPS*, includes information about purchasing the following two OPPS data files: ''OPPS Limited Data Set'' and ''OPPS Identifiable Data Set.'' These files are available for the claims that were used to calculate the final payment rates for the CY 2009 OPPS.

As proposed, we used the following methodology to establish the relative weights used in calculating the proposed OPPS payment rates for CY 2009 shown in Addenda A and B to this final rule with comment period.

a. Claims Preparation

We used the CY 2007 hospital outpatient claims processed on and before June 30, 2008, to set the final relative weights for CY 2009. To begin the calculation of the relative weights for CY 2009, we pulled all claims for outpatient services furnished in CY 2007 from the national claims history file. This is not the population of claims paid under the OPPS, but all outpatient claims (including, for example, CAH claims and hospital claims for clinical laboratory services for persons who are neither inpatients nor outpatients of the hospital).

We then excluded claims with condition codes 04, 20, 21, and 77. These are claims that providers submitted to Medicare knowing that no payment would be made. For example,

providers submit claims with a condition code 21 to elicit an official denial notice from Medicare and document that a service is not covered. We then excluded claims for services furnished in Maryland, Guam, the U.S. Virgin Islands, American Samoa, and the Northern Mariana Islands because hospitals in those geographic areas are not paid under the OPPS.

We divided the remaining claims into the three groups shown below. Groups 2 and 3 comprise the 107 million claims that contain hospital bill types paid under the OPPS.

1. Claims that were not bill types 12X, 13X (hospital bill types), or 76X (CMHC bill types). Other bill types are not paid under the OPPS and, therefore, these claims were not used to set OPPS payment. In prior years, we also used claims of bill type 14X to set payment rates under the OPPS. However, bill type 14X ceased to be used to report any services for which payment is made under the OPPS effective April 1, 2006. Therefore, we did not use these claims in development of the final CY 2009 OPPS rates.

2. Claims that were bill types 12X or 13X (hospital bill types). These claims are hospital outpatient claims.

3. Claims that were bill type 76X (CMHC). (These claims are later combined with any claims in item 2 above with a condition code 41 to set the per diem partial hospitalization rate determined through a separate process.)

For the CCR calculation process, we used the same general approach as we used in developing the final APC rates for CY 2007 using the revised CCR calculation which excluded the costs of paramedical education programs and weighted the outpatient charges by the volume of outpatient services furnished by the hospital. We refer readers to the CY 2007 OPPS/ASC final rule with comment period for more information (71 FR 67983 through 67985). We first limited the population of cost reports to only those for hospitals that filed outpatient claims in CY 2007 before determining whether the CCRs for such hospitals were valid.

We then calculated the CCRs for each cost center and the overall CCR for each hospital for which we had claims data. We did this using hospital-specific data from the HCRIS. We used the most recent available cost report data, in most cases, cost reports beginning in CY 2006. As proposed, for this final rule with comment period, we used the most recently submitted cost reports to calculate the CCRs to be used to calculate median costs for the proposed CY 2009 OPPS rates. If the most recent available cost report was submitted but not settled, we looked at the last settled cost report to determine the ratio of submitted to settled cost using the overall CCR, and we then adjusted the most recent available submitted but not settled cost report using that ratio. We calculated both an overall CCR and cost center-specific CCRs for each hospital. We used the overall CCR calculation discussed in section II.A.1.c. of this final rule with comment period for all purposes that require use of an overall CCR.

We then flagged CAH claims, which are not paid under the OPPS, and claims from hospitals with invalid CCRs. The latter included claims from hospitals without a CCR; those from hospitals paid an all-inclusive rate; those from hospitals with obviously erroneous CCRs (greater than 90 or less than .0001); and those from hospitals with overall CCRs that were identified as outliers (3 standard deviations from the geometric mean after removing error CCRs). In addition, we trimmed the CCRs at the cost center (that is, departmental) level by removing the CCRs for each cost center as outliers if they exceeded +/−3 standard deviations from the geometric mean. We used a four-tiered hierarchy of cost center CCRs, the revenue code-to-cost center crosswalk, to match a cost center to every possible revenue code appearing in the outpatient claims that is relevant to OPPS services, with the top tier being the most common cost center and the last tier being the default CCR. If a hospital's cost center CCR was deleted by trimming, we set the CCR for that cost center to ''missing'' so that another cost center CCR in the revenue center hierarchy could apply. If no other cost center CCR could apply to the revenue code on the claim, we used the hospital's overall CCR for the revenue code in question. For example, if a visit was reported under the clinic revenue code, but the hospital did not have a clinic cost center, we mapped the hospital-specific overall CCR to the clinic revenue code. The revenue code-to-cost center crosswalk is available for inspection and comment on the CMS Web site: *http://www.cms.hhs.gov/HospitalOutpatientPPS*. Revenue codes not used to set medians or to model impacts are identified with an ''N'' in the revenue code-to-cost center crosswalk. We note that as discussed in section II.A.1.c.(1) of this final rule with comment period, we removed cost center 3580 (Recreational Therapy) from the hierarchy of CCRs for revenue code 0904 (Activity Therapy).

We then converted the charges to costs on each claim by applying the CCR that we believed was best suited to the revenue code indicated on the line with the charge. Table 2 of the CY 2009 OPPS/ASC proposed rule contained a list of the revenue codes we proposed to package. Revenue codes not included in Table 2 were those not allowed under the OPPS because their services could not be paid under the OPPS (for example, inpatient room and board charges), and thus charges with those revenue codes were not packaged during development of the OPPS median costs. One exception to this general methodology for converting charges to costs on each claim is the calculation of median blood costs, as discussed in section II.A.2.d.(2) of this final rule with comment period.

Thus, we applied CCRs as described above to claims with bill type 12X or 13X, excluding all claims from CAHs and hospitals in Maryland, Guam, the U.S. Virgin Islands, American Samoa, and the Northern Mariana Islands and claims from all hospitals for which CCRs were flagged as invalid.

We identified claims with condition code 41 as partial hospitalization services of hospitals and moved them to another file. These claims were combined with the 76X claims identified previously to calculate the partial hospitalization per diem rate.

We then excluded claims without a HCPCS code. We moved to another file claims that contained nothing but influenza and pneumococcal pneumonia (PPV) vaccines. Influenza and PPV vaccines are paid at reasonable cost and, therefore, these claims are not used to set OPPS rates. We note that the separate file containing partial hospitalization claims is included in the files that are available for purchase as discussed above.

We next copied line-item costs for drugs, blood, and brachytherapy sources (the lines stay on the claim, but are copied onto another file) to a separate file. No claims were deleted when we copied these lines onto another file. These line-items are used to calculate a per unit mean and median cost and a per day mean and median cost for drugs, radiopharmaceutical agents, blood and blood products, and brachytherapy sources, as well as other information used to set payment rates, such as a unit-to-day ratio for drugs.

We did not receive any public comments on our CY 2009 proposal to prepare the claims to be split into usable groups and, therefore, we are finalizing our proposal without modification.

b. Splitting Claims and Creation of ''Pseudo'' Single Claims

(1) Splitting Claims

We then split the remaining claims into five groups: single majors, multiple majors, single minors, multiple minors, and other claims. (Specific definitions of these groups follow below.) In the CY 2009 OPPS/ASC proposed rule (73 FR 41434), we proposed to continue our current policy of defining major procedures as any procedure having a status indicator of ''S,'' ''T,'' ''V,'' or ''X;'' defining minor procedures as any code having a status indicator of ''F,'' ''G,'' ''H,'' ''K,'' ''L,'' ''R,'' ''U,'' or ''N,'' and classifying ''other'' procedures as any code having a status indicator other than one that we have classified as major or minor. For CY 2009, we proposed that status indicator ''R'' would be assigned to blood and blood products; status indicator ''U'' would be assigned to brachytherapy sources; status indicator ''Q1'' would be assigned to all ''STVX-packaged codes;'' status indicator ''Q2'' would be assigned to all ''T-packaged codes;'' and status indicator ''Q3'' would be assigned to all codes that may be paid through a composite APC based on composite-specific criteria or paid separately through single code APCs when the criteria are not met. The codes with proposed status indicators ''Q1,'' ''Q2,'' and ''Q3'' were previously assigned status indicator ''Q'' for the CY 2008 OPPS. As we discuss in section XIII.A.1. of this final rule with comment period, we proposed to assign these new status indicators to facilitate identification of the different categories of codes. We proposed to treat these codes in the same manner for data purposes for CY 2009 as we treated them for CY 2008. Specifically, we proposed to continue to evaluate whether the criteria for separate payment of codes with status indicator ''Q1'' or ''Q2'' are met in determining whether they are treated as major or minor codes. Codes with status indicator ''Q1'' or ''Q2'' are carried through the data either with status indicator ''N'' as packaged or, if they meet the criteria for separate payment, they are given the status indicator of the APC to which they are assigned and are considered as ''pseudo'' single major codes. Codes assigned status indicator ''Q3'' are paid under individual APCs unless they occur in the combinations that qualify for payment as composite APCs and, therefore, they carry the status indicator of the individual APC to which they are assigned through the data process and are treated as major codes during both the split and ''pseudo'' single creation process. The calculation of the median costs for composite APCs from multiple major claims is discussed in section II.A.2.e. of this final rule with comment period.

Specifically, we divided the remaining claims into the following five groups:

1. *Single Major Claims:* Claims with a single separately payable procedure (that is, status indicator ''S,'' ''T,'' ''V,'' or ''X,'' which includes codes with status indicator ''Q3''); claims with one unit of a status indicator ''Q1'' code (''STVX-packaged'') where there was no code with status indicator ''S,'' ''T,'' ''V,'' or ''X'' on the same claim on the same date; or claims with one unit of a status indicator ''Q2'' code (''T-packaged'') where there was no code with a status indicator ''T'' on the same claim on the same date.

2. *Multiple Major Claims:* Claims with more than one separately payable procedure (that is, status indicator ''S,'' ''T,'' ''V,'' or ''X,'' which includes codes with status indicator ''Q3''), or multiple units of one payable procedure. These claims include those codes with a status indicator ''Q2'' code (''T-packaged'') where there was no procedure with a status indicator ''T'' on the same claim on the same date of service but where there was another separately paid procedure on the same claim with the same date of service (that is, another code with status indicator ''S,'' ''V,'' or ''X''). We also include in this set claims that contained one unit of one code when the bilateral modifier was appended to the code and the code was conditionally or independently bilateral. In these cases, the claims represented more than one unit of the service described by the code, notwithstanding that only one unit was billed.

3. *Single Minor Claims:* Claims with a single HCPCS code that was assigned status indicator ''F,'' ''G,'' ''H,'' ''K,'' ''L,'' ''R,'' ''U,'' or ''N'' and not status indicator ''Q1'' (''STVX-packaged'') or status indicator ''Q2'' (''T-packaged'') code.

4. *Multiple Minor Claims:* Claims with multiple HCPCS codes that are assigned status indicator ''F,'' ''G,'' ''H,'' ''K,'' ''L,'' ''R,'' ''U,'' or ''N;'' claims that contain more than one code with status indicator ''Q1'' (''STVX-packaged'') or more than one unit of a code with status indicator ''Q1'' but no codes with status indicator ''S,'' ''T,'' ''V,'' or ''X'' on the same date of service; or claims that contain more than one code with status indicator ''Q2'' (''T-packaged''), or ''Q2'' and ''Q1,'' or more than one unit of a code with status indicator ''Q2'' but no code with status indicator ''T'' on the same date of service.

5. *Non-OPPS Claims:* Claims that contain no services payable under the OPPS (that is, all status indicators other than those listed for major or minor status). These claims were excluded from the files used for the OPPS. Non-OPPS claims have codes paid under other fee schedules, for example, durable medical equipment or clinical laboratory tests, and do not contain either a code for a separately paid OPPS service or a code for a packaged service. Non-OPPS claims include claims for therapy services paid sometimes under the OPPS but billed, in these non-OPPS cases, with revenue codes indicating that the therapy services would be paid under the Medicare Physician Fee Schedule (MPFS).

The claims listed in numbers 1, 2, 3, and 4 above are included in the data files that can be purchased as described above. Claims that contain codes to which we have assigned status indicators ''Q1'' (''STVX-packaged'') and ''Q2'' (''T-packaged'') appear in the data for the single major file, the multiple major file, and the multiple minor file used in this final rule with comment period. Claims that contain codes to which we have assigned status indicator ''Q3'' (composite APC members) appear in both the data of the single and multiple major files used in this final rule with comment period, depending on the specific composite calculation.

Comment: One commenter asked that CMS make the preliminary packaging and composite data available to the public for review as soon as possible. In addition, several commenters requested that CMS make packaging data available to the public, including utilization rates and median costs for packaged services, and general payment calculations, to allow more transparency in the OPPS ratesetting process.

Response: We make available a considerable amount of data for public analysis each year and, while we are not developing and providing to the public the extensively detailed information that commenters requested, we provide the public use files of claims and a detailed narrative description of our data process that the public can use to perform any desired analyses. In addition, we believe that the commenters must examine the data themselves to develop the specific arguments to support their requests for changes to payments under the OPPS. In fact, several commenters submitted detailed analyses of how often certain packaged services were provided with specific independent services, and the amount by which packaged costs contribute to the payment rate for the

independent service. We understand that the OPPS is a complex payment system and that it is impossible to easily determine the quantitative amount of packaged costs present in the median cost for every independent service. However, based on the complex and detailed comments that we received, commenters are clearly able to perform meaningful analyses based on the public claims data available at this time.

After consideration of the public comments received on our proposed process of organizing claims by type, we are finalizing our CY 2009 proposal, without modification.

(2) Creation of ''Pseudo'' Single Claims

As proposed, to develop ''pseudo'' single claims for this final rule with comment period, we examined both the multiple major claims and the multiple minor claims. We first examined the multiple major claims for dates of service to determine if we could break them into ''pseudo'' single procedure claims using the dates of service for all lines on the claim. If we could create claims with single major procedures by using dates of service, we created a single procedure claim record for each separately paid procedure on a different date of service (that is, a ''pseudo'' single).

We also used the bypass codes listed earlier in Table 1 and discussed in section II.A.1.b. of this final rule with comment period to remove separately payable procedures that we determined contained limited or no packaged costs or that were otherwise suitable for inclusion on the bypass list from a multiple procedure bill. When one of the two separately payable procedures on a multiple procedure claim was on the bypass list, we split the claim into two ''pseudo'' single procedure claim records. The single procedure claim record that contained the bypass code did not retain packaged services. The single procedure claim record that contained the other separately payable procedure (but no bypass code) retained the packaged revenue code charges and the packaged HCPCS code charges. We also removed lines that contained multiple units of codes on the bypass list and treated them as ''pseudo'' single claims by dividing the cost for the multiple units by the number of units on the line. Where one unit of a single, separately paid procedure code remained on the claim after removal of the multiple units of the bypass code, we created a ''pseudo'' single claim from that residual claim record, which retained the costs of packaged revenue codes and packaged HCPCS codes. This enabled us to use claims that would otherwise be multiple procedure claims and could not be used.

Where only one unit of one of an ''overlap bypass code'' appeared on a claim with only one unit of another separately paid code, for the CY 2009 OPPS/ASC proposed rule we used the line-item cost of the ''overlap bypass code'' to create a ''pseudo'' single procedure claim for the ''overlap bypass code'' but did not use the remaining costs on the claim for the other separately paid procedure.

Comment: Several commenters urged CMS to use as much claims data as possible to set the CY 2009 OPPS median costs.

Response: We agree that it is preferable to use as much claims data as possible to maximize the extent to which the median costs for any given service or APC accurately reflect the relative costs of the services. Although as discussed in section II.A.1.b. of this final rule with comment period, the removal of radiation oncology codes that did not pass the empirical criteria from the bypass list for this final rule with comment period resulted in a smaller number of ''pseudo'' single claims, we were able to revise our treatment of the ''overlap bypass codes'' to enable us to use the claims data that remained on the claim after removal of the line-item cost for the bypass code when only one unit of one separately paid code remained on the claim. We refer readers to section II.A.1.b. of this final rule with comment period for further discussion of this change.

For this final rule with comment period, we created ''pseudo'' single claims from the remaining information on these claims. We assessed the claim to determine if, after removal of all lines for bypass codes, including the ''overlap bypass codes,'' a single unit of a single separately paid code remained on the claim. If so, we attributed the packaged costs on the claim to the single unit of the single remaining separately paid code other than the bypass code to create a ''pseudo'' single claim. This allowed us to use more claims data for ratesetting purposes for this final rule with comment period.

We also examined the multiple minor claims to determine whether we could create ''pseudo'' single procedure claims. Specifically, where the claim contained multiple codes with status indicator ''Q1'' (''STVX-packaged'') on the same date of service or contained multiple units of a single code with status indicator ''Q1,'' we selected the status indicator ''Q1'' HCPCS code that had the highest CY 2008 relative weight, moved the units to one on that HCPCS code, and packaged all costs for other codes with status indicator ''Q1,'' as well as all other packaged HCPCS code and packaged revenue code costs, into a total single cost for the claim to create a ''pseudo'' single claim for the selected code. We changed the status indicator for selected codes from the data status indicator of ''N'' to the status indicator of the APC to which the selected procedure was assigned for further data processing and considered this claim as a major procedure claim. We used this claim in the calculation of the APC median cost for the status indicator ''Q1'' HCPCS code.

Similarly, where a multiple minor claim contained multiple codes with status indicator ''Q2'' (''T-packaged'') or multiple units of a single code with status indicator ''Q2,'' we selected the status indicator ''Q2'' HCPCS code that had the highest CY 2008 relative weight, moved the units to one on that HCPCS code, and packaged all costs for other codes with status indicator ''Q2,'' as well as all other packaged HCPCS code and packaged revenue code costs into a total single cost for the claim to create a ''pseudo'' single claim for the selected code. We changed the status indicator for the selected code from a data status indicator of ''N'' to the status indicator of the APC to which the selected code was assigned, and we considered this claim as a major procedure claim.

Lastly, where a multiple minor claim contained multiple codes with status indicator ''Q2'' (''T-packaged'') and status indicator ''Q1'' (''STVX-packaged''), we selected the status indicator ''Q2'' HCPCS code (''T-packaged'') that had the highest relative weight for CY 2008, moved the units to one on that HCPCS code, and packaged all costs for other codes with status indicator ''Q2,'' costs of all codes with status indicator ''Q1'' (''STVX-packaged''), and other packaged HCPCS code and packaged revenue code costs into a total single cost for the claim to create a ''pseudo'' single claim for the selected (''T-packaged'') code. We favor status indicator ''Q2'' over ''Q1'' HCPCS codes because ''Q2'' HCPCS codes have higher CY 2008 relative weights. If a status indicator ''Q1'' HCPCS code had a higher CY 2008 relative weight, it would become the primary code for the simulated single bill process. We changed the status indicator for the selected status indicator ''Q2'' (''T-packaged'') code from a data status indicator of ''N'' to the status indicator of the APC to which the selected code was assigned and we considered this claim as a major procedure claim.

After we assessed the conditional packaging of HCPCS codes with proposed status indicators ''Q1'' and

''Q2,'' we then assessed the claims to determine if the criteria for the multiple imaging composite APCs, discussed in section II.A.2.e.(5) of this final rule with comment period, were met. Where the criteria for the imaging composite APCs were met, we created a ''single session'' claim for the applicable imaging composite service and determined whether we could use the claim in ratesetting. For HCPCS codes that are both conditionally packaged and are members of a multiple imaging composite APC, we first assessed whether the code would be packaged and if so, the code ceased to be available for further assessment as part of the composite APC. Because the packaged code would not be a separately payable procedure, we considered it to be unavailable for use in setting the composite APC median cost.

We excluded those claims that we were not able to convert to single claims even after applying all of the techniques for creation of ''pseudo'' singles to multiple majors and to multiple minors. As has been our practice in recent years, we also excluded claims that contained codes that were viewed as independently or conditionally bilateral and that contained the bilateral modifier (Modifier 50 (Bilateral procedure)) because the line-item cost for the code represented the cost of two units of the procedure, notwithstanding that the code appeared with a unit of one.

Comment: One commenter suggested that the handling of status indicator ''Q1'' (''STVX-packaged'') and ''Q2'' (''T-packaged'') conditionally packaged codes at the beginning of the ratesetting process rather than in later stages packaged more lines than were necessary or appropriate. The commenter suggested that applying the packaging determination of the conditionally packaged code in later stages would allow lines that would otherwise be packaged to be used for ratesetting.

Response: The purposes of the various methods through which we develop ''pseudo'' single claims is to isolate the resource cost of a service in situations where that otherwise might not be possible. In the case of the status indicator ''Q1'' and ''Q2'' conditionally packaged codes, we only used lines that would actually be paid separately under the final CY 2009 payment policies in estimating median costs in order to accurately estimate the costs of these services when they would be separately payable. The commenter's suggested methodology would result in our incorporation of lines that would be packaged when processed through the I/OCE, which we believe to be inappropriate in the ''pseudo'' single claim development process that we use to estimate the costs of services that would be separately payable.

After consideration of the public comment received, we are finalizing our CY 2009 proposal, without modification, for the process by which we develop ''pseudo'' single claims, for this final rule with comment period.

c. Completion of Claim Records and Median Cost Calculations

We then packaged the costs of packaged HCPCS codes (codes with status indicator ''N'' listed in Addendum B to this final rule with comment period, the costs of those lines for codes with status indicator ''Q1'' or ''Q2'' when they are not separately paid), and the costs of packaged revenue codes into the cost of the single major procedure remaining on the claim.

As noted in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66606), for the CY 2008 OPPS, we adopted an APC Panel recommendation that requires CMS to review the final list of packaged revenue codes for consistency with OPPS policy and ensure that future versions of the I/OCE edit accordingly. We compared the packaged revenue codes in the I/OCE to the final list of packaged revenue codes for the CY 2008 OPPS (72 FR 66608 through 66609) and that we used for packaging costs in median calculation. As a result of that analysis, we used the packaged revenue codes for CY 2009 that are displayed in Table 2 below. We received no public comments on the revenue codes that we proposed to package for CY 2009 and, therefore, we are finalizing the list of packaged revenue codes as proposed, without modification, as shown in Table 2 below.

In this final rule with comment period, we replaced the NUBC standard abbreviations for the revenue codes listed in Table 2 of the CY 2009 OPPS/ASC proposed rule with the most current NUBC description of the revenue code categories and subcategories to better articulate the meanings of the revenue codes. However, while the labeling for the packaged revenue codes changed, the list of revenue codes shown in Table 2 has not changed from the revenue codes that we proposed to package for CY 2009 as displayed in Table 2 of the CY 2009 OPPS/ASC proposed rule (73 FR 41436 through 41437) and which we are finalizing for the CY 2009 OPPS. In the course of making the changes in labeling for the revenue codes in Table 2, we noticed some changes to revenue categories and subcategories that we believe warrant further review for future OPPS updates. Although we are finalizing the list of packaged revenue codes in Table 2 for CY 2009, we intend to assess the NUBC revenue codes to determine whether any changes to the list of packaged revenue codes should be proposed for the CY 2010 OPPS. We welcome public input and discussion during the comment period of this final rule with comment period on the packaged revenue codes listed in Table 2, for purposes of assisting us in this assessment of revenue codes. When submitting comments, commenters should remember that the OPPS pays not only for services furnished to hospital outpatients but also pays for a limited set of services furnished to inpatients who do not have Part A coverage of hospital services furnished on the date on which the service is furnished. Payment under the OPPS for these services, which are reported on 12X bill types, may lead to the appropriate packaging of some costs reported on inpatient revenue codes for purposes of the OPPS ratesetting.

TABLE 2—CY 2009 PACKAGED REVENUE CODES

Revenue code	Description
0250	Pharmacy; General Classification.
0251	Pharmacy; Generic Drugs.
0252	Pharmacy; Non-Generic Drugs.
0254	Pharmacy; Drugs Incident to Other Diagnostic Services.
0255	Pharmacy; Drugs Incident to Radiology.
0257	Pharmacy; Non-Prescription.
0258	Pharmacy; IV Solutions.
0259	Pharmacy; Other Pharmacy.

TABLE 2—CY 2009 PACKAGED REVENUE CODES—Continued

Revenue code	Description
0260	IV Therapy; General Classification.
0262	IV Therapy; IV Therapy/Pharmacy Svcs.
0263	IV Therapy; IV Therapy/Drug/Supply Delivery.
0264	IV Therapy; IV Therapy/Supplies.
0269	IV Therapy; Other IV Therapy.
0270	Medical/Surgical Supplies and Devices; General Classification.
0271	Medical/Surgical Supplies and Devices; Non-sterile Supply.
0272	Medical/Surgical Supplies and Devices; Sterile Supply.
0273	Medical/Surgical Supplies and Devices; Take Home Supplies.
0275	Medical/Surgical Supplies and Devices; Pacemaker.
0276	Medical/Surgical Supplies and Devices; Intraocular Lens.
0278	Medical/Surgical Supplies and Devices; Other Implants.
0279	Medical/Surgical Supplies and Devices; Other Supplies/Devices.
0280	Oncology; General Classification.
0289	Oncology; Other Oncology.
0343	Nuclear Medicine; Diagnostic Radiopharmaceuticals.
0344	Nuclear Medicine; Therapeutic Radiopharmaceuticals.
0370	Anesthesia; General Classification.
0371	Anesthesia; Anesthesia Incident to Radiology.
0372	Anesthesia; Anesthesia Incident to Other DX Services.
0379	Anesthesia; Other Anesthesia.
0390	Administration, Processing and Storage for Blood and Blood Components; General Classification.
0399	Administration, Processing and Storage for Blood and Blood Components; Other Blood Handling.
0560	Home Health (HH)—Medical Social Services; General Classification.
0569	Home Health (HH)—Medical Social Services; Other Med. Social Service.
0621	Medical Surgical Supplies—Extension of 027X; Supplies Incident to Radiology.
0622	Medical Surgical Supplies—Extension of 027X; Supplies Incident to Other DX Services.
0624	Medical Surgical Supplies—Extension of 027X; FDA Investigational Devices.
0630	Pharmacy—Extension of 025X; Reserved.
0631	Pharmacy—Extension of 025X; Single Source Drug.
0632	Pharmacy—Extension of 025X; Multiple Source Drug.
0633	Pharmacy—Extension of 025X; Restrictive Prescription.
0681	Trauma Response; Level I Trauma.
0682	Trauma Response; Level II Trauma.
0683	Trauma Response; Level III Trauma.
0684	Trauma Response; Level IV Trauma.
0689	Trauma Response; Other.
0700	Cast Room; General Classification.
0709	Cast Room; Reserved.
0710	Recovery Room; General Classification.
0719	Recovery Room; Reserved.
0720	Labor Room/Delivery; General Classification.
0721	Labor Room/Delivery; Labor.
0732	EKG/ECG (Electrocardiogram); Telemetry.
0762	Specialty Room—Treatment/Observation Room; Observation Room.
0801	Inpatient Renal Dialysis; Inpatient Hemodialysis.
0802	Inpatient Renal Dialysis; Inpatient Peritoneal Dialysis (Non-CAPD).
0803	Inpatient Renal Dialysis; Inpatient Continuous Ambulatory Peritoneal Dialysis (CAPD).
0804	Inpatient Renal Dialysis; Inpatient Continuous Cycling Peritoneal Dialysis (CCPD).
0809	Inpatient Renal Dialysis; Other Inpatient Dialysis.
0810	Acquisition of Body Components; General Classification.
0819	Inpatient Renal Dialysis; Other Donor.
0821	Hemodialysis-Outpatient or Home; Hemodialysis Composite or Other Rate.
0824	Hemodialysis-Outpatient or Home; Maintenance—100%.
0825	Hemodialysis-Outpatient or Home; Support Services.
0829	Hemodialysis-Outpatient or Home; Other OP Hemodialysis.
0942	Other Therapeutic Services (also see 095X, an extension of 094x); Education/Training.

In addition, we excluded (1) claims that had zero costs after summing all costs on the claim and (2) claims containing packaging flag number 3. Effective for services furnished on or after July 1, 2004, the I/OCE assigned packaging flag number 3 to claims on which hospitals submitted token charges for a service with status indicator ''S'' or ''T'' (a major separately paid service under the OPPS) for which the fiscal intermediary or MAC was required to allocate the sum of charges for services with a status indicator equaling ''S'' or ''T'' based on the weight of the APC to which each code was assigned. We do not believe that these charges, which were token charges as submitted by the hospital, are valid reflections of hospital resources. Therefore, we deleted these claims. We also deleted claims for which the charges equaled the revenue center payment (that is, the Medicare payment) on the assumption that where the charge equaled the payment, to apply a CCR to the charge would not yield a valid estimate of relative provider cost.

For the remaining claims, we then standardized 60 percent of the costs of

the claim (which we have previously determined to be the labor-related portion) for geographic differences in labor input costs. We made this adjustment by determining the wage index that applied to the hospital that furnished the service and dividing the cost for the separately paid HCPCS code furnished by the hospital by that wage index. As has been our policy since the inception of the OPPS, we proposed to use the pre-reclassified wage indices for standardization because we believe that they better reflect the true costs of items and services in the area in which the hospital is located than the post-reclassification wage indices and, therefore, would result in the most accurate unadjusted median costs.

We also excluded claims that were outside 3 standard deviations from the geometric mean of units for each HCPCS code on the bypass list (because, as discussed above, we used claims that contain multiple units of the bypass codes).

After removing claims for hospitals with error CCRs, claims without HCPCS codes, claims for immunizations not covered under the OPPS, and claims for services not paid under the OPPS, approximately 58 million claims were left for this final rule with comment period. Using these 58 million claims, we created approximately 99 million single and ''pseudo'' single claims, of which we used 99 million single bills (after trimming out approximately 617,000 claims as discussed above in this section) in the final CY 2009 median development and ratesetting.

We used the remaining claims to calculate the final CY 2009 median costs for each separately payable HCPCS code and each APC. The comparison of HCPCS code-specific and APC medians determines the applicability of the 2 times rule. Section 1833(t)(2) of the Act provides that, subject to certain exceptions, the items and services within an APC group cannot be considered comparable with respect to the use of resources if the highest median (or mean cost, if elected by the Secretary) for an item or service in the group is more than 2 times greater than the lowest median cost for an item or service within the same group (the 2 times rule). Finally, we reviewed the median costs and public comments received on the CY 2009 OPPS/ASC proposed rule and reassigned HCPCS codes to different APCs where we believed that it was appropriate. Section III. of this final rule with comment period includes a discussion of certain HCPCS code assignment changes that resulted from examination of the median costs, review of the public comments, and for other reasons. The APC medians were recalculated after we reassigned the affected HCPCS codes. Both the HCPCS code-specific medians and the APC medians were weighted to account for the inclusion of multiple units of the bypass codes in the creation of ''pseudo'' single bills.

Comment: Several commenters objected to the volatility of the OPPS rates from year to year. These commenters asserted that the absence of stability in the OPPS rates creates budgeting, planning, and operating problems for hospitals, and that as more care is provided on an outpatient, rather than inpatient basis, the need for stable payment rates from one year to the next becomes more important to hospitals. Some commenters suggested that we limit reductions in APC payments to a set amount. One commenter suggested that we reexamine the billing system.

Response: There are a number of factors pertinent to the OPPS that may cause median costs to change from one year to the next. Some of these are a reflection of hospital behavior, and some of them are a reflection of fundamental characteristics of the OPPS as defined in statute. For example, the OPPS payment rates are based on hospital cost report and claims data. However, hospital costs and charges change each year and this results in both changes to the CCRs taken from the most currently available cost reports and also differences in the charges on the claims that are the basis of the calculation of the median costs on which OPPS rates are based. Similarly, hospitals adjust their mix of services from year to year by offering new services and ceasing to furnish services or changing the proportion of the various services they furnish, which has an impact on the CCRs that we derive from their cost reports. CMS cannot stabilize these hospital-driven fundamental inputs to the calculation of OPPS payment rates.

Moreover, there are other essential elements of the OPPS which contribute to the changes in relative weights each year. These include, but are not limited to, reassignments of HCPCS codes to APCs to rectify 2 times violations as required by the law, to address the costs of new services, to address differences in hospitals' costs that may result from changes in medical practice, and to respond to public comments. Our efforts to improve payment accuracy may also contribute to payment volatility in the short run, as may be the case when we are eventually able to use more specific CCRs to estimate the costs of implantable devices, based on the final policy that we adopted to disaggregate the single cost center for medical supplies into two more specific cost centers, as described in the FY 2009 IPPS final rule (73 FR 48458 through 48467). Moreover, for some services, we cannot avoid using small numbers of claims, either because the volume of services is naturally low or because the claims data do not facilitate the calculation of a median cost for a single service. Where there are small numbers of claims that are used in median calculation, there is more volatility in the median cost from one year to the next. Lastly, changes to OPPS payment policy (for example, changes to packaging) also contribute to some extent to the fluctuations in the OPPS payment rates for the same services from year to year.

We cannot avoid the naturally occurring volatility in the cost report and claims data that hospitals submit and on which the payment rates are based. Moreover (with limited exceptions), we are required by law to reassign HCPCS codes to APCs where it is necessary to avoid 2 times violations. However, we have made other changes to resolve some of the other potential reasons for instability from year to year. Specifically, we continue to seek ways to use more claims data so that we have fewer APCs for which there are small numbers of single bills used to set the APC median costs. Moreover, we have tried to eliminate APCs with very small numbers of single bills where we could do so. We recognize that changes to payment policies, such as the packaging of payment for ancillary and supportive services and the implementation of composite APCs, may contribute to volatility in payment rates in the short term, but we believe that larger payment packages and bundles should help to stabilize payments in future years by enabling us to use more claims data and by establishing payments for larger groups of services.

Comment: Some commenters asked that CMS provide an adjustment for medical education costs under the OPPS because many of the costs of teaching services are now incurred in the HOPD as services previously furnished only in the inpatient setting are now being furnished in the HOPD. These commenters stated that CMS indicated that it would study the costs and payment differential among different classes of providers in the April 7, 2000 OPPS final rule but has not done so. They recommended that CMS study whether the hospital outpatient costs of teaching hospitals are higher than the costs of other hospitals for purposes of determining whether there should be a teaching hospital adjustment. The

commenters explained that their internal analysis of 2006 Medicare cost reports showed that the average outpatient margins were −27.3 for major teaching hospitals, −13.0 for other teaching hospitals, and −15.2 for nonteaching hospitals. They believed that these findings demonstrated that the hospital outpatient costs of major teaching hospitals are significantly greater than the costs of other hospitals. The commenters requested that CMS conduct its own analysis and that if that analysis showed a difference due to the unique missions of teaching hospitals, CMS should add a teaching adjustment to the OPPS.

Response: Unlike payment under the IPPS, the law does not provide for payment for indirect medical education costs to be made under the OPPS. Section 1833(t)(2)(E) of the Act, as added by section 4523 of the BBA, states that the Secretary shall establish, in a budget neutral manner ''* * * other adjustments as determined to be necessary to ensure equitable payments, such as adjustments for certain classes of hospitals.'' We have not found such an adjustment to be necessary to ensure equitable payments to teaching hospitals and, therefore, have not developed such an adjustment. We do not believe an indirect medical education add-on payment is appropriate in a budget neutral payment system where such changes would result in reduced payments to all other hospitals. Furthermore, in this final rule with comment period, we have developed payment weights that we believe provide appropriate and adequate payment for the complex medical services, such as visits requiring prolonged observation, new technology services, and device-dependent procedures, which we understand are disproportionately furnished by teaching hospitals. We note that teaching hospitals benefit from the CY 2009 recalibration of the APCs in this final rule with comment period. The final CY 2009 impacts by class of hospital are displayed in Table 51 in section XXIII.B. of this final rule with comment period.

After consideration of the public comments received, we are finalizing our proposed CY 2009 methodology for calculating the median costs upon which the CY 2009 OPPS payment rates are based.

In some cases, APC median costs are calculated using variations of the process outlined above. Section II.A.2.d. of this final rule with comment period that follows addresses the calculation of single APC criteria-based median costs. Section II.A.2.e. of this final rule with comment period discusses the calculation of composite APC criteria-based median costs. Section X.B. of this final rule with comment period addresses the methodology for calculating the median cost for partial hospitalization services.

d. Calculation of Single Procedure APC Criteria-Based Median Costs

(1) Device-Dependent APCs

Device-dependent APCs are populated by CPT codes that usually, but not always, require that a device be implanted or used to perform the procedure. For a full history of how we have calculated payment rates for device-dependent APCs in previous years and a detailed discussion of how we developed the standard device-dependent APC ratesetting methodology, we refer readers to the CY 2008 OPPS/ASC final rule with comment period (72 FR 66739 through 66742). Overviews of the procedure-to-device edits and device-to-procedure edits used in ratesetting for device-dependent APCs are available in the CY 2005 OPPS final rule with comment period (69 FR 65761 through 65763) and the CY 2007 OPPS/ASC final rule with comment period (71 FR 68070 through 68071).

In the CY 2009 OPPS/ASC proposed rule (73 FR 41437), we proposed for CY 2009 to continue using our standard methodology for calculating median costs for device-dependent APCs, which utilizes claims data that generally represent the full cost of the required device. Specifically, we proposed to calculate the medians for device-dependent APCs for CY 2009 using only the subset of single procedure claims from CY 2007 claims data that pass the procedure-to-device and device-to-procedure edits; do not contain token charges (less than $1.01) for devices; and do not contain the ''FB'' modifier signifying that the device was furnished without cost to the provider, supplier, or practitioner, or where a full credit was received. We believe that this methodology gave us the most appropriate proposed rule median costs for device-dependent APCs in which the hospital incurs the full cost of the device.

While the median costs for the majority of device-dependent APCs showed increases from CY 2008 based on the CY 2009 proposed rule claims data, the median costs for three APCs involving electrode/lead implantation decreased significantly compared to the CY 2008 final rule with comment period median costs. Specifically, APC 0106 (Insertion/Replacement of Pacemaker Leads and/or Electrodes), APC 0225 (Implantation of Neurostimulator Electrodes, Cranial Nerve), and APC 0418 (Insertion of Left Ventricular Pacing Electrode) demonstrated median decreases of 26 percent, 52 percent, and 47 percent, respectively. As indicated in the CY 2009 OPPS/ASC proposed rule (73 FR 41437), we believe these decreases reflect hospitals' correction of inaccurate and incomplete billing practices for these services due to the implementation of device-to-procedure edits beginning in CY 2007. As discussed in the CY 2007 OPPS/ASC final rule with comment period (71 FR 68070 through 68071), in the course of examining claims data for calculation of the CY 2007 OPPS payment rates, we identified circumstances in which hospitals billed a device code but failed to bill any procedure code with which the device could be used correctly. For APCs 0106, 0225, and 0418 in particular, we found that hospitals frequently billed a procedure code for lead/electrode implantation with device HCPCS codes for a lead/electrode and the more expensive pulse generator but failed to report a procedure code for generator implantation. These errors in billing led to the costs of the pulse generator being packaged incorrectly into the procedure codes for lead/electrode implantation. Hospitals that coded and billed in this manner received no payment for the procedure to implant the pulse generator, but these erroneous claims caused the OPPS payment rate for the lead/electrode implantation APCs to be inappropriately high. To address this problem, we implemented edits to correct the coding for CY 2007, and the proposed decreases to the median costs of APCs 0106, 0225, and 0418 for CY 2009 were consistent with what we expected, based on what we understood to be the nature of the services and the costs of correctly coded devices. In the CY 2009 OPPS/ASC proposed rule (73 FR 41438), we also noted an anticipated decrease in our frequency of single procedure claims for the services assigned to APCs 0106, 0225, and 0418, most likely because the device-to-procedure edits led hospitals to include the pulse generator implantation HCPCS codes on the same claims, resulting in fewer single procedure claims for the lead/electrode implantation procedures.

At the August 2008 meeting of the APC Panel, one presenter stated that the proposed decrease in payment for CY 2009 for APC 0225, which includes a procedure to implant a neurostimulator electrode for vagus nerve stimulation (VNS), would make VNS too costly for

providers and beneficiaries relative to its OPPS payment. The presenter requested that CMS reassign CPT code 64553 (Percutaneous implantation of neurostimulator electrodes, cranial nerve) to APC 0040 (Percutaneous Implantation of Neurostimulator Electrodes, Excluding Cranial Nerve), leaving CPT code 64573 (Incision for implantation of neurostimulator electrodes, cranial nerve) as the only code in APC 0225 (CPT code 64573 describes the lead implantation for VNS). The presenter argued that the procedure described by CPT code 64553 is more similar clinically and in terms of resource utilization to the procedures assigned to APC 0040 than to the other procedure assigned to APC 0225. The presenter also requested that, after reassigning CPT code 64553 to APC 0040, CMS calculate the payment rate for APC 0225 using only claims for patients with epilepsy. According to the presenter, in May 2007, CMS issued a National Coverage Determination (NCD) denying Medicare coverage of VNS for the treatment of depression, while maintaining coverage for certain epilepsy indications. The presenter stated that it was possible the Medicare noncoverage of VNS for depression may have confused hospital providers, leading to incorrect hospital coding and submission of epilepsy claims. In response to this two-part request, the APC Panel recommended that CMS reassign CPT code 64553 to APC 0040, and that CMS recalculate the median cost of APC 0225 based solely on claims for CPT code 64573. The APC Panel did not make a recommendation related to the requester's second request, to include only claims with epilepsy indications in ratesetting for APC 0225. We discuss our response to these two APC Panel recommendations below under the comments and responses section of this section of this final rule with comment period.

We also indicated in the CY 2009 OPPS/ASC proposed rule (73 FR 41438), that APC 0625 (Level IV Vascular Access Procedures) as configured for CY 2008 and calculated based on CY 2007 claims data also demonstrated a significant decrease in median cost (approximately 59 percent) relative to CY 2008 (based on CY 2006 claims data). We believe this decrease is attributable to the implementation of procedure-to-device edits on January 1, 2007, for the only CPT code assigned to this APC, specifically CPT code 36566 (Insertion of tunneled centrally inserted central venous access device, requiring two catheters via two separate venous access sites; with subcutaneous port(s)). Because the procedure described by CPT code 36566 involves the insertion of a dialysis access system, our edits require that the HCPCS code for that device be present on the claim any time a hospital bills CPT code 36566. Prior to January 1, 2007, we believe that hospitals often reported CPT code 36566 without also reporting the device HCPCS code for the dialysis access system, or incorrectly billed CPT code 36566 for procedures that do not require the use of the device. Therefore, with the implementation of procedure-to-device edits, the volume of total CY 2007 claims for CPT code 36566 decreased as hospitals corrected their claims to report this service only under the appropriate circumstances, while the correctly coded claims reporting the required device (and available for CY 2009 ratesetting) increased significantly from CY 2006 to CY 2007. We believe that the CY 2009 proposed rule median cost of approximately $2,092 calculated for CPT code 36566 from those claims was accurate and appropriately reflected correct hospital reporting of the procedure and the associated device. Furthermore, because of the decrease in the median cost for CPT code 36566, we proposed to reassign the code to APC 0623 (Level III Vascular Access Procedures), which had a proposed median cost of approximately $1,939. We also proposed to delete APC 0625 because no other procedures would map to this APC if CPT code 36566 was reassigned.

In addition, we noted a decrease of approximately 19 percent for APC 0681 (Knee Arthroplasty) relative to CY 2008, which we believe is attributable to a low volume of services being performed by a small number of providers (73 FR 41438) and to a single provider furnishing the majority of the services. As we have stated in the past, some fluctuation in relative costs from year to year is to be expected in a prospective payment system, particularly for low volume device-dependent APCs such as APC 0681, for which the proposed median cost increased approximately 37 percent from CY 2007 to CY 2008.

Comment: Many commenters supported the CMS proposal to set the median costs for device-dependent APCs using the standard device-dependent APC ratesetting methodology in CY 2009, and expressed appreciation of CMS' efforts to use only those claims that reflect the full costs of devices in ratesetting for device-dependent APCs. One commenter remarked that the methodology of using only those claims that include the appropriate device HCPCS codes to calculate payment rates for procedures that require a device to be implanted or used results in payment rates that more appropriately reflect the costs associated with device-dependent APCs. The commenter supported the proposed payment increases for APC 0385 (Level I Prosthetic Urological Procedures) and APC 0386 (Level II Prosthetic Urological Procedures) in particular. Some commenters supported the mandatory reporting of all HCPCS device C-codes, and urged CMS to continue educating hospitals on the importance of accurate coding for devices, supplies, and other technologies. Those commenters recommended that CMS focus on educating providers on the accurate use of supply codes, particularly HCPCS code A4306 (Disposable drug delivery system, flow rate of less than 50 ml per hour), which the commenters believed was reported inappropriately by many hospitals.

Several commenters also requested that CMS exclude claims from ratesetting in CY 2010 and beyond that contain the ''FC'' modifier, indicating the procedure was performed using a device for which the hospital received partial credit. According to the commenters, exclusion of these claims is necessary to ensure that only claims that contain the full costs of devices are included in ratesetting.

Response: We appreciate the commenters' support of the standard device-dependent APC ratesetting methodology. We agree that accurate reporting of device, supply, and technology charges will help to ensure that these items are appropriately accounted for in future years' OPPS payment rates. We encourage stakeholders to carefully review HCPCS code descriptors, as well as any guidance CMS may have provided for specific HCPCS codes. In addition, we have provided further instructions on the billing of medical and surgical supplies in the October 2008 OPPS update (Transmittal 1599, Change Request 6196, dated September 19, 2008). For HCPCS codes that are paid under the OPPS, providers may also submit inquiries to the AHA Central Office on HCPCS, which serves as a clearinghouse on the proper use of Level I HCPCS codes for hospital providers and certain Level II HCPCS codes for hospitals, physicians, and other health professionals. Inquiries must be submitted using the approved form, which may be downloaded from the AHA Web site (*http://www.ahacentraloffice.org*) and either faxed to 312–422–4583 or mailed directly to the AHA Central Office: Central Office on HCPCS, American

Hospital Association, One North Franklin, Chicago, IL 60606.

The ''FC'' modifier became effective January 1, 2008, and will be present for the first time on claims used in OPPS ratesetting for CY 2010. Any refinements to our standard device-dependent APC ratesetting methodology for years beyond CY 2009 would be addressed in future rulemaking.

Comment: Several commenters remarked that the CY 2009 OPPS/ASC proposed rule included several reductions to the payments for device-dependent APCs that they believe may threaten medical technology innovation and patient access. The commenters made the general recommendation that CMS study further the claims for any APC for which the calculated payment reduction would be greater than 10 percent and take action to correct issues that may reduce these payments artificially. The commenters further recommended that CMS limit the reduction in payment that any device-dependent APC may experience in 1 year to 10 percent. Other commenters expressed concerns specifically about the proposed payment reductions for APCs 0106 and 0418, arguing that the proposed payment rates would not cover outpatient hospital costs associated with providing the procedures assigned to these APCs, and that CMS should take steps to stabilize payment for these APCs to protect beneficiary access.

Several commenters also requested that CMS reassign CPT code 64553 from APC 0225 to APC 0040 as a means to address what they perceived to be inadequate payment for the only other procedure assigned to APC 0225, which is described by CPT code 64573, consistent with the recommendation made by the APC Panel at its August 2008 meeting. These commenters argued that the procedure described by CPT code 64553 is more similar clinically and/or in terms of resource utilization to procedures that are assigned to APC 0040, because these procedures have median costs that more closely approximate the median cost of CPT code 64553 and involve the percutaneous implantation of neurostimulator electrodes through an introducer needle. They asserted that CPT code 64573, in contrast, describes electrode placement by using a scalpel to incise skin. In addition to requesting the reassignment of CPT code 64553 to APC 0040, some commenters asked CMS to calculate the median cost for CPT code 64573 using only single procedure claims with an epilepsy diagnosis code that is consistent with CMS' NCD for VNS, effective May 4, 2007.

Response: We do not agree that it is necessary to implement a payment reduction limit of 10 percent or take other steps to stabilize payment for device-dependent APCs in CY 2009. We reviewed the data for all device-dependent APCs with significant changes in median costs from CY 2008 to CY 2009, as is our usual practice, to ensure there are no data errors that would inappropriately or artificially impact the median costs. We found no reason to believe that the claims used to calculate the median costs for all device-dependent APCs, including those with median costs that declined for CY 2009 relative to CY 2008, did not appropriately reflect hospitals' relative costs for providing those services as reported to us in the claims and cost report data. Because we believe the device-dependent APC median costs appropriately reflect hospital costs, implementing a payment reduction limit would artificially and inaccurately inflate payment rates. As described previously in this section and in the CY 2009 OPPS/ASC proposed rule (73 FR 41437 through 41438), the decreases in median costs for three APCs involving electrode/lead implantation, APCs 0106, 0225, and 0418, are expected and appropriate based on what we understand to be the nature of the services included in these APCs and the costs of correctly coded devices. We believe that the median costs calculated for these APCs were inappropriately high in years prior to CY 2009 due to widespread errors in how hospitals billed for the implantation of leads/electrodes and the pulse generators connected to the leads/electrodes. Prior to CY 2007, hospitals frequently billed a procedure code for lead/electrode implantation with device HCPCS codes for a lead/electrode *and* the more costly pulse generator, but failed to report a procedure code for the implantation of the pulse generator. As a result, hospitals received only one APC payment for implanting both the electrode/lead and the pulse generator when they should have received separate APC payments for both the electrode/lead implantation and the pulse generator implantation. These hospital billing errors also resulted in the inappropriate attribution of the pulse generator costs to the median costs for the APCs for the less expensive electrode/lead implantation procedures.

The implementation of device-to-procedure edits in CY 2007 corrected these incorrect and incomplete billing practices by requiring hospitals to include a procedure code for pulse generator implantation when they report a device HCPCS code for a pulse generator or to remove the device HCPCS code for the pulse generator from the claim if it was not furnished. As described above in this section, prior to CY 2007, some hospitals billed a procedure code for lead/electrode implantation with device HCPCS codes for both a lead/electrode and the more costly pulse generator, but did not bill a procedure code for implantation of the pulse generator. This practice resulted in an erroneous single procedure claim that was used for ratesetting in years prior to CY 2009. However, beginning in CY 2007, hospitals reported such services with a procedure code for lead/electrode implantation, a device HCPCS code for the lead/electrode, a procedure code for pulse generator implantation, and a device HCPCS code for the pulse generator (resulting in a multiple procedure claim that would not be used for ratesetting). Thus, for the first time in CY 2009, we no longer have single procedure claims available for ratesetting that would result in the inappropriate attribution of pulse generator costs to lead/electrode implantation APCs. Where the edits result in hospitals billing both the CPT code for the insertion of the leads and the CPT code for the implantation of the device, hospitals are being correctly paid considerably more than they were being paid when they were billing incorrectly. Therefore, we believe that the device-to-procedure edits result both in more accurate claims payment and more appropriate relative weights for these services.

We agree with the commenters and the APC Panel that the procedure described by CPT code 64553 is more similar clinically and in terms of resource utilization to procedures that are assigned to APC 0040 than to the other procedure assigned to APC 0225. Therefore, for CY 2009, we are accepting the APC Panel's recommendation and reassigning the procedure described by CPT code 64553 to APC 0040, and changing the title of APC 0040 to ''Percutaneous Implantation of Neurostimulator Electrode.'' As a result of our decision to reassign CPT code 64553 from APC 0225 to APC 0040, CPT code 64573 is the only CPT code assigned to APC 0225. Consistent with the APC Panel's second recommendation, we are recalculating the median cost of APC 0225 based solely on claims for CPT code 64573.

We do not agree with the commenters that we should calculate the median cost for CPT code 64573 using only single procedure claims with an epilepsy diagnosis code based on CMS'

NCD for VNS therapy, effective May 4, 2007. OPPS payment rates typically apply regardless of the medical condition for which a device is used; thus, APC median costs are developed based on claims for all patient diagnoses. Furthermore, we note that the NCD for VNS made effective on May 4, 2007, establishes noncoverage of VNS specifically for indications of depression. We examined the diagnosis codes present on the single procedure claims for CPT code 64573 that we would use in ratesetting, and found that, while diagnosis codes for epilepsy most commonly appeared on the claims, most nonepilepsy diagnoses present on the claims were for conditions other than depression. As such, the recommendation by some commenters to utilize only those claims with an epilepsy diagnosis for ratesetting would result predominantly in the exclusion of claims with diagnoses other than depression, to which the VNS national noncoverage decision does not apply. Therefore, we find no basis to deviate from our standard device-dependent APC ratesetting methodology, which does not take into consideration patient diagnoses, and we will not exclude claims for VNS therapy with diagnoses other than epilepsy from ratesetting.

Comment: One commenter stated that, while the standard device-dependent APC ratesetting methodology of using single procedure claims for calculating median costs is appropriate for many device-dependent APCs, this approach distorts and undervalues payment for those services where multiple device-dependent procedures are conducted within the same session. The commenter pointed out, as an example, that the lead/electrode implantation procedures assigned to APC 0225 are frequently performed with pulse generator implantation procedures assigned to APC 0039 (Level I Implantation of Neurostimulator). The commenter also noted that, according to an analysis of CY 2007 claims data available for the CY 2009 OPPS/ASC proposed rule, claims for device-dependent APCs more commonly include multiple procedures than claims for other types of APCs. The commenter encouraged CMS to develop a methodology to ensure that packaged costs can be allocated across multiple procedures performed on the same date of service. Until such a methodology can be implemented, the commenter asked that CMS institute a payment reduction limit of no more than 10 percent annually for device-dependent APCs such as APC 0225 with a large proportion of multiple procedure claims. Other commenters shared similar concerns about the use of single procedure claims in ratesetting for device-dependent APCs and suggested that CMS implement a composite payment methodology for certain procedures assigned to device-dependent APCs for which relatively few correctly coded single procedure claims are available for ratesetting, specifically those procedures involving the implantation of a cardiac resynchronization therapy defibrillator (CRT–D) or cardiac resynchronization therapy pacemaker (CRT–P).

Response: We do not agree that it is necessary, as one commenter suggested, to establish a payment reduction limit for APC 0225, or any other device-dependent APC, until we have developed a methodology for device-dependent ratesetting that can incorporate data from multiple procedure claims. For all OPPS services, we continue our efforts to use the data from as many multiple procedure claims as possible, through approaches such as use of the bypass list and date splitting of claims as described further in section II.A. of this final rule with comment period, and through methodologies such as increased packaging and composite APCs. We believe that the standard device-dependent APC ratesetting methodology currently provides the most appropriate median costs for device-dependent APCs in which the hospital incurs the full cost of the device. As we discuss above in this section, we believe that decreases in the median costs for APC 0225 and other device-dependent APCs involving lead/electrode implantation are appropriate and attributable to the correction of inaccurate and incomplete hospital billing practices. However, we recognize the importance of maximizing our utilization of claims data, especially of claims that reflect common clinical scenarios, and that the number of single procedure claims available for ratesetting for many device-dependent APCs comprise a very low proportion of total bills for procedures that map to those APCs. We will continue to examine ways to utilize more claims data to set payment rates under the OPPS, including payment rates for device-dependent APCs, and appreciate the commenters' thoughtful suggestions. We refer readers to section II.A.2.e. of this final rule with comment period for a detailed summary of the public comments related to the establishment of a composite payment methodology for procedures involving CRT–D and CRT–P devices and our responses.

Comment: Several commenters requested that CMS alter the standard device-dependent APC ratesetting methodology in order to utilize data from multiple procedure claims for APC 0222 (Level II Implantation of Neurostimulator). They noted that, for CY 2008, CMS reconfigured the APC assignments for implantable neurostimulators to accommodate the inclusion of procedures involving both nonrechargeable and rechargeable neurostimulators (the pass-through status for which expired in CY 2007) and improve resource homogeneity among the neurostimulator APCs. The commenters further noted that the revised configuration provides payment for procedures involving mostly nonrechargeable neurostimulator technology (that is, cranial, sacral, gastric, or other peripheral neurostimulators) through two APCs—APC 0039 (Level I Implantation of Neurostimulator) and APC 0315 (Level III Implantation of Neurostimulator)—while establishing a single APC, APC 0222, for spinal neurostimulator implantation, which commonly utilizes either rechargeable or nonrechargeable technologies. The commenters summarized CMS' assessment in the CY 2008 OPPS/ASC final rule with comment period that, to the extent rechargeable spinal neurostimulators become the dominant device implanted in procedures described by the only CPT code assigned to APC 0222, CPT code 63685 (Insertion or replacement of spinal neurostimulator pulse generator or receiver, direct or inductive coupling), the median cost for APC 0222 may increase to reflect contemporary utilization patterns.

The commenters raised concerns that analyses of the CY 2007 claims data demonstrate that the evolution to rechargeable spinal neurostimulators, while occurring in clinical practice and seen in the total billed claims, is not well represented in single procedure claims used for ratesetting for APC 0222. As a result, the commenters stated, the use of single procedure claims in the calculation of the median costs for APC 0222 systematically underestimates the use and cost of rechargeable neurostimulators. According to the data provided by the commenters, rechargeable neurostimulators are present on only 40 to 43 percent of single procedure claims, as opposed to 57 to 60 percent of all claims (both single and multiple procedure) for APC 0222. If CMS were to replace the device cost estimated for single procedure claims with the device cost estimated for total claims, the commenters stated, the median cost for APC 0222 would increase by 7 percent.

One commenter also contended that the median line-item device cost for neurostimulator generators was 17 percent lower in ''pure single claims'' when compared to all claims assigned to APC 0222. Another commenter noted that neurostimulator implantation procedures are reported with two separately payable CPT codes and consequently almost always appear on multiple procedure claims. The commenter argued that the single procedure claims used in ratesetting are either replacement procedures or incorrectly coded claims and do not reflect clinical practice in terms of either procedural frequency or cost.

Several commenters recommended that CMS calculate the payment rate for APC 0222 using the median device cost for rechargeable and nonrechargeable neurostimulators from all claims and the median procedure cost for CPT code 63685 from single procedure claims, arguing that larger claim samples lead to more accurate payment rates. The commenters stated that this would be an extension of CMS' process of using ''pseudo'' single procedure claims to calculate median costs, and would be consistent with CMS' focus on converting multiple procedure claims to ''pseudo'' single procedure claims in order to maximize the use of claims data in calculating median costs for OPPS ratesetting. According to the commenters, this approach would result in a 7 percent increase in the median cost for APC 0222 compared to the median cost calculated for the CY 2009 OPPS/ASC proposed rule.

Another commenter expressed the same concern that rechargeable neurostimulator costs were underrepresented in the claims data used to establish the median cost for APC 0222 and urged CMS to split APC 0222 into separate APCs based on whether a rechargeable or nonrechargeable spinal neurostimulator generator is utilized. Alternatively, the commenter asked CMS to consider a ratesetting methodology that, similar to the method offered by other commenters, would incorporate data from single and multiple procedure claims and result in a 9-percent increase in the median cost for APC 0222.

Response: We do not believe it is necessary or appropriate to alter our ratesetting methodology for device-dependent APC 0222. We believe that the revised neurostimulator APC configuration adopted in CY 2008, and our standard device-dependent APC ratesetting methodology, allow us to calculate appropriate OPPS payment rates for procedures involving spinal neurostimulators. The foundation of a system of relative weights is the relativity of the costs of all services to one another, as derived from a standardized system that uses standardized inputs and a consistent methodology. Adoption of a ratesetting methodology for APC 0222 that is different from our standard device-dependent APC ratesetting would undermine this relativity. A policy to provide different payments for the same procedures according to the types of devices implanted also would not be consistent with our overall strategy under the OPPS to encourage hospitals to use resources more efficiently by increasing the size of the payment bundles, as we described in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66715 through 66716).

According to information provided by certain manufacturers of rechargeable neurostimulators in response to the CY 2008 OPPS/ASC final rule with comment period, rechargeable neurostimulators are clinically indicated in only a subset of patients for whom spinal neurostimulation is a treatment option. These manufacturers estimated that approximately 35 percent of these patients are candidates for rechargeable spinal neurostimulators, although this proportion may be higher (72 FR 66715). We note that, according to the data analysis submitted by the commenters, rechargeable neurostimulators were used in 40 to 43 percent of spinal neurostimulator implantation procedures included on single procedure claims for APC 0222 in CY 2007, and in 57 to 60 percent of spinal neurostimulator implantation procedures included on all claims (both single and multiple procedure) for APC 0222 in CY 2007. Therefore, the rate of implantation of rechargeable neurostimulators in Medicare beneficiaries in CY 2007 in the hospital outpatient setting appears to have met or exceeded the expectations of certain manufacturers that were expressed in their comments to the CY 2008 OPPS/ASC final rule with comment period. Based on these reported analyses, rechargeable neurostimulator technology appears to have been widely adopted into medical practice, and we expect that our CY 2009 OPPS payment rates will provide continued access to this technology for those patients for whom rechargeable neurostimulators are clinically indicated.

Comment: Several commenters stated that the proposed national unadjusted CY 2009 OPPS payment rate for cochlear implantation is significantly less than the average cost for the hospital to acquire the cochlear device and the associated costs to provide the implantation procedure and may impede patient access to this technology. The cochlear device implantation procedure is described by CPT code 69930 (Cochlear device implantation, with or without mastoidectomy), the only CPT code assigned to APC 0259 (Level VII ENT Procedures). The commenters remarked that, although the proposed CY 2009 OPPS payment rate is higher than the CY 2008 OPPS payment rate, it is also less than the OPPS national unadjusted CY 2007 OPPS payment rate, and occurs at a time when device costs and related hospital costs continue to rise. Some commenters stated that the true cost of the cochlear implant procedure, including the device and related surgical costs, is between $35,000 and $40,000, depending on the specific devices and services required for a given patient, while other commenters indicated that the cost to hospitals is approximately $32,000. Several commenters recommended that CMS adjust the median cost upon which the OPPS payment rate for APC 0259 is based by substituting a weighted average selling price of $24,500 for the median device cost from the CY 2007 OPPS claims of $18,420, where this selling price was calculated based on hospital invoice data supplied separately by the two leading cochlear implant manufacturers. The commenters indicated that this methodology would result in a median cost for APC 0259 of $30,037. Other commenters referenced a 2006 analysis, which found the average cost of cochlear implant procedures to be approximately $33,364, and asked that CMS reconsider establishing payment based on this figure.

The commenters also expressed concern about the proposed assignment and payment rate of procedures involving auditory osseointegrated devices, the pass-through status for which will expire on December 31, 2008. The commenters noted that CMS proposed in the CY 2009 OPPS/ASC proposed rule to package payment for these devices, described by HCPCS code L8690 (Auditory osseointegrated device, includes all internal and external components), into payment for their associated implantation procedures, described by CPT codes 69714 (Implantation, osseointegrated implant, temporal bone, with percutaneous attachment to external speech processor/cochlear stimulator; without mastoidectomy); 69715 (Implantation, osseointegrated implant, temporal bone, with percutaneous attachment to external speech processor/cochlear

stimulator; with mastoidectomy); 69717 (Replacement (including removal of existing device), osseointegrated implant, temporal bone, with percutaneous attachment to external speech processor/cochlear stimulator; without mastoidectomy); and 69718 (Replacement (including removal of existing device), osseointegrated implant, temporal bone, with percutaneous attachment to external speech processor/cochlear stimulator; with mastoidectomy). Citing the CMS proposal to assign these implantation procedures to APC 0425 (Level II Arthroplasty or Implantation with Prosthesis) for CY 2009, the commenters stated that the proposed payment rate for APC 0425 would be insufficient to guarantee continued patient access to auditory osseointegrated devices and argued that the appropriate payment for procedures involving these devices should at least approximate the sum of the CY 2008 OPPS payment rate for APC 0256 (Level VI ENT Procedures), the APC to which the auditory osseointegrated device implantation procedures were assigned in CY 2007, and the average sales price for auditory osseointegrated devices, which they report totals $8,826 ($2,539 for APC 0256 plus $6,287 for device costs). The commenters also remarked that auditory osseointegrated device implantation procedures are clinically dissimilar to the other procedures assigned to APC 0425 and recommended that CMS establish a new APC for procedures involving osseointegrated devices. According to the commenters, APC 0425 is an inappropriate APC assignment for osseointegrated device implantation procedures because it is comprised of less device-intensive orthopedic procedures for the restoration of joint functioning. The commenters also stated that a training and audit process for the billing offices of hospitals performing osseointegrated device implantation procedures revealed widespread billing and coding errors, and indicated that these billing errors may contribute to a median cost calculation for osseointegrated device implantation procedures that is too low.

Response: We disagree with the commenters that it would be appropriate to use external pricing information in place of the costs derived from the claims and Medicare cost report data for APC 0259 or APC 0425 because we believe that to do so would distort the relativity that is so fundamental to the integrity of the OPPS. We have not systematically used external data to validate the median costs derived from claims data because external data lack relativity to the estimated costs derived from the claims and cost report data and generally are not appropriate for determining relative weights that result in payment rates. As described earlier in this section and in previous final rules such as the CY 2008 OPPS/ASC final rule with comment period (72 FR 66742), the foundation of a system of relative weights is the relativity of the costs of all services to one another, as derived from a standardized system that uses standardized inputs and a consistent methodology.

We also do not agree that auditory osseointegrated device implantation procedures are so clinically dissimilar to the other procedures assigned to APC 0425 that their assignment to that APC is not warranted. All procedures assigned to APC 0425 involve the implantation of a prosthestic device into bone. In regard to the commenters' concerns that billing and coding errors may have contributed to an inaccurate median cost calculation for APC 0425, we note that, because APC 0425 is a device-dependent APC, we calculated the median cost for osseointegrated device implantation procedures using only correctly coded claims that included the HCPCS device code for the osseointegrated device, L8690, along with an appropriate procedure code. Effective January 1, 2009, we also will implement procedure-to-device edits that require all hospitals paid under the OPPS to report HCPCS code L8690 whenever they report an osseointegrated device implantation procedure described by CPT codes 69714, 69715, 69717, and 69718. We also will implement the appropriate device-to-procedure edits to ensure that when HCPCS code L8690 is reported, an appropriate implantation procedure code is also included on the claim.

Comment: One commenter accepted CMS' consistent reliance on claims data to establish the CY 2009 OPPS/ASC proposed rule median cost for CPT code 36566 of $2,092, but disagreed with the proposed reassignment of CPT code 36566 to APC 0623 and urged CMS to maintain APC 0625. While the median cost for CPT code 36566 is very similar to the median costs of other procedures assigned to APC 0623, the commenter stated that the amounts will likely diverge in the future.

Response: We do not believe it would be appropriate to maintain an APC that is not necessary to classify services into groups that are similar clinically and in terms of resource utilization based on purported anticipated future costs. We continue to believe that CPT code 36566 is most appropriately assigned to APC 0623 for CY 2009, as we proposed, based on consideration of the procedure's clinical and resource characteristics. We reassess the composition of APCs, including reviewing the median costs of individual HCPCS codes, annually when we have new claims and Medicare cost report data and propose those changes through our annual rulemaking cycle that we believe are necessary to maintain the clinical and resource homogeneity of APCs based on that updated data. To the extent that the median cost of CPT code 36566 changes significantly in the future, we may propose future changes to the CPT code's assignment if we determine that a different APC would be more appropriate.

After consideration of the public comments received, we are finalizing our proposed CY 2009 payment policies for device-dependent APCs, with modification to reassign CPT code 64553 from APC 0225 to APC 0040. The CY 2009 OPPS payment rates for device-dependent APCs are based on their median costs calculated from CY 2007 claims and the most recent cost report data, using only claims that pass the device edits, do not contain token charges for devices, and do not have a modifier signifying that the device was furnished without cost or with full credit. We continue to believe that the median costs calculated from the single bills that meet these three criteria represent the most valid estimated relative costs of these services to hospitals when they incur the full cost of the devices required to perform the procedures. The CY 2009 device-dependent APCs are listed in Table 3 below.

TABLE 3—CY 2009 DEVICE-DEPENDENT APCS

Final CY 2009 APC	Final CY 2009 status indicator	CY 2009 APC title
0039	S	Level I Implantation of Neurostimulator.
0040	S	Percutaneous Implantation of Neurostimulator Electrodes.

TABLE 3—CY 2009 DEVICE-DEPENDENT APCS—Continued

Final CY 2009 APC	Final CY 2009 status indicator	CY 2009 APC title
0061	S	Laminectomy, Laparoscopy, or Incision for Implantation of Neurostimulator Electrodes.
0082	T	Coronary or Non Coronary Atherectomy.
0083	T	Coronary or Non Coronary Angioplasty and Percutaneous Valvuloplasty.
0084	S	Level I Electrophysiologic Procedures.
0085	T	Level II Electrophysiologic Procedures.
0086	T	Level III Electrophysiologic Procedures.
0089	T	Insertion/Replacement of Permanent Pacemaker and Electrodes.
0090	T	Insertion/Replacement of Pacemaker Pulse Generator.
0104	T	Transcatheter Placement of Intracoronary Stents.
0106	T	Insertion/Replacement of Pacemaker Leads and/or Electrodes.
0107	T	Insertion of Cardioverter-Defibrillator.
0108	T	Insertion/Replacement/Repair of Cardioverter-Defibrillator Leads.
0115	T	Cannula/Access Device Procedures.
0202	T	Level VII Female Reproductive Procedures.
0222	S	Level II Implantation of Neurostimulator.
0225	S	Implantation of Neurostimulator Electrodes, Cranial Nerve.
0227	T	Implantation of Drug Infusion Device.
0229	T	Transcatheter Placement of Intravascular Shunts.
0259	T	Level VII ENT Procedures.
0293	T	Level V Anterior Segment Eye Procedures.
0315	S	Level III Implantation of Neurostimulator.
0384	T	GI Procedures with Stents.
0385	S	Level I Prosthetic Urological Procedures.
0386	S	Level II Prosthetic Urological Procedures.
0418	T	Insertion of Left Ventricular Pacing Elect.
0425	T	Level II Arthroplasty or Implantation with Prosthesis.
0427	T	Level II Tube or Catheter Changes or Repositioning.
0622	T	Level II Vascular Access Procedures.
0623	T	Level III Vascular Access Procedures.
0648	T	Level IV Breast Surgery.
0652	T	Insertion of Intraperitoneal and Pleural Catheters.
0653	T	Vascular Reconstruction/Fistula Repair with Device.
0654	T	Insertion/Replacement of a permanent dual chamber pacemaker.
0655	T	Insertion/Replacement/Conversion of a permanent dual chamber pacemaker.
0656	T	Transcatheter Placement of Intracoronary Drug-Eluting Stents.
0674	T	Prostate Cryoablation.
0680	S	Insertion of Patient Activated Event Recorders.
0681	T	Knee Arthroplasty.

(2) Blood and Blood Products

Since the implementation of the OPPS in August 2000, separate payments have been made for blood and blood products through APCs rather than packaging them into payments for the procedures with which they are administered. Hospital payments for the costs of blood and blood products, as well as the costs of collecting, processing, and storing blood and blood products, are made through the OPPS payments for specific blood product APCs.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41439), we proposed to continue to establish payment rates for blood and blood products for CY 2009 using our blood-specific CCR methodology, which utilizes actual or simulated CCRs from the most recently available hospital cost reports to convert hospital charges for blood and blood products to costs. This methodology has been our standard ratesetting methodology for blood and blood products since CY 2005. It was developed in response to data analysis indicating that there was a significant difference in CCRs for those hospitals with and without blood-specific cost centers, and past comments indicating that the former OPPS policy of defaulting to the overall hospital CCR for hospitals not reporting a blood-specific cost center often resulted in an underestimation of the true hospital costs for blood and blood products. Specifically, in order to address the difference in CCRs and to better reflect hospitals' costs, we proposed to continue to simulate blood CCRs for each hospital that does not report a blood cost center by calculating the ratio of the blood-specific CCRs to hospitals' overall CCRs for those hospitals that do report costs and charges for blood cost centers. We would then apply this mean ratio to the overall CCRs of hospitals not reporting costs and charges for blood cost centers on their cost reports in order to simulate blood-specific CCRs for those hospitals. We calculated the median costs upon which the proposed CY 2009 payment rates for blood and blood products were based using the actual blood-specific CCR for hospitals that reported costs and charges for a blood cost center and a hospital-specific simulated blood-specific CCR for hospitals that did not report costs and charges for a blood cost center. For more detailed discussion of the blood-specific CCR methodology, we refer readers to the CY 2005 OPPS proposed rule (69 FR 50524 through 50525). For a full history of OPPS payment for blood and blood products, we refer readers to the CY 2008 OPPS/ASC final rule with comment period (72 FR 66807 through 66810).

As we indicated in the CY 2009 OPPS/ASC proposed rule (73 FR 41439), we believe that the blood-specific CCR methodology better responds to the absence of a blood-specific CCR for a hospital than alternative methodologies, such as defaulting to the overall hospital CCR or applying an average blood-specific CCR across hospitals. Because this methodology takes into account the unique charging and cost accounting

structure of each provider, we believe that it yields more accurate estimated costs for these products. We believe that continuing with this methodology in CY 2009 will result in median costs for blood and blood products that appropriately reflect the relative estimated costs of these products for hospitals without blood cost centers, and, therefore, for these products in general.

As discussed in section XIII.A.1. of this final rule with comment period, we also proposed to create status indicator ''R'' (Blood and Blood Products) to denote blood and blood products for publication and payment purposes in CY 2009. We believe that it is necessary to create a status indicator that is specific to blood and blood products to facilitate development of blood product median costs under the blood-specific CCR methodology and to facilitate implementation of the reduced payments that will be made to hospitals that fail to report the hospital outpatient quality data, as discussed in section XVI.D.2. of this final rule with comment period.

Comment: One commenter remarked that the proposed blood-specific CCR methodology accurately reflects the relative estimated costs of blood and blood products for hospitals without blood cost centers and for these products in general. The commenter encouraged CMS to continue the historical practice of providing separate payments for blood and blood products through APCs, rather than packaging their payment into payments for the procedures with which they are administered. Another commenter stated that the proposed payment rates for many blood and blood products are less than the actual acquisition costs, particularly for high volume blood products. The commenter noted that the proposed payment rate for the most commonly transfused blood product, leukocyte-reduced red blood cells described by HCPCS code P9016 (Red blood cells, leukocytes reduced, each unit), is less than hospitals' average acquisition cost for the product (not including overhead, storage, handling, and wastage) according to a nationwide survey of 2006 blood costs. The survey was conducted by the American Association of Blood Banks under a contract with HHS and includes data from approximately 1,700 hospitals. The commenter noted that since 2006, the year for which cost data were collected, the costs of acquiring blood products have continued to increase due to new safety advances and increasingly expensive donor recruitment and retention efforts. The commenter recommended that CMS continue to increase payments for blood products, particularly leukocyte-reduced red blood cells, to bridge the perceived gap between Medicare payments and the actual costs incurred by hospitals.

Response: We continue to believe that using blood-specific CCRs applied to hospital claims data results in payments that appropriately reflect hospitals' relative costs of providing blood and blood products as reported to us by hospitals. We do not believe it is necessary or appropriate to incorporate external survey data into our ratesetting process for blood and blood products because, in a relative weight system, it is the relativity of the costs to one another, rather than absolute cost, that is most important for setting payment rates. External data lack relativity to the estimated costs derived from the claims and cost report data and generally are not appropriate for determining relative weights that result in payment rates. We note that median costs per unit (calculated using the blood-specific CCR methodology) for this final rule with comment period increase from CY 2008 for 16 of the top 20 highest volume blood products.

Comment: One commenter asked that CMS reconsider the proposed payment rate of approximately $30 for HCPCS code P9011 (Blood, split unit), indicating that this payment rate was much lower than the CY 2008 payment rate of approximately $149 and would fail to cover the costs of split units of blood. The commenter also was concerned that the proposed payment decrease would result in insufficient Medicaid payment for transfusions involving split blood products.

Response: We do not agree that it would be appropriate to deviate from our standard methodology of using blood-specific CCRs to calculate the median cost upon which payment is based for HCPCS code P9011, despite the significant decrease in median cost from the CY 2006 claims data used for ratesetting in CY 2008 relative to the CY 2007 claims data used for ratesetting in CY 2009. We believe that some variation in relative costs from year to year is to be expected in a prospective payment system, particularly for low volume items such as HCPCS code P9011. We also note that, because HCPCS code P9011 is defined only as a split unit of blood and no particular designation is made within the code's descriptor as to the type or volume of blood product that makes up the split unit reported, the median cost for this HCPCS code also may vary based upon the types and volumes of split products hospitals report using HCPCS code P9011.

Public comments on Medicaid payment for blood and blood products are not within the scope of this CY 2009 OPPS/ASC final rule with comment period, as it is only within our purview to establish payment rates for HOPDs that receive payment under the OPPS for services furnished to Medicare beneficiaries.

We also note that it is our common practice to review significant changes in median costs from year to year and from the proposed rule to the final rule for a given calendar year. Although a handful of HCPCS codes experienced decreases in median cost for CY 2009 from the proposed rule to this final rule with comment period, most notably HCPCS codes P9011 and P9043 (Infusion, plasma protein fraction (human), 5%, 50ml), we determined that the decreases in median cost were due to contributions of additional claims and revised cost report data. For all APCs whose payment rates are based upon relative payment weights, we note that the quality and accuracy of reported units and charges significantly influence the final median costs that are the basis for our payment rates, especially for low volume items and services. Beyond our standard OPPS trimming methodology (described in section II.A.2. of this final rule with comment period) that we apply to those claims that have passed various types of claims processing edits, it is not our policy to judge the accuracy of hospital coding and charging for purposes of ratesetting.

After consideration of the public comments received, we are finalizing, without modification, our CY 2009 proposal to calculate the median costs upon which the CY 2009 payment rates for blood and blood products are based using the blood-specific CCR methodology that we have utilized since CY 2005. We continue to believe this methodology is the best mechanism to deal with the absence of a blood-specific CCR for hospitals that do not use the blood cost center. We believe that continuing with this methodology, which takes into account the unique charging and cost accounting structure of each provider, results in median costs for blood and blood products that appropriately reflect the relative estimated costs of these products. As discussed in section XIII.A.1. of this final rule with comment period, we also are finalizing our proposal to create status indicator ''R'' to denote blood and blood products in Addendum B to this final rule with comment period for publication and payment purposes.

(3) Single Allergy Tests

In the CY 2009 OPPS/ASC proposed rule (73 FR 41439 through 41440), we proposed to continue with our methodology of differentiating single allergy tests (''per test'') from multiple allergy tests (''per visit'') by assigning these services to two different APCs to provide accurate payments for these tests in CY 2009. Multiple allergy tests are currently assigned to APC 0370 (Allergy Tests), with a median cost calculated based on the standard OPPS methodology. We provided billing guidance in CY 2006 in Transmittal 804 (issued on January 3, 2006) specifically clarifying that hospitals should report charges for the CPT codes that describe single allergy tests to reflect charges ''per test'' rather than ''per visit'' and should bill the appropriate number of units of these CPT codes to describe all of the tests provided. However, as noted in the CY 2009 OPPS/ASC proposed rule (73 FR 41439), our CY 2007 claims data available for that rule for APC 0381 did not reflect improved and more consistent hospital billing practices of ''per test'' for single allergy tests. The median cost of APC 0381, calculated for the proposed rule according to the standard single claims OPPS methodology, was approximately $51, significantly higher than the CY 2008 median cost of APC 0381 of approximately $17 calculated according to the ''per unit'' methodology, and greater than we would expect for these procedures that are to be reported ''per test'' with the appropriate number of units. Some claims for single allergy tests still appear to provide charges that represent a ''per visit'' charge, rather than a ''per test'' charge. Therefore, consistent with our payment policy for CYs 2006, 2007, and 2008, we calculated a proposed ''per unit'' median cost for APC 0381 of $25, based upon 520 claims containing multiple units or multiple occurrences of a single CPT code. For a full discussion of this methodology, we refer readers to the CY 2008 OPPS/ASC final rule with comment period (72 FR 66737).

We did not receive any public comments on our CY 2009 proposal for payment of single allergy tests. Therefore, we are finalizing our CY 2009 proposal, without modification, to calculate a ''per unit'' median cost for APC 0381 as described above in this section. The final CY 2009 median cost of APC 0381 is approximately $23.

(4) Echocardiography Services

In the CY 2009 OPPS/ASC proposed rule (73 FR 41440), we proposed to continue the packaging of payment for all contrast agents into the payment for the associated imaging procedure for CY 2009, as we did in CY 2008. For echocardiography services, we proposed to estimate median costs using the same methodology that we used to set medians for these services for CY 2008. In CY 2008, we finalized a policy to package payment for all contrast agents into the payment for the associated imaging procedure, regardless of whether the contrast agent met the OPPS drug packaging threshold. Section 1833(t)(2)(G) of the Act requires us to create additional APC groups of services for procedures that use contrast agents that classify them separately from those procedures that do not utilize contrast agents. To reconcile this statutory provision with our final policy of packaging all contrast agents, for CY 2008, we calculated HCPCS code-specific median costs for all separately payable echocardiography procedures that may be performed with contrast agents by isolating single and ''pseudo'' single claims with the following CPT codes where a contrast agent was also billed on the claim: 93303 (Transthoracic echocardiography for congenital cardiac anomalies; complete); 93304 (Transthoracic echocardiography for congenital cardiac anomalies; follow-up or limited study); 93307 (Echocardiography, transthoracic, real-time with image documentation (2D) with or without M-mode recording; complete); 93308 (Echocardiography, transthoracic, real-time with image documentation (2D) with or without M-mode recording; follow-up or limited study); 93312 (Echocardiography, transesophageal, real time with image documentation (2D) (with or without M-mode recording); including probe placement, image acquisition, interpretation and report); 93315 (Transesophageal echocardiography for congenital cardiac anomalies; including probe placement, image acquisition, interpretation and report); 93318 (Echocardiography, transesophageal (TEE) for monitoring purposes, including probe placement, real time 2-dimensional image acquisition and interpretation leading to ongoing (continuous) assessment of (dynamically changing) cardiac pumping function and to therapeutic measures on an immediate time basis); and 93350 (Echocardiography, transthoracic, real-time with image documentation (2D), with or without M-mode recording, during rest and cardiovascular stress test using treadmill, bicycle exercise and/or pharmacologically induced stress, with interpretation and report). As noted in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66644), our analysis indicated that all echocardiography procedures that may be performed with contrast agents are reasonably similar both clinically and in terms of resource use, as evidenced by similar HCPCS code-specific median costs.

As provided for under the statute, for CY 2008, we created APC 0128 (Echocardiogram With Contrast) to provide payment for echocardiography procedures that are performed with a contrast agent. In addition, as discussed in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66644 through 66646), in order for hospitals to identify separately and receive appropriate payment for echocardiography procedures performed with contrast beginning in CY 2008, we created eight new HCPCS codes (C8921 through C8928) that corresponded to the related CPT echocardiography codes and assigned them to the newly created APC 0128. We instructed hospitals performing echocardiography procedures without contrast to continue to report the CPT codes and to report the new HCPCS C-codes when performing echocardiography procedures with contrast or without contrast followed by with contrast.

As noted in the CY 2009 OPPS/ASC proposed rule (73 FR 41440), claims data from CY 2008 are not yet available for ratesetting, so we do not yet have claims data specific to HCPCS codes C8921 through C8928 in order to determine the CY 2009 payment rate for APC 0128. Therefore, for CY 2009, we proposed to again use the methodology that we used to set the CY 2008 payment rate for APC 0128 (72 FR 66645). That is, we isolated single and ''pseudo'' single claims in our database that included those CPT codes in the range of 93303 through 93350 as described above in this section that correspond to the contrast studies described by HCPCS codes C8921 through C8928. For claims where one of these echocardiography procedures was billed with a contrast agent, we packaged the cost of the contrast agent into the cost of the echocardiography procedure and then calculated a median cost for APC 0128 using this subset of claims. As in CY 2008, the HCPCS code-specific median costs for echocardiography procedures performed with contrast are all similar, and we continue to believe these services share sufficient similarity to be assigned to the same APC.

For CY 2009, we also recalculated the median cost for APCs 0269 (Level II Echocardiogram Without Contrast

Except Transesophageal); 0270 (Transesophageal Echocardiogram Without Contrast); and 0697 (Level I Echocardiogram Without Contrast Except Transesophageal), as we did in CY 2008 (72 FR 66645). We used claims for CPT codes 93303 through 93350 after removing claims from the ratesetting process that included contrast agents because these claims were used to set the median cost for APC 0128.

Comment: One commenter noted that a new CPT code will be available in CY 2009 that combines spectral and color Doppler with transthoracic echocardiography. The commenter stated that hospitals using this code in CY 2009 will be able to assign costs to this new code, but expressed concern as to how CMS plans to provide payment for the years before claims data are available.

Response: Typically, our process for providing payment for CPT codes that are newly recognized under the OPPS for payment in the upcoming calendar year is to provide interim APC assignments in the final rule with comment period for that upcoming year. The APC assignment of these codes is then open to comment on that final rule. We note that there are circumstances regarding the new CPT code referenced by the commenter, CPT 93306 (Echocardiography, transthoracic, real-time with image documentation (2D), includes M-mode recording, when performed, complete, with spectral Doppler echocardiography, and with color flow Doppler echocardiography), that contributed to our CY 2009 interim APC assignment for that code. There were also several factors that contributed to our decision regarding the final APC assignment for CPT code 93307 for CY 2009.

First, as discussed above in this section, in CY 2008, we implemented HCPCS C-codes for hospitals to identify echocardiography procedures provided with contrast, or without contrast followed by with contrast. As these data are not yet available for ratesetting for CY 2009, we used the same process for CY 2009 as we did for CY 2008 to separately identify echocardiography services provided with contrast and those provided without contrast.

Second, the American Medical Association (AMA) revised several CPT codes in the 93000 series to more specifically describe particular services provided during echocardiography procedures. The CY 2009 descriptor for CPT code 93306 essentially includes the services described in CY 2008 by CPT codes 93307 (Echocardiography, transthoracic, real-time with image documentation (2D) with or without M-mode recording; complete); 93320 (Doppler echocardiography, pulsed wave and/or continuous wave with spectral display; complete) and 93325 (Doppler echocardiography color flow velocity mapping). Therefore, in CY 2008, the service described in CY 2009 by new CPT code 93306 is reported with three CPT codes, specifically CPT codes 93307, 93320, and 93325, and the hospital receives separate payment for CPT code 93307 through APC 0269, into which payment for the other two services is packaged. The revised CY 2009 descriptor of CPT code 93307 (Echocardiography, transthoracic, real-time with image documentation (2D), includes M-mode recording, when performed, complete, without spectral or color Doppler echocardiography) explicitly excludes services described by CPT codes 93320 and 93325.

To determine the hospital costs of CPT codes 93306 and 93307 under CY 2009 definitions for purposes of CY 2009 ratesetting, we redefined our CY 2007 single and ''pseudo'' single claims. We began by redefining the single claims for CPT code 93307 billed with packaged CPT codes 93320 and 93325 as single claims for CPT code 93306. We identified almost 600,000 CY 2007 single and ''pseudo'' single claims for CPT code 93306. We then limited the single claims for CPT code 93307 to reflect the newly revised descriptor for CY 2009, that is, those claims where CPT code 93307 was not billed with either packaged CPT code 93320 or CPT code 93325. We identified roughly 13,000 single and ''pseudo'' single claims for revised CPT code 93307.

Having created claims that reflected CY 2009 definitions, we then followed our proposed CY 2009 methodology for calculating HCPCS code-specific median costs for these echocardiography procedures with and without contrast by dividing the new set of single and ''pseudo'' single claims for CPT codes 93306 and 93307 into those billed without and with contrast agents. We first calculated a HCPCS code-specific median cost for new CPT code 93306 when it was billed without contrast. We had over 500,000 claims that fit this criterion, and the median cost for this service was approximately $425. We then calculated a HCPCS code-specific median cost for CPT code 93307 under the newly revised descriptor for CY 2009 without contrast. We had approximately 13,000 claims that fit this criterion. The median cost for this service was approximately $256.

In addition, as discussed above in this section, in CY 2008, we began providing separate payment for echocardiography services that are performed with contrast through APC 0128. In accordance with this policy and the revised and new CPT codes, we calculated a HCPCS code-specific median cost for new CPT code 93306 using the set of redefined single claims billed with contrast. Over 9,000 claims met this criterion, and the median cost for CPT code 93306 with contrast was approximately $569. Consistent with our CY 2008 policy of providing HCPCS C-codes for billing the ''with contrast'' form of the echocardiography CPT code, we identified this set of claims to represent new HCPCS code C8929 (Transthoracic echocardiography with contrast, or without contrast followed by with contrast, real-time with image documentation (2D), includes M-mode recording, when performed, complete, with spectral Doppler echocardiography, and with color flow Doppler echocardiography).

Finally, we calculated a HCPCS code-specific median cost for CPT code 93307 using single claims for CPT code 93307 under the newly revised descriptor for CY 2009 when billed with contrast. We had 168 claims that fit this criterion, and the median cost for this service was approximately $376. We identified this set of claims to represent revised HCPCS code C8923 (Transthoracic echocardiography with contrast, or without contrast followed by with contrast, real-time with image documentation (2D), includes M-mode recording, when performed, complete, without spectral or color Doppler echocardiography). Based on their HCPCS code-specific median costs, we have assigned new CPT code 93306 (with a median cost of approximately $425 based on the methodology described above in this section) without contrast to APC 0269 for CY 2009 on an interim basis. In addition, we have reassigned CPT code 93307 without contrast, using the updated CPT descriptor and the criteria described above in this section to develop a median cost of approximately $256, to APC 0697 for CY 2009. We have assigned new HCPCS code C8929 on an interim basis and revised HCPCS code C8923 on a final basis to APC 0128. All codes with interim assignments are designated with comment indicator ''NI'' in Addendum B to this final rule with comment period, and their OPPS treatment is open to comment in this final rule with comment period.

Comment: One commenter disagreed with the proposed payment for fetal echocardiography services in general, while several other commenters suggested that the proposed assignment of CPT code 76825 (Echocardiography,

fetal, cardiovascular system, real time with image documentation (2D), with or without M-mode recording) to APC 0266 (Level II Diagnostic and Screening Ultrasound) and CPT code 76826 (Echocardiography, fetal, cardiovascular system, real time with image documentation (2D), with or without M-mode recording; follow-up or repeat study) to APC 0265 (Level I Diagnostic and Screening Ultrasound) did not provide an accurate representation of the resources required by these two CPT codes. These commenters noted that the resources required to perform these procedures differ substantially from the other services included in APCs 0265 and 0266 and that resource use exceeds that for comparable studies on adults. In addition, the commenters suggested that CMS reassign CPT code 76825 to APC 0269 and CPT code 76826 to APC 0697.

Response: We agree with the commenters that the services described by CPT codes 76825 and 76826 are most appropriately grouped with the services assigned to APCs 0269 and 0697, respectively. The resource use and clinical characteristics of these fetal echocardiography services resemble those of nonfetal echocardiography services also assigned to APCs 0269 and 0697 for CY 2009. Therefore, we are reassigning CPT code 76825 to APC 0269, and CPT code 76826 to APC 0697 for CY 2009. In reference to the general comment regarding fetal echocardiography services, we note that CPT codes 76827 (Doppler echocardiography, fetal, pulsed wave and/or continuous wave with spectral display; complete) and 76828 (Doppler echocardiography, fetal, pulsed wave and/or continuous wave with spectral display; follow-up or repeat study) are also included in this general service type. We have reviewed the proposed APC assignments of these two CPT codes, and we have concluded that the clinical characteristics of these services and their HCPCS code-specific median costs from hospital claims data (approximately $92 and $77, respectively) are similar to those of other services also assigned to APC 0265, which has a final CY 2009 APC median cost of approximately $61. Therefore, in the absence of specific recommendations to move these codes to another APC or other detailed information from commenters in support of their reassignment, we believe that CPT codes 76827 and 76828 are most appropriately assigned to APC 0265 for CY 2009, as we proposed.

Comment: One commenter agreed with our procedure regarding identifying those echocardiography procedures with and without contrast until the specific HCPCS C-code data are available for ratesetting purposes. However, the commenter expressed concern that because of low utilization of contrast for echocardiography procedures, the median cost for APC 0128 may not accurately reflect all of the resources required to provide contrast echocardiography services. The commenter suggested that CMS review those echocardiography procedures that are performed with contrast and consider creating more than one APC that includes echocardiography services performed with contrast.

Response: We have reviewed the HCPCS code-specific median costs for echocardiography services performed with contrast in our CY 2007 claims data, and we continue to believe that the median cost of APC 0128 accurately reflects the hospital costs of performing echocardiography procedures with contrast. We see no need, based on clinical characteristics or median costs as reflected in the hospital claims data, to develop another APC for certain echocardiography procedures with contrast. Only two services assigned to APC 0128 for CY 2009 are significant procedures, specifically with contrast studies described by CPT code 93306 (based on the subset of claims that met our criteria described above in this section) and CPT code 93350, with median costs of approximately $569 and $537, respectively. Other echocardiography services are rarely provided with contrast to Medicare beneficiaries. Furthermore, we believe that the final OPPS coding and payment methodology for echocardiography services allows us to both adhere to the statutory requirement to create additional groups of services for procedures that use contrast agents and to continue packaged payment for contrast agents.

After consideration of the public comments received, we are finalizing our CY 2009 payment proposals for echocardiography services, with modification to reassign CPT code 93307 to APC 0697 and to assign new CPT code 93306 to APC 0269 based on their revised and new CY 2009 CPT code descriptors, respectively. In addition, we are reassigning CPT code 76825 and CPT code 76826 for fetal echocardiography services to APC 0269 and APC 0697, respectively. The final echocardiography APCs and their CY 2009 median costs are listed in Table 4 below.

TABLE 4—CY 2009 ECHOCARDIOGRAPHY APCS

Final CY 2009 APC	CY 2009 APC title	Final CY 2009 approximate APC median cost
0128	Echocardiogram with Contrast	$553
0269	Level II Echocardiogram Without Contrast Except Transesophageal	422
0270	Transesophageal Echocardiogram Without Contrast	539
0697	Level I Echocardiogram Without Contrast Except Transesophageal	249

(5) Nuclear Medicine Services

In CY 2008, we began packaging payment for diagnostic radiopharmaceuticals into the payment for the associated nuclear medicine procedure. (For a discussion regarding the distinction between diagnostic and therapeutic radiopharmaceuticals, we refer readers to the CY 2008 OPPS/ASC final rule at 72 FR 66636.) Prior to the implementation of this policy, diagnostic radiopharmaceuticals were subject to the standard OPPS drug packaging methodology whereby payments are packaged when the estimated mean per day product costs fall at or below the annual packaging threshold for drugs, biologicals, and radiopharmaceuticals.

Packaging costs into a single aggregate payment for a service, encounter, or episode-of-care is a fundamental principle that distinguishes a prospective payment system from a fee schedule. In general, packaging the costs of supportive items and services into the payment for the independent procedure or service with which they are associated encourages hospital efficiencies and also enables hospitals to manage their resources with maximum flexibility. All nuclear medicine

procedures require the use of at least one radiopharmaceutical or other radiolabeled product, and there are only a small number of radiopharmaceuticals that may be appropriately billed with each diagnostic nuclear medicine procedure. For the OPPS, we distinguish diagnostic radiopharmaceuticals from therapeutic radiopharmaceuticals for payment purposes, and this distinction is recognized in the Level II HCPCS codes for diagnostic radiopharmaceuticals that include the term ''diagnostic'' along with a radiopharmaceutical in their HCPCS code descriptors. As we stated in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66635), we believe that our policy to package payment for diagnostic radiopharmaceuticals (other than those already packaged when their per day costs are below the packaging threshold for OPPS drugs, biologicals, and radiopharmaceuticals) is consistent with OPPS packaging principles, provides greater administrative simplicity for hospitals, and encourages hospitals to use the most clinically appropriate and cost efficient diagnostic radiopharmaceutical for each study. For more background on this policy, we refer readers to discussions in the CY 2008 OPPS/ASC proposed rule (72 FR 42667 through 42672) and the CY 2008 OPPS/ASC final rule with comment period (72 FR 66635 through 66641).

For CY 2008 ratesetting, we used only claims for nuclear medicine procedures that contained a diagnostic radiopharmaceutical in calculating the median costs for APCs including nuclear medicine procedures (72 FR 66639). This is similar to the established methodology used for device-dependent APCs before claims reflecting the procedure-to-device edits were included in our claims data. For CY 2008, we also implemented claims processing edits (called procedure-to-radiolabeled product edits) requiring the presence of a radiopharmaceutical (or other radiolabeled product) HCPCS code when a separately payable nuclear medicine procedure is present on a claim. Similar to our practice regarding the procedure-to-device edits that have been in place for some time, we continually review comments and requests for changes related to these edits and, based on our review, may update the edit list during our quarterly update process if necessary. The radiopharmaceutical (and other radiolabeled product) and procedure HCPCS codes that are included in these edits can be viewed on the CMS Web site at: *http://www.cms.hhs.gov/HospitalOutpatientPPS/01_overview.asp*.

The CY 2008 OPPS claims that are subject to the procedure-to-radiolabeled product edits will not be available for setting payment rates until CY 2010 and, therefore, are not yet available to set payment rates for CY 2009. Therefore, in the CY 2009 OPPS/ASC proposed rule (73 FR 41440), we proposed to continue our established CY 2008 methodology for setting the payment rates for APCs that include nuclear medicine procedures for CY 2009. We used an updated list of radiolabeled products, including but not limited to diagnostic radiopharmaceuticals, from the procedure-to-radiolabeled product edit file to identify single and ''pseudo'' single claims for nuclear medicine procedures that also included at least one eligible radiolabeled product. Using this subset of claims, we followed our standard OPPS ratesetting methodology, discussed in section II.A. of this final rule with comment period, to calculate median costs for nuclear medicine procedures and their associated APCs.

We identified those APCs containing nuclear medicine procedures that would be subject to this methodology under our CY 2009 proposal in Table 4 of the CY 2009 OPPS/ASC proposed rule, and shown below in Table 5. As in CY 2008, when we set APC median costs based on single and ''pseudo'' single claims that also included at least one radiolabeled product on our edit file, we observed an equivalent or higher median cost than that calculated from all single and ''pseudo'' single bills. We believe that this methodology appropriately ensures that the costs of diagnostic radiopharmaceuticals are included in the ratesetting process for these APCs.

During its March 2008 meeting, the APC Panel recommended that CMS continue to package payment for diagnostic radiopharmaceuticals for CY 2009. In addition, the APC Panel recommended that CMS present data at the first CY 2009 APC Panel meeting on usage and frequency, geographic distribution, and size and type of hospitals performing nuclear medicine studies using radioisotopes in order to ensure that access to diagnostic radiopharmaceuticals is preserved for Medicare beneficiaries. We discuss, below, our response to these APC Panel recommendations along with our response to public comments.

Comment: A number of the commenters opposed CMS' proposed policy to package payment for all diagnostic radiopharmaceuticals into their associated nuclear medicine procedure. They noted that the majority of diagnostic radiopharmaceuticals are not interchangeable, and for that reason, the CMS policy of packaging all diagnostic radiopharmaceuticals into their associated nuclear medicine procedure does not foster hospital efficiencies. Some of these commenters expressed concern that packaging diagnostic radiopharmaceuticals into the payment for associated nuclear medicine procedures results in overpayment of many procedures, especially those using existing lower-cost radiopharmaceuticals, while the bundled payment would be insufficient for newer, and likely more expensive, radiopharmaceuticals.

In addition, the commenters requested that if CMS continues to package payment for diagnostic radiopharmaceuticals into payment for their associated nuclear medicine procedures, CMS should revise the nuclear medicine APCs to provide differential payments for nuclear medicine procedures when used with different radiopharmaceuticals. Several commenters identified the series of tumor/infection imaging APCs, including APCs 0406 (Level I Tumor/Infection Imaging), 0408 (Level III Tumor/Infection Imaging), and 0414 (Level II Tumor/Infection Imaging), for CMS' attention to ensure appropriate payment for low volume, high cost radiopharmaceuticals. One commenter specifically suggested a composite APC for specific combinations of a tumor imaging scan and certain diagnostic radiopharmaceuticals. Several commenters noted that there is wide variation in the costs of diagnostic radiopharmaceuticals, and that composite APCs for specific combinations of procedures and diagnostic radiopharmaceuticals would be necessary to ensure adequate payment to hospitals using expensive diagnostic radiopharmaceuticals. Other commenters suggested that the significant clinical and resource diversity of radiopharmaceuticals packaged into nuclear imaging procedures amounted to a violation of the 2 times rule. The commenters explained that just as diagnostic radiopharmaceuticals are not interchangeable, certain radiopharmaceuticals are indicated for particular types of diseases, such as cancer, and are not clinically similar to other radiopharmaceuticals used for other purposes, such as tumor imaging.

Response: We understand that the selection of a diagnostic radiopharmaceutical for a particular nuclear medicine procedure is a complex decision based on many factors, including patient-specific

factors, and that not every diagnostic radiopharmaceutical is fully interchangeable with others. However, as stated in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66617), we believe that nonspecific packaging (as opposed to selected code packaging) based on combinations of items and services observed on hospital claims is fully appropriate because of the myriad combinations of items and services that can be appropriately provided together. Under the OPPS, we package payment for ancillary, supportive, and interrelated items and services into payment for the independent services they accompany. As we discuss in section II.A.4. of this final rule with comment period, packaging promotes hospital efficiencies through numerous means, not only just through the choice of which radiopharmaceutical to use for a specific nuclear medicine scan. While all diagnostic radiopharmaceuticals may not be interchangeable, we believe that packaging the costs of diagnostic radiopharmaceuticals, however differential those costs may be, into the payment for nuclear medicine services that use these products is appropriate, whether there is one product or multiple products that could be used to furnish the particular service provided to an individual patient. The OPPS has a history of packaging items that are not necessarily interchangeable. It is our longstanding practice to package payment for nonpass-through implantable medical devices into payment for the procedure in which they are used, notwithstanding that there may be different devices or combinations of devices that could be used to furnish a service. (For a more complete discussion of the history of packaging items, we refer readers to the CY 2008 OPPS/ASC final rule with comment period at 72 FR 66639.) Therefore, in combination with our understanding that a diagnostic radiopharmaceutical is never provided without an accompanying nuclear medicine scan, we believe that it is appropriate to package the payment for all diagnostic radiopharmaceuticals into the payment for the associated nuclear medicine procedure.

With regard to suggested composites or other revisions designed to isolate specific nuclear medicine scans with a subset of diagnostic radiopharmaceuticals, we do not believe that the inability to substitute one diagnostic radiopharmaceutical for another is a compelling reason for creating composite APCs, as explained below. We developed composite APCs to provide a single payment for two or more services that are typically performed together during a single clinical encounter and that result in the provision of a complete service. Composite APCs differ from packaging. Composite APCs provide a single payment for specific combinations of independent services that would otherwise be separately payable if they were not provided together, while packaging entails associating the cost of ancillary, supportive, and interrelated services and supplies with a distinct service or composite service. Composite APCs are intended to expand the OPPS payment bundles to encourage hospital efficiencies. Providing a single payment for a specific combination of a diagnostic radiopharmaceutical with a particular nuclear medicine procedure would not constitute a composite APC and would provide no incentives for hospital efficiency. From the perspective of value-based purchasing, we see no benefit to paying for many individual diagnostic radiopharmaceutical and nuclear medicine procedure combinations over paying separately for both the item and service, beyond an appearance of bundling. Such an approach would add complexity to ratesetting and would create challenges and cost instability because payments would be based on data from small numbers of claims for certain HCPCS code pairs. As noted above, there are many items and services that we package under the OPPS that are similarly not interchangeable with other related items and services.

We understand that by packaging payment for a range of products such as diagnostic radiopharmaceuticals, payment for the associated nuclear medicine procedure may be more or less than the hospital's cost for these services in a given case. As stated in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66639), we note that the most fundamental characteristic of a prospective payment system is that payment is to be set at an average for the service, which, by definition, means that some services are paid more or less than average. As explained above in this section, in order to more accurately account for these packaged services, for CY 2009 ratesetting, we used only correctly coded claims for nuclear medicine procedures that contained a radiolabeled product in calculating the CY 2009 median costs for APCs including nuclear medicine procedures.

We discussed in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66640) the issue of variability in radiopharmaceutical costs or other packaged costs creating potential 2 times violations. We note that 2 times violations are specific to the total cost of the primary service, nuclear medicine scans in this case, including packaged costs. We have performed our standard review of the APCs using updated CY 2007 claims data for this final rule with comment period and, as a result, have not identified any 2 times violations in the APCs containing nuclear medicine procedures, when calculated as described above. (For more information on the 2 times rule, we refer readers to sections III.B.2. and 3. of this final rule with comment period.)

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, to set the payment rates for APCs containing nuclear medicine procedures based on those claims that also contain a radiolabeled product to ensure that the costs of diagnostic radiopharmaceuticals are appropriately packaged into the costs of nuclear medicine procedures. The CY 2009 APCs to which nuclear medicine procedures are assigned and for which we required radiolabeled products on the nuclear medicine procedure claims used for ratesetting are displayed in Table 5 below.

Comment: Several commenters cited concerns regarding the proposed APC assignments and proposed payment rates for a number of the nuclear medicine procedures. These commenters noted that the APC assignments of certain nuclear medicine procedures led to clinically diverse procedures being grouped together for payment purposes. Furthermore, they added that, in some cases, nuclear medicine procedures with very different resource requirements, such as positron emission tomography (PET) and PET/computed tomography (CT) scans, were grouped together.

Specifically, one commenter requested that (1) CPT code 78645 (Cerebrospinal fluid flow, imaging (not including introduction of material); shunt evaluation) be reassigned from APC 0403 (Level I Nervous System Imaging) to APC 0402 (Level II Nervous System Imaging); (2) CPT code 78608 (Brain imaging, positron emission tomography (PET); metabolic evaluation) be reassigned from APC 0308 (Non-Myocardial Positron Emission Tomography (PET) Imaging) to a more appropriate APC; and (3) CPT codes 78000 (Thyroid uptake; single determination) and 78001 (Thyroid uptake; multiple determinations) be reassigned from APC 0389 (Level I Non-imaging Nuclear Medicine) to APC 0392

(Level II Non-imaging Nuclear Medicine).

Response: We have performed our annual review of all the procedures and APC groupings for this final rule with comment period based on updated CY 2007 claims data. The HCPCS code-specific median cost of CPT code 78645 is approximately $208 based on 425 single claims, which is reasonably close to the median cost of APC 0403 of approximately $182, where we proposed to assign the service. The commenter recommended assignment of CPT code 78645 to APC 0402, in the same nervous system imaging series, with an APC median cost of approximately $536. Based on this review of costs, we continue to believe CPT code 78645 is most appropriately assigned to APC 0403 as we proposed, as the HCPCS code-specific median cost of CPT code 78645 is more comparable to the level of hospital resources that are reflected in the median cost of APC 0403 than the level of resources reflected in the median cost of APC 0402.

There is a single APC for nonmyocardial PET scans, APC 0308, with a median cost of approximately $1,014. The median costs of all CPT codes assigned to that APC, including CPT codes for PET scans and PET/CT scans and CPT code 78608 for a metabolic evaluation of the brain using PET, range from approximately $891 to $1,164, demonstrating very significant resource similarity. Therefore, we do not agree with commenters that the proposed configuration of APC 0308 should be modified because all of these nonmyocardial services that use PET technology demonstrate very similar costs and share clinical similarity as well.

With regard to the thyroid scans described by CPT codes 78000 and 78001, these procedures have HCPCS code-specific median costs of approximately $109 and $117, respectively, very close to the median cost of APC 0389 of approximately $115, where we proposed to assign them. There is only one other service, with one single claim, assigned to APC 0389, other than an unlisted code whose data do not contribute to ratesetting for the APC. Therefore, these two CPT codes determine the median cost of APC 0389. In contrast, the median cost of APC 0392, their recommended placement according to the commenter, is approximately $161, substantially greater than the median costs of the two thyroid studies. Therefore, we do not believe any changes to the proposed APC assignments of CPT codes 78000 or 78001 are justified.

Comment: Several commenters disagreed with the proposed payment rate for myocardial PET scan services because they believed that the payment rate is based on inadequate hospital data consisting of fewer than 2,800 claims. They stated that the CY 2009 proposed payment rate of approximately $1,143 for myocardial PET scan services decreased 18 percent compared to the CY 2008 payment rate of approximately $1,400 for these services. The commenters believed that the proposed payment rate for APC 0307 (Myocardial Positron Emission Tomography (PET) Imaging) is substantially less than the cost of providing the services involved, including the use of a relatively costly diagnostic radiopharmaceutical. They urged CMS to accept external data in light of the limited hospital claims data in order to set the payment rate for myocardial PET scans. If external data are not used for CY 2009 ratesetting, the commenters alternatively recommended that CMS freeze the payment rate for myocardial PET scans at the CY 2008 payment rate of approximately $1,400 for CY 2009 to ensure greater stability in payment. Some commenters asserted that the payment rates for myocardial PET studies have shown significant volatility over the past 4 years, and requested that CMS refrain from implementing the proposed payment reduction and work towards stabilizing the payment rate. One commenter suggested placing all three myocardial PET scan CPT codes, that is 78459, 78491, and 78492, in New Technology APC 1516 (New Technology—Level XVI ($1400—$1500)), with a proposed CY 2009 payment rate of $1,450, for at least 2 years, to stabilize the payment for these services. Another commenter urged CMS to carefully review the claims data in setting the final payment rate for APC 0307.

Response: Analysis of the CY 2007 hospital outpatient claims data revealed that the HCPCS code-specific median costs for all three myocardial PET scan procedures that we proposed to retain in APC 0307 are about the same. Specifically, the HCPCS code-specific median costs of the three myocardial PET scan procedures are as follows: (1) For CPT code 78459, the median cost is approximately $924 based on 118 single claims; (2) For CPT code 78491, the median cost is approximately $1,410 based on 28 single claims; and (3) For CPT code 78492, the median cost is approximately $1,142 based on 1,809 single claims. In setting the CY 2009 payment rates for the myocardial PET scan services, according to our standard ratesetting methodology for clinical APCs to which nuclear medicine procedures are assigned, we used only those claims with a radiolabeled product reported, to ensure correctly coded claims. We packaged the cost of the diagnostic radiopharmaceuticals used in the studies into payment for the scans, as discussed in detail in section V.B.2.c. of this final rule with comment period. We believe that all of the myocardial PET scan procedures are appropriately assigned to APC 0307 based on consideration of their clinical characteristics and resource costs.

While we utilized external data in the early years of the OPPS for ratesetting for a few services, we now rely on the cost data from claims as the system has matured and we have gained additional experience in ratesetting for HOPD services. The foundation of a system of relative weights like the OPPS is the relativity of the costs of all services to one another, as derived from a standardized system that uses standardized inputs and a consistent methodology. Adoption of a ratesetting methodology for APC 0307 that is different from ratesetting for other APCs containing nuclear medicine procedures would undermine this relativity. We believe that we have sufficient claims data for the myocardial PET scan services upon which to base the CY 2009 final payment rates. In fact, the total number of claims for these services has increased steadily over the past several years. There were 2,576 claims for CY 2004; 2,874 claims for CY 2005; 3,094 claims for CY 2006; and 3,537 claims for CY 2007, the most recent year of claims available for CY 2009 ratesetting. The historical variability in OPPS payment for myocardial PET scan services does not appear to have affected the access of Medicare beneficiaries to these services. Given that these services have been assigned to APC 0307 since CY 2007, with payment based on the most current hospital claims and Medicare cost report data, we believe we are providing a stable and consistent payment methodology that appropriately reflects the hospital resources required for myocardial PET scans. Therefore, we see no reason to ''freeze'' the payment for myocardial PET scans at the CY 2008 rate when we have updated hospital claims information available for ratesetting.

Further, we do not agree with the recommendation to assign myocardial PET scan services to New Technology APC 1516, because these services are established OPPS services of moderate volume, with historical claims data available for a number of past years, and they do not fit the general criteria for services considered to be new

technology services under the OPPS. We continue to believe that assignment of CPT codes 78459, 78491, and 78492 to APC 0307 ensures appropriate payment for the services. Assignment to New Technology APC 1516, which has a CY 2009 payment rate of $1,450, would result in overpayment for myocardial PET scan services according to our most recent hospital cost data.

Comment: One commenter expressed concern with the proposed assignment of the multiple myocardial PET scan procedure, specifically CPT code 78492, to the same APC as the single myocardial PET scan procedure, specifically CPT code 78491, and believed this approach would significantly underpay providers for multiple scanning procedures. The commenter stated that multiple scans require greater hospital resources, as well as increased scan times, than single scans, and argued that the proposal would result in underpayment to the facilities providing multiple scan services. The commenter further asserted that the proposed significant reduction in payment from CY 2008 to CY 2009 would impact patient access to these services. The commenter urged CMS to reevaluate the claims data for APC 0307 to distinguish between the resources necessary to provide single versus multiple imaging studies before finalizing the proposed CY 2009 payment rate for myocardial PET scan services.

Response: Based on our CY 2007 claims data used for this final rule with comment period, the HCPCS code-specific median costs for all three myocardial PET scan services that we proposed to assign to APC 0307 are similar. Approximately 93 percent of the CY 2007 claims for myocardial PET scans are for CPT code 78492 for multiple scans, while only approximately 1 percent are for CPT code 78491, the single scan CPT code referenced by the commenter. The median cost for CPT code 78492 of approximately $1,142 is actually less than the median cost of CPT code 78491 of approximately $1,410, a counterintuitive finding that is likely the result of very few claims for CPT code 78491 from a small number of hospitals. Nevertheless, the assignment of single myocardial PET scan procedures to the same APC as multiple scan procedures has very little effect on the payment rate for APC 0307, which is largely driven by the majority of claims for multiple scan procedures. As we explained previously in the CY 2007 OPPS/ASC final rule with comment period (71 FR 68040 through 68041) and the CY 2008 OPPS/ASC final rule with comment period (72 FR 66718), based on the CY 2007 claims data used for this final rule with comment period, we believe that the assignment of CPT codes 78459, 78491, and 78492 to a single clinical APC for CY 2009 is appropriate because the CY 2007 claims data used for CY 2009 ratesetting do not support a payment differential between single and multiple myocardial PET scan services.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, to continue to assign CPT codes 78459, 78491, and 78492 for myocardial PET scan services to APC 0307, with a final APC median cost of approximately $1,131 for CY 2009.

After consideration of the public comments received, we are finalizing our CY 2009 proposals, without modification, for the configurations of APCs containing nuclear medicine procedures. The final APC assignments of all CPT codes for nuclear medicine procedures are displayed in Addendum B to this final rule with comment period.

Comment: With regard to the procedure-to-radiolabeled product claims processing edits, some commenters suggested that CMS create a modifier or a HCPCS code for hospitals to use when the hospital performs the nuclear medicine scan but does not supply the radiolabeled product. The commenters noted that this would be an appropriate situation for a reduction to payment for the nuclear medicine procedure in order to offset the packaged diagnostic radiopharmaceutical costs not incurred by the hospital when the hospital does not provide the radiopharmaceutical.

Response: It continues to be our expectation that, in accordance with the hospital bundling requirements, hospitals will provide both the diagnostic radiopharmaceutical and the nuclear medicine procedure because administration of the diagnostic radiopharmaceutical is an essential part of the nuclear medicine study. As we stated in the April 7, 2000 OPPS final rule (65 FR 18440), ''All diagnostic tests that are furnished by a hospital, directly or under arrangements, to a registered hospital outpatient during an encounter at a hospital are subject to the bundling requirements.'' We further explained that the hospital is not responsible for billing the diagnostic test if a hospital patient leaves the hospital and goes elsewhere to obtain the diagnostic test. However, when reporting a nuclear medicine procedure provided in the HOPD, the administration of the radiopharmaceutical is not separately reported because the administration is considered to be integral to the performance of the nuclear medicine procedure. Therefore, we would expect that the radiopharmaceutical and the accompanying nuclear medicine procedure that make up the complete service ''furnished to hospital patients, must be provided directly or under arrangements by the hospital and only the hospital may bill the program,'' as we also stated in the August 2, 2000 OPPS final rule (65 FR 18440).

We have provided a specific accommodation for one rare circumstance where the HOPD does not furnish a diagnostic radiopharmaceutical (or other radiolabeled product) prior to performing a nuclear medicine procedure. In the particular case where a Medicare beneficiary receives a radiolabeled product as a hospital inpatient and then requires a nuclear medicine procedure as a hospital outpatient but does not require administration of a diagnostic radiopharmaceutical, as of October 2008, we have instructed hospitals to report HCPCS code C9898 (Radiolabeled product provided during a hospital inpatient stay) with a token charge of less than $1.01 so that the claims for the nuclear medicine procedure may process to payment. In this situation, which we have been told is rare, the patient would not receive a radiolabeled product in the HOPD. We believe the hospital should receive payment for the nuclear medicine procedure provided in the HOPD and the hospital bundling rules would not present a problem because the radiolabeled product furnished to an inpatient was not provided for purposes of the nuclear medicine study. HCPCS code C9898 is recognized as a radiolabeled product code for purposes of the procedure-to-radiolabeled product edits incorporated in the I/OCE. However, we do not believe that the development of a modifier, additional HCPCS codes, or an offset methodology for other circumstances, such as the patient receiving a radiopharmaceutical in the physician's office when the nuclear medicine procedure is provided in the HOPD, would be appropriate because of the hospital bundling requirements. Moreover, in those situations where an exception is made, such as when a beneficiary is administered a therapeutic radiopharmaceutical as part of a hospital inpatient stay and then returns to the HOPD for a nuclear medicine scan without needing a diagnostic radiopharmaceutical to be administered for the study, we do use

these claims for ratesetting purposes. We believe that just as these situations are representative of the use of a nuclear medicine scan, it is also appropriate to include them for ratesetting purposes.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, to provide payment for nuclear medicine procedures on OPPS claims that pass the procedure-to-radiolabeled product edits incorporated in the I/OCE, without additional provisions for bypassing those edits or offsetting the packaged diagnostic radiopharmaceutical costs included in the procedure payment if the radiopharmaceutical is administered outside the HOPD.

In summary, because we are continuing to package payment for diagnostic radiopharmaceuticals in CY 2009 as discussed further in section V.B.2.c. of this final rule with comment period, we are finalizing our CY 2009 proposal, without modification, to set the nuclear medicine procedure payment rates based on those correctly coded claims that pass the claims processing edits that ensure that a radiolabeled product is included on the nuclear medicine procedure claim. We also are finalizing the proposed APC configurations for those APCs to which nuclear medicine procedures are assigned. In doing so, we are accepting the APC Panel's March 2008 recommendation to continue to package payment for diagnostic radiopharmaceuticals for CY 2009. In addition, we are accepting another APC Panel recommendation from March 2008 to present data at the first CY 2009 APC Panel meeting on usage and frequency, geographic distribution, and size and type of hospitals performing nuclear medicine studies using radioisotopes in order to ensure that access to diagnostic radiopharmaceuticals is preserved for Medicare beneficiaries.

TABLE 5—APCS WHERE NUCLEAR MEDICINE PROCEDURES ARE ASSIGNED WITH MEDIAN COSTS CALCULATED FROM CLAIMS WITH AN ASSOCIATED RADIOLABELED PRODUCT

Final CY 2009 APC	CY 2009 APC Title
0307	Myocardial Positron Emission Tomography (PET) imaging.
0308	Non-Myocardial Positron Emission Tomography (PET) imaging.
0377	Level II Cardiac Imaging.
0378	Level II Pulmonary Imaging.
0389	Level I Non-Imaging Nuclear Medicine.
0390	Level I Endocrine Imaging.
0391	Level II Endocrine Imaging.
0392	Level II Non-imaging Nuclear Medicine.
0393	Hematologic Processing & Studies.
0394	Hepatobiliary Imaging.
0395	GI Tract Imaging.
0396	Bone Imaging.
0397	Vascular Imaging.
0398	Level I Cardiac Imaging.
0400	Hematopoietic Imaging.
0401	Level I Pulmonary Imaging.
0402	Level II Nervous System Imaging.
0403	Level I Nervous System Imaging.
0404	Renal and Genitourinary Studies.
0406	Level I Tumor/Infection Imaging.
0408	Level III Tumor/Infection Imaging.
0414	Level II Tumor/Infection Imaging.

(6) Hyperbaric Oxygen Therapy

Since the implementation of the OPPS in August 2000, the OPPS has recognized HCPCS code C1300 (Hyperbaric oxygen under pressure, full body chamber, per 30 minute interval) for hyperbaric oxygen therapy (HBOT) provided in the hospital outpatient setting. In the CY 2005 OPPS final rule with comment period (69 FR 65758 through 65759), we finalized a ''per unit'' median cost calculation for APC 0659 (Hyperbaric Oxygen) using only claims with multiple units or multiple occurrences of HCPCS code C1300 because delivery of a typical HBOT service requires more than 30 minutes. We observed that claims with only a single occurrence of the code were anomalies, either because they reflected terminated sessions or because they were incorrectly coded with a single unit. In the same rule, we also established that HBOT would not generally be furnished with additional services that might be packaged under the standard OPPS APC median cost methodology. This enabled us to use claims with multiple units or multiple occurrences. Finally, we also used each hospital's overall CCR to estimate costs for HCPCS code C1300 from billed charges rather than the CCR for the respiratory therapy or other departmental cost centers. The comments on the CY 2005 OPPS proposed rule effectively demonstrated that hospitals report the costs and charges for HBOT in a wide variety of cost centers. Since CY 2005, we have used this methodology to estimate the median cost for HBOT. The median costs of HBOT using this methodology have been relatively stable for the last 4 years. In the CY 2009 OPPS/ASC proposed rule (73 FR 41442), we proposed to continue using the same methodology to estimate a ''per unit'' median cost for HCPCS code C1300 for CY 2009 of approximately $103, using 71,866 claims with multiple units or multiple occurrences.

Comment: One commenter suggested that the payment rate per unit for HBOT was too low relative to the commenter's incurred costs for the hyperbaric oxygen and equipment. The commenter further encouraged CMS to instruct providers to be sure their charges are appropriate and offer providers specific billing guidance and instruction by providing examples of charging by the ''unit'' for multiple 30 minute sessions. The commenter noted that per unit billing can be confusing.

Response: In response to the comment on the adequacy of the proposed payment rate, the proposed methodology represents our best

approach to estimating a valid median cost upon which to base a payment rate for HBOT services for CY 2009, in the context of the per 30 minute time period specified in the HCPCS code descriptor for HCPCS code C1300. All OPPS payment rates are based on the middle or median estimated cost of providing a service or group of services. For any given service or group of services, we expect that some hospitals will incur costs higher than the payment rate and some less.

We agree with the commenter on the importance of having accurate claims data as part of our median cost calculation and that unit billing can be challenging. For all services, we do expect hospitals participating in the OPPS to be familiar with CPT and HCPCS code descriptors and to bill accordingly. We provide general direction on billing units for HCPCS codes under the OPPS in the Medicare Claims Processing Manual, Pub. 100–04, Chapter 4, Section 20.4. We note that HCPCS code C1300 has been in use for some time. Our analysis of claims for HCPCS code C1300 for the CY 2005 OPPS proposed rule indicated that many hospitals understand unit billing for HCPCS code C1300. We observed that most hospitals billed 3 or 4 units for an HBOT session, and these multiple unit claims are the claims we used for rateseting for CY 2009.

After consideration of the public comment received, we are finalizing our CY 2009 proposal, without modification, to continue to use our established ratesetting methodology for calculating the median cost of APC 0659 for payment of HBOT, with a final CY 2009 APC median cost of approximately $101.

(7) Payment for Ancillary Outpatient Services When Patient Expires (–CA Modifier)

In the November 1, 2002 final rule with comment period (67 FR 66798), we discussed the creation of the new HCPCS–CA modifier to address situations where a procedure on the OPPS inpatient list must be performed to resuscitate or stabilize a patient (whose status is that of an outpatient) with an emergent, life-threatening condition, and the patient dies before being admitted as an inpatient. In Transmittal A–02–129, issued on January 3, 2003, we instructed hospitals on the use of this modifier. For a complete description of the history of the policy and development of the payment methodology for these services, we refer readers to the CY 2007 OPPS/ASC final rule with comment period (71 FR 68157 through 68158).

In the CY 2009 OPPS/ASC proposed rule (73 FR 41442), we proposed to continue to use for CY 2009 our established ratesetting methodology for calculating the median cost of APC 0375 (Ancillary Outpatient Services When Patient Expires), and we proposed to continue to make one payment under APC 0375 for the services that meet the specific conditions for using modifier –CA. We proposed to calculate the relative payment weight for APC 0375 by using all claims reporting a status indicator ''C'' procedure appended with the –CA modifier, using estimated costs from claims data for line-items with a HCPCS code assigned status indicator ''G,'' ''H,'' ''K,'' ''N,'' ''Q1,'' ''Q2,'' ''Q3,'' ''R,'' ''S,'' ''T,'' ''U,'' ''V,'' and ''X'' and charges for packaged revenue codes without a HCPCS code. We continue to believe that this methodology results in the most appropriate aggregate median cost for the ancillary services provided in these unusual clinical situations.

As discussed in the CY 2009 OPPS/ASC proposed rule (73 FR 41442), we believe that hospitals are reporting the –CA modifier according to the policy initially established in CY 2003. We noted that the claims frequency for APC 0375 has been relatively stable over the past few years. Although the proposed median cost for APC 0375 was slightly lower for CY 2009 than the final median cost for CY 2008, generally it has increased significantly in recent years. Variation in the median cost for APC 0375 is expected because of the small number of claims and because the specific cases are grouped by the presence of the –CA modifier appended to an inpatient procedure and not according to the standard APC criteria of clinical and resource homogeneity. Cost variation for APC 0375 from year to year is anticipated and acceptable as long as hospitals continue judicious reporting of the –CA modifier. Table 5 of the CY 2009 OPPS/ASC proposed rule showed the number of claims and the median cost for APC 0375 from CY 2006 to CY 2008. For CY 2009, the final median cost for APC 0375 of approximately $5,545 is slightly higher than the CY 2008 and proposed CY 2009 median costs.

We did not receive any public comments regarding this proposal. Therefore, we are finalizing our CY 2009 proposal, without modification, to continue to use our established ratesetting methodology for calculating the median cost of APC 0375, which has a final CY 2009 APC median cost of approximately $5,545.

Table 6 below shows the number of claims and the final median cost for APC 0375 from CY 2006 to CY 2009.

TABLE 6—CLAIMS FOR ANCILLARY OUTPATIENT SERVICES WHEN PATIENT EXPIRES (–CA MODIFIER) FOR CYS 2006 THROUGH 2009

Prospective payment year	Number of claims	Final approximate APC median cost
CY 2006	370	$2,717
CY 2007	260	3,549
CY 2008	183	4,945
CY 2009	168	5,545

e. Calculation of Composite APC Criteria-Based Median Costs

As discussed in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66613), we believe it is important that the OPPS enhance incentives for hospitals to provide only necessary, high quality care and to provide that care as efficiently as possible. For CY 2008, we developed composite APCs to provide a single payment for groups of services that are typically performed together during a single clinical encounter and that result in the provision of a complete service. Bundling payment for multiple independent services into a single OPPS payment in this way enables hospitals to manage their resources with maximum flexibility by monitoring and adjusting the volume and efficiency of services themselves. An additional advantage to the composite APC model is that we can use data from correctly coded multiple procedure claims to calculate payment rates for the specified combinations of services, rather than

relying upon single procedure claims which typically are low in volume and/or incorrectly coded. We refer readers to section II.A.4. of the CY 2008 OPPS/ASC final rule with comment period for a full discussion of the development of the composite APC methodology (72 FR 66611 through 66614 and 66650 through 66652).

We continue to consider the development and implementation of larger payment bundles, such as composite APCs, a long-term policy objective for the OPPS and continue to explore other areas where this payment model may be utilized. In developing the CY 2009 OPPS/ASC proposed rule, we followed the same methodology for identifying possible composite APCs as we did for CY 2008. Specifically, we examined the multiple procedure claims that we could not convert to single procedure claims to identify common combinations of services for which we have relatively few single procedure claims. We then performed a clinical assessment of the combinations that we identified to determine whether our findings were consistent with our understanding of the services furnished. In addition, consistent with our stated intention to involve the APC Panel in our future exploration of how we can develop encounter-based and episode-based payment groups (72 FR 66614), we also specifically explored a possible composite APC for radioimmunotherapy in response to a recommendation of the APC Panel from its September 2007 meeting.

After performing claims analysis and clinical assessments as described earlier, and taking into consideration the recommendation of the APC Panel from its March 2008 meeting that we continue pursuing a radioimmunotherapy composite APC, we did not propose a composite APC payment for radioimmunotherapy for CY 2009, as discussed further in section V.B.4. of this final rule with comment period. However, in the CY 2009 OPPS/ASC proposed rule (73 FR 41450), we proposed to expand the composite APC model to one new clinical area for CY 2009, multiple imaging services, as described in detail in section II.A.2.e.(5) of this final rule with comment period. We also proposed to continue for CY 2009 our established composite APC policies for extended assessment and management, low dose rate (LDR) prostate brachytherapy, cardiac electrophysiologic evaluation and ablation, and mental health services, as discussed in sections II.A.2.e.(1), II.A.2.e.(2), II.A.2.e.(3), and II.A.2.e.(4), respectively, of this final rule with comment period (73 FR 41443).

Comment: Many commenters supported the development and implementation of composite APCs as a mechanism to encourage efficient and effective care and to use multiple procedure claims that otherwise would not be available for ratesetting because they include multiple separately payable procedures furnished on the same date of service. The commenters remarked that the number of single bills available for ratesetting for certain procedures (particularly those requiring coding combinations to represent a complete service) remain a very small percentage of total billed claims, and recommended that CMS develop composite APCs in several clinical areas in order to improve OPPS payment accuracy and include more correctly coded, multiple procedure claims in ratesetting. For example, several commenters urged CMS to create composite APCs for procedures involving cardiac resynchronization therapy defibrillator (CRT–D) or cardiac resynchronization therapy pacemaker (CRT–P) devices. The commenters argued that the procedures involved in the implantation of CRT–D and CRT–P devices are major, separately payable services that, if correctly coded, are always represented by the submission of at least two CPT codes. A number of commenters recommended the development of ''composite'' APCs to address their concerns regarding the proposed packaging of certain items and services, specifically suggesting the creation of ''composite'' APC payments for various combinations of individual services and specific packaged items or services, such as bronchoscopy procedures with endobronchial ultrasound or nuclear medicine procedures combined with specific diagnostic radiopharmaceuticals.

In contrast to the commenters requesting that CMS create additional composite APCs, several commenters remarked generally that CMS should proceed cautiously as it expands service bundling, and should not implement additional composite methodologies until adequate data are available to evaluate the effectiveness and impact on beneficiary access to care of the composite policies implemented in CY 2008. Some commenters urged CMS to reevaluate the concept of composite APCs to ensure they are truly meeting the objective of encouraging more cost efficient care, are not unfairly penalizing hospitals because of the acuity of the patients they treat, and are not making the system unnecessarily complex.

Response: We agree with commenters that the composite APC model is an important and effective mechanism for promoting efficiency and paying more appropriately for packages of services. The composite payment methodology also enables us to use more claims data and generates payment rates that more accurately reflect the reality of how hospitals furnish services. Therefore, we will carefully explore the commenters' suggestions for additional composite APCs when we assess what payment policy changes might be appropriate in the future. We also will consider bringing these and other composite ideas to the APC Panel for further discussion.

We believe we are proceeding at an appropriate pace in the development of composite APCs. We did not receive any comments on the CY 2009 OPPS/ASC proposed rule indicating there were access problems resulting from the implementation of composite APCs in CY 2008. Furthermore, we believe that the composite payment methodology improves the accuracy of OPPS payment, and we would not expect access problems or other difficulties to arise from a methodology that utilizes more complete and valid claims in ratesetting than our standard APC ratesetting methodology. We also do not agree that the composite methodology makes the OPPS payment system unnecessarily complex, because it utilizes data from multiple procedure claims as reported by hospitals and does not require hospitals to change their coding and billing practices in any way.

As discussed in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66650), our initial work on developing composite APCs arose, in part, from our attempts to develop an approach to utilize common multiple procedure claims that were not otherwise available for ratesetting because they included multiple separately payable procedures furnished on the same date of service. Composite APCs were designed to expand the payment bundles of the OPPS by providing a single payment for the totality of care provided in a hospital outpatient encounter that would be reported with two or more HCPCS codes for otherwise separately payable component services. Similarly, in CY 2008 the expanded unconditional packaging of items and services also allowed us to use more claims data from what would otherwise be multiple procedure claims and to expand the OPPS payment bundles. We do not consider some of the recommendations by commenters to provide unique payments for specific combinations of separately payable services with certain packaged items and services to be

''composite'' APCs that move toward a single payment for that totality of a service because, in such cases, we are already providing only a single payment for the totality of the service, including the packaged items and services. Such an approach would lead to smaller OPPS payment bundles, would not utilize additional multiple procedure claims, and would reduce the incentives for hospital efficiency created by packaging payment.

After consideration of the public comments received, for CY 2009 we are finalizing our proposal, without modification, to continue our established composite APC policies for extended assessment and management, LDR prostate brachytherapy, cardiac electrophysiologic evaluation and ablation, and mental health services, as discussed in sections II.A.2.e.(1), II.A.2.e.(2), II.A.2.e.(3), and II.A.2.e.(4), respectively, of this final rule with comment period. We also are implementing a new composite payment methodology for multiple imaging services provided on the same date of service, as discussed further in section II.A.2.e.(5) of this final rule with comment period.

(1) Extended Assessment and Management Composite APCs (APCs 8002 and 8003)

In the CY 2009 OPPS/ASC proposed rule (73 FR 41443), we proposed to continue to include composite APC 8002 (Level I Extended Assessment and Management Composite) and composite APC 8003 (Level II Extended Assessment and Management Composite) in the OPPS for CY 2009. In addition, we proposed to include HCPCS code G0384 (Level 5 hospital emergency department visit provided in a type B emergency department) in the criteria that determine eligibility for payment for composite APC 8003 (73 FR 41443) for CY 2009. For CY 2008, we created these two new composite APCs to provide payment to hospitals in certain circumstances when extended assessment and management of a patient occur (an extended visit). In most circumstances, observation services are supportive and ancillary to the other services provided to a patient. In the circumstances when observation care is provided in conjunction with a high level visit or direct admission and is an integral part of a patient's extended encounter of care, payment is made for the entire care encounter through one of two composite APCs as appropriate.

As defined for the CY 2008 OPPS, composite APC 8002 describes an encounter for care provided to a patient that includes a high level (Level 5) clinic visit or direct admission to observation in conjunction with observation services of substantial duration (72 FR 66648 through 66649). Composite APC 8003 describes an encounter for care provided to a patient that includes a high level (Level 4 or 5) emergency department visit or critical care services in conjunction with observation services of substantial duration. HCPCS code G0378 (Observation services, per hour) is assigned status indicator ''N,'' signifying that its payment is always packaged. As noted in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66648 through 66649), the I/OCE evaluates every claim received to determine if payment through a composite APC is appropriate. If payment through a composite APC is inappropriate, the I/OCE, in conjunction with the PRICER, determines the appropriate status indicator, APC, and payment for every code on a claim. The specific criteria that must be met for the two extended assessment and management composite APCs to be paid are provided below in the description of the claims that were selected for the calculation of the proposed CY 2009 median costs for these composite APCs. The general composite APC logic and observation care reporting criteria have also been included in updates to the Claims Processing and Benefit Policy Manuals through Change Request 5916 (Transmittals 82 and 1145), dated February 8, 2008, and we did not propose to change these criteria for the CY 2009 OPPS (73 FR 41443).

When we created composite APCs 8002 and 8003 for CY 2008, we retained as general reporting requirements for all observation services those criteria related to physician order and evaluation; documentation; and observation beginning and ending time as listed in section XI. of the CY 2008 final rule with comment period (72 FR 66812). In the CY 2009 OPPS/ASC proposed rule (73 FR 41443), we did not propose to change these reporting requirements for the CY 2009 OPPS. These are more general requirements that encourage hospitals to provide medically reasonable and necessary care and help to ensure the proper reporting of observation services on correctly coded hospital claims that reflect the full charges associated with all hospital resources utilized to provide the reported services.

As noted in detail in sections IX.C. and XI. of the CY 2008 OPPS/ASC final rule with comment period (72 FR 66802 through 66805 and 66814), we saw a normal and stable distribution of clinic and emergency department visit levels. We do not expect to see an increase in the proportion of visit claims for high level visits as a result of the new composite APCs adopted for CY 2008 and proposed for CY 2009. Similarly, we expect that hospitals will not purposely change their visit guidelines or otherwise upcode clinic and emergency department visits reported with observation care solely for the purpose of composite payment. As stated in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66648), we expect to carefully monitor any changes in billing practices on a service-specific and hospital-specific level to determine whether there is reason to request that Quality Improvement Organizations (QIOs) review the quality of care furnished, or to request that Benefit Integrity contractors or other contractors review the claims against the medical record. However, we will not have claims available for analysis that reflect the new CY 2008 payment policy for the extended assessment and management composite APCs until the CY 2010 annual OPPS rulemaking cycle.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41444), we proposed to continue the extended assessment and management composite APC payment methodology for APCs 8002 and 8003 for CY 2009. As stated earlier, we also proposed to continue the general reporting requirements for observation services reported with HCPCS code G0378. We continue to believe that the composite APCs 8002 and 8003 and the related policies provide the most appropriate means of paying for these services. We proposed to calculate the median costs for APCs 8002 and 8003 using all single and ''pseudo'' single procedure claims for CY 2007 that meet the criteria for payment of each composite APC.

Specifically, to calculate the proposed median costs for composite APCs 8002 and 8003, we selected single and ''pseudo'' single claims that met each of the following criteria:

1. Did not contain a HCPCS code to which we have assigned status indicator ''T'' that is reported with a date of service 1 day earlier than the date of service associated with HCPCS code G0378. (By selecting these claims from single and ''pseudo'' single claims, we had already assured that they would not contain a code for a service with status indicator ''T'' on the same date of service.);

2. Contained 8 or more units of HCPCS code G0378; and

3. Contained one of the following codes:

• In the case of composite APC 8002, HCPCS code G0379 (Direct admission of patient for hospital observation care) on the same date of service as G0378; or CPT code 99205 (Office or other outpatient visit for the evaluation and management of a new patient (Level 5)); or CPT code 99215 (Office or other outpatient visit for the evaluation and management of an established patient (Level 5)) provided on the same date of service or one day before the date of service for HCPCS code G0378.

• In the case of composite APC 8003, CPT code 99284 (Emergency department visit for the evaluation and management of a patient (Level 4)); CPT code 99285 (Emergency department visit for the evaluation and management of a patient (Level 5)); CPT code 99291 (Critical care, evaluation and management of the critically ill or critically injured patient; first 30–74 minutes); or HCPCS code G0384 provided on the same date of service or one day before the date of service for HCPCS code G0378. (As discussed in detail below, we proposed to add HCPCS code G0384 to the eligibility criteria for composite APC 8003 for CY 2009.)

We applied the standard packaging and trimming rules to the claims before calculating the proposed CY 2009 median costs. The proposed CY 2009 median cost resulting from this process for composite APC 8002 was approximately $364, which was calculated from 14,968 single and ''pseudo'' single bills that met the required criteria. The proposed CY 2009 median cost for composite APC 8003 was approximately $670, which was calculated from 83,491 single and ''pseudo'' single bills that met the required criteria. This is the same methodology we used to calculate the medians for composite APCs 8002 and 8003 for the CY 2008 OPPS (72 FR 66649).

As discussed in more detail in section IX.B. of this final rule with comment period, in the CY 2009 OPPS/ASC proposed rule (73 FR 41444), we proposed to reassign HCPCS code G0384 from APC 0608 (Level 5 Hospital Clinic Visits) to APC 0616 (Level 5 Emergency Visits) for CY 2009. Consistent with this change for CY 2009, in the CY 2009 OPPS/ASC proposed rule (73 FR 41444), we also proposed to add HCPCS code G0384 to the eligibility criteria for payment of composite APC 8003. Because these visits are rare, we would not expect that adding HCPCS code G0384 to the eligibility criteria for payment for extended assessment and management composite APC 8003 would significantly increase the relative frequency of the Type B emergency department Level 5 visits reported using HCPCS code G0384.

As discussed further in sections III.D and IX. of this final rule with comment period and consistent with our CY 2008 final policy, when calculating the median costs for the clinic, Type A emergency department visit, Type B emergency department visit, and critical care APCs (0604 through 0617 and 0626 through 0629), we would utilize our methodology that excludes those claims for visits that are eligible for payment through the two extended assessment and management composite APCs, that is APC 8002 or APC 8003. We believe that this approach would result in the most accurate cost estimates for APCs 0604 through 0617 and 0626 through 0629 for CY 2009.

Also as discussed in section XIII.A.1. of this final rule with comment period, for CY 2009, in the CY 2009 OPPS/ASC proposed rule (73 FR 41520 through 41521), we proposed to replace current status indicator ''Q'' with three new separate status indicators: ''Q1,'' ''Q2,'' and ''Q3'' for CY 2009. In the CY 2009 OPPS, ASC proposed rule (73 FR 41520 through 41521), we indicated our belief that this proposed change would make our policy more transparent to hospitals and would facilitate the use of status indicator-driven logic in our ratesetting calculations, and in hospital billing and accounting systems. Under this proposal, status indicator ''Q3'' would be assigned to all codes that may be paid through a composite APC based on composite-specific criteria or separately through single code APCs when the criteria are not met. Therefore, we proposed that each of the direct admission, clinic, and emergency department visit codes that may be paid through composite APCs 8002 and 8003 be assigned status indicator ''Q3'' for CY 2009. We proposed that HCPCS code G0378 would continue to be always packaged by assigning the HCPCS code status indicator ''N,'' its current status indicator under the CY 2008 OPPS.

At its March 2008 meeting, the APC Panel recommended that CMS provide additional data related to the frequency and median cost for the extended assessment and management composite APCs and length-of-stay frequency distribution data for observation services, with additional detail at the 24–48 hour and greater than 48 hour levels. At the APC Panel's August 2008 meeting, we provided the additional data as requested. After reviewing the data presented, the APC Panel requested that additional data on observation services with longer lengths of stay, analyzed by hospital characteristics, be presented at the next meeting of the APC Panel, that is, the APC Panel's first CY 2009 meeting. In addition, the APC Panel requested that an analysis of CY 2008 claims data for clinic visits, emergency department visits (Type A and Type B), and extended assessment and management composite APCs be presented at the first CY 2009 meeting of the APC Panel.

At its August 2008 meeting, the APC Panel also recommended that CMS adopt the CY 2009 proposals related to the extended assessment and management composite APCs, especially in reference to the inclusion of the Level 5 Type B emergency department visit HCPCS code in APC 8003 (Level II Extended Assessment and Management Composite). Finally, the APC Panel recommended continuation of the Visits and Observation Subcommittee's work. We are accepting each of the APC Panel's recommendations and will provide additional data and analyses as requested at the first CY 2009 meeting of the APC Panel.

Comment: Several commenters expressed continued support for payment of composite APC 8003, which includes a high level emergency department visit or critical care billed with observation services. In addition, several commenters supported CMS' proposal to include the Level 5 Type B ED visits, reported with HCPCS code G0384, to the eligibility criteria for payment of composite APC 8003 (Level II Extended Assessment and Management Composite). Another commenter asserted that the extended assessment and management APC criteria are arbitrary because they do not include lower level emergency department and clinic visits. The latter commenter believed that observation care is medically necessary in association with low level visits in some cases and that the observation care is often identical to the observation provided to individuals in association with high level visits. Therefore, the commenter concluded that the proposed composite payment criteria were arbitrary because no payment is made for the medically necessary observation care provided in association with a low level visit.

Response: We appreciate the commenter's support for continued payment of the extended assessment and management composite APCs and for the addition of HCPCS code G0384 to the eligibility criteria for payment of composite APC 8003.

In response to the commenter who stated that the composite APC payment criteria are arbitrary, payment for all

observation care is packaged under the OPPS but, as we explained in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66648), we believe that observation care only rises to the level of a major component service that could be paid through a composite APC when it is provided for 8 hours or more in association with a high level clinic or emergency department visit. Therefore, we do not believe it would be appropriate to provide payment for observation care in association with a low level clinic or emergency department visit through a composite APC because we do not believe that two major component services are provided in such cases.

In the CY 2008 OPPS/ASC final rule with comment period (72 FR 66649), we estimated that roughly 90 percent of the instances of separately payable observation care reported in CY 2006 would be eligible for payment through composite APCs 8002 and 8003, using the CY 2008 final criteria. We continue to believe that most instances of observation that were separately payable in CY 2006 would have been eligible for payment under composite APCs 8002 and 8003 under the CY 2009 OPPS. In addition, some of the packaged observation care that was provided in CY 2006 would now be eligible for payment through composite APCs 8002 and 8003 because we eliminated the diagnosis requirement for CY 2008. However, for observation care provided under circumstances that do meet the criteria for composite APC payment, including observation in association with low level clinic or emergency department visits, we continue to believe that the observation is ancillary and supportive to those other services provided to the patient on the same day. Therefore, in such cases, hospitals would receive payment for the observation care as it is packaged into payment for the other separately payable services, such as the low level clinic or emergency department visit.

After consideration of the public comments received and the recommendations of the APC Panel, we are finalizing our CY 2009 proposals, without modification, for payment of composite APCs 8002 and 8003. The CY 2008 criteria and payment methodology finalized for composites APCs 8002 and 8003 will continue, consistent with the APC Panel's August 2008 recommendation in support of our CY 2009 proposals for payment of extended assessment and management composite APCs. As discussed in section IX.B. of this final rule with comment period, we are also finalizing our proposal to reassign HCPCS code G0384 from APC 0608 (Level 5 Hospital Clinic Visits) to APC 0616 (Level 5 Emergency Visits). Moreover, we are finalizing our CY 2009 proposal, without modification, to include HCPCS code G0384 in the criteria that determine eligibility for payment of composite APC 8003, consistent with the APC Panel's August 2008 recommendation that we should adopt this proposal. The final CY 2009 median cost for composite APC 8002 is approximately $367, which was calculated from 17,501 single and ''pseudo'' single bills that met the required criteria. The final CY 2009 median cost for composite APC 8003 is approximately $660, which was calculated from 150,088 single and ''pseudo'' single bills that met the required criteria.

Finally, as discussed in section XIII.A.1, of this final rule with comment period, we are finalizing our CY 2009 proposal to replace current status indicator ''Q'' with three new separate status indicators: ''Q1,'' ''Q2,'' and ''Q3.'' Therefore, each of the direct admission, clinic, and emergency department visit codes that may be paid through composite APCs 8002 and 8003 are assigned status indicator ''Q3'' (Codes that May be Paid Through a Composite APC) for CY 2009 in Addendum B to this final rule with comment period.

As we indicated in the CY 2008 OPPS ASC final rule with comment period, (72 FR 66802 through 66805 and 66814), we saw a normal and stable distribution of clinic and emergency department visits. We continue not to expect to see an increase in the proportion of visit claims for high level visits as a result of the new composite APCs adopted for CY 2008 and proposed for CY 2009. Similarly, we expect that hospitals will not purposely change their visit guidelines or otherwise upcode clinic and emergency department visits reported with observation care solely for the purpose of composite payment. We would also remind readers that reasonable and necessary observation care is a supportive and ancillary service for which payment is always packaged. When the criteria for payment of either composite APC 8002 or 8003 are met, then the costs associated with observation care reported with HCPCS code G0378 are attributed to the total costs of that composite APC. When the criteria are not met, the costs of observation care are packaged with the costs of the separately payable independent services on the claim, usually the clinic or emergency department visit. Those costs are reflected in the APC payments for the independent services. Therefore, payment is made for observation care as part of the payment for the independent service. The absence of separate payment for observation care does not equate to the absence of Medicare coverage for the service.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41444), we also proposed that the payment policy for separate payment of HCPCS code G0379 that was finalized for the CY 2008 OPPS (72 FR 66814 through 66815) would continue to apply for CY 2009 when the criteria for payment of this service through composite APC 8002 are not met. The criteria for payment of HCPCS code G0379 under either composite APC 8002, as part of the extended assessment and management composite service, or APC 0604, as a separately payable individual service are: (1) Both HCPCS codes G0378 and G0379 are reported with the same date of service; and (2) no service with a status indicator of ''T'' or ''V'' or Critical Care (APC 0617) is provided on the same date of service as HCPCS code G0379. If either of the above criteria is not met, HCPCS code G0379 is assigned status indicator ''N'' and its payment is packaged into the payment for other separately payable services provided in the same encounter.

We did not receive any public comments concerning this proposal. Therefore, we are finalizing our CY 2009 proposal, without modification, for separate or composite APC payment of HCPCS code G0379 under the same circumstances as the final CY 2008 policy. If the criteria for separate or composite APC payment are not met, payment for HCPCS code G0379 is packaged into payment for the other separately payable services provided.

(2) LDR Prostate Brachytherapy Composite APC (APC 8001)

LDR prostate brachytherapy is a treatment for prostate cancer in which needles or catheters are inserted into the prostate, followed by permanent implantation of radioactive sources into the prostate through hollow needles or catheters. At least two CPT codes are used to report the composite treatment service because there are separate codes that describe placement of the needles/catheters and the application of the brachytherapy sources: CPT code 55875 (Transperineal placement of needles or catheters into prostate for interstitial radioelement application, with or without cystoscopy) and CPT code 77778 (Interstitial radiation source application; complex). Generally, the component services represented by both codes are provided in the same operative session in the same hospital

on the same date of service to the Medicare beneficiary treated with LDR brachytherapy for prostate cancer. As discussed in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66653), OPPS payment rates for CPT code 77778, in particular, have fluctuated over the years. We were frequently informed by the public that reliance on single procedure claims to set the median costs for these services resulted in use of only incorrectly coded claims for LDR prostate brachytherapy because a correctly coded claim should include, for the same date of service, CPT codes for both needle/catheter placement and application of radiation sources, as well as separately coded imaging and radiation therapy planning services (that is, a multiple procedure claim).

In order to base payment on claims for the most common clinical scenario, and to contribute to our goal of providing payment under the OPPS for a larger bundle of component services provided in a single hospital encounter, beginning in CY 2008 we provide a single payment for LDR prostate brachytherapy when the composite service, billed as CPT codes 55875 and 77778, is furnished in a single hospital encounter. We base the payment for composite APC 8001 (LDR Prostate Brachytherapy Composite) on the median cost derived from claims for the same date of service that contain both CPT codes 55875 and 77778 and that do not contain other separately paid codes that are not on the bypass list. In uncommon occurrences in which the services are billed individually, hospitals continue to receive separate payments for the individual services. We refer readers to the CY 2008 OPPS/ASC final rule with comment period (72 FR 66652 through 66655) for a full history of OPPS payment for LDR prostate brachytherapy and a detailed description of how we developed the LDR prostate brachytherapy composite APC.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41445), we proposed to continue paying for LDR prostate brachytherapy services in CY 2009 using the composite APC methodology proposed and implemented for CY 2008. That is, we proposed to use CY 2007 claims on which both CPT codes 55875 and 77778 were billed on the same date of service with no other separately paid procedure codes (other than those on the bypass list) to calculate the payment rate for composite APC 8001. Consistent with our CY 2008 practice, we would not use the claims that meet these criteria in the calculation of the median costs for APCs 0163 (Level IV Cystourethroscopy and Other Genitourinary Procedures) and 0651 (Complex Interstitial Radiation Source Application) to which CPT codes 55875 and 77778 are assigned respectively; median costs for APCs 0163 and 0651 would continue to be calculated using single procedure claims. We note that we inadvertently cited APC 0313 instead of APC 0651 as the assigned APC for CPT code 77778 in the CY 2009 OPPS/ASC proposed rule at 73 FR 41445. However, the correct APC (0651) assignment for CPT code 77778 was included in Addenda B and M to the proposed rule, and our CY 2009 proposal was to continue to assign CPT code 77778 to APC 0651. As discussed in section XIII.A.1. of this final rule with comment period, we also proposed to use new status indicator ''Q3'' (Codes that May be Paid Through a Composite APC), to denote HCPCS codes such as CPT codes 55875 and 77778 that may be paid through a composite APC for publication and payment purposes for CY 2009, rather than status indicator ''Q'' that is being used in CY 2008. In the CY 2009 OPPS/ASC proposed rule (73 FR 41520 through 41521), we proposed the status indicator change to facilitate identification of HCPCS codes that may be paid through composite APCs and to facilitate development of the composite APC median costs for CY 2009.

We continue to believe that this composite APC contributes to our goal of creating hospital incentives for efficiency and cost containment, while providing hospitals with the most flexibility to manage their resources. We also continue to believe that data from claims reporting both services required for LDR prostate brachytherapy provide the most accurate median cost upon which to base the composite APC payment rate.

Using partial year CY 2007 claims data available for the CY 2009 proposed rule, we were able to use 6,897 claims that contained both CPT code 77778 and 55875 to calculate the median cost upon which the CY 2009 proposed payment for composite APC 8001 was based. The proposed median cost for composite APC 8001 for CY 2009 was approximately $3,509. This was an increase compared to the CY 2008 OPPS/ASC final rule with comment period in which we calculated a final median cost for this composite APC of approximately $3,391 based on a full year of CY 2006 claims data. The CY 2009 proposed composite APC median was slightly less than $3,581, the sum of the proposed median costs for APCs 0163 and 0651 ($2,388 + $1,193), the APCs to which CPT codes 55875 and 77778 map if one service is billed on a claim without the other. We stated in the CY 2009 OPPS/ASC proposed rule (73 FR 41445) that we believe the proposed CY 2009 median cost for composite APC 8001 of approximately $3,509, calculated from claims we believe to be correctly coded, would result in a reasonable and appropriate payment rate for this service in CY 2009.

Comment: One commenter supported the continuation of the LDR prostate brachytherapy composite APC but urged CMS to closely monitor utilization to ensure access to this therapy is not compromised by this change in payment policy.

Response: We appreciate the commenter's thoughts on the LDR prostate brachytherapy composite APC. As stated previously, we believe that the composite payment methodology improves the accuracy of OPPS payment, and we would not expect access problems or other difficulties to arise from a methodology that utilizes more complete and valid claims in ratesetting than our standard APC ratesetting methodology for the services described by CPT codes 55875 and 77778 when performed together on the same date of service. When the CY 2008 claims become available for the CY 2010 OPPS rulemaking cycle, we will examine utilization of LDR prostate brachytherapy services to ensure no inappropriate changes in utilization have occurred.

After consideration of the public comment received, we are finalizing our CY 2009 proposal, without modification, to continue paying for LDR prostate brachytherapy services using the composite APC methodology implemented for CY 2008. We were able to use 845 claims that contained both CPT codes 77778 and 55875 to calculate the median cost upon which the CY 2009 final payment for composite APC 8001 is based. The final median cost for composite APC 8001 for CY 2009 is approximately $2,967. We note that this is a decrease in median cost compared to the CY 2009 OPPS/ASC proposed rule in which we calculated a proposed median cost for this composite APC of approximately $3,509. We also note that there is a significant decrease in the number of claims used for calculating the median cost for APC from the CY 2009 proposed rule to this final rule with comment period.

We believe that the decreases in both the median cost for APC 8001 and the number of claims used to calculate the median cost are attributable to the removal of CPT codes in the radiation oncology series of CPT codes from the

bypass list in response to public comments because the codes did not meet the empirical criteria for inclusion on the bypass list, as discussed in section II.A.1.b.of this final rule with comment period. We believe that some of the CPT codes that were removed from the bypass list, which are paid separately in addition to the LDR prostate brachytherapy composite APC, occur so frequently on claims that meet the criteria for LDR prostate brachytherapy composite payment that their removal from the bypass list resulted in the significant drop in the number of claims that could be used to calculate the median cost for APC 8001. However, our final CY 2009 median cost for APC 8001 should be a more accurate reflection of the cost of the services for which the composite payment is made than the proposed CY 2009 median cost, because it is most likely that the packaged costs that should have been associated with the radiation oncology codes on the bypass list were wrongly attributed to the cost of the LDR prostate brachytherapy composite APC in the CY 2009 proposed rule, as discussed in more detail in response to public comments in section II.A.1.b. of this final rule with comment period. The APC 8001 median cost that we calculated for this final rule with comment period no longer includes the packaging that should have been attributed to the codes that were on the bypass list but did not meet the empirical criteria for the bypass list. Moreover, the line-item costs for the radiation oncology codes that failed the empirical criteria for the bypass list are no longer being used as ''pseudo'' single claims without their associated packaging to set the payment rates for those codes. The median costs for these codes should also be more accurate because the ''pseudo'' single procedure claims that lacked the appropriate packaging are no longer being used to set the medians for them.

The final CY 2009 median cost for composite APC 8001 of approximately $2,967 is slightly less than $3,163, the sum of the median costs for APC 0163 and APC 0651 ($2,316 + $847), the APCs to which CPT codes 55875 and 77778 map if one service is billed on a claim without the other. These CPT codes are assigned status indicator ''Q3'' in Addendum B to this final rule with comment period to identify their status as potentially payable through a composite APC. Their composite APC assignment is identified in Addendum M to this final rule with comment period.

(3) Cardiac Electrophysiologic Evaluation and Ablation Composite APC (APC 8000)

Cardiac electrophysiologic evaluation and ablation services frequently are performed in varying combinations with one another during a single episode-of-care in the hospital outpatient setting. Therefore, correctly coded claims for these services often include multiple codes for component services that are reported with different CPT codes and that, prior to CY 2008, were always paid separately through different APCs (specifically, APC 0085 (Level II Electrophysiologic Evaluation), APC 0086 (Ablate Heart Dysrhythm Focus), and APC 0087 (Cardiac Electrophysiologic Recording/Mapping)). As a result, there would never be many single bills for cardiac electrophysiologic evaluation and ablation services, and those that are reported as single bills would often represent atypical cases or incorrectly coded claims. As described in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66655 through 66659), the APC Panel and the public expressed persistent concerns regarding the limited and reportedly unrepresentative single bills available for use in calculating the median costs for these services according to our standard OPPS methodology.

Effective January 1, 2008, we established APC 8000 (Cardiac Electrophysiologic Evaluation and Ablation Composite) to pay for a composite service made up of at least one specified electrophysiologic evaluation service and one electrophysiologic ablation service. Calculating a composite APC for these services allowed us to utilize many more claims than were available to establish the individual APC median costs for these services, and we also saw this composite APC as an opportunity to advance our stated goal of promoting hospital efficiency through larger payment bundles. In order to calculate the median cost upon which the payment rate for composite APC 8000 was based, we used multiple procedure claims that contained at least one CPT code from group A for evaluation services and at least one CPT code from group B for ablation services reported on the same date of service on an individual claim. Table 9 in the CY 2008 OPPS/ASC final rule with comment period, and Table 6 in the CY 2009 OPPS/ASC proposed rule, reprinted as Table 7 below, identified the CPT codes that were assigned to groups A and B. For a full discussion of how we identified the group A and group B procedures and established the CY 2008 payment rate for the cardiac electrophysiologic evaluation and ablation composite APC, we refer readers to the CY 2008 OPPS/ASC final rule with comment period (72 FR 66655 through 66659). Where a service in group A is furnished on a date of service that is different from the date of service for a code in group B for the same beneficiary, payments are made under the appropriate single procedure APCs and the composite APC does not apply.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41446), we proposed to continue paying for cardiac electrophysiologic evaluation and ablation services in CY 2009 using the composite APC methodology established for CY 2008. Consistent with our CY 2008 practice, we would not use the claims that met the composite payment criteria in the calculation of the median costs for APCs 0085 (Level II Electrophysiologic Procedures) and 0086 (Level III Electrophysiologic Procedures), to which the HCPCS codes in both groups A and B for composite APC 8000 were otherwise assigned. Median costs for APCs 0085 and 0086 would continue to be calculated using single procedure claims. As discussed in section XIII.A.1. of this final rule with comment period, we also proposed to use new status indicator ''Q3'' (Codes that May be Paid Through a Composite APC) to denote HCPCS codes such as the cardiac electrophysiologic evaluation and ablation CPT codes that may be paid through a composite APC for publication and payment purposes for CY 2009, rather than the status indicator ''Q'' that is being used in CY 2008.

We continue to believe that the composite APC for cardiac electrophysiologic evaluation and ablation services is the most efficient and effective way to use the claims data for the majority of these services and best represents the hospital resources associated with performing the common combinations of these services that are clinically typical. Furthermore, this approach creates incentives for efficiency by providing a single payment for a larger bundle of major procedures when they are performed together, in contrast to continued separate payment for each of the individual procedures.

Using partial year CY 2007 claims data available for the CY 2009 OPPS/ASC proposed rule, we were able to use 5,603 claims containing a combination of group A and group B codes and calculated a proposed median cost of approximately $9,174 for composite APC 8000. This was an increase

compared to the CY 2008 OPPS/ASC final rule with comment period in which we calculated a final median cost for this composite APC of approximately $8,438 based on a full year of CY 2006 claims data. We stated in the CY 2009 OPPS/ASC proposed rule (73 FR 41446) that we believe that the proposed median cost of $9,174 calculated from a high volume of correctly coded multiple procedure claims resulted in an accurate and appropriate proposed payment for cardiac electrophysiologic evaluation and ablation services when at least one evaluation service is furnished during the same clinical encounter as at least one ablation service. Table 6 of the CY 2009 OPPS/ASC proposed rule, reprinted as Table 7 below, listed the groups of procedures upon which we proposed to base composite APC 8000 for CY 2009.

Comment: One commenter expressed support for CMS' proposal to continue using the composite APCs created in CY 2008, in particular the composite APC for cardiac electrophysiologic evaluation and ablation services.

Response: We appreciate the commenter's support for the composite payment methodology in general and the composite APC for cardiac electrophysiologic evaluation and ablation in particular.

After consideration of the public comment received, we are finalizing our CY 2009 proposal, without modification, to continue paying for cardiac electrophysiologic evaluation and ablation services using the composite APC methodology implemented for CY 2008. For this final rule with comment period, we were able to use 6,105 claims from CY 2007 containing a combination of group A and group B codes and calculated a final median cost of approximately $9,206 for composite APC 8000. This is an increase compared to the CY 2008 OPPS/ASC final rule with comment period in which we calculated a final median cost for this composite APC of approximately $8,438 based on a full year of CY 2006 claims data. We believe that the final median cost of $9,206 calculated from a high volume of correctly coded multiple procedure claims results in an accurate and appropriate final payment for cardiac electrophysiologic evaluation and ablation services when at least one evaluation service is furnished during the same clinical encounter as at least one ablation service. Table 7, below, lists the groups of procedures upon which we are basing composite APC 8000 for CY 2009. These CPT codes are assigned status indicator ''Q3'' in Addendum B to this final rule with comment period to identify their status as potentially payable through a composite APC. Their composite APC assignment is identified in Addendum M to this final rule with comment period.

TABLE 7—GROUPS OF CARDIAC ELECTROPHYSIOLOGIC EVALUATION AND ABLATION PROCEDURES UPON WHICH COMPOSITE APC 8000 IS BASED

Codes used in combinations: At least one in Group A and one in Group B	CY 2009 HCPCS code	Final single code CY 2009 APC	Final CY 2009 SI (composite)
Group A			
Comprehensive electrophysiologic evaluation with right atrial pacing and recording, right ventricular pacing and recording, His bundle recording, including insertion and repositioning of multiple electrode catheters, without induction or attempted induction of arrhythmia	93619	0085	Q3
Comprehensive electrophysiologic evaluation including insertion and repositioning of multiple electrode catheters with induction or attempted induction of arrhythmia; with right atrial pacing and recording, right ventricular pacing and recording, His bundle recording	93620	0085	Q3
Group B			
Intracardiac catheter ablation of atrioventricular node function, atrioventricular conduction for creation of complete heart block, with or without temporary pacemaker placement	93650	0085	Q3
Intracardiac catheter ablation of arrhythmogenic focus; for treatment of supraventricular tachycardia by ablation of fast or slow atrioventricular pathways, accessory atrioventricular connections or other atrial foci, singly or in combination	93651	0086	Q3
Intracardiac catheter ablation of arrhythmogenic focus; for treatment of ventricular tachycardia	93652	0086	Q3

(4) Mental Health Services Composite APC (APC 0034)

In the CY 2009 OPPS/ASC proposed rule (73 FR 41446), we proposed to continue our longstanding policy of limiting the aggregate payment for specified less intensive mental health services furnished on the same date to the payment for a day of partial hospitalization, which we consider to be the most resource intensive of all outpatient mental health treatment for CY 2009. We refer readers to the April 7, 2000 OPPS final rule with comment period (65 FR 18455) for the initial discussion of this longstanding policy. We continue to believe that the costs associated with administering a partial hospitalization program represent the most resource intensive of all outpatient mental health treatment, and we do not believe that we should pay more for a day of individual mental health services under the OPPS than the partial hospitalization per diem payment.

For CY 2009, as discussed further in section X.B. of this final rule with comment period, we proposed to create two new APCs, 0172 (Level I Partial Hospitalization (3 services)) and 0173 (Level II Partial Hospitalization (4 or more services)), to replace APC 0033 (Partial Hospitalization), which we proposed to delete for CY 2009 (73 FR 41446). In summary, when a community mental health center (CMHC) or hospital provides three units of partial hospitalization services and meets all other partial hospitalization payment criteria, the CMHC or hospital would be paid through APC 0172. When the CMHC or hospital provides four or more units of partial hospitalization services and meets all other partial hospitalization payment criteria, the hospital would be paid through APC 0173. In the CY 2009 OPPS/ASC proposed rule (73 FR 41446 through 41447), we proposed to set the CY 2009 payment rate for mental health

composite APC 0034 at the same rate as APC 0173, which is the maximum partial hospitalization per diem payment. In the proposed rule, we explained that we believed this APC payment rate would provide the most appropriate payment for composite APC 0034, taking into consideration the intensity of the mental health services and the differences in the HCPCS codes for mental health services that could be paid through this composite APC compared with the HCPCS codes that could be paid through partial hospitalization APC 0173. Through the I/OCE, when the payment for specified mental health services provided by one hospital to a single beneficiary on one date of service based on the payment rates associated with the APCs for the individual services would exceed the maximum per diem partial hospitalization payment [listed as APC 0173 (Level II Partial Hospitalization (4 or more services))], those specified mental health services would be assigned to APC 0034 (Mental Health Services Composite), which has the same payment rate as APC 0173, and the hospital would be paid one unit of APC 0034. In the CY 2008 OPPS/ASC final rule with comment period (72 FR 66651), we clarified that this longstanding policy regarding payment of APC 0034 for combinations of independent mental health services provided in a single hospital encounter resembles the payment policy for composite APCs that we finalized for LDR prostate brachytherapy and cardiac electrophysiologic evaluation and ablation services for CY 2008. Similar to the logic for those two composite APCs, the I/OCE currently determines, and we proposed for CY 2009 that it would continue to determine, whether to pay these specified mental health services individually or to make a single payment at the same rate as the APC 0173 per diem rate for partial hospitalization for all of the specified mental health services furnished on that date of service. However, we note that this established policy for payment of APC 0034 differs from the payment policies for the LDR prostate brachytherapy and cardiac electrophysiologic evaluation and ablation composite APCs because APC 0034 is only paid if the sum of the individual payment rates for the specified mental health services provided on one date of service exceeds the APC 0034 payment rate.

For CY 2008 (72 FR 66651), we changed the status indicator to ''Q'' for the HCPCS codes that describe the specified mental health services to which APC 0034 applies because those codes are conditionally packaged when the sum of the payment rates for the single code APCs to which they are assigned exceeds the per diem payment rate for partial hospitalization. For CY 2009, we proposed to change the status indicator from ''Q'' (Packaged Services Subject to Separate Payment under OPPS Payment Criteria) to ''Q3'' (Codes that May be Paid Through a Composite APC), for those HCPCS codes that describe the specified mental health services to which APC 0034 applies. This was consistent with our proposal to change the status indicator from ''Q'' to ''Q3'' for all HCPCS codes that may be paid through composite APCs, in order to further refine our identification of the different types of conditionally packaged HCPCS codes that were previously all assigned the same status indicator ''Q'' under the OPPS. In the CY 2009 OPPS/ASC proposed rule (73 FR 41447), we proposed to apply this status indicator policy to the HCPCS codes that were assigned to composite APC 0034 in Addendum M to the proposed rule. We also proposed to change the status indicator from ''P'' (Partial Hospitalization) to ''S'' (Significant Procedure, Not Discounted when Multiple), for APC 0034. Although APC 0034 has been historically assigned status indicator ''P'' under the OPPS, this APC provides payment for mental health services that are furnished in an HOPD outside of a partial hospitalization program. As we noted in the CY 2009 OPPS/ASC proposed rule (73 FR 41447), this proposed status indicator change should have no practical implications for hospitals from a billing or payment perspective. Rather, we believed that it would be more appropriate to assign status indicator ''S'' to an APC that describes mental health services that are provided outside of a partial hospitalization program (73 FR 41447). We refer readers to section XIII.A. of this final rule with comment period for a complete discussion of status indicators and our status indicator changes for CY 2009.

Comment: Several commenters were concerned that claims data from CMHCs and hospitals were used to calculate the proposed payment for APC 0173. The payment for APC 0173 would be the upper limit of payment a hospital could receive for outpatient mental health services provided in one day. These commenters believed that hospital cost data, and not CMHC cost data, should be used to set payment rates for hospital services. One commenter believed that the proposed payment rate for APC 0173 was too low and, therefore, established the mental health cap on payment of HOPD mental health services at an inappropriately low payment rate. The commenter noted that most patients receiving hospital outpatient mental health services generally receive four or more services per day, for 1 to 3 days. In these cases, according to the commenter, if an HOPD provided four particular mental health services in one day, that department of the hospital would receive full payment for the first two services, partial payment for the third service, and no payment for the fourth service.

Response: As discussed in detail in section X. of this final rule with comment period, the payment rates for APCs 0172 and 0173 are set consistent with hospital-only cost data for CY 2009, instead of using both hospital and CMHC cost data. This final policy results in an increase of the median cost of APC 0173 from approximately $174 as proposed to approximately $200, using hospital-only cost data. Hospital-only data have been used in the past to set the PHP payment rates when the CMHC data were unavailable or too volatile to use. This year using the CMHC data would significantly reduce the current rate and negatively impact hospital-based PHPs. Additionally, using only the hospital-based PHP data results in a Level II Partial Hospitalization rate (APC 0173) that is close to the current payment level ($203). Therefore, we are finalizing the two-tiered payment rates as proposed, but using hospital-based PHP data only.

As noted in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66739), we continue to believe that the costs associated with administering a partial hospitalization program represent the most resource intensive of all outpatient mental health treatment, and we do not believe that we should pay more for a day of individual mental health services under the OPPS. The mental health payment limitation will rise and fall in the same manner as payment for partial hospitalization services. We note that our final CY 2009 policy which sets the payment rate for APC 0173 for partial hospitalization services based on hospital-only cost data for CY 2009 results in payment for APC 0034, the limit on aggregate payment for specified less intensive mental health services provided on one day in the HOPD, to now be based on hospital cost data, as requested by several commenters.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, to limit the aggregate

payment for specified less intensive outpatient mental health services furnished on the same date by a hospital to the payment for a day of partial hospitalization, specifically APC 0173. For CY 2009, we are also finalizing, without modification, our proposal to change the status indicator from ''Q'' to ''Q3'' for those HCPCS codes that describe the specified mental health services to which APC 0034 applies. For CY 2009, we also are finalizing the proposal to change the status indicator for APC 0034 from ''P'' to ''S.''

(5) Multiple Imaging Composite APCs (APCs 8004, 8005, 8006, 8007, and 8008)

Under current OPPS policy, hospitals receive a full APC payment for each imaging service on a claim, regardless of how many procedures are performed during a single session using the same imaging modality or whether the procedures are performed on contiguous body areas. In response to a 2005 MedPAC recommendation to reduce the technical component payment for multiple imaging services performed on contiguous body areas, CMS proposed a payment reduction policy for multiple imaging procedures performed on contiguous body areas in both the CY 2006 MPFS proposed rule (70 FR 45849 through 45851) and the CY 2006 OPPS proposed rule (70 FR 42748 through 42751). In the March 2005 MedPAC report entitled, ''Report to the Congress: Medicare Payment Policy,'' MedPAC concluded that Medicare's physician's office payment rates for imaging services were based on each service being provided independently and that the rates did not account for efficiencies that may be gained when multiple studies using the same imaging modality are performed in the same session. In both the CY 2006 MPFS proposed rule (70 FR 45849) and the CY 2006 OPPS proposed rule (70 FR 42751), we suggested that although each imaging procedure entails the use of hospital resources, including certain staff, equipment, and supplies, some of those resource costs are not incurred twice when the procedures are performed in the same session and thus, should not be paid as if they were incurred twice. Specifically, for CY 2006, for both the MPFS and the OPPS, we proposed to apply a 50-percent reduction in the payment for certain second and subsequent imaging procedures performed during the same session, similar to the longstanding OPPS policy of reducing payments for certain second and subsequent surgical procedures performed during the same operative session. We developed the 50-percent reduction estimate using MPFS input data to estimate the practice expense resources associated with equipment time and indirect costs that would not occur for the second and subsequent procedures. We proposed that the reduction would apply only to individual services within 11 designated imaging families, which were comprised of procedures utilizing similar modalities across contiguous body areas and developed based on MPFS billing data. The imaging modalities included in the proposal were ultrasound, computed tomography (CT), computed tomographic angiography (CTA), magnetic resonance imaging (MRI), and magnetic resonance angiography (MRA). Prior to making the proposal for the OPPS, we confirmed that the CY 2004 OPPS claims for the CY 2006 OPPS update demonstrated comparable clustering of imaging procedures by modality and within family. The OPPS and MPFS imaging services provided across families would not be subject to the reduction policy as proposed for CY 2006. The proposed 11 families of imaging services for the proposed CY 2006 OPPS and MPFS multiple imaging payment reduction policy were as follows:

- Ultrasound (Chest/Abdomen/Pelvis-Non-Obstetrical)
- CT and CTA (Chest/Thorax/Abd/Pelvis)
- CT and CTA (Head/Brain/Orbit/Maxillofacial/Neck)
- MRI and MRA (Chest/Abd/Pelvis)
- MRI and MRA (Head/Brain/Neck)
- MRI and MRA (Spine)
- CT (Spine)
- MRI and MRA (Lower Extremities)
- CT and CTA (Lower Extremities)
- MR and MRI (Upper Extremities and Joints)
- CT and CTA (Upper Extremities)

In response to the multiple imaging payment reduction policy proposed for the CY 2006 OPPS (70 FR 68707 through 68708), several commenters requested that we postpone implementation until we performed further analyses and were able to find more substantial, hospital-based data to support the 50-percent payment reduction rather than base the policy on MPFS data. The commenters argued that, unlike a relative value unit (RVU) estimate of the total resources associated with a single service for the MPFS, the OPPS cost-based methodology already incorporates the efficiencies of performing multiple procedures during the same session and that median cost estimates for single procedures reflect these savings. Specifically, an imaging CCR consists of the labor and allocated capital and overhead costs for all imaging provided in a department specified by each hospital on its cost report, divided by the total charges for all imaging services provided. In short, commenters stated that because the OPPS cost estimates used for setting the OPPS payment rates for imaging services already reflect costs for a department in general, the CCR used to adjust charges to costs currently incorporated savings from the imaging efficiencies associated with multiple procedures provided in a single session. By applying this CCR to every charge on a claim, the commenters noted that CMS averages multiple imaging efficiencies for all imaging services across all service costs estimated with the departmental CCR. At its August 2005 meeting, the APC Panel heard this and other arguments and recommended that CMS postpone implementation of the policy for a year in order to gather more data on the impact of the proposed changes.

In the CY 2006 OPPS final rule with comment period (70 FR 68516), we acknowledged that, based on our analysis of how hospitals report charges and costs for diagnostic radiology services, it may be correct that the median costs from hospital claims data for the imaging services in the 11 families proposed for the reduction policy already reflect reduced median costs based, in part, on hospitals' provision of multiple imaging services in a single session. However, we expressed concern that the marginal effect of imaging efficiencies on a given CCR may be negligible, thereby underestimating the impact of multiple imaging efficiencies, especially where hospitals reported all diagnostic radiology services in one cost center and did not split the costs and charges for advanced imaging with CT, MRI, or ultrasound into separate cost centers. Because efficiencies are inherent in our cost methodology, our analysis did not provide a definitive answer regarding how much, on average, the OPPS median costs for single imaging services in the 11 families are reduced due to existing hospital efficiencies related to multiple services provided in a single session. Accordingly, we did not implement a multiple imaging payment reduction policy for the OPPS in CY 2006 (a modified MPFS multiple imaging payment reduction policy was implemented with a 25-percent reduction for certain second and subsequent imaging services for CY 2006, and that same reduction policy currently remains in effect under the MPFS). In the CY 2006 OPPS final rule with comment period (70 FR 68707 through 68708), we stated that, depending upon the results of future

analyses, we might revisit this issue and propose revisions to the structure of our payment rates for imaging procedures in order to ensure that those rates properly reflect the relative costs of initial and subsequent imaging procedures. Since publication of the CY 2006 OPPS final rule with comment period, MedPAC has encouraged us to continue our analyses in order to improve payment accuracy for imaging services under the OPPS, including considering adoption of a multiple procedure payment reduction policy.

In preparation for the CY 2009 OPPS proposed rule, we revisited the issue of how we could improve the accuracy of OPPS payment for multiple imaging procedures and incorporate the lower marginal cost for conducting second and subsequent imaging procedures in the same imaging session. As already noted, for CY 2008, we developed a composite APC methodology to provide a single payment for two or more major independent procedures that are typically performed together during a single operative session and that result in the provision of a complete service (72 FR 66650 through 66652). The composite APCs for LDR prostate brachytherapy services and cardiac electrophysiologic evaluation and ablation services discussed in sections II.A.2.e.(2) and (3), respectively, of this final rule with comment period are classic examples. Providing one payment for an entire session encourages hospitals to closely evaluate the resources they use for all components of the composite service in order to improve their payment relative to the costs of performing the composite service. We decided to explore capturing efficiencies for multiple imaging procedures through a composite APC payment methodology when a hospital provides more than one imaging procedure using the same modality during a single session.

We began by reexamining the 11 imaging families of HCPCS codes for contiguous body areas involving a single imaging modality that we had proposed for CY 2006 and that are currently in use under the MPFS for the multiple imaging procedure payment reduction policy. We based this code-specific analysis on the HCPCS codes recognized under the OPPS for the same procedures that are included in the 11 CY 2008 MPFS imaging families, and in addition, we incorporated the 10 HCPCS codes that were proposed for inclusion in these 11 families for the CY 2009 MPFS. We collapsed the 11 MPFS imaging families into 3 OPPS imaging families according to their modality—1 for ultrasound, 1 for CT and CTA, and 1 for MRI and MRA services. These larger OPPS imaging families generally corresponded to the larger APC groups of services paid under the OPPS relative to the service-specific payment under the MPFS. We believed that these larger OPPS imaging families were appropriate because eliminating the contiguous body area concept that is central to the MPFS imaging families should not significantly limit potential efficiencies in an imaging session. For example, we would not expect second and subsequent imaging procedures of the same modality involving noncontiguous body areas to require duplicate facility services such as greeting the patient, providing education and obtaining consent, retrieving prior exams, setting up an intravenous infusion, and preparing and cleaning the room, any more than second and subsequent imaging procedures of the same modality on contiguous body areas. The contiguous body area concept was a component of MedPAC's recommendation for reducing physician payment, but we believed it was less appropriate for a single, session-based OPPS composite imaging payment. In addition, we estimated that using these collapsed OPPS families would add only 12 percent additional claims to those eligible for composite payment relative to using the 11 MPFS imaging families, suggesting that under the OPPS, multiple imaging claims were within the same imaging modality and involved contiguous body areas the vast majority of the time. Nevertheless, the three OPPS imaging families would allow us to capture additional claims for payment under an imaging composite payment methodology.

Another unique aspect of imaging procedures for OPPS ratesetting, in general, is their inclusion on our bypass list and contribution to creating ''pseudo'' single claims, particularly those procedures that are specifically performed without the administration of contrast. Our creation of ''pseudo'' single claims from multiple procedure claims is discussed in section II.A.1.b. of this final rule with comment period. In beginning to model these potential multiple imaging composite APCs for the CY 2009 OPPS/ASC proposed rule, we noted that there would be overlap between the bypass list and noncontrast imaging HCPCS codes that are included in the three OPPS imaging families. The bypass process removes any line-item for a bypass HCPCS code, irrespective of units, from multiple procedure claims. The line-item information is used to make at least one ''pseudo'' single bill and the line-items remaining on the claim are split by date and reassessed for single bill status. To model the median costs for the potential multiple imaging composite APCs for the CY 2009 OPPS/ASC proposed rule, we removed any HCPCS codes in the OPPS imaging families that overlapped with codes on our bypass list to avoid splitting claims with multiple units or multiple occurrences of codes in an OPPS imaging family into new ''pseudo'' single claims. The imaging HCPCS codes that we removed from the bypass list for purposes of calculating proposed multiple imaging composite APC median costs appeared in Table 7 of the CY 2009 OPPS/ASC proposed rule. We integrated the identification of imaging composite ''single session'' claims, that is, claims with multiple imaging procedures within the same family on the same date of service, into the creation of ''pseudo'' single claims to ensure that claims were split in the ''pseudo'' single process into accurate reflections of either a composite ''single session'' imaging service or a standard sole imaging service resource cost. Like all single bills, the new composite ''single session'' claims were for the same date of service and contained no other separately paid services in order to isolate the session imaging costs. For the CY 2009 OPPS/ASC proposed rule, our last step after processing all claims through the ''pseudo'' single process was to make line-items for HCPCS codes in the OPPS imaging families remaining on multiple procedure claims with one unit of the imaging HCPCS code and no other imaging services in the families into ''pseudo'' single bills for use in calculating the median costs for sole imaging services.

One final requirement of our assessment of multiple imaging composite APCs was our expansion of the OPPS families for the three modalities—ultrasound, CT and CTA, and MRI and MRA—into five composite APCs to accommodate the statutory requirement in section 1833(t)(2)(G) of the Act, that the OPPS provide payment for imaging services provided with contrast and without contrast through separate payment groups. The ultrasound studies proposed for inclusion in the multiple imaging composite policy do not utilize contrast and thus this family constituted a single composite APC. However, we had to split the families for CT and CTA, and MRI and MRA, into two separate composite APCs each to reflect whether the procedures were performed with or without contrast. We examined the HCPCS codes on our ''single session'' claims and, if the claim had at least one

HCPCS code that was performed with contrast, we classified the ''single session'' bill as ''with contrast.'' For both CT and CTA, and MRI and MRA, some claims classified as ''with contrast'' contained one or more ''without contrast'' HCPCS code. We then recalculated the median costs for the standard (sole service) imaging APCs based on single and ''pseudo'' single bills and the imaging composite APC median costs based on appropriate ''single session'' bills with multiple imaging procedures.

For the CY 2009 OPPS/ASC proposed rule, we were able to identify 1.7 million ''single session'' claims out of an estimated 3 million potential composite cases from our ratesetting claims database to calculate the proposed median costs for the 5 OPPS multiple imaging composite APCs. We specifically noted that the proposed CY 2009 payment rates for multiple imaging services provided during the same session and within the same OPPS imaging family were based entirely on median costs derived empirically from OPPS claims and Medicare cost report data.

In general, we found that the per procedure median cost for each of the multiple imaging procedures performed during a single session, and reflected in the composite APC median costs, was modestly less than the sole service median cost when only one imaging procedure was performed during a single session, as reflected in the median cost of the standard (sole service) imaging APCs (that is, those imaging services that would not have qualified for payment through a multiple imaging composite APC under the proposed composite methodology). We also noticed that the proposed CY 2009 median costs for the standard (sole service) imaging APCs increased slightly compared to the median costs that we would calculate using the current OPPS imaging service payment policy. These variations in median costs were consistent with our expectations. Because the OPPS cost-based payment weight methodology estimates a standard cost per imaging procedure for each hospital, these results suggested that the imaging composite ''single session'' claims disproportionately represented services furnished by more efficient providers that frequently performed more than one imaging procedure during a single session. The lower cost claims also may have included more providers that reported costs and charges for nonstandard cost centers for advanced imaging on their Medicare hospital cost reports.

In light of these findings, we determined that a proposal to revise our methodology for paying for multiple imaging procedures was warranted because the current OPPS policy of providing a full APC payment for each imaging procedure on a claim, regardless of how many procedures are performed during a single session using the same imaging modality, neither reflects nor promotes the efficiencies hospitals can achieve when they perform multiple imaging procedures during a single session, as seen in the claims data.

Therefore, in the CY 2009 OPPS/ASC proposed rule (73 FR 41450 through 41451), we proposed to utilize the three OPPS imaging families discussed above, incorporating statutory requirements to differentiate OPPS payment for imaging services provided with contrast and without contrast as required by section 1833(t)(2)(G) of the Act, to create five multiple imaging composite APCs for payment in CY 2009. The proposed APCs were: APC 8004 (Ultrasound Composite); APC 8005 (CT and CTA without Contrast Composite); APC 8006 (CT and CTA with Contrast Composite); APC 8007 (MRI and MRA without Contrast Composite); and APC 8008 (MRI and MRA with Contrast Composite). We calculated the proposed median costs for these APCs using CY 2007 claims data by isolating ''single session'' claims with more than one imaging procedure within a family as discussed above. Unlike our CY 2006 proposal where we would have applied a 50-percent payment reduction for second and subsequent imaging procedures comparable to the proposed MPFS policy, the CY 2009 OPPS proposal calculated the composite APC payment amounts empirically from estimated costs on claims for multiple imaging procedures provided in a single session. This proposed composite methodology for multiple imaging services paralleled the payment methodologies that we proposed for other composite APCs under the CY 2009 OPPS. Table 8 of the CY 2009 OPPS/ASC proposed rule presented the HCPCS codes comprising the three OPPS imaging families and five composite APCs that would be created under this proposal for CY 2009, along with the proposed median costs upon which the proposed payment rates for these composite APCs were based.

During the August 2008 APC Panel meeting, the APC Panel recommended that CMS work with stakeholders to review the proposed multiple imaging composite APCs and to assess the potential impact of the proposal on Medicare beneficiaries affected by trauma or cancer.

Comment: Some commenters stated that the proposed multiple imaging composite payment methodology would improve the accuracy of OPPS payment for imaging services and that CMS should implement the policy as proposed. In particular, MedPAC stated that the proposed multiple imaging composite APCs are consistent with larger payment bundles and should increase hospitals' incentives to furnish care efficiently. MedPAC further asserted that the multiple imaging composite policy could serve as a starting point for creating more comprehensive payment bundles that reflect encounters or episodes of care.

However, many commenters urged CMS to perform additional data analyses of CY 2007 claims with multiple imaging services and, depending on the results, modify the final policy to ensure sufficient payments are made to hospitals for providing an appropriate number of imaging services. In particular, commenters indicated that the proposed policy could have a disproportionately negative effect on cancer centers and trauma units, where patients frequently require more than two imaging services and hospitals have limited flexibility to gain greater efficiencies. The commenters also questioned the adequacy of the proposed multiple imaging composite payment rates for sessions involving three or more or four or more procedures, particularly in the case of CT and CTA procedures, expressing general concern that the proposed payment rates would limit beneficiary access to imaging services. According to these commenters, the proposed policy could create incentives for hospitals to require patients who need more than two imaging procedures to return for additional visits if the costs for sessions in which more than two procedures are performed far exceed the multiple imaging composite APC payment rates. Some commenters also requested that CMS thoroughly evaluate the impact of the multiple imaging composite APCs after the policy has been implemented to ensure that hospitals are being adequately compensated for providing multiple imaging services. Other commenters remarked generally that CMS should proceed cautiously as it expands service bundling, should accompany composite proposals with data and a clear and transparent description of the data-generating process, and should not implement additional composite methodologies until adequate data are available to evaluate the effectiveness

and impact on beneficiary access to care of the composite policies implemented in CY 2008.

In order to address perceived payment inadequacies or incentives for hospitals to require patients to return on separate days for multiple imaging services, the commenters suggested a variety of alternative approaches to the proposed multiple imaging composite payment methodology, such as a multiple imaging payment reduction policy for second and subsequent imaging procedures, additional composite APCs for sessions involving three or more imaging procedures, or an exemption from composite payment for multiple imaging services provided to cancer or trauma patients. One commenter specifically recommended two new composite APCs for CT scans of the chest, abdomen, and pelvis with and without contrast.

Some commenters, however, opposed the implementation of any payment policy to account for the efficiencies of multiple imaging procedures provided during the same session, arguing that the OPPS cost-based methodology already incorporates the efficiencies of performing multiple procedures during the same session. They believed that adding a composite policy essentially ''double counts'' imaging efficiencies. One commenter opposed the policy because, according to the commenter, hospitals do not have the option of refusing to provide services that are ordered by a physician, and cannot control the cost of providing a service in relationship to the cost of the equipment. Another commenter noted that MRI equipment costs are fixed in the short term.

Response: We have reviewed all of the public comments we received on the proposed multiple imaging composite methodology, and we have decided to finalize our proposal to provide a single composite payment each time a hospital bills more than one procedure from an imaging family on a single date of service for CY 2009. We appreciate the commenters' thoughtful observations and suggestions.

In response to the commenters' concerns about the adequacy of the proposed composite APC payment rates for sessions involving more than two imaging procedures, we analyzed data from the CY 2007 claims from which the median costs used to calculate those payment rates were calculated. We found that the vast majority of CY 2007 claims used for ratesetting included two procedures, ranging from 73 percent of multiple imaging procedure claims for APC 8008, to 97 percent of multiple imaging procedure claims for APC 8004. We do not believe that, in aggregate, OPPS payment for multiple imaging services will be inadequate under the multiple imaging composite payment methodology, even considering the minority of cases in which hospitals provide more than two imaging procedures on a single date of service. The median costs upon which the payment rates for the multiple imaging composite APCs are based are calculated using CY 2007 claims that would have qualified for composite payment, including those with only two imaging procedures and those with substantially higher numbers of imaging procedures. Payment based on a measure of central tendency is a principle of any prospective payment system. In some individual cases payment exceeds the average cost and in other cases payment is less than the average cost. On balance, however, payment should approximate the relative cost of the average case, recognizing that, as a prospective payment system, the OPPS is a system of averages.

Furthermore, the purpose of the composite payment methodology overall is to establish incentives for efficiency through larger payment bundles. Based on our observations of only small to moderate percentages of single sessions with three or more imaging procedures, we do not believe it would be appropriate to create additional multiple imaging composite APCs for sessions involving more than two or three imaging procedures. The various suggestions by some commenters regarding the creation of additional composite APCs for payment of three or more procedures or for specific combinations of scans all would remove some of the efficiency incentives associated with a single bundled payment and would make the multiple imaging policy more closely resemble standard payment for single procedures. Additional composite APCs would not be consistent with encouraging value-based purchasing under the OPPS. We note that the OPPS does have an outlier policy for cases involving extremely high costs, as discussed in section II.F. of this final rule with comment period.

We also do not believe that the multiple imaging composite payment methodology will inhibit beneficiary access to imaging services, because the policy will result in only relatively modest payment redistributions in the short term. We estimate that total payment impact among classes of hospitals attributable to changes in imaging payment will be relatively small, and we expect that the multiple imaging composite policy will redistribute about 0.4 percent of total OPPS payment. We believe this policy does more to redesign incentives in providing imaging services than to significantly reduce imaging payment to hospitals for CY 2009.

Further, we do not agree with some commenters that the multiple imaging composite payment methodology would result in hospitals requiring patients who need more than two imaging procedures to return for additional visits. We do not believe that, in general, hospitals would routinely and for purposes of financial gain put patients at unnecessary risk of harm from radiation or contrast exposure, or inconvenience them or risk lack of timely follow up to the point of making them return to the hospital on separate days to receive medically necessary diagnostic studies. However, we note that we do have the capacity to examine our claims data for patterns of fragmented care. If we were to find a pattern in which a hospital appears to be fragmenting care across multiple days, we could refer it for review by the Quality Improvement Organizations (QIOs) with respect to the quality of care furnished, or for review by the Program Safeguard Contractors of claims against the medical record, as appropriate to the circumstances we found.

In addition, we explored data from the CY 2007 claims from which the median costs used to calculate the multiple imaging composite APC payment rates were calculated in response to comments that the policy would have a disproportionate effect on cancer centers and trauma units and the recommendation by the APC Panel at its August 2008 meeting, which we are accepting. An analysis of diagnosis codes present on the CY 2007 multiple imaging ''single session'' claims did show more variability in the number of scans for cancer patients compared to other types of patients, consistent with commenters' concerns. We saw that, for several of the more commonly reported cancer diagnoses, more than half of the patients received more than two imaging procedures, while lower proportions of other types of patients received more than two imaging procedures on a single date of service. We did not observe the same pattern for trauma diagnoses. We do not believe that the higher rate of variability that we observed in the number of scans cancer patients receive was so extreme, however, that the mix of services hospitals provide to patients with diagnoses other than cancer would not balance out higher numbers of scans for cancer patients.

We do not have a current list of cancer centers other than those held permanently harmless under section 1833(t)(7)(D)(ii) of the Act or a current list of hospitals with significant trauma units in order to assess outcomes for these particular classes of hospitals. However, as noted above, we do not estimate significant redistributions among hospitals as a result of this policy. Further, the goal of introducing a single composite payment for any multiple imaging session is to encourage hospitals to consider their patterns of service provision in general, and not payment per patient. Therefore, we do not believe that the multiple imaging composite methodology will result in disproportionate effects on either hospitals with cancer centers or trauma units, and we do not agree with some commenters that it would be appropriate to exempt services provided to cancer and trauma patients from the multiple imaging composite APC payment policy. We see no justification for paying differently for the same imaging services according to patient diagnosis or care setting, because we believe that most hospitals demonstrate sufficient variability in the number of imaging procedures they provide to a single patient on the same day that it is unlikely that certain hospitals would disproportionately experience negative financial effects from the multiple imaging composite APC payment policy.

We also do not agree that the multiple imaging composite APCs are unnecessary, as some commenters argued, because the OPPS cost-based methodology already incorporates the efficiencies of performing multiple imaging procedures during the same session. While we agree that efficiencies due to multiple imaging procedures are generally reflected in hospitals' CCRs used to develop costs, we believe that the advantage of a composite methodology for imaging services is that it allows us to use naturally occurring multiple procedure claims to calculate the median costs for sessions involving multiple procedures, rather than using single procedure claims which do not reflect as accurately how hospitals provide care in those instances. The lower per case median cost for multiple imaging services suggests that hospitals providing more multiple imaging services generally have lower costs. We note that a small increase in the median cost of standard (sole service) APCs accompanied our lower multiple imaging composite APC median costs. The multiple imaging policy does not ''double count'' efficiencies for imaging; rather, it more accurately estimates the costs of single versus multiple imaging sessions.

We believe that we are proceeding with an appropriate level of caution, as several commenters recommended, by developing one new composite APC policy for CY 2009. We did not receive any comments to the CY 2009 OPPS/ASC proposed rule indicating there were access problems resulting from the implementation of composite APCs in CY 2008, which was consistent with our expectations given the composite methodology improves the accuracy of the OPPS payment rates by utilizing more complete and valid claims in ratesetting. With regard to providing data and a transparent methodology, we point out that we make our claims data available to the public, and we discuss our calculation of these multiple imaging composite APC payment rates in both this section and in section II.A.1. of the CY 2009 OPPS/ASC proposed rule (73 FR 41423 through 41425). We also have a claims accounting narrative available under supporting documentation for this final rule with comment period on the CMS Web site at: *http://www.cms.hhs.gov/HospitalOutpatientPPS/HORD/.*

We disagree with commenters who asserted that we should not implement the multiple imaging composite methodology because hospitals do not have the option of refusing to provide services that are ordered by a physician, and cannot control the cost of providing a service in relationship to the cost of the equipment. While physicians, rather than hospital staff, may order specific services for patients, hospitals decide what services they will and will not furnish, and how they will furnish those services. We also disagree that fixed capital equipment costs are a deterrent to implementing a multiple imaging composite payment methodology. As discussed earlier, data analyses performed for the CY 2009 OPPS/ASC proposed rule showed that some hospitals are more efficient than other hospitals when providing multiple imaging services. A prospective payment system sets payments based on a median or average cost to encourage providers to carefully consider their costs of providing services, and in any individual case payment may exceed the average or median cost. We would expect less efficient hospitals to construct ways to become more efficient, such as negotiating lower costs on equipment, even if they do not have the latitude to perform fewer imaging services.

Comment: Some commenters urged CMS to standardize cost reporting for both advanced imaging procedures and other problematic cost centers before it makes any methodological changes to OPPS payment methodologies, including a composite policy for multiple imaging procedures. According to the commenters, additional efficiencies can only be gained from improved accuracy in cost reporting for diagnostic radiology services, including use of several standard cost centers for diagnostic imaging services. The commenters were concerned that observed efficiencies in the multiple imaging composite median costs are the result of inaccurate cost report data only and do not reflect true efficiencies from multiple imaging services provided during a single session. These commenters stated that the implementation of separate cost centers for CT and MRI procedures, as recommended in the July 2008 report by RTI entitled, ''Refining Cost to Charge Ratios for Calculating APC and DRG Relative Payment Weights,'' would provide much more accurate charge and cost data for these imaging modalities, and that the efficiencies associated with providing multiple imaging procedures in a single session may only be discernable once these data are available. The commenters recommended that CMS analyze claims data for a 2 to 3 year period following cost reporting changes before considering a multiple imaging composite payment methodology.

Response: As discussed in section II.A.1.c.(2) of this final rule with comment period, we agree with commenters that improved and more precise cost reporting would improve OPPS payment accuracy. Even if we were to make changes to create new diagnostic radiology cost centers for CT and MRI procedures as recommended by the commenters for future years, it would be several years after initial implementation before data would be available to reevaluate OPPS payment rates for imaging services. In the meantime, we see no reason not to move forward with other changes in OPPS payment policies, such as the multiple imaging composite APC payment methodology, that could improve the accuracy of OPPS payment rates and promote efficiency among hospitals. The most recent hospital cost report data are the best and most consistent estimate of relative costs that we have available to us for all hospitals for all hospital services. We will continue to use these data to estimate APC median costs. Our goal in creating this new payment structure is to encourage long-term efficiencies in the provision of

multiple imaging services. Should improved, revised cost report data become available for CT and MRI procedures, our composite methodology would automatically incorporate that additional precision into the multiple imaging composite APC median cost estimates.

Comment: Several commenters expressed concern that the proposed composite payment methodology for multiple imaging procedures may not comply with the statutory requirement in section 1833(t)(2)(G) of the Act that the OPPS provide payment for imaging services furnished with and without contrast through separate payment groups. They requested that CMS not use data from services performed without contrast to set the payment rates for the ''with contrast'' composite APCs, arguing that the inclusion of cost data from procedures performed without contrast in the median cost calculation for the ''with contrast'' composite APCs may fail to capture the full costs of imaging services provided with contrast agents. A handful of commenters sought clarification about whether CMS had included ''single session'' claims that incorporated ''without contrast'' HCPCS codes in the ''with contrast'' composite. Another commenter requested that the more costly CT and MRI studies performed without contrast and then followed by contrast, and described by a single combination CPT code, be paid through separate composite APCs. According to the commenter, the inclusion of these procedures with other ''with contrast'' studies would cause their median payment level to decrease.

Response: We believe that the composite payment methodology for multiple imaging procedures complies with the statutory requirement in section 1833(t)(2)(G) of the Act that the OPPS provide separate payment groups for imaging services provided with and without contrast. As discussed in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66650), section 1833(t)(1)(B) of the Act permits us to define what constitutes a covered HOPD ''service'' for purposes of payment under the OPPS, and we have not restricted a ''service'' to a single HCPCS code. Defining the service paid under the OPPS by combinations of HCPCS codes for procedures that are commonly performed in the same encounter and that result in the provision of a complete service enables us to use more claims data and establish payment rates that we believe more appropriately capture the costs of services paid under the OPPS. Consistent with our statutory flexibility to define what constitutes a service under the OPPS, we have redefined an imaging service for purposes of the multiple imaging composite methodology as a ''single session'' involving multiple imaging procedures within an imaging family performed on the same date of service. Furthermore, if a contrast agent is provided to a Medicare beneficiary as part of any imaging procedure furnished during that single imaging session, then we have defined that session as a ''with contrast'' imaging session to allow for payment through a separate group from a ''without contrast'' single imaging session.

Therefore, in order to calculate the median costs for the multiple imaging composite APCs, we designate an entire session as a ''with contrast'' service and use the claim to calculate the median cost for the ''with contrast'' composite APC when at least one of the imaging procedures within an imaging family performed on the same date of service involves contrast. If none of the imaging procedures within an imaging family performed on the same date of service involve contrast, we designate the entire session a ''without contrast'' service and use the claim to calculate the median cost for the ''without contrast'' composite APC.

The statutory requirement that we create separate payment groups to classify imaging procedures performed with contrast and without contrast allows us to recognize that imaging services involving contrast require different hospital resources than imaging services performed without contrast. As shown in Table 8 below, the median costs upon which payment rates are calculated for the ''with contrast'' composite APCs (APC 8006 and APC 8008) are higher than the median costs for the ''without contrast'' composite APCs (APC 8005 and APC 8007). We believe that when multiple imaging services are provided in a single imaging session and only one of the studies uses contrast, hospitals still incur many of the same costs as they would incur if all of the studies used contrast, such as a screening by hospital staff for patient allergies, the establishment of venous access, and the initiation of necessary monitoring. As such, we would not expect that the costs of sessions involving a ''with contrast'' procedure along with other ''with contrast'' procedures in the same family would differ significantly from the costs of sessions involving a ''with contrast'' procedure and procedures that do not involve contrast. Our analysis of the CY 2007 claims data used to calculate the median costs for the multiple imaging composite APCs supported this argument. If we were to remove all ''single session'' claims that included procedures both with contrast and without contrast from the median cost calculation of the two ''with contrast'' composite APCs, the impact on the APC median costs would be negligible—the median cost for APC 8006 would increase by less than 1 percent, and the median cost for APC 8008 would increase by only 4 percent.

In addition, we do not believe it would be appropriate to create a separate composite APC for payment of CT or MRI procedures performed without contrast and then followed by contrast, as described by a single combination CPT code. In effect, these codes already describe a multiple imaging session—a ''without contrast'' imaging service followed by a ''with contrast'' imaging service. This is comparable to some of the other ''single session'' claims in the CT/CTA and MRI/MRA ''with contrast'' composite APCs (APC 8006 and APC 8008, respectively), in that these composite APCs incorporate in some ''single session'' claims certain ''without contrast'' imaging services. We believe that our definition of a single session with contrast as including the costs associated with providing a contrast agent for any one or more individual procedures appropriately places these combination CPT codes in APCs 8006 and 8008 and meets the statutory requirements.

Finally, we agree with several commenters that APC 8004 includes only ultrasound studies performed without contrast. Should we revise the HCPCS codes in APC 8004 to include ultrasound imaging services performed with contrast in the future, we would create a new composite APC for ''with contrast'' ultrasound procedures to comply with section 1833(t)(2)(G) of the Act.

In summary, we believe the payment differential between the ''with contrast'' composite APCs and the ''without contrast'' composite APCs is appropriate, regardless of whether or not the other imaging procedures provided within the same session as an imaging procedure performed with contrast are also performed with contrast. We believe we are in full compliance with the statutory requirement that we create groups of covered OPPS services that utilize contrast agents and those that do not utilize contrast agents by redefining multiple imaging services provided in one encounter as a ''single session'' in which more than one procedure from an imaging family is provided on the same date of service and assigning ''with

contrast'' composite APCs when at least one of the procedures involves contrast.

Comment: One commenter stated that, before implementing the multiple imaging composite policy, CMS should consult with relevant stakeholders about which CPT codes should be subject to the policy. The commenter also urged CMS to provide hospitals with instructions to continue coding for packaged and bundled services to ensure adequate data collection. Another commenter stated that CMS should delay implementation of the multiple imaging composite policy to allow hospitals that use the charging of single CPT codes to determine staff levels and productivity to adjust to the proposed changes. One commenter recommended that CMS work with the AMA to create new CPT codes that describe combined procedures so that providers could use those codes when they provide multiple imaging services in a single session. The commenter argued that utilization of such codes would be easier for providers and would facilitate the capturing of charge data that could be used to create new APCs or payment policies that reflect economies of scale for combined procedures reported through claims data.

Response: Consistent with our standard process for securing the views of stakeholders through the rulemaking cycle, we published a detailed account of the multiple imaging composite payment methodology proposed for CY 2009 in the CY 2009 OPPS/ASC proposed rule (73 FR 41447 through 41451) and requested comment. Table 8 of the CY 2009 OPPS/ASC proposed rule presented the HCPCS codes comprising the three OPPS imaging families and five composite APCs that would be created under the multiple imaging composite proposal for CY 2009. We did not receive any comments on the particular imaging HCPCS codes or the families of codes we proposed for composite payment. Therefore, we will apply the multiple imaging composite methodology to the HCPCS codes listed in Table 8 below, for CY 2009. These HCPCS codes are assigned status indicator ''Q3'' in Addendum B to this final rule with comment period to identify their status as potentially payable through a composite APC. Their composite APC assignments are identified in Addendum M to this final rule with comment period.

We continue to encourage hospitals to report the HCPCS codes and associated charges for all services they provide, taking into consideration all CPT, CMS, and local Medicare contractor instructions, whether payment for those HCPCS codes is packaged or separately provided. We note that the multiple imaging composite APC payment policy should have no operational impact on hospital billing practices, because hospitals should continue reporting the same HCPCS codes they currently use to report imaging procedures. The I/OCE will assess claims to determine whether a composite APC or a standard (sole service) imaging APC should be assigned. We believe that an advantage of the multiple imaging composite methodology is that it can improve the accuracy of OPPS payment without imposing burdens on hospitals to use different codes or change the way they report services.

We do not agree with the commenter that it would be necessary to create new CPT codes that describe combined services to ease the burden of hospital billing and improve claims data for ratesetting. As discussed earlier, certain combination CPT codes, specifically those single codes that describe imaging procedures without contrast and then followed by contrast, already allow for hospitals to report commonly performed combinations of imaging procedures in one anatomic area using a single CPT code. Hospitals can continue to use existing codes to report combined services by reporting multiple HCPCS codes, and for ratesetting, we use the charges reported to us by hospitals for combined services to calculate composite APC payment rates.

Comment: The commenters asked for clarifications and offered recommendations regarding how the multiple imaging composite policy would be implemented. A few commenters also requested that CMS clarify what constitutes a ''single session'' and provide guidance on how hospitals are to bill and receive payment for multiple imaging procedures provided on the same date of service but during different encounters. According to the commenters, a composite payment would not be appropriate in such cases because facility resources are expended each and every time a patient is seen for a separate procedure. Some commenters suggested CMS address these cases by allowing the use of the ''59'' modifier to signify a distinct procedural service and implementing I/OCE logic that would not assign composite payment in those instances. Other commenters stated that hospitals would not track whether multiple scans took place during single or separate sessions on the same day, and asked that CMS provide standard (sole service) APC payment when hospitals provide imaging services that would otherwise be subject to the composite methodology on the same date of service but at different times.

Response: A single imaging session for purposes of the multiple imaging composite APC payment policy involves more than one procedure within the same family provided on a single date of service. We believe that composite payment is appropriate even when procedures are provided on the same date of service but at different times, because hospitals do not expend the same facility resources each and every time a patient is seen for a distinct imaging service in a separate imaging session. In most cases, we expect that patients in these circumstances would receive imaging procedures at different times during a single prolonged hospital outpatient encounter. The efficiencies that may be gained from providing multiple imaging procedures during a single session are achieved in ways other than merely not having to reposition the patient. For example, a patient who has two MRI procedures three hours apart during a single hospital outpatient encounter would not have to be registered again, and hospital staff might not have to explain the procedure in detail prior to the second scan. In the case of multiple procedures involving contrast that are provided at different times during a single hospital outpatient encounter, establishment of new intravenous access for the second study would not be necessary. Even if the same level of efficiencies could not be gained for multiple imaging procedures performed on the same date of service but at different times, we expect that any higher costs associated with these cases would be reflected in the claims data and cost reports we use to calculate the median costs for the multiple imaging composite APCs, and therefore, in the payment rates for the multiple imaging composite APCs. We do not believe it is necessary or appropriate for hospitals to report imaging procedures provided on the same date of service but during different encounters any differently than they would report imaging procedures performed consecutively with no time in between.

In all cases, hospitals that furnish more than one imaging procedure to a Medicare beneficiary in the HOPD on the same date of service must bill all imaging services on the same claim. We expect to carefully monitor any changes in billing practices on a service-specific and hospital-specific basis to determine whether there is reason to request that QIOs review the quality of care furnished or to request that Program Safeguard Contractors review the claims against the medical record.

Comment: Several commenters asked whether the multiple imaging composite policy would affect application of section 5102(b)(1) of the Deficit Reduction Act (DRA), which requires CMS to cap the technical component of the MPFS payment amount by the OPPS payment amount for certain imaging procedures. One commenter asked if the savings from this proposal are budget neutral.

Response: The payment comparison for the DRA cap on the MPFS technical component payment for imaging services will continue to be made between the applicable MPFS technical component payment and the payment for the standard (sole service) imaging APC payment for services subject to the cap, even if multiple MPFS imaging services subject to the DRA cap are provided in one imaging session.

Modest imaging savings from the multiple imaging composite methodology of 0.4 percent are budget neutral and are redistributed to other services paid under the OPPS for CY 2009.

In summary, after consideration of the public comments received, we are adopting our CY 2009 proposal, without modification, to utilize the three OPPS imaging families discussed above in this section, incorporating statutory requirements to differentiate OPPS payment for imaging services provided with contrast and without contrast as required by section 1833(t)(2)(G) of the Act, to create five multiple imaging composite APCs for payment in CY 2009. The multiple imaging composite APCs for CY 2009 are: APC 8004 (Ultrasound Composite); APC 8005 (CT and CTA without Contrast Composite); APC 8006 (CT and CTA with Contrast Composite); APC 8007 (MRI and MRA without Contrast Composite); and APC 8008 (MRI and MRA with Contrast Composite). The composite APCs have status indicators of ''S,'' signifying that payment for the APC is not reduced when it appears on the same claim with other significant procedures.

We will provide one composite APC payment each time a hospital bills more than one procedure described by the HCPCS codes in an OPPS imaging family displayed in Table 8 below, on a single date of service. If the hospital performs a procedure without contrast during the same session as at least one other procedure with contrast using the same imaging modality, then the hospital will receive payment for the ''with contrast'' composite APC. A single imaging procedure, or imaging procedures reported with HCPCS codes assigned to different OPPS imaging families, will be paid according to the standard OPPS methodology through the standard (sole service) imaging APCs to which they are assigned in CY 2009. Hospitals will continue to use the same HCPCS codes to report imaging procedures, and the I/OCE will determine when combinations of imaging procedures qualify for composite APC payment or map to standard (sole service) APCs for payment. We will make a single payment for those imaging procedures that qualify for composite APC payment, as well as any packaged services furnished on the same date of service.

To calculate the final rule median costs for the five multiple imaging composite APCs, we removed any HCPCS codes in the OPPS imaging families that overlapped with codes on our bypass list to avoid splitting claims with multiple units or multiple occurrences of codes in an OPPS imaging family into new ''pseudo'' single claims. The imaging HCPCS codes that we removed from the bypass list for purposes of calculating the multiple imaging composite APC median costs appear in Table 9 below. (We refer readers to section II.A.1.b. of this final rule with comment period for further discussion of how we treat claims with HCPCS codes in the OPPS imaging families that are also on the bypass list.) We integrated the identification of imaging composite ''single session'' claims, that is, claims with multiple imaging procedures within the same family on the same date of service, into the creation of ''pseudo'' single claims to ensure that claims were split in the ''pseudo'' single process into accurate reflections of either a composite ''single session'' imaging service or a standard sole imaging service resource cost. Like all single bills, the new composite ''single session'' claims were for the same date of service and contained no other separately paid services in order to isolate the session imaging costs. Our last step after processing all claims through the ''pseudo'' single process was to reassess the remaining multiple procedure claims using the full bypass list and bypass process. This enhanced our proposed rule methodology of only identifying line-item costs for HCPCS codes in the OPPS imaging families remaining on multiple procedure claims with one unit of the imaging HCPCS code and no other imaging services in the families as potential ''pseudo'' single bills for use in calculating the median costs for sole imaging services. For this final rule with comment period, we not only made ''pseudo'' single bills out of line-items for the HCPCS codes in the OPPS imaging families overlapping with the HCPCS codes on the bypass list, which appear in Table 9 below, but we reassessed each claim after removing these line-items in order to see if we could make other ''pseudo'' single bills. That is, we assessed whether a single separately paid service remained on the claim after removing line-items for the ''overlap bypass codes.'' In particular, this change significantly increased the number of single bills available for APC 0274 (Myelography) for this final rule with comment period. We were able to identify 1.8 million ''single session'' claims out of an estimated 3 million potential composite cases from our ratesetting claims database, or over half of all eligible claims, to calculate median costs for the 5 final CY 2009 OPPS multiple imaging composite APCs.

TABLE 8—OPPS IMAGING FAMILIES AND MULTIPLE IMAGING PROCEDURE COMPOSITE APCS

Family 1—Ultrasound	
Final CY 2009 APC 8004 (Ultrasound Composite)	**Final CY 2009 Approximate APC Median Cost = $188**
76604	Us exam, chest.
76700	Us exam, abdom, complete.
76705	Echo exam of abdomen.
76770	Us exam abdo back wall, comp.
76775	Us exam abdo back wall, lim.
76776	Us exam k transpl w/Doppler.
76831	Echo exam, uterus.
76856	Us exam, pelvic, complete.
76870	Us exam, scrotum.

TABLE 8—OPPS IMAGING FAMILIES AND MULTIPLE IMAGING PROCEDURE COMPOSITE APCS—Continued

76857	Us exam, pelvic, limited.
Family 2—CT and CTA with and without Contrast	
Final CY 2009 APC 8005 (CT and CTA without Contrast Composite)*	**Final CY 2009 Approximate APC Median Cost = $406**
0067T	Ct colonography;dx.
70450	Ct head/brain w/o dye.
70480	Ct orbit/ear/fossa w/o dye.
70486	Ct maxillofacial w/o dye.
70490	Ct soft tissue neck w/o dye.
71250	Ct thorax w/o dye.
72125	Ct neck spine w/o dye.
72128	Ct chest spine w/o dye.
72131	Ct lumbar spine w/o dye.
72192	Ct pelvis w/o dye.
73200	Ct upper extremity w/o dye.
73700	Ct lower extremity w/o dye.
Final CY 2009 APC 8006 (CT and CTA with Contrast Composite)	**Final CY 2009 Approximate APC Median Cost = $621**
70487	Ct maxillofacial w/dye.
70460	Ct head/brain w/dye.
70470	Ct head/brain w/o & w/dye.
70481	Ct orbit/ear/fossa w/dye.
70482	Ct orbit/ear/fossa w/o&w/dye.
70488	Ct maxillofacial w/o & w/dye.
70491	Ct soft tissue neck w/dye.
70492	Ct sft tsue nck w/o & w/dye.
70496	Ct angiography, head.
70498	Ct angiography, neck.
71260	Ct thorax w/dye.
71270	Ct thorax w/o & w/dye.
71275	Ct angiography, chest.
72126	Ct neck spine w/dye.
72127	Ct neck spine w/o & w/dye.
72129	Ct chest spine w/dye.
72130	Ct chest spine w/o & w/dye.
72132	Ct lumbar spine w/dye.
72133	Ct lumbar spine w/o & w/dye.
72191	Ct angiograph pelv w/o&w/dye.
72193	Ct pelvis w/dye.
72194	Ct pelvis w/o & w/dye.
73201	Ct upper extremity w/dye.
73202	Ct uppr extremity w/o&w/dye.
73206	Ct angio upr extrm w/o&w/dye.
73701	Ct lower extremity w/dye.
73702	Ct lwr extremity w/o&w/dye.
73706	Ct angio lwr extr w/o&w/dye.
74160	Ct abdomen w/dye.
74170	Ct abdomen w/o & w/dye.
74175	Ct angio abdom w/o & w/dye.
75635	Ct angio abdominal arteries.
Family 3—MRI and MRA with and without Contrast	
Final CY 2009 APC 8007 (MRI and MRA without Contrast Composite)*	**Final CY 2009 Approximate APC Median Cost = $695**
70336	Magnetic image, jaw joint.
70540	Mri orbit/face/neck w/o dye.
70544	Mr angiography head w/o dye.
70547	Mr angiography neck w/o dye.
70551	Mri brain w/o dye.
70554	Fmri brain by tech.
71550	Mri chest w/o dye.
72141	Mri neck spine w/o dye.
72146	Mri chest spine w/o dye.
72148	Mri lumbar spine w/o dye.
72195	Mri pelvis w/o dye.
73218	Mri upper extremity w/o dye.
73221	Mri joint upr extrem w/o dye.
73718	Mri lower extremity w/o dye.

TABLE 8—OPPS IMAGING FAMILIES AND MULTIPLE IMAGING PROCEDURE COMPOSITE APCS—Continued

73721	Mri jnt of lwr extre w/o dye.
74181	Mri abdomen w/o dye.
75557	Cardiac mri for morph.
75559	Cardiac mri w/stress img.
C8901	MRA w/o cont, abd.
C8904	MRI w/o cont, breast, uni.
C8907	MRI w/o cont, breast, bi.
C8910	MRA w/o cont, chest.
C8913	MRA w/o cont, lwr ext.
C8919	MRA w/o cont, pelvis.
Final CY 2009 APC 8008 (MRI and MRA with Contrast Composite)	**Final CY 2009 Approximate APC Median Cost = 968**
70549	Mr angiograph neck w/o&w/dye.
70542	Mri orbit/face/neck w/dye.
70543	Mri orbt/fac/nck w/o & w/dye.
70545	Mr angiography head w/dye.
70546	Mr angiograph head w/o&w/dye.
70548	Mr angiography neck w/dye.
70552	Mri brain w/dye.
70553	Mri brain w/o & w/dye.
71551	Mri chest w/dye.
71552	Mri chest w/o & w/dye.
72142	Mri neck spine w/dye.
72147	Mri chest spine w/dye.
72149	Mri lumbar spine w/dye.
72156	Mri neck spine w/o & w/dye.
72157	Mri chest spine w/o & w/dye.
72158	Mri lumbar spine w/o & w/dye.
72196	Mri pelvis w/dye.
72197	Mri pelvis w/o & w/dye.
73219	Mri upper extremity w/dye.
73220	Mri uppr extremity w/o&w/dye.
73222	Mri joint upr extrem w/dye.
73223	Mri joint upr extr w/o&w/dye.
73719	Mri lower extremity w/dye.
73720	Mri lwr extremity w/o&w/dye.
73722	Mri joint of lwr extr w/dye.
73723	Mri joint lwr extr w/o&w/dye.
74182	Mri abdomen w/dye.
74183	Mri abdomen w/o & w/dye.
75561	Cardiac mri for morph w/dye.
75563	Card mri w/stress img & dye.
C8900	MRA w/cont, abd.
C8902	MRA w/o fol w/cont, abd.
C8903	MRI w/cont, breast, uni.
C8905	MRI w/o fol w/cont, brst, un.
C8906	MRI w/cont, breast, bi.
C8908	MRI w/o fol w/cont, breast,
C8909	MRA w/cont, chest.
C8911	MRA w/o fol w/cont, chest.
C8912	MRA w/cont, lwr ext.
C8914	MRA w/o fol w/cont, lwr ext.
C8918	MRA w/cont, pelvis.
C8920	MRA w/o fol w/cont, pelvis.

* If a ''without contrast'' CT or CTA procedure is performed during the same session as a ''with contrast'' CT or CTA procedure, the I/OCE will assign APC 8006 rather than 8005.

* If a ''without contrast'' MRI or MRA procedure is performed during the same session as a ''with contrast'' MRI or MRA procedure, the I/OCE will assign APC 8008 rather than 8007.

TABLE 9—OPPS IMAGING FAMILY SERVICES OVERLAPPING WITH HCPCS CODES ON THE CY 2009 BYPASS LIST

Family 1—Ultrasound	
76700	Us exam, abdom, complete.
76705	Echo exam of abdomen.
76770	Us exam abdo back wall, comp.
76775	Us exam abdo back wall, lim.
76776	Us exam k transpl w/doppler.
76856	Us exam, pelvic, complete.
76870	Us exam, scrotum.
76857	Us exam, pelvic, limited.

TABLE 9—OPPS IMAGING FAMILY SERVICES OVERLAPPING WITH HCPCS CODES ON THE CY 2009 BYPASS LIST—Continued

Family 2—CT and CTA with and without Contrast	
70450	Ct head/brain w/o dye.
70480	Ct orbit/ear/fossa w/o dye.
70486	Ct maxillofacial w/o dye.
70490	Ct soft tissue neck w/o dye.
71250	Ct thorax w/o dye.
72125	Ct neck spine w/o dye.
72128	Ct chest spine w/o dye.
72131	Ct lumbar spine w/o dye.
72192	Ct pelvis w/o dye.
73200	Ct upper extremity w/o dye.
73700	Ct lower extremity w/o dye.
74150	Ct abdomen w/o dye.
Family 3—MRI and MRA with and without Contrast	
70336	Magnetic image, jaw joint.
70544	Mr angiography head w/o dye.
70551	Mri brain w/o dye.
72141	Mri neck spine w/o dye.
72146	Mri chest spine w/o dye.
72148	Mri lumbar spine w/o dye.
73218	Mri upper extremity w/o dye.
73221	Mri joint upr extrem w/o dye.
73718	Mri lower extremity w/o dye.
73721	Mri jnt of lwr extre w/o dye.

3. Calculation of OPPS Scaled Payment Weights

Using the APC median costs discussed in sections II.A.1. and 2. of this final rule with comment period, we calculated the final relative payment weights for each APC for CY 2009 shown in Addenda A and B to this final rule with comment period. In years prior to CY 2007, we standardized all the relative payment weights to APC 0601 (Mid Level Clinic Visit) because mid-level clinic visits were among the most frequently performed services in the hospital outpatient setting. We assigned APC 0601 a relative payment weight of 1.00 and divided the median cost for each APC by the median cost for APC 0601 to derive the relative payment weight for each APC.

Beginning with the CY 2007 OPPS (71 FR 67990), we standardized all of the relative payment weights to APC 0606 (Level 3 Clinic Visits) because we deleted APC 0601 as part of the reconfiguration of the visit APCs. We selected APC 0606 as the base because APC 0606 was the middle level clinic visit APC (that is, Level 3 of five levels). We had historically used the median cost of the middle level clinic visit APC (that is APC 0601 through CY 2006) to calculate unscaled weights because mid-level clinic visits were among the most frequently performed services in the hospital outpatient setting. Therefore, for CY 2009, to maintain consistency in using a median for calculating unscaled weights representing the median cost of some of the most frequently provided services, we proposed to continue to use the median cost of the mid-level clinic visit APC, proposed APC 0606, to calculate unscaled weights. Following our standard methodology, but using the proposed CY 2009 median cost for APC 0606, for CY 2009 we assigned APC 0606 a relative payment weight of 1.00 and divided the median cost of each APC by the proposed median cost for APC 0606 to derive the unscaled relative payment weight for each APC. The choice of the APC on which to base the relative weights for all other APCs does not affect the payments made under the OPPS because we scale the weights for budget neutrality.

Section 1833(t)(9)(B) of the Act requires that APC reclassification and recalibration changes, wage index changes, and other adjustments be made in a budget neutral manner. Budget neutrality ensures that estimated aggregate payments under the OPPS for CY 2009 are neither greater than nor less than the estimated aggregate payments that would have been made without the changes. To comply with this requirement concerning the APC changes, we proposed to compare aggregate payments using the CY 2008 scaled relative weights to aggregate payments using the CY 2009 unscaled relative weights. Again this year, we included payments to CMHCs in our comparison. Based on this comparison, we adjusted the unscaled relative weights for purposes of budget neutrality. The unscaled relative payment weights were adjusted by a weight scaler of 1.3354 for budget neutrality in the CY 2009 OPPS/ASC proposed rule (73 FR 41452). In addition to adjusting for increases and decreases in weight due to the recalibration of APC medians, the scaler also accounts for any change in the base, other than changes in volume which are not a factor in the weight scaler.

Section 1833(t)(14)(H) of the Act, as added by section 621(a)(1) of Public Law 108–173, states that, ''Additional expenditures resulting from this paragraph shall not be taken into account in establishing the conversion factor, weighting and other adjustment factors for 2004 and 2005 under paragraph (9) but shall be taken into account for subsequent years.'' Section 1833(t)(14) of the Act provides the payment rates for certain ''specified covered outpatient drugs.'' Therefore, the cost of those specified covered outpatient drugs (as discussed in section V. of this final rule with comment period) is included in the budget neutrality calculations for the CY 2009 OPPS.

We did not receive any public comments on the proposed methodology for calculating scaled weights from the median costs for the CY 2009 OPPS. Therefore, we are finalizing our proposed methodology, without modification, including updating of the budget neutrality scaler for this final rule with comment period,

as we proposed. Under this methodology, the final unscaled payment weights were adjusted by a weight scaler of 1.3585 for this final rule with comment period. The final scaled relative payment weights listed in Addenda A and B to this final rule with comment period incorporate the recalibration adjustments discussed in sections II.A.1. and 2. of this final rule with comment period.

4. Changes to Packaged Services

a. Background

The OPPS, like other prospective payment systems, relies on the concept of averaging, where the payment may be more or less than the estimated costs of providing a service or package of services for a particular patient, but with the exception of outlier cases, is adequate to ensure access to appropriate care. Packaging and bundling payment for multiple interrelated services into a single payment create incentives for providers to furnish services in the most efficient way by enabling hospitals to manage their resources with maximum flexibility, thereby encouraging long-term cost containment. For example, where there are a variety of supplies that could be used to furnish a service, some of which are more expensive than others, packaging encourages hospitals to use the least expensive item that meets the patient's needs, rather than to routinely use a more expensive item. Packaging also encourages hospitals to negotiate carefully with manufacturers and suppliers to reduce the purchase price of items and services or to explore alternative group purchasing arrangements, thereby encouraging the most economical health care. Similarly, packaging encourages hospitals to establish protocols that ensure that necessary services are furnished, while carefully scrutinizing the services ordered by practitioners to maximize the efficient use of hospital resources. Finally, packaging payments into larger payment bundles promotes the stability of payment for services over time. Packaging and bundling also may reduce the importance of refining service-specific payment because there is more opportunity for hospitals to average payment across higher cost cases requiring many ancillary services and lower cost cases requiring fewer ancillary services.

Decisions about packaging and bundling payment involve a balance between ensuring some separate payment for individual services and establishing incentives for efficiency through larger units of payment. Over the past several years of the OPPS, greater unpackaging of payment has occurred simultaneously with continued growth in OPPS expenditures as a result of increasing volumes of individual services. In an attempt to address this increase in volume of services, in the CY 2008 OPPS/ASC final rule with comment period, we finalized additional packaging for the CY 2008 OPPS, which included the establishment of four new composite APCs for CY 2008, specifically APC 8000 (Cardiac Electrophysiologic Evaluation and Ablation Composite), APC 8001 (LDR Prostate Brachytherapy Composite), APC 8002 (Level I Extended Assessment & Management Composite), and APC 8003 (Level II Extended Assessment & Management Composite) (72 FR 66650 through 66659). HCPCS codes that may be paid through a composite APC if certain composite-specific criteria are met or otherwise may be paid separately are assigned status indicator ''Q'' for CY 2008, and we consider them to be conditionally packaged. We discuss composite APCs in more detail in section II.A.2.e. of this final rule with comment period.

In addition, in the CY 2008 OPPS/ASC final rule with comment period, (72 FR 66610 through 66659), we adopted the packaging of payment for items and services in the seven categories listed below into the payment for the primary diagnostic or therapeutic modality to which we believe these items and services are typically ancillary and supportive. The seven categories are: guidance services, image processing services, intraoperative services, imaging supervision and interpretation services, diagnostic radiopharmaceuticals, contrast media, and observation services. We specifically chose these categories of HCPCS codes for packaging because we believe that the items and services described by the codes in these categories are the HCPCS codes that are typically ancillary and supportive to a primary diagnostic or therapeutic modality and, in those cases, are an integral part of the primary service they support. We finalized our assignment of status indicator ''N'' to those HCPCS codes that we believe are always integral to the performance of the primary modality, so we always package their costs into the costs of the separately paid primary services with which they are billed. Services assigned status indicator ''N'' in CY 2008 are unconditionally packaged. We also finalized our assignment of status indicator ''Q'' to those HCPCS codes that we believe are typically integral to the performance of the primary modality and, in such cases, we package payment for their costs into the costs of the separately paid primary services with which they are usually billed. An ''STVX-packaged code'' describes a HCPCS code whose payment is packaged when one or more separately paid primary services are furnished in the hospital outpatient encounter. A ''T-packaged code'' describes a code whose payment is packaged when one or more separately paid surgical procedures are provided during the hospital encounter. ''STVX-packaged codes'' and ''T-packaged codes'' are paid separately in those uncommon cases when they do not meet their respective criteria for packaged payment. ''STVX-packaged codes'' and ''T-packaged HCPCS codes'' assigned status indicator ''Q'' in CY 2008 are conditionally packaged.

We use the term ''dependent service'' to refer to the HCPCS codes that represent services that are typically ancillary and supportive to a primary diagnostic or therapeutic modality. We use the term ''independent service'' to refer to the HCPCS codes that represent the primary therapeutic or diagnostic modality into which we package payment for the dependent service. We note that, in future years as we consider the development of larger payment groups that more broadly reflect services provided in an encounter or episode-of-care, it is possible that we might propose to bundle payment for a service that we now refer to as ''independent.''

An example of a CY 2008 change in the OPPS packaging status for a dependent HCPCS code that is ancillary and supportive is CPT code 61795 (Stereotactic computer-assisted volumetric (navigational) procedure, intracranial, extracranial, or spinal (List separately in addition to code for primary procedure)). CPT code 61795 was assigned separate payment in CY 2007 but its payment is packaged during CY 2008. This service is only performed during the course of a surgical procedure. Several of the surgical procedures that we would expect to be reported in association with CPT code 61795 are assigned to APC 0075 (Level V Endoscopy Upper Airway) for CY 2008. We consider the stereotactic guidance service to be an ancillary and supportive service that may be performed only in the same operative session as a procedure that could otherwise be performed independently of the stereotactic guidance service.

During its March 2008 meeting, the APC Panel recommended that CMS report to the APC Panel at its first CY 2009 meeting the impact of packaging on the net payments for patient care. We will take this recommendation into

consideration and determine which data we can provide at the first CY 2009 APC Panel meeting that would best respond to this recommendation. The APC Panel also recommended that CMS present data at the first CY 2009 APC Panel meeting on usage and frequency, geographic distribution, and size and type of hospitals performing nuclear medicine examinations and using radioisotopes to ensure that access to these services is preserved for Medicare beneficiaries. This recommendation is discussed in more detail in section V.B.2.c. of this final rule with comment period.

Hospitals include charges for packaged services on their claims, and the costs associated with those packaged services are then added to the costs of separately payable procedures on the same claims in establishing payment rates for the separately payable services. We encourage hospitals to report all HCPCS codes that describe packaged services that were provided, unless CPT or CMS provide other guidance. If a HCPCS code is not reported when a packaged service is provided, it can be challenging to track utilization patterns and resource costs.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41453), we proposed to further refine our identification of the different types of conditionally packaged HCPCS codes that were previously all assigned status indicator ''Q'' (Packaged Services Subject to Separate Payment under OPPS Payment Criteria) under the OPPS for CY 2009. We proposed to create and assign status indicators ''Q1'' (''STVX-Packaged Codes''), ''Q2'' (''T-Packaged Codes''), or ''Q3'' (Codes that may be paid through a composite APC) to each conditionally packaged HCPCS code. We refer readers to section XIII.A.1. of this final rule with comment period for a complete discussion of status indicators and our status indicator changes for CY 2009.

While most conditionally packaged HCPCS codes are assigned to only one of the conditionally packaged categories described above, in the CY 2009 OPPS/ASC proposed rule (73 FR 41453), we proposed to assign one particular HCPCS code to two conditionally packaged categories for CY 2009. Specifically, we proposed to treat CPT code 75635 (Computed tomographic angiography, abdominal aorta and bilateral iliofemoral lower extremity runoff, with contrast material(s), including noncontrast images, if performed, and image postprocessing) as both a ''T-packaged code'' and a component of composite APC 8006 (CT and CTA with Contrast Composite). We proposed to assign this code status indicator ''Q2'' in Addendum B and ''Q3'' in Addendum M, to signify its dual treatment. For CY 2009, we proposed to first assess whether CPT code 75635 would be packaged or separately payable, based on its status as a ''T-packaged code.'' If the service reported with CPT code 75635 would be separately payable due to the absence of another procedure on the claim with status indicator ''T'' for the same date of service, the code would then be assessed in the context of any other relevant imaging services reported on the claim for the same date of service to determine whether payment for CPT code 75635 under composite APC 8006 would be appropriate. If the criteria for payment of the code under composite APC 8006 are not met, then CPT code 75635 would be separately paid based on APC 0662 (CT Angiography) and its corresponding payment rate displayed in Addendum B to this final rule with comment period.

We received many public comments related to the CY 2009 proposals for payment of packaged services that are not drugs. We have responded to public comments on the packaging of payment for drugs, including contrast media and diagnostic radiopharmaceuticals, in section V.B.2.c. of this final rule with comment period.

Comment: Several commenters were pleased that CMS did not propose to extend packaging to additional categories of services for CY 2009. These commenters believed that it was appropriate for CMS to study the effects of newly packaging many services for CY 2008 before choosing to package additional services. One commenter asked that we reconsider all packaging in general because of the adverse financial impact it has on some hospitals.

Many commenters recommended that CMS define principles and/or thresholds to determine whether a HCPCS code should be packaged, consistent with the August 2008 APC Panel recommendation that CMS establish a threshold (for example, a proportion of cases in which the service is provided ancillary and dependent to another service, rate of change in utilization over time, and market penetration) when packaging will be considered. While the APC Panel recommendation was discussed in the context of packaging intravascular ultrasound, intracardiac echocardiography, and fractional flow reserve, those general comments related to a threshold are summarized here.

One commenter suggested the following packaging principles: packaging should be reserved for higher-volume, lower-cost, minor and ancillary services that are frequently performed with an independent service; low volume procedures performed only occasionally in conjunction with the independent service should not be packaged; device-dependent procedures or procedures utilizing both single-use devices and capital equipment designed exclusively for use with that unique service should not be packaged; add-on codes that are infrequently performed among all cases of the independent services they accompany should not be packaged; and exceptions to the packaging policy should be permitted when packaging could unreasonably impede access to valuable technologies. Many commenters suggested that resource costs should be considered when determining whether to package services, in accordance with MedPAC's comment, which stated that packaging should be reserved for ''ancillaries that are frequently provided or inexpensive in relation to the associated independent service.'' Another commenter recommended that CMS should only package items that have substitutes; that CMS should take cost and volume into consideration when determining whether to package a service; and that CMS should package the charges for packaged services in a logical and more deliberate manner, ensuring that packaged costs representing dependent services are allocated only to corresponding independent services. One commenter suggested that CMS should only package payment for a dependent service if the payment rate for the independent service increases appropriately. Many commenters recommended that CMS consider a simple cost threshold, similar to the $60 per day drug packaging threshold that CMS proposed would determine whether payment for most drugs would be packaged or separately paid in CY 2009.

Response: We agree with the commenters that we should examine claims data from CY 2008 that reflect the first year of a significant change in packaging under the OPPS and note that we did not propose to package additional large categories of services for CY 2009 because we wanted a chance to study the effects of packaging payment. We will have CY 2008 claims available for the CY 2010 rulemaking cycle and will determine at that time whether it would be appropriate to propose to package additional categories of services. As noted below in section II.A.4.b.(1) of this final rule with comment period, we plan to review CY

2008 claims data with the APC Panel to assess any changes in utilization patterns of packaged services as previously recommended by the APC Panel.

While we are not adopting additional packaging principles or a nondrug packaging threshold for CY 2009, we understand the concerns of the commenters and are committed to considering this issue further in the future, balancing the concerns of the commenters with our goal of continuing to encourage efficient use of hospital resources. The criteria that the commenters provided are focused almost exclusively on preventing packaging, rather than on determining when packaging would be appropriate. We believe that packaging is appropriate when the nature of a service is such that it is supportive and ancillary to another service, whether or not the dependent service is always furnished with the independent service and regardless of the cost of the supportive ancillary service. For example, we do not want to create financial incentives to use one form of guidance instead of another, or to use guidance all the time, even if a procedure could be performed safely without guidance. In addition, it is not clear whether one set of packaging principles or one threshold could apply to the wide variety of services paid under the OPPS. Moreover, we are fully committed to continuing to advance value-based purchasing by Medicare in the hospital outpatient setting, to further the focus on value of care rather than volume, and we believe that packaging payment into larger payment bundles under the OPPS is an appropriate component of our strategy.

In general, we believe that packaging should reflect the reality of how services are furnished and reported on claims by hospitals. We believe that nonspecific packaging (as opposed to selected code packaging) based on combinations of services observed on hospital claims is appropriate because of the myriad combinations of services that can be appropriately provided together. As explained in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66617), we have used this approach to ratesetting throughout the history of the OPPS, and note that payment for APC groups currently reflects significant nonspecific packaging in many cases. We do not agree with the commenters that we should only package services that are low cost ancillary and supportive services that appear frequently with an independent service. To adopt that policy would essentially negate the concept of averaging that is an underlying premise of a prospective payment system because we would package only services that would increase the payment for the independent service, and hospitals would not have a particular incentive to provide care more efficiently.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, to package payment for five categories of ancillary and supportive services for CY 2009, specifically guidance services, image processing services, intraoperative services, imaging supervision and interpretation services, and observation services, that are provided in association with independent, separately paid services, without a specific threshold for the cost or utilization of those supportive services. The final CY 2009 payment policies for contrast media and diagnostic radiopharmaceuticals are discussed in section V.B.2.b. of this final rule with comment period.

b. Service-Specific Packaging Issues

(1) Packaged Services Addressed by the APC Panel Recommendations

The Packaging Subcommittee of the APC Panel was established to review all packaged HCPCS codes. In deciding whether to package a service or pay for a code separately, we have historically considered a variety of factors, including whether the service is normally provided separately or in conjunction with other services; how likely it is for the costs of the packaged code to be appropriately mapped to the separately payable codes with which it was performed; and whether the expected cost of the service is relatively low. As discussed in section II.A.4.a. of this final rule with comment period regarding our packaging approach for CY 2008, we established packaging criteria that apply to seven categories of codes whose payments are packaged. Four of the APC Panel's packaging recommendations from its March 2008 meeting reference codes are included in the seven categories of services that we packaged for CY 2008. For these four recommendations, we specifically applied the packaging considerations that apply to those seven categories of codes in determining whether a code should be proposed as packaged or separately payable for CY 2009. Specifically, we determined whether a service is a dependent service falling into one of the seven specified categories that is always or almost always provided integral to an independent service. For those two APC Panel recommendations that do not fit into any of the seven categories of services that were part of the CY 2008 packaging approach, we applied the packaging criteria noted above in this section that were historically used under the OPPS. Moreover, we took into consideration our interest in possibly expanding the size of payment groups for component services to provide encounter-based or episode-of-care-based payment in the future in order to encourage hospital efficiency and provide hospitals with maximal flexibility to manage their resources.

The Packaging Subcommittee reviewed the packaging status of numerous HCPCS codes and reported its findings to the APC Panel at its March 2008 meeting. The APC Panel accepted the report of the Packaging Subcommittee, heard several presentations on certain packaged services, discussed the deliberations of the Packaging Subcommittee, and recommended that—

1. CMS provide additional data to support packaging radiation oncology guidance services for review by the Data Subcommittee at the next APC Panel meeting. (Recommendation 1)

2. CPT code 36592 (Collection of blood specimen using established central or peripheral catheter, venous, not otherwise specified) be treated as an ''STVX-packaged code'' for CY 2009 and assigned to the same APC as CPT code 36591 (Collection of blood specimen from a completely implantable venous access device) until adequate data are collected that would enable CMS to determine its own payment rate. (Recommendation 2)

3. HCPCS code A4306 (Disposable drug delivery system, flow rate of less than 50 mL per hour) remain packaged for CY 2009. (Recommendation 3)

4. CPT code 74305 (Cholangiography and/or pancreatography; through existing catheter, radiological supervision and interpretation) be treated as a ''T-packaged code'' for CY 2009 and that CMS consider assigning this code to APC 0263 (Level I Miscellaneous Radiology Procedures). (Recommendation 4)

5. CMS reinstate separate payment for the following intravascular ultrasound and intracardiac echocardiography codes: CPT codes 37250 (Intravascular ultrasound (non-coronary vessel) during diagnostic evaluation and/or therapeutic intervention; initial vessel); 37251 (Intravascular ultrasound (non-coronary vessel) during diagnostic evaluation and/or therapeutic intervention; each additional vessel); 92978 (Intravascular ultrasound (coronary vessel or graft) during diagnostic evaluation and/or therapeutic intervention including

imaging supervision, interpretation and report; initial vessel); 92979 (Intravascular ultrasound (coronary vessel or graft) during diagnostic evaluation and/or therapeutic intervention including imaging supervision, interpretation and report; each additional vessel); and 93662 (Intracardiac echocardiography during therapeutic/diagnostic intervention, including imaging supervision and interpretation). (Recommendation 5)

6. CMS continue to package diagnostic radiopharmaceuticals for CY 2009. (Recommendation 6)

7. The Packaging Subcommittee continue its work. (Recommendation 7)

In addition, the Packaging Subcommittee reported its findings to the APC Panel at its August 2008 meeting. The APC Panel accepted the report of the Packaging Subcommittee, heard presentations on several packaged services, discussed the deliberations of the Packaging Subcommittee and recommended that—

8. CMS pay separately for the following IVUS, ICE, and FFR CPT codes: 37250 (Intravascular ultrasound (non-coronary vessel) during diagnostic evaluation and/or therapeutic intervention; initial vessel); 37251 (Intravascular ultrasound (non-coronary vessel) during diagnostic evaluation and/or therapeutic intervention; each additional vessel); 92978 (Intravascular ultrasound (coronary vessel or graft) during diagnostic evaluation and/or therapeutic intervention including imaging supervision, interpretation and report; initial vessel); 92979 (Intravascular ultrasound (coronary vessel or graft) during diagnostic evaluation and/or therapeutic intervention including imaging supervision, interpretation and report; each additional vessel); 93662 (Intracardiac echocardiography during therapeutic/diagnostic intervention, including imaging supervision and interpretation); 93571 (Intravascular Doppler velocity and/or pressure derived coronary flow reserve measurement (coronary vessel or graft) during coronary angiography including pharmacologically induced stress, initial vessel); and 93572 (Intravascular Doppler velocity and/or pressure derived coronary flow reserve measurement (coronary vessel or graft) during coronary angiography including pharmacologically induced stress, each additional vessel).

The APC Panel further recommended that CMS establish a threshold (for example, a proportion of cases in which the service is provided ancillary and dependent to another service, rate of change in utilization over time, and market penetration) when packaging will be considered. The APC Panel also recommended that CMS reconsider packaging these codes after 2 years of claims data are available from their period of payment as a separate service. (Recommendation 8)

9. CMS pay separately for radiation therapy guidance for 2 years and then reevaluate packaging on the basis of claims data. The APC Panel further recommended that CMS evaluate possible models for threshold levels for packaging radiation therapy guidance and other new technologies. (Recommendation 9)

10. The Packaging Subcommittee continue its work. (Recommendation 10)

We address each of these recommendations in turn in the discussion that follows.

Recommendation 1 and Recommendation 9

We indicated in the CY 2009 OPPS/ASC proposed rule (73 FR 41454) that we are adopting this APC Panel recommendation for CY 2009 and as requested, we provided data related to radiation oncology guidance services to the Data Subcommittee at the APC Panel's August 2008 meeting. The APC Panel at its August 2008 meeting recommended that CMS pay separately for image-guidance for radiation therapy (IGRT) for 2 years and then reevaluate packaging on the basis of claims data. The APC Panel further recommended that CMS evaluate possible models for threshold levels for packaging radiation therapy guidance and other new technologies.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41454), we proposed to maintain the packaged status of radiation oncology guidance services for CY 2009. Specifically, we proposed to continue to package payment for the services reported with CPT codes 76950 (Ultrasonic guidance for placement of radiation therapy fields); 76965 (Ultrasonic guidance for interstitial radioelement application); 77014 (Computed tomography guidance for placement of radiation therapy fields); 77417 (Therapeutic radiation port film(s)); and 77421 (Stereoscopic X-ray guidance for localization of target volume for the delivery of radiation therapy). These services are ancillary and dependent in relation to the radiation therapy services with which they are most commonly furnished. Consistent with the principles of a prospective payment system, in some cases payment in an individual case exceeds the average cost, and in other cases payment is less than the average cost, but on balance, payment should approximate the relative cost of the average case. While we noted that we are aware that some of the radiation oncology guidance codes describe relatively new technologies, we do not believe that beneficiary access to care would be harmed by packaging payment for radiation oncology guidance services. We believe that packaging creates incentives for hospitals and their physician partners to work together to establish appropriate protocols that will eliminate unnecessary services where they exist and institutionalize approaches to providing necessary services more efficiently. Therefore, we saw no basis for treating radiation oncology services differently from other guidance services that are ancillary and dependent to the procedures they facilitate.

Comment: Several commenters asked that CMS pay separately for IGRT guidance that represent new guidance technologies for at least the first 2 to 3 years of the use of the new service so that diffusion of the new service is not compromised by the absence of separate payment for it and that CMS evaluate possible models for threshold levels for packaging radiation therapy guidance and other new technologies. The commenters objected to the continued packaging of these services for CY 2009 on the basis that packaging creates significant financial disincentives to the use of these services which they believed enhance the quality of care. These commenters believed that packaging will delay adoption of new technologies by hospitals and that this will hinder access to improved care for Medicare beneficiaries. They suggested that advances in radiation therapy delivery are associated with higher technical costs and more demanding, time-consuming services that ensure the safe delivery of high quality care. The commenters asked that if CMS continues to package these services, it should closely monitor the impact of packaging imaging guidance on the quality of care furnished to Medicare beneficiaries and to provide transparent and meaningful data associated with the packaging, which would allow stakeholders to determine if payment for imaging guidance technology is reasonable and appropriate. Several commenters raised concern that the packaging policy for new guidance technologies may make it more difficult for new services to be approved for payment under New Technology APCs if CMS considers guidance to be supportive and ancillary, rather than a separately paid complete service.

Response: From the perspective of the Medicare program as a value-based purchaser, we believe that packaged payment causes hospitals to carefully consider whether the purchase of or use of a technology is appropriate in an individual case, while separate payment may create incentives to furnish services regardless of whether they are the most appropriate for an individual patient's particular needs. We also believe that where new technologies are proven to improve the quality of care, their utilization will increase appropriately, whether the payment for them is packaged or not. Moreover, we note that the history of technology development shows that new technologies do not necessarily result in the forecasted improvements over existing technologies. Often a period of some years of broad use is necessary to effectively assess whether the new technology improves, harms, or yields no improvement in patient health and quality of life. Furthermore, we also do not believe that hospitals would fail to provide services to Medicare beneficiaries while furnishing the same services to other patients with the same clinical needs, because to do so would jeopardize the hospital's continued participation in Medicare. Specifically, under § 489.53, CMS may terminate the Medicare participation of a hospital that places restrictions on the persons it will accept for treatment and either fails to exempt Medicare beneficiaries from those restrictions or to apply them to Medicare beneficiaries the same as to all other persons seeking treatment. We have already addressed the issue of establishing a threshold for a determination of whether to package a service in our response to general comments on packaging above in this section.

We understand the concerns of the commenters who noted that it may be harder for new guidance services to become eligible for assignment to a New Technology APC. As we stated in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66621), we assess applications for New Technology APC placement on a case-by-case basis. The commenters are correct that, to qualify for New Technology APC placement, the service must be a complete service, by which we mean a comprehensive service that stands alone as a meaningful diagnostic or therapeutic service. To the extent that a service for which New Technology APC status is being requested is ancillary and supportive of another service, for example, a new intraoperative service or a new guidance service, we might not consider it to be a complete service because its value is as part of an independent service. However, if the entire, complete service, including the guidance component of the service, for example, is ''truly new,'' as we explained that term at length in the November 30, 2001 final rule (66 FR 59898) which sets forth the criteria for eligibility for assignment of services to New Technology APCs, we would consider the new complete procedure for New Technology APC assignment. As stated in that November 30, 2001 final rule, by way of examples provided, ''The use of a new expensive instrument for tissue debridement or a new, expensive wound dressing does not in and of itself warrant creation of a new HCPCS code to describe the instrument or dressing; rather, the existing wound repair code appropriately describes the service that is being furnished * * *'' (66 FR 59898). This example may be applicable for some new guidance technologies as well.

The OPPS pays for certain new technology services through New Technology APC assignment. One of the criteria requires the new technology service to be a complete service. If we were to pay separately for new guidance technologies, in many cases hospitals would receive duplicate payment when providing a comprehensive, independent service, through payment for the independent service that already has guidance costs packaged into its payment rate and the new guidance service that was provided separate payment. In addition, if we were to pay separately for new guidance technologies, we would create a payment incentive to use one form of guidance instead of another. Therefore, by packaging payment for all forms of guidance, we specifically encourage hospitals to utilize the most cost effective and clinically advantageous method of guidance that is appropriate in each situation by providing hospitals with the maximum flexibility associated with a single payment for the independent procedure.

We further note that the OPPS pays separately for new items through the pass-through payment provisions for drugs, biologicals, and device categories. The criteria for a drug, biological, or device category to be eligible for pass-through payment status are different than the criteria for a new service to be eligible for assignment to a New Technology APC. These criteria and processes are listed on the CMS Web site at: *http://www.cms.hhs.gov/HospitalOutpatientPPS/04_pass through_payment.asp#TopOfPage*. One requirement for separate pass-through payment for implantable devices, which are all packaged if they do not have pass-through status, is that the applicant for the pass-through device category must demonstrate that use of the device results in substantial clinical improvement in the diagnosis or treatment of a Medicare beneficiary in comparison with currently available tests or treatments. Thus, in some cases we may not pay separately under the pass-through provisions for some new or modified implantable devices because the evidence to support substantial clinical improvement may not be available early in the device's use. Instead, like new or modified guidance or other nonimplantable technologies that are not complete services, the cost of the new or modified device is incorporated into the OPPS payment rates for the associated procedures as the device is adopted into medical practice and its utilization increases, and OPPS payment rates come to reflect hospital charges for the new or modified device. In many cases, the new or modified device may be replacing a predecessor device whose cost is already reflected in the OPPS payments for the associated procedures. As stated in the ''Innovator's Guide to Navigating CMS,'' posted on the CMS Web site at *http://www.cms.hhs.gov/CouncilonTechInnov/Downloads/InnovatorsGuide8_25_08.pdf* , CMS pays for many new technologies under various payment systems, including the OPPS, without requiring an explicit payment decision by CMS.

Comment: Several commenters objected to the packaging of IGRT guidance because they believed that there is a fundamental difference between diagnostic imaging support services, which they suggested may be more easily correlated with specific independent procedures, and therapeutic imaging guidance services, which they stated are used to enhance the precise delivery of many different radiation therapy procedures. They believed that CMS should not package IGRT guidance services because they cannot be identified with a single specific therapeutic service.

Response: We disagree that IGRT guidance services are so fundamentally different in function from other imaging support services that the packaging policy is inappropriately applied to them. In both cases, the dependent services are being furnished to support a service that could be performed independently of the image guidance service, whether on the same day or soon thereafter. Moreover, we do not believe that diagnostic imaging support services are necessarily more

specifically linked to any one specific diagnostic service than are the IGRT guidance services, nor do we believe that this is relevant in considering whether the service can be appropriately packaged. Therefore, we do not believe that there is a fundamental distinction between IGRT and other guidance services that causes packaging to be inappropriate for the IGRT subset of these services.

Comment: A number of commenters indicated that packaging for radiation therapy guidance was particularly inappropriate because the OPPS payments for the separately paid independent services were simultaneously reduced. The commenters explained that their review of the CY 2007 claims data on which the proposed CY 2009 OPPS payment rates are based revealed that fewer than 10 percent of the billed lines for these radiation therapy guidance codes were used in setting the proposed CY 2009 OPPS payment rates. They also stated that more than one-third of the billed lines for IGRT guidance services were being packaged into single claims for services that are totally unrelated to radiation oncology. These commenters believed that this may occur in part as a result of the inclusion of radiation oncology services on the bypass list, but that nevertheless, it is inequitable and inappropriate to impose a packaging policy for IGRT guidance that does not package the costs of these services into payment for the associated radiation oncology services. Moreover, the commenters feared that the problem of packaged costs that were lost in ratesetting would be exacerbated in the future because hospitals would cease to report the IGRT services they provide because no separate payment would be made. Without reporting of the HCPCS codes, the commenter asserted, the costs of IGRT guidance would not be available to be packaged in ratesetting for radiation oncology services.

Response: In response to the commenters' concerns with the data, we examined our claims data and determined that the inclusion on the bypass list of certain radiation oncology CPT codes, specifically 77261 (Therapeutic radiology treatment planning, simple) through and including 77799 (Unlisted procedure clinical brachytherapy), may be responsible for the loss or misassignment of packaging for the IGRT guidance codes. A number of these codes had been historically included on the bypass list based on clinical evaluation and past public comments although they failed to meet the empirical criteria for inclusion on the bypass list. Therefore, for CY 2009, we are removing those radiation oncology codes from the bypass list that do not meet the empirical criteria. We discuss these changes to the bypass list in section II.A.1.b. of this final rule with public comment period.

As a result of these changes to the bypass list, the median costs for APCs 0412 (IMRT Treatment Delivery) and 0304 (Level I Therapeutic Treatment Preparation) increased by more than 9 percent compared to the median costs used to calculate the proposed CY 2009 OPPS payment rates. Furthermore, Table 10 below displays the historical and final CY 2009 payment rates for the common combination of intensity modulated radiation therapy (IMRT) described by CPT code 77418 (Intensity modulated treatment delivery, single or multiple fields/arcs, via narrow spatially and temporally modulated beams, binary, dynamic MLC, per treatment session) and IGRT guidance described by CPT code 77421 (Stereoscopic X-ray guidance for localization of target volume for the delivery of radiation therapy). Packaging payment for IGRT guidance services notably increases the payment rate for IMRT. Specifically, the packaging of IGRT guidance services results in an approximately $50 increase to the CY 2009 median cost for APC 0412, the APC that includes IMRT, as compared to the APC's median cost without packaged IGRT guidance.

TABLE 10—HISTORICAL PAYMENT FOR RADIATION TREATMENT AND IGRT GUIDANCE SERVICES

	CY 2006	CY 2007	CY 2008	CY 2009
Payment for Radiation Treatment—IMRT (CPT code 77418)	$319	$336	$348	$411
Payment for IGRT Guidance (CPT Code 77421)	75	67	N/A *	N/A *
Total Payment for IMRT & IGRT Guidance	394	403	348	411

* Packaged payment.

On the other hand, as a result of these changes to the bypass list we were unable to use nearly a million claims that would otherwise have been used, in whole or in part, to calculate median costs for the radiation oncology APCs and other APCs. Moreover, the median costs for some of the radiation oncology APCs declined, most notably the brachytherapy source application APCs, 0651 (Complex interstitial radiation source application); 0312 (Radioelement applications); and 8001 (Low dose rate prostate brachytherapy). As we discuss in section II.A.1.b. of this final rule with comment period, we are exploring whether we can identify specific radiation oncology codes that could safely be added back into the bypass list that would enable us to use more claims data for these APCs without the effect of loss or misassignment of packaging. We welcome comments on the specific radiation oncology CPT codes that would achieve this goal. However, for CY 2009, we will base payments on the median costs calculated from the smaller number of single bills for the brachytherapy source application APCs that result from the removal of radiation oncology codes that do not meet the empirical bypass list criteria from the bypass list because we want to ensure that all costs of IGRT guidance services are packaged appropriately for CY 2009 ratesetting.

We strongly encourage hospitals to report a charge for each packaged service they furnish, either by billing the packaged HCPCS code and a charge for that service if separate reporting is consistent with CPT and CMS instructions, by increasing the charge for the separately paid associated service to include the charge for the packaged service, or by reporting the charge for the packaged service with an appropriate revenue code but without a HCPCS code. Any of these means of charging for the packaged service will result in the costs of the packaged service being incorporated into the cost we estimate for the separately paid service. We believe that hospitals will continue to charge for these packaged services, individually or as part of the charge for the independent service, because hospitals must charge all payers the same amount for services they furnish to patients and because some other payers pay a percentage of charges. To fail to charge for the packaged service would result in immediately reduced payment from sources other than Medicare, and over

time, could also lead to a reduction in payment under the OPPS.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, to package payment for all IGRT guidance services into payment for the separately paid independent services to which they are ancillary and supportive. We will base all final CY 2009 payments on claims data derived with the use of a bypass list that has been revised to remove the radiation oncology services that do not meet the empirical criteria. We are not adopting the APC Panel recommendation to pay separately for radiation therapy guidance for CY 2009. We will consider the issue of a threshold for packaging, as recommended by the APC Panel, in the future, balancing the concerns over access to high quality medical care with the goal of continuing to encourage efficient use of hospital resources.

Recommendation 2

We indicated in the CY 2009 OPPS/ASC proposed rule (73 FR 41454) that we are adopting this APC Panel recommendation. For CY 2009, we proposed to treat CPT code 36592 (Collection of blood specimen using established central or peripheral catheter, venous, not otherwise specified) as an ''STVX-packaged code'' and assign it to APC 0624 (Phlebotomy and Minor Vascular Access Device Procedures), the same APC to which we proposed to assign CPT code 36591 (Collection of blood specimen from a completely implantable venous access device). CPT code 36591 became effective January 1, 2008, and was assigned interim status indicator ''Q,'' with treatment as an ''STVX-packaged code'' and assignment to APC 0624. CPT code 36591 was a direct replacement for CPT code 36540, which was deleted effective January 1, 2008, but was an ''STVX-packaged code'' with assignment to APC 0624 for CY 2007. CPT code 36592 became effective January 1, 2008, and was assigned interim status indicator ''N'' in the CY 2008 OPPS/ASC final rule with comment period.

In summary, for CY 2009, we proposed to change the packaged status of CPT code 36592 from unconditionally packaged to conditionally packaged, as an ''STVX-packaged code,'' which was parallel to the proposed treatment of CPT code 36591. This service would be paid separately when it is provided in an encounter without a service assigned status indicator ''S,'' ''T,'' ''V,'' or ''X.'' In all other circumstances, its payment would be packaged. As noted above in section II.A.4.a. of this final rule with comment period, for CY 2009, we proposed to further refine our identification of the different types of conditionally packaged HCPCS codes that were previously all assigned status indicator ''Q'' (Packaged Services Subject to Separate Payment under OPPS Payment Criteria) under the OPPS. Therefore, we proposed to assign status indicator ''Q1'' to CPT code 36592 for CY 2009, which indicates that it is an ''STVX-packaged code.'' We refer readers to section XIII.A.1. of this final rule with comment period for a complete discussion of status indicators and our status indicator changes for CY 2009.

Comment: One commenter requested that CMS change the status of CPT code 36592 from unconditionally to conditionally packaged, treating it like CPT code 36591. The commenter stated that the resource costs associated with drawing blood from an established central or peripheral catheter were almost identical to the resources associated with drawing blood from an implanted venous access device. Several other commenters noted that they supported the proposal to assign status indicator ''Q1'' to CPT code 36592 for CY 2009.

Response: We appreciate the commenters' support. We agree that the resource costs associated with CPT code 36592 may be similar to the resource costs associated with CPT code 36591. When CY 2008 cost data for CPT code 36592 are available for the CY 2010 OPPS annual update, we will reevaluate whether assignment to APC 0624 continues to be appropriate.

Comment: One commenter asked whether hospitals must follow the parenthetical CPT guidance listed immediately following the code descriptor that states that CPT code 36592 may not be reported with any other service. The commenter asked why CMS proposed to change the status of this code from unconditionally packaged to conditionally packaged if the code descriptor states that this code would never be provided with another service. The commenter contended that there does not appear to be any reason to treat this code as conditionally packaged.

Response: Hospitals must follow the coding guidance provided by CPT. We are not recommending that hospitals report CPT code 36592 every time it is performed, even if provided at the same time as another procedure or visit. Our proposed payment policy would ensure that, if CPT code 36592 was reported with other services paid under the OPPS, hospitals would not receive separate payment. Therefore, our payment proposal to conditionally package CPT code 36592 is consistent with the reporting guidance provided by CPT.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, and adopting the APC Panel's recommendation to conditionally package CPT code 36592 as an ''STVX-packaged code'' for CY 2009. This CPT code will be paid separately through APC 0624 when criteria for packaged payment are not met. As noted in the CY 2009 OPPS/ASC proposed rule (73 FR 41454), we expect hospitals to follow the CPT guidance related to CPT codes 36591 and 36592 regarding when these services should be appropriately reported.

Recommendation 3

In the CY 2009 OPPS/ASC proposed rule (73 FR 41455), we indicated that we are adopting this APC Panel recommendation. For CY 2009, we proposed to maintain the packaged status of HCPCS code A4306 (Disposable drug delivery system, flow rate of less than 50 mL per hour).

HCPCS code A4306 describes a disposable drug delivery system with a flow rate of less than 50 mL per hour. Beginning in CY 2007, HCPCS code A4306 is payable under the OPPS with status indicator ''N,'' indicating that its payment is unconditionally packaged. We packaged this code because it is considered a supply, and under the OPPS it is standard to package payment for all supplies, including implantable and nonimplantable supplies, into payment for the procedures in which the supplies are used. We first discussed this code with the APC Panel in March 2007. During the APC Panel's March 2007 meeting, a manufacturer noted in a presentation that a particular disposable drug delivery system reported with HCPCS code A4306 is specifically used to treat postoperative pain. The manufacturer requested that this code be moved to its own APC for CY 2008 in order for the service to receive separate payment. During its September 2007 meeting, the APC Panel recommended that CPT code A4306 remain packaged for CY 2008 and asked CMS to present additional data regarding this code to the APC Panel when available.

During the APC Panel's March 2008 meeting, we provided to the Packaging Subcommittee additional cost data related to this code. Our CY 2007 proposed rule claims data indicate that HCPCS code A4306 was billed on OPPS

claims approximately 2,400 times, yielding a line-item median cost of approximately $4. The individual costs for this supply range from $4 per unit to $2,056 per unit. The Packaging Subcommittee suggested that this code may not always be correctly reported by hospitals as the data also show that this code was frequently billed together with computed tomography (CT) scans of various regions of the body, without surgical procedures on the same date of service. The APC Panel speculated that this code may be currently reported when other types of drug delivery devices are utilized for nonsurgical procedures or for purposes other than the treatment of postoperative pain. It was also noted that hospitals may actually be appropriately reporting HCPCS code A4306, which may be used to describe supplies used for purposes other than postoperative pain relief.

In summary, because HCPCS code A4306 represents a supply and payment of supplies is packaged under the OPPS according to longstanding policy, we proposed to maintain the unconditionally packaged status of HCPCS code A4306 for CY 2009.

Comment: One commenter believed that hospitals are misreporting CPT code A4306, leading to inaccurate cost estimates and payment rates. The commenter asked CMS to clarify that this supply code is for single use infusion pump devices used for chemotherapy, not syringes for chemotherapy or pain drugs. The commenter also asked CMS to clarify that hospitals should not report HCPCS code A4306 for syringes prefilled with sodium chloride or other material.

Response: In general, it is not our practice to provide specific coding guidance regarding permanent Level II HCPCS codes, such as HCPCS code A4306. As noted in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66669), we encourage interested parties to submit any questions or requests for clarification of the HCPCS codes to the AHA coding clinic.

After consideration of the public comment received, we are finalizing our CY 2009 proposal, without modification, and adopting the APC Panel recommendation to maintain the unconditionally packaged status of HCPCS code A4306.

Recommendation 4

In the CY 2009 OPPS/ASC proposed rule (73 FR 41455), we indicated that we are adopting this APC Panel recommendation. For CY 2009, we proposed to treat CPT code 74305 (Cholangiography and/or pancreatography; through existing catheter, radiological supervision and interpretation) as a ''T-packaged code'' and assign it to APC 0263 (Level I Miscellaneous Radiology Procedures).

Effective January 1, 2008, CPT code 74305 is unconditionally packaged and falls into the imaging supervision and interpretation category of codes that we created as part of the CY 2008 packaging approach. Several members of the public recently noted that CPT code 74305 may sometimes be provided in a single hospital encounter with CPT code 47505 (Injection procedure for cholangiography through an existing catheter (e.g., percutaneous transepatic or T-tube)), which is unconditionally packaged itself, when these are the only two services reported on a claim. In the case where only these two services were performed, the hospital would receive no separate payment. Our claims data indicate that CPT code 74305 is infrequently provided without any other separately payable services on the same date of service.

Therefore, for CY 2009, we proposed to change the packaged status of CPT code 74305 from unconditionally packaged to conditionally packaged, as a ''T-packaged code,'' which is parallel to the treatment of many other conditionally packaged imaging supervision and interpretation codes. Hospitals would receive separate payment for this service when it appears on a claim without a surgical procedure. The payment for this service would be packaged into payment for a status indicator ''T'' surgical procedure when it appears on the same date as a surgical procedure. Hospitals that furnish this imaging supervision and interpretation service on the same date as an independent surgical procedure assigned status indicator ''T'' must bill both services on the same claim.

As noted above in section II.A.4.a. of this final rule with comment period, for CY 2009, we proposed to further refine our identification of the different types of conditionally packaged HCPCS codes that were previously all assigned status indicator ''Q'' (Packaged Services Subject to Separate Payment under OPPS Payment Criteria) under the OPPS. Therefore, we proposed to assign status indicator ''Q2'' to CPT code 74305 for CY 2009, which indicates that it is a ''T-packaged code.'' We refer readers to section XIII.A.1. of this final rule with comment period for a complete discussion of status indicators and our status indicator changes for CY 2009.

In summary, for CY 2009, we proposed to change the status indicator for CPT code 74305 from ''N'' to ''Q2,'' with assignment to APC 0263 (Level I Miscellaneous Radiology Procedures) when it would be paid separately.

Comment: Several commenters supported the CY 2009 proposal to change the status indicator for CPT code 74305 from ''N'' to ''Q2,'' with assignment to APC 0263 when it would be paid separately. One commenter requested that CMS change the status indicator of this code retroactive to January 1, 2008, when this code became unconditionally packaged.

Response: We are pleased that commenters supported this proposal. We established the final unconditionally packaged status of CPT code 74305 for CY 2008 through the CY 2008 OPPS/ASC rulemaking cycle. We note that we proposed to unconditionally package CPT code 74305 in the CY 2008 OPPS/ASC proposed rule and we did not receive any public comments opposing this proposal. Therefore, we finalized our policy to unconditionally package CPT code 74305 for CY 2008.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, and adopting the APC Panel recommendation to conditionally package CPT code 74305 as a ''T-packaged code'' for CY 2009, with payment through APC 0263 when the criteria for packaged payment are not met.

Recommendation 5 and Recommendation 8

For CY 2009, we proposed to maintain the packaged status of CPT codes 37250 (Intravascular ultrasound (non-coronary vessel) during diagnostic evaluation and/or therapeutic intervention; initial vessel); 37251 (Intravascular ultrasound (non-coronary vessel) during diagnostic evaluation and/or therapeutic intervention; each additional vessel); 92978 (Intravascular ultrasound (coronary vessel or graft) during diagnostic evaluation and/or therapeutic intervention including imaging supervision, interpretation and report; initial vessel); 92979 (Intravascular ultrasound (coronary vessel or graft) during diagnostic evaluation and/or therapeutic intervention including imaging supervision, interpretation and report; each additional vessel); and 93662 (Intracardiac echocardiography during therapeutic/diagnostic intervention, including imaging supervision and interpretation). Our CY 2009 proposal indicated that we are not adopting the APC Panel's recommendation to pay separately for these intraoperative intravascular ultrasound (IVUS) and

intracardiac echocardiography (ICE) services for CY 2009.

These services were newly packaged for CY 2008 because they were members of the intraoperative category of services that were included in the CY 2008 packaging approach. The intraoperative category includes those codes that are reported for supportive dependent diagnostic testing or other minor procedures performed during surgical or other independent procedures. Because these intraoperative IVUS and ICE services support the performance of an independent procedure and are provided in the same operative session as the independent procedure, we packaged their payment into the OPPS payment for the independent procedure performed in CY 2008. We believe these IVUS and ICE services are always integral to and dependent upon the independent services that they support and, therefore, we believe their payment would be appropriately packaged into the independent procedure.

A presenter at the March 2008 APC Panel meeting requested separate payment for these services, noting that they are high cost and provided with relatively low frequency compared to the services they typically accompany. We continue to believe that these services are ancillary and dependent in relation to the independent cardiac and vascular procedures with which they are most commonly furnished. We note that resource cost was not a factor we considered when deciding to package intraoperative services. Packaging payment for items and services that are directly related to performing a procedure, even when those packaged items and services have variable resource costs or different frequencies of use in relationship to one another or to the independent services into which their payment is packaged, has been a principle of the OPPS since the inception of that payment system. For example, once an implantable device is no longer eligible for device pass-through payment, our standard policy is to package the payment for the device into the payment for the procedures with which the device was reported. These former pass-through devices may be high or low cost in relationship to the other costs of the associated surgical procedures, or the devices may be implanted in a large or small proportion of those surgical procedures, but the device payment is nevertheless packaged. We do not believe that the fact that a procedure may be performed with assorted technologies of varying resource costs is a sufficient reason to pay separately for a particular technology that is clearly ancillary and dependent in relationship to independent associated procedures. We acknowledged in the CY 2009 OPPS/ASC proposed rule that the costs associated with packaged services may contribute more or less to the median cost of the independent service, depending on how often the dependent service is billed with the independent service (73 FR 41456). Consistent with the principles of a prospective payment system, in some cases payment in an individual case exceeds the average cost, and in other cases payment is less than the average cost, but on balance, payment should approximate the relative cost of the average case. While we understand that these services represent technologies that are not commonly used in most hospitals, we do not believe that beneficiary access to care would be harmed by packaging payment for IVUS and ICE services. We noted that IVUS and ICE services are existing, established technologies and that hospitals have provided some of these services in the HOPD since the implementation of the OPPS in CY 2000. We believe that packaging will create incentives for hospitals and their physician partners to work together to establish appropriate protocols that will eliminate unnecessary services where they exist and institutionalize approaches to providing necessary services more efficiently. Therefore, in the CY 2009 OPPS/ASC proposed rule (73 FR 41456), we indicated that we saw no basis for treating IVUS and ICE services differently from other intraoperative services that are ancillary and dependent to the procedure they facilitate.

In summary, we proposed to maintain the unconditionally packaged status of CPT codes 37250, 37251, 92978, 92979, and 93662 for CY 2009.

As noted above in this section, during its August 2008 meeting, the APC Panel discussed these services and recommended that CMS pay separately for CPT codes 37250, 37251, 92978, 92979, 93662, as well as 93571 (Intravascular Doppler velocity and/or pressure derived coronary flow reserve measurement (coronary vessel or graft) during coronary angiography including pharmacologically induced stress, initial vessel); and 93572 (Intravascular Doppler velocity and/or pressure derived coronary flow reserve measurement (coronary vessel or graft) during coronary angiography including pharmacologically induced stress, each additional vessel).

In addition, the APC Panel further recommended that CMS establish a threshold (for example, a proportion of cases in which the service is provided ancillary and dependent to another service, rate of change in utilization over time, and market penetration) when packaging will be considered. The APC Panel also recommended that CMS reconsider packaging these codes after it has 2 years of claims data available from their period of payment as a separate service.

Comment: Many commenters were disappointed that CMS did not propose to provide separate payment for CPT codes 37250, 37251, 92978, 92979, and 93662 for CY 2009, in accordance with the March 2008 APC Panel recommendation, and requested that CMS adopt the APC Panel's August 2008 recommendation to pay separately for these services (and CPT codes 93571 and 93572) for CYs 2009 and 2010. These commenters believed that separate payment for 2 years would allow CMS to accurately capture cost data. Other commenters clarified that services should only be eligible for packaging if they have been separately payable for 2 years, thereby enabling CMS to capture complete cost data. The commenters indicated that payment for the independent procedures provided in conjunction with IVUS are not sufficient to cover the incremental cost of providing IVUS. The commenters also were concerned that packaging these technologies creates a strong disincentive for hospitals to use these important technologies. Other commenters requested that CMS develop a composite APC whose payment criteria would be met when IVUS, ICE, or FFR are provided.

The commenters estimated the IVUS and ICE are utilized in less than 10 percent of Medicare beneficiaries undergoing a diagnostic cardiac catheterization procedure, or other related procedures, which results in their costs having little or no impact on the payment for the independent procedure. Furthermore, many commenters emphasized that limited access to these technologies would result in greater utilization of interventional procedures that could have been avoided had these interventions been used. One commenter disputed describing FFR services as ''ancillary'' and stated that they are ''decisional'' and, therefore, should not be packaged, or should become conditionally packaged. Several commenters were concerned that packaged payment would create a significant financial disincentive to provide these services. The commenters also noted that these procedures should not be described as ''intraoperative'' because they precede the independent procedure, and may even result in

canceling the independent procedure. One commenter acknowledged the reference in the CY 2009 OPPS/ASC proposed rule (73 FR 41555 to 41556) that CMS does not believe that beneficiary access would be harmed, but asked CMS to provide support for this assumption. Another commenter indicated that even with separate payment in the past, only a small number of hospitals purchased this technology. Therefore, the commenter was concerned that with packaged payment, access to this technology would be even more severely limited. Many commenters developed and shared criteria and/or principles that they suggested should dictate whether an item or service is eligible for packaged payment, both for determining the packaged status of IVUS, ICE, and FFR, as well as other services.

Response: We appreciate the many detailed comments related to the packaged status of IVUS, FFR, and ICE services. We acknowledge that the costs associated with packaged services may contribute more or less to the median cost of the independent service, depending on how often the dependent service is billed with the independent service. It is our goal to adhere to the principles inherent in a prospective payment system and to encourage hospitals to utilize resources in a cost-effective manner. In this case, hospitals may choose whether to utilize IVUS, FFR, and ICE services, balancing the needs of the patient with the costs associated with the services.

We note that IVUS, ICE, and FFR services had been separately payable under the OPPS prior to CY 2008, and hospitals were paid separately each time they provided IVUS, ICE, or FFR services. In addition, according to several manufacturers, these technologies are not new and have been widely available for at least the past 5 to 10 years. In fact, every one of the CPT codes describing IVUS and ICE services (CPT codes 37250, 37251, 92978, 92979, and 93662) has been separately payable under the OPPS since CY 2001, or earlier. FFR services (CPT code 93571 and 93572) have been separately payable since CY 2005.

In general, we believe that hospitals adopt technologies when it is clinically advantageous and financially feasible to do so. The fact that these technologies have not been provided by a larger number of hospitals prior to CY 2008 is, therefore, not a function of separate versus packaged Medicare hospital outpatient payment. We do not believe that packaged payment is harming access to these technologies that have been separately paid for many years. Similarly, we do not believe that another 2 years of separate payment is necessary to increase Medicare beneficiaries' access to these services.

We also do not agree that beneficiary access to care will be harmed by packaging payment for these services. We believe that packaging will create incentives for hospitals and their physician partners to work together to establish appropriate protocols that will eliminate unnecessary services where they exist and will institutionalize approaches to providing necessary services more efficiently. Where this review results in the reductions in services that are only marginally beneficial, we believe that this could improve rather than harm the quality of care for beneficiaries because every service furnished in a hospital carries some level of risk to the patient. Similarly, where this review results in the concentration of some services in a reduced number of hospitals in the community, we believe that the quality of care and hospital efficiency may both be enhanced as a result. The medical literature shows that concentration of services in certain hospitals often results in both greater efficiency and higher quality of care for patients.

We continue to believe that IVUS, FFR, and ICE are dependent services that are always provided in association with independent services. Those independent services may be diagnostic and/or therapeutic or interventional. This is different than stating that every angioplasty or other related independent procedure utilizes IVUS, FFR, or ICE. In fact, all of the codes about which we received public comments are listed as add-on codes in the CY 2007 CPT book. While we agree that some of these services may contribute to decisionmaking regarding a potential therapeutic procedure, we still believe that these services are never provided without another independent service that is separately paid under the OPPS also performed on the same day. Therefore, we do not believe it would be appropriate to conditionally package CPT codes 93571 and 93572, or any of the other IVUS or ICE services.

We have responded to public comments related to general packaging criteria, thresholds, and/or principles earlier in this section. After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, to unconditionally packaged payment for IVUS, ICE, and FFR services for CY 2009. We are not adopting the APC Panel recommendation to pay separately for these services. We will discuss these services with the APC Panel at its first 2009 meeting, in addition to reviewing CY 2008 claims data with the APC Panel to assess any changes in utilization patterns of the packaged services as previously recommended by the APC Panel.

Recommendation 6

We indicated in the CY 2009 OPPS/ASC proposed rule (73 FR 41456) that we are adopting this APC Panel recommendation. For CY 2009, we proposed to maintain the packaged status of diagnostic radiopharmaceuticals. This recommendation is discussed in detail in section V.B.2.b. of this final rule with comment period.

Recommendation 7 and Recommendation 10

In response to the APC Panel's recommendation for the Packaging Subcommittee to remain active until the next APC Panel meeting, we note that the APC Panel Packaging Subcommittee remains active, and additional issues and new data concerning the packaging status of codes will be shared for its consideration as information becomes available. We continue to encourage submission of common clinical scenarios involving currently packaged HCPCS codes to the Packaging Subcommittee for its ongoing review, and we also encourage recommendations of specific services or procedures whose payment would be most appropriately packaged under the OPPS. Additional detailed suggestions for the Packaging Subcommittee should be submitted by e-mail to *APCPanel@cms.hhs.gov* with Packaging Subcommittee in the subject line.

Comment: Several commenters supported the recommendation that the Packaging Subcommittee continue, noting that they rely on the Subcommittee to thoroughly review data and carefully deliberate regarding the proper packaged status of various services.

Response: We are pleased that commenters support the work of the Packaging Subcommittee. The Packaging Subcommittee will continue to remain active.

(2) IVIG Preadministration-Related Services

In the CY 2009 OPPS/ASC proposed rule (73 FR 41456 and 41457), we proposed to package payment for HCPCS code G0332 (Services for intravenous infusion of immunoglobulin prior to administration (this service is to be billed in conjunction with administration of immunoglobulin)) for CY 2009. Immune

globulin is a complicated biological product that is purified from human plasma obtained from human plasma donors. In past years, there have been issues reported with the supply of intravenous immune globulin (IVIG) due to numerous factors, including decreased manufacturing capacity, increased usage, more sophisticated processing steps, and low demand for byproducts from IVIG fractionation.

Under the OPPS, the current CY 2008 payment methodology for IVIG treatments consists of three components, which include payment for the drug itself (described by a HCPCS J-code), administration of the IVIG product (described by one or more CPT codes), and the preadministration-related services (HCPCS code G0332). The CY 2009 OPPS payment rates for IVIG products are established based on the Part B ASP drug methodology, as discussed further in section V.B.3. of this final rule with comment period. Under the OPPS, payment is made separately for the administration of IVIG and those services are reported using the CPT code for the first hour and, as needed, additional hour CPT infusion codes. The CY 2009 OPPS payments for drug administration services are discussed in section VIII.B. of this final rule with comment period.

As explained in detail in the CY 2006 OPPS, CY 2007 OPPS/ASC, and CY 2008 OPPS/ASC final rules with comment period (70 FR 68648 to 68650, 71 FR 68092 to 68093, and 72 FR 66697 to 66698, respectively), we temporarily paid separately for the IVIG preadministration-related services in CYs 2006, 2007, and 2008 in order to assist in ensuring appropriate access to IVIG during a period of market instability due, in part, to the implementation of the new ASP payment methodology for IVIG drugs. The preadministration-related payment was designed to pay the hospital for the added costs of obtaining the IVIG and scheduling the patient infusion during a period of market uncertainty. Under the CYs 2006 and 2007 OPPS, HCPCS code G0332 was assigned to New Technology APC 1502 (New Technology—Level II ($50–$100)), with a payment rate of $75. For CY 2008, HCPCS code G0332 was reassigned to APC 0430 (Drug Preadministration-Related Services), with a payment rate of approximately $38 set prospectively based on robust CY 2006 claims data for this code. In addition, a separate payment for HCPCS code G0332 has been made under the MPFS during the same time period, CY 2006 to CY 2008.

We specifically indicated in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66697 through 66698) that we would consider packaging payment for HCPCS code G0332 in future years and that we intended to reevaluate the appropriateness of separate payment for IVIG preadministration-related services for the CY 2009 OPPS rulemaking cycle, especially as we explore the potential for greater packaging under the OPPS. In the CY 2009 OPPS/ASC proposed rule (73 FR 41457), we noted that the Office of the Inspector General's (OIG's) study on the availability and pricing of IVIG published in a report in April 2007 entitled, ''Intravenous Immune Globulin: Medicare Payment and Availability (OEI–03–05–00404),'' found that for the third quarter of CY 2006, just over half of the IVIG sales to hospitals and physicians were at prices below Medicare payment amounts. Relative to the previous three quarters, this represented a substantial increase in the percentage of sales with prices below Medicare amounts. During the third quarter of CY 2006, 56 percent of IVIG sales to hospitals and over 59 percent of IVIG sales to physicians by the three largest distributors occurred at prices below the Medicare payment amounts. We reviewed national CY 2006 and CY 2007 claims data for IVIG drug utilization, as well as utilization of the preadministration-related services HCPCS code. These data show modest increases in the utilization of IVIG drugs and the preadministration-related services code, which suggest that IVIG pricing and access may be improving.

IVIG preadministration-related services are dependent services that are always provided in conjunction with other separately payable services, such as drug administration services, and thus are well suited for packaging into the payment for the separately payable services that they usually accompany. Therefore, consistent with our OPPS payment policy for the facility resources expended to prepare for the administration of all other drugs and biologicals under the OPPS, we believe that payment for the hospital resources required to locate and obtain the appropriate IVIG products and to schedule patients' infusions should be made through the OPPS payment for the associated drug administration services. Furthermore, the cost data that we gathered for the services described by HCPCS code G0332 since CY 2006, including the line-item median cost for the code of approximately $37 from CY 2007 claims data, indicated that the cost of the services is relatively low. Therefore, because HCPCS code G0332 meets our historical criteria for packaged payment, because we paid separately for these services on a temporary basis only, and because we believe that the reported transient market conditions that led us to adopt the separate payment for IVIG preadministration-related services have improved, we indicated in the CY 2009 OPPS/ASC proposed rule our belief that packaged payment is more appropriate for the CY 2009 OPPS, consistent with our ongoing efforts to expand the size of the OPPS payment bundles (73 FR 41457). Therefore, we proposed to assign status indicator ''N'' to HCPCS code G0332 for CY 2009.

For CY 2009, under the MPFS, a proposal was made to discontinue payment for HCPCS code G0332 for CY 2009 (73 FR 38518).

Comment: Most commenters opposed the elimination of the preadministration-related payment in CY 2009. A few commenters requested that the preadministration services payment become permanent for both the OPPS and the MPFS. Some commenters stated that the market conditions for IVIG are not fundamentally different than they were when CMS initially instituted the preadministration services payment in CY 2006. The commenters requested that CMS continue the separate payment until there is more stability in the IVIG market. Several commenters stated that the information CMS presented in the CY 2009 OPPS/ASC proposed rule did not conclusively prove that the IVIG market was stabilizing. They alleged that significant access problems remain.

In response to the findings of the OIG report, some commenters stated that the lag inherent to the ASP pricing system may have played a role in substantially increasing the percentage of IVIG sales at prices below the Medicare payment amounts in the third quarter of 2006. The preadministration-related services payment was cited as providing some assistance to physicians and hospitals who are experiencing problems obtaining IVIG. Several commenters noted that the OIG report could be interpreted as leaving a large percentage of hospitals and physicians unable to acquire IVIG at prices below Medicare's payment amounts. Many commenters stated that they did not believe the introduction of new brand-specific reporting codes for IVIG would result in a more stable marketplace.

One commenter presented patient surveys conducted in CYs 2006, 2007, and 2008 which described access limitations and shifts in the site of service. These surveys were limited in size and surveyed only patients receiving IVIG for primary immune

deficiency. Another commenter referred to a report on IVIG issued in February 2007 entitled, *Analysis of Supply, Distribution, Demand and Access Issues Associated with Immune Globulin Intravenous,* prepared by the Eastern Research Group under contract (Contract No. HHSP23320045012XI) to the Assistant Secretary of Planning and Evaluation in HHS, and cited this report as an important source of information on IVIG usage and patient access.

Response: The separate payment for IVIG preadministration-related services was designed to pay the hospital for the additional, unusual, and temporary costs associated with obtaining IVIG products and scheduling patient infusions during a temporary period of market instability. This payment was never intended to subsidize the OPPS payment for drugs made under the ASP methodology.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41457), we referred to data from the OIG study that indicated that for the third quarter of 2006, just over half of IVIG sales to hospitals and physicians were at prices below Medicare payment amounts. Relative to the previous three quarters, this represented a substantial increase of the percentage of sales with prices below Medicare amounts. We agree with the commenters that it is likely that the increased ASP payments were the result of previous price increases from past quarters influencing future ASP data. Furthermore, we believe that the new HCPCS codes for IVIG products allow the hospital to report and receive payment for the specific product furnished to the patient.

We stated clearly in the CY 2006 OPPS final rule with comment period (70 FR 68649 through 68650) that the preadministration-related services payment policy was a temporary measure to pay hospitals for the unusual and temporary costs associated with procuring IVIG. We expected that these costs would decline over time as hospitals became more familiar with the nuances of the IVIG market and the availability of the limited primary and secondary suppliers in their areas.

We did not reference the report conducted by the Eastern Research Group (Contract No. HHSP23320045012XI) in the CY 2009 OPPS/ASC proposed rule. As the commenter noted, this report provides important comprehensive background on the IVIG marketplace, such as an analysis of the IVIG supply and distribution, and an analysis of the demand for and utilization of IVIG products, including how they are administered and paid, as well as information from the industry and others on physician and patient problems with access to IVIG. The study is a collection of multisource information and provides an understanding of the IVIG marketplace. One limitation of the study is that it depicts the market only up through the first quarter of CY 2006 and it does not include detailed information on IVIG pricing as was provided in the OIG report. The OIG report also contains data from a later time period because it includes data through the third quarter of CY 2006.

We note, based on the information that follows, that the IVIG market today appears more stable than it was in CY 2006. We have reviewed national CY 2006 and CY 2007 claims data for IVIG drug utilization, as well as the utilization of the preadministration-related services HCPCS code. These data show a modest increase in the utilization of IVIG and the preadministration-related services code in both physicians' offices and HOPDs from CY 2006 to CY 2007, after a period of decreased IVIG utilization in physicians' offices with a shift of IVIG infusions to the HOPD in the previous year, which suggest that IVIG pricing and access may be improving.

There were about 3.1 million units of IVIG administered in physicians' offices in CY 2006, and 7.3 million units in HOPDs. In CY 2007, those numbers rose to estimates of 3.3 million units and 8.1 million units in the physician's office and HOPD settings, respectively. Under the OPPS, the total number of days of IVIG increased modestly from CY 2006 to CY 2007, from 113,000 to 119,000. Aggregate allowed IVIG charges in the physician's office setting for CY 2006 were $82 million, while total payments (including beneficiary coinsurance) under the OPPS were $184 million for the same time period. In CY 2007, aggregate allowed charges in the physician's office setting are estimated at $98 million, while total OPPS payments are estimated at $246 million.

In summary, beginning in CY 2007, IVIG utilization increased modestly in both the physician's office setting and the HOPD, after a prior shift to the hospital and away from the physicians' offices, presumably reflecting increasing availability of IVIG and appropriate payment for the drug in both settings.

According to information on the Plasma Protein Therapeutics Association (PPTA) Web site regarding the supply of IVIG, in the past year, while the supply has spiked at various times throughout the year, the supply has remained above or near the 12-month moving average. While we acknowledge that the supply is only one of several factors that influence the market, we believe that an adequate supply is one significant factor that contributes to better access to IVIG for patients.

Therefore, because HCPCS code G0332 meets our historical criteria for packaged payment under the OPPS, because we paid separately for these services on a temporary basis only for 3 years, and because we believe that the reported transient market conditions that led us to adopt the separate payment for IVIG preadministration-related services have improved, we believe that packaged payment is more appropriate for the CY 2009 OPPS, consistent with our ongoing efforts to expand the size of the OPPS payment bundles.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, to package payment for IVIG preadministration-related services described by HCPCS code G0332 for CY 2009. The treatment of payment for preadministration-related services under the MPFS is addressed separately in that CY 2009 final rule with comment period. We will continue to work with IVIG stakeholders to understand their concerns regarding the pricing of IVIG and Medicare beneficiary access to this important therapy.

HCPCS code G0332 will be deleted effective January 1, 2009. Therefore, hospitals should report charges for IVIG preadministration-related services in the same manner as hospitals report preadministration-related services charges for other drugs. Hospitals may include the charge for IVIG preadministration-related services on a claim in the charge for the associated drug administration service, in the charge for the IVIG product infused, on an uncoded revenue code line, or in another appropriate manner.

(3) Other Service-Specific Packaging Issues

Based on our CY 2009 proposal to maintain the unconditionally and conditionally packaged payment for services in the seven categories that we originally packaged for CY 2009 (guidance services, image processing services, intraoperative services, imaging supervision and interpretation services, diagnostic radiopharmaceuticals, contrast media, and observation services), we received a number of public comments on individual services that were not specifically discussed in the CY 2009 OPPS/ASC proposed rule or for which

the APC Panel made no specific recommendations.

Comment: Several commenters were concerned that the proposal to package payment for electrodiagnostic guidance for chemodenervation procedures, specifically, CPT codes 95873 (Electrical stimulation for guidance in conjunction with chemodenervation (List separately in addition to code for primary procedure)), and 95874 (Needle electromyography for guidance in conjunction with chemodenervation (List separately in addition to code for primary procedure)). These commenters indicated that chemodenervation involves the injection of chemodenervation agents, such as botulinum toxin, to control the symptoms associated with dystonia and other disorders. According to the commenters, physicians often, but not always, use electromyography or electrical stimulation guidance to guide the needle to the most appropriate location. The commenters were concerned that the proposal to package payment for these guidance services may discourage utilization of this particular form of guidance, even when medically appropriate. One commenter also noted that even if the median cost for the chemodenervation procedures increased, the payment rate would not increase because chemodenervation procedures are only a small proportion of all claims in their proposed APC.

Response: We note that the cost of the chemodenervation guidance services will generally be reflected in the median cost for the independent HCPCS code as a function of the frequency that chemodenervation services are reported with that particular HCPCS code. We recognize that in some cases supportive and ancillary dependent services are furnished at high frequency with independent services, and in other cases, they are furnished with independent services at a low frequency. We believe that packaging should reflect the reality of how services are furnished. While the commenters are correct that the chemodenervation procedures reflect only approximately 3 percent of the services that comprise APC 0204 (Level I Nerve Injections), and approximately 20 percent of the services that comprise APC 0205 (Level II Nerve Injections), we note that they appropriately map to these APCs both clinically and in terms of resource use. We also note that CPT codes 64613 (Chemodenervation of muscle(s); neck muscle(s) (eg, for spasmodic torticollis, spasmodic sysphonia) and 64614 (Chemodenervation of muscle(s); extremity(s) and/or trunk muscle(s) (eg, for dystonia, cerebral palsy, multiple sclerosis) are assigned to APC 0205 for CY 2009, which has a higher payment rate than APC 0204, where they were assigned for CY 2008, based on our annual review of clinical and resource homogeneity.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, to package payment for chemodenervation guidance services described by CPT codes 95873 and 95874 for CY 2009.

Comment: One commenter requested separate payment for CPT codes 0174T (Computer-aided detection (CAD) (computer algorithm analysis of digital image data for lesion detection) with further physician review for interpretation and report, with or without digitization of film radiographic images, chest radiograph(s), performed concurrent with primary interpretation (List separately in addition to code for primary procedure)) and 0175T (Computer-aided detection (CAD) (computer algorithm analysis of digital image data for lesion detection) with further physician review for interpretation and report, with or without digitization of film radiographic images, chest radiograph(s), performed remote from primary interpretation), and expressed concern that CMS' CY 2009 proposal did not adopt the March 2007 APC Panel recommendation related to these services. Another commenter stated that computer-aided detection services should not be treated as image processing services because they require extensive performance testing by the Food and Drug Administration (FDA), as compared to general image processing services that are not required to meet the same performance standards.

Response: During its March 2007 meeting, the APC Panel recommended conditional packaging for CPT code 0175T, but did not recommend a change to the unconditionally packaged status of CPT code 0174T. As discussed extensively in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66667), after thorough discussion with the APC Panel and repeated review by our medical advisors, we continue to believe that these codes are appropriately unconditionally packaged. Because CPT codes 0174T and 0175T are supportive ancillary services that fit into the ''image processing'' category, we packaged payment for all image processing services in CY 2008, and we proposed to continue packaging all image processing services in CY 2009. We believe it is appropriate to maintain the packaged status of these codes because we received no additional data subsequent to the CY 2009 OPPS/ASC proposed rule that convinced us to change this policy.

An image processing service processes and integrates diagnostic test data that were captured during another independent procedure. Computer-aided detection services, which incorporate pattern recognition and image analysis of x-rays or other radiologic studies to aid radiologists in the detection of abnormalities, meet this definition. Therefore, we continue to believe that computer-aided detection services fit into the image processing category, despite any additional requirements that may apply for FDA approval.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, to unconditionally package payment for chest x-ray CAD services described by CPT codes 0174T and 0175T for CY 2009. We are also finalizing our CY 2009 proposal, without modification, to unconditionally package payment for all image processing services.

Comment: Several commenters were concerned that some ''stand-alone'' procedures and services were proposed with status indicator ''N'' for the CY 2009 OPPS. When a hospital provides these services without any other service on the same day, these commenters pointed out that the hospital would not receive any payment for the services. Several commenters cited CPT code 77014 (Computed tomography guidance for placement of radiation therapy fields) as an example of a service that may be performed by Hospital A, while Hospital B provides the associated main independent procedure, the radiation therapy. The commenters noted that in the situation described, Hospital A would not receive any payment and Hospital B would receive payment that included payment for CPT code 77014 and, therefore, they requested that CMS treat CPT code 77014 as a conditionally packaged code, rather than an unconditionally packaged code. Other commenters described a clinical scenario in which one hospital would provide both services, but on different days, and requested that CMS assign a conditionally packaged status indicator to CPT code 77014 so that the hospital would receive payment for services provided on each day. One commenter also noted that it is possible for Hospital A to provide guidance services associated with placement of a breast wire or clips prior to the breast biopsy procedure that would be performed by Hospital B. The latter commenter stated

that in many instances, Hospital A would not provide the services under arrangement with Hospital B. The commenter further noted that if Hospital A were to bill the service to CMS, the bill would be returned to the provider because there would be no separately payable service on the claim.

Response: CMS medical advisors reevaluated every unconditionally packaged HCPCS code, as well as clinical scenarios related to those packaged codes, and determined that the unconditionally packaged status of every code is appropriate, except for CPT code 76936 (Ultrasound guided compression repair of arterial pseudoaneurysm or arteriovenous fistulae (includes diagnostic ultrasound evaluation, compression of lesion and imaging)).

For CY 2008, we unconditionally packaged CPT code 76936 because we classified it as a guidance service, and we packaged all guidance services beginning in CY 2008. We did not receive any public comments on the CY 2008 OPPS/ASC proposed rule requesting that we unpackage payment for this code. However, because this code describes a vascular repair procedure, of which image guidance is a component, upon further examination we believe that separate payment is the most appropriate payment methodology for the service. Therefore, for CY 2009, CPT code 76936 is assigned to APC 0096 (Non-Invasive Vascular Studies), with status indicator ''S.''

CMS medical advisors specifically reviewed the clinical scenarios surrounding CPT code 77014 offered by the commenters and determined that its unconditional packaged status is appropriate. If we were to treat CPT code 77014 as a conditionally packaged code, we would create an incentive for a hospital to provide this service on a different day than other services related to radiation therapy, whereas when this code is unconditionally packaged, the hospital has an incentive to provide the service described by CPT code 77014 at the most appropriate time, from the perspective of the patient and hospital. We believe that it would be uncommon for one hospital to provide the guidance service described by CPT code 77014 and another hospital to provide radiation therapy. Section 1866 of the Act sets forth the requirements for provider enrollment. More specifically, section 1866(a)(1)(H) of the Act states, ''in the case of hospitals which provide services for which payment may be made under this title and in the case of critical access hospitals which provide critical access hospital services, to have all items and services (other than physicians' services as defined in regulations for purposes of section 1862(a)(14), and other than services described by section 1861(s)(2)(K), certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist) (I) that are furnished to an individual who is a patient of the hospital, and (II) for which the individual is entitled to have payment made under this title, furnished by the hospital or otherwise under arrangements (as defined in section 1861(w)(1)) made by the hospital.'' In other words, each Medicare-participating hospital must agree to furnish directly all covered nonphysician facility services required by its patients (inpatients and outpatients) or to have the services furnished under arrangement (as defined in section 1861(w)(1) of the Act). In addition, § 410.27(a)(1)(i) through (iii) further requires that payment is made for hospital outpatient services (1) furnished by or under arrangement by the hospital, (2) as an integral though incidental part of the physician's services, and (3) in the hospital or at a department of the provider that has provider-based status in relation to the hospital, as defined in § 413.65. That means when a patient requires a particular service ordered by the physician, such as the radiation therapy services in question, the hospital would be responsible for ensuring that service is provided directly or that the hospital arranges for the service to be provided in that hospital or in a provider-based department of that hospital. Both the independent service, here the radiation therapy, and the dependent guidance service are necessary to perform the radiation therapy. If the services cannot all be provided by the hospital, whether directly or under arrangement as required in § 410.27(a), then the hospital would discharge the patient and refer that patient to another provider to receive the services.

If one hospital provided the service described by CPT code 77014 on one day, and the same hospital provided radiation therapy services on another day, as long as both services were reported on one claim, we would package payment across the dates of service. This was discussed in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66637) in the context of diagnostic radiopharmaceuticals that may be provided on a day prior to an independent procedure. In light of the ability of ''natural'' singles claims to package costs across days, we believe that our standard OPPS ratesetting methodology of using median costs calculated from claims data would adequately capture the costs of CPT code 77014 associated with radiation therapy services that are not provided on the same date of service.

CMS medical advisors also reviewed the clinical scenarios surrounding CPT codes 19290 (Preoperative placement of needle localization wire, breast); 19291 (Preoperative placement of needle localization wire, breast; each additional lesion) (List separately in addition to code for primary procedure)); and 19295 (Image guided placement, metallic localization clip, percutaneous, during breast biopsy (List separately in addition to code for primary procedure)). Our rationale for unconditionally packaging this service is parallel to the rationale described for unconditionally packaging CPT code 77014. As stated above, we believe that it would be very unlikely that one hospital would perform the preoperative wire placement in the breast and then send the patient to another facility for the breast biopsy procedure both because it would be potentially difficult and uncomfortable for the beneficiary and because this care pattern would not conform to the requirements of the statute and regulations that the hospital must furnish directly or arrange to have furnished all services required by its patients.

In response to the commenter who stated that a claim without any separately payable services would be returned to the provider, as we stated in the CY 2007 OPPS final rule with comment period (71 FR 67995), claims with only packaged codes and no separately payable codes are processed by the I/OCE and rejected for payment, but are included in the national claims history file that we analyze and use to set payment rates. Therefore, we have hospital claims data for packaged codes that are provided without any separately payable service.

After consideration of the public comments received, we are finalizing our CY 2009 proposal to unconditionally package all HCPCS codes for services assigned status indicator ''N'' in Addendum B to this final rule with comment period, with modification to provide separate payment for CPT code 76936, assigned status indicator ''S,'' through APC 0096 for CY 2009.

Comment: Many commenters requested separate payment for CPT code 31620 (Endobronchial ultrasound (EBUS) during bronchoscopic diagnostic or therapeutic intervention(s) (List

separately in addition to code for primary procedure)). The commenters noted that the payment rate for performing a bronchoscopy with EBUS dropped significantly between CYs 2007 and 2009, from approximately $2,500 to approximately $700, and they are concerned that beneficiary' access to care will be limited if hospitals are no longer financially able to offer this important clinical tool. The commenters indicated that EBUS is only represented on a small portion of bronchoscopy claims. The commenters believed that packaging payment for EBUS will result in more mediastinoscopies, a more invasive and costly procedure. One commenter asserted that EBUS should be unpackaged to correct the violation of the 2 times rule for the APCs (specifically APC 0076 (Level I Endoscopy Lower Airway)) that contain bronchoscopy procedures. The commenters recommended various ideas for creation of composite APCs that would include payment for EBUS, when performed. Several commenters requested that CMS unpackage payment for certain ultrasound guidance services, for similar reasons.

Response: We do not agree that beneficiary access to care will be harmed or that the number of mediastinoscopies will increase as a result of packaging payment for CPT code 31620. We believe that packaging created incentives for hospitals and physician partners to work together to establish appropriate protocols that will eliminate unnecessary services where they exist and institutionalize approaches to providing necessary services more efficiently. If this review results in the concentration of some services in a reduced number of hospitals in the community, we believe that the quality of care and hospital efficiency may both be enhanced as a result. The medical literature shows that concentration of services in certain hospitals often results in both greater efficiency and higher quality of care for patients. As we have stated previously, the median cost for a particular independent procedure generally will be higher as a result of added packaging, but also could change little or be lower because median costs typically do not reflect small distributional changes and because changes to the packaged HCPCS codes affect both the number and composition of single bills and the mix of hospitals contributing those single bills. In this case, our data indicate increased packaged costs associated with the services into which CPT code 31620 is packaged, ultimately increasing the APC payment rates for bronchoscopy procedures. We will include the CY 2008 claims data for CPT code 31620 from its first year of packaged payment in our analysis recommended by the APC Panel to assess changes in utilization patterns that may accompany packaged payment.

Regarding the comment about the 2 times rule violations for bronchoscopy APCs, because we have traditionally paid for a service package under the OPPS as represented by a HCPCS code for the major procedure that is assigned to an APC group for payment, we assess the applicability of the 2 times rule to services at the HCPCS code level, not at a more specific level based on the individual intraoperative service that may be performed during an independent service reported with a HCPCS code for the major service. If the use of a very expensive intraoperative service in a clinical scenario causes a specific procedure to be much more expensive for the hospital than the APC payment, we consider such a case to be the natural consequence of a prospective payment system that anticipates that some cases will be more costly and other less costly than the procedure payment. In addition, very high cost cases could be eligible for outlier payment. Decisions about packaging and bundling payment involve a balance between ensuring some separate payment for individual services and establishing incentives for efficiency through larger units of payment.

While the proposed configuration of APC 0076 did not violate the 2 times rule, we note that we have slightly reconfigured APC 0076 for this final rule with comment period as a result of our medical advisors' regular review of all APCs for clinical and resource homogeneity, using updated final rule data. Specifically, CPT code 31615 (Tracheobronchoscopy through established tracheostomy incision) is reassigned from APC 0076 to APC 0252 (Level III ENT Procedures) for CY 2009.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification to package payment for EBUS and ultrasound guidance services for CY 2009.

We have responded to public comments related to potential composite APCs in section II.A.2.e. of this final rule with comment period.

B. Conversion Factor Update

Section 1833(t)(3)(C)(ii) of the Act requires us to update the conversion factor used to determine payment rates under the OPPS on an annual basis. Section 1833(t)(3)(C)(iv) of the Act provides that, for CY 2009, the update is equal to the hospital inpatient market basket percentage increase applicable to hospital discharges under section 1886(b)(3)(B)(iii) of the Act. The final hospital market basket increase for FY 2009 published in the IPPS final rule on August 19, 2008 is 3.6 percent (73 FR 48759). To set the OPPS conversion factor for CY 2009, we increased the CY 2008 conversion factor of $63.694, as specified in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66677), by 3.6 percent. Hospitals that fail to meet the reporting requirements of the Hospital Outpatient Quality Data Reporting (HOP QDRP) program are subject to a reduction of 2.0 percentage points from the market basket update to the conversion factor. For a complete discussion of the HOP QDRP requirements and the payment reduction for hospitals that fail to meet those requirements, we refer readers to section XVI. of this final rule with comment period.

In accordance with section 1833(t)(9)(B) of the Act, we further adjusted the conversion factor for CY 2009 to ensure that any revisions we are making to our updates for a revised wage index and rural adjustment are made on a budget neutral basis. We calculated an overall budget neutrality factor of 1.0013 for wage index changes by comparing total payments from our simulation model using the FY 2009 IPPS final wage index values as finalized to those payments using the current (FY 2008) IPPS wage index values. For CY 2009, we did not propose a change to our rural adjustment policy. Therefore, the budget neutrality factor for the rural adjustment is 1.000.

For this final rule with comment period, we estimated that allowed pass-through spending for both drugs and biologicals and devices for CY 2009 would equal approximately $33.3 million, which represents 0.11 percent of total projected OPPS spending for CY 2009. Therefore, the conversion factor was also adjusted by the difference between the 0.09 percent pass-through dollars set aside for CY 2008 and the 0.11 percent estimate for CY 2009 pass-through spending. Finally, estimated payments for outliers remain at 1.0 percent of total OPPS payments for CY 2009.

The market basket increase update factor of 3.6 percent for CY 2009, the required wage index budget neutrality adjustment of approximately 1.0013, and the adjustment of 0.02 percent of projected OPPS spending for the difference in the pass-through set aside resulted in a full market basket conversion factor for CY 2009 of

$66.059. To calculate the CY 2009 reduced market basket conversion factor for those hospitals that fail to meet the requirements of the HOP QDRP for the full CY 2009 payment update, we made all other adjustments discussed above, but used a reduced market basket increase update factor of 1.6 percent. This resulted in a reduced market basket conversion factor for CY 2009 of $64.784 for those hospitals that fail to meet the HOP QDRP requirements.

Comment: One commenter requested that CMS update the conversion factor using the final FY 2009 IPPS market basket increase update factor of 3.6 percent rather than the proposed FY 2009 IPPS market basket increase update factor of 3.0 percent.

Response: We agree and have applied the final FY 2009 IPPS market basket increase update factor of 3.6 percent to calculate the CY 2009 OPPS conversion factor. When we developed the CY 2009 OPPS/ASC proposed rule, the FY 2009 IPPS market basket increase update factor of 3.6 percent had not yet been finalized. Therefore, we could not use it to update the proposed CY 2009 OPPS conversion factor. As is our longstanding policy, when developing the proposed OPPS update for a given calendar year, we use the most current IPPS market basket update factor available for the year applicable to the OPPS update and adopt that finalized IPPS value when we develop the final rule with comment period for the OPPS update.

After consideration of the public comment received, we are finalizing our CY 2009 proposal, without modification, to update the conversion factor by the FY 2009 IPPS market basket increase update factor of 3.6 percent, resulting in a final full conversion factor of $66.059 and in a reduced conversion factor of $64.784 for those hospitals that fail to meet the HOP QDRP reporting requirements.

C. Wage Index Changes

Section 1833(t)(2)(D) of the Act requires the Secretary to determine a wage adjustment factor to adjust, for geographic wage differences, the portion of the OPPS payment rate, which includes the copayment standardized amount, that is attributable to labor and labor-related cost. This adjustment must be made in a budget neutral manner and budget neutrality is discussed in section II.B. of this final rule with comment period.

The OPPS labor-related share is 60 percent of the national OPPS payment. This labor-related share is based on a regression analysis that determined that approximately 60 percent of the costs of services paid under the OPPS were attributable to wage costs. We confirmed that this labor-related share for outpatient services is still appropriate during our regression analysis for the payment adjustment for rural hospitals in the CY 2006 OPPS final rule with comment period (70 FR 68553). Therefore, we did not propose to revise this policy for the CY 2009 OPPS. We refer readers to section II.G. of this final rule with comment period for a description and example of how the wage index for a particular hospital is used to determine the payment for the hospital.

As discussed in section II.A.2.c. of this final rule with comment period, for estimating national median APC costs, we standardize 60 percent of estimated claims costs for geographic area wage variation using the same FY 2009 pre-reclassified wage indices that the IPPS uses to standardize costs. This standardization process removes the effects of differences in area wage levels from the determination of a national unadjusted OPPS payment rate and the copayment amount.

As published in the original OPPS April 7, 2000 final rule with comment period (65 FR 18545), the OPPS has consistently adopted the final IPPS wage indices as the wage indices for adjusting the OPPS standard payment amounts for labor market differences. Thus, the wage index that applies to a particular acute short-stay hospital under the IPPS will also apply to that hospital under the OPPS. As initially explained in the September 8, 1998 OPPS proposed rule, we believed and continue to believe that using the IPPS wage index as the source of an adjustment factor for the OPPS is reasonable and logical, given the inseparable, subordinate status of the HOPD within the hospital overall. In accordance with section 1886(d)(3)(E) of the Act, the IPPS wage index is updated annually. Therefore, in accordance with our established policy, we proposed to use the final FY 2009 version of the IPPS wage indices used to pay IPPS hospitals to adjust the CY 2009 OPPS payment rates and copayment amounts for geographic differences in labor cost for all providers that participate in the OPPS, including providers that are not paid under the IPPS (referred to in this section as ''non-IPPS'' providers).

We note that the final FY 2009 IPPS wage indices continue to reflect a number of adjustments implemented over the past few years, including revised Office of Management and Budget (OMB) standards for defining geographic statistical areas (Core Based Statistical Areas or CBSAs), reclassification to different geographic areas, rural floor provisions and the accompanying budget neutrality adjustment, an adjustment for out-migration labor patterns, an adjustment for occupational mix, and a policy for allocating hourly wage data among campuses of multicampus hospital systems that cross CBSAs. We refer readers to the FY 2009 IPPS final rule (73 FR 48563 through 48592) and to the **Federal Register** notice published subsequent to that final rule on October 3, 2008 (73 FR 57888) for a detailed discussion of recent changes to the FY 2009 IPPS wage indices, including adoption of a 3-year transition from a national budget neutrality adjustment to a State-level budget neutrality adjustment for the rural and imputed floors. In addition, we refer readers to the CY 2005 OPPS final rule with comment period (69 FR 65842 through 65844) and subsequent OPPS rules for a detailed discussion of the history of these wage index adjustments as applied under the OPPS.

The IPPS wage indices that we proposed to adopt in the CY 2009 OPPS/ASC proposed rule include all reclassifications that are approved by the Medicare Geographic Classification Review Board (MGCRB) for FY 2009. We note that reclassifications under section 508 of Public Law 108–173 and certain special exception reclassifications that were extended by section 106(a) of the MIEA-TRHCA and section 117(a)(1) of the MMSEA (Pub. L. 110–173) were set to terminate September 30, 2008. Section 117(a)(2) of the MMSEA also extended certain special exception reclassifications. On February 22, 2008, we published a notice in the **Federal Register** (73 FR 9807) that indicated how we are implementing section 117(a) of the MMSEA under the IPPS. We also issued a joint signature memorandum on January 28, 2008, that explained how section 117 of the MMSEA would apply to the OPPS. As we stated in that memorandum, most of the reclassifications extended by the MMSEA would expire September 30, 2008, for both the IPPS and the OPPS (with OPPS hospitals reverting to a previous reclassification or home area wage index from October 1, 2008 to December 31, 2008). However, because we implemented the special exception wage indices for certain hospitals on a calendar year cycle for OPPS, we extended special exception wage indices through December 31, 2008, in order to give these hospitals the special exception wage indices under the OPPS

for the same time period as under the IPPS.

Since issuance of the CY 2009 OPPS/ASC proposed rule, section 124 of Public Law 110–275 (MIPPA) further extended geographic reclassifications under section 508 and certain special exception reclassifications until September 30, 2009. We did not make any proposals related to these provisions for the CY 2009 OPPS wage indices in our proposed rule, since the MIPPA was enacted after issuance of the CY 2009 OPPS/ASC proposed rule. In accordance with section 124 of Public Law 110–275, for CY 2009, we are adopting all section 508 geographic reclassifications through September 30, 2009. Similar to our treatment of section 508 reclassifications extended under the MMSEA as described above, hospitals with section 508 reclassifications will revert to their home area wage index, with out-migration adjustment if applicable, from October 1, 2009, to December 31, 2009. As we did for CY 2008, we also are extending the special exception wage indices for certain hospitals through December 31, 2009, under the OPPS in order to give these hospitals the special exception wage indices under the OPPS for the same time period as under the IPPS. We refer readers to the **Federal Register** notice published subsequent to the FY 2009 IPPS final rule for a detailed discussion of the changes to the wage indices as required by section 124 of the Public Law 110–275 (73 FR 57888).

For purposes of the OPPS, we proposed to continue our policy in CY 2009 to allow non-IPPS hospitals paid under the OPPS to qualify for the out-migration adjustment if they are located in a section 505 out-migration county. We note that because non-IPPS hospitals cannot reclassify, they are eligible for the out-migration wage adjustment. Table 4J in the **Federal Register** notice that provides final FY 2009 IPPS wage indices published subsequent to the FY 2009 IPPS final rule (73 FR 57988) identifies counties eligible for the out-migration adjustment and providers receiving the adjustment. As we have done in prior years, we are reprinting Table 4J, as Addendum L to this final rule with comment period, with the addition of non-IPPS hospitals that will receive the section 505 out-migration adjustment under the CY 2009 OPPS.

As stated earlier in this section, we continue to believe that using the IPPS wage indices as the source of an adjustment factor for the OPPS is reasonable and logical, given the inseparable, subordinate status of the HOPD within the hospital overall. Therefore, we proposed to use the final FY 2009 IPPS wage indices for calculating the OPPS payments in CY 2009. With the exception of the out-migration wage adjustment table (Addendum L to this final rule with comment period), which includes non-IPPS hospitals paid under the OPPS, we are not reprinting the finalized FY 2009 IPPS wage indices referenced in this discussion of the wage index. We refer readers to the CMS Web site for the OPPS at: *http://www.cms.hhs.gov/providers/hopps.* At this link, readers will find a link to the final FY 2009 IPPS wage index tables as finalized.

Comment: Several commenters supported the CMS proposal to extend the IPPS wage indices to the OPPS in CY 2009 as we have done in previous years. One commenter praised the adoption of reclassifications approved by the MGCRB. Another commenter supported the extension of the special exception reclassifications for certain hospitals through December 31, 2008 for the OPPS.

Response: We appreciate the support expressed by the commenters for our proposed CY 2009 wage index policies, as well as our CY 2008 policy that extended the special exception wage indices through December 31, 2008. As discussed earlier, in implementing section 124 of Public Law 110–275, we also are extending the special exception wage indices through December 31, 2009, under the OPPS. With regard to adopting reclassifications approved by the MGCRB, we note that under the OPPS we adopt the IPPS wage indices in their entirety, including wage index reclassifications. Therefore, any reclassifications approved for a hospital would apply to payment under both the IPPS and the OPPS.

Comment: One commenter opposed CMS' implementation of the FY 2009 IPPS wage indices in the OPPS in light of the revisions to the reclassification average hourly wage comparison criteria, as finalized in the FY 2009 IPPS final rule. Specifically, the commenter suggested that CMS consider the redistributional effects of implementing the changes to the comparison threshold. In addition, the commenter stated that a change in the reclassification comparison criteria, coupled with CMS' implementation of a transitional within-State rural floor budget neutrality adjustment, could have a substantially negative effect on hospitals located in rural markets.

Response: We appreciate the comment concerning our revision to the reclassification average hourly wage comparison criteria as discussed in the FY 2009 IPPS final rule (73 FR 48568). Our consistent policy has been to adopt the IPPS fiscal year wage indices for use under the OPPS, including IPPS policy on geographic reclassification. While the commenter discussed the redistributional effects of changes made in the IPPS rulemaking process, the inherent policy rationales underlying such changes were not discussed. The policy rationales for an update to the geographic reclassification wage comparison criteria and budget neutrality for the rural and imputed floors were fully discussed during the FY 2009 IPPS rulemaking process, and hospitals had the opportunity to comment specifically on such policy rationales during that process.

Comment: One commenter expressed concern about the impact of the wage index on hospital payment for specific APCs. In particular, the commenter argued that 60 percent, the current percentage of the APC payment that is adjusted for variation in labor-related costs, is too large of a percentage for APCs that incorporate high cost technologies, implantable devices, and drugs, and instead suggested a labor rate split of 20 percent (based on the commenter's data) for APCs that include high device or supply costs. The commenter suggested a labor-related share of 20 percent for APCs 0107 (Insertion of Cardioverter-Defibrillator); 0108 (Insertion/Replacement/Repair of Cardioverter-Defibrillator Leads); 0222 (Level II Implantation of Neurostimulator); 0225 (Implantation of Neurostimulator Electrodes, Cranial Nerve); 0227 (Implantation of Drug Infusion Device); 0315 (Level III Implantation of Neurostimulator); 0418 (Insertion of Left Ventricular Pacing Elect.); 0654 (Insertion/Replacement of a Permanent Dual Chamber Pacemaker); 0655 (Insertion/Replacement/Conversion of a Permanent Dual Chamber Pacemaker); 0656 (Transcatheter Placement of Intracoronary Drug-Eluting Stents); and others that CMS believes would meet the criteria discussed by the commenter.

Moreover, regarding the effects of wage adjustment on hospital payment for certain services, MedPAC noted that the effect of charge compression on OPPS payment for services where devices make up a large percentage of the costs of the service tend to be exacerbated among hospitals in low-wage areas and counteracted in high-wage areas because CMS wage adjusts a portion of the device cost, which typically exceeds 40 percent of the APC payment. The MedPAC suggested that CMS overadjusts for the labor costs in these services and stated its plan to

evaluate CMS' method for adjusting payments for variations in labor costs.

Response: We do not believe it is appropriate to vary the percentage of the national payment that is wage adjusted for different services provided under the OPPS. Such a change could not be considered without first assessing its impact on the OPPS labor-related share calculation. The OPPS labor-related share of 60 percent was determined through regression analyses conducted for the initial OPPS proposed rule (63 FR 47581) and recently confirmed for the CY 2006 OPPS final rule with comment period (70 FR 68556). The labor-related share is a provider-level adjustment based on the relationship between the labor input costs and a provider's average OPPS unit cost, holding all other things constant. While numerous individual services may have variable labor shares, these past analyses identified 60 percent as the appropriate labor-related share across all types of outpatient services and are the basis for our current policy. The provider-level adjustment addresses payment for all services paid under the OPPS. We look forward to reviewing the results of MedPAC's evaluation of the CMS method for adjusting payment for variation in labor costs in light of differences in labor-related costs for device-implantation services, as well as any recommendations it may provide regarding the OPPS wage adjustment policy.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, to use the final FY 2009 IPPS wage indices to adjust the OPPS standard payment amounts for labor market differences.

D. Statewide Average Default CCRs

CMS uses CCRs to determine outlier payments, payments for pass-through devices, and monthly interim transitional corridor payments under the OPPS, in addition to adjusting hospitals' charges reported on claims to costs. Some hospitals do not have a CCR because there is no cost report available. For these hospitals, CMS uses the statewide average default CCRs to determine the payments mentioned above until a hospital's Medicare contractor is able to calculate the hospital's actual CCR from its most recently submitted Medicare cost report. These hospitals include, but are not limited to, hospitals that are new, have not accepted assignment of an existing hospital's provider agreement, and have not yet submitted a cost report. CMS also uses the statewide average default CCRs to determine payments for hospitals that appear to have a biased CCR (that is, the CCR falls outside the predetermined ceiling threshold for a valid CCR) or for hospitals whose most recent cost report reflects an all-inclusive rate status (Medicare Claims Processing Manual, Pub. 100–04, Chapter 4, Section 10.11). As proposed, in this final rule with comment period, we are updating the default ratios for CY 2009 using the most recent cost report data, and we are codifying our policies for using the default ratios for hospitals that do not have a CCR for outlier payments specifically. We refer readers to section II.F. of this final rule with comment period where we discuss our final policy for default CCRs, including setting the ceiling threshold for a valid CCR, as part of our broader implementation of an outlier reconciliation process similar to that implemented under the IPPS.

For CY 2009, we used our standard methodology of calculating the statewide average default CCRs using the same hospital overall CCRs that we use to adjust charges to costs on claims data. Table 9 published in the CY 2009 OPPS/ASC proposed rule listed the proposed CY 2009 default urban and rural CCRs by State and compared them to last year's default CCRs. These CCRs are the ratio of total costs to total charges from each hospital's most recently submitted cost report, for those cost centers relevant to outpatient services weighted by Medicare Part B charges. We also adjusted ratios from submitted cost reports to reflect final settled status by applying the differential between settled to submitted costs and charges from the most recent pair of final settled and submitted cost reports. We then weighted each hospital's CCR by claims volume corresponding to the year of the majority of cost reports used to calculate the overall CCR. We refer readers to section II.E. of the CY 2008 OPPS/ASC final rule with comment period (72 FR 66680 through 66682) and prior OPPS rules for a more detailed discussion of our established methodology for calculating the statewide average default CCRs, including the hospitals used in our calculations and trimming criteria.

For the CY 2009 OPPS/ASC proposed rule, approximately 38 percent of the submitted cost reports represented data for cost reporting periods ending in CY 2005 and 60 percent were for cost reporting periods ending in CY 2006. We have since updated the cost report data we use to calculate CCRs with additional cost reports ending in CYs 2006 and 2007. For this final rule with comment period, 53 percent of the submitted cost reports utilized in the default ratio calculation are for CY 2006 and 46 percent are for CY 2007. For Maryland, we use an overall weighted average CCR for all hospitals in the nation as a substitute for Maryland CCRs. Few hospitals in Maryland are eligible to receive payment under the OPPS, which limits the data available to calculate an accurate and representative CCR. In general, observed changes between CYs 2008 and 2009 are modest and the few significant changes are associated with a small number of hospitals.

We did not receive any public comments concerning our CY 2009 proposal to apply our standard methodology of calculating the statewide average default CCRs using the same hospital overall CCRs that we use to adjust charges to costs on claims data. Public comments on setting the threshold for determining a valid CCR are discussed in section II.F. of this final rule with comment period. Therefore, we are finalizing the statewide average default CCRs as shown in Table 11 below for OPPS services furnished on or after January 1, 2009.

TABLE 11—CY 2009 STATEWIDE AVERAGE CCRS

State	Urban/rural	Final CY 2009 default CCR	Previous default CCR (CY 2008 OPPS final rule)
ALASKA	RURAL	0.562	0.537
ALASKA	URBAN	0.345	0.351
ALABAMA	RURAL	0.221	0.228
ALABAMA	URBAN	0.202	0.213
ARKANSAS	RURAL	0.256	0.266
ARKANSAS	URBAN	0.268	0.270
ARIZONA	RURAL	0.267	0.264

TABLE 11—CY 2009 STATEWIDE AVERAGE CCRS—Continued

State	Urban/rural	Final CY 2009 default CCR	Previous default CCR (CY 2008 OPPS final rule)
ARIZONA	URBAN	0.226	0.232
CALIFORNIA	RURAL	0.219	0.232
CALIFORNIA	URBAN	0.218	0.218
COLORADO	RURAL	0.346	0.355
COLORADO	URBAN	0.248	0.254
CONNECTICUT	RURAL	0.372	0.391
CONNECTICUT	URBAN	0.322	0.339
DISTRICT OF COLUMBIA	URBAN	0.329	0.346
DELAWARE	RURAL	0.302	0.302
DELAWARE	URBAN	0.349	0.400
FLORIDA	RURAL	0.204	0.219
FLORIDA	URBAN	0.189	0.198
GEORGIA	RURAL	0.267	0.279
GEORGIA	URBAN	0.251	0.269
HAWAII	RURAL	0.367	0.373
HAWAII	URBAN	0.344	0.317
IOWA	RURAL	0.439	0.349
IOWA	URBAN	0.294	0.325
IDAHO	RURAL	0.449	0.445
IDAHO	URBAN	0.419	0.414
ILLINOIS	RURAL	0.280	0.286
ILLINOIS	URBAN	0.266	0.271
INDIANA	RURAL	0.298	0.313
INDIANA	URBAN	0.295	0.301
KANSAS	RURAL	0.300	0.318
KANSAS	URBAN	0.238	0.240
KENTUCKY	RURAL	0.236	0.244
KENTUCKY	URBAN	0.255	0.262
LOUISIANA	RURAL	0.283	0.271
LOUISIANA	URBAN	0.258	0.277
MARYLAND	RURAL	0.303	0.308
MARYLAND	URBAN	0.276	0.284
MASSACHUSETTS	URBAN	0.328	0.338
MAINE	RURAL	0.452	0.433
MAINE	URBAN	0.428	0.424
MICHIGAN	RURAL	0.317	0.331
MICHIGAN	URBAN	0.321	0.318
MINNESOTA	RURAL	0.488	0.499
MINNESOTA	URBAN	0.348	0.342
MISSOURI	RURAL	0.269	0.289
MISSOURI	URBAN	0.282	0.292
MISSISSIPPI	RURAL	0.261	0.267
MISSISSIPPI	URBAN	0.209	0.217
MONTANA	RURAL	0.455	0.453
MONTANA	URBAN	0.439	0.450
NORTH CAROLINA	RURAL	0.272	0.286
NORTH CAROLINA	URBAN	0.292	0.321
NORTH DAKOTA	RURAL	0.369	0.379
NORTH DAKOTA	URBAN	0.354	0.378
NEBRASKA	RURAL	0.345	0.347
NEBRASKA	URBAN	0.283	0.290
NEW HAMPSHIRE	RURAL	0.350	0.375
NEW HAMPSHIRE	URBAN	0.296	0.337
NEW JERSEY	URBAN	0.257	0.276
NEW MEXICO	RURAL	0.263	0.275
NEW MEXICO	URBAN	0.328	0.353
NEVADA	RURAL	0.312	0.329
NEVADA	URBAN	0.192	0.200
NEW YORK	RURAL	0.412	0.417
NEW YORK	URBAN	0.388	0.402
OHIO	RURAL	0.353	0.354
OHIO	URBAN	0.258	0.268
OKLAHOMA	RURAL	0.278	0.288
OKLAHOMA	URBAN	0.238	0.245
OREGON	RURAL	0.318	0.321
OREGON	URBAN	0.374	0.366
PENNSYLVANIA	RURAL	0.284	0.298
PENNSYLVANIA	URBAN	0.232	0.241
PUERTO RICO	URBAN	0.519	0.474
RHODE ISLAND	URBAN	0.294	0.308

TABLE 11—CY 2009 STATEWIDE AVERAGE CCRS—Continued

State	Urban/rural	Final CY 2009 default CCR	Previous default CCR (CY 2008 OPPS final rule)
SOUTH CAROLINA	RURAL	0.242	0.258
SOUTH CAROLINA	URBAN	0.240	0.244
SOUTH DAKOTA	RURAL	0.336	0.334
SOUTH DAKOTA	URBAN	0.267	0.289
TENNESSEE	RURAL	0.244	0.256
TENNESSEE	URBAN	0.221	0.241
TEXAS	RURAL	0.257	0.271
TEXAS	URBAN	0.238	0.242
UTAH	RURAL	0.413	0.416
UTAH	URBAN	0.430	0.406
VIRGINIA	RURAL	0.257	0.268
VIRGINIA	URBAN	0.266	0.275
VERMONT	RURAL	0.406	0.416
VERMONT	URBAN	0.422	0.340
WASHINGTON	RURAL	0.349	0.358
WASHINGTON	URBAN	0.342	0.368
WISCONSIN	RURAL	0.399	0.384
WISCONSIN	URBAN	0.346	0.362
WEST VIRGINIA	RURAL	0.293	0.298
WEST VIRGINIA	URBAN	0.349	0.360
WYOMING	RURAL	0.418	0.449
WYOMING	URBAN	0.331	0.351

E. OPPS Payment to Certain Rural and Other Hospitals

1. Hold Harmless Transitional Payment Changes Made by Public Law 110–275 (MIPPA)

When the OPPS was implemented, every provider was eligible to receive an additional payment adjustment (called either transitional corridor payment or transitional outpatient payment (TOPS)) if the payments it received for covered OPD services under the OPPS were less than the payment it would have received for the same services under the prior reasonable cost-based system (referred to as the pre-BBA amount). Section 1833(t)(7) of the Act provides that the transitional corridor payments are temporary payments for most providers to ease their transition from the prior reasonable cost-based payment system to the OPPS system. There are two exceptions to this provision, cancer hospitals and children's hospitals, and those hospitals receive the transitional corridor payments on a permanent basis. Section 1833(t)(7)(D)(i) of the Act originally provided for transitional corridor payments to rural hospitals with 100 or fewer beds for covered OPD services furnished before January 1, 2004. However, section 411 of Public Law 108–173 amended section 1833(t)(7)(D)(i) of the Act to extend these payments through December 31, 2005, for rural hospitals with 100 or fewer beds. Section 411 also extended the transitional corridor payments to SCHs located in rural areas for services furnished during the period that began with the provider's first cost reporting period beginning on or after January 1, 2004, and ended on December 31, 2005. Accordingly, the authority for making transitional corridor payments under section 1833(t)(7)(D)(i) of the Act, as amended by section 411 of Public Law 108–173, for rural hospitals having 100 or fewer beds and SCHs located in rural areas expired on December 31, 2005.

Section 5105 of Public Law 109–171 reinstituted the TOPs for covered OPD services furnished on or after January 1, 2006, and before January 1, 2009, for rural hospitals having 100 or fewer beds that are not SCHs. When the OPPS payment is less than the provider's pre-BBA amount, the amount of payment is increased by 95 percent of the amount of the difference between the two payment systems for CY 2006, by 90 percent of the amount of that difference for CY 2007, and by 85 percent of the amount of that difference for CY 2008.

For CY 2006, we implemented section 5105 of Public Law 109–171 through Transmittal 877, issued on February 24, 2006. In the Transmittal, we did not specifically address whether TOPs apply to essential access community hospitals (EACHs), which are considered to be SCHs under section 1886(d)(5)(D)(iii)(III) of the Act. Accordingly, under the statute, EACHs are treated as SCHs. In the CY 2007 OPPS/ASC final rule with comment period (71 FR 68010), we stated that EACHs were not eligible for TOPs under Public Law 109–171. However, we stated they were eligible for the adjustment for rural SCHs. In the CY 2007 OPPS/ASC final rule with comment period (71 FR 68010 and 68228), we updated § 419.70(d) of our regulations to reflect the requirements of Public Law 109–171.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41461), we stated that, effective for services provided on or after January 1, 2009, rural hospitals having 100 or fewer beds that are not SCHs would no longer be eligible for TOPs, in accordance with section 5105 of Public Law 109–171. However, subsequent to issuance of the CY 2009 OPPS/ASC proposed rule, section 147 of Public Law 110–275 amended section 1833(t)(7)(D)(i) of the Act by extending the period for TOPs to rural hospitals with 100 beds or fewer, for 1 year, for services provided before January 1, 2010. Section 147 of Public Law 110–275 also extended TOPs to SCHs (including EACHs) with 100 or fewer beds for covered OPD services provided on or after January 1, 2009, and before January 1, 2010. In accordance with section 147 of Public Law 110–275, when the OPPS payment is less than the provider's pre-BBA amount, the amount of payment is increased by 85 percent of the amount of the difference between the two payment systems for CY 2009.

Comment: Several commenters supported the legislative extension of TOPs to small rural hospitals and small SCHs for services provided before January 1, 2010, under section 147 of Public Law 110–275.

Response: We appreciate the commenters' support.

In this final rule with comment period, we are revising §§ 419.70(d)(2) and (d)(4) and adding a new paragraph (d)(5) to incorporate the provisions of section 147 of Public Law 110–275. We note that our interpretation of the term ''beds,'' as is used in the regulation for determining the number of beds in a hospital, is consistent with how that term is defined in our established hold harmless policy in § 419.70, as stated in the April 7, 2000, OPPS final rule with comment period (65 FR 18501). In addition, while we were reviewing § 419.70(d)(2) in order to incorporate the change provided by section 147 of Pub. L. 110–275, we realized that our use of the word ''paragraph'' was incorrect. Specifically, the provision states that for covered hospital outpatient services furnished in a calendar year from January 1, 2006, through December 31, 2009, for which the prospective payment amount is less than the pre-BBA amount, the amount of payment under this paragraph is increased by the amount of the difference. We note that if the prospective payment amount is less than the pre-BBA amount, payments under this part (Part 419), not paragraph, are increased. Therefore, in order to more precisely capture our existing policy and to correct an inaccurate cross reference, we are substituting the word ''part'' for ''paragraph.''

In addition, in our review of § 419.70 to implement section 147 of Public Law 110–275, we discovered that the cross-references in paragraphs (e), (g), and (i) of § 419.70 were incorrect. Paragraph (e) defines the term ''prospective payment system amount'' which is used throughout § 419.70. However, the language in paragraph (e) incorrectly references ''this paragraph'' rather than ''this section.'' We are making a technical correction to this cross-reference to correct the error and to accurately reflect the current policy. In addition, paragraph (g) of § 419.70 states that ''CMS makes payments under this paragraph * * *'' Because paragraph (g) is intended to specify how additional OPPS payments will be made to hospitals and CMHCs that result from the application of the transitional adjustments set forth in the entire § 419.70, in this final rule with comment period, we are correcting the cross-reference in paragraph (g) by removing ''paragraph'' and replacing it with ''section'' to correct the error and to accurately reflect the current policy. Similarly, paragraph (i) of § 419.70 cross-references the additional payments as those made under paragraph (i) rather than as those made under the entire § 419.70. Therefore, in this final rule with comment period, we also are correcting this cross-reference error to read ''section'' to accurately reflect the current policy.

2. Adjustment for Rural SCHs Implemented in CY 2006 Related to Public Law 108–173 (MMA)

In the CY 2006 OPPS final rule with comment period (70 FR 68556), we finalized a payment increase for rural SCHs of 7.1 percent for all services and procedures paid under the OPPS, excluding drugs, biologicals, brachytherapy sources, and services paid under the pass-through payment policy in accordance with section 1833(t)(13)(B) of the Act, as added by section 411 of Public Law 108–173. Section 411 gave the Secretary the authority to make an adjustment to OPPS payments for rural hospitals, effective January 1, 2006, if justified by a study of the difference in costs by APC between hospitals in rural and urban areas. Our analysis showed a difference in costs for rural SCHs. Therefore, for the CY 2006 OPPS, we finalized a payment adjustment for rural SCHs of 7.1 percent for all services and procedures paid under the OPPS, excluding drugs, biologicals, brachytherapy sources, and services paid under the pass-through payment policy in accordance with section 1833(t)(13)(B) of the Act.

In CY 2007, we became aware that we did not specifically address whether the adjustment applies to EACHs, which are considered to be SCHs under section 1886(d)(5)(D)(iii)(III) of the Act. Thus, under the statute, EACHs are treated as SCHs. Therefore, in the CY 2007 OPPS/ASC final rule with comment period (71 FR 68010 and 68227), for purposes of receiving this rural adjustment, we revised § 419.43(g) to clarify that EACHs are also eligible to receive the rural SCH adjustment, assuming these entities otherwise meet the rural adjustment criteria. Currently, fewer than 10 hospitals are classified as EACHs and as of CY 1998, under section 4201(c) of Public Law 105–33, a hospital can no longer become newly classified as an EACH.

This adjustment for rural SCHs is budget neutral and applied before calculating outliers and copayment. As stated in the CY 2006 OPPS final rule with comment period (70 FR 68560), we would not reestablish the adjustment amount on an annual basis, but we may review the adjustment in the future and, if appropriate, would revise the adjustment. We provided the same 7.1 percent adjustment to rural SCHs again in CY 2008.

For the CY 2009 OPPS, we proposed to continue our current policy of a budget neutral 7.1 percent payment adjustment for rural SCHs, including EACHs, for all services and procedures paid under the OPPS, excluding drugs, biologicals, and services paid under the pass-through payment policy.

For CY 2009, we proposed to include brachytherapy sources in the group of services eligible for the 7.1 percent payment increase because we proposed to pay them for CY 2009 at prospective rates based on their median costs as calculated from historical claims data. However, subsequent to issuance of the CY 2009 OPPS/ASC proposed rule, section 142 of Public Law 110–275 amended section 1833(t)(16)(C) of the Act by extending payment for brachytherapy sources at charges adjusted to cost for services provided prior to January 1, 2010. Our consistent policy has been to exclude items paid at charges adjusted to cost from the 7.1 percent payment adjustment. Therefore, consistent with past policy, brachytherapy sources will not be eligible for the 7.1 percent payment adjustment for CY 2009.

Statutory provisions to pay for brachytherapy sources and other items under the OPPS at charges adjusted to cost have been common over the history of the OPPS. In the past, we updated the regulations at § 419.43(g)(4) each year to exclude those items paid at charges adjusted to cost by identifying those items specifically. However, for administrative ease and convenience, we are now updating § 419.43(g)(4) to specify in a general manner that items paid at charges adjusted to cost by application of a hospital-specific CCR are excluded from the percent payment adjustment in § 419.43(g)(2). We note that § 419.43(g)(4) currently specifically identifies devices or brachytherapy consisting of a seed or seeds (including a radioactive source) as being excluded from the payment adjustment in § 419.43(g)(2) (because they are paid at charges adjusted to cost). In addition, section 147 of Public Law 110–275 also provides that brachytherapy sources and therapeutic radiopharmaceuticals are paid at charges adjusted to cost for a specified time period. We believe that it would be administratively burdensome to amend the regulations in this final rule with comment period to specifically identify these items as exclusions and then to engage in notice and comment rulemaking to later delete their reference upon the sunset of the provision if we were to adopt a different payment methodology. As indicated above in this section, we believe that the most logical approach is to exclude all

items paid at charges adjusted to cost as determined by hospital-specific CCRs.

In addition, as noted in the CY 2009 OPPS/ASC proposed rule (73 FR 41461), we intend to reassess the 7.1 percent adjustment in the near future by examining differences between urban and rural hospitals' costs using updated claims, cost, and provider information.

Comment: Several commenters supported the proposed 7.1 percent payment adjustment for rural SCHs. The commenters further requested that CMS finalize the proposal to apply the 7.1 percent payment adjustment to rural SCHs for CY 2009 despite the extension of TOPs to small SCHs for CY 2009. The commenters noted that the 7.1 percent adjustment and TOPs for CY 2009 apply to classes of hospitals that only partially overlap, specifically, the 7.1 percent adjustment applies to rural SCHs of any size while TOPs apply to all small SCHs (urban and rural) and small rural hospitals. In addition, the commenters stated that the purpose of the 7.1 percent adjustment is to compensate rural SCHs because they are costlier than other classes of hospitals, while the purpose of TOPs is to compensate certain hospitals for some of the money that these hospitals would otherwise have received for hospital outpatient services under a cost-based system.

Response: We will continue to apply the 7.1 percent payment adjustment to rural SCHs and provide TOPS to small SCHs (including EACHs) and small rural hospitals for CY 2009. We acknowledge that small rural SCHs are potentially eligible for both the 7.1 percent payment adjustment and TOPs, assuming all eligibility criteria are met.

Comment: One commenter requested that CMS extend the 7.1 percent payment adjustment to all SCHs, not just rural SCHs, under the equitable adjustment authority in section 1833(t)(2)(E) of the Act. The commenter described the necessary access to services that urban SCHs provide and highlighted the fact that both urban and rural SCHs have been recognized for special protections by Congress in other payment systems because they are the sole source of inpatient hospital services reasonably available to Medicare beneficiaries. The commenter also referenced a comment and data analysis that the commenter previously submitted to CMS in response to the CY 2006 OPPS proposed rule.

Response: As we have noted previously in response to a similar comment in the CY 2006 OPPS final rule with comment period (70 FR 68560 and 68561), the statutory authority for the rural adjustment relies upon a comparison of costs between urban and rural hospitals. Extending this adjustment to urban SCHs under our equitable adjustment authority would require urban SCHs to demonstrate strong empirical evidence that they are significantly more costly than other urban hospitals. We could not find any strong empirical evidence suggesting that urban SCHs are significantly more costly than other urban hospitals. In the CY 2006 OPPS final rule with comment period, we noted that urban SCHs' costs closely resembled urban hospitals' costs. While some urban SCHs may have unit costs as high as those of rural SCHs, many clearly did not. Accordingly, we are not adopting the commenters' suggestions to extend the rural adjustment to urban SCHs.

Comment: Several commenters requested that CMS provide adequate notice if the Agency plans to reassess the 7.1 percent adjustment in a future year. One commenter requested that CMS provide adequate notice and a comment period prior to applying a new adjustment, particularly if a decrease in the adjustment were to be proposed. Another commenter requested that CMS provide notice at least 12 months prior to implementing a change in the adjustment, to allow hospitals time to adjust their annual budget, of which expected payment is a key component.

Response: As noted earlier, we intend to reassess the 7.1 percent adjustment in the near future by examining differences between urban and rural hospitals' costs using updated claims, cost, and provider information. According to our usual practice, we would perform the initial analysis on the most complete claims data available at the time the proposed rule is published. We would propose a new adjustment for rural hospitals or some class of rural hospitals, if appropriate, with an expected implementation date of January 1 of the next calendar year, because the annual proposed rule is the means we use to propose OPPS updates and changes in policies for the upcoming calendar year. Upon review of the public comments that we would expect to receive and our analysis of fully complete claims data, we would finalize a payment adjustment, if appropriate, effective January 1 of the next calendar year.

After consideration of the pubic comments received, we are finalizing our CY 2009 proposal, without modification, to apply the 7.1 percent payment adjustment to rural SCHs for all services and procedures paid under the OPPS in CY 2009, excluding drugs, biologicals, services paid under the pass-through payment policy, and items paid at charges adjusted to cost. We are revising the regulations at § 419.43(g)(4) to specify in general terms that items paid at charges adjusted to costs by application of a hospital-specific CCR are excluded from the 7.1 percent payment adjustment.

F. Hospital Outpatient Outlier Payments

1. Background

Currently, the OPPS pays outlier payments on a service-by-service basis. For CY 2008, the outlier threshold is met when the cost of furnishing a service or procedure by a hospital exceeds 1.75 times the APC payment amount and exceeds the APC payment rate plus a $1,575 fixed-dollar threshold. We introduced a fixed-dollar threshold in CY 2005 in addition to the traditional multiple threshold in order to better target outliers to those high cost and complex procedures where a very costly service could present a hospital with significant financial loss. If a hospital meets both of these conditions, the multiple threshold and the fixed-dollar threshold, the outlier payment is calculated as 50 percent of the amount by which the cost of furnishing the service exceeds 1.75 times the APC payment rate. This outlier payment has historically been considered a final payment by longstanding OPPS policy.

It has been our policy for the past several years to report the actual amount of outlier payments as a percent of total spending in the claims being used to model the proposed OPPS. An accounting error for CYs 2005, 2006, and 2007 inflated CMS' estimates of OPPS expenditures, which led us to underestimate outlier payment as a percentage of total OPPS spending in prior rules. Total OPPS expenditures have been revised downward, and we have accordingly revised our outlier payment estimates. We further note that the CY 2005 outlier payment estimate included in the CY 2007 OPPS/ASC final rule with comment period (71 FR 68010) has not changed based on revised spending estimates. However, we previously stated that CY 2006 outlier payment was equal to 1.1 percent of OPPS expenditures for CY 2006 (72 FR 66685), but based on our revised numbers, actual outlier payments are equal to approximately 1.3 percent of CY 2006 OPPS expenditures. In the CY 2009 OPPS/ASC proposed rule (73 FR 41462), we estimated total outlier payments as a percent of total CY 2007 OPPS payment, using available CY 2007 claims and the revised OPPS expenditure estimate, to be approximately 0.9 percent. For CY 2007, the estimated outlier payment was set at

1.0 percent of the total aggregated OPPS payments. Having all CY 2007 claims, we continue to observe outlier payments of 0.9 percent of the total aggregated OPPS payment. Therefore, for CY 2007 we paid approximately 0.1 percent less than the CY 2007 outlier target of 1.0 percent of the total aggregated OPPS payments.

As explained in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66685), we set our projected target for aggregate outlier payments at 1.0 percent of the aggregate total payments under the OPPS for CY 2008. The outlier thresholds were set so that estimated CY 2008 aggregate outlier payments would equal 1.0 percent of the aggregate total payments under the OPPS. Using the same set of CY 2007 claims and CY 2008 payment rates, we currently estimate that the outlier payments for CY 2008 would be approximately 0.73 percent of the total CY 2008 OPPS payments. The difference between 1.0 percent and 0.73 percent is reflected in the regulatory impact analysis in section XXIII.B. of this final rule with comment period. We note that we provide estimated CY 2009 outlier payments for hospitals and CMHCs with claims included in the claims data that we used to model impacts in the Hospital-Specific Impacts—Provider-Specific Data file on the CMS Web site at: *http://www.cms.hhs.gov/HospitalOutpatientPPS/.*

2. Proposed Outlier Calculation

In the CY 2009 OPPS/ASC proposed rule (73 FR 41462), we proposed to continue our policy of estimating outlier payments to be 1.0 percent of the estimated aggregate total payments under the OPPS for outlier payments in CY 2009. We proposed that a portion of that 1.0 percent, specifically 0.07 percent, would be allocated to CMHCs for PHP outlier payments. This is the amount of estimated outlier payments that would result from the proposed CMHC outlier threshold of 3.40 times the CY 2009 PHP APC payment rates, as a proportion of all payments dedicated to outlier payments. For further discussion of CMHC outlier payments, we refer readers to section X.D. of this final rule with comment period.

To ensure that the estimated CY 2009 aggregate outlier payments would equal 1.0 percent of estimated aggregate total payments under the OPPS, we proposed that the hospital outlier threshold be set so that outlier payments would be triggered when the cost of furnishing a service or procedure by a hospital exceeds 1.75 times the APC payment amount and exceeds the APC payment rate plus an $1,800 fixed-dollar threshold (73 FR 41462). This proposed threshold reflected the methodology discussed below in this section, as well as the proposed APC recalibration for CY 2009.

We calculated the fixed-dollar threshold for the CY 2009 OPPS/ASC proposed rule using largely the same methodology as we did in CY 2008. For purposes of estimating outlier payments for the CY 2009 OPPS/ASC proposed rule, we used the CCRs available in the April 2008 update to the Outpatient Provider Specific File (OPSF). The OPSF contains provider specific data, such as the most current CCR, which is maintained by the Medicare contractors and used by the OPPS PRICER to pay claims. The claims that we use to model each OPPS update lag by 2 years. For the CY 2009 OPPS/ASC proposed rule, we used CY 2007 claims to model the CY 2009 OPPS. In order to estimate the CY 2009 hospital outlier payments for the CY 2009 OPPS/ASC proposed rule, we inflated the charges on the CY 2007 claims using the same inflation factor of 1.1204 that we used to estimate the IPPS fixed-dollar outlier threshold for the FY 2009 IPPS proposed rule. For 1 year, the inflation factor we used was 1.0585. The methodology for determining this charge inflation factor was discussed in the FY 2009 IPPS proposed rule (73 FR 23710 through 23711) and the FY 2009 IPPS final rule (73 FR 48763). As we stated in the CY 2005 OPPS final rule with comment period (69 FR 65845), we believe that the use of this charge inflation factor is appropriate for the OPPS because, with the exception of the routine service cost centers, hospitals use the same cost centers to capture costs and charges across inpatient and outpatient services.

As noted in the CY 2007 OPPS/ASC final rule with comment period (71 FR 68011), we are concerned that we may systematically overestimate the OPPS hospital outlier threshold if we did not apply a CCR inflation adjustment factor. Therefore, we proposed to apply the same CCR inflation adjustment factor that we proposed to apply for the FY 2009 IPPS outlier calculation to the CCRs used to simulate the CY 2009 OPPS outlier payments that determined the fixed-dollar threshold. Specifically, for CY 2009, we proposed to apply an adjustment of 0.9920 to the CCRs that were in the April 2008 OPSF to trend them forward from CY 2008 to CY 2009. The methodology for calculating this adjustment is discussed in the FY 2009 IPPS proposed rule (73 FR 23710 through 23711) and the FY 2009 IPPS final rule (73 FR 48763).

Therefore, to model hospital outliers for the CY 2009 OPPS/ASC proposed rule, we applied the overall CCRs from the April 2008 OPSF file after adjustment (using the proposed CCR inflation adjustment factor of 0.9920 to approximate CY 2009 CCRs) to charges on CY 2007 claims that were adjusted (using the proposed charge inflation factor of 1.1204 to approximate CY 2009 charges). We simulated aggregated CY 2009 hospital outlier payments using these costs for several different fixed-dollar thresholds, holding the 1.75 multiple constant and assuming that outlier payment would continue to be made at 50 percent of the amount by which the cost of furnishing the service would exceed 1.75 times the APC payment amount, until the total outlier payments equaled 1.0 percent of aggregated estimated total CY 2009 OPPS payments. We estimated that a proposed fixed-dollar threshold of $1,800, combined with the proposed multiple threshold of 1.75 times the APC payment rate, would allocate 1.0 percent of aggregated total OPPS payments to outlier payments. We proposed to continue to make an outlier payment that equals 50 percent of the amount by which the cost of furnishing the service exceeds 1.75 times the APC payment amount when both the 1.75 multiple threshold and the fixed-dollar $1,800 threshold are met. For CMHCs, if a CMHC's cost for partial hospitalization exceeds 3.40 times the payment rate for APC 0172 (Level I Partial Hospitalization (3 services)) or APC 0173 (Level II Partial Hospitalization (4 or more services)), the outlier payment would be calculated as 50 percent of the amount by which the cost exceeds 3.40 times the APC payment rate.

New section 1833(t)(17)(A) of the Act, which applies to hospitals as defined under section 1886(d)(1)(B) of the Act, requires that hospitals that fail to report data required for the quality measures selected by the Secretary, in the form and manner required by the Secretary under 1833(t)(17)(B) of the Act, incur a 2.0 percentage point reduction to their OPD fee schedule increase factor, that is, the annual payment update factor. The application of a reduced OPD fee schedule increase factor results in reduced national unadjusted payment rates that will apply to certain outpatient items and services performed by hospitals that are required to report outpatient quality data and that fail to meet the HOP QDRP requirements. For hospitals that fail to meet the HOP QDRP requirements, we proposed that the hospitals' costs would be compared to the reduced payments for purposes of

outlier eligibility and payment calculation (73 FR 41462 through 41463). We believe no changes in the regulation text would be necessary to implement this policy because using the reduced payment for these outlier eligibility and payment calculations is contemplated in the current regulations at § 419.43(d). This proposal conformed to current practice under the IPPS in this regard. Specifically, under the IPPS, for purposes of determining the hospital's eligibility for outlier payments, the hospital's estimated operating costs for a discharge are compared to the outlier cost threshold based on the hospital's actual DRG payment for the case. For more information on the HOP QDRP, we refer readers to section XVI. of this final rule with comment period.

Comment: Several commenters supported the increase in the fixed-dollar threshold for CY 2009 in order to maintain the target outlier spending percentage of 1 percent of estimated total OPPS payments. Other commenters believed that the proposed outlier fixed-dollar threshold was inappropriate and should be reduced because CMS has not spent all the funds set aside for outlier payments in prior years. One commenter suggested that because the outlier pool has been greater than the need in prior years, CMS should either reduce the set-aside amount and retain those dollars in the OPPS ratesetting structure or lower the fixed-dollar threshold so that there is a zero-balance at the end of the year.

Another commenter suggested that outlier payments potentially be discontinued because certain organizations had not received outlier payments for some years. Several commenters did not support the proposed increase in the outlier threshold because they believed that consistent increases in the level of the outlier threshold reduced their hospitals' ability to capture additional reimbursement for high cost cases and put downward pressure on their hospitals' Medicare revenues.

A few commenters suggested that the fixed-dollar threshold remain at the CY 2008 level of $1,575. Some commenters recommended that the threshold be proportionally reduced based on the percentage difference between target and actual outlier spending. One commenter suggested that because CMS modeled only 0.8 percent of total payments made in outlier payments for CY 2008 in the impact table for the CY 2009 OPPS/ASC proposed rule (73 FR 41559), CMS should proportionally lower the proposed threshold to $1,440. Another commenter believed that the outlier pool should be increased to 2 percent of total OPPS payments, with corresponding thresholds of 1.5 times the APC payment amount and $1,175 based on their analysis on their hospital's costs and payments. Some commenters asked CMS to increase the OPPS outlier payment percentage from 50 percent to 80 percent to mirror inpatient outlier payments. One commenter requested that CMS increase outlier reimbursement to help teaching hospitals that provide complex outpatient services and incur significant costs. Another commenter suggested that the additional packaging by CMS would result in reduced outlier payments.

Response: In CY 2009, we proposed that outlier payments would be 1.0 percent of total estimated OPPS payments for outlier payments. In general, outlier payments are intended to ensure beneficiary access to services by having the Medicare program share in the financial loss incurred by a provider associated with individual, extraordinarily expensive cases. Because the OPPS makes separate payment for many individual services, there is less financial risk associated with the OPPS payment than, for example, with the DRG payment under the IPPS. Although some commenters suggested an increase to 2.0 percent of total estimated payment, we continue to believe that an outlier target payment percentage of 1.0 is appropriate because the OPPS largely pays hospitals a separate payment for most major services, which mitigates significant financial risk for most encounters, even complex ones. We acknowledge that teaching hospitals provide complex outpatient services and incur costs, but they also receive separate OPPS payment for most major services provided in a single encounter. Further, in a budget neutral system, increasing the percent of total estimated payments dedicated to outlier payments would reduce individual APC prospective payments.

Although the OPPS makes separate payment for most major services, we continue to believe that outlier payments are an integral component of the OPPS and that the small amount of OPPS payments targeted to outliers serve to mitigate the financial risk associated with extremely costly and complex services. In allocating only 1.0 percent of total estimated payments for outlier payments, the OPPS does not pay as much in total outlier payments as certain other payment systems. Instead, the OPPS concentrates a small amount of funds on extreme cases. For this reason, it is not unanticipated that some hospitals would not receive any OPPS outlier payments in any given year.

We believe that the estimated total CY 2009 outlier payments will meet the target of 1.0 percent of total estimated OPPS payments. Historically, OPPS outlier payments have exceeded the percentage of total estimated OPPS payments dedicated to outlier payments. Only for CY 2007 was actual outlier spending less than the target percentage of aggregate OPPS payments in that year, and only by 0.1 percent. We note that we estimated a larger difference between modeled outlier payment as a percentage of spending for CY 2007 and the CY 2007 1.0 percent outlay in the CY 2008 OPPS/ASC final rule with comment period. Further, the CY 2007 fixed-dollar threshold was higher, $1,825, than the CY 2008 threshold of $1,575, potentially increasing the likelihood that outlier payments would meet the target estimated spending percentage for CY 2008. Therefore, we are not convinced that we will not meet the estimated 1.0 percent outlay in outlier payments in CY 2008.

As discussed above in this section, we modeled the proposed fixed dollar threshold of $1,800 incorporating all proposed CY 2009 OPPS payment policies using CY 2007 claims, our best available charge and cost inflation assumptions, and CY 2008 CCRs. Because our estimates account for anticipated inflation in both charges and costs, we generally expect our threshold to increase each year. We would not retain the threshold at $1,575 because we believe this threshold would lead us to pay more than 1.0 percent of total estimated OPPS payment in outlier payments for CY 2009. The proposed fixed-dollar threshold also reflected any proposed changes in packaging for CY 2009. Because packaging also is considered in the cost estimation portion of the outlier eligibility and payment calculations, any proposed increase in packaging policy would not automatically lead to less outlier payments as one commenter suggested. This is because the costs of packaged items are distributed among the items and services eligible for outliers, increasing the likelihood that those eligible items and services would receive outlier payments.

We believe that our proposed methodology uses the best information we have at this time to yield the most accurate prospective fixed-dollar outlier threshold for the CY 2009 OPPS. The hospital multiple and fixed-dollar outlier thresholds are important parts of a prospective payment system and

should be based on projected payments using the latest available historical data, without adjustments for prior year actual expenditures. We do not adjust the prospective threshold for prior year differences in actual expenditure of outlier payments.

We do not believe it would be appropriate to increase the payment percentage to 80 percent of the difference between the APC payment and the cost of the services in order to align it with the IPPS outlier policy. In a budget neutral system with a specified amount dedicated to outlier payments, the payment percentage and fixed-dollar threshold are related. Raising the payment percentage would require us to significantly increase the fixed-dollar threshold to ensure that the estimated CY 2009 OPPS payments would not exceed the amount dedicated to outlier payments. The payment percentage also reflects the general level of financial risk. The 50 percent payment percentage under the OPPS corresponds to the lower financial risk presented by the OPPS cases compared to the IPPS, which largely makes a single payment for a complete episode-of-care.

Comment: One commenter supported the proposal to make brachytherapy sources eligible for outlier payments.

Response: In the CY 2009 OPPS/ASC proposed rule (73 FR 41502), we proposed prospective payment based on median costs for brachytherapy sources and proposed to assign brachytherapy sources to status indicator ''U.'' Subsequent to the issuance of the CY 2009 OPPS/ASC proposed rule, Congress enacted Public Law 110–275, which further extended the payment period for brachytherapy sources based on a hospital's charges adjusted to cost through CY 2009. In receiving payment at charges adjusted to cost, the outlier policy would no longer apply to brachytherapy sources because outlier eligibility and payment are calculated based on the difference between APC payment and estimated cost. Outlier payments are designed to buffer losses when hospital costs greatly exceed prospective payments. When section 142 of Public Law 110–275 once again continued payment for brachytherapy sources at charges adjusted to cost for CY 2009, we revisited § 419.43(f) of our regulations. Under § 419.43(f) of the regulations, we exclude certain items and services from qualification for outlier payments. We note that our longstanding policy has been that an item or service paid at charges adjusted to cost by a hospital-specific CCR is ineligible for outlier payments. This amendment does not alter our longstanding and consistent policy regarding the exclusion of drugs and biologicals that are assigned to separate APCs and items that are paid at charges adjusted to cost by application of a hospital-specific CCR. An item or service paid at charges adjusted to cost does not qualify for an outlier payment because the outlier eligibility calculation is based on the difference between APC payment and cost, where cost is estimated at charges adjusted to cost. When the APC payment for items is made at charges adjusted to cost, there is no difference between the APC payment and estimated cost and thus no outlier payment can be triggered. We believed it was administratively simpler to amend § 419.43(f) to exclude in a general manner items or services paid at charges adjusted to cost by application of a hospital-specific CCR from eligibility for an outlier payment, consistent with our historical policy, rather than amending the regulations to specifically cite each item or service that is excluded from an outlier payment because it is paid at charges adjusted to costs, currently brachytherapy sources and pass-through devices. Consequently, we are making a conforming technical amendment to § 419.43(f) to specify that items and services paid at charges adjusted to cost by application of a hospital-specific CCR are excluded from qualification for the payment adjustment under paragraph (d)(1) of this section [419.43].

In addition, we note that the estimated cost of pass-through devices will continue to be used in outlier payment and eligibility calculations as specified in § 419.43(d)(1)(i)(B). Specifically, this regulation text codifies the statutory provision of 1833(t)(5)(A)(i)(II) of the Act which requires that estimated payment for transitional pass-through devices be added to the APC payment amount for the associated procedure when determining outlier eligibility for the associated surgical procedure. However, we are making a technical correction to § 419.43(d)(1)(i)(B) to appropriately reference § 419.66. While § 419.43(d)(1)(i)(B) discusses the use of the pass-through payment in determining outlier eligibility, it currently incorrectly references paragraph (e) which discusses budget neutrality, instead of § 419.66 which sets for the specific rules on pass-through payments for devices. Thus, we are deleting the reference to the phrase ''paragraph (e) of this section'' and in its place substituting the correct cite ''§ 419.66.'' Pass-through devices are paid at charges adjusted to cost, and thus are not eligible to receive outlier payments on their own.

After consideration of the public comments received, we are finalizing our CY 2009 proposal for the outlier calculation, without modification, as outlined below.

3. Final Outlier Calculation

For CY 2009, we are applying the overall CCRs from the July 2008 OPSF file with a CCR adjustment factor of 0.9920 to approximate CY 2009 CCRs to charges on the final CY 2007 claims that were adjusted to approximate CY 2009 charges (using the final charge inflation factor of 1.1204). These are the same CCR adjustment and charge inflation factors that we used to set the IPPS fixed-dollar threshold for FY 2009 (73 FR 48763). We simulated the estimated aggregate CY 2009 outlier payments using these costs for several different fixed-dollar thresholds, holding the 1.75 multiple constant and assuming that outlier payment would continue to be made at 50 percent of the amount by which the cost of furnishing the service would exceed 1.75 times the APC payment amount, until the estimated total outlier payments equaled 1.0 percent of aggregated estimated total CY 2009 payments. We estimate that a fixed-dollar threshold of $1,800, combined with the multiple threshold of 1.75 times the APC payment rate, will allocate 1.0 percent of estimated aggregated total CY 2009 OPPS payments to outlier payments.

In summary, for CY 2009 we will continue to make an outlier payment that equals 50 percent of the amount by which the cost of furnishing the service exceeds 1.75 times the APC payment amount when both the 1.75 multiple threshold and the fixed-dollar $1,800 threshold are met. For CMHCs, if a CMHC provider's cost for partial hospitalization exceeds 3.40 times the APC payment rate, the outlier payment is calculated as 50 percent of the amount by which the cost exceeds 3.40 times the APC payment rate. We estimate that this threshold will allocate 0.12 percent of outlier payments to CMHCs for PHP outlier payments.

4. Outlier Reconciliation

As provided in section 1833(t)(5) of the Act, and described in the CY 2001 OPPS final rule with comment period (65 FR 18498), we initiated the use of a provider-specific overall CCR to estimate a hospital's or CMHC's costs from billed charges on a claim to determine whether a service's cost was significantly higher than the APC payment to qualify for outlier payment. Currently, these facility-specific overall

CCRs are determined using the most recent settled or tentatively settled cost report for each facility. At the end of the cost reporting period, the hospital or CMHC submits a cost report to its Medicare contractor, who then calculates the overall CCR that is used to determine prospective outlier payments for the facility. We believe the intent of the statute is that outlier payments would be made only in situations where the cost of a service provided is extraordinarily high. For example, under our existing outlier methodology, a hospital's billed current charges may be significantly higher than the charges included in the hospital's overall CCR that is used to calculate outlier payments, while the hospital's costs are more similar to the costs included in the overall CCR. In this case, the hospital's overall CCR used to calculate outlier payments is not representative of the hospital's current charge structure. The overall CCR applied to the hospital's billed charges would estimate an inappropriately high cost for the service, resulting in inappropriately high outlier payments. This is contrary to the goal of outlier payments, which are intended to reduce the hospital's financial risk associated with services that have especially high costs. The reverse could be true as well, if a hospital significantly lowered its current billed charges in relationship to its costs, which would result in inappropriately low outlier payments.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41463), for CY 2009, we proposed to address vulnerabilities in the OPPS outlier payment system that lead to differences between billed charges and charges included in the overall CCR used to estimate cost. Our proposal would apply to all hospitals and CMHCs paid under the OPPS. The main vulnerability in the OPPS outlier payment system is the time lag between the CCRs that are based on the latest settled cost report and current charges that creates the potential for hospitals and CMHCs to set their own charges to exploit the delay in calculating new CCRs. A facility can increase its outlier payments during this time lag by increasing its charges significantly in relation to its cost increases. The time lag may lead to inappropriately high CCRs relative to billed charges that overestimate cost, and as a result, greater outlier payments. Therefore, we proposed to take steps to ensure that outlier payments appropriately account for financial risk when providing an extraordinarily costly and complex service, while only being made for services that legitimately qualify for the additional payment.

We believe that some CMHCs may have historically increased and decreased their charges in response to Medicare outlier payment policies. The HHS Office of the Inspector General (OIG) has published several reports that found that CMHCs took advantage of vulnerabilities in the outpatient outlier payment methodology by increasing their billed charges after their CCRs were established to garner greater outlier payments (DHHS OIG June 2007, A–07–06–0459, page 2). We discuss the OIG's most recent report and accompanying recommendations in section XIV.C. of this final rule with comment period. We similarly noted in the CY 2004 OPPS final rule with comment period (68 FR 63470) that some CMHCs manipulated their charges in order to inappropriately receive outlier payments.

To address these vulnerabilities in the area of the OPPS outlier payment methodology, we proposed to update our regulations to codify two existing longstanding OPPS policies related to CCRs, as discussed in further detail below in this section. In addition to codifying two longstanding policies related to CCRs, we also proposed a new provision giving CMS the ability to specify an alternative CCR and allowing hospitals to request a new CCR based on substantial evidence. Finally, we proposed to incorporate outlier policies comparable to those that have been included in several Medicare prospective payment systems, in particular the IPPS (68 FR 34494). Specifically, we proposed to require reconciliation of outlier payments in certain circumstances. We stated our belief that these proposed changes would address most of the current vulnerabilities present in the OPPS outlier payment system.

First, we proposed to update the regulations to codify two existing outlier policies (73 FR 41463). These policies are currently stated in Pub 100–04, Chapter 4, section 10.11.1 of the Internet-Only Manual, as updated via Transmittal 1445, Change Request 5946, dated February 8, 2008. To be consistent with our manual instructions, for CY 2009, we proposed to revise 42 CFR 419.43 to add two new paragraphs (d)(5)(ii) and (d)(5)(iii). Specifically, we proposed to add new paragraph (d)(5)(ii) to incorporate rules governing the overall ancillary CCR applied to processed claims and new paragraph (d)(5)(iii) to incorporate existing policy governing when a statewide average CCR may be used instead of an overall ancillary CCR. We note that use of a statewide average CCR in the specified cases is to ensure that the most appropriate CCR possible is used for outlier payment calculations. For purposes of this discussion and OPPS payment policy in general, we treat ''overall CCR'' and ''overall ancillary CCR'' as synonymous terms that refer to the overall CCR that is calculated based on cost report data, which for hospitals, pertains to a specific set of ancillary cost centers.

We proposed new § 419.43(d)(5)(ii) to specify use of the hospital's or CMHC's most recently updated overall CCR for purposes of calculating outlier payments. Our ability to identify true outlier cases depends on the accuracy of the CCRs. To the extent some facilities may be motivated to maximize outlier payments by taking advantage of the time lag in updating the CCRs, the payment system remains vulnerable to overpayments to individual hospitals or CMHCs. This proposed provision specified that the overall CCR applied at the time a claim is processed is based on either the most recently settled or tentatively settled cost report, whichever is from the latest cost reporting period. We also proposed new § 419.43(d)(5)(iii) to describe several circumstances in which a Medicare contractor may substitute a statewide average CCR for a hospital's or CMHC's CCR. In the CY 2007 OPPS/ASC final rule with comment period (71 FR 68006), we finalized this policy but inadvertently did not update our regulations. We refer readers to section II.D. of this final rule with comment period for a more detailed discussion of statewide average CCRs. In summary, Medicare contractors can use a statewide CCR for new hospitals or CMHCs that have not accepted assignment of the existing provider agreement and who have not yet submitted a cost report; for hospitals or CMHCs whose Medicare contractor is unable to obtain accurate data with which to calculate the overall ancillary CCR; and for facilities whose actual CCR is more than 3 standard deviations above the geometric mean of other overall CCRs. For CY 2009, we estimate this upper threshold to be 1.3. While this existing policy minimizes the use of CCRs that are significantly above the mean for cost estimation, facilities with CCRs that fall significantly below the mean would continue to have their actual CCRs utilized, instead of the statewide default CCR. We also proposed to reevaluate the upper threshold and propose a new upper threshold, if appropriate, through rulemaking each year.

These improvements would somewhat mitigate, but would not fully eliminate, a hospital's or CMHC's ability to significantly increase its charges in relation to its cost increases each year, thereby receiving significant outlier payments because of the inflated CCR. Therefore, we also proposed two new policies to more fully address the vulnerabilities described above. Specifically, we proposed new § 419.43(d)(5)(i) that stated that for hospital outpatient services performed on or after January 1, 2009, CMS may specify an alternative CCR or the facility may request an alternative CCR under certain circumstances. The alternative CCR in either case may be either higher or lower than the otherwise applicable CCR. In addition, we proposed to allow a facility to request that its CCR be prospectively adjusted if the facility presents substantial evidence that the overall CCR that is currently used to calculate outlier payments is inaccurate. Such an alternative CCR may be appropriate if a facility's charges have increased at an excessive rate, relative to the rate of increase among other hospitals or CMHCs. CMS would have the authority to direct the Medicare contractor to calculate a CCR from the cost report that accounts for the increased charges. As explained in greater detail below in this section, we also proposed new § 419.43(d)(5)(iv), now (d)(6), to allow Medicare contractors the administrative discretion to reconcile hospital or CMHC cost reports under certain circumstances.

We also proposed to implement a reconciliation process similar to that implemented by the IPPS in FY 2003 (68 FR 34494). This proposed policy would subject certain outlier payments to reconciliation when a hospital or CMHC cost report is settled. While the existing policies described above in this section partially address the vulnerabilities in the OPPS outlier payment system, the proposed reconciliation process would more fully ensure accurate outlier payments for those facilities whose CCRs fluctuate significantly, relative to the CCRs of other facilities. We proposed that this reconciliation process would only apply to those services provided on or after January 1, 2009 (73 FR 41464). We considered proposing that this reconciliation process would become effective beginning with services provided during the hospital's first cost reporting period beginning in CY 2009 but believed effectuating this policy based upon date of service could be less burdensome for hospitals. We specifically solicited public comment related to the effective date for the reconciliation process that would be most administratively feasible for hospitals and CMHCs. We noted this reconciliation process would be done on a limited basis in order to ease the administrative burden on Medicare contractors, as well as to focus on those facilities that appear to have improperly manipulated their charges to receive excessive outlier payments. We proposed to set reconciliation thresholds in the manual, reevaluate them annually, and modify them as necessary. Following current IPPS outlier policy, these thresholds would include a measure of acceptable percent change in a hospital's or CMHC's CCR and an amount of outlier payment involved. We further proposed that when the cost report is settled, reconciliation of outlier payments would be based on the overall CCR calculated based on the ratio of costs and charges computed from the cost report at the time the cost report coinciding with the service dates is settled. Reconciling these outlier payments would ensure that the outlier payments made are appropriate and that final outlier payments would reflect the most accurate cost data. We did not propose to apply reconciliation to services and items not otherwise subject to outlier payments, including items and services paid at charges adjusted to cost (73 FR 41464).

This reconciliation process would require recalculating outlier payments for individual claims. We understand that the aggregate change in a facility's outlier payments cannot be determined because changes in the CCR would affect the eligibility and amount of outlier payment. For example, if a CCR declined, some services may no longer qualify for any outlier payments while other services may qualify for lower outlier payments. Therefore, the only way to accurately determine the net effect of a decrease in an overall CCR on a facility's total outlier payments is to assess the impact on a claim-by-claim basis. At this time, CMS is developing a method for reexamining claims to calculate the change in total outlier payments for a cost reporting period using a revised CCR.

Similar to the IPPS, we also proposed to adjust the amount of final outlier payments determined during reconciliation for the time value of money (73 FR 41464). A second vulnerability remaining after reconciliation is related to the same issue of the ability of hospitals and CMHCs to manipulate the system by significantly increasing charges in the year the service is performed, and obtaining excessive outlier payments as a result. Even though under the proposal the excess money would be refunded at the time of reconciliation, the facility would have access to excess payments from the Medicare Trust Fund on a short-term basis. In cases of underpayment, the facility would not have had access to appropriate outlier payment for that time period.

Accordingly, we believed it would be necessary to adjust the amount of the final outlier payment to reflect the time value of the funds for that time period. Therefore, we proposed to add section § 419.43(d)(6) to provide that when the cost report is settled, outlier payments would be subject to an adjustment to account for the value of the money for the time period in which the money was inappropriately held by the hospital or CMHC (73 FR 41464 through 41465). This would also apply where outlier payments were underpaid. In those cases, the adjustment would result in additional payments to hospitals or CMHCs. Any adjustment would be made based on a widely available index to be established in advance by the Secretary, and would be applied from the midpoint of the cost reporting period to the date of reconciliation (or when additional payments are issued, in the case of underpayments). This adjustment to reflect the time value of a facility's outlier payments would ensure that the outlier payment finalized at the time its cost report is settled appropriately reflected the hospital's or CMHC's approximate marginal costs in excess of the APC payments for services, taking into consideration the applicable outlier thresholds.

Despite the fact that each individual facility's outlier payments may be subject to adjustment when the cost report is settled, we noted our continued belief that the hospital multiple and fixed-dollar outlier thresholds should be based on projected payments using the latest available historical data, without retroactive adjustments, to ensure that actual outlier payments are equal to the target spending percentage of total anticipated hospital outpatient spending. The proposed reconciliation process and ability to change overall CCRs would be intended only to adjust actual outlier payments so that they most closely reflected true costs rather than artificially inflated costs. These adjustments would be made irrespective of whether total outlier spending targets were met or not.

In the CY 2009 OPP/ASC proposed rule (73 FR 41465), we did not propose to make any changes to the method that

we use to calculate outlier thresholds for CY 2009. The multiple and fixed-dollar outlier thresholds are an important aspect of the prospective nature of the OPPS and key to their importance is their predictability and stability for the prospective payment year. The outlier payment policy is designed to alleviate any financial disincentive hospitals may have to providing any medically necessary care their patients may require, even to those patients who are very sick and would be likely more costly to treat. Preset and publicized OPPS outlier thresholds allow hospitals and CMHCs to approximate their Medicare payment for an individual patient while that patient is still in the hospital. Even though we proposed to make outlier payments susceptible to a reconciliation based on the facility's actual CCRs during the contemporaneous cost reporting period, the facility should still be in a position to make this approximation. Hospitals and CMHCs have immediate access to the information needed to determine what their CCR will be for a specific time period when their cost report is settled. Even if the final CCR is likely to be different from the ratio used initially to process and pay the claim, hospitals and CMHCs not only have the information available to estimate their CCRs, but they also have the ability to control those CCRs, through the structure and levels of their charges. If we were to make retroactive adjustments to hospital outlier payments to ensure that we met total OPPS outlier spending targets, we would undermine the critical predictability aspect of the prospective nature of the OPPS. Making such an across-the-board adjustment would lead to either more or less outlier payments for all hospitals that would, therefore, be unable to immediately approximate the payment they would receive for especially costly services at the time those services were provided. We continue to believe that it would be neither necessary nor appropriate to make such an aggregate retroactive adjustment.

Comment: Some commenters were opposed to outlier reconciliation because they believed that the concept of reconciliation is contrary to the nature of a prospective payment system. One commenter asserted that the proposed reconciliation process would be administratively burdensome to hospitals due to the volume of outpatient encounters and number of claims involved. Another commenter believed that hospitals, which typically increase charges at the beginning of each fiscal year, should not have to be held to a prior period CCR for settlement purposes. One commenter suggested that the impact of the outlier reconciliation be identified, and should the impact grow too large, that it be included in the development of the outlier thresholds. Another commenter sought alternatives to the reconciliation process and suggested controlling outlier payments through the percentage of payments set aside for outlier payments, as well as more timely settlement of cost reports to avoid the need for reconciliation. Several commenters suggested waiting until the newly revised cost reporting forms are in place before implementing the outlier reconciliation proposal in order to assess changes to the CCRs and potentially use more accurate CCRs for outlier payment.

Many commenters recommended that the effective date for implementation of the outlier reconciliation policy be the first cost reporting period in CY 2009. Several commenters sought further clarification regarding the expected outlier reconciliation thresholds, as well as the reasoning behind their development. Some commenters believed that the OPPS reconciliation policy should implement the same outlier reconciliation thresholds as the IPPS, or should use them as a guide in developing OPPS-specific thresholds. A few commenters recommended that the CCR fluctuation threshold should be the same as in the IPPS because the same data from the cost report would be used in both cases. Many commenters believed that the outlier reconciliation policy should be applied on a limited basis.

Response: According to commenters, the concept of reconciliation is contrary to the idea of a prospective payment system. We believe it is contrary to the concept of a prospective payment system for hospitals to be able to increase outlier payments by manipulating their charges for the current year. We believe that reconciliation would help address this vulnerability in outlier payment, without affecting the overall prospective nature of the OPPS. Any action regarding reconciling the outlier payments of an individual hospital would not affect the predictability of the system because we are not proposing to make any adjustments to the prospectively set outlier multiple and fixed-dollar thresholds and payment methodology. We will continue to use the best data available to set the annual OPPS outlier thresholds. Hospitals would continue to be capable of calculating any outlier payments they would receive, using information that is readily available to them through their accounting systems. While we are finalizing the proposed outlier reconciliation policy, as described above, we are not making retroactive adjustments to our outlier threshold to meet a dedicated percentage of total payments set aside for outlier payments. This approach maintains the prospective nature of the OPPS outlier payment and will enable hospitals to approximate their outlier payments and potential eligibility for reconciliation.

In section II.A.1.c. of this final rule with comment period, we indicate that we are updating the Medicare hospital cost report form and that we plan to publish this form for public comment. It is possible that the new cost report form could lead to more accurate overall CCRs. Although some commenters suggested that we postpone the implementation of the outlier reconciliation policy until the revised cost report form is available to capitalize on this potential for improved accuracy, we do not believe that minor improvements in the accuracy of the overall CCR, a gross measure, warrant delaying outlier reconciliation. In order to determine an effective date for the policy that would minimize the administrative burden of the outlier reconciliation process, we specifically solicited public comment regarding the effective implementation date of this policy. We have considered the comments regarding the effective implementation date of the outlier reconciliation process and believe that the first cost reporting period of CY 2009 would be the most appropriate start date. Therefore, we expect that for hospital outpatient services furnished during the cost reporting periods beginning on or after January 1, 2009, that if the hospital qualifies for reconciliation, the amount of outlier payments will be recalculated using the actual CCR computed from the relevant cost report and claims data for each service furnished during the cost reporting period and that any difference in aggregate outlier payment, adjusted for the time value of money, will be handled at cost report settlement.

While we recognize the burden involved in potentially subjecting hospitals to an outlier reconciliation process, we believe that appropriate outlier reconciliation thresholds will ensure that the limited resources of Medicare contractors are focused upon those hospitals that appear to have disproportionately benefited from the time lag in updating their CCRs. We intend to issue manual instructions in the near future to assist Medicare

contractors in implementing the outlier reconciliation provision for CY 2009. In those manual instructions, we will issue thresholds for Medicare contractors to use to determine when a hospital or CMHC will qualify for reconciliation for the first cost reporting period beginning on or after January 1, 2009.

We recognize the commenters' concerns regarding the reconciliation thresholds that we would set to focus on those hospitals whose charging structures fluctuate significantly. In considering reconciliation thresholds for the OPPS, we have used the existing IPPS thresholds as a guide in identifying hospitals in which outlier reconciliation would be appropriate. For cost reports beginning in CY 2009, we are considering instructing Medicare contractors to conduct reconciliation for hospitals and CMHCs whose actual CCRs at the time of cost report settlement are found to be plus or minus 10 percentage points from the CCR used during the cost reporting period to make outlier payments, and for hospitals that have total OPPS outlier payments that exceed $200,000. The change in CCR threshold would be the same threshold used under the IPPS. We are still considering whether to adopt an outlier payment threshold specifically for CMHCs. The hospital outlier payment threshold of $200,000 serves the same purpose as the IPPS $500,000 threshold, but is proportional to OPPS outlier payments. We estimate that the $200,000 threshold would identify roughly the same number of hospitals as the IPPS threshold of $500,000. We believe that these thresholds would appropriately identify hospitals receiving outlier payments that are substantially different from the ones indicated by their actual costs and charges, while ensuring limited application of the outlier reconciliation policy. Hospitals exceeding these thresholds during their applicable cost reporting periods would become subject to reconciliation of their outlier payments. These thresholds would be reevaluated annually and, if necessary, modified each year in order to ensure that reconciliation is performed on a limited basis and focused on those hospitals that appear to have disproportionately benefited from the outlier payment vulnerabilities. As under the IPPS, we also retain the discretion to recommend other hospitals' cost reports for reconciliation.

As under the IPPS, we did not propose to adjust the fixed-dollar threshold or amount of total OPPS payment set aside for outlier payments for reconciliation activity. As noted above in this section, the predictability of the fixed-dollar threshold is an important component of a prospective payment system. We would not adjust the prospectively set threshold for the amount of payment reconciled at cost report settlement. Our outlier threshold calculation assumes that CCRs accurately estimate hospital costs based on information available to us at the time we set the prospective fixed-dollar outlier threshold. For these reasons, we are not making any assumptions about the effects of reconciliation on the outlier threshold calculation.

With regard to other suggested alternatives to an outlier reconciliation process, we note that more timely cost report settlement would not address the fundamental vulnerability in using a prior period CCR to project cost in the prospective payment year. While timely cost report settlement is valuable, significant differences might still exist between the actual CCR and the one used to estimate cost in the outlier payment calculation. We also clarify that hospitals would not be held to a prior period CCR for settlement. The reconciliation process will ensure that CMS uses an actual year CCR for cost report settlement when outlier payments are significant and may not have been accurate.

Comment: Some commenters supported the proposal to substitute CCRs based on the most recent cost report or other alternate CCRs where appropriate. Several commenters recommended changes to the regulation text that would more specifically delineate the situations in which CMS could specify an alternative CCR, believing that the proposed regulation text placed no limits on the circumstances in which an alternative CCR could be applied. Some commenters requested that CMS automatically notify a provider if its CCR is three standard deviations below the geometric mean and potentially replace those CCRs with a statewide CCR. They believed that this would protect the Medicare program against CCR manipulation and do more to correct both ''underpayments'' and ''overpayments'' of outliers as they occur.

Response: Although we recognize the commenters' concern regarding situations in which CMS could direct Medicare contractors to use an alternative CCR, we believe we must retain the flexibility to quickly respond should we uncover excessive discrepancies between anticipated actual CCRs and the ones being used to estimate costs for outlier payments. This could entail observation of significant increases in a hospital's or CMHC's charges over a short period of time, potentially to garner greater outlier payments, but also could occur if a hospital accepted assignment in a change of ownership and needed CMS to quickly change the CCR being used for payment in order to help the new owners avoid reconciliation. We believe that limiting the circumstances in which CMS could specify an alternative CCR would limit our ability to respond quickly. We do not anticipate using that authority frequently. It likely would be isolated to situations where immediate action would be necessary.

Some commenters requested that a statewide CCR be used as a substitute in situations where CCRs fall three standard deviations below the geometric mean, similar to the policy for excessively high CCRs. We believe that the CCR of hospitals who have CCRs that fall below three standard deviations below the geometric mean is an accurate reflection of the relationship between their costs and charges. Implementing a statewide floor would provide an incentive for hospitals to take advantage of the policy by manipulating their charging structures so that their hospital-specific CCR would be replaced by a statewide CCR. We have previous experience under the IPPS outlier policy with hospitals increasing their charges significantly in order to lower their CCRs, resulting in assignment of the statewide average. This manipulation would allow hospitals to reach a higher estimation of cost than actually exists. No similar incentive exists for hospitals to increase their CCRS to the ceiling. In the FY 2004 IPPS final rule (68 FR 34500), we removed the IPPS requirement that hospitals with a CCR below the floor be assigned the statewide average and we have adopted the same policy in manual instructions for the OPPS, as noted above. For CY 2009, we estimate the upper threshold at which we would substitute to the statewide CCR for a hospital's CCR to be 1.3.

Comment: One commenter supported the time value of money adjustment which would be included in situations where outlier reconciliation applied. Other commenters did not support the time value of money adjustment because of the recent experience under the IPPS. The IPPS is still finalizing the technical methodology for conducting accurate reconciliation and the commenters did not want to be penalized for holding outlier overpayments while waiting for reconciliation. One commenter argued against the time value of money adjustment because the commenter believed there was insufficient information about how the calculation

would be conducted. A commenter believed that interest should only be accrued if a provider did not pay in a timely manner the amount due to Medicare after being issued a Notice of Program Reimbursement at cost report settlement.

Response: The time value of money adjustment was proposed to address the outlier payment vulnerability that would remain even after a cost report reconciliation policy was in place. Outlier payments are uniquely susceptible to manipulation because hospitals set their own charging structure and can change it during a cost reporting period without the Medicare contractor's knowledge. By manipulating its CCRs, a hospital could inappropriately gain excess payments from the Medicare Trust Fund on a short-term basis. We believe that the current IPPS situation, where hospitals must wait to reconcile cost reports until CMS can operationally refine the system of IPPS outlier reconciliation, is unique and that adjustment for the time value of money makes sense for long-term implementation. Furthermore, the provision offers hospitals the same interest adjustment should CMS owe hospitals additional outlier payments. We specify the time value of money calculation in the Medicare Claims Processing Manual, Pub 100–04, Chapter 3, Section 20.1.2.7. For the OPPS, we intend to employ the same calculation, and we will use the same index, which is the monthly rate of return that the Medicare Trust Fund earns.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, with modification, for an OPPS outlier reconciliation policy. We are implementing the outlier reconciliation policy for each hospital and CMHC for services furnished during cost reporting periods beginning in CY 2009, and we are including an adjustment for the time value of money. We have modified § 419.43(d)(6) to reflect this change to the effective date. We also reorganized the provisions of § 419.43(d)(5) and § 419.43(d)(6) to better separate the concept of CCRs and outlier reconciliation processes. In reviewing our proposed regulation text for outlier reconciliation, we noted that use of ''Reconciliation'' was not the appropriate title for § 419.43(d)(5), which included both CCRs and the reconciliation process itself. We have modified our regulation text to separately identify the concepts of CCRs and reconciliation and have labeled § 419.43(d)(5) as ''Cost-to-Charge Ratios for Calculating Charges Adjusted to Cost'' and § 419.43(d)(6) as ''Reconciliation.''

G. Calculation of an Adjusted Medicare Payment From the National Unadjusted Medicare Payment

The basic methodology for determining prospective payment rates for HOPD services under the OPPS is set forth in existing regulations at §§ 419.31, 419.32, 419.43 and 419.44. The payment rate for most services and procedures for which payment is made under the OPPS is the product of the conversion factor calculated in accordance with section II.B. of this final rule with comment period and the relative weight determined under section II.A. of this final rule with comment period. Therefore, the national unadjusted payment rate for most APCs contained in Addendum A to this final rule with comment period and for most HCPCS codes to which separate payment under the OPPS has been assigned in Addendum B to this final rule with comment period was calculated by multiplying the final CY 2009 scaled weight for the APC by the final CY 2009 conversion factor. We note that section 1833(t)(17)(A) of the Act, which applies to hospitals as defined under section 1886(d)(1)(B) of the Act, requires that hospitals that fail to report data required for the quality measures selected by the Secretary, in the form and manner required by the Secretary under 1833(t)(17)(B) of the Act, incur a 2.0 percentage point reduction to their OPD fee schedule increase factor, that is, the annual payment update factor. The application of a reduced OPD fee schedule increase factor results in reduced national unadjusted payment rates that will apply to certain outpatient items and services provided by hospitals that are required to report outpatient quality data and that fail to meet the Hospital Outpatient Quality Data Reporting Program (HOP QDRP) requirements. For further discussion of the payment reduction for hospitals that fail to meet the requirements of the HOP QDRP, we refer readers to section XVI.D. of this final rule with comment period.

We demonstrate in the steps below how to determine the APC payment that will be made in a calendar year under the OPPS to a hospital that fulfills the HOP QDRP requirements and to a hospital that fails to meet the HOP QDRP requirements for a service that has any of the following status indicator assignments: ''P,'' ''Q1,'' ''Q2,'' ''Q3,'' ''R,'' ''S,'' ''T,'' ''V,'' or ''X'' (as defined in Addendum D1 to this final rule with comment period), in a circumstance in which the multiple procedure discount does not apply and the procedure is not bilateral. We note that, as discussed in section VII.B. of this final rule with comment period, brachytherapy sources, to which we proposed assigning status indicator ''U'' for CY 2009, are required by section 142 of Public Law 110–275 to be paid on the basis of a hospital's charges adjusted to cost. Therefore, these items are not subject to the annual OPPS payment update factor and, therefore, will not be subject to the CY 2009 payment reduction for a hospital's failure to meet the HOP QDRP requirements.

Individual providers interested in calculating the payment amount that they specifically will receive for a specific service from the national unadjusted payment rates presented in Addenda A and B to this final rule with comment period should follow the formulas presented in the following steps. For purposes of the payment calculations below, we refer to the national unadjusted payment rate for hospitals that meet the requirements of the HOP QDRP as the ''full'' national unadjusted payment rate. We refer to the national unadjusted payment rate for hospitals that fail to meet the requirements of the HOP QDRP as the ''reduced'' national unadjusted payment rate. The ''reduced'' national unadjusted payment rate is calculated by multiplying the reporting ratio of 0.981 times the ''full'' national unadjusted payment rate. The national unadjusted payment rate used in the calculations below is either the ''full'' national unadjusted payment rate or the ''reduced'' national unadjusted payment rate, depending on whether the hospital met its HOP QDRP requirements in order to receive the full CY 2009 OPPS increase factor.

Step 1. Calculate 60 percent (the labor-related portion) of the national unadjusted payment rate. Since the initial implementation of the OPPS, we have used 60 percent to represent our estimate of that portion of costs attributable, on average, to labor. We refer readers to the April 7, 2000 OPPS final rule with comment period (65 FR 18496 through 18497) for a detailed discussion of how we derived this percentage. We confirmed that this labor-related share for hospital outpatient services is still appropriate during our regression analysis for the payment adjustment for rural hospitals in the CY 2006 OPPS final rule with comment period (70 FR 68553).

The formula below is a mathematical representation of Step 1 and identifies the labor-related portion of a specific payment rate for the specific service.

x—Labor-related portion of the national unadjusted payment rate

x = .60 * (national unadjusted payment rate)

Step 2. Determine the wage index area in which the hospital is located and identify the wage index level that applies to the specific hospital. The wage index values assigned to each area reflect the new geographic statistical areas as a result of revised OMB standards (urban and rural) to which hospitals are assigned for FY 2009 under the IPPS, reclassifications through the MGCRB, section 1886(d)(8)(B) ''Lugar'' hospitals, and section 401 of Public Law 108–173. In the CY 2009 OPPS/ASC proposed rule (73 FR 41466), we noted that the reclassifications of hospitals under section 508 of Public Law 108–173 were scheduled to expire on September 30, 2008 and would not be applicable to FY 2009 and, therefore, would not apply to the CY 2009 OPPS. However, section 124 of Public Law 110–275 extended these reclassifications and special exception wage indices through September 30, 2009. For further discussion of the changes to the FY 2009 IPPS wage index, as applied to the CY 2009 OPPS, we refer readers to section II.C. of this final rule with comment period. The wage index values include the occupational mix adjustment described in section II.C. of this final rule with comment period that was developed for the final FY 2009 IPPS payment rates published in the **Federal Register** on August 19, 2008 (73 FR 48778) and finalized in a subsequent document published in the **Federal Register** on October 3, 2008 (73 FR 57888 through 58017).

Step 3. Adjust the wage index of hospitals located in certain qualifying counties that have a relatively high percentage of hospital employees who reside in the county, but who work in a different county with a higher wage index, in accordance with section 505 of Public Law 108–173. Addendum L to this final rule with comment period contains the qualifying counties and the final wage index increase developed for the FY 2009 IPPS published in the FY 2009 IPPS final rule as Table 4J (73 FR 48883 through 48898) and finalized in a subsequent document published in the **Federal Register** on October 3, 2008 (73 FR 57988). This step is to be followed only if the hospital has chosen not to accept reclassification under Step 2 above.

Step 4. Multiply the applicable wage index determined under Steps 2 and 3 by the amount determined under Step 1 that represents the labor-related portion of the national unadjusted payment rate.

The formula below is a mathematical representation of Step 4 and adjusts the labor-related portion of the national payment rate for the specific service by the wage index.

x_a—Labor-related portion of the national unadjusted payment rate (wage adjusted)

x_a = .60 * (national unadjusted payment rate) * applicable wage index.

Step 5. Calculate 40 percent (the nonlabor-related portion) of the national unadjusted payment rate and add that amount to the resulting product of Step 4. The result is the wage index adjusted payment rate for the relevant wage index area.

The formula below is a mathematical representation of Step 5 and calculates the remaining portion of the national payment rate, the amount not attributable to labor, and the adjusted payment for the specific service.

y—Nonlabor-related portion of the national unadjusted payment rate

y = .40 * (national unadjusted payment rate)

Adjusted Medicare Payment = y + x_a

Step 6. If a provider is a SCH, as defined in the regulations at § 412.92, or an EACH, which is considered to be a SCH under section 1886(d)(5)(D)(iii)(III) of the Act, and located in a rural area, as defined in § 412.64(b), or is treated as being located in a rural area under § 412.103, multiply the wage index adjusted payment rate by 1.071 to calculate the total payment.

The formula below is a mathematical representation of Step 6 and applies the rural adjustment for rural SCHs.

Adjusted Medicare Payment (SCH or EACH) = Adjusted Medicare Payment * 1.071

We have provided examples below of the calculation of both the full and reduced national unadjusted payment rates that will apply to certain outpatient items and services performed by hospitals that meet and that fail to meet the HOP QDRP requirements, using the steps outlined above. For purposes of this example, we will use a provider that is located in Brooklyn, New York that is assigned to CBSA 35644. This provider bills one service that is assigned to APC 0019 (Level I Excision/Biopsy). The CY 2009 full national unadjusted payment rate for APC 0019 is $295.69. The reduced national unadjusted payment rate for a hospital that fails to meet the HOP QDRP requirements is $290.07. This reduced rate is calculated by multiplying the reporting ratio of 0.981 by the full unadjusted payment rate for APC 0019.

The FY 2009 wage index for a provider located in CBSA 35644 in New York is 1.2996. The labor portion of the full national unadjusted payment is $230.56 (.60 * $295.69 * 1.2996). The labor portion of the reduced national unadjusted payment is $226.18 (.60 * $290.07 * 1.2996). The nonlabor portion of the full national unadjusted payment is $118.27 (.40 * $295.69). The nonlabor portion of the reduced national unadjusted payment is $116.02 (.40 * $290.07). The sum of the labor and nonlabor portions of the full national adjusted payment is $348.83 ($230.56 + $118.27). The sum of the reduced national adjusted payment is $342.20 ($226.18 + $116.02).

We did not receive any public comments concerning our proposed methodology for calculating an adjusted payment from the national unadjusted Medicare payment amount for CY 2009. Therefore, we are finalizing our proposed CY 2009 methodology, without modification.

H. Beneficiary Copayments

1. Background

Section 1833(t)(3)(B) of the Act requires the Secretary to set rules for determining copayment amounts to be paid by beneficiaries for covered OPD services. Section 1833(t)(8)(C)(ii) of the Act specifies that the Secretary must reduce the national unadjusted copayment amount for a covered OPD service (or group of such services) furnished in a year in a manner so that the effective copayment rate (determined on a national unadjusted basis) for that service in the year does not exceed a specified percentage. As specified in section 1833(t)(8)(C)(ii)(V) of the Act, for all services paid under the OPPS in CY 2009, and in calendar years thereafter, the percentage is 40 percent of the APC payment rate. Section 1833(t)(3)(B)(ii) of the Act provides that, for a covered OPD service (or group of such services) furnished in a year, the national unadjusted copayment amount cannot be less than 20 percent of the OPD fee schedule amount. Sections 1834(d)(2)(C)(ii) and (d)(3)(C)(ii) of the Act further require that the copayment for screening flexible sigmoidoscopies and screening colonoscopies be equal to 25 percent of the payment amount. Since the beginning of the OPPS, we have applied the 25-percent copayment to screening flexible sigmoidoscopies and screening colonoscopies.

2. Copayment Policy

For CY 2009, we proposed to determine copayment amounts for new

and revised APCs using the same methodology that we implemented for CY 2004. (We refer readers to the November 7, 2003 OPPS final rule with comment period (68 FR 63458)). In addition, we proposed to use the same rounding methodology implemented in CY 2008 in instances where the application of our standard copayment methodology would result in a copayment amount that is less than 20 percent and cannot be rounded, under standard rounding principles, to 20 percent. (We refer readers to the CY 2008 OPPS/ASC final rule with comment period (72 FR 66687).) The national unadjusted copayment amounts for services payable under the OPPS that will be effective January 1, 2009, are shown in Addenda A and B to this final rule with comment period. As discussed in section XVI.D. of this final rule with comment period, we are finalizing our proposal for CY 2009 that the Medicare beneficiary's minimum unadjusted copayment and national unadjusted copayment for a service to which a reduced national unadjusted payment rate applies would equal the product of the reporting ratio and the national unadjusted copayment, or the product of the reporting ratio and the minimum unadjusted copayment, respectively, for the service.

We did not receive any public comments regarding this proposal. Therefore, we are finalizing our CY 2009 proposal for determining APC copayment amounts, without modification.

3. Calculation of an Adjusted Copayment Amount for an APC Group

Individuals interested in calculating the national copayment liability for a Medicare beneficiary for a given service provided by a hospital that met or failed to meet its HOP QDRP requirements should follow the formulas presented in the following steps.

Step 1. Calculate the beneficiary payment percentage for the APC by dividing the APC's national unadjusted copayment by its payment rate. For example, using APC 0019, $71.87 is 24.306 percent of the full national unadjusted payment rate of $295.69.

The formula below is a mathematical representation of Step 1 and calculates national copayment as a percentage of national payment for a given service.

b—Beneficiary payment percentage

b = National unadjusted copayment for APC/national unadjusted payment rate for APC

Step 2. Calculate the appropriate wage-adjusted payment rate for the APC for the provider in question, as indicated in section II.G. of this final rule with comment period. Calculate the rural adjustment for eligible providers as indicated in section II.G. of this final rule with comment period.

Step 3. Multiply the percentage calculated in Step 1 by the payment rate calculated in Step 2. The result is the wage-adjusted copayment amount for the APC.

The formula below is a mathematical representation of Step 3 and applies the beneficiary percentage to the adjusted payment rate for a service calculated under section II.G. of this final rule with comment period, with and without the rural adjustment, to calculate the adjusted beneficiary copayment for a given service.

Wage-adjusted copayment amount for the APC = Adjusted Medicare Payment * b

Wage-adjusted copayment amount for the APC (SCH or EACH) = (Adjusted Medicare Payment * 1.071) * b

Step 4. For a hospital that failed to meet its HOP QDRP requirements, multiply the copayment calculated in Step 3 by the reporting ratio of 0.981.

The unadjusted copayments for services payable under the OPPS that will be effective January 1, 2009, are shown in Addenda A and B to this final rule with comment period. We note that the national unadjusted payment rates and copayment rates shown in Addenda A and B to this final rule with comment period reflect the full market basket conversion factor increase, as discussed in section XVI.D. of this final rule with comment period.

III. OPPS Ambulatory Payment Classification (APC) Group Policies

A. OPPS Treatment of New HCPCS and CPT Codes

1. Treatment of New HCPCS Codes Included in the April and July Quarterly OPPS Updates for CY 2008

During the April and July quarters of CY 2008, we created a total of 11 new Level II HCPCS codes that were not addressed in the CY 2008 OPPS/ASC final rule with comment period that updated the CY 2008 OPPS. For the April quarter of CY 2008, we recognized for separate payment a total of four new Level II HCPCS codes, specifically C9241 (Injection, doripenem, 10 mg); Q4096 (Injection, von willebrand factor complex, human, ristocetin cofactor (not otherwise specified), per i.u. VWF:RCO); Q4097 (Injection, immune globulin (Privigen), intravenous, non-lyophilized (e.g., liquid), 500 mg); and Q4098 (Injection, iron dextran, 50 mg). For the July quarter of CY 2008, we recognized a total of seven new Level II HCPCS codes, specifically C9242 (Injection, fosaprepitant, 1 mg); C9356 (Tendon, porous matrix of cross-linked collagen and glycosaminoglycan matrix (TenoGlide Tendon Protector Sheet), per square centimeter); C9357 (Dermal substitute, granulated cross-linked collagen and glycosaminoglycan matrix (Flowable Wound Matrix), 1 cc); C9358 (Dermal substitute, native, non-denatured collagen (SurgiMend Collagen Matrix), per 0.5 square centimeters); G0398 (Home sleep study test (HST) w/type II portable monitor, unattended; minimum of 7 channels: EEG, EOG, EMG, ECG/heart rate, airflow, respiratory effort and oxygen saturation); G0399 (Home sleep test (HST) with type III portable monitor, unattended; minimum of 4 channels: 2 respiratory movement/airflow, 1 ECG/heart rate and 1 oxygen saturation); and G0400 (Home sleep test (HST) with type IV portable monitor, unattended; minimum of 3 channels). We designated the payment status of these codes and added them either through the April update (Transmittal 1487, Change Request 5999, dated April 8, 2008) or the July update (Transmittal 1536, Change Request 6094, dated June 19, 2008) of the CY 2008 OPPS.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41467), we also solicited public comment on the status indicators, APC assignments, and payment rates of these codes, which were listed in Table 10 and Table 11 of that proposed rule and now appear in Tables 12 and 13, respectively, of this final rule with comment period. Because of the timing of the proposed rule, the codes implemented through the July 2008 OPPS update were not included in Addendum B to the proposed rule. We proposed to assign these new HCPCS codes for CY 2009 to APCs with the proposed payment rates as displayed in Table 11 and incorporate them into Addendum B to this final rule with comment period for CY 2009, which is consistent with our annual OPPS update policy. The HCPCS codes implemented through the April 2008 OPPS update and displayed in Table 10 were included in Addendum B to the proposed rule, where their proposed payment rates also were shown.

For CY 2009, the CMS HCPCS Workgroup created permanent HCPCS J-codes for four codes that were implemented in April 2008 and one code that was implemented in July 2008. Consistent with our general policy of using permanent HCPCS codes, if appropriate, rather than HCPCS C-codes

or Q-codes for the reporting of drugs under the OPPS in order to streamline coding, we display the new HCPCS J-codes in Tables 12 and 13 that replace the HCPCS C-codes or Q-codes, effective January 1, 2009. Specifically, J1267 (Injection, doripenem, 10 mg) replaces C9241; J7186 (Injection, antihemophilic factor viii/von willebrand factor complex (human), per factor viii i.u.) replaces Q4096; J1459 (Injection, immune globulin (Privigen), intravenous, non-lyophilized (e.g., liquid), 500 mg) replaces Q4097; J1750 (Injection, iron dextran, 50 mg) replaces Q4098; and J1453 (Injection, fosaprepitant, 1 mg) replaces C9242. The HCPCS J-codes describe the same drugs and the same dosages as the HCPCS C-codes and Q-codes that will be deleted, effective December 31, 2008. We note that HCPCS C-codes and Q-codes are temporary national HCPCS codes. To avoid duplication, temporary national HCPCS codes, such as C, G, K, and Q-codes, are generally deleted once permanent national HCPCS codes are created that describe the same item, service, or procedure. Because HCPCS codes J1267, J1453, and J1459 describe the same drugs and the same dosages that are currently designated by HCPCS codes C9241, C9242, and Q4097, respectively, we are continuing their pass-through status in CY 2009, and are assigning the HCPCS J-codes to the same APCs and status indicators as their predecessor HCPCS C-codes, as shown in Tables 12 and 13. Specifically, HCPCS code J1267 is assigned to the same APC (9241) and status indicator (''G'') as HCPCS code C9241, HCPCS code J1453 is assigned to the same APC (9242) and status indicator (''G'') as HCPCS code C9242, and HCPCS code J1459 is assigned to the same APC (1214) and status indicator (''G'') as HCPCS code Q4097.

In addition, new HCPCS code Q4114 (Allograft, Integra Flowable Wound Matrix, injectable, 1 cc) for January 1, 2009 replaces HCPCS code C9357. Because HCPCS code Q4114 describes the same biological and dosage descriptor as its predecessor HCPCS code, HCPCS code Q4114 is assigned the same status indicator as HCPCS code C9357 (''G'') and continues its pass-through status in CY 2009.

Except for the public comments that we received concerning the three new HCPCS G-codes for home sleep tests, we did not receive any public comments regarding the proposed APC and status indicator assignments for any of the other new HCPCS codes that were implemented in either April 2008 or July 2008. Therefore, for CY 2009, we are adopting as final the designated APCs for the replacement HCPCS J-codes, specifically J1267, J1453, J1459, J1750, and J7186, as well as HCPCS codes C9356, C9358, and Q4114, as shown in Tables 12 and 13 below, and in Addendum B to this final rule with comment period.

Comment: One commenter did not understand why the three home sleep testing HCPCS G-codes, that is G0398, G0399, and G0400, were recognized under the OPPS when it was the commenter's understanding that HCPCS G-codes are to be used only for physician billing. The commenter also requested clarification on the following issues: (1) The intended method for hospitals and independent diagnostic testing facilities (IDTFs) to bill for outpatient home sleep testing; (2) whether CMS will pay hospitals and IDTFs for home sleep testing that meets the criteria for CPT code 95806; (3) the relationship between CPT code 95806 (Sleep study, simultaneous recording of ventilation, respiratory effort, ecg or heart rate, and oxygen saturation, unattended by a technologist) and the new HCPCS G-codes, and how hospitals, IDTFs and physicians might properly code for a procedure that fulfills both descriptions; and (4) whether CMS will allow separate billing for the technical and professional components of this service by physicians and facilities.

Response: HCPCS G-codes are not limited to physician reporting. Since implementation of the OPPS in August 2000, Medicare has recognized HCPCS G-codes for reporting under the OPPS for hospital outpatient services. HCPCS G-codes are a subset of the Level II HCPCS codes and describe temporary procedures and services that are not described by any CPT codes. Created by CMS, this subset of codes is updated on a quarterly basis and may be reported by providers for any health insurers for various sites of services. While the codes may be used by any health insurers, it is up to the individual insurers to provide guidance on the reporting of these codes.

CMS created three new HCPCS G-codes, specifically G0398, G0399, and G0400, that were implemented on March 13, 2008, to describe the various types of home sleep tests that Medicare determined could be used to allow for coverage of continuous positive airway pressure (CPAP) therapy based upon a diagnosis of obstructive sleep apnea (OSA) according to a home sleep study. CMS reconsidered its 2005 NCD regarding CPAP therapy for OSA, effective March 13, 2008, to allow for coverage of CPAP therapy based on a diagnosis of OSA from a home sleep study. This NCD does not ensure coverage of sleep testing, but rather states when CPAP therapy is covered as a result of clinical evaluation and a positive sleep test.

The OPPS makes payment only to hospitals for their facility services, not to physicians or IDTFs. We proposed to assign these new HCPCS G-codes to APCs for payment under the OPPS because we believe these diagnostic services may be provided by HOPDs to Medicare beneficiaries. Because these new HCPCS G-codes specify home sleep studies and CPT code 95806 only refers to an unattended sleep study, hospitals providing home sleep studies should report the more specific HCPCS G-codes under these circumstances, according to the general coding principle that the most specific code should be reported for a service, unless CMS or Medicare contractors have provided other instructions.

Comment: One commenter expressed concern regarding the proposed payment rates for the three new HCPCS G-codes for home sleep studies. The commenter indicated that the proposed payment rate of approximately $153 for APC 0213 (Level I Extended EEG and Sleep Studies) to which these HCPCS codes were proposed for assignment is inappropriate. The commenter further stated that it appears that CMS's decision to use CPT code 95806 as the benchmark in setting the payment rates for these new HCPCS G-codes is flawed. The commenter asserted that CPT code 95806 was created in 1998 and is seldom reported and, therefore, does not appropriately reflect the current costs of providing home sleep testing. The commenter requested that CMS take into consideration the current cost of portable monitors, staff time, and administrative support associated with home sleep testing in determining the appropriate payment rate for these new services. The commenter suggested that the payment rate for HCPCS G-codes G0398, G0399, and G0400 should be about $550.

Response: Based on consultation with our medical advisors and on our review of the components of these services, we believe that home sleep testing is most appropriately assigned to APC 0213, as proposed. In determining the payment rates for HCPCS G-codes G0398, G0399, and G0400, we took into consideration the clinical and resource characteristics associated with providing home sleep testing. As has been our policy, we will analyze the hospital resource costs for home sleep testing in order to determine in the future whether proposals of alternative APC assignments may be warranted once we have hospital claims

data for these HCPCS G-codes. Since these codes were implemented in July 2008, the CY 2010 OPPS/ASC rulemaking cycle will be the first time that we will have cost data for these new HCPCS codes available for analysis.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, to assign new HCPCS codes G0398, G0399, and G0400 to APC 0213, with a final CY 2009 APC median cost of approximately $150.

TABLE 12—NEW HCPCS CODES IMPLEMENTED IN APRIL 2008

CY 2008 HCPCS code	CY 2009 HCPCS code	CY 2009 long descriptor	Final CY 2009 status indicator	Final CY 2009 APC
C9241	J1267	Injection, doripenem, 10 mg	G	9241
Q4096	J7186	Injection, antihemophilic factor viii/von willebrand factor complex (human), per factor viii i.u.	K	1213
Q4097	J1459	Injection, immune globulin (Privigen), intravenous, non-lyophilized (e.g. liquid), 500 mg.	G	1214
Q4098	J1750	Injection, iron dextran, 50 mg	K	1237

TABLE 13—NEW HCPCS CODES IMPLEMENTED IN JULY 2008

CY 2008 HCPCS code	CY 2009 HCPCS code	CY 2009 long descriptor	Final CY 2009 status indicator	Final CY 2009 APC
C9242	J1453	Injection, fosaprepitant, 1 mg	G	9242
C9356	C9356	Tendon, porous matrix of cross-linked collagen and glycosaminoglycan matrix (TenoGlide Tendon Protector Sheet), per square centimeter.	G	9356
C9357	Q4114	Allograft, Integra Flowable Wound Matrix, injectable, 1 cc	G	1251
C9358	C9358	Dermal substitute, native, non-denatured collagen (SurgiMend Collagen Matrix), per 0.5 square centimeters.	G	9358
G0398	G0398	Home sleep study test (HST) with type II portable monitor, unattended; minimum of 7 channels: EEG, EOG, EMG, ECG/heart rate, airflow, respiratory effort and oxygen saturation.	S	0213
G0399	G0399	Home sleep test (HST) with type III portable monitor, unattended; minimum of 4 channels: 2 respiratory movement/airflow, 1 ECG/heart rate and 1 oxygen saturation.	S	0213
G0400	G0400	Home sleep test (HST) with type IV portable monitor, unattended; minimum of 3 channels.	S	0213

2. Treatment of New Category I and III CPT Codes and Level II HCPCS Codes

As has been our practice in the past, we implement new Category I and III CPT codes and new Level II HCPCS codes, which are released in the summer through the fall of each year for annual updating, effective January 1, in the final rule with comment period updating the OPPS for the following calendar year. These codes are flagged with comment indicator ''NI'' in Addendum B to the OPPS/ASC final rule with comment period to indicate that we are assigning them an interim payment status which is subject to public comment. Specifically, the status indicator, the APC assignment, or both, for all such codes flagged with comment indicator ''NI'' are open to public comment in this final rule with comment period. In the CY 2009 OPPS/ASC proposed rule (73 R 41468), we proposed to continue this recognition and process for CY 2009. New Category I and III CPT codes, as well as new Level II HCPCS codes, effective January 1, 2009, are listed in Addendum B to this final rule with comment period and designated using comment indicator ''NI.'' We will respond to all comments received concerning these codes in a subsequent final rule for the next calendar year's OPPS/ASC update.

In addition, in the CY 2009 OPPS/ASC proposed rule (73 FR 41468), we proposed to continue our policy of the last 3 years of recognizing new mid-year CPT codes, generally Category III CPT codes, that the AMA releases in January for implementation the following July through the OPPS quarterly update process. Therefore, for CY 2009, we proposed to include in Addendum B to this final rule with comment period the new Category III CPT codes released in January 2008 for implementation on July 1, 2008 (through the OPPS quarterly update process), and the new Category III codes released in July 2008 for implementation on January 1, 2009. However, only those new Category III CPT codes implemented effective January 1, 2009, are flagged with comment indicator ''NI'' in Addendum B to this final rule with comment period, to indicate that we have assigned them an interim payment status which is subject to public comment. Category III CPT codes implemented in July 2008, which appeared in Table 12 of the CY 2009 OPPS/ASC proposed rule and now in Table 14 below, were open to public comment in the proposed rule, and we are finalizing their CY 2009 status in this final rule with comment period.

We did not receive any public comments on the proposed CY 2009 assignment of status indicator ''M'' to CPT codes 0188T (Remote real-time interactive videoconferenced critical care, evaluation and management of the critically ill or critically injured patient; first 30–74 minutes) and 0189T (Remote real-time interactive videoconferenced critical care, evaluation and management of the critically ill or

critically injured patient; each additional 30 minutes) and on the assignment of status indicator ''T'' to CPT code 0190T (Placement of intraocular radiation source applicator) in APC 0237 (Level II Posterior Segment Eye Procedures). Therefore we are finalizing these proposed assignments for CY 2009, without modification.

Comment: One commenter was concerned with the proposed assignment of new CPT code 0191T (Insertion of anterior segment aqueous drainage device, without extraocular reservoir; internal approach) to APC 0234 (Level III Anterior Segment Eye Procedures) and recommended that the procedure be reassigned to APC 0673 (Level IV Anterior Segment Eye Procedures). According to the commenter, CPT code 0191T, which became effective July 1, 2008, uses a bypass device that routes fluid around the diseased part of a patient's aqueous drainage apparatus. The commenter indicated that there is significant resource dissimilarity between CPT code 0191T and other procedures assigned to APC 0234. The commenter argued that the procedure is more similar in resources to procedures assigned to APC 0673. The commenter explained that other procedures assigned to APC 0673 almost always use either a permanently implanted device or a permanent graft, while those assigned to APC 0234 do not. The commenter stated that CPT code 0191T requires the use of a costly implantable device, like other procedures assigned to APC 0673. The commenter also believed that the clinical characteristics of procedures already assigned to APC 0673 are more similar to CPT code 0191T than those assigned to APC 0234 because APC 0673 includes only procedures that treat glaucoma with intraocular surgery using a device to assist with aqueous outflow. According to the commenter, CPT code 66180 (Aqueous shunt to extraocular reservoir (e.g., Molteno, Schocket, Denver-Krupin)), which has the largest number of claims among procedures assigned to APC 0673, describes aqueous bypass surgery that serves the same purpose as the procedure described by CPT code 0191T. Finally, the commenter explained that the device used in CPT code 0191T is currently being studied in a FDA investigational device exemption (IDE) clinical trial.

Response: We assigned new Category III CPT code 0191T to APC 0234, effective July 1, 2008, and announced this assignment in the July 2008 OPPS update (Transmittal 1536, Change Request 6094, dated June 19, 2008). In the CY 2009 OPPS/ASC proposed rule (73 FR 41469), we proposed to continue this assignment for CY 2009 with a proposed payment rate of approximately $1,576. The commenter did not identify a predecessor CPT code for this surgical procedure, and there is limited clinical experience with this surgical procedure at this time. Nevertheless, based on our understanding of the clinical and resource characteristics of this surgical procedure, we continue to believe it is most appropriately assigned to APC 0234 in order to achieve the greatest clinical and resource homogeneity among the APC groups for anterior segment eye procedures. Further, we anticipate that the CY 2008 partial year hospital claims data for CPT code 0191T will first be available in CY 2009 for the CY 2010 OPPS/ASC rulemaking cycle. At that time we will review the assignment of this CPT code for CY 2010.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, to assign CPT code 0191T to APC 0234, with a final CY 2009 APC median cost of approximately $1,543.

Comment: Many commenters requested that CPT code 0192T (Insertion of anterior segment aqueous drainage device, without extraocular reservoir; external approach) be reassigned to APC 0673 (Level IV Anterior Segment Eye Procedures) from APC 0234 (Level III Anterior Segment Eye Procedures), where it was proposed for CY 2009 assignment. Several commenters reported that prior to July 1, 2008, when CPT code 0192T became effective, most providers reported this procedure with CPT code 66180 (Aqueous shunt to extraocular reservoir (e.g., Molteno, Schocket, Denver-Krupin)).

One commenter calculated a median cost of $2,806 using 19 single procedure OPPS claims for anterior segment eye procedures from 13 hospitals that the commenter believed represent services that would now be reported with CPT code 0192T. The commenter concluded that the analysis supported the request to assign CPT code 0192T to APC 0673, which had a proposed rule median cost of $2,631, while APC 0234 had a proposed rule median cost of only $1,573. The commenter pointed out that 17 of the 19 CY 2007 claims used for the analysis were coded with CPT code 66180, which was proposed for assignment to APC 0673 for CY 2009, indicating that the procedure and device costs of CPT code 0192T were reflected in claims data for APC 0673. The commenter estimated that about one third of the CY 2007 claims for CPT code 66180 represent procedures that would now be reported with CPT code 0192T. Furthermore, the commenter asserted that none of the procedures currently assigned to APC 0234 includes either a permanently implanted or high cost disposable device, while procedures assigned to APC 0673 utilize such devices.

The commenter also believed that the procedures assigned to APC 0673 are more clinically similar to CPT code 0192T than those assigned to APC 0234. The commenter noted that APC 0673 contains procedures, such as CPT code 66180, which primarily treat glaucoma with intraocular surgery using a device that assists with aqueous outflow. The commenter believed that assignment of CPT code 0192T to APC 0234 could result in limited patient access to that procedure.

Some commenters argued that payment for the aqueous shunt device should be paid separately from the hospital payment for the surgical procedure. Many commenters believed that the procedure described by CPT code 0192T is safer, more effective, and has fewer complications than trabeculectomy because the new procedure does not excise tissue but instead uses a shunt to bypass the trabecular tissue.

Response: We assigned new Category III CPT code 0192T to APC 0234 effective July 1, 2008, and announced this assignment in the July 2008 OPPS update (Transmittal 1536, Change Request 6094, dated June 19, 2008). In the CY 2009 OPPS/ASC proposed rule (73 FR 41469), we proposed to continue this APC assignment for new CPT code 0192T, with a proposed payment rate of approximately $1,576 for CY 2009. We agree with the commenters that new CPT code 0192T has associated implantable device costs that may not be fully reflected in the costs of other services assigned to APC 0234. It is our established OPPS policy to package payment for all implantable devices without pass-through status into payment for the associated surgical procedures. Therefore, we will not provide separate payment under the OPPS for the aqueous shunt required for CPT code 0192T. Moreover, CPT code 66180, which is assigned to APC 0673 for CY 2009, reportedly was often used to bill Medicare prior to July 1, 2008, for the procedure now described by CPT code 0192T. Therefore, the costs of CPT code 66180 from hospital claims data may partially reflect the costs of CPT code 0192T, as these two CPT codes are clinically similar. CPT code 66180 has a final CY 2009 median cost of approximately $2,772 and APC 0673 has a median cost of approximately $2,644.

Therefore, we agree with the commenters that APC 0673 is the most appropriate APC assignment for CPT code 0192T for CY 2009.

After consideration of the public comments received, we are modifying our CY 2009 proposal for payment of CPT 0192T and reassigning it to APC 0673, with a final CY 2009 APC median cost of approximately $2,644.

The final CY 2009 status indicators and APC assignments of the Category III CPT codes implemented in July 2008 are included in Table 14, below, as well as in Addendum B to this final rule with comment period.

TABLE 14—CATEGORY III CPT CODES IMPLEMENTED IN JULY 2008

CY 2009 HCPCS code	CY 2009 long descriptor	Final CY 2009 status indicator	Final CY 2009 APC
0188T	Remote real-time interactive videoconferenced critical care, evaluation and management of the critically ill or critically injured patient; first 30–74 minutes.	M	Not applicable.
0189T	Remote real-time interactive videoconferenced critical care, evaluation and management of the critically ill or critically injured patient; each additional 30 minutes.	M	Not applicable.
0190T	Placement of intraocular radiation source applicator	T	0237.
0191T	Insertion of anterior segment aqueous drainage device, without extraocular reservoir; internal approach.	T	0234.
0192T	Insertion of anterior segment aqueous drainage device, without extraocular reservoir; external approach.	T	0673.

B. OPPS Changes—Variations Within APCs

1. Background

Section 1833(t)(2)(A) of the Act requires the Secretary to develop a classification system for covered hospital outpatient services. Section 1833(t)(2)(B) of the Act provides that this classification system may be composed of groups of services, so that services within each group are comparable clinically and with respect to the use of resources. In accordance with these provisions, we developed a grouping classification system, referred to as APCs, as set forth in § 419.31 of the regulations. We use Level I and Level II HCPCS codes and descriptors to identify and group the services within each APC. The APCs are organized such that each group is homogeneous both clinically and in terms of resource use. Using this classification system, we have established distinct groups of similar services, as well as medical visits. We also have developed separate APC groups for certain medical devices, drugs, biologicals, therapeutic radiopharmaceuticals, and brachytherapy devices.

We have packaged into payment for each procedure or service within an APC group the costs associated with those items or services that are directly related to and supportive of performing the main independent procedures or furnishing the services. Therefore, we do not make separate payment for these packaged items or services. For example, packaged items and services include: (1) Use of an operating, treatment, or procedure room; (2) use of a recovery room; (3) observation services; (4) anesthesia; (5) medical/surgical supplies; (6) pharmaceuticals (other than those for which separate payment may be allowed under the provisions discussed in section V. of this final rule with comment period); (7) incidental services such as venipuncture; and (8) guidance services, image processing services, intraoperative services, imaging supervision and interpretation services, diagnostic radiopharmaceuticals, and contrast media. Further discussion of packaged services is included in section II.A.4. of this final rule with comment period.

In CY 2008, we implemented composite APCs to provide a single payment for groups of services that are typically performed together during a single clinical encounter and that result in the provision of a complete service. Under current CY 2008 OPPS policy, we provide composite APC payment for certain extended assessment and management services, low dose rate (LDR) prostate brachytherapy, cardiac electrophysiologic evaluation and ablation, and mental health services. In the CY 2009 OPPS/ASC proposed rule (73 FR 41450), we also proposed a composite APC payment methodology for multiple imaging services for CY 2009. Further discussion of composite APCs is included in section II.A.2.e. of this final rule with comment period.

Under the OPPS, we generally pay for hospital outpatient services on a rate-per-service basis, where the service may be reported with one or more HCPCS codes. Payment varies according to the APC group to which the independent service or combination of services is assigned. Each APC weight represents the hospital median cost of the services included in that APC relative to the hospital median cost of the services included in APC 0606 (Level 3 Hospital Clinic Visits). The APC weights are scaled to APC 0606 because it is the middle level clinic visit APC (that is, where the Level 3 clinic visit CPT code of five levels of clinic visits is assigned), and because middle level clinic visits are among the most frequently furnished services in the hospital outpatient setting.

Section 1833(t)(9)(A) of the Act requires the Secretary to review the components of the OPPS not less than annually and to revise the groups and relative payment weights and make other adjustments to take into account changes in medical practice, changes in technology, and the addition of new services, new cost data, and other relevant information and factors. Section 1833(t)(9)(A) of the Act, as amended by section 201(h) of the BBRA, also requires the Secretary, beginning in CY 2001, to consult with an outside panel of experts to review the APC groups and the relative payment weights (the APC Panel recommendations for specific services for the CY 2009 OPPS and our responses to them are discussed in the relevant specific sections throughout this final rule with comment period).

Finally, section 1833(t)(2) of the Act provides that, subject to certain exceptions, the items and services within an APC group cannot be considered comparable with respect to the use of resources if the highest median cost, or mean cost as elected by the Secretary, for an item or service in the group is more than 2 times greater than the lowest median cost for an item or service within the same group (referred to as the ''2 times rule''). We

use the median cost of the item or service in implementing this provision. The statute authorizes the Secretary to make exceptions to the 2 times rule in unusual cases, such as low-volume items and services.

2. Application of the 2 Times Rule

In accordance with section 1833(t)(2) of the Act and § 419.31 of the regulations, we annually review the items and services within an APC group to determine, with respect to comparability of the use of resources, if the median cost of the highest cost item or service within an APC group is more than 2 times greater than the median of the lowest cost item or service within that same group (''2 times rule''). In the CY 2009 OPPS/ASC proposed rule (73 FR 41469), we proposed to make exceptions to this limit on the variation of costs within each APC group in unusual cases such as low-volume items and services for CY 2009.

During the APC Panel's March 2008 meeting, we presented median cost and utilization data for services furnished during the period of January 1, 2007, through September 30, 2007, about which we had concerns or about which the public had raised concerns regarding their APC assignments, status indicator assignments, or payment rates. The discussions of most service-specific issues, the APC Panel recommendations, if any, and our proposals for CY 2009 are contained mainly in sections III.C. and III.D. of this final rule with comment period.

In addition to the assignment of specific services to APCs that we discussed with the APC Panel, we also identified APCs with 2 times violations that were not specifically discussed with the APC Panel but for which we proposed changes to their HCPCS codes' APC assignments in Addendum B to the CY 2009 OPPS/ASC proposed rule. In these cases, to eliminate a 2 times violation or to improve clinical and resource homogeneity, we proposed to reassign the codes to APCs that contain services that are similar with regard to both their clinical and resource characteristics (73 FR 41470). In the CY 2009 OPP/ASC proposed rule (73 FR 41470), we also proposed to rename existing APCs, discontinue existing APCs, or create new clinical APCs to complement proposed HCPCS code reassignments for CY 2009. In many cases, the proposed HCPCS code reassignments and associated APC reconfigurations for CY 2009 included in the CY 2009 OPPS/ASC proposed rule were related to changes in median costs of services that were observed in the CY 2007 claims data newly available for the CY 2009 ratesetting. We also proposed changes to the status indicators for some codes that were not specifically and separately discussed in the proposed rule. In these cases, we proposed to change the status indicators for some codes because we believed that another status indicator would more accurately describe their payment status from an OPPS perspective based on the policies that we proposed for CY 2009 or because we proposed new status indicators to differentiate a related group of services from other services that previously shared the same status indicator (73 FR 41470).

Addendum B to the CY 2009 OPPS/ASC proposed rule identified with comment indicator ''CH'' those HCPCS codes for which we proposed a change to the APC assignment or status indicator as assigned in the April 2008 Addendum B update (via Transmittal 1487, Change Request 5999, dated April 8, 2008). HCPCS codes with proposed CY 2009 changes in status indicator assignments from ''Q'' to ''Q1,'' from ''Q'' to ''Q2,'' or from ''Q'' to ''Q3'' were an exception to this identification practice because they were not flagged with comment indicator ''CH'' in Addendum B to the CY 2009 OPPS/ASC proposed rule. Because these proposed changes in status indicators were designed to facilitate policy transparency and operational logic rather than to reflect changes in OPPS payment policy for these services, we believed that identifying these HCPCS codes with ''CH'' could be confusing to the public.

We received several public comments on our proposed separation of status indicator ''Q'' into three distinct status indicators, specifically ''Q1,'' ''Q2,'' or ''Q3,'' for purposes of policy transparency and administrative ease. This proposal, including the public comments received and our response to them, is discussed in section XIII.A. of this final rule with comment period.

3. Exceptions to the 2 Times Rule

As discussed earlier, we may make exceptions to the 2 times limit on the variation of costs within each APC group in unusual cases such as low-volume items and services. Taking into account the APC changes that we proposed for CY 2009 based on the APC Panel recommendations discussed mainly in sections III.C. and III.D. of this final rule with comment period, the other proposed changes to status indicators and APC assignments as identified in Addendum B to the CY 2009 OPPS/ASC proposed rule, and the use of CY 2007 claims data to calculate the median costs of procedures classified in the APCs, we reviewed all the APCs to determine which APCs would not satisfy the 2 times rule. We used the following criteria to decide whether to propose exceptions to the 2 times rule for affected APCs:

- Resource homogeneity
- Clinical homogeneity
- Hospital outpatient setting
- Frequency of service (volume)
- Opportunity for upcoding and code fragments.

For a detailed discussion of these criteria, we refer readers to the April 7, 2000 OPPS final rule with comment period (65 FR 18457).

Table 13 of the CY 2009 OPPS/ASC proposed rule listed 12 APCs that we proposed to exempt from the 2 times rule for CY 2009 based on the criteria cited above. For cases in which a recommendation by the APC Panel appeared to result in or allow a violation of the 2 times rule, we generally accepted the APC Panel's recommendation because those recommendations were based on explicit consideration of resource use, clinical homogeneity, hospital specialization, and the quality of the CY 2007 claims data used to determine the APC payment rates that we proposed for CY 2009. The median costs for hospital outpatient services for these and all other APCs that were used in the development of the CY 2009 OPPS/ASC proposed rule and this final rule with comment period can be found on the CMS Web site at: *http://www.cms.hhs.gov/HospitalOutpatientPPS/01_overview.asp*.

For the CY 2009 OPPS/ASC proposed rule, we based the listed exceptions to the 2 times rule on claims data from January 1, 2007, through September 30, 2007. For this final rule with comment period, we used claims data from January 1, 2007, through December 1, 2007. Thus, after responding to all of the public comments on the CY 2009 OPPS/ASC proposed rule and making changes to APC assignments based on those comments, we analyzed the CY 2007 claims data used for this final rule with comment period to identify the APCs with 2 times rule violations.

Based on the final CY 2007 claims data, we found that there were 14 APCs with 2 times rule violations, an increase of 2 APCs from the proposed rule. We have not included in this count those APCs where a 2 times violation is not a relevant concept, such as APC 0375 (Ancillary Outpatient Service When Patient Expires), with an APC median cost set based on multiple procedure claims, so that we have identified only final APCs, including those with

criteria-based median costs, such as device-dependent APCs, with 2 times violations. We applied the criteria as described earlier to identify the APCs that are exceptions to the 2 times rule for CY 2009, and as noted below, have identified the additional APCs that have met the criteria for exception to the 2 times rule for this final rule with comment period. These APC exceptions are listed in Table 15 below.

Comment: One commenter supported the continued exception of APC 0303 (Treatment Device Construction) to the 2 times rule for CY 2009. The commenter agreed that, based on the CY 2007 claims data, CMS' proposed assignment of the following three CPT codes to APC 0303 was appropriate: 77332 (Treatment devices, design and construction; simple (simple block, simple bolus)); 77333 (Treatment devices, design and construction; intermediate (multiple blocks, stents, bite blocks, special bolus)); and 77334 (Treatment devices, design and construction; complex (irregular blocks, special shields, compensators, wedges, molds or casts)). Noting that the 2 times violation was not extreme, the commenter believed that the proposed exception was appropriate because the services within APC 0303 are clinically comparable.

Response: We appreciate the commenter's support for our proposal.

After consideration of all of the public comments received and our review of the CY 2007 claims data used for this final rule with comment period, we are finalizing our proposal to exempt 12 APCs from the 2 times rule for CY 2009, with modification. We are increasing the list of APC exceptions from 12 to 14 APCs to also include APCs 0341 (Skin Tests) and 0367 (Level I Pulmonary Test) for CY 2009. Our final list of the 14 APC exceptions to the 2 times rule for CY 2009 is displayed in Table 15 below.

TABLE 15—FINAL APC EXCEPTIONS TO THE 2 TIMES RULE FOR CY 2009

Final CY 2009 APC	CY 2009 APC title
0060	Manipulation Therapy.
0080	Diagnostic Cardiac Catheterization.
0093	Vascular Reconstruction/Fistula Repair Without Device.
0105	Repair/Revision/Removal of Pacemakers, AICDs, or Vascular Devices.
0141	Level I Upper GI Procedures.
0245	Level I Cataract Procedures Without IOL Insert.
0303	Treatment Device Construction.
0330	Dental Procedures.
0341	Skin Tests.
0367	Level I Pulmonary Test.
0409	Red Blood Cell Tests.
0426	Level II Strapping and Cast Application.
0432	Health and Behavior Services.
0604	Level 1 Hospital Clinic Visits.

C. New Technology APCs

1. Background

In the November 30, 2001, final rule (66 FR 59903), we finalized changes to the time period a service was eligible for payment under a New Technology APC. Beginning in CY 2002, we retain services within New Technology APC groups until we gather sufficient claims data to enable us to assign the service to a clinically appropriate APC. This policy allows us to move a service from a New Technology APC in less than 2 years if sufficient data are available. It also allows us to retain a service in a New Technology APC for more than 2 years if sufficient data upon which to base a decision for reassignment have not been collected.

We note that the cost bands for New Technology APCs range from $0 to $50 in increments of $10, from $50 to $100 in increments of $50, from $100 through $2,000 in increments of $100, and from $2,000 through $10,000 in increments of $500. These increments, which are in two parallel sets of New Technology APCs, one with status indicator ''S'' and the other with status indicator ''T,'' allow us to price new technology services more appropriately and consistently.

2. Movement of Procedures From New Technology APCs to Clinical APCs

As we explained in the November 30, 2001, final rule (66 FR 59897), we generally keep a procedure in the New Technology APC to which it is initially assigned until we have collected sufficient data to enable us to move the procedure to a clinically appropriate APC. However, in cases where we find that our original New Technology APC assignment was based on inaccurate or inadequate information (although it was the best information available at the time), or where the New Technology APCs are restructured, we may, based on more recent resource utilization information (including claims data) or the availability of refined New Technology APC cost bands, reassign the procedure or service to a different New Technology APC that most appropriately reflects its cost.

Consistent with our current policy, in the CY 2009 OPPS/ASC proposed rule (73 FR 41471), we proposed to retain services within New Technology APC groups until we gather sufficient claims data to enable us to assign the service to a clinically appropriate APC for CY 2009. The flexibility associated with this policy allows us to move a service from a New Technology APC in less than 2 years if sufficient data are available. It also allows us to retain a service in a New Technology APC for more than 2 years if sufficient hospital claims data upon which to base a decision for reassignment have not been collected.

We did not receive any public comments on this proposal. Therefore, we are finalizing our CY 2009 proposal, without modification, to retain services within New Technology APCs until we gather sufficient claims data to assign the services to a clinically appropriate APC. Thus, a service can be assigned to a New Technology APC for more than 2 years if we have insufficient claims data to reassign the service to a clinical APC, or it could be reassigned to a clinical APC in less than 2 years if we have adequate claims data.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41471), we stated that we believed we had sufficient claims data to propose reassigning the following three HCPCS codes, which we stated represent services assigned to New Technology APCs in CY 2008, to

clinically appropriate APC for CY 2009: C9725 (Placement of endorectal intracavitary applicator for high intensity brachytherapy), C9726 (Placement and removal (if performed) of applicator into breast for radiation therapy), and C9727 (Insertion of implants into the soft palate; minimum of three implants). These three procedures have been assigned to their New Technology APCs for at least 3 years, thereby providing us with data from at least 2 years of hospital claims upon which we based the proposed reassignments for CY 2009. In addition, as we indicated in the CY 2009 OPPS/ASC proposed rule, we believe that these three procedures are clinically similar to other services currently paid through clinical APCs under the OPPS and for which we have substantial claims data regarding hospital costs. Therefore, in the CY 2009 OPPS/ASC proposed rule , we proposed to reassign these three procedures to clinically appropriate APCs, utilizing their CY 2007 claims data to develop the clinical APC median costs upon which payments would be based for CY 2009. As shown in Table 14 of the CY 2009 OPPS/ASC proposed rule, we proposed to reassign HCPCS code C9725 from New Technology APC 1507—Level VII ($500–$600) to APC 0164 (Level II Urinary and Anal Procedures), with a proposed payment rate of approximately $145; to reassign HCPCS code 9726 from New Technology APC 1508—Level VIII ($600–$700) to APC 0028 (Level I Breast Surgery), with a proposed payment rate of approximately $1,412; and to reassign HCPCS code C9727 from New Technology 1510–Level X ($800–$900) to APC 0252 (Level III ENT Procedures), with a proposed payment rate of approximately $509.

Further, in the CY 2009 OPPS/ASC proposed rule (73 FR 41471), we proposed to delete HCPCS code C9723 (Dynamic infrared blood perfusion imaging (diri)) that has been assigned to New Technology APC 1502 (New Technology—Level II ($50–$100)) since it was implemented in April 2005. Based on our claims data for the past 3 years, which have shown no utilization for HCPCS code C9723, we proposed to delete this HCPCS code on December 31, 2008.

Comment: Several commenters disagreed with the proposed reassignment of HCPCS code C9725 and asserted that the CY 2007 claims data included only two single claims for HCPCS code C9725 and, therefore, these data provided an insufficient basis for reassigning this service from New Technology APC 1507 to APC 0164, which has a proposed payment rate of approximately $145. They argued that the procedures in APC 0164 are not clinically similar or comparable in cost to HCPCS code C9725. The commenters believed that the procedures included in APC 0164 require less time and physician skill than HCPCS code C9725 and that they do not require the use of a temporary implanted device for treatment delivery as does HCPCS code C9725. The commenters recommended that, for CY 2009, CMS retain HCPCS code C9725 in its current New Technology APC with a payment rate of approximately $550 for at least 1 more year, or reassign it to APC 0155 (Level II Anal/Rectal Procedures), which has a proposed payment rate of approximately $804, because they believed that APC 0155 would be a more appropriate assignment for HCPCS code 9725 based on consideration of its clinical characteristics and resource costs.

Response: We do not agree that that we should continue to assign HCPCS code C9725 to New Technology APC 1507, as explained below. HCPCS code C9725 was assigned to New Technology 1507 with a payment rate of approximately $550 when it was implemented on October 1, 2005. At this point, the service has been assigned to a New Technology APC for over 3 years. We believe that reassigning this service to a clinical APC is appropriate for CY 2009, because this service is clinically similar to other services currently paid under the OPPS and because it has resided in a New Technology APC for over 3 years.

At the August 2008 APC Panel meeting, a public comment letter on the CY 2009 OPPS/ASC proposed rule was discussed that requested that the APC Panel recommend that CMS reassign HCPCS code C9725 to APC 0155 (Level II Anal/Rectal Procedures) rather than to APC 0164, as proposed, on the basis of its clinical similarity to other procedures in APC 0155. The proposed CY 2009 payment rate of APC 0155 is approximately $804. The APC Panel did not agree that HCPCS code C9725 is comparable to the procedures in APC 0155, but the APC Panel recommended that CMS reassign the HCPCS code C9725 to an appropriate device-dependent APC based on median cost data.

Further analysis of the latest CY 2007 claims data used for this final rule with comment period revealed limited data for HCPCS code C9725, with variable costs over the past 3 years, leading us to conclude that this service is rarely performed on Medicare beneficiaries in the HOPD. We do not agree with the commenters' recommendation to either retain this procedure in New Technology APC 1507 for 1 more year or to reassign it to clinical APC 0155 in the Anal/Rectal Procedures series for CY 2009. Currently we do not have an identified device-dependent APC under the OPPS that would be an appropriate assignment for HCPCS code C9725, and there is no Level II HCPCS code that describes the device that is inserted into the body that would be reported with the procedure. Therefore, we are not adopting the APC Panel's recommendation to assign the service to an appropriate device-dependent APC for CY 2009.

However, after reexamining the clinical characteristics of HCPC code C9725, the limited claims data, and our expectations regarding the cost of the procedure, we reevaluated our proposed assignment for HCPCS code C9725 and believe that this service would be more appropriately assigned to APC 0148 (Level I Anal/Rectal Procedures), based on considerations of the service's clinical and resource characteristics. Moreover, several commenters recommended an APC assignment for HCPCS code C9725 in this same clinical series. APC 0148 has a final median cost of approximately $378 for CY 2009, and we believe this APC will ensure appropriate payment for HCPCS code C9725.

After consideration of the public comments received and the APC Panel recommendation, in this final rule with comment period, we are modifying our CY 2009 proposal and reassigning HCPCS code C9725 to APC 0148 (instead of APC 0164), with a final CY 2009 APC median cost of approximately $378 for CY 2009.

Comment: One commenter supported the proposed reassignment of HCPCS code C9726 from New Technology APC 1508 to APC 0028 for CY 2009, with a proposed payment rate of approximately $1,412.

Response: We appreciate the commenter's support.

After consideration of the public comment received, we are finalizing our CY 2009 proposal, without modification, to reassign HCPCS code C9726 to APC 0028, with a final CY 2009 APC median cost of approximately $1,387.

We did not receive any public comments on the proposed assignment of HCPCS code C9727 to APC 0252 or our proposal related to the deletion of HCPCS code C9723. Therefore, we are finalizing our CY 2009 proposals, without modification, to reassign HCPCS code C9727 to APC 0252, which has a final CY 2009 APC median cost of approximately $486 and to discontinue HCPCS code C9723 on December 31,

2008. Table 16, below, lists the final CY 2009 APC assignments and status indicators for HCPCS codes C9725, C9726, and C9727.

TABLE 16—CY 2009 APC REASSIGNMENTS OF NEW TECHNOLOGY PROCEDURES TO CLINICAL APCS

CY 2009 HCPCS code	CY 2009 short descriptor	CY 2008 SI	CY 2008 APC	Final CY 2009 SI	Final CY 2009
C9725	Placement of endorectal intracavitary applicator for high intensity brachytherapy.	S	1507	T	0148
C9726	Placement and removal (if performed) of applicator into breast for radiation therapy.	S	1508	T	0028
C9727	Insertion of implants into the soft palate; minimum of three implants.	S	1510	T	0252

D. OPPS APC-Specific Policies

1. Apheresis and Stem Cell Processing Services

a. Low-Density Lipoprotein (LDL) Apheresis (APC 0112)

In the CY 2009 OPPS/ASC proposed rule (73 FR 41798), we proposed to continue our CY 2008 assignment of CPT code 36516 (Therapeutic apheresis; with extracorporeal selective adsorption or selective filtration and plasma reinfusion) to APC 0112 (Apheresis and Stem Cell Procedures) with a proposed payment rate of approximately $2,020. The CY 2008 payment rate for this service is approximately $1,949.

Comment: One commenter argued that the CY 2007 claims data for CPT code 36516 are skewed and would result in a CY 2009 payment rate for APC 0112 that is unacceptably low for hospitals. The commenter stated that LDL apheresis is the only procedure that can be reported accurately using CPT code 36516. According to the commenter, far fewer hospitals have the capability to perform this procedure than hospitals that are billing CPT code 36516 on OPPS claims. Furthermore, the commenter asserted that hospitals systematically underreport costs for CPT code 36516, resulting in a median cost for CPT code 36516 that is undervalued by an estimated $1,000, and a median cost for APC 0112 that is undervalued by an estimated $150 to $200. The commenter recommended that CMS initiate an investigation or provide instruction on how to rectify the misreporting of the procedure described by CPT code 36516, and remove all claims for CPT code 36516 from the median calculation upon which the payment rate for APC 0112 is based.

Response: We do not believe it is necessary to alter our standard OPPS ratesetting methodology to exclude claims for CPT code 36516 from the median cost calculation for APC 0112 in order to ensure appropriate payment to hospitals that will ensure access to care in CY 2009. The payment rate for APC 0112 has steadily increased since CY 2006, when the OPPS payment rate was approximately $1,570. We also note that procedures described by CPT code 36516 comprise only 11 percent of the CY 2007 single claims for all services that are used to calculate the median cost of APC 0112. Furthermore, according to the commenter's analysis, removing several hundred claims for CPT code 36516 from the calculation of the median cost of APC 0112 would lead to only a small change of $150 to $200 in the APC's median cost.

We have no reason to believe that hospitals are misreporting services with CPT code 36516 and note that we do not specify the methodologies that hospitals must use to set charges for this, or any other, procedure. The calculation of OPPS payment weights that reflect the relative resources required for HOPD services is the foundation of the OPPS, and we also see no reason why hospitals would systemically underreport the costs of the procedure described by CPT code 36516.

We rely on hospitals to bill all HCPCS codes accurately in accordance with their code descriptors and CPT and CMS instructions, as applicable, and to report charges on claims and charges and costs on their Medicare cost report appropriately. In both the January 2005 OPPS quarterly update, Transmittal 423, Change Request 3632, issued on January 6, 2005, and the January 2006 OPPS quarterly update, Transmittal 804, Change Request 4250, issued on January 3, 2006, we provided instructions to hospitals on how to correctly report items and services associated with the procedure described by CPT code 36516. Specifically, we instructed hospitals to bill supply charges either by including them in the charge for CPT code 36516 or by using an appropriate supply revenue code when using CPT code 36516 to report extracorporeal selective absorption of selective filtration and plasma reinfusion for indications such as familial hypercholesterolemia. We further emphasized that, in every case, hospitals should report the codes that most accurately describe the therapeutic apheresis service that is being furnished. We continue to expect hospitals to report the services described by CPT code 36516 accurately as we have instructed, and see no current basis for questioning the charges hospitals report on their claims and on their Medicare cost reports for this service.

After consideration of the public comment received, we are finalizing our CY 2009 proposal, without modification, to calculate the payment rate for APC 0112 by applying our standard OPPS ratesetting methodology that relies on all single claims for all procedures assigned to the APC. The final CY 2009 median cost of APC 0112 is approximately $1,988.

b. Bone Marrow and Stem Cell Processing Services (APC 0393)

For CY 2008, we discontinued recognizing HCPCS code G0267 (Bone marrow or peripheral stem cell harvest, modification or treatment to eliminate cell type(s)) for depletion services for hematopoietic progenitor cells) for payment under the OPPS and deleted the HPCPCS code effective January 1, 2008 (72 FR 66821 through 66823). Instead, we recognized the specific CPT codes that describe these services, which include: CPT codes 38210 (Transplant preparation of hematopoietic progenitor cells; specific cell depletion within harvest, T-cell depletion); 38211 (Transplant preparation of hematopoietic progenitor cells; tumor cell depletion); 38212 (Transplant preparation of hematopoietic progenitor cells; red blood cell removal); 38213 (Transplant preparation of hematopoietic progenitor cells; platelet depletion); 38214 (Transplant preparation of hematopoietic progenitor cells; plasma (volume) depletion); and 38215 (Transplant preparation of hematopoietic progenitor cells; cell

concentration in plasma, mononuclear, of buffy coat layer).

For CY 2008, we assigned CPT codes 38210 through 38215 to APC 0393 with other red blood cell and plasma handling and testing services and renamed APC 0393 ''Hematologic Processing and Studies'' so that the APC title more accurately describes all the services assigned to the APC. We maintained a status indicator of ''S'' for APC 0393. The data for the predecessor code, HCPCS code G0267, was also assigned to APC 0393. The CY 2008 payment for APC 0393 is approximately $363, based on an APC median cost of approximately $397, the same median cost as HCPCS code G0267 in CY 2008. As we stated in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66823), it is consistent with our general practice under the OPPS to make payment based on historical claims data for the predecessor HCPCS code until we have more specific hospital resource data available to assess the specific CPT codes for possible APC reassignment. In the CY 2009 OPPS/ASC proposed rule, we did not propose to change the APC assignments for CPT codes 38210 through 38215 for CY 2009. The CY 2009 proposed payment for APC 0393 was approximately $398.

Comment: One commenter asserted that CPT codes 38210 and 38211 were inappropriately assigned to APC 0393 because the other services in APC 0393 are not related to stem cell purification and transplantation and because the supplies and clinical staff costs are significantly more than the proposed payment rate for these two services. The commenter recommended that CMS reassign these services to APC 0112 (Apheresis and Stem Cell Procedures), reasoning that the codes for T-cell and tumor cell depletion are more similar clinically and in terms of costs to other services assigned to APC 0112.

Response: As we stated in the CY 2008 OPS/ASC final rule with comment period (72 FR 66823), we believe that our assignment of CPT codes 38210 through 38215 to APC 0393 will pay appropriately for these CPT codes while we collect more specific data on their individual resource costs. We continue to believe that the two specific services for T-cell or tumor cell depletion during preparation of hematopoietic progenitor cells for transplantation are more clinically similar to those services in APC 0393 than in APC 0112, which contains procedures for extracorporeal adsorption during therapeutic apheresis that involves reinfusion of plasma into the patient and bone marrow and stem cell collection and transplantation, rather than cell processing. We note that the final median cost for APC 0112 for CY 2009, is approximately $1,988, while the final median cost for APC 0393 is approximately $391. There were no claims submitted for CPT code 38210 in CY 2008. In addition, there was one claim for CPT code 38211 available for ratesetting, with a median cost of about $201. Further, there were 125 claims for HCPCS code G0267 available for ratesetting, with a final median cost of $391. Based on these cost data, we continue to believe that APC 0393 will pay more appropriately for CPT codes 38210 and 38211 while we collect more specific data on their individual resource costs.

After consideration of the public comment received, we are finalizing our CY 2009 proposal, without modification, to maintain CPT codes 38210 and 38211 in APC 0393, with a final CY 2009 APC median cost of approximately $391.

2. Genitourinary Procedures

a. Implant Injection for Vesicoureteral Reflux (APC 0163)

Following publication of the CY 2008 OPPS/ASC final rule with comment period, several members of the public contacted us to express their concerns regarding inadequate payment for CPT code 52327 (Cystourethroscopy, including ureteral catheterization, with subureteric injection of implant material). The CY 2008 OPPS payment for this procedure, which is assigned to APC 0162 (Level III Cystourethroscopy and other Genitourinary Procedures), is approximately $1,578. From the perspective of these stakeholders, the CY 2008 assignment of CPT code 52327 to APC 0162 provides inadequate payment to cover the hospital's cost for the procedure, which they asserted requires expensive implant material. Specifically, they stated that the currently available CPT and Level II HCPCS codes lack the specificity needed to properly account for the cost of the ureteral implant, dextranomer/hyaluronic acid, the only FDA approved product for the procedure. In addition to receiving several letters on this subject, we also met with stakeholders about the concerns of pediatric urologists regarding decreased access to and inadequate payment for performance of this procedure.

At the March 2008 APC Panel meeting, a presenter requested that the APC Panel recommend reassignment of CPT code 52327 from APC 0162 to APC 0385 (Level I Prosthetic Urological Procedures). The presenter indicated that while CPT code 52327 is clinically similar to other procedures assigned to APC 0162, it is not similar in terms of resource utilization. The presenter stated that CPT code 52327 is the only procedure assigned to APC 0162 that uses a high cost implant, with a stated cost of $1,045 per milliliter. The APC Panel recommended that CMS consider reassigning CPT code 52327 to a more appropriate APC.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41477), we proposed to reassign CPT code 52327 from APC 0162 to APC 0163 (Level IV Cystourethroscopy and other Genitourinary Procedures), with a proposed payment rate of approximately $2,392.

Comment: One commenter supported the proposed reassignment of CPT code 52327 from APC 0162 to APC 0163. However, the commenter expressed concern that the proposed payment rate for the service is still inadequate. The commenter contended that until hospitals are able to report the implant material with a separate HCPCS code, the procedure would continue to be inadequately paid under APC 0163. Another commenter also expressed support for the proposed reassignment of CPT code 52327 to APC 0163 from APC 0162. However, the commenter noted that the proposed increase in payment was less than the cost of a single vial of the implant material and that it is not uncommon for more than one vial to be used during a procedure. The commenter argued that Medicare claims data do not accurately reflect the cost of the implant for several reasons, specifically that the procedure is primarily a pediatric procedure with few Medicare claims and that there is no unique HCPCS code to describe the implant product.

Response: We appreciate the commenters' support for our proposal to reassign CPT code 52327 from APC 0162 to APC 0163 for CY 2009. We continue to believe that APC 0163 will provide appropriate payment for this surgical procedure, including the cost of the ureteral implant material, in CY 2009. As we noted in the CY 2009 OPPS/ASC proposed rule (73 FR 41477), a number of the procedures also assigned to APC 0163 are clinically similar to CPT code 52327, involving the use of a cystoscope and the implantation of devices.

There is a new Level II HCPCS code for CY 2009, HCPCS code L8604 (Injectable bulking agent, dextranomer/hyaluronic acid copolymer implant, urinary tract, 1 ml), that describes an implant that may be used in the procedure reported with CPT code 52327. However, with the exception of implantable devices that are subject to

transitional pass-through payment for a limited time period, under the OPPS, regardless of the availability of HCPCS codes specific to implantable devices, Medicare makes payment for those implantable devices through payment for the associated surgical procedure. According to our regulations at § 419.2(b), the OPPS establishes a national payment rate that includes operating and capital-related costs that are directly related and integral to performing a procedure or furnishing a service on an outpatient basis including, but not limited to, implantable prosthetics, implantable durable medical equipment, and medical and surgical supplies. Therefore, HCPCS code L8604 is assigned an interim CY 2009 status indicator of ''N'' in Addendum B to this final rule with comment period, to indicate that its payment is unconditionally packaged in all cases. We also note that, because HCPCS code L8604 is a new code for CY 2009, it is assigned comment indicator ''NI'' in Addendum B to this final rule with comment period, indicating that its interim OPPS treatment is open to public comment on this final rule with comment period.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, to reassign CPT code 52327 from APC 0162 to APC 0163, with a final CY 2009 APC median cost of approximately $2,316.

b. Laparoscopic Ablation of Renal Mass (APC 0132)

In the CY 2009 OPPS/ASC proposed rule, we proposed to continue the assignment of CPT code 50542 (Laparoscopy, surgical; ablation of renal mass lesion(s)) to APC 0132 (Level III Laparoscopy), with a proposed payment rate of approximately $4,715. The CY 2008 payment rate for APC 0132 is approximately $4,437.

Comment: Several commenters disagreed with the proposed continued assignment of CPT code 50542 to APC 0132. They indicated that the service described by CPT code 50542 is not similar, in terms of clinical characteristics or resource costs, to the other procedures in APC 0132. The commenters further asserted that APC 0132 does not accurately reflect the hospital costs required to perform the procedure on an outpatient basis, which may be performed by cryoablation or radiofrequency ablation. They recommended that CMS create a new clinical APC in the laparoscopy series in order to improve both the clinical and resource homogeneity of the laparoscopy APCs and reassign CPT code 50542 to this new clinical APC.

Response: CPT code 50542 was implemented on January 1, 2003, and from CYs 2003 through 2005, this service was assigned to APC 0131 (Level II Laparoscopy). As discussed in the CY 2006 OPPS final rule with comment period (70 FR 68604), a CY 2006 OPPS proposed rule commenter recommended that we reassign CPT code 50542 from APC 0131 to APC 0132 to adequately pay for the cost of performing this procedure. We examined our CY 2004 hospital outpatient claims used for CY 2006 ratesetting and concluded that a reassignment to APC 0132 was warranted. For CY 2009, our analysis of the CY 2007 hospital outpatient claims data used for CY 2009 ratesetting revealed a HCPCS code-specific median cost of approximately $8,225 for CPT code 50542, which is substantially higher than the APC median cost of approximately $4,515 for APC 0132. We also found, after further examination of all of the procedures currently assigned to APC 0132, that CPT code 47370 (Laparoscopy, surgical, ablation of one or more liver tumor(s); radiofrequency) that describes another laparoscopic ablation procedure has a HCPCS code-specific median cost of approximately $6,520, which is also significantly higher than the median cost for APC 0132. While there are numerous procedures assigned to APC 0132, most are low volume and only 1 procedure has significant volume consisting of 862 single claims, with a HCPCS code-specific median cost of approximately $4,651, significantly lower than the median costs of the 2 ablation procedures. Based on these findings, we believe that creation of a new clinical APC, specifically APC 0174 (Level IV Laparoscopy) with status indicator ''T,'' and the reassignment of both CPT codes 50542 and 47370 for laparoscopic ablation procedures to this new APC, are the most appropriate approaches to ensuring clinical and resource homogeneity within APC 0132 and new APC 0174.

After consideration of the public comments received, we are modifying our CY 2009 proposed configuration of APC 0132 by reassigning CPT codes 50542 and 47370 from APC 0132 to new clinical APC 0174 for laparoscopic procedures, which has a final CY 2009 APC median cost of approximately $7,731. Reconfigured APC 0132 has a final CY 2009 APC median cost of approximately $4,515.

c. Percutaneous Renal Cryoablation (APC 0423)

In the CY 2009 OPPS/ASC proposed rule, we proposed to continue to assign CPT code 50593 (Ablation, renal tumor(s), unilateral, percutaneous, cryotherapy) to APC 0423 (Level II Percutaneous Abdominal and Biliary Procedures) for CY 2009, with a proposed payment rate of approximately $3,028. This CPT code was new in CY 2008; however, the same service was previously described by CPT code 0135T (Ablation renal tumor(s), unilateral, percutaneous, cryotherapy). We note that in CY 2007, based upon the APC Panel's recommendation made at its March 2006 meeting, we reassigned CPT code 50593 (then CPT code 0135T) from APC 0163 (Level IV Cystourethroscopy and other Genitourinary Procedures) to APC 0423, with a payment rate of approximately $2,297 in CY 2007. We expected hospitals, when reporting CPT code 50593, to also report the device HCPCS code, C2618 (Probe, cryoablation), associated with the procedure.

Comment: Several commenters disagreed with the proposed continued APC assignment of CPT code 50593 to APC 0423. The commenters believed that the proposed payment rate for APC 0423 does not accurately reflect the costs incurred by hospitals that perform CPT code 50593, and recommended that CMS assign this procedure to its own APC and base payment for that APC on the mean cost of CPT code 50593. They also believed that the proposed inadequate payment rate for CPT code 50593 is attributable to the use of claims data that do not accurately capture the full costs of CPT code 50593.

Response: Based on our review of the procedures assigned to APC 0423, the public comments received, and the CY 2006 recommendation of the APC Panel regarding renal cryoablation, we believe that we have appropriately assigned CPT code 50593 to APC 0423 for CY 2009 based on clinical and resource considerations. We continue to believe that CPT code 50593 is appropriately assigned to APC 0423 because it is grouped with other procedures that share similar clinical and resource characteristics. Further examination of the procedures assigned to APC 0423 revealed that the HCPCS code-specific median costs of these services are all similar, ranging from $2,875 to $3,959.

In regard to the commenters' request that CMS assign CPT code 50593 to its own APC and provide payment based on the mean cost of this procedure, it has been our policy since the implementation of the OPPS that the

final APC relative weights and payment rates are based on median hospital costs, not mean costs, for the clinical APC groups. The OPPS relies on the relativity of costs for procedures as reported by hospitals in establishing payment rates, and we do not believe it would be appropriate to utilize a different payment methodology based on mean cost for one APC, while the payment rates for the other clinical APCs would be based on median costs. Mean and median costs are two different statistical measures of central tendency and, based on common distributions, mean costs typically are higher than median costs. Therefore, we do not believe it would be appropriate to use a combination of these measures to establish the payment weights for different clinical APCs under the OPPS.

Comment: Some commenters requested that CMS designate CPT code 50593 as a device-dependent procedure. They requested that CMS establish a claims processing edit to ensure that the device HCPCS code C2618 (Probe, cryoablation), used during the procedure, is reported on percutaneous renal cryoablation claims to ensure correctly coded claims for future ratesetting that accurately reflect hospitals' costs for CPT code 50593. Commenters indicated that the failure of hospitals to report the device HCPCS C-code for the cryoablation probe on claims leads to an underestimation of hospital costs for the procedure.

Response: We acknowledge the concerns raised by the commenters regarding hospitals' failure to report the device HCPCS code C2618 with the procedure in many cases. We further examined our CY 2007 claims data used for this final rule with comment period to determine the frequency of billing CPT code 50593 with and without HCPCS code C2618. Our analysis revealed that the CY 2009 final rule median cost for CPT code 50593 of approximately $3,959, based on 118 single bills used for CY 2009 ratesetting, falls within the range for those procedures billed with and without the device HCPCS code C2618. Specifically, our data showed a median cost of approximately $4,632 based on 48 single bills for procedures reported with the device HCPCS code C2618 and a median cost of about $2,924 based on 71 single bills for those procedures billed without the device HCPCS C-code. (We note that of the 119 single bills available for CY 2009 ratesetting, we trimmed 1 claim with excessively high cost when setting the CY 2009 final rule median.) Even considering only those claims for percutaneous renal cryoablation with the device HCPCS code and higher median cost, the procedure would be appropriately assigned to APC 0423 based on that cost. As a result of this analysis, which showed that both claim subsets could be appropriately mapped to APC 0423 based on their costs, we believe it continues to be appropriate to use all single claims for CPT code 50593 for ratesetting and that the procedure is appropriately assigned to APC 0423.

Further, we do not agree that we should create a claims processing edit for CPT code 50593 and HCPCS code C2618 for the cryoablation probe, nor do we believe that we should identify any individual HCPCS codes as device-dependent HCPCS codes under the OPPS for CY 2009. We create device edits, when appropriate, for procedures assigned to device-dependent APCs, where those APCs have been historically identified under the OPPS as having very high device costs. Because APC 0423 is not a device-dependent APC and the costs of percutaneous renal cryoablation with and without HCPCS code C2618 are both within the range of costs for procedures assigned to APC 0423, we are not creating claims processing edits for CY 2009. Furthermore, in the case of APC 0423, we note that while all of the procedures assigned to this APC require the use of implantable devices, for many of the procedures there are no Level II HCPCS codes that describe all of the technologies that may be used in the procedures. Therefore, it would not be possible for us to develop procedure-to-device edits for most of the CPT codes assigned to the APC.

We remind hospitals that they must report all of the HCPCS codes that appropriately describe the items used to provide services, regardless of whether the HCPCS codes are packaged or paid separately. If hospitals use more than one probe in performing CPT code 50593, we expect hospitals to report this information on the claim and adjust their charges accordingly. Hospitals should report the number of cryoablation probes used to perform CPT code 50593 as the units of HCPCS code C2618 which describes these devices, with their charges for the probes. Since CY 2005, we have required hospitals to report device HCPCS codes for all devices used in procedures if there are appropriate HCPCS codes available. In this way, we can be confident that hospitals have included charges on their claims for costly devices used in procedures when they submit claims for those procedures.

After consideration of all the public comments received, we are finalizing our CY 2009 proposal, without modification, to continue to assign CPT code 50593 to APC 0423, which has a final CY 2009 APC median cost of approximately $3,003.

d. Magnetic Resonance Guided Focused Ultrasound (MRgFUS) Ablation of Uterine Fibroids (APC 0067)

In the CY 2009 OPPS/ASC proposed rule, we proposed to continue to assign CPT codes 0071T (Focused ultrasound ablation of uterine leiomyomata, including MR guidance; total leiomyomata volume less than 200 cc of tissue) and 0072T (Focused ultrasound ablation of uterine leiomyomata, including MR guidance; total leiomyomata volume greater or equal to 200 cc of tissue) to APC 0067 (Level III Stereotactic Radiosurgery, MRgFUS, and MEG), with a payment rate of approximately $3,664. The CY 2008 payment rate for these services is approximately $3,930. Further, at its August 2008 meeting, the APC Panel recommended that CMS maintain the APC assignment for both procedures, specifically CPT codes 0071T and 0072T, to APC 0067, similar to the recommendation the APC Panel made for these procedures at its March 2007 meeting.

Comment: Several commenters commended CMS for its proposal to assign the MRgFUS procedures, specifically CPT codes 0071T and 0072T, to APC 0067 because of their clinical similarity to other services also assigned to that APC. However, the commenters disagreed with the proposed payment rate of $3,664 for these procedures. They claimed that the payment rate for the procedures continues to be lower than the hospital costs incurred to provide the services and does not accurately reflect all of the components required to perform the MRgFUS procedures. They asserted that the proposed payment rate does not include payment for the treatment planning required to perform the procedure. The commenters recommended that CMS reassign CPT codes 0071T and 0072T to another APC in the same clinical series, specifically APC 0127 (Level IV Stereotactic Radiosurgery, MRgFUS, and MEG), with a proposed payment rate of approximately $7,608, because assignment to this APC would provide more appropriate payment for the hospital resources needed to perform the procedures.

Response: We disagree that the MRgFUS procedures are clinically similar to the single multi-source cobalt-based stereotactic radiosurgery (SRS) service that is currently assigned to APC 0127, and which we believe requires significantly greater hospital resources.

The SRS procedure is generally performed on intracranial lesions, and requires immobilization of the patient's head using a frame that is applied to the skull. Several hundred converging beams of gamma radiation are then applied to the target lesion, requiring their accurate placement to the fraction of a millimeter. In contrast, during MRgFUS, magnetic resonance imaging guidance is utilized to confirm tissue heating, while multiple sonications at various points in the fibroid treatment area are executed until the entire target volume has been treated.

Our analysis of the latest CY 2007 hospital outpatient claims data indicates that MRgFUS procedures are rarely performed on Medicare beneficiaries. As we stated in the CY 2006 OPPS final rule with comment period (70 FR 68600) and in the CYs 2007 and 2008 OPPS/ASC final rules with comment period (71 FR 68050 and 72 FR 66710, respectively), because treatment of uterine fibroids is most common among women younger than 65 years of age, we expect very limited Medicare claims for these procedures. In fact, for claims submitted from CYs 2005 through 2007, our claims data showed that there were only two claims for CPT code 0071T in CY 2005, one claim in CY 2006, and again only one claim in CY 2007. There were no claims submitted for CPT code 0072T from CYs 2005 through 2007. Therefore, we have no reliable information from hospital claims regarding the costs of MRgFUS procedures. However, we continue to believe that the clinical and expected resource characteristics for these procedures resemble the first or complete session linear accelerator-based SRS treatment delivery services that also are assigned to APC 0067.

Further, in response to a public comment letter that was presented at its August 2008 meeting, the APC Panel reiterated its March 2007 recommendation to maintain the current placement of CPT codes 0071T and 0072T in APC 0067 for CY 2009. At that meeting, a stakeholder reported that the reason for requesting the reassignment of the MRgFUS procedures from APC 0067 to APC 0127 is to set the standard payment rate for other payers because many of them base their payment rates on Medicare rates. We remind hospitals that the payment rates set for the services, procedures, and items paid under the OPPS are based mainly on costs from hospitals' claims, and are established in accordance with the payment policies of the OPPS to provide appropriate payment for the care of Medicare beneficiaries. Non-Medicare payers set their own payment rates based on their payment policies.

After consideration of the public comments received and the APC Panel recommendations from its March 2007 and August 2008 meetings, we are finalizing our CY 2009 proposal, without modification, to continue to assign CPT codes 0071T and 0072T to APC 0067, with a final CY 2009 APC median cost of approximately $3,718.

e. Prostatic Thermotherapy (APC 0429)

In the CY 2009 OPPS/ASC proposed rule, we proposed to continue the assignment of CPT codes 53850 (Transurethral destruction of prostate tissue; by microwave thermotherapy) and 53852 (Transurethral destruction of prostate tissue; by radiofrequency thermotherapy) to APC 0429 (Level V Cystourethroscopy and other Genitourinary Procedures) for CY 2009, with a proposed payment rate of approximately $3,016.

Comment: One commenter, who stated that CPT codes 53850 and 53852 were assigned to APC 0163, urged CMS to investigate whether these procedures were correctly assigned to APC 0163 as the commenter believed that APC 0429 would be a more appropriate assignment for the procedures based on clinical and resource considerations. The commenter recommended that the APC assignments of CPT codes 53850 and 53852 be discussed at the next APC Panel meeting.

Response: As we stated in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66709), as part of our annual review, we examine the APC assignments for all items and services under the OPPS for appropriate placements in the context of our proposed policies for the update year. This review involves careful and extensive analysis of our hospital outpatient claims data, as well as input from our medical advisors, the APC Panel, and the public. As stated in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66709), we agreed with a commenter on the CY 2008 OPPS/ASC proposed rule that reassignment of CPT codes 53850 and 53852 to APC 0429 with a CY 2008 median cost of approximately $2,844 would be appropriate, based on their clinical and resource similarities with other procedures to destroy prostate tissue also residing in that APC. We proposed to continue to assign these two procedures to APC 0429 for CY 2009; therefore, our proposed assignment already reflected the commenter's requested assignment. Consequently, because CPT codes 53850 and 53852 are already assigned to APC 0429, we do not see the need to discuss this issue at the next APC Panel meeting.

After consideration of the public comment received, we are finalizing our CY 2009 proposal, without modification, to continue to assign CPT codes 53850 and 53852 to APC 0429, with a final CY 2009 APC median cost of approximately $2,958.

3. Nervous System Procedures

a. Magnetoencephalography (MEG) (APC 0067)

APC 0067 (Level III Stereotactic Radiosurgery, MRgFUS and MEG), with a proposed CY 2009 payment rate of approximately $3,664, contains five HCPCS codes: CPT code 95965 (Magnetoencephalography, recording and analysis; for spontaneous brain magnetic activity (e.g., epileptic cerebral cortex)); HCPCS code G0173 (Linear accelerator-based stereotactic radiosurgery, complete course of therapy in one session); HCPCS code G0399 (Image-guided robotic linear accelerator-based stereotactic radiosurgery, complete course of therapy in one session or first session of fractionated treatment); CPT code 0071T (Focused ultrasound ablation of uterine leiomyomata, including MR guidance; total leiomyomata volume less than 200 cc of tissue); and CPT code 0072T (Focused ultrasound ablation of uterine leiomyomata, including MR guidance; total leiomyomata volume greater or equal to 200 cc of tissue). In March 2007, the APC Panel recommended that CPT code 95965 be placed in APC 0067. Given the clinical and resource similarities among CPT code 95965 and the other existing codes in APC 0067, we agreed and reassigned CPT code 95965 to APC 0067, to which it was assigned for the CY 2008 OPPS with a payment rate of approximately $3,930. At its August 2008 meeting, the APC Panel recommended that CMS retain CPT code 95965 in APC 0067 for CY 2009.

Comment: One commenter objected to the proposed reduction in payment for APC 0067, on the basis that it would reduce, by approximately $300, the CY 2009 payment for the service reported under CPT code 95965, compared to the CY 2008 payment rate. The commenter asked that CMS determine whether the claims from the hospital in which the commenter furnished services were included in the set of single bills used to calculate the proposed payment rate.

Response: Our final rule data show a median cost for APC 0067 of approximately $3,718 and a median cost for CPT code 95965 of approximately

$2,227. We agree with the APC Panel that CPT code 95965 is clinically compatible with the other services assigned to APC 0067 and that the median cost for CPT code 95965, while somewhat lower than the median costs of the other services also assigned to the APC, is consistent with the CPT code's assignment to APC 0067. The process we use to select the claims used in the calculation of the OPPS rates is discussed in section II. of this final rule with comment period. We make the claims we use for ratesetting available for public examination and analysis through the limited and identifiable OPPS data sets so that the public may review them if there are questions about particular claims used to set the rates under the OPPS. Information on these files is available on the CMS Web site at: *http://www.cms.hhs.gov/LimitedDataSets/06_HospitalOPPS.asp*.

After consideration of the public comment received, we are retaining the assignment of CPT code 95965 to APC 0067 for CY 2009, as recommended by the APC Panel, with a final CY 2009 APC median cost of approximately $3,718.

b. Chemodenervation (APC 0204)

In the CY 2009 OPPS/ASC proposed rule, we proposed to continue our assignment of CPT code 64612 (Chemodenervation of muscle(s); muscle(s) innervated by facial nerve (e.g., for blepharospasm, hemifacial spasm) to APC 0204 (Level I Nerve Injections), with a proposed payment rate of approximately $165. The CY 2008 payment rate for this service is approximately $148. In addition, for CY 2009, we proposed to reassign CPT codes 64613 (Chemodenervation of muscle(s); neck muscle(s) (e.g., for spasmodic torticollis, spasmodic dysphonia)) and 64614 (Chemodenervation of muscle(s); extremity(s) and/or trunk muscle(s) (e.g., for dystonia, cerebral palsy, multiple sclerosis)) from APC 0204 to APC 0206 (Level II Nerve Injections), with a proposed payment rate of approximately $243.

Comment: Several commenters requested that CMS reassign CPT code 64612 from APC 0204 to APC 0206, the same APC to which CMS proposed to assign CPT codes 64613 and 64614. Commenters claimed that CPT code 64612 is clinically similar and comparable in resource use to CPT codes 64613 and 64614 and, therefore, believed that CPT code 64612 should also be assigned to APC 0206.

Response: CPT code 64612 has a HCPCS code-specific median cost of approximately $138, based on over 5,000 single claims, and we proposed to assign this service to APC 0204, which has a final median cost of approximately $161. We believe that APC 0204 appropriately reflects the hospital resource characteristics of CPT code 64612 and provides appropriate payment to hospitals for this service. Further, we believe that other procedures currently assigned to APC 0204 are similar to CPT code 64612 with respect to their clinical characteristics.

In contrast, CPT code 64613 has a HCPCS code-specific median cost of approximately $197 based on approximately 5,700 single claims. Similarly, CPT code 64614 has a HCPCS code-specific median cost of approximately $217 based on over 5,700 single claims data. We proposed to assign both of these services to APC 0206, which has a final APC median cost of approximately $236. Our CY 2007 claims data used for this final rule with comment period revealed that the hospital resource costs for CPT codes 64613 and 64614 are significantly greater than the hospital resource costs of CPT code 64612. Therefore, we believe the proposed assignment of CPT code 64612 to APC 0204 is appropriate for CY 2009, while CPT codes 64613 and 64614 are more appropriately assigned to APC 0206.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, to assign CPT code 64612 to APC 0204, with a final CY 2009 APC median cost of approximately $161.

4. Ocular Procedures

a. Suprachordial Delivery of Pharmacologic Agent (APC 0237)

In Addendum B to the CY 2008 OPPS/ASC final rule with comment period (72 FR 66997), we assigned CPT code 0186T comment indicator ''NI'' to indicate that it was a new code for CY 2008 with an interim payment status subject to public comment following publication of that rule. In that same final rule with comment period, we also made an interim assignment of CPT code 0186T to APC 0236 (Level II Posterior Segment Eye Procedures), with a payment rate of approximately $1,161. CPT code 0186T was released by the AMA on July 1, 2007, and was implemented on January 1, 2008. Under the OPPS, we generally assign a new Category III CPT code to an APC if we believe that the procedure, if covered, would be appropriate for separate payment under the OPPS. A specific assignment to a clinical APC where HCPCS codes with comparable clinical and resource characteristics also reside is based on a variety of types of information including, but not limited to: advice from our medical advisors, information from specialty societies, review of resource costs for related services from historical hospital claims data, consideration of the clinical similarity of the service to existing procedures, and review of any other information available to us.

We did not receive any public comments regarding the interim assignment of CPT code 0186T to APC 0236 for CY 2008.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41472), we proposed to reassign CPT code 0186T (Suprachordial delivery of pharmacologic agent (does not include supply of medication)) to APC 0237 (Level II Posterior Segment Eye Procedures), from APC 0236, which we proposed to delete for CY 2009. As stated earlier, this CPT code was released by CPT on July 1, 2007, and implemented on January 1, 2008; therefore, we had no CY 2007 claims data for this service upon which to base our CY 2009 proposal.

We proposed to reassign CPT code 0186T to APC 0237, with a proposed CY 2009 payment rate of approximately $1,449, based upon our review and analysis of the clinical and resource costs associated with CPT code 0186T. We agreed with a presenter at the March 2008 APC Panel meeting that the most appropriate CY 2009 APC assignment for the procedure is APC 0237. The presenter indicated that CPT code 0186T is analogous to CPT code 67027 (Implantation of intravitreal drug delivery system (e.g., ganciclovir implant), includes concomitant removal of vitreous), which currently is assigned to APC 0672 (Level IV Posterior Segment Eye Procedures). Although the presenter stated that both procedures share similar clinical characteristics and resource costs, the presenter believed that CPT code 0186T would be most appropriately assigned to APC 0237 based on the procedure's estimated hospital cost. The APC Panel noted that because the CPT code is new and there are no claims data for this procedure, the APC Panel would not make a specific CY 2009 APC assignment recommendation to CMS at that time. However, the APC Panel recommended that CMS share with the APC Panel the claims data for CPT code 0186T at the first CY 2009 APC Panel meeting, and that CMS reevaluate the assignment of CPT code 0186T to APC 0236 on the basis of those data.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41472), we accepted the recommendation of the APC Panel and

stated that we would provide the initial OPPS claims data available for this CPT code, based on CY 2008 claims data, for the first CY 2009 APC Panel meeting. These data will not be available until the CY 2010 OPPS/ASC rulemaking cycle.

Comment: One commenter agreed with the proposed reassignment of CPT code 0186T to APC 0237. The commenter believed that the resource costs of the procedure reported with CPT code 0186T best matched those of the other eye procedures also assigned to APC 0237.

Response: We appreciate the commenter's support for our proposal.

We are finalizing our CY 2009 proposal, without modification, to assign CPT code 0186T to APC 0237, with a final CY 2009 APC median cost of approximately $1,442. We are accepting the APC Panel's March 2008 recommendation, and we will provide the initial OPPS claims data available for this CPT code, based on CY 2008 claims data, for the first CY 2009 APC Panel meeting.

b. Scanning Ophthalmic Imaging (APC 0230)

CPT code 0187T (Scanning computerized ophthalmic diagnostic imaging, anterior segment, with interpretation and report, unilateral) was released by the AMA on July 1, 2007, and implemented on January 1, 2008. In the CY 2008 OPPS/ASC final rule with comment period (72 FR 66997), we assigned CPT code 0187T to APC 0230 (Level I Eye Tests & Treatments) with a payment rate of approximately $38. We also assigned this CPT code comment indicator ''NI'' in Addendum B to the CY 2008 OPPS/ASC final rule with comment period to indicate that it is a new code for CY 2008 with an interim payment status subject to public comment following publication of that rule. As has been our longstanding policy, we do not respond to public comments submitted on the OPPS/ASC final rule with comment period regarding these interim assignments in the proposed OPPS/ASC rule for the following calendar year. However, we do review and take into consideration these public comments received during the development of the proposed rule when we evaluate APC assignments for the following year, and we respond to them in the final rule for that following calendar year.

In the CY 2009 OPPS/ASC proposed rule, we proposed to continue the assignment of CPT code 0187T to APC 0230, with a proposed payment rate of approximately $42 for CY 2009.

Comment: One commenter on the CY 2008 OPPS/ASC final rule with comment period requested that CMS reassign CPT code 0187T from APC 0230 to APC 0266 (Level II Diagnostic and Screening Ultrasound), which is the APC assigned to CPT code 76513 (Ophthalmic ultrasound, diagnostic; anterior segment ultrasound, immersion (water bath) b-scan or high resolution biomicroscopy). The commenter indicated that CPT code 76513 is very similar to CPT code 0187T because both procedures require imaging of the anterior segment of the eye, use similar resources, and utilize the same level of technical expertise in performing the procedures. However, the commenter cited a difference between the two procedures regarding how images are acquired. Specifically, the commenter explained that CPT code 0187T generates images based on light, whereas CPT code 76513 generates images by ultrasound.

Response: Based on our review of the clinical characteristics of the procedure and its expected resource costs, we continue to believe that APC 0230 is the most appropriate assignment for CPT code 0187T. We will reevaluate this APC assignment for future OPPS updates as additional information becomes available to us. We expect claims data for CPT code 0187T to be first available for the CY 2010 OPPS/ASC rulemaking cycle.

We did not receive any public comments on our proposal to continue to assign CPT code 0187T to APC 0230 for CY 2009. Therefore, we are finalizing our CY 2009 proposal, without modification, to assign CPT code 0187 to APC 0230, with a final CY 2009 APC median cost of approximately $42.

5. Orthopedic Procedures

a. Closed Treatment of Fracture of Finger/Toe/Trunk (APCs 0129, 0138, and 0139)

We received a comment in response to the CY 2008 OPPS/ASC proposed rule on the variety of procedures assigned to APC 0043 (Closed Treatment Fracture Finger/Toe/Trunk). The commenter did not agree with the placement of various procedures in APC 0043 because many of the procedures vary in resource costs. In particular, the commenter asserted that the costs associated with finger treatments, hip dislocations, and spinal fractures vary significantly, and further stated that the costs of treating spinal fractures are significantly greater than the costs associated with finger or toe fractures. The commenter also expressed concern that grouping all of the approximately 150 procedures in one clinical APC violated the 2 times rule, and that continuing to exempt APC 0043 from the 2 times rule was not appropriate. The commenter recommended that CMS pay appropriately for these procedures, and stated that this could be achieved by dividing the procedures currently assigned to APC 0043 into several APCs. However, the commenter did not make any specific recommendations regarding alternative APC configurations. Because APC 0043 contains so many different fracture treatment procedures with low volume, we were concerned that any restructuring without the benefit of public comment for CY 2008 could result in a reconfiguration of APC 0043 that did not reflect improved clinical and resource homogeneity. Therefore, we did not reconfigure APC 0043 for CY 2008, and we finalized a payment rate for APC 0043 of approximately $113.

In the CY 2008 OPPS/ASC final rule with comment period (72 FR 66723), we stated that we agreed with the commenter that grouping all of the closed fracture treatment procedures in one APC may not accurately distinguish the more expensive from the less resource-intensive fracture treatment procedures. We also explained that that there were only 13 procedures with the frequency necessary to assess the APC's alignment with the 2 times rule. The other procedures were all very low volume and, therefore, not significant procedures for purposes of evaluating the APC with respect to the 2 times rule. We noted that APC 0043 had been exempted from the 2 times rule for the past 7 years under the OPPS, and we had not previously received public comments regarding the structure of this APC. We also stated that we would bring this APC issue to the attention of the APC Panel at its March 2008 meeting, and we specifically invited public recommendations on potential alternative APC configurations for the services assigned to APC 0043 for consideration for the CY 2009 OPPS rulemaking cycle. We did not receive any public comments on this APC issue in response to the CY 2008 OPPS/ASC final rule with comment period.

Based on the updated CY 2007 hospital outpatient claims data available for the March 2008 APC Panel meeting, we presented a possible reconfiguration of APC 0043 for the APC Panel's consideration that would delete APC 0043 and replace it with three new APCs, configured based on the hospital resource data from the CY 2007 claims data, as well as the clinical characteristics of the procedures currently assigned to APC 0043. The APC Panel recommended that CMS

adopt this approach, and we accepted the APC Panel's recommendation for CY 2009. Therefore, in the CY 2009 OPPS/ASC proposed rule (73 FR 41472), we proposed three new APCs to replace APC 0043, with proposed configurations as displayed in Table 15 of the proposed rule for CY 2009.

Based on these configurations, proposed new APC 0129 (Level I Closed Treatment Fracture Finger/Toe/Trunk) had a proposed APC median cost of approximately $104, with the HCPCS code-specific median costs of the significant procedures ranging from approximately $74 to $124. Proposed new APC 0138 (Level II Closed Treatment Fracture Finger/Toe/Trunk) had a proposed APC median cost of approximately $397, with one significant procedure with a HCPCS code-specific median cost of approximately $399. Proposed new APC 0139 (Level III Closed Treatment Fracture Finger/Toe/Trunk) had a proposed APC median cost of approximately $1,340, with one significant volume HCPCS code whose median cost was approximately $1,574.

We further stated in the CY 2009 OPPS/ASC proposed rule (73 FR 41473) that while all three proposed APCs contained many procedures that were very low in volume, this reconfiguration reflected an attempt to realign the procedures previously assigned to APC 0043 into more homogeneous APC groups based on their clinical characteristics and resource costs. Therefore, in the CY 2009 OPPS/ASC proposed rule, we proposed to reconfigure APC 0043 by deleting APC 0043 and reassigning the HCPCS codes previously assigned to APC 0043 to proposed new APCs 0129, 0138, and 0139.

Comment: Several commenters commended CMS for reconfiguring APC 0043 into the proposed three new APCs 0129, 0138, and 0139.

Response: We appreciate the commenters' support for our proposal.

For this final rule with comment period, we analyzed our CY 2007 claims data used for CY 2009 OPPS ratesetting, and determined that the final median costs for proposed new APCs 0129, 0138, and 0139 are relatively similar to those for the CY 2009 OPPS/ASC proposed rule. Specifically, APC 0129 has a final APC median cost of approximately $103, with the HCPCS code-specific median costs of the significant procedures ranging from approximately $68 to $123, compared to a proposed APC median cost of approximately $104. APC 0138 has a final APC median cost of approximately $397, with one significant procedure with a HCPCS code-specific median cost of approximately $396, compared to a proposed APC median cost of approximately $397. Finally, APC 0139 has a final APC median cost of about $1,283, with one significant volume HCPCS code whose median cost is approximately $1,393, compared to a proposed APC median cost of approximately $1,340.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, to delete APC 0043 and reassign the HCPCS codes previously assigned to APC 0043 to new APCs 0129, 0138, and 0139, with final CY 2009 APC median costs of approximately $103, $397, and $1,283, respectively.

TABLE 17—FINAL APCS FOR CLOSED TREATMENT FRACTURE OF FINGER/TOE/TRUNK

CY 2009 HCPCS code	Final CY 2009 SI	CY 2009 short descriptor	Final CY 2009 approximate APC median cost	Final CY 2009 APC
21800	T	Treatment of rib fracture	$103	0129
21820	T	Treat sternum fracture		
22305	T	Treat spine process fracture		
23500	T	Treat clavicle fracture		
23540	T	Treat clavicle dislocation		
23570	T	Treat shoulder blade fx		
23600	T	Treat humerus fracture		
23620	T	Treat humerus fracture		
23650	T	Treat shoulder dislocation		
23675	T	Treat dislocation/fracture		
23929	T	Shoulder surgery procedure		
24500	T	Treat humerus fracture		
24505	T	Treat humerus fracture		
24530	T	Treat humerus fracture		
24560	T	Treat humerus fracture		
24565	T	Treat humerus fracture		
24576	T	Treat humerus fracture		
24600	T	Treat elbow dislocation		
24640	T	Treat elbow dislocation		
24650	T	Treat radius fracture		
24670	T	Treat ulnar fracture		
24675	T	Treat ulnar fracture		
24999	T	Upper arm/elbow surgery		
25500	T	Treat fracture of radius		
25530	T	Treat fracture of ulna		
25535	T	Treat fracture of ulna		
25560	T	Treat fracture radius & ulna		
25600	T	Treat fracture radius/ulna		
25622	T	Treat wrist bone fracture		
25630	T	Treat wrist bone fracture		
25650	T	Treat wrist bone fracture		
25660	T	Treat wrist dislocation		
25675	T	Treat wrist dislocation		
25680	T	Treat wrist fracture		
25999	T	Forearm or wrist surgery		

TABLE 17—FINAL APCS FOR CLOSED TREATMENT FRACTURE OF FINGER/TOE/TRUNK—Continued

CY 2009 HCPCS code	Final CY 2009 SI	CY 2009 short descriptor	Final CY 2009 approximate APC median cost	Final CY 2009 APC
26600	T	Treat metacarpal fracture		
26605	T	Treat metacarpal fracture		
26641	T	Treat thumb dislocation		
26670	T	Treat hand dislocation		
26700	T	Treat knuckle dislocation		
26705	T	Treat knuckle dislocation		
26720	T	Treat finger fracture, each		
26725	T	Treat finger fracture, each		
26740	T	Treat finger fracture, each		
26742	T	Treat finger fracture, each		
26750	T	Treat finger fracture, each		
26755	T	Treat finger fracture, each		
26770	T	Treat finger dislocation		
26989	T	Hand/finger surgery		
27193	T	Treat pelvic ring fracture		
27200	T	Treat tail bone fracture		
27220	T	Treat hip socket fracture		
27230	T	Treat thigh fracture		
27250	T	Treat hip dislocation		
27256	T	Treat hip dislocation		
27265	T	Treat hip dislocation		
27267	T	Cltx thigh fx		
27299	T	Pelvis/hip joint surgery		
27501	T	Treatment of thigh fracture		
27503	T	Treatment of thigh fracture		
27508	T	Treatment of thigh fracture		
27516	T	Treat thigh fx growth plate		
27517	T	Treat thigh fx growth plate		
27520	T	Treat kneecap fracture		
27530	T	Treat knee fracture		
27538	T	Treat knee fracture(s)		
27550	T	Treat knee dislocation		
27560	T	Treat kneecap dislocation		
27599	T	Leg surgery procedure		
27750	T	Treatment of tibia fracture		
27760	T	Cltx medial ankle fx		
27767	T	Cltx post ankle fx		
27768	T	Cltx post ankle fx w/mnpj		
27780	T	Treatment of fibula fracture		
27786	T	Treatment of ankle fracture		
27788	T	Treatment of ankle fracture		
27808	T	Treatment of ankle fracture		
27816	T	Treatment of ankle fracture		
27824	T	Treat lower leg fracture		
27830	T	Treat lower leg dislocation		
27899	T	Leg/ankle surgery procedure		
28400	T	Treatment of heel fracture		
28430	T	Treatment of ankle fracture		
28435	T	Treatment of ankle fracture		
28450	T	Treat midfoot fracture, each		
28455	T	Treat midfoot fracture, each		
28470	T	Treat metatarsal fracture		
28475	T	Treat metatarsal fracture		
28490	T	Treat big toe fracture		
28495	T	Treat big toe fracture		
28510	T	Treatment of toe fracture		
28515	T	Treatment of toe fracture		
28530	T	Treat sesamoid bone fracture		
28540	T	Treat foot dislocation		
28600	T	Treat foot dislocation		
28605	T	Treat foot dislocation		
28630	T	Treat toe dislocation		
28660	T	Treat toe dislocation		
28899	T	Foot/toes surgery procedure		
20660	T	Apply, rem fixation device	$397	0138
22310	T	Treat spine fracture		
23520	T	Treat clavicle dislocation		
23525	T	Treat clavicle dislocation		
23545	T	Treat clavicle dislocation		

TABLE 17—FINAL APCS FOR CLOSED TREATMENT FRACTURE OF FINGER/TOE/TRUNK—Continued

CY 2009 HCPCS code	Final CY 2009 SI	CY 2009 short descriptor	Final CY 2009 approximate APC median cost	Final CY 2009 APC
23575	T	Treat shoulder blade fx		
23665	T	Treat dislocation/fracture		
24535	T	Treat humerus fracture		
24577	T	Treat humerus fracture		
24655	T	Treat radius fracture		
25505	T	Treat fracture of radius		
25520	T	Treat fracture of radius		
25565	T	Treat fracture radius & ulna		
25605	T	Treat fracture radius/ulna		
25624	T	Treat wrist bone fracture		
25635	T	Treat wrist bone fracture		
26340	T	Manipulate finger w/anesth		
26645	T	Treat thumb fracture		
26675	T	Treat hand dislocation		
27238	T	Treat thigh fracture		
27246	T	Treat thigh fracture		
27500	T	Treatment of thigh fracture		
27510	T	Treatment of thigh fracture		
27810	T	Treatment of ankle fracture		
27818	T	Treatment of ankle fracture		
27840	T	Treat ankle dislocation		
28570	T	Treat foot dislocation		
22315	T	Treat spine fracture	$1,283	0139
23505	T	Treat clavicle fracture		
23605	T	Treat humerus fracture		
23625	T	Treat humerus fracture		
24620	T	Treat elbow fracture		
25259	T	Manipulate wrist w/anesthes		
25690	T	Treat wrist dislocation		
26607	T	Treat metacarpal fracture		
26706	T	Pin knuckle dislocation		
27502	T	Treatment of thigh fracture		
27532	T	Treat knee fracture		
27752	T	Treatment of tibia fracture		
27762	T	Cltx med ankle fx w/mnpj		
27781	T	Treatment of fibula fracture		
27825	T	Treat lower leg fracture		
27831	T	Treat lower leg dislocation		
28405	T	Treatment of heel fracture		
28575	T	Treat foot dislocation		

b. Arthroscopic and Other Orthopedic Procedures (APCs 0041 and 0042)

For CY 2009, we proposed the following two primary APCs for arthroscopic procedures: (1) APC 0041 (Level I Arthroscopy), comprised of 44 procedures with a proposed CY 2009 payment rate of approximately $1,933; and (2) APC 0042 (Level II Arthroscopy), comprised of 30 procedures with a proposed payment rate of approximately $3,233. The CY 2008 payment rates for APCs 0041 and 0042, with the same APC configurations as proposed for CY 2009, are approximately $1,833 and $2,911, respectively.

Comment: The commenters stated that the proposed configurations of arthroscopic procedures assigned to APCs 0041 and 0042 fail to appropriately recognize the distinct clinical and resource features of the wide range of arthroscopic procedures now being provided to Medicare beneficiaries. Furthermore, they believed that there are services proposed for assignment to APC 0042 that are not arthroscopies and should be reassigned to APC 0052 (Level IV Musculoskeletal Procedure Except Hand and Foot). The commenters indicated that, as proposed, CMS data include a significant number of procedures in which the payment would be less than the median cost of the procedure. They believed that this problem was compounded by the reduced payments made for the procedures in ASCs. The commenters argued that the low level of payment for these APCs would result in barriers to high quality of care in the ASC setting. Specifically, the commenters requested that CMS reassign CPT codes 27412 (Autologous chondrocyte implantation, knee) and 27415 (Osteochondral allograft, knee, open) to APC 0052 because these are not arthroscopic procedures. They believed that these two procedures were clinically similar to procedures in APC 0052 and that their median costs were more similar to the median costs for other services in APC 0052.

The commenters further requested that CMS create 11 new arthroscopy APCs to ensure that the services within the arthroscopy APCs are clinically homogenous and contain only those procedures that are similar in terms of resource utilization. Specifically, the commenters requested that CMS restructure the arthroscopy APCs to reflect the following clinical categories: Diagnostic arthroscopies, lower extremity versus upper extremity arthroscopies without implants, and lower extremity versus upper extremity arthroscopies with implants. The

commenters believed that these clinical distinctions parallel the distinctions CMS has created for other classes of procedures, including other orthopedic procedures, and would more accurately and equitably reflect the clinical characteristics and resource utilization of the services provided. The commenters further asked that CMS consider the new APCs with implants to be device-dependent APCs so that they may be considered to be device-intensive for ASC ratesetting purposes in order to ''pass through'' the cost of the implants in the ASC payment.

Response: As a result of the concerns raised by the commenters, we reviewed the clinical characteristics and HCPCS code-specific median costs from the CY 2007 claims data for all procedures we proposed to assign to APCs 0041, 0042, and 0052 for CY 2009. Based on our findings from this review, we agree with the commenters that the procedures reported by CPT codes 27412 and 27415 are not arthroscopic procedures, that they are more clinically similar to the procedures in APC 0052, and that their median costs are better aligned with the median costs for services assigned to APC 0052. Therefore, we are reassigning CPT codes 27412 and 27415 to APC 0052 for CY 2009.

While we appreciate the commenters' suggestion that we create 11 new APCs for arthroscopic procedures, we believe that existing clinical APCs 0041 and 0042 sufficiently account for the different clinical and resource characteristics of these procedures. To reduce the size of the APC payment groups and establish new APC payment groups to pay more precisely would be inconsistent with our overall strategy to encourage hospitals to use resources more efficiently by increasing the size of the payment bundles. Moreover, many of the services that are assigned to APCs 0041 and 0042 are low volume services, with even fewer single claims available for ratesetting. Including low volume services in APCs with clinically similar higher volume services and similar median costs generates more stability in the payment rates that are set for these low volume services.

We also considered whether it would be appropriate to create two new APCs as requested by the commenters to isolate the arthroscopic procedures that the commenters indicate require implants. Our review of the CPT code definitions for the services that commenters would define as requiring implants and our understanding of the resources required to perform the procedures indicate that, for most of these procedures, implanted devices are not always required to perform the service and that in a number of cases, the ''implant'' is actually a supply or graft rather than an implantable device that would contribute to the APC's estimated device cost. Therefore, we do not believe that there is justification to create new APCs for these procedures or to designate them as device-dependent APCs. We refer readers to section XV.E.1.c. of this final rule with comment period for an explanation of the methodology used to calculate the payment rates for device-intensive procedures under the revised ASC payment system.

After consideration of the public comments received, we are finalizing our CY 2009 proposed configuration of APCs 0041 and 0042, with the modification that we are reassigning CPT codes 27412 and 27415 from APC 0042 to APC 0052. The final CY 2009 APC median costs of APCs 0041, 0042, and 0052 are approximately $1,899, $3,178, and $5,592, respectively.

c. Surgical Wrist Procedures (APCs 0053 and 0054)

For CY 2009, we proposed to retain the CY 2008 configuration of the HCPCS codes in APCs 0053 (Level I Hand Musculoskeletal Procedures) and 0054 (Level II Hand Musculoskeletal Procedures), with proposed payment rates of approximately $1,116 and $1,851, respectively. The CY 2008 payment rates for APCs 0053 and 0054, with the same APC configurations as proposed for CY 2009, are approximately $1,049 and $1,676, respectively.

Comment: One commenter asked that CMS reassign a number of CPT codes for surgical wrist procedures to alternative APCs, where they would reside with similar wrist procedures. They requested the following moves: (1) CPT code 25111 (Excision of ganglion, wrist (dorsal or volar); primary) from APC 0053 to APC 0049 (Level I Musculoskeletal Procedures Except Hand and Foot); (2) CPT code 25112 (Excision of ganglion, wrist (dorsal or volar); recurrent) from APC 0053 to APC 0049; (3) CPT code 25210 (Carpectomy; one bone) from APC 0054 to APC 0050 (Level II Musculoskeletal Procedures Except Hand and Foot); (4) CPT code 25215 (Carpectomy; all bones of proximal row) from APC 0054 to APC 0050; (5) CPT code 25394 (Osteoplasty, carpal bone, shortening) from APC 0053 to APC 0051 (Level III Musculoskeletal Procedures Except Hand and Foot); (6) CPT code 25430 (Insertion of vascular pedicle into carpal bone (eg, Hori procedure)) from APC 0054 to APC 00051; (7) CPT code 25431 (Repair of nonunion of carpal bone (excluding carpal scaphoid (navicular))(includes obtaining graft and necessary fixation), each bone) from APC 0054 to APC 0051; and (8) CPT code 25820 (Arthrodesis, wrist; limited, without bone graft (eg, intercarpal or radiocarpal) from APC 0053 to APC 0052 (Level IV Musculoskeletal Procedures Except Hand and Foot). The commenter believed that these wrist procedures typically have the same costs of personnel, supplies, and implants as the procedures assigned to the APCs in which the commenter recommended placement. Moreover, the commenter also suggested that the wrist procedures are more clinically similar to other surgical procedures already assigned to the APCs in which the commenter recommended placement.

Response: We agree with most of the commenter's recommendations and are reassigning the CPT codes to the recommended APCs for CY 2009 to improve clinical and resource homogeneity, with one exception. We do not agree that CPT code 25820 is most appropriately assigned to APC 0052. We have 123 total CY 2007 claims for this procedure, with 30 claims available for ratesetting. The median cost of the procedure is approximately $4,029, which falls between the median costs of APCs 0051 and 0052, Levels III and IV Musculoskeletal Procedures Except Hand and Foot, with APC median costs of approximately $2,929 and $5,592, respectively. Other wrist arthrodesis procedures are currently assigned to both APCs 0051 and 0052 under the OPPS, and we note that the procedure described by CPT code 25820 is a limited procedure without a bone graft, in comparison with other complete arthrodesis procedures that may utilize a graft. Therefore, based on clinical and resource considerations, we believe CPT code 25820 is most appropriately reassigned to APC 0051 for CY 2009.

After consideration of the public comments received, we are modifying our CY 2009 proposed configurations for APCs 0049, 0050, 0051, 0053, and 0054. Specifically, we are reassigning CPT codes 25111 and 25112 to APC 0049; we are reassigning CPT codes 25210 and 25215 to APC 0050; and we are reassigning CPT codes 25394, 25430, and 25431 to APC 0051 for CY 2009. We also are finalizing our CY 2009 proposal to reassign CPT code 25820 from APC 0053 to APC 0051 for the CY 2009 OPPS. The final CY 2009 median costs of APCs 0049, 0050, and 0051 are approximately $1,406, $1,929, and $2,929, respectively.

d. Intercarpal or Carpometacarpal Arthroplasty (APC 0047)

In the CY 2009 OPPS/ASC proposed rule, we proposed to continue to assign CPT code 25447 (Arthroplasty, interposition, intercarpal or carpometacarpal joints) to APC 0047 (Arthroplasty without Prosthesis) for CY 2009, with a proposed payment rate of approximately $2,488. The CY 2008 payment rate for this procedure is approximately $2,287.

At the August 2008 APC Panel meeting, a presenter requested that the APC Panel recommend to CMS that CPT code 25447 be reassigned to APC 0048 (Level I Arthroplasty or Implantation with Prosthesis), because a costly implantable spacer device may be used when a hospital provides CPT code 25447. The presenter argued that the proposed payment rate of approximately $3,473 for APC 0048 would provide more appropriate payment for the procedure, and that the procedure clinically resembled other procedures also assigned to APC 0048. The APC Panel recommended that CMS maintain the assignment of CPT code 25447 in APC 0047 for CY 2009.

The procedure described by APC code 25447 does not always utilize an implantable device. We note that the median cost of CPT code 25447 is approximately $2,445 based on over 850 single claims, very close to the median cost of APC 0047 of approximately $2,443 and much lower than the median cost of APC 0048 of approximately $3,433. Therefore, we are adopting the APC Panel's recommendation for CY 2009.

We did not receive any public comments regarding our proposal. Therefore, we are finalizing our CY 2009 proposal, without modification, to assign CPT code 25447 to APC 0047, with a final CY 2009 APC median cost of approximately $2,443.

e. Insertion of Posterior Spinous Process Distraction Device (APC 0052)

In the CY 2009 OPPS/ASC proposed rule, we proposed to reassign CPT codes 0171T (Insertion of posterior spinous process distraction device (including necessary removal of bone or ligament for insertion and imaging guidance), lumbar, single level) and 0172T (Insertion of posterior spinous process distraction device (including necessary removal of bone or ligament for insertion and imaging guidance), lumbar, each additional level) from APC 0050 (Level II Musculoskeletal Procedures Except Hand and Foot) to APC 0052 (Level IV Musculoskeletal Procedures Except Hand and Foot), with a proposed payment rate of approximately $5,615. The CY 2008 payment rate for APC 0050 is approximately $1,859. For CY 2007 and CY 2008, the device HCPCS code C1821 (Interspinous process distraction device (implantable)), used with CPT codes 0171T and 0172T, was assigned pass-through payment status and, therefore, was paid separately at charges adjusted to cost. As we discuss in section IV.A. of this final rule with comment period, the period of pass-through payment for HCPCS code C1821 expires after December 31, 2008. According to our usual methodology, the costs of devices no longer eligible for pass-through payments are packaged into the costs of the procedures with which the devices are reported in the claims data used to set the payment rates for those procedures.

Comment: One commenter asserted that the proposed reassignment of CPT codes 0171T and 0172T to APC 0052 was not appropriate for a number of reasons. The commenter stated that the proposed median costs of CPT codes 0171T and 0172T of approximately $8,080 and $11,114, respectively, were substantially higher than the proposed median cost of APC 0052 of approximately $5,606. The commenter indicated that the median cost for the device HCPCS code C1821 that is always required for the procedures was $6,483, higher than the median cost of the APC to which the procedures were proposed for assignment. The commenter believed that the assignment of the procedures to APC 0052 would result in significant underpayment to hospitals and possibly limit patient access to this technology. The commenter also claimed that the assignment of CPT codes 0171T and 0172T to APC 0052 would violate the 2 times rule. The commenter recommended either the assignment of CPT codes 0171T and 0172T to a newly created clinical APC, or the reassignment of CPT codes 0171T and 0172T to APC 0425 (Level II Arthroplasty or Implantation with Prosthesis), based on clinical and resource homogeneity and device-dependent status. The commenter pointed out that the proposed rule median cost of APC 0425 of approximately $7,905 was similar to the proposed rule median costs of CPT codes 0171T and 0172T. Finally, the commenter recommended that CMS add interspinous process distraction device procedures described by CPT 0171T and 0172T to the device-to-procedure and procedure-to-device claims processing edits to ensure that future claims are correctly coded, leading to more accurate and appropriate payment policies for the technology.

Response. We continue to believe that APC 0052 is an appropriate APC assignment for CPT codes 0171T and 0172T based on consideration of the procedures' clinical and resource characteristics. The CY 2007 claims data for C1821 used for this final rule with comment period show that the interspinous process distraction device that is used with CPT codes 0171T and 0172T has a line-item median cost of approximately $4,374, whereas the median cost of APC 0052 is significantly higher, at approximately $5,592.

The HCPCS code-specific final median costs of CPT codes 0171T and 0172T are approximately $7,748 and $10,431, respectively. However, we note that because CPT code 0172T is a CPT add-on code for an additional level that should always be reported in conjunction with CPT code 0171T, the 5 single claims (out of 576 total claims) upon which the median cost of CPT code 0172T is based are likely incorrectly coded claims and, therefore, the median cost does not provide a valid estimate of the hospital resources required to perform CPT code 0172T. The median cost of CPT code 0171T of approximately $7,748 is the highest cost of the significant procedures (frequency of greater than 1,000 single claims or frequency of greater than 99 and more than 2 percent of the single claims in the APC) assigned to APC 0052, while the lowest cost significant procedure has a median cost of approximately $4,336. Therefore, the configuration of APC 0052 does not violate the 2 times rule. We continue to believe that, based on resource considerations, APC 0052 would provide appropriate payment for CPT codes 0171T and 0172T in CY 2009.

Moreover, we note that there are several other spinal procedures that require the use of implantable devices that are also assigned to APC 0052, such as the percutaneous kyphoplasty procedures described by CPT code 22523 (Percutaneous vertebral augmentation, including cavity creation (fracture reduction and bone biopsy included when performed) using mechanical device, one vertebral body, unilateral or bilateral cannulation (e.g., kyphoplasty); thoracic) and CPT code 22524 (Percutaneous vertebral augmentation, including cavity creation (fracture reduction and bone biopsy included when performed) using mechanical device, one vertebral body, unilateral or bilateral cannulation (e.g., kyphoplasty); lumbar). Therefore, we believe that CPT codes 0171T and 0172

share sufficient clinical similarity with other surgical procedures assigned to APC 0052 to justify their reassignment to APC 0052 for CY 2009.

Regarding the commenter's request that we implement device edits for interspinous process distraction device procedures, we note that we typically do not implement procedure-to-device edits where there are not device HCPCS codes for all possible devices that could be used to perform a procedure that always requires a device, and the APC is not designated as a device-dependent APC. APC 0052 is not a device-dependent APC because a number of the procedures assigned to the APC do not require the use of implantable devices. Furthermore, in some cases there may not be HCPCS codes that describe all devices that may be used to perform the procedures in APC 0052. We recognize the additional burden claims processing edits, particularly for the device-to-procedure edits, pose for hospitals, and as a result we try to limit edits only to those device and procedure combinations for which we believe costs have not been correctly captured on hospital claims. Hospitals had every incentive to report and charge for interspinous process distraction devices described by HCPCS code C1821 due to their separately payable pass-through status in CY 2007, and we have no reason to believe hospitals have not been reporting the associated implantation procedure codes along with HCPCS code C1821. Accordingly, we believe that the packaged costs of interspinous process distraction devices are appropriately reflected in the median costs of their associated implantation procedures, and that device-to-procedure edits would pose an unnecessary burden on hospitals.

After consideration of the public comment received, we are finalizing our proposed CY 2009 assignment, without modification, of CPT codes 0171T and 0172T to APC 0052, with a final CY 2009 APC median cost of approximately $5,592.

6. Radiation Therapy Services

a. Proton Beam Therapy (APCs 0664 and 0667)

For CY 2009, we proposed to pay for the following four CPT codes for proton beam therapy: 77520 (Proton treatment delivery; simple, without compensation); 77522 (Proton treatment delivery; simple, with compensation); 77523 (Proton treatment delivery; intermediate); and 77525 (Proton treatment delivery; complex). We proposed to continue to assign the simple proton beam therapy procedures (CPT codes 77520 and 77522) to APC 0664 (Level I Proton Beam Radiation Therapy), with a proposed payment rate of approximately $925, and the intermediate and complex proton beam therapy procedures (CPT codes 77523 and 77525, respectively) to APC 0667 (Level II Proton Beam Radiation Therapy), with a proposed payment rate of approximately $1,105. The CY 2008 payment rates for these APCs are approximately $817 and $977, respectively.

Comment: Several commenters supported the proposed OPPS payment rates for APCs 0664 and 0667. They indicated that proton beam therapy has numerous advantages to patients and that the proposed OPPS payment rates would pay appropriately for these services.

Response: As we proposed, we are basing the final rule payment rates for proton beam therapy and all other services paid under the OPPS on the median costs we calculated using the most current claims and cost report data that are available to us. Therefore, for CY 2009, we are setting the payment rate for proton beam therapy based on median costs of approximately $688 for APC 0664 and approximately $822 for APC 0667. These median costs result in modest declines in the final CY 2009 payment rates for proton beam therapy compared to the CY 2008 payment rates, rather than the modest increases that were proposed.

We explored our claims and cost report data to determine the reason for the change in the median costs between the proposed rule and final rule data. We found that there were two providers that billed Medicare in CY 2007 for these services. At the time we calculated the proposed rule median costs and payment rates, we used the most current claims and cost reports submitted by these hospitals. When we examined the final rule data for these hospitals, we found that both providers had submitted new cost reports subsequent to the development of the proposed rule data. The CCR from the new cost report for the provider supplying the majority of service volume in both APCs declined by more than 25 percent compared to the CCR calculated from the cost report used to determine the proposed rule costs for that provider. Therefore, the charges and costs from this provider significantly influenced the median costs for these APCs. In summary, the estimated costs of proton beam therapy services decreased because the most current CCRs, which declined compared to the CCRs used to calculate the proposed rule costs, were applied to charges that remained consistent from the proposed rule to the final rule claims. Our examination of the claims and cost report data showed no characteristics that would cause us to believe that the estimated costs for this final rule with comment period are inappropriate for the services furnished.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, to pay for proton beam therapy through APCs 0664 and 0667, with payment rates based upon the most current claims and cost report data for these services. The final CY 2009 APC median costs of APCs 0664 and 0667 are approximately $688 and $822, respectively.

b. Implantation of Interstitial Devices (APC 0310)

In the CY 2009 OPPS/ASC proposed rule, we proposed to reassign CPT code 55876 (Placement of interstitial device(s) for radiation therapy guidance (e.g., fiducial markers, dosimeter), prostate (via needle, any approach), single or multiple) to APC 0310 (Level III Therapeutic Radiation Treatment Preparation) with a proposed payment rate of approximately $901, based on our review of CY 2007 claims data for the service and consideration of the service's clinical characteristics. For CY 2008, CPT code 55876 is assigned to APC 0156 (Level III Urinary and Anal Procedures), with a payment rate of approximately $194.

Comment: One commenter supported the proposed reassignment of CPT code 55876 to APC 0310, with the proposed increase in payment for the service.

Response: We appreciate the commenter's support and are finalizing, without modification, our CY 2009 proposal to reassign CPT code 55876 to APC 0310, with a final CY 2009 APC median cost of approximately $873.

c. Stereotactic Radiosurgery (SRS) Treatment Delivery Services (APCs 0065, 0066, and 0067)

In the CY 2009 OPPS/ASC proposed rule, we proposed to continue to assign SRS CPT codes 77372 (Radiation treatment delivery, stereotactic radiosurgery (SRS) (complete course of treatment of cerebral lesion(s) consisting of 1 session); linear accelerator based) and 77373 (Stereotactic body radiation therapy, treatment delivery, per fraction to 1 or more lesions, including image guidance, entire course not to exceed 5 fractions) status indicator ''B'' under the OPPS, to indicate that these CPT codes are not payable under the OPPS. Alternatively, we proposed to continue to recognize for separate payment the HCPCS G-codes that describe SRS

treatment delivery services. Specifically, we proposed the following: to assign HCPCS code G0173 (Linear accelerator based stereotactic radiosurgery, complete course of therapy in one session) to APC 0067 (Level III Stereotactic Radiosurgery, MRgFUS, and MEG), with a proposed payment rate of approximately $3,664; to assign HCPCS code G0251 (Linear accelerator-based stereotactic radiosurgery, delivery including collimator changes and custom plugging, fractionated treatment, all lesions, per session, maximum five sessions per course of treatment) to APC 0065 (Level I Stereotactic Radiosurgery, MRgFUS, and MEG), with a proposed payment rate of approximately $995; to assign HCPCS code G0339 (Image-guided robotic linear accelerator-based stereotactic radiosurgery, complete course of therapy in one session or first session of fractionated treatment) to APC 0067, with a proposed payment rate of approximately $3,664; and to assign HCPCS code G0340 (Image-guided robotic linear accelerator-based stereotactic radiosurgery, delivery including collimator changes and custom plugging, fractionated treatment, all lesions, per session, second through fifth sessions, maximum five sessions per course of treatment) to APC 0066 (Level II Stereotactic Radiosurgery, MRgFUS, and MEG), with a proposed payment rate of approximately $2,654.

Comment: Several commenters urged CMS to recognize CPT codes 77372 and 77373 under the OPPS rather than continuing to use the Level II HCPCS G-codes for SRS treatment delivery services. One commenter requested that CMS recognize the CPT codes to facilitate claims processing by non-Medicare payers who do not accept temporary HCPCS codes in their claims processing systems. Another commenter suggested that CMS recognize the SRS treatment delivery CPT codes for separate payment under the OPPS, and provide payment through one clinical APC. The commenter argued that this change would reduce the number of APCs for SRS treatment delivery services and provide more clarity to hospitals.

Response: As we explained in both the CY 2007 OPPS/ASC final rule with comment period (71 FR 68025–68026) and the CY 2008 OPPS/ASC final rule with comment period (72 FR 66734 through 66737), we decided to recognize the Level II HCPCS codes, specifically HCPCS codes G0251 and G0340, because they are more specific in their descriptors than the CPT codes for SRS treatment delivery services. In the CY 2004 OPPS final rule with comment period (68 FR 63431) and in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66735), we also explained the basis for creating the Level II HCPCS codes. We continue to believe that the Level II HCPCS codes are more specific in their descriptors and more accurately reflect the SRS treatment delivery services provided in the hospital outpatient setting than the CPT codes for SRS treatment delivery services.

Analysis of the CY 2007 claims data used for this final rule with comment period indicate that the HCPCS code-specific median cost is approximately $931 for HCPCS code G0251; approximately $2,522 for HCPCS code G0340; approximately $3,523 for HCPCS code G0173; and approximately $3,718 for HCPCS code G0339. Because the CY 2009 median costs of HCPCS codes G0173, G0251, G0339, and G0340 vary significantly, we do not believe it would be appropriate to provide OPPS payment through a single APC for these SRS treatment delivery services in CY 2009. Furthermore, we have no way of crosswalking hospital costs for the HCPCS G-codes to the expected costs for the SRS CPT codes that would ensure continued accurate payment for SRS treatment delivery services under the OPPS if we were to recognize the CPT codes. Depending on the individual clinical case, the SRS treatment delivery services described by a single CPT code could be reported by one of several of the HCPCS G-codes and, similarly, the SRS treatment delivery services currently described by a single HCPCS G-code could be reported by one of several CPT codes.

Hospitals have told us that many other payers recognize Level II HCPCS codes for payment, although each payer may set its own reporting guidelines. With respect to the identification of HCPCS codes for services under the OPPS, we recognize those codes that lead to the most appropriate payment for services under the OPPS, using CPT codes whenever we believe their recognition leads to accurate payment. Otherwise, we may determine that Level II HCPCS codes should be used for reporting OPPS services, as is the case for SRS services.

Comment: Some commenters expressed concern about the difference in the proposed payment rate of approximately $995 for HCPCS code G0251 and that of approximately $2,654 for HCPCS code G0340. The commenters found no clinical justification for the differential payment for these services. They believed that one technology should not be favored over another when both technologies provide similar radiation dose distribution and clinical outcomes. The commenters recommended that CMS recognize CPT codes 77372 and 77373 rather than use HCPCS codes G0251 and G0340, and set the payment rate to be the same for both CPT codes. Another commenter requested that CMS continue to recognize the four HCPCS G-codes for SRS treatment delivery services and finalize their proposed assignments to their respective clinical APCs for CY 2009.

Response: As we have stated previously, we believe that HCPCS codes G0251 and G0340 are more specific in their descriptors for SRS treatment delivery services than CPT codes 77372 and 77373, and therefore, we will continue to recognize the Level II HCPCS codes for SRS treatment delivery services under the OPPS.

Based on our review of the CY 2007 claims data used for this final rule with comment period, we found that the costs of HCPCS codes G0251 and G0340 differ significantly. Specifically, our CY 2007 claims data showed 10,022 single claims for HCPCS G0340, with a HCPCS code-specific median cost of approximately $2,522, whereas the median cost for HCPCS code G0251 based on 3,132 single claims is only approximately $931. Our CY 2007 claims data used for this final rule with comment period do not support a single payment for both services as suggested by some commenters, and as a result, we find no justification for setting the same payment rate for the CPT codes that would describe some of the services currently reported with HCPCS codes G025 and G0340.

Moreover, we note that there are two additional Level II HCPCS codes for SRS treatment delivery services that are recognized for payment under the OPPS, specifically HCPCS codes G0173 and G0339, that describe services that could be reported under CPT code 77372 or 77373. These HCPCS G-codes also have median costs of approximately $3,523 and $3,718, respectively, significantly different from the median costs of HCPCS codes G0251 and G0340 and, therefore, we proposed to assign HCPCS codes G0173 and G0339 to a third clinical APC, that is APC 0067. We continue to believe that all four HCPCS G-codes for SRS treatment delivery services are most appropriately assigned to the three APCs in the Stereotactic Radiosurgery, MRgFUS, and MEG clinical series, where they are paid based on APC median costs that are consistent with their HCPCS code-specific median costs that reflect required hospital resources.

After consideration of the public comments received, we are finalizing

our CY 2009 proposal, without modification, to continue to recognize Level II HCPCS codes G0251 and G0340, instead of CPT codes 77372 and 77373, for the reporting of SRS treatment delivery services under the OPPS in CY 2009. For CY 2009, HCPCS code G0251 is assigned to APC 0065 with a final APC median cost of approximately $931, and HCPCS code G0340 is assigned to APC 0066 with a final APC median cost of approximately $2,522. We also are finalizing our CY 2009 proposal to continue to recognize HCPCS codes G0173 and G0339, assigned to APC 0067 with a final median cost of approximately $3,718, for certain SRS services reported in accordance with the codes descriptors of these two HCPCS G-codes.

In addition, for CY 2009, the CPT Editorial Panel decided to delete CPT code 61793 (Stereotactic radiosurgery (particle beam, gamma ray or linear accelerator), one or more sessions) on December 31, 2008, and replace it with several new CPT codes, specifically CPT codes 61796, 61797, 61798, 61799, 61800, 63620, and 63621, effective January 1, 2009. Similar to its predecessor code, all of the replacement codes have been assigned status indicator ''B'' on an interim basis under the OPPS because we are continuing to recognize the HCPCS G-codes for SRS treatment delivery services under the OPPS in CY 2009. In accordance with our established policy for the treatment of new CPT codes under the OPPS, we also have assigned these replacement codes comment indicator ''NI'' in Addendum B to this final rule with comment period to indicate that these new CPT codes are open to public comment in this final rule with comment period. The replacement codes for CPT code 61793 are displayed in Table 18 below.

TABLE 18—REPLACEMENT CODES FOR CPT CODE 61793 EFFECTIVE JANUARY 1, 2009

CY 2009 HCPCS code	CY 2009 long descriptor	CY 2009 interim SI
61796	Stereotactic radiosurgery (particle beam, gamma ray, or linear accelerator); 1 simple cranial lesion.	B
61797	Stereotactic radiosurgery (particle beam, gamma ray or linear accelerator); each additional cranial lesion, simple.	B
61798	Stereotactic radiosurgery (particle beam, gamma ray or linear accelerator); 1 complex cranial lesion.	B
61799	Stereotactic radiosurgery (particle beam, gamma ray or linear accelerator); each additional cranial lesion, complex.	B
61800	Application of stereotactic headframe for stereotactic radiosurgery	B
63620	Stereotactic radiosurgery (particle beam, gamma ray, or linear accelerator); 1 spinal lesion.	B
63621	Stereotactic radiosurgery (particle beam, gamma ray or linear accelerator); each additional spinal lesion.	B

7. Other Procedures and Services

a. Negative Pressure Wound Therapy (APC 0013)

In the CY 2009 OPPS/ASC proposed rule, we proposed to assign CPT codes 97605 (Negative pressure wound therapy (e.g., vacuum assisted drainage collection), including topical application(s), wound assessment, and instruction(s) for ongoing care, per session; total wound(s) surface area less than or equal to 50 square centimeters) and 97606 (Negative pressure wound therapy (e.g., vacuum assisted drainage collection), including topical application(s), wound assessment, and instruction(s) for ongoing care, per session; total wound(s) surface area greater than 50 square centimeters) to APC 0013 (Level II Debridement and Destruction) for CY 2009, with a proposed payment rate of approximately $55. For CY 2008, CPT code 97605 is also assigned to APC 0013, with a payment rate of approximately $51, but CPT code 97606 is assigned to APC 0015 (Level III Debridement and Destruction), with a payment rate of approximately $93. We proposed to reassign CPT code 97606 from APC 0015 to APC 0013 for CY 2009 because its median cost of $75, based on the CY 2007 proposed rule claims data, indicated that the resource costs associated with this procedure were more similar to the resource costs of the procedures assigned to APC 0013 than the procedures assigned to APC 0015.

Comment: One commenter requested that CMS maintain the CY 2008 payment rates for CPT codes 97605 and 97606 in CY 2009 and noted that negative pressure wound therapy often requires greater time and resources than reflected in the proposed payment rate for CPT code 97606. The commenter claimed that these codes are used to report negative pressure wound therapy for increasingly more complicated wounds. The commenter also requested that CMS refer both codes to the CPT Wound Care Workgroup for development of new code descriptors.

Response: As a result of the concerns raised by the commenter, we reviewed the clinical characteristics and HCPCS code-specific median costs from our CY 2007 claims data for all procedures we proposed to assign to APCs 0013 and 0015 for CY 2009. Based on the resource costs associated with these codes, as reported by hospitals, we continue to believe that APC 0013 is the most appropriate assignment for CPT codes 97605 and 97606. The median costs of these two services are approximately $64 and $74, respectively, based on thousands of single claims available for ratesetting. These median costs fall well within the range of median costs of the other significant procedures also assigned to APC 0013, ranging from approximately $40 to $78. In contrast, the median cost of APC 0015 is significantly higher, at approximately $98, than the median costs of the negative pressure wound therapy services.

To the extent that, in the future, hospitals use these CPT codes to report more resource intensive services than are currently reflected in claims data, we would expect to see higher costs reported by hospitals in the future. We would reevaluate whether a different APC assignment was appropriate at that time. We currently do not have concerns based on historical patterns of hospital reporting and hospital costs about the CPT codes reported by hospitals for payment of negative pressure wound care services under the OPPS. We note that any interested party may refer CPT codes to the CPT Editorial Panel for reassessment.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without

modification, to assign CPT codes 97605 and 97606 to APC 0013, with a final CY 2009 APC median cost of approximately $53.

b. Endovenous Ablation (APCs 0091 and 0092)

In the CY 2009 OPPS/ASC proposed rule, we proposed to continue to assign CPT code 36475 (Endovenous ablation therapy of incompetent vein, extremity, inclusive of all imaging guidance and monitoring, percutaneous, radiofrequency; first vein treated) to APC 0091 (Level II Vascular Ligation) and to continue to assign CPT code 36478 (Endovenous ablation therapy of incompetent vein, extremity, inclusive of all imaging guidance and monitoring, percutaneous, laser; first vein treated) to APC 0092 (Level I Vascular Ligation), with proposed payment rates of approximately $2,833 and $1,781, respectively. The CY 2008 payment rate for APC 0091 is approximately $2,714, and the CY 2008 payment rate for APC 0092 is approximately $1,646.

Comment: One commenter expressed concern about decreases in the OPPS payment for outpatient medical procedures, specifically for CPT codes 36475 and 36478, while the costs of supplies and malpractice insurance and the costs of care for the uninsured have increased.

Response: We review, on an annual basis, the APC assignments and relative payment weights for services and items paid under the OPPS. Based on our findings, we propose to revise the APC assignments to account for the following factors: Changes in medical practice; changes in technology; addition of new services; new cost data; advice and recommendations from the APC Panel; and other relevant information. The OPPS is a budget neutral payment system, with payment for most individual services determined by the relative costs of the required hospital resources as determined from historical hospital costs for these services. For CY 2009, we estimate that providers overall will receive a 3.9 percent increase in aggregate payment under the OPPS, as discussed in more detail in section XXIII.B. of this final rule with comment period. We note that we proposed to increase the CY 2009 payment rates for CPT codes 36475 and 36478 by approximately 5 percent, 2 percentage points more than the proposed annual CY 2009 market basket update factor of 3 percent for the OPPS, based on the relative costs that hospitals have reported to us for these OPPS services.

Based on our latest CY 2007 claims data, we believe that CPT code 36475, with a final HCPCS code-specific median cost of approximately $2,404, is appropriately assigned to APC 0091, with a final APC median cost of approximately $2,828. Similarly, we believe that CPT code 36478, with a final HCPCS code-specific median cost of approximately $1,853, is appropriately assigned to APC 0092, with a final APC median cost of approximately $1,767. Both of these procedures are clinically similar to other procedures also assigned to their respective APCs, and they are similar in terms of hospital resources to the other procedures assigned to their respective APCs, as reflected in their median costs.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, to continue assignment of CPT code 36475 to APC 0091, with a final CY 2009 APC median cost of approximately $2,828, and CPT code 36478 to APC 0092, with a final CY 2009 APC median cost of approximately $1,767.

c. Unlisted Antigen Skin Testing (APC 0341)

CPT code 86486 (Skin test; unlisted antigen, each) is a new CPT code for CY 2008. Therefore, in accordance with our established policy for the treatment of new CPT codes under the OPPS, in Addendum B to the CY 2008 OPPS/ASC final rule with comment period, we assigned CPT code 86486 an interim status indicator of ''A'' (Services furnished to a hospital outpatient that are paid under a few schedule or payment system other than OPPS). In that final rule with comment period, we also assigned CPT code 86468 comment indicator ''NI'' to indicate that its OPPS treatment as a new code was open to public comment in that rule. As stated earlier in section III.D.4.b. of this final rule with comment period and in accordance with our longstanding policy, we do not respond to public comments submitted on the OPPS/ASC final rule with comment period with respect to these interim assignments in the proposed OPPS/ASC rule for the following calendar year. However, we do review and take into consideration these public comments received during the development of the proposed rule when we evaluate APC assignments for the following year, and we respond to them in the final rule for that following calendar year.

In the CY 2009 OPPS/ASC proposed rule, we proposed to assign CPT code 86486 to APC 0341 (Skin Tests) with a status indicator of ''X'' and a proposed payment rate of approximately $6.

Comment: One commenter on the CY 2008 OPPS/ASC final rule with comment period questioned CMS's CY 2008 interim status indicator assignment of ''A'' to CPT code 86486, when all of the other CPT codes within the same clinical series were assigned status indicator ''X'' and paid separately under APC 0341. The commenter requested that CMS review the interim status indicator assignment for CPT code 86486 and analyze the code's similarity to other skin tests that are assigned to APC 0341.

Response: After reviewing the concerns raised by the commenter and the clinical and resources characteristics of CPT code 86486, we agree with the commenter that the service should be assigned to APC 0341 with a status indicator of ''X,'' and we made this proposal for CY 2009.

We did not receive any public comments regarding our CY 2009 proposal. Therefore, we are finalizing our CY 2009 proposal, without modification, to assign CPT code 86486 to APC 0341, with a final CY 2009 APC median cost of approximately $5.

d. Home International Normalized Ratio (INR) Monitoring (APC 0607)

In the CY 2009 OPPS/ASC proposed rule, we proposed to continue to assign HCPCS code G0248 (Demonstration, prior to initial use, of home INR monitoring for patient with either mechanical heart valve(s), chronic atrial fibrillation, or venous thromboembolism who meets Medicare coverage criteria, under the direction of a physician; includes: face-to-face demonstration of use and care of the INR monitor, obtaining at least one blood sample, provision of instructions for reporting home INR test results, and documentation of patient ability to perform testing prior to its use) and HCPCS code G0249 ((Provision of test materials and equipment for home INR monitoring of patient with either mechanical heart valve(s), chronic atrial fibrillation, or venous thromboembolism who meets Medicare coverage criteria; includes provision of materials for use in the home and reporting of test results to physician; not occurring more frequently than once a week) to APC 0607 (Level 4 Hospital Clinic Visits) for CY 2009, with a proposed payment rate of approximately $106. The CY 2008 payment rate for APC 0607 is approximately $104.

Comment: One commenter stated that it was reasonable for CMS to maintain assignment of these two CPT codes to APC 0607 for CY 2009. The commenter stated that this assignment continues to be reasonable insofar as the services are clinically homogeneous and the proposed payment rate, although likely

lower than the hospital costs incurred in providing these services, appears to be sufficient to allow continued monitoring of utilization and access for at least another year. While stating that utilization of home INR monitoring remains very low among Medicare beneficiaries, especially in the hospital outpatient anticoagulation clinic setting, the commenter encouraged CMS to continue to monitor these codes to ensure proper APC assignment, as coverage for these services was recently expanded beyond patients with mechanical heart valves to include Medicare patients with chronic atrial fibrillation or venous thromboembolism.

Response: We appreciate the commenter's support for our proposal. We agree that a much more substantial population of Medicare beneficiaries who undergo anticoagulation therapy may now be eligible for these services due to the recent expansion in Medicare coverage for the services reported by HCPCS codes G0248 and G0249. On an annual basis, we review the APC assignments and relative payment weights for services and items paid under the OPPS. Based on our findings, we may propose to revise the APC assignments to appropriately account for changes in medical practice or hospital costs, among other factors. We will continue to assess the most current claims data for HCPCS codes G0248 and G0249 for our future annual OPPS updates.

After consideration of the public comment received, we are finalizing our CY 2009 proposal, without modification, to continue the assignment of CPT codes G0248 and G0249 to APC 0607, with a final CY 2009 APC median cost of approximately $111.

e. Mental Health Services (APCs 0322, 0323, 0324, and 0325)

APC 0323 (Extended Individual Psychotherapy) had a 2 times rule violation for CYs 2007 and 2008, and was exempted from the 2 times rule during those years. APC 0323 would continue to have a 2 times rule violation in CY 2009 if its configuration is not adjusted. In the CY 2008 OPPS/ASC final rule with comment period (72 FR 66739), we agreed to review APC 0323 at the next APC Panel meeting and seek the APC Panel's guidance in reconfiguring this APC for CY 2009.

It was brought to our attention that a few CPT codes describe psychotherapy services that could be appropriately provided and reported as part of a partial hospitalization program, but would not otherwise be appropriately reported by a HOPD for those psychotherapy services. Specifically, the category heading in the 2008 CPT book specifies that the CPT codes listed in Table 16 of the CY 2009 OPPS/ASC proposed rule are to be reported for services provided in an ''inpatient hospital, partial hospital, or residential care facility.'' (Table 16 is reprinted below in this final rule with comment period as Table 19.) These CPT codes have been assigned to APCs 0322 (Brief Individual Psychotherapy) and 0323 since the implementation of the OPPS.

TABLE 19—INPATIENT HOSPITAL, PARTIAL HOSPITAL, OR RESIDENTIAL CARE FACILITY PSYCHOTHERAPY CODES

CY 2009 HCPCS code	CY 2009 long descriptor
90816	Individual psychotherapy, insight oriented, behavior modifying and/or supportive, in an inpatient hospital, partial hospital or residential care setting, approximately 20 to 30 minutes face-to-face with the patient;
90817	Individual psychotherapy, insight oriented, behavior modifying and/or supportive, in an inpatient hospital, partial hospital or residential care setting, approximately 20 to 30 minutes face-to-face with the patient; with medical evaluation and management services.
90818	Individual psychotherapy, insight oriented, behavior modifying and/or supportive, in an inpatient hospital, partial hospital or residential care setting, approximately 45 to 50 minutes face-to-face with the patient;
90819	Individual psychotherapy, insight oriented, behavior modifying and/or supportive, in an inpatient hospital, partial hospital or residential care setting, approximately 45 to 50 minutes face-to-face with the patient; with medical evaluation and management.
90821	Individual psychotherapy, insight oriented, behavior modifying and/or supportive, in an inpatient hospital, partial hospital or residential care setting, approximately 75 to 80 minutes face-to-face with the patient;
90822	Individual psychotherapy, insight oriented, behavior modifying and/or supportive, in an inpatient hospital, partial hospital or residential care setting, approximately 75 to 80 minutes face-to-face with the patient; with medical evaluation and management services.
90823	Individual psychotherapy, interactive, using play equipment, physical devices, language interpreter, or other mechanisms of non-verbal communication, in an inpatient hospital, partial hospital or residential care setting, approximately 20 to 30 minutes face-to-face with the patient;
90824	Individual psychotherapy, interactive, using play equipment, physical devices, language interpreter, or other mechanisms of non-verbal communication, in an inpatient hospital, partial hospital or residential care setting, approximately 20 to 30 minutes face-to-face with the patient; with medical evaluation and management services.
90826	Individual psychotherapy, interactive, using play equipment, physical devices, language interpreter, or other mechanisms of non-verbal communication, in an inpatient hospital, partial hospital or residential care setting, approximately 45 to 50 minutes face-to-face with the patient;
90827	Individual psychotherapy, interactive, using play equipment, physical devices, language interpreter, or other mechanisms of non-verbal communication, in an inpatient hospital, partial hospital or residential care setting, approximately 45 to 50 minutes face-to-face with the patient; with medical evaluation and management services.
90828	Individual psychotherapy, interactive, using play equipment, physical devices, language interpreter, or other mechanisms of non-verbal communication, in an inpatient hospital, partial hospital or residential care setting, approximately 75 to 80 minutes face-to-face with the patient;
90829	Individual psychotherapy, interactive, using play equipment, physical devices, language interpreter, or other mechanisms of non-verbal communication, in an inpatient hospital, partial hospital or residential care setting, approximately 75 to 80 minutes face-to-face with the patient; with medical evaluation and management services.

The 2008 CPT book also includes a parallel set of CPT codes whose category heading in the CPT book specifies that these codes are to be reported for services provided in the office or other outpatient facilities. These CPT codes were listed in Table 17 of the CY 2009 OPPS/ASC proposed rule, which is reprinted below as Table 20. These CPT codes also have been assigned to APCs 0322 and 0323 since the implementation of the OPPS.

TABLE 20—OFFICE OR OTHER OUTPATIENT FACILITY PSYCHOTHERAPY CODES

CY 2009 HCPCS code	CY 2009 long descriptor
90804	Individual psychotherapy, insight oriented, behavior modifying and/or supportive, in an office or outpatient facility, approximately 20 to 30 minutes face-to-face with the patient;
90805	Individual psychotherapy, insight oriented, behavior modifying and/or supportive, in an office or outpatient facility, approximately 20 to 30 minutes face-to-face with the patient; with medical evaluation and management services.
90806	Individual psychotherapy, insight oriented, behavior modifying and/or supportive, in an office or outpatient facility, approximately 45 to 50 minutes face-to-face with the patient;
90807	Individual psychotherapy, insight oriented, behavior modifying and/or supportive, in an office or outpatient facility, approximately 45 to 50 minutes face-to-face with the patient; with medical evaluation and management.
90808	Individual psychotherapy, insight oriented, behavior modifying and/or supportive, in an office or outpatient facility, approximately 75 to 80 minutes face-to-face with the patient;
90809	Individual psychotherapy, insight oriented, behavior modifying and/or supportive, in an office or outpatient facility, approximately 75 to 80 minutes face-to-face with the patient; with medical evaluation and management services.
90810	Individual psychotherapy, interactive, using play equipment, physical devices, language interpreter, or other mechanisms of non-verbal communication, in an office or outpatient facility, approximately 20 to 30 minutes face-to-face with the patient;
90811	Individual psychotherapy, interactive, using play equipment, physical devices, language interpreter, or other mechanisms of non-verbal communication, in an office or outpatient facility, approximately 20 to 30 minutes face-to-face with the patient; with medical evaluation and management services.
90812	Individual psychotherapy, interactive, using play equipment, physical devices, language interpreter, or other mechanisms of non-verbal communication, in an office or outpatient facility, approximately 45 to 50 minutes face-to-face with the patient;
90813	Individual psychotherapy, interactive, using play equipment, physical devices, language interpreter, or other mechanisms of non-verbal communication, in an office or outpatient facility, approximately 45 to 50 minutes face-to-face with the patient; with medical evaluation and management services.
90814	Individual psychotherapy, interactive, using play equipment, physical devices, language interpreter, or other mechanisms of non-verbal communication, in an office or outpatient facility, approximately 75 to 80 minutes face-to-face with the patient;
90815	Individual psychotherapy, interactive, using play equipment, physical devices, language interpreter, or other mechanisms of non-verbal communication, in an office or outpatient facility, approximately 75 to 80 minutes face-to-face with the patient; with medical evaluation and management services.

Our CY 2007 claims data for the CY 2009 OPPS/ASC proposed rule (excluding all claims for partial hospitalization services) included approximately 10,000 OPPS claims for CPT codes 90816 through 90829, compared with approximately 500,000 claims for CPT codes 90804 through 90815. We were unclear as to what HOPD services these claims for CPT codes 90816 through 90829 represented and believed that these may be miscoded claims. We did not believe that CPT codes 90816 through 90829 could be appropriately reported for hospital outpatient services that are not part of a partial hospitalization program. Therefore, in the CY 2009 OPPS/ASC proposed rule (73 FR 41476), we proposed to assign status indicator ''P'' to CPT codes 90816 through 90829 for CY 2009, indicating that these services may be billed appropriately and paid under the OPPS only when they are part of a partial hospitalization program. Partial hospitalization services are not included in our ratesetting process for nonpartial hospitalization OPPS services. Under this proposal, hospitals would continue to report CPT codes 90804 through 90815 for individual psychotherapy services provided in the HOPD that are not part of partial hospitalization services, consistent with CPT instructions.

For the CY 2009 OPPS/ASC proposed rule, we recalculated the median costs for APCs 0322 and 0323, after assigning status indicator ''P'' to CPT codes 90816 through 90829 (73 FR 41477). We stated in the CY 2009 OPPS/ASC proposed rule (73 FR 41477) that, as partial hospitalization services only, the claims data for these codes would only be considered for ratesetting with respect to partial hospitalization services paid through the two proposed CY 2009 partial hospitalization APCs, specifically APC 0172 (Level I Partial Hospitalization (3 services)) and APC 0173 (Level II Partial Hospitalization (4 or more services)), and that no historical hospital claims data would continue to map to APCs 0322 and 0323. We refer readers to section X.B. of this final rule with comment period for a complete discussion of the proposed CY 2009 partial hospitalization payment policy. The CY 2009 proposed median costs for APCs 0322 and 0323 were approximately $88 and $108, respectively. This proposed new configuration for APC 0323 eliminated the longstanding 2 times violation for this APC, although the median cost remained approximately the same as it was for CYs 2007 and 2008.

During its March 2008 APC Panel meeting, the APC Panel recommended that CMS restructure APC 0323 as described above, and that a similar restructuring be considered for APC 0322. In the CY 2009 OPPS/ASC proposed rule (73 FR 41477), we stated that we were adopting the APC Panel's recommendation and, therefore, we proposed to assign status indicator ''P'' to CPT codes 90816 through 90829 for CY 2009.

Comment: Several commenters requested that CMS not assign status indicator ''P'' to CPT codes 90804 through 90815, indicating that these

services are often billed by HOPDs outside of a partial hospitalization program.

Response: We believe that commenters may have misunderstood our proposal. For CY 2009, we proposed to assign status indicator ''Q3'' rather than ''P'' to CPT codes 90804 through 90815. We proposed to assign status indicator ''P'' to CPT codes 90816 through 90829, in order that payment for CPT codes 90816 through 90829 would only be made through payment for a partial hospitalization program. We agree with the commenters that CPT codes 90804 through 90815 may be appropriately billed by HOPDs outside of a partial hospitalization program, as reflected in our CY 2009 proposal. Hospitals would continue to receive payment for CPT codes 90804 through 90815 when billed by an HOPD.

We believe that commenters may have been confused about the proposal to assign status indicator ''Q3'' to CPT codes 90804 through 90815 for CY 2009. As discussed in detail in section II.A.2.e.(4) of this final rule with comment period, for CY 2009 we proposed to change the status indicator to ''Q3'' (Codes that May be Paid Through a Composite APC), for the HCPCS codes that describe the specified mental health services to which APC 0034 (Mental Health Services Composite) applies. These codes are conditionally packaged when the sum of the payment rates for the single code APCs to which they are assigned exceeds the per diem payment rate for partial hospitalization. We proposed to apply this status indicator policy to the HCPCS codes that are assigned to composite APC 0034 in Addendum M to the proposed rule. We refer readers to section XIII.A. of this final rule with comment period for a complete discussion of status indicators and our status indicator changes for CY 2009.

Comment: Several commenters expressed concern that the payment rate for APC 0325 (Group Psychotherapy) as proposed for CY 2009 reflected a decrease of 21.62 percent from CY 2006 to CY 2009. One commenter was concerned that the payment rate would be insufficient to cover its costs for providing mental health services, especially in a geographic area designated as a Mental Health Provider Shortage Area. Another commenter asked whether the proposed APC payment rates for APCs 0322, 0323, 0324 (Family Psychotherapy), and 0325 were properly set based upon substantiated data.

Response: Unlike APCs 0322 and 0323, we did not specifically discuss APCs 0324 and 0325 in the CY 2009 OPPS/ASC proposed rule because we did not propose any significant changes to these APCs. Instead, we proposed to calculate payment rates for these APCs following our standard OPPS ratesetting methodology.

As one commenter noted, the payment rate for APC 0325 declined by 17 percent between CYs 2006 and 2007 and then declined an additional 5 percent from CY 2007 to CY 2008. The CY 2009 proposed payment rate for APC 0325 of approximately $63 represents an additional decrease of 1 percent from CY 2008. However, based upon the updated CY 2007 final rule claims data, the CY 2009 payment rate for APC 0325 is $65, very similar to the CY 2008 payment rate of approximately $63. As noted in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66739), we cannot speculate as to why the median cost of group psychotherapy services decreased significantly between CY 2006 and CY 2008.

We note that we have robust claims data for the CPT codes that map to APC 0325. Specifically, we were able to use more than 99 percent of the approximately 1.5 million claims submitted by hospitals to report group psychotherapy services. We set the payment rates for the APCs containing psychotherapy services using our standard OPPS methodology based on relative costs from hospital outpatient claims. We have no reason to believe that our claims data, as reported by hospitals, do not accurately reflect the hospital costs of group psychotherapy services. It would appear that the relative cost of providing these mental health services in comparison with other HOPD services has decreased in recent years.

Therefore, for CY 2009, we are finalizing our CY 2009 proposed configurations for APC 0322, 0323, 0324, and 0325, without modification. In doing so, we are adopting the APC Panel recommendation to assign status indicator ''P'' to CPT codes 90816 through 90829. The final CY 2009 median costs of APCs 0322, 0323, 0324, and 0325 are approximately $85, $105, $161, and $63, respectively.

f. Trauma Response Associated With Hospital Critical Care Services (APC 0618)

In the CY 2007 OPPS/ASC final rule with comment period (71 FR 68133 through 68134), we discussed the creation of HCPCS code G0390 (Trauma response team activation associated with hospital critical care service), which became effective January 1, 2007. HCPCS code G0390 is reported by hospitals when providing critical care services in association with trauma response team activation. HCPCS code G0390 has been assigned to APC 0618 (Trauma Response with Critical Care) since CY 2007, with payment rates of approximately $495 and $330 for CYs 2007 and 2008, respectively. The creation of HCPCS code G0390 enables us to pay differentially for critical care when trauma response team activation is associated with critical care services and when there is no trauma response team activation. We instructed hospitals to continue to report CPT codes 99291 (Critical care, evaluation and management of the critically ill or critically injured patient; first 30–74 minutes) and 99292 (Critical care, evaluation and management of the critically ill or critically injured patient; each additional 30 minutes (List separately in addition to code for primary service)) for critical care services when they also report HCPCS code G0390.

For CYs 2007 and 2008, we calculated the median cost for APC 0617 (Critical Care) to which CPT code 99291 is assigned using the subset of single claims for CPT code 99291 that did not include charges under revenue code 068x, the trauma revenue code, reported on the same day. We established the median cost for APC 0618 by calculating the difference in median costs between the two subsets of single claims for CPT code 99291 representing the reporting of critical care services with and without revenue code 068x charges reported on the same day. For a complete description of the history of the policy and development of the payment methodology for these services, we refer readers to the CY 2007 OPPS/ASC final rule with comment period (71 FR 68133 through 68134). We provided billing guidance in CY 2006 in Transmittal 1139, Change Request 5438, issued on December 22, 2006, specifically clarifying when it would be appropriate to report HCPCS code G0390. The I/OCE logic only accepts HCPCS code G0390 when it is reported with revenue code 068x and CPT code 99291 on the same claim and on the same date of service.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41471), we proposed a median cost for APC 0617 of approximately $488 and a median cost for APC 0618 of approximately $989 for CY 2009. For the CY 2009 OPPS ratesetting, we used claims data from CY 2007 that also included claims for HCPCS code G0390, as CY 2007 is the initial year that we established OPPS payment for HCPCS code G0390. We proposed to use the line-item median cost for HCPCS code G0390 in the CY 2007 claims to set the median cost for

APC 0618, as HCPCS code G0390 is the only code assigned to that APC. As discussed in section II.A.1.b. of this final rule with comment period, we proposed to add HCPCS code G0390 to the CY 2009 bypass list to isolate the line-item cost for HCPCS code G0390 and ensure that the critical care claims for CPT code 99291 that are reported with HCPCS code G0390 are available to set the medians for APC 0617 and composite APC 8003. The costs of packaged revenue code charges and HCPCS codes for services with status indicator ''N'' on a claim with HCPCS code G0390 would be associated with CPT code 99291 for ratesetting, if the claim for CPT code 99291 is a single or ''pseudo'' single bill.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41472), we proposed to calculate the median cost for APC 0617 using our standard methodology that excludes those single claims for critical care services that are eligible for payment through the Level II extended assessment and management composite APC, that is APC 8003, as described in section II.A.2.e.(1) of this final rule with comment period for CY 2009. As indicated in the CY 2009 OPPS/ASC proposed rule (73 FR 41472), we believe that these proposed refinements in median cost calculations would result in more accurate cost estimates and payments for APCs 0617 and 0618 for CY 2009.

Comment: One commenter supported the proposed payment increase for HCPCS code G0390 from $330 in CY 2008 to $991 in CY 2009. Several commenters requested that CMS allow hospitals to report HCPCS code G0390 with CPT code 99285 (Emergency department visit for the evaluation and management of a patient (Level 5)), in addition to CPT code 99291 (and CPT code 99292, when appropriate), and stated that when less than 30 minutes of critical care are provided to a patient, the hospital may not bill CPT code 99291 and must bill another appropriate visit code instead, often CPT code 99285.

Response: We appreciate the commenter's support for the proposed CY 2009 payment for HCPCS code G0390. As noted by commenters, when less than 30 minutes of critical care are provided, hospitals may not bill CPT code 99291, according to CPT instructions, and may instead bill an appropriate visit code. We understand that hospitals may be reporting CPT code 99285 most often when less than 30 minutes of critical care are provided. However, we continue to believe that the 068x series revenue codes used to report a trauma response are most often reported with CPT code 99291, rather than other visit codes, and are most appropriately paid separately only under the circumstances that a Medicare beneficiary receives a significant period of critical care in the HOPD.

If less than 30 minutes of critical care are provided, the payment for trauma response is packaged into payment for the visit code or other services provided to the patient. We note that the cost of trauma response will generally be reflected in the median cost for the visit code or other HCPCS code as a function of the frequency of the reporting of trauma response charges with the particular separately payable HCPCS code. Consistent with the principles of a prospective payment system, OPPS payment may be more or less than the estimated costs of providing a service or package of services for a particular patient, but with the exception of outlier cases, is adequate to ensure access to appropriate care. Hospitals that bill a visit code or other services, as well as a charge for trauma response, may be eligible for outlier payment, if their costs meet the outlier threshold.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, to pay separately for HCPCS code G0390 when billed with CPT code 99291, and to provide payment for HCPCS code G0390 through APC 0618, with a final CY 2009 APC median cost of approximately $914. We are also finalizing, without modification, our CY 2009 proposal to calculate the median cost for HCPCS code G0390 using our standard methodology that excludes those single claims for critical care services that are eligible for payment through the Level II extended assessment and management composite APC 8003.

IV. OPPS Payment for Devices

A. Pass-Through Payments for Devices

1. Expiration of Transitional Pass-Through Payments for Certain Devices

a. Background

Section 1833(t)(6)(B)(iii) of the Act requires that, under the OPPS, a category of devices be eligible for transitional pass-through payments for at least 2, but not more than 3, years. This period begins with the first date on which transitional pass-through payments are eligible for any medical device that is described by the category. We may establish a new device category for pass-through payment in any quarter. Under our established policy, we base the expiration dates for the category codes on the date on which a category was first eligible for pass-through payment. We propose and finalize the dates for expiration of pass-through payments for device categories as part of the OPPS annual update.

Two currently eligible categories, HCPCS code C1821 (Interspinous process distraction device (implantable)) and HCPCS code L8690 (Auditory osseointegrated device, includes all internal and external components), were established for pass-through payment as of January 1, 2007. These two device categories will be eligible for pass-through payment for 2 years through December 31, 2008. In the CY 2008 OPPS/ASC final rule with comment period (72 FR 66751), we finalized our policy to expire these two categories from pass-through device payment after December 31, 2008.

We also have an established policy to package the costs of the devices no longer eligible for pass-through payments into the costs of the procedures with which the devices are reported in the claims data used to set the payment rates (67 FR 66763). Brachytherapy sources, which are now separately paid in accordance with section 1833(t)(2)(H) of the Act, are an exception to this established policy.

b. Final Policy

In the CY 2009 OPPS/ASC proposed rule (73 FR 41477), we stated that we are implementing the final decisions that we discussed in the CY 2008 OPPS/ASC final rule with comment period that finalize the expiration date of pass-through status for device categories described by HCPCS codes C1821 and L8690. We did not receive any public comments on our statement of these decisions on expiration of the HCPCS codes L8690 and C1821 categories. Responses to public comments regarding the proposed CY 2009 APC assignments for surgical procedures associated with HCPCS codes L8690 and C1821 and into which payment for these devices is packaged for CY 2009, are included in sections II.A.2.d.(1) and III.D.5.e. of this final rule with comment period, respectively. Therefore, as of January 1, 2009, we will discontinue pass-through payment for HCPCS device category codes C1821 and L8690. In accordance with our established policy, we will package the costs of the devices assigned to these two device categories into the costs of the procedures with which the devices were billed in CY 2007, the year of hospital claims data used for this CY 2009 OPPS update.

We currently have no established device categories eligible for pass-through payment that are continuing into CY 2009. We continue to evaluate

applications for pass-through payment of medical devices on an ongoing basis. We may establish a new device category in any quarter, and we will advise the public of our decision to establish a new device category in a subsequent quarter in CY 2009 through the transmittal that implements the OPPS update for the applicable quarter. We would then propose an expiration date for such new categories in future OPPS annual updates.

2. Provisions for Reducing Transitional Pass-Through Payments To Offset Costs Packaged Into APC Groups

a. Background

We have an established policy to estimate the portion of each APC payment rate that could reasonably be attributed to the cost of the associated devices that are eligible for pass-through payments (66 FR 59904). We deduct from the pass-through payments for identified device categories eligible for pass-through payments an amount that reflects the portion of the APC payment amount that we determine is associated with the cost of the device, defined as the APC offset amount, as required by section 1833(t)(6)(D)(ii) of the Act. We have consistently employed an established methodology to estimate the portion of each APC payment rate that could reasonably be attributed to the cost of an associated device eligible for pass-through payment, using claims data from the period used for the most recent recalibration of the APC rates (72 FR 66751 through 66752). We establish and update the applicable APC offset amounts for eligible pass-through device categories through the transmittals that implement the quarterly OPPS updates.

b. Final Policy

In the CY 2009 OPPS/ASC proposed rule (73 FR 41478), we proposed to continue our established policies for calculating and setting the APC offset amounts for each device category eligible for pass-through payment. We also proposed to continue to review each new device category on a case-by-case basis, to determine whether device costs associated with the new category are already packaged into the existing APC structure. If device costs packaged into the existing APC structure are associated with the new category, we would deduct the APC offset amount from the pass-through payment for the device category.

We did not receive any public comments regarding these proposals. Therefore, for CY 2009, we are continuing our established policies for calculating and setting the APC offset amounts for each device category eligible for pass-through payment, and for reviewing each new device category on a case-by-case basis, to determine whether device costs associated with the new category are packaged into the existing APC structure.

We note that we will also publish on the CMS Web site at *http://www.cms.hhs.gov/HospitalOutpatientPPS/01_overview.asp* a list of all procedural APCs with the CY 2009 portions of the APC payment amounts that we determine are associated with the cost of devices. These portions will be used as the APC offset amounts, and, in accordance with our established practice, they will be used in order to evaluate whether the cost of a device in an application for a new device category for pass-through payment is not insignificant in relation to the APC payment amount for the service related to the category of devices, as specified in our regulations at § 419.66(d).

B. Adjustment to OPPS Payment for No Cost/Full Credit and Partial Credit Devices

1. Background

In recent years, there have been several field actions on and recalls of medical devices as a result of implantable device failures. In many of these cases, the manufacturers have offered devices without cost to the hospital or with credit for the device being replaced if the patient required a more expensive device. In order to ensure that payment rates for procedures involving devices reflect only the full costs of those devices, our standard ratesetting methodology for device-dependent APCs uses only claims that contain the correct device code for the procedure, do not contain token charges, and do contain the ''FB'' modifier signifying that the device was furnished without cost or with a full credit.

To ensure equitable payment when the hospital receives a device without cost or with full credit, in CY 2007 we implemented a policy to reduce the payment for specified device-dependent APCs by the estimated portion of the APC payment attributable to device costs (that is, the device offset) when the hospital receives a specified device at no cost or with full credit (71 FR 68071 through 68077). Hospitals are instructed to report no cost/full credit cases using the ''FB'' modifier on the line with the procedure code in which the no cost/full credit device is used. In cases in which the device is furnished without cost or with full credit, the hospital is to report a token device charge of less than $1.01. In cases in which the device being inserted is an upgrade (either of the same type of device or to a different type of device) with a full credit for the device being replaced, the hospital is to report as the device charge the difference between its usual charge for the device being implanted and its usual charge for the device for which it received full credit. In CY 2008, we expanded this payment adjustment policy to include cases in which hospitals receive partial credit of 50 percent or more of the cost of a specified device. Hospitals are instructed to append the ''FC'' modifier to the procedure code that reports the service provided to furnish the device when they receive a partial credit of 50 percent or more of the cost of the new device. In CY 2008, OPPS payment for the implantation procedure is reduced by 100 percent of the device offset for no cost/full credit cases when both a specified device code is present on the claim and the procedure code maps to a specified APC. Payment for the implantation procedure is reduced by 50 percent of the device offset for partial credit cases when both a specified device code is present on the claim and the procedure code maps to a specified APC. Beneficiary copayment is based on the reduced payment amount when either the ''FB'' or ''FC'' modifier is billed and the procedure and device codes appear on the lists of procedures and devices to which this policy applies. We refer readers to the CY 2008 OPPS/ASC final rule with comment period for more background information on the ''FB'' and ''FC'' payment adjustment policy (72 FR 66743 through 66749).

2. APCs and Devices Subject to the Adjustment Policy

In the CY 2009 OPPS/ASC proposed rule (73 FR 41478 through 41480), for CY 2009 we proposed to continue the policy of reducing OPPS payment for specified APCs by 100 percent of the device offset amount when a hospital furnishes a specified device without cost or with a full credit and by 50 percent of the device offset amount when the hospital receives partial credit in the amount of 50 percent or more of the cost for the specified device. Because the APC payments for the related services are specifically constructed to ensure that the full cost of the device is included in the payment, we continue to believe that it is appropriate to reduce the APC payment in cases in which the hospital receives a device without cost, with full credit, or with partial credit, in order to

provide equitable payment in these cases. (We refer readers to section II.A.2.d.(1) of this final rule with comment period for a description of our standard ratesetting methodology for device-dependent APCs.) Moreover, the payment for these devices comprises a large part of the APC payment on which the beneficiary copayment is based, and we continue to believe it is equitable that the beneficiary cost sharing reflect the reduced costs in these cases.

We also proposed to continue using the three criteria established in the CY 2007 OPPS/ASC final rule with comment period for determining the APCs to which this policy applies (71 FR 68072 through 68077). Specifically, (1) all procedures assigned to the selected APCs must involve implantable devices that would be reported if device insertion procedures were performed, (2) the required devices must be surgically inserted or implanted devices that remain in the patient's body after the conclusion of the procedures (at least temporarily), and (3) the device offset amount must be significant, which for purposes of this policy is defined as exceeding 40 percent of the APC cost. We proposed to continue to restrict the devices to which the APC payment adjustment would apply to a specific set of costly devices to ensure that the adjustment would not be triggered by the implantation of an inexpensive device whose cost would not constitute a significant proportion of the total payment rate for an APC. We continue to believe that these criteria are appropriate because free devices and credits are likely to be associated with particular cases only when the device must be reported on the claim and is of a type that is implanted and remains in the body when the beneficiary leaves the hospital. We believe that the reduction in payment is appropriate only when the cost of the device is a significant part of the total cost of the APC into which the device cost is packaged, and that the 40-percent threshold is a reasonable definition of a significant cost.

As indicated in the CY 2009 OPPS/ASC proposed rule (73 FR 41479), we examined the offset amounts calculated from the CY 2009 proposed rule data and the clinical characteristics of APCs to determine whether the APCs to which the no cost/full credit and partial credit device adjustment policy applies in CY 2008 continue to meet the criteria for CY 2009, and to determine whether other APCs to which the policy does not apply in CY 2008 would meet the criteria for CY 2009. Table 18 of the CY 2009 OPPS/ASC proposed rule listed the proposed APCs to which the payment reduction policy for no cost/full credit and partial credit devices would apply in CY 2009 and displayed the proposed payment reduction percentages for both no cost/full credit and partial credit circumstances. Table 19 of the CY 2009 OPPS/ASC proposed rule listed the proposed devices to which this policy would apply in CY 2009. As reflected in the tables, we proposed to add APC 0425 (Level II Arthroplasty or Implantation with Prosthesis) and APC 0648 (Level IV Breast Surgery) and their associated devices that would not otherwise be on the device list for CY 2009 because the device offset percentages for these two APCs were above the 40-percent threshold based on the CY 2007 claims data available for the proposed rule. We also proposed to remove APC 0106 (Insertion/Replacement of Pacemaker Leads and/or Electrodes) and device HCPCS codes associated only with procedures assigned to this APC because the proposed device offset percentage for this APC was less than 40 percent. We stated in the CY 2009 OPPS/ASC proposed rule (73 FR 41479) that we would update the lists of APCs and devices to which the no cost/full credit and partial credit device adjustment policy would apply in CY 2009 based on the final CY 2007 claims data available for this final rule with comment period.

Comment: One commenter supported the continuation of the current policy. Another commenter acknowledged an understanding of the rationale for the no cost/full credit and partial credit payment reduction policy, but expressed concerns regarding the policy's application in cases of device upgrades. According to the commenter, when a device is replaced, the old model is often no longer available and an upgrade is required. In such circumstances, the commenter asserted that the full cost of the replaced device is credited, but the replacement device is more expensive. The commenter objected to CMS' application of the full device offset amount in these cases, and suggested CMS develop a process that takes into account and pays for the excess cost of the replacement device. The commenter also noted that, in instances of partial credits for replacement devices, hospitals often do not know if they are receiving a partial credit until the manufacturer has inspected the device. According to the commenter, hospitals must then resubmit the claim after the partial refund is received. The commenter believed that this process requires manual intervention that is costly for hospitals because many material management systems are interfaced with billing systems and do not routinely match returns to specific patients. The commenter urged CMS to take into account the additional costs incurred by the hospital to track these replacement devices and the additional staff effort required to resubmit claims when the manufacturer provides partial credit for replacement devices.

Response: We do not agree with the commenter that we need to modify the no cost/full credit and partial credit device adjustment policy to account for the cost of more expensive replacement devices when manufacturers provide device upgrades. We continue to believe making the full APC payment would result in significant overpayment because, as described above, we use only those claims that reflect the full costs of devices in ratesetting for device-dependent APCs. In cases where a hospital incurs a cost for a device upgrade, the difference between the cost of the replacement device and the full credit the hospital receives for the device being replaced would likely be much less than the full cost of the device that is included in the device-dependent APC payment rate. To provide the full APC payment in these cases would favor a device upgrade, rather than replacement with a comparable device, in warranty or recall cases where the surgical procedure to replace the device is only medically necessary because of the original defective device, for which the manufacturer bears responsibility. Moreover, we also are concerned that a new policy to apply a smaller APC payment percentage reduction in an upgrade case, if we were eventually able to estimate such a percentage from sufficient claims data, could also favor device upgrades, rather than replacement with a comparable device in those situations for which the upgrade is only being provided because the old model failed (and for which the manufacturer provides a full credit) but is no longer available for use in the replacement procedure. We recognize that, in some cases, the estimated device cost, and, therefore, the amount of the payment reduction, will be more or less than the cost a hospital would otherwise incur for a no cost/full credit device. However, because averaging is inherent in a prospective payment system, we do not believe this is inappropriate. Therefore, we continue to believe that the full device offset reduction should be made when hospitals receive full credit for the cost of a replaced device

against the cost of a more expensive replacement device.

Also, as stated in the CY 2007 OPPS/ASC final rule with comment period (71 FR 68076), we do not believe it is necessary to reduce the amount of no cost/full credit and partial credit device adjustments to account for administrative costs because we believe that these costs are part of the payment that remains for the services furnished. We remind hospitals that, as outlined in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66747), they have two options to report that they received a partial credit of 50 percent or more of the cost of a replacement device: (1) Submit the claims immediately without the ''FC'' modifier signifying partial credit for a replacement device and submit a claim adjustment with the ''FC'' modifier at a later date once the credit determination is made; or (2) hold the claim until a determination is made on the level of credit.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, to continue the established no cost/full credit and partial credit device adjustment policy. For CY 2009, OPPS payments for implantation procedures to which the ''FB'' modifier is appended are reduced by 100 percent of the device offset for no cost/full credit cases when both a device code listed in Table 22, below, is present on the claim and the procedure code maps to an APC listed in Table 21 below. OPPS payments for implantation procedures to which the ''FC'' modifier is appended are reduced by 50 percent of the device offset when both a device code listed in Table 22 is present on the claim and the procedure code maps to an APC listed in Table 21. Beneficiary copayment is based on the reduced payment amount when either the ''FB'' or ''FC'' modifier is billed and the procedure and device codes appear on the lists of procedures and devices to which this policy applies.

In addition, we are adding, as proposed, APC 0425 (Level II Arthroplasty or Implantation with Prosthesis) and APC 0648 (Level IV Breast Surgery) and their associated devices to the lists of APCs and devices to which this policy applies, as shown in Tables 21 and 22, respectively, because the device offset percentages for these two APCs are above the 40-percent threshold. We are not implementing our proposal to remove APC 0106 (Insertion/Replacement of Pacemaker Leads and/or Electrodes) and device HCPCS codes associated with this APC from these lists because the device offset percentage for this APC is now above 40 percent based on updated CY 2007 claims data and the most recent cost report data available for this final rule with comment period.

TABLE 21—APCS TO WHICH THE NO COST/FULL CREDIT AND PARTIAL CREDIT DEVICE ADJUSTMENT POLICY APPLIES

Final CY 2009 APC	Final CY 2009 SI	CY 2009 APC title	Final CY 2009 device offset percentage for no cost/full credit case	Final CY 2009 device offset percentage for partial credit case
0039	S	Level I Implantation of Neurostimulator	84	42
0040	S	Percutaneous Implantation of Neurostimulator Electrodes	57	29
0061	S	Laminectomy, Laparoscopy, or Incision for Implantation of Neurostimulator Electrodes.	62	31
0089	T	Insertion/Replacement of Permanent Pacemaker and Electrodes.	72	36
0090	T	Insertion/Replacement of Pacemaker Pulse Generator	74	37
0106	T	Insertion/Replacement of Pacemaker Leads and/or Electrodes.	43	21
0107	T	Insertion of Cardioverter-Defibrillator	89	45
0108	T	Insertion/Replacement/Repair of Cardioverter-Defibrillator Leads.	89	44
0222	S	Level II Implantation of Neurostimulator	85	42
0225	S	Implantation of Neurostimulator Electrodes, Cranial Nerve.	62	31
0227	T	Implantation of Drug Infusion Device	82	41
0259	T	Level VII ENT Procedures	84	42
0315	S	Level III Implantation of Neurostimulator	88	44
0385	S	Level I Prosthetic Urological Procedures	59	29
0386	S	Level II Prosthetic Urological Procedures	69	34
0418	T	Insertion of Left Ventricular Pacing Elect	71	36
0425	T	Level II Arthroplasty or Implantation with Prosthesis	59	29
0648	T	Level IV Breast Surgery	46	23
0654	T	Insertion/Replacement of a permanent dual chamber pacemaker.	77	38
0655	T	Insertion/Replacement/Conversion of a permanent dual chamber pacemaker.	76	38
0680	S	Insertion of Patient Activated Event Recorders	71	36
0681	T	Knee Arthroplasty	71	35

TABLE 22—DEVICES TO WHICH THE NO COST/FULL CREDIT AND PARTIAL CREDIT DEVICE ADJUSTMENT POLICY APPLIES

CY 2009 device HCPCS code	CY 2009 short descriptor
C1721	AICD, dual chamber.
C1722	AICD, single chamber.
C1728	Cath, brachytx seed adm.
C1764	Event recorder, cardiac.
C1767	Generator, neurostim, imp.

TABLE 22—DEVICES TO WHICH THE NO COST/FULL CREDIT AND PARTIAL CREDIT DEVICE ADJUSTMENT POLICY APPLIES—Continued

CY 2009 device HCPCS code	CY 2009 short descriptor
C1771	Rep dev, urinary, w/sling.
C1772	Infusion pump, programmable.
C1776	Joint device (implantable).
C1777	Lead, AICD, endo single coil.
C1778	Lead, neurostimulator.
C1779	Lead, pmkr, transvenous VDD.
C1785	Pmkr, dual, rate-resp.
C1786	Pmkr, single, rate-resp.
C1789	Prosthesis, breast, imp.
C1813	Prosthesis, penile, inflatab.
C1815	Pros, urinary sph, imp.
C1820	Generator, neuro rechg bat sys.
C1881	Dialysis access system.
C1882	AICD, other than sing/dual.
C1891	Infusion pump, non-prog, perm.
C1895	Lead, AICD, endo dual coil.
C1896	Lead, AICD, non sing/dual.
C1897	Lead, neurostim, test kit.
C1898	Lead, pmkr, other than trans.
C1899	Lead, pmkr/AICD combination.
C1900	Lead coronary venous.
C2619	Pmkr, dual, non rate-resp.
C2620	Pmkr, single, non rate-resp.
C2621	Pmkr, other than sing/dual.
C2622	Prosthesis, penile, non-inf.
C2626	Infusion pump, non-prog, temp.
C2631	Rep dev, urinary, w/o sling.
L8600	Implant breast silicone/eq.
L8614	Cochlear device/system.
L8685	Implt nrostm pls gen sng rec.
L8686	Implt nrostm pls gen sng non.
L8687	Implt nrostm pls gen dua rec.
L8688	Implt nrostm pls gen dua non.
L8690	Aud osseo dev, int/ext comp.

V. OPPS Payment Changes for Drugs, Biologicals, and Radiopharmaceuticals

A. OPPS Transitional Pass-Through Payment for Additional Costs of Drugs, Biologicals, and Radiopharmaceuticals

1. Background

Section 1833(t)(6) of the Act provides for temporary additional payments or ''transitional pass-through payments'' for certain drugs and biological agents. As originally enacted by the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act (BBRA) of 1999 (Pub. L. 106–113), this provision requires the Secretary to make additional payments to hospitals for current orphan drugs, as designated under section 526 of the Federal Food, Drug, and Cosmetic Act (Pub. L. 107–186); current drugs and biological agents and brachytherapy sources used for the treatment of cancer; and current radiopharmaceutical drugs and biological products. For those drugs and biological agents referred to as ''current,'' the transitional pass-through payment began on the first date the hospital OPPS was implemented (before enactment of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000 (Pub. L. 106–554), on December 21, 2000).

Transitional pass-through payments also are provided for certain ''new'' drugs and biological agents that were not being paid for as an HOPD service as of December 31, 1996, and whose cost is ''not insignificant'' in relation to the OPPS payments for the procedures or services associated with the new drug or biological. For pass-through payment purposes, radiopharmaceuticals are included as ''drugs.'' Under the statute, transitional pass-through payments can be made for at least 2 years but not more than 3 years. CY 2009 pass-through drugs and biologicals and their APCs are assigned status indicator ''G'' as indicated in Addenda A and B to this final rule with comment period.

Section 1833(t)(6)(D)(i) of the Act specifies that the pass-through payment amount, in the case of a drug or biological, is the amount by which the amount determined under section 1842(o) of the Act (or, if the drug or biological is covered under a competitive acquisition contract under section 1847B of the Act, an amount determined by the Secretary to be equal to the average price for the drug or biological for all competitive acquisition areas and year established under such section as calculated and adjusted by the Secretary) for the drug or biological exceeds the portion of the otherwise applicable Medicare OPD fee schedule that the Secretary determines is associated with the drug or biological. This methodology for determining the pass-through payment amount is set forth in § 419.64 of the regulations, which specifies that the pass-through payment equals the amount determined under section 1842(o) of the Act minus the portion of the APC payment that CMS determines is associated with the drug or biological. Section 1847A of the Act, as added by section 303(c) of Public Law 108–173, establishes the use of the average sales price (ASP) methodology as the basis for payment for drugs and biologicals described in section 1842(o)(1)(C) of the Act that are furnished on or after January 1, 2005. The ASP methodology, as applied under the OPPS, uses several sources of data as a basis for payment, including the ASP, wholesale acquisition cost (WAC), and average wholesale price (AWP). In

this final rule with comment period, the term ''ASP methodology'' and ''ASP-based'' are inclusive of all data sources and methodologies described therein. Additional information on the ASP methodology can be found on the CMS Web site at: *http://www.cms.hhs.gov/McrPartBDrugAvgSalesPrice/01_overview.asp#TopOfPage*.

As noted above, section 1833(t)(6)(D)(i) of the Act also states that if a drug or biological is covered under a competitive acquisition contract under section 1847B of the Act, the payment rate is equal to the average price for the drug or biological for all competitive acquisition areas and the year established as calculated and adjusted by the Secretary. Section 1847B of the Act, as added by section 303(d) of Public Law 108–173, establishes the payment methodology for Medicare Part B drugs and biologicals under the competitive acquisition program (CAP). The Part B drug CAP was implemented on July 1, 2006, and includes approximately 190 of the most common Part B drugs provided in the physician's office setting. We note that the Part B drug CAP program has been postponed for CY 2009 (Medicare Learning Network (MLN) Matters Special Edition 0833, available via the Web site: *http://www.medicare.gov*). Therefore, there will be no effective Part B drug CAP rate for pass-through drugs and biologicals as of January 1, 2009. As is our standard process, we have used the Part B drug CAP rates for July 2008 to determine the packaging status for drugs with expiring pass-through status. However, effective January 1, 2009, we will use the amount determined under section 1842(o) of the Act for payment purposes for drugs and biologicals with pass-through status. If the Part B drug CAP program is reinstituted sometime during CY 2009, we will again use the Part B drug CAP rate for pass-through drugs and biologicals if they are a part of the Part B drug CAP program. Otherwise, we will continue to use the rate that would be paid in the physician's office setting for drugs and biologicals with pass-through status. The list of drugs and biologicals covered under the Part B drug CAP through December 31, 2008, their associated payment rates, and the Part B drug CAP pricing methodology can be found on the CMS Web site at: *http://www.cms.hhs.gov/CompetitiveAcquisforBios*.

For CYs 2005, 2006, and 2007, we estimated the OPPS pass-through payment amount for drugs and biologicals to be zero based on our interpretation that the ''otherwise applicable Medicare OPD fee schedule'' amount was equivalent to the amount to be paid for pass-through drugs and biologicals under section 1842(o) of the Act (or section 1847B of the Act, if the drug or biological is covered under a competitive acquisition contract). We concluded for those years that the resulting difference between these two rates would be zero. For CY 2008, we estimated the OPPS pass-through payment amount for drugs and biologicals to be $6.6 million. Our OPPS pass-through payment estimate for drugs and biologicals in CY 2009 is $23.3 million, which is discussed in section VI.B. of this final rule with comment period.

The pass-through application and review process for drugs and biologicals is explained on the CMS Web site at: *http://www.cms.hhs.gov/HospitalOutpatientPPS/04_passthrough_payment.asp*.

2. Drugs and Biologicals With Expiring Pass-Through Status in CY 2008

Section 1833(t)(6)(C)(i) of the Act specifies that the duration of transitional pass-through payments for drugs and biologicals must be no less than 2 years and no longer than 3 years. In the CY 2009 OPPS/ASC proposed rule (73 FR 41481), we proposed that the pass-through status of 15 drugs and biologicals would expire on December 31, 2008, as listed in Table 20 of the proposed rule. It is standard OPPS practice to delete temporary C-codes if an alternate permanent HCPCS code becomes available for purposes of OPPS billing and payment. Based on our review of the new CY 2009 HCPCS codes available at the time of this final rule with comment period, as noted in Table 23 below, there are no new permanent HCPCS codes that will be implemented in CY 2009 to replace HCPCS C-codes that were used in CY 2008 for drugs and biologicals with pass-through status.

In addition, HCPCS code J7348 (Dermal (substitute) tissue of nonhuman origin, with or without other bioengineered or processed elements, without metabolically active elements (Tissuemend), per square centimeter), which was proposed for expiring pass-through status on December 31, 2009, has been deleted by the CMS HCPCS Workgroup, effective January 1, 2009. We have determined that the product(s) described by this HCPCS code are appropriately reported with HCPCS code Q4109 (Skin substitute, Tissuemend, per square centimeter), effective January 1, 2009. Furthermore, another HCPCS code J7349 (Dermal (substitute) tissue of nonhuman origin, with or without other bioengineered or processed elements, without metabolically active elements (Primatrix), per square centimeter), which was proposed for expiring pass-through status on December 31, 2008, also has been deleted, effective January 1, 2009, and product(s) described by this HCPCS code are appropriately reported with HCPCS code Q4110 (Skin substitute, Primatrix, per square centimeter).

As we discussed in the proposed rule, our standard methodology for providing payment for drugs and biologicals with expiring pass-through status in an upcoming calendar year is to determine the product's estimated per day cost and compare it with the OPPS drug packaging threshold for that calendar year (which was proposed at $60 for CY 2009). If the estimated per day cost is less than or equal to the applicable OPPS drug packaging threshold, we package payment for the drug or biological into the payment for the associated procedure in the upcoming calendar year. If the estimated per day cost is greater than the OPPS drug packaging threshold, we provide separate payment at the applicable relative ASP-based payment amount (which was proposed at ASP+4 percent for CY 2009). For drugs and biologicals that are currently covered under the CAP, we proposed to use the payment rates calculated under that program that were in effect as of April 1, 2008, for purposes of packaging decisions and for Addenda A and B to the proposed rule. As we proposed, we are updating these payment rates based on the CAP rates as of July 1, 2008, for packaging decisions and as of October 1, 2008, for purposes of Addenda A and B to this CY 2009 OPPS/ASC final rule with comment period, as these are the most updated data available at the time these decisions are made.

Three of the products with proposed expiring pass-through status for CY 2009 are biologicals that are solely surgically implanted according to their Food and Drug Administration-approved indications. As discussed in the proposed rule, these products are described by HCPCS codes C9352 (Microporous collagen implantable tube (Neuragen Nerve Guide), per centimeter length); C9353 (Microporous collagen implantable slit tube (NeuraWrap Nerve Protector), per centimeter length); and J7348 (Dermal (substitute) tissue of nonhuman origin, with or without other bioengineered or processed elements, without metabolically active elements (Tissuemend), per square centimeter). We note that, as discussed above, the CMS HCPCS Workgroup has deleted HCPCS code J7348, effective January 1,

2009, and we have determined that the product(s) described by this HCPCS code are appropriately reported with HCPCS code Q4109, effective January 1, 2009.

We proposed to package payment for those implantable biologicals that have expiring pass-through status in CY 2009 into payment for the associated surgical procedure. We indicated our belief that the three products described above with expiring pass-through status for CY 2009 differ from other biologicals paid under the OPPS in that they specifically function as surgically implanted devices. Both implantable devices under the OPPS and these three biologicals with expiring pass-through status are always surgically inserted or implanted (including through a surgical incision or a natural orifice). Furthermore, in some cases, these implantable biologicals can substitute for implantable nonbiologic devices (such as for synthetic nerve conduits or synthetic mesh used in tendon repair).

To date, for other nonpass-through biologicals paid under the OPPS that may sometimes be used as implantable devices, we have instructed hospitals, via Transmittal 1336, Change Request 5718, dated September 14, 2007, to not separately bill for the HCPCS codes for the products when using these items as implantable devices (including as a scaffold or an alternative to human or nonhuman connective tissue or mesh used in a graft) during surgical procedures. In such cases, we consider payment for the biological used as an implantable device in a specific clinical case to be included in payment for the surgical procedure.

As we established in the CY 2003 OPPS final rule with comment period (67 FR 66763), when the pass-through payment period for an implantable device ends, it is standard OPPS policy to package payment for the implantable device into payment for its associated surgical procedure. We consider nonpass-through implantable devices to be integral and supportive items and services for which packaged payment is most appropriate. According to our regulations at § 419.2(b), as a prospective payment system, the OPPS establishes a national payment rate that includes operating and capital-related costs that are directly related and integral to performing a procedure or furnishing a service on an outpatient basis including, but not limited to, implantable prosthetics, implantable durable medical equipment, and medical and surgical supplies. Therefore, when the period of nonbiologic device pass-through payment ends, we package the costs of the devices no longer eligible for pass-through payment into the costs of the procedures with which the devices were reported in the claims data used to set the payment rates for the upcoming calendar year. As described in the CY 2009 OPPS/ASC proposed rule (73 FR 41481), we believed that this policy to package payment for implantable devices that are integral to the performance of separately paid procedures should also apply to payment for implantable biologicals without pass-through status, when those biologicals function as implantable devices. As stated above, implantable biologicals may be used in place of other implantable nonbiologic devices whose costs are already accounted for in the associated procedural APC payments for surgical procedures. If we were to provide separate payment for these implantable biologicals without pass-through status, we would potentially be providing duplicate device payment, both through the packaged nonbiologic device cost included in the surgical procedure's payment and separate biological payment. We indicated in the CY 2009 OPPS/ASC proposed rule (73 FR 41481) that we saw no basis for treating implantable biological and nonbiologic devices without pass-through status differently for OPPS payment purposes because both are integral to and supportive of the separately paid surgical procedures in which either may be used.

The methodology of calculating a product's estimated per day cost and comparing it to the annual OPPS drug packaging threshold has been used to determine the packaging status of all drugs and biologicals under the OPPS (except for our exemption for 5HT3 anti-emetics), including injectable products paid for under the OPPS as biologicals (such as intraarticular sodium hyaluronate products). However, because we believe that the three products described above with expiring pass-through status for CY 2009 differ from other biologicals paid under the OPPS in that they specifically function as surgically implanted devices, we proposed a policy to package payment for any biological without pass-through status that is surgically inserted or implanted (through a surgical incision or a natural orifice) into the payment for the associated surgical procedure when their pass-through status expires.

Comment: One commenter requested that CMS not end pass-through status for HCPCS codes C9352 and C9353 effective December 31, 2008. The commenter pointed out that while these two products were originally granted pass-through status on January 1, 2007 (and could therefore theoretically be eligible for another year of pass-through status under the OPPS), a coding change in CY 2008 was the first opportunity for these products to be differentiated on hospital claims. Therefore, when determining payment rates for CY 2009, the commenter argued that CY 2007 claims data do not identify which product was used on the claim and, therefore, accurate payment cannot be determined for these products for CY 2009.

In addition, the commenter stated that there were very few claims for these products in CY 2007. There were a total of 11 CY 2007 claims for these products, and only 3 were single or ''pseudo'' single claims used for ratesetting for the associated procedures.

Response: HCPCS code C9350 (Microporous collagen tube of non-human origin, per centimeter length) was first created effective January 1, 2007 and was assigned status indicator ''G'' (indicating pass-through status applied). On January 1, 2008, HCPCS code C9350 was split into HCPCS code C9352 and HCPCS code C9353. The products described in CY 2007 under HCPCS code C9350 continued pass-through status under the HCPCS codes C9352 and C9353 in CY 2008. As stated above, pass-through status is required for at least 2 but not more than 3 years. We proposed to end pass-through status for the products described by HCPCS codes C9352 and C9353 because they were first approved for pass-through status on January 1, 2007 under HCPCS code C9350 and, therefore, would meet the timeframe required for pass-through status on December 31, 2008. We do not believe the finding that these products were rarely used in the care of Medicare beneficiaries in CY 2007, their first year of pass-through payment, is sufficient justification for providing a third year of pass-through payment, as we have cost data that allow us to package payment for these implantable biologicals into payment for the associated procedures for CY 2009.

We note that, unlike our standard methodology of calculating an estimated per day cost for items that have expiring pass-through status and comparing this estimate to the applicable drug packaging threshold, our proposal to package nonpass-through biologicals that are surgically inserted or implanted (through a surgical incision or a natural orifice) into the payment for the associated surgical procedure is not dependent on claims data to establish an estimated per day cost for each product. Rather, the packaging determination is made as a result of the

FDA-indicated implantable use of the product. Therefore, we do not believe that the coding change in CY 2008 and the resulting lack of product-specific claims data sufficiently warrant an extension of pass-through status for the products described by HCPCS codes C9352 and C9353.

Comment: A few commenters supported the proposed methodology to package payment for drugs and nonimplantable biologicals with expiring pass-through status if their estimated per day costs are less than or equal to the drug packaging threshold (proposed at $60 for CY 2009).

Furthermore, several commenters supported CMS' proposal to package payment for implantable biologicals without pass-through status into the payment for the associated surgical procedure. One commenter recommended that CMS continue to examine the APC weights of these associated APCs to ensure they sufficiently account for the costs of the implantable biologicals. In addition, this commenter recommended that CMS consider developing separate APCs for surgical procedures that use biological and synthetic mesh from those procedures that do not use any type of mesh. The commenter argued that this separation would ensure that the APCs are similar in terms of clinical characteristic and resource use.

One commenter requested an exception to the proposed packaging policy when the procedure including an implantable biological is billed using an unlisted surgical procedure code. In this specific situation, the commenter believed that the implantable biological should be paid separately whether or not it currently has pass-through status if the estimated per day cost is over the applicable drug packaging threshold.

Response: We proposed to package payment for drugs and nonimplantable biologicals with expiring pass-through status in CY 2009 and with estimated costs below the CY 2009 $60 drug packaging threshold and to continue to pay separately for these products if their estimated costs exceeded the threshold, consistent with our established policy for the past several years. We appreciate the commenters' support for this approach.

In addition, we do not believe there is a need to develop separate APCs for surgical procedures that use biological and synthetic mesh, distinct from APCs for those procedures that do not use mesh. The APCs are groupings of services that share clinical and resource characteristics. The packaged costs of implantable mesh devices are reflected in the HCPCS code-specific median costs for the associated surgical procedures; thus, while we believe that, unless we find that APCs violate the 2 times rule or there is a concern regarding their clinical or resource homogeneity, we have no specific need to assign procedures using mesh to different APCs from procedures that do not implant mesh products. Packaging costs into a single aggregate payment for a service, encounter, or episode-of-care is a fundamental principle that distinguishes a prospective payment system from a fee schedule. In general, packaging the costs of supportive items and services into the payment for the independent procedure or service with which they are associated encourages hospital efficiencies and also enables hospitals to manage their resources with maximum flexibility.

Finally, we understand that one commenter was concerned that when implantable biologicals are used in procedures reported with unlisted surgical procedure CPT codes, the complete packaged payment for the procedure and the biological may not sufficiently cover the costs of the biological. We disagree with the commenter that implantable biologicals should be paid separately when provided with an unlisted surgical procedure. We acknowledge that the commenter's concern is based partially on our established policy to provide payment for unlisted codes at the lowest level clinical APC in an appropriate clinical series. As we do for other OPPS services, we package payment for certain items and services when provided with unlisted procedure codes. We note that this methodology is also followed when packaged implantable nonbiologic devices are provided with unlisted surgical procedure codes. We expect that stakeholders would continue to seek specific HCPCS codes for new procedures provided with any frequency in the HOPD in order to allow for more precise procedure-specific payment under the OPPS. We remind readers that the reporting of unlisted codes is meant as a temporary measure to allow payment for new and/or uncommon services and, therefore, the services described by unlisted codes vary from year-to-year.

Comment: One commenter further recommended that CMS treat biologicals that are always surgically implanted or inserted and are approved by the FDA as devices rather than drugs for purposes of pass-through payment. The commenter noted that this would allow all implantable devices, biological and otherwise, to be subject to a single pass-through payment policy. The commenter concluded that this policy change would provide consistency in billing these products as implanted devices during both their pass-through payment period, as well as after the expiration of pass-through status.

Response: We appreciate the commenter's recommendation to treat biologicals that are always surgically implanted or inserted and are approved by the FDA as devices for purposes of pass-through payment under the OPPS. We did not propose such a policy for CY 2009, but we will consider making such a proposal for future rulemaking.

Comment: One commenter requested special payment consideration for HCPCS code J1473 (Injection, idursulfase, 1mg) because this drug has been granted orphan drug status by the FDA. Specifically, the commenter requested separate payment for this drug.

Response: In the CY 2009 OPPS/ASC proposed rule, we proposed to end the pass-through status of HCPCS code J1473 on December 31, 2008. As noted above, for drugs and biologicals (other than implantable only biologicals) transitioning from pass-through status, we determine the packaging status of each drug or biological by comparing its estimated per day cost to the annual drug packaging threshold for the applicable payment year. For CY 2009, the per day cost estimate for HCPCS code J1473 exceeds the $60 drug packaging threshold finalized for CY 2009 in section V.B.2.b. of this final rule with comment period and, therefore, HCPCS code J1473 will be paid separately for CY 2009.

After consideration of the public comments received, for CY 2009, we are finalizing our proposed policy, without modification, to package payment for any biological without pass-through status that is surgically inserted or implanted (through a surgical incision or a natural orifice) into the payment for the associated surgical procedure. As a result of this final methodology, HCPCS codes C9352, C9353, and J7348 are packaged and assigned status indicator ''N'' in Addendum B to this final rule with comment period. In addition, as proposed, any new biologicals without pass-through status that are surgically inserted or implanted (through a surgical incision or a natural orifice) will be packaged beginning in CY 2009.

Moreover, for nonpass-through biologicals that may sometimes be used as implantable devices, we continue to instruct hospitals to not bill separately for the HCPCS codes for the products when used as implantable devices. This reporting ensures that the costs of these products that may be, but are not

always, used as implanted biologicals are appropriately packaged into payment for the associated implantation procedures when the products are used as implantable devices.

For drugs and nonimplantable biologicals with expiring pass-through status, as proposed we have determined their final CY 2009 payment methodology of packaged or separate payment based on their estimated per day costs, in comparison with the CY 2009 drug packaging threshold.

Finally, we are finalizing our CY 2009 proposal, without modification, to expire pass-through status for the 15 drugs and biologicals listed in Table 20 of the proposed rule and listed below in Table 23, effective December 31, 2008. Packaged drugs and biologicals are assigned status indicator ''N'' and drugs and biologicals that continue to be separately paid as nonpass-through products are assigned status indicator ''K.''

TABLE 23—DRUGS AND BIOLOGICALS FOR WHICH PASS-THROUGH STATUS EXPIRES DECEMBER 31, 2008

CY 2008 HCPCS code	CY 2009 HCPCS code	CY 2009 short descriptor	Final CY 2009 SI	Final CY 2009 APC
C9352	C9352	Neuragen nerve guide, per cm	N	
C9353	C9353	Neurawrap nerve protector, cm	N	
J0129*	J0129	Abatacept injection	K	9230
J0348	J0348	Injection, anidulafungin, 1mg	K	0760
J0894*	J0894	Decitabine injection	K	9231
J1740*	J1740	Ibandronate sodium injection	K	9229
J1743	J1743	Idursulfase injection	K	9232
J2248	J2248	Micafungin sodium injection	K	9227
J2323*	J2323	Natalizumab injection	K	9126
J2778*	J2778	Ranibizumab injection	K	9233
J3243	J3243	Tigecycline injection	K	9228
J3473	J3473	Hyaluronidase recombinant	K	0806
J7348	Q4109	Tissuemend skin sub	N	
J7349	Q4110	Primatrix skin sub	K	1248
J9303	J9303	Panitumumab injection	K	9235

* Indicates that the drug was paid at a rate determined by the Part B drug CAP methodology (prior to January 1, 2009) while identified as pass-through under the OPPS.

3. Drugs, Biologicals, and Radiopharmaceuticals With New or Continuing Pass-Through Status in CY 2009

In the CY 2009 OPPS/ASC proposed rule (73 FR 41482), we proposed to continue pass-through status in CY 2009 for 16 drugs and biologicals. These items, which were approved for pass-through status between April 1, 2007 and July 1, 2008, were listed in Table 21 of the proposed rule. The APCs and HCPCS codes for the proposed drugs and biologicals that were listed in Table 21 were assigned status indicator ''G'' in Addenda A and B to the proposed rule.

Section 1833(t)(6)(D)(i) of the Act sets the amount of pass-through payment for pass-through drugs and biologicals (the pass-through payment amount) as the difference between the amount authorized under section 1842(o) of the Act (or, if the drug or biological is covered under a CAP under section 1847B of the Act, an amount determined by the Secretary equal to the average price for the drug or biological for all competitive acquisition areas and year established under such section as calculated and adjusted by the Secretary) and the portion of the otherwise applicable fee schedule amount that the Secretary determines is associated with the drug or biological. We stated in the proposed rule that, given our CY 2009 proposal to provide payment for nonpass-through separately payable drugs and biologicals at ASP+4 percent as described further in section V.B.3. of the proposed rule, we believed it would be consistent with the statute to provide payment for drugs and biologicals with pass-through status that are not part of the Part B drug CAP at a rate of ASP+6 percent, the amount authorized under section 1842(o) of the Act, rather than ASP+4 percent that would be the otherwise applicable fee schedule portion associated with the drug or biological. The difference between ASP+4 percent and ASP+6 percent, therefore, would be the CY 2009 pass-through payment amount for these drugs and biologicals. Thus, for CY 2009, we proposed to pay for pass-through drugs and biologicals that are not part of the Part B drug CAP at ASP+6 percent, equivalent to the rate these drugs and biologicals would receive in the physician's office setting in CY 2009. In addition, as we consider radiopharmaceuticals to be drugs for pass-through purposes, we proposed to provide pass-through payment for radiopharmaceuticals based on the ASP methodology at a rate equivalent to the payment rate for drugs and biologicals in the physician's office setting. We proposed to collect ASP data from those manufacturers that were able to report a patient-specific dose based on the HCPCS code descriptor (73 FR 41482).

Section 1842(o) of the Act also states that if a drug or biological is covered under the CAP under section 1847B of the Act, the payment rate is equal to the average price for the drug or biological for all competitive acquisition areas and year established as calculated and adjusted by the Secretary. For CY 2009, we proposed to provide payment for drugs and biologicals with pass-through status that are offered under the Part B drug CAP at a rate equal to the Part B drug CAP rate. Therefore, considering ASP+4 percent to be the otherwise applicable fee schedule portion associated with these drugs or biologicals, the difference between the Part B drug CAP rate and ASP+4 percent would be the pass-through payment amount for these drugs and biologicals. In the proposed rule, HCPCS codes that are offered under the CAP program as of April 1, 2008, were identified in Table 21 of the proposed rule with an asterisk.

Comment: Several commenters supported the continued pass-through status in CY 2009 of specific drugs and biologicals and urged CMS to finalize the proposal for these items. One commenter supported the proposed methodology of providing payment for drugs and biologicals at a rate equal to the rate those drugs and biologicals would receive under the Part B drug CAP program or in the physician's office setting. The commenter stated that

newer drugs with pass-through status are often not part of discounting programs for either physicians or hospitals, and that payment parity for this group of drugs provides for continued access to these new therapies. Another commenter disagreed with the proposed payment methodology for drugs, biologicals, and radiopharmaceuticals that have pass-through status. The commenter noted that linking pass-through drug payment to the payment provided to physicians creates a further payment disadvantage for hospitals, as the commenter believed that physicians may charge for consulting services that assist in paying for physicians' costs of supplying drugs, while hospitals do not have this same opportunity.

Response: As discussed above, we are directed by section 1833(t)(6)(D) of the Act to provide payment for pass-through drugs and biologicals at the difference between the amount authorized under section 1842(o) of the Act and the portion of the otherwise applicable fee schedule amount that the Secretary determines is associated with the drug or biological (or at the Part B Drug CAP rate if the drug or biological is covered under the Part B drug CAP). Therefore, we are not able to adopt an alternative payment methodology for pass-through drugs and biologicals under the CY 2009 OPPS.

Comment: A few commenters requested clarification of the criteria that would be used to evaluate radiopharmaceutical and contrast agent applications for pass-through status. In addition, some commenters requested that CMS clarify that new contrast agents are eligible to apply for pass-through status, even though they would otherwise be packaged.

Response: We note that, as stated above, for pass-through purposes we consider radiopharmaceuticals and contrast agents to be drugs and, therefore, the same pass-through criteria apply. Our criteria for reviewing pass-through drug and biologicals applications are available on the CMS Web site at: *http://www.cms.hhs.gov/HospitalOutpatientPPS/04_passthrough_payment.asp*.

Under the packaging methodology for diagnostic radiopharmaceuticals and contrast agents that we implemented in CY 2008, new diagnostic radiopharmaceuticals and new contrast agents without pass-thorough status would be packaged under the OPPS. As we are continuing our packaging policy for diagnostic radiopharmaceuticals and contrast agents for CY 2009, we will continue to package payment for all new diagnostic radiopharmaceuticals and contrast agents that do not have pass-through status in CY 2009.

Comment: Several commenters supported the proposal to provide payment for pass-through diagnostic and therapeutic radiopharmaceuticals based on the ASP methodology. Other commenters, while generally in favor of using the ASP methodology for pass-through radiopharmaceutical payment purposes, cautioned CMS that some manufacturers do not have the ability to provide a patient-specific ASP for their product(s).

Response: We appreciate the commenters' support for the ASP methodology to pay for radiopharmaceuticals with pass-through status. Currently, there are no radiopharmaceuticals (diagnostic or therapeutic) that would have pass-through status in CY 2009. For CY 2009, we proposed to provide payment for diagnostic and therapeutic radiopharmaceuticals with pass-through status based on the ASP methodology. We proposed to collect ASP data from those manufacturers who were able to report a patient-specific dose based on the HCPCS code descriptor (73 FR 41482).

Shortly after the issuance of our CY 2009 proposed rule, section 142 of Public Law 110–275 (MIPPA) directed that OPPS payments for therapeutic radiopharmaceutical be made at hospital charges adjusted to cost for CY 2009. The payment methodology specified in Public Law 110–275 also applies to any therapeutic radiopharmaceutical with pass-through status during CY 2009. Therefore, any therapeutic radiopharmaceutical that is granted pass-through status for CY 2009 will be paid based on hospital charges adjusted to cost for CY 2009.

Consistent with OPPS payment for separately payable drugs and biologicals with HCPCS codes, in CY 2009, as proposed, payment for diagnostic radiopharmaceuticals that are granted pass-through status will be based on the ASP methodology. As stated above, for purposes of pass-through payment, we consider radiopharmaceuticals to be drugs under the OPPS. Therefore, if a diagnostic radiopharmaceutical receives pass-through status during CY 2009, we will follow the standard ASP methodology to determine its pass-through payment rate under the OPPS.

We understand that not all manufacturers are in a position to submit patient-specific ASP data for their diagnostic radiopharmaceuticals. Therefore, if we do not have ASP data submitted under the standard ASP process to provide payment at ASP+6 percent, we will base the pass-through payment on the product's wholesale acquisition cost (WAC). If WAC data are also not available, we will provide payment for the pass-through diagnostic radiopharmaceutical at 95 percent of its most recent average wholesale price (AWP).

Comment: Some commenters suggested that CMS provide a payment, in addition to the relative ASP amount, for pass-through radiopharmaceuticals to account for nuclear medicine handling and compounding costs.

Response: As stated above, we are directed by section 142 of Public Law 110–275 to provide payment for therapeutic radiopharmaceuticals with pass-through status in CY 2009 at charges adjusted to cost. Therefore, additional payments are not within our discretion for these therapeutic radiopharmaceuticals. However, as we stated in the CY 2007 OPPS/ASC final rule with comment period (71 FR 68096), we believe that hospitals have the ability to set charges for items properly so that charges adjusted to cost can appropriately account fully for the acquisition and overhead costs of radiopharmaceuticals.

We have routinely provided a single payment for drugs, biologicals, and radiopharmaceuticals under the OPPS to account for acquisition cost and pharmacy overhead costs, including compounding costs. We continue to believe that a single payment is appropriate for diagnostic radiopharmaceuticals with pass-through status in CY 2009, and that the payment rate of ASP+6 (or payment based on the ASP methodology) is adequate to provide payment for both the diagnostic radiopharmaceutical acquisition cost and any associated nuclear medicine handling and compounding costs.

Comment: Some commenters noted that a pass-through period of possibly only 2 years discourages new product development, especially for radiopharmaceutical products. One commenter recommended providing pass-through payment for approved radiopharmaceuticals for a full 3-year time period to allow hospitals time to incorporate new products into their chargemasters and billing practices.

Response: As stated above, we currently do not have any radiopharmaceuticals, diagnostic or therapeutic, that either have been granted pass-through status or are under consideration for pass-through status at the time of this final rule with comment period. We also note that the OPPS pass-through provision provides for at least 2 but not more than 3 years of pass-through payment for drugs and biologicals that are approved for pass-

through payments. We provide an annual opportunity through the annual OPPS/ASC rulemaking cycle for public comment on those drugs and biologicals that are proposed for expiration of pass-through payment in the next calendar year. We often receive comments related to our proposed expiration of pass-through status for particular items, and we expect to continue to receive these comments regarding the proposed expiration of pass-through status for drugs and biologicals in the future. In this manner, we would address specific concerns about the pass-through period for individual drugs and biologicals in the future, including radiopharmaceuticals.

After consideration of the public comments received, we are finalizing our proposed CY 2009 policy, with modification as noted below, to provide payment for pass-through drugs, including diagnostic radiopharmaceuticals, and biologicals based on the ASP methodology. This allows diagnostic radiopharmaceutical manufacturers that are able to provide ASP information through the established methodology to be paid for pass-through diagnostic radiopharmaceuticals at ASP+6 percent, the same rate as pass-through drugs and biologicals are paid in the physician's office setting. In addition, we are modifying our proposal to provide payment for therapeutic radiopharmaceuticals with pass-through status based on the requirements of section 142 of Public Law 110–275. Therefore, therapeutic radiopharmaceuticals with pass-through status in CY 2009 will be paid at hospital charges adjusted to cost, the same payment methodology as other therapeutic radiopharmaceuticals in CY 2009.

The drugs and biologicals that are continuing pass-through status or have been granted pass-through status as of January 2009 for CY 2009 are displayed in Table 24 below. In addition, we did not receive any public comments on our proposal to update pass-through payment rates on a quarterly basis on our Web site during CY 2009 if later quarter ASP submissions (or more recent WAC or AWP information, as applicable) indicate that adjustments to the payment rates for these pass-through drugs and biologicals are necessary, and we are finalizing this policy. Finally, if a drug or biological that has been granted pass-through status for CY 2009 becomes covered under the Part B drug CAP if the program is reinstituted, we will provide payment for Part B drugs that are granted pass-through status and are covered under the Part B drug CAP at the Part B drug CAP rate. Appropriate adjustments to the payment rates for pass-through drugs and biologicals will occur on a quarterly basis.

TABLE 24—DRUGS AND BIOLOGICALS WITH PASS-THROUGH STATUS IN CY 2009

CY 2008 HCPCS code	CY 2009 HCPCS code	CY 2009 short descriptor	Final CY 2009 SI	Final CY 2009 APC
C9238	J1953	Levetiracetam injection	G	9238
C9239	J9330	Temsirolimus injection	G	1168
C9240*	J9207	Ixabepilone injection	G	9240
C9241	J1267	Doripenem injection	G	9241
C9242	J1453	Fosaprepitant injection	G	9242
C9243	J9033	Bendamustine injection	G	9243
C9244	J2785	Injection, regadenoson	G	9244
C9354	C9354	Veritas collagen matrix, cm2	G	9354
C9355	C9355	Neuromatrix nerve cuff, cm	G	9355
C9356	C9356	TendoGlide Tendon Prot, cm2	G	9356
C9357	Q4114	Integra flowable wound matri	G	1251
C9358	C9358	SurgiMend, 0.5cm2	G	9358
C9359	C9359	Implant, bone void filler	G	9359
J1300	J1300	Eculizumab injection	G	9236
J1571	J1571	Hepagam b im injection	G	0946
J1573	J1573	Hepagam b intravenous, inj	G	1138
J3488*	J3488	Reclast injection	G	0951
J9225*	J9225	Vantas implant	G	1711
J9226	J9226	Supprelin LA implant	G	1142
J9261	J9261	Nelarabine injection	G	0825
Q4097	J1459	Inj IVIG privigen 500 mg	G	1214
	C9245	Injection, romiplostim	G	9245
	C9246	Inj, gadoxetate disodium	G	9246
	C9248	Inj, clevidipine butyrate	G	9248

* Indicates that the drug was paid at a rate determined by the Part B drug CAP methodology (prior to January 1, 2009) while identified as pass-through under the OPPS.

4. Reduction of Transitional Pass-Through Payments for Diagnostic Radiopharmaceuticals To Offset Costs Packaged Into APC Groups

Prior to CY 2008, certain diagnostic radiopharmaceuticals were paid separately under the OPPS if their mean per day costs were greater than the applicable year's drug packaging threshold. In CY 2008 (72 FR 66768), we packaged payment for all nonpass-through diagnostic radiopharmaceuticals as ancillary and supportive items and services. Specifically, we packaged payment for all nonpass-through diagnostic radiopharmaceuticals, including those products that would not otherwise have been packaged based solely on the CY 2008 drug packaging threshold, into payment for their associated nuclear medicine procedures. In the CY 2009 OPPS/ASC proposed rule (73 FR 41483), we proposed to continue to package payment in CY 2009 for all nonpass-through diagnostic radiopharmaceuticals as discussed in section V.B.2.c. of this final rule with comment period.

As previously noted, for OPPS pass-through payment purposes, radiopharmaceuticals are considered to be ''drugs.'' As described above, section 1833(t)(6)(D)(i) of the Act specifies that the transitional pass-through payment amount for pass-through drugs and

biologicals is the difference between the amount paid under section 1842(o) or the Part B drug CAP rate and the otherwise applicable OPPS payment amount. Furthermore, transitional pass-through payments for drugs, biologicals, and radiopharmaceuticals under the OPPS are made for a period of at least 2 but not more than 3 years. There are currently no radiopharmaceuticals with pass-through status under the OPPS. For new pass-through radiopharmaceuticals with no ASP information or CAP rate, our proposed and final CY 2009 payment methodology is discussed in section V.A.3. of this final rule with comment period. According to our final policy and consistent with our CY 2008 final policy (72 FR 66755), new pass-through diagnostic radiopharmaceuticals will be paid at ASP+6 percent, while those without ASP information will be paid based on WAC or, if WAC is not available, based on 95 percent of the product's most recently published AWP.

As described in section IV.A.2.a. of the proposed rule and this final rule with comment period regarding pass-through device payment, we have consistently employed an established methodology to estimate the portion of each APC payment rate that could reasonably be attributed to the cost of an associated device eligible for pass-through payment (the APC device offset amount) to avoid duplicate payment for the device portion of a procedure. This calculation uses calendar year claims data from the period used for the most recent recalibration of the APC payment rates (72 FR 66751 through 66752). We evaluate new pass-through device categories individually to determine if there are device costs packaged into the associated procedural APC payment rate from predecessor devices that resemble the new pass-through device category, suggesting that a device offset amount would be appropriate. On an ongoing basis, through the quarterly transmittals that implement the quarterly OPPS updates, we establish the applicable APC device offset amount, if any, in the same quarter as the eligible pass-through device category is first established. We update device offset amounts annually for eligible pass-through device categories when we recalibrate APC payment rates. We note that we initially implemented the device offset policy in CY 2001 only for pacemakers and neurostimulators but subsequently expanded the offset to other pass-through devices with costs from predecessor devices packaged into the existing APC structure beginning in CY 2002. Since April 2002, we have applied a uniform reduction, the APC device offset amount for the associated procedure, to payment for each of the devices receiving transitional pass-through payments furnished on or after April 1, 2002, and for which we have determined that the pass-through device resembles packaged predecessor devices.

The law specifies two categories of products that are eligible for transitional pass-through payment, specifically implantable devices and drugs and biologicals. Historically, in calculating the APC device offset amount that we have used to evaluate whether a candidate device category for pass-through status meets the cost significance test, we have calculated an amount that reflects the total packaged device costs for all devices that are included on the single bills mapping to the specific APC. This APC device offset amount is then also the amount by which we would reduce the pass-through payment for a device if we determine that the pass-through device resembles packaged predecessor devices.

In the case of drugs and biologicals, we also have historically calculated a single APC drug amount that reflects the total packaged drug (including radiopharmaceutical) costs for all drugs and biologicals that are included on claims mapping to a specific APC. This is the amount that we have used to evaluate whether a candidate drug or biological for pass-through status meets the cost significance test. However, since CY 2008, we have had two major policies for the packaged payment of two categories of nonpass-through drugs and biologicals, specifically those drugs that are always packaged and those drugs that may be packaged. The first group of drugs and biologicals includes diagnostic radiopharmaceuticals and contrast agents, as well as implantable biologicals beginning in CY 2009, which we refer to as ''policy-packaged'' drugs. The second group of drugs and biologicals includes those drugs that are subject to packaging based on their estimated per day costs in relationship to the annual OPPS drug packaging threshold, which we refer to as ''threshold-packaged'' drugs. We are clarifying that, for purposes of determining whether a drug or biological candidate for pass-through status meets the cost significance test, we use the appropriate ''threshold-packaged'' drug amount or ''policy-packaged'' drug amount to assess the criteria, based on the group of drugs to which the pass-through candidate drug belongs. Similarly, for purposes of the radiopharmaceutical offset policy, we utilize the ''policy-packaged'' drug amount to determine the appropriate APC radiopharmaceutical offset. In the case of APCs that contain nuclear medicine procedures, we expect that this ''policy-packaged'' drug amount would consist almost entirely of the costs of diagnostic radiopharmaceuticals. It is this amount by which we would both assess a candidate pass-through diagnostic radiopharmaceutical's cost for purposes of cost significance according to § 419.64(b)(2) and reduce the diagnostic radiopharmaceutical pass-through payment if we determine that the pass-through diagnostic radiopharmaceutical resembles packaged predecessor radiopharmaceuticals.

As we stated in the CY 2009 OPPS/ASC proposed rule (73 FR 41483), because of our proposed CY 2009 packaging policy for diagnostic radiopharmaceuticals, we believe that a payment offset policy, as discussed previously for implantable devices, is now appropriate for diagnostic radiopharmaceuticals approved for pass-through payment status. An APC ''policy-packaged'' offset amount would allow us to avoid duplicate payment for the diagnostic radiopharmaceutical portion of a nuclear medicine procedure by providing a diagnostic radiopharmaceutical pass-through payment that represents the difference between the payment rate for the diagnostic radiopharmaceutical and the packaged predecessor drug costs included in the procedural APC payment for the nuclear medicine procedure. In accordance with section 1833(t)(6)(D)(i) of the Act, the otherwise applicable OPPS payment amount for the diagnostic radiopharmaceutical would roughly be the median cost of the ''policy-packaged'' drug costs for the predecessor radiopharmaceuticals that are packaged into the payment for the nuclear medicine procedure. We indicated in the proposed rule that this APC ''policy-packaged'' drug offset amount, similar to the longstanding device offset policy for payment of implantable devices with pass-through status, would be calculated based on a percentage of the APC payment for a nuclear medicine procedure attributable to the costs of ''policy-packaged'' drugs, including diagnostic radiopharmaceuticals, as reflected in the most recent complete year of hospital outpatient claims data.

Beginning in CY 2009, as we proposed, we would review each new pass-through diagnostic radiopharmaceutical on a case-by-case basis, to determine whether radiopharmaceutical costs associated

with predecessors of the new product are packaged into the existing APC structure for those nuclear medicine procedures with which the new radiopharmaceutical would be used. This methodology is consistent with our current policy for new device categories. Because of the nature of diagnostic radiopharmaceuticals and the small number of nuclear medicine procedures to which they are typically closely linked, we believe that we would usually find costs for predecessor diagnostic radiopharmaceuticals packaged into the existing APC payment for the nuclear medicine procedures associated with the new product. In these cases, we would deduct the uniform, applicable APC ''policy-packaged'' drug offset amount for the associated nuclear medicine procedure from the pass-through payment for the diagnostic radiopharmaceutical. As we proposed, we would establish the pertinent APC offset amounts for newly eligible pass-through diagnostic radiopharmaceuticals quarterly through the transmittals that implement the quarterly OPPS updates and update these offset amounts annually, as needed.

Not all CY 2007 OPPS claims for nuclear medicine procedures include radiolabeled products because radiopharmaceutical claims processing edits were implemented beginning in CY 2008. These claims processing edits require that a radiolabeled product be included on all claims for nuclear medicine procedures to ensure that we capture the full costs of the packaged diagnostic radiopharmaceuticals used for the procedures in future ratesetting. Because our most recent claims data at the time of issuance of the proposed rule did not yet reflect the results of these edits, we proposed to use only those claims that pass the radiopharmaceutical edits to set rates for nuclear medicine procedures in CY 2009, as discussed in section II.A.2.d.(5) of this final rule with comment period. We proposed to use the same claims to calculate the APC ''policy-packaged'' drug offset amounts.

Comment: Some commenters supported the proposed diagnostic radiopharmaceutical offset policy described in the CY 2009 OPPS/ASC proposed rule. These commenters supported CMS' proposal to apply an offset for pass-through diagnostic radiopharmaceuticals as it would ensure that duplicate payment would not be made for diagnostic radiopharmaceuticals by removing the radiopharmaceutical payment amount that is already packaged into the payment for the associated nuclear medicine procedure.

Other commenters were concerned that the pass-through payment amount for diagnostic radiopharmaceuticals would be significantly reduced if the proposed offset policy is applied. Some of these commenters believed that the true costs of currently used diagnostic radiopharmaceuticals are not included in the payment for associated APCs because of hospital billing practices, and that using this unreliable hospital claims information to establish an offset amount would provide inadequate payment for the pass-through diagnostic radiopharmaceutical.

Some commenters suggested calculating a diagnostic radiopharmaceutical offset on a per-nuclear medicine procedure basis. That is, these commenters suggested that the diagnostic radiopharmaceutical offset should be calculated for individual CPT codes, rather than for all procedures assigned to an APC, in order to more specifically identify the diagnostic radiopharmaceutical costs attributable to a specific procedure.

Many commenters asked for further clarification regarding the calculation of the offsets and requested that CMS make the APC radiopharmaceutical offset amounts for the year publicly available for review by stakeholders.

Response: As we stated in the CY 2009 OPPS/ASC proposed rule (73 FR 41483), because of our proposed CY 2009 packaging policy for diagnostic radiopharmaceuticals, we believe that a payment offset policy is appropriate for diagnostic radiopharmaceuticals approved for pass-through payment. An APC ''policy-packaged'' drug offset amount applied to diagnostic radiopharmaceuticals allows us to avoid duplicate payment for the diagnostic radiopharmaceutical portion of a nuclear medicine procedure by providing a diagnostic radiopharmaceutical pass-through payment that represents the difference between the payment rate for the diagnostic radiopharmaceutical and the packaged radiopharmaceutical cost included in the procedural APC payment for the nuclear medicine procedure. As noted above, we distinguish between ''policy-packaged'' drugs and biologicals where a whole category of drugs or biologicals is packaged, regardless of an individual product's cost (such as diagnostic radiopharmaceuticals, contrast agents, and biologicals that are implantable only), from those ''threshold-packaged'' drugs and biologicals that are packaged because of the drug packaging threshold, in order to provide a more accurate offset estimate for diagnostic radiopharmaceutical pass-through purposes.

We do not believe it would be appropriate to calculate the offset amount at the nuclear medicine procedure-specific level because OPPS payment for procedures is provided by APCs that group procedures that share clinical and resource similarities. Therefore, similar to our pass-through device offset policy, we will calculate the offset amount for pass-through diagnostic radiopharmaceuticals at the level of APCs because the APC reflects the OPPS payment for the specific nuclear medicine procedure in which the pass-through diagnostic radiopharmaceutical is used.

The use of a pass-through offset amount is consistent with our current policy for new device categories. Because of the nature of diagnostic radiopharmaceuticals and the small number of nuclear medicine procedures to which they are typically closely linked, contrary to the commenters' concerns, we believe that we will usually find costs for predecessor diagnostic radiopharmaceuticals packaged into the existing APC payment for the nuclear medicine procedures associated with the new product. As we proposed, we will establish the pertinent APC ''policy-packaged'' drug amounts for newly eligible pass-through diagnostic radiopharmaceuticals quarterly through the transmittals that implement the quarterly OPPS updates and update these offset amounts annually, as needed.

We will post annually on the CMS Web site at: *http://www.cms.hhs.gov/HospitalOutpatientPPS/01_overview.asp*, a file that contains the three offset amounts that will be used for that year for purposes of evaluating cost significance for candidate pass-through device categories and drugs and biologicals, including diagnostic radiopharmaceuticals, and establishing any appropriate APC offset amounts. Specifically, the file will provide, for every OPPS clinical APC, the amounts and percentages of APC payment associated with packaged implantable devices, ''policy-packaged'' drugs and biologicals, and ''threshold-packaged'' drugs and biologicals.

Comment: Several commenters recommended that CMS provide extensive education for Medicare contractors (fiscal intermediaries and A/B MACs) on how the offset should be applied and how payment should be made for pass-through diagnostic radiopharmaceuticals. One commenter requested that CMS provide hospital-specific education in order to prevent

hospitals from charging beneficiaries for any perceived difference in payment as a result of the offset, especially in situations where the beneficiary has been given an Advance Beneficiary Notice (ABN).

Response: Our standard process is to release instructions in the January quarterly transmittal related to the updated OPPS policies finalized in the annual final rule with comment period. We will continue to provide instructions to our Medicare contractors on our policy changes in this manner, including the offset policy for diagnostic radiopharmaceuticals with pass-through status included in this final rule with comment period. Determination of offset eligibility and payment is determined in the OPPS PRICER, the pricing utility for OPPS payment. Medicare contractors have been successfully applying the offset policy through implementation of the OPPS PRICER for pass-through implantable devices for many years, and we do not expect that contractors will have difficulty providing appropriate payment for those pass-through diagnostic radiopharmaceuticals for which we have identified a drug offset amount.

In addition, we remind readers that packaged items and services are covered and paid under the OPPS. Hospitals may only provide an ABN when the hospital expects that the service provided to the beneficiary will not be covered under any Medicare benefit category. Although hospitals do not receive separate payment from Medicare for packaged items and supplies, hospitals may not bill beneficiaries separately for any packaged items and supplies because those costs are recognized and paid within the OPPS payment rate for the associated procedure or service. Transmittal A–01–133, issued on November 20, 2001, explains in greater detail the rules regarding payment for packaged services. We believe that the vast majority of hospitals understand the correct use of ABNs, and that situations such as the one suggested the commenter would be rare. For more information on mandatory and voluntary uses of ABNs, we refer readers to the Medicare Claims Processing Manual, Pub. 100–4, Chapter 30, Sections 50.3.1 and 50.3.2.

Comment: One commenter requested that CMS not apply a pass-through payment offset to pass-through contrast agents unless proper notice was provided and there was an opportunity for public comment. The commenter noted that the offset methodology would likely be unnecessary for contrast agents, as most contrast agents have per day cost estimates of under $60 and, therefore, are not likely to pass the cost significance test required for pass-through drug status.

Response: We believe the commenter misunderstood our proposed offset policy. We did not make a proposal to apply a pass-through offset methodology for contrast agents, and we are not implementing an offset for pass-through contrast agents for CY 2009.

After consideration of the public comments received, we are finalizing our proposal to apply an offset methodology to diagnostic radiopharmaceuticals that are granted pass-through status for CY 2009 without modification. Specifically, the APC ''policy-packaged'' drug offset fraction for APCs containing nuclear medicine procedures in CY 2009 is: 1 minus (the cost from single procedure claims in the APC that pass nuclear medicine procedure-to-radiolabeled product edits after removing the costs for ''policy-packaged'' drugs and biologicals divided by the cost from single procedure claims in the APC that pass the claims processing edits). To determine the actual APC offset amount for diagnostic radiopharmaceuticals granted pass-through status in CY 2009, we multiply the resulting fraction by the CY 2009 APC payment amount for the procedure with which the new diagnostic radiopharmaceutical is used and, accordingly, reduce the APC payment associated with the transitional pass-through diagnostic radiopharmaceutical by this amount.

We will post annually on the CMS Web site at: *http://www.cms.hhs.gov/HospitalOutpatientPPS/01_overview.asp*, a file that contains the three offset amounts that will be used for that year for purposes of evaluating cost significance for candidate pass-through device categories and drugs and biologicals, including diagnostic radiopharmaceuticals, and establishing any appropriate APC offset amounts. Specifically, the file will provide, for every OPPS clinical APC, the amounts and percentages of APC payment associated with packaged implantable devices, ''policy-packaged'' drugs and biologicals, and ''threshold-packaged'' drugs and biologicals.

Table 25 displays the APCs to which nuclear medicine procedures are assigned in CY 2009 and for which we expect that an APC offset could be applicable in the case of new diagnostic radiopharmaceuticals with pass-through status.

TABLE 25—APCS TO WHICH NUCLEAR MEDICINE PROCEDURES ARE ASSIGNED FOR CY 2009

Final CY 2009 APC	CY 2009 APC title
0307	Myocardial Positron Emission Tomography (PET) imaging.
0308	Non-Myocardial Positron Emission Tomography (PET) imaging.
0377	Level II Cardiac Imaging.
0378	Level II Pulmonary Imaging.
0389	Level I Non-imaging Nuclear Medicine.
0390	Level I Endocrine Imaging.
0391	Level II Endocrine Imaging.
0392	Level II Non-imaging Nuclear Medicine.
0393	Hematologic Processing & Studies.
0394	Hepatobiliary Imaging.
0395	GI Tract Imaging.
0396	Bone Imaging.
0397	Vascular Imaging.
0398	Level I Cardiac Imaging.
0400	Hematopoietic Imaging.
0401	Level I Pulmonary Imaging.
0402	Level II Nervous System Imaging.
0403	Level I Nervous System Imaging.
0404	Renal and Genitourinary Studies.
0406	Level I Tumor/Infection Imaging.
0408	Level III Tumor/Infection Imaging.
0414	Level II Tumor/Infection Imaging.

B. OPPS Payment for Drugs, Biologicals, and Radiopharmaceuticals Without Pass-Through Status

1. Background

Under the CY 2008 OPPS, we currently pay for drugs, biologicals, and radiopharmaceuticals that do not have pass-through status in one of two ways: Packaged payment into the payment for the associated service; or separate payment (individual APCs). We explained in the April 7, 2000 OPPS final rule with comment period (65 FR 18450) that we generally package the cost of drugs and radiopharmaceuticals into the APC payment rate for the procedure or treatment with which the products are usually furnished. Hospitals do not receive separate payment from Medicare for packaged items and supplies, and hospitals may not bill beneficiaries separately for any packaged items and supplies whose costs are recognized and paid within the national OPPS payment rate for the

associated procedure or service. (Transmittal A–01–133, issued on November 20, 2001, explains in greater detail the rules regarding separate payment for packaged services.)

Packaging costs into a single aggregate payment for a service, procedure, or episode-of-care is a fundamental principle that distinguishes a prospective payment system from a fee schedule. In general, packaging the costs of items and services into the payment for the primary procedure or service with which they are associated encourages hospital efficiencies and also enables hospitals to manage their resources with maximum flexibility.

Section 1833(t)(16)(B) of the Act, as added by section 621(a)(2) of Public Law 108–173, sets the threshold for establishing separate APCs for drugs and biologicals at $50 per administration for CYs 2005 and 2006. Therefore, for CYs 2005 and 2006, we paid separately for drugs, biologicals, and radiopharmaceuticals whose per day cost exceeded $50 and packaged the costs of drugs, biologicals, and radiopharmaceuticals whose per day cost was equal to or less than $50 into the procedures with which they were billed. For CY 2007, the packaging threshold for drugs, biologicals, and radiopharmaceuticals that were not new and did not have pass-through status was established at $55. For CY 2008, the packaging threshold for drugs, biologicals, and radiopharmaceuticals that are not new and do not have pass-through status was established at $60. The methodology used to establish the $55 threshold for CY 2007, the $60 threshold for CY 2008, and our proposed and final approach for CY 2009 are discussed in more detail in section V.B.2.b. of this final rule with comment period.

In addition, since CY 2005, we have provided an exemption to this packaging determination for oral and injectable 5HT3 anti-emetic products. We discuss in section V.B.2. of this final rule with comment period our proposed and final CY 2009 payment policy for these anti-emetic products.

2. Criteria for Packaging Payment for Drugs, Biologicals and Radiopharmaceuticals

a. Background

As indicated above, in accordance with section 1833(t)(16)(B) of the Act, the threshold for establishing separate APCs for payment of drugs and biologicals was set to $50 per administration during CYs 2005 and 2006. In CY 2007, we used the fourth quarter moving average Producer Price Index (PPI) levels for prescription preparations to trend the $50 threshold forward from the third quarter of CY 2005 (when the Public Law 108–173 mandated threshold became effective) to the third quarter of CY 2007. We then rounded the resulting dollar amount to the nearest $5 increment in order to determine the CY 2007 threshold amount of $55. Using the same methodology as that used in CY 2007 (which is discussed in more detail in the CY 2007 OPPS/ASC final rule with comment period (71 FR 68085 through 68086)), for CY 2008 we set the packaging threshold for establishing separate APCs for drugs and biologicals at $60.

In addition, in CY 2008 we began distinguishing between diagnostic and therapeutic radiopharmaceuticals for payment purposes under the OPPS. We finalized a policy that identified diagnostic radiopharmaceuticals as those Level II HCPCS codes that include the term ''diagnostic'' along with a radiopharmaceutical in their long code descriptors. Therapeutic radiopharmaceuticals were identified as those Level II HCPCS codes that have the term ''therapeutic'' along with a radiopharmaceutical in their long code descriptors. We again noted that all radiopharmaceutical products fall into one category or the other; their use as a diagnostic radiopharmaceutical or therapeutic radiopharmaceutical is mutually exclusive.

b. Drugs, Biologicals, and Therapeutic Radiopharmaceuticals

Following the CY 2007 methodology for CY 2009, we used updated fourth quarter moving average PPI levels to trend the $50 threshold forward from the third quarter of CY 2005 to the third quarter of CY 2009 and again rounded the resulting dollar amount ($61.25) to the nearest $5 increment, which yielded a figure of $60. In performing this calculation, we used the most up-to-date forecasted, quarterly PPI estimates from CMS' Office of the Actuary (OACT). As actual inflation for past quarters replaced forecasted amounts, the PPI estimates for prior quarters have been revised (compared with those used in the CY 2007 OPPS/ASC final rule with comment period) and have been incorporated into our calculation. Based on the calculations described above, in the proposed rule, we proposed a packaging threshold for CY 2009 of $60. During its March 2008 meeting, the APC Panel made a recommendation supporting CMS' current methodology of adjusting the threshold dollar amount for packaging drugs and biologicals on the basis of the PPI for prescription drugs. (For a more detailed discussion of the OPPS drug packaging threshold and the use of the PPI for prescription drugs, we refer readers to the CY 2007 OPPS/ASC final rule with comment period (71 FR 68085 through 68086).)

For the fourth year, we proposed to continue exempting the oral and injectable forms of 5HT3 anti-emetics products from packaging, thereby making separate payment for all of these products. As we stated in the CY 2005 OPPS final rule with comment period (69 FR 65779 through 65780), it is our understanding that chemotherapy is very difficult for many patients to tolerate, as the side effects are often debilitating. In order for Medicare beneficiaries to achieve the maximum therapeutic benefit from thermotherapy and other therapies with side effects of nausea and vomiting, anti-emetic use is often an integral part of the treatment regiment. In the proposed rule, we stated our belief that we should continue to ensure that Medicare payment rules do not impede a beneficiary's access to the particular anti-emetic that is most effective for him or her, as determined by the beneficiary and the treating physician.

Comment: Several commenters supported CMS' proposal to maintain the packaging threshold at $60 for CY 2009. One commenter expressed concern that annual increases may limit patient access to drugs in the HOPD setting.

A few commenters recommended a variety of alternatives for CMS to consider, including: (1) Eliminating the drug packaging threshold and provide separate payment for all drugs; (2) permanently establishing the packaging threshold at $60; or (3) not increasing the drug packaging threshold for CY 2009. Some commenters believed that eliminating the drug packaging threshold would allow for parity in drug payment between the HOPD setting and the physician's office setting and, therefore, would provide transparency for beneficiaries who are comparing the costs of care between the two settings. In addition, these commenters claimed that eliminating the drug packaging threshold would increases the accuracy of hospital claims by providing an incentive to hospitals to correctly code for all drugs. Several commenters noted that the current packaging threshold discourages hospitals from using less costly packaged drugs because these drugs are not paid separately in the HOPD setting. Other comments believed that setting a permanent drug packaging threshold would eliminate the potential for incremental changes in the threshold

that could adversely affect hospital payment.

Response: As fully discussed in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66757–66758), we continue to believe that unpackaging payment for all drugs, biologicals, and radiopharmaceuticals is inconsistent with the concept of a prospective payment system and that such a change could create an additional reporting burden for hospitals. The OPPS and the MPFS that applies to physician's office services are fundamentally different payment systems with essential differences in their payment policies and structure. Specifically, the OPPS is a prospective payment system, based on the concept of payment for groups of services that share clinical and resource characteristics. Payment is made under the OPPS according to prospectively established payment rates that are related to the relative costs of hospital resources for services. The MPFS is a fee schedule that generally provides payment for each individual component of a service. Consistent with the MPFS approach, separate payment is made for each drug provided in the physician's office, but the OPPS packages payment for certain drugs into the associated procedure payments for the APC group. Because of the different payment policies, differences in the degrees of packaged payment and separate payment between these two systems are only to be expected. In general, we do not believe that our packaging methodology under the OPPS results in limited beneficiary access to drug administration services because packaging is a fundamental component of a prospective payment system that accounts for the cost of certain items and services in larger payment bundles, recognizing that some clinical cases may be more costly and others less costly but that, on average, OPPS payment is appropriate for the services provided.

We note that, in CYs 2005 and 2006, the statutorily mandated drug packaging threshold was set at $50, and we believe that it is currently appropriate to continue a modest drug packaging threshold for the CY 2009 OPPS for the reasons set forth below. As stated in the CY 2007 OPPS/ASC final rule with comment period (71 FR 68086), we believe that packaging certain items is a fundamental component of a prospective payment system, that packaging these items does not lead to beneficiary access issues and does not create a problematic site of service differential, that the packaging threshold is reasonable based on the initial establishment in law of a $50 threshold for the CY 2005 OPPS, that updating the $50 threshold is consistent with industry and government practices, and that the PPI for prescription preparations is an appropriate mechanism to gauge Part B drug inflation. Therefore, because of our continued belief that packaging is a fundamental component of a prospective payment system that contributes to important flexibility and efficiency in the delivery of high quality hospital outpatient services, we are not adopting the commenters' recommendations to pay separately for all drugs, biologicals, and radiopharmaceuticals for CY 2009 or to eliminate or to freeze the packaging threshold at $60.

For purposes of this final rule with comment period, we again followed the CY 2007 methodology for CY 2009 and used updated fourth quarter moving average PPI levels to trend the $50 threshold forward from the third quarter of CY 2005 to the third quarter of CY 2009 and again rounded the resulting dollar amount ($61.95) to the nearest $5 increment, which continued to yield a figure of $60. In performing this calculation, we used the most up-to-date forecasted, quarterly PPI estimates from CMS' OACT.

After consideration of the public comments received, we are accepting the March 2008 APC Panel recommendation to continue to use our CY 2007 methodology of updating annually the OPPS packaging threshold for drugs and biologicals by the PPI for prescription drugs, and we are finalizing our CY 2009 proposed packaging threshold of $60, without modification, calculated according to the threshold update methodology that we began applying in CY 2007.

Comment: Several commenters supported the proposal to continue to exempt the oral and injectable forms of 5HT3 anti-emetic products that were listed in Table 23 of the proposed rule (reprinted as Table 26 below) from packaging, thereby making separate payment for all of the 5HT3 anti-emetic products.

In addition, several commenters requested that CMS apply the same principle to other groups of drugs in order to equalize payment methodologies across drugs in the same clinical group. One commenter suggested that CMS institute a similar policy for anticoagulant therapies provided in the HOPD. This commenter noted that there are several drug treatments for deep vein thrombosis, and that one drug treatment is paid separately while others are packaged. The commenter was concerned that these different payment methodologies provide hospitals an incentive to use the separately paid drugs, although the commenter noted that treatments are not interchangeable and that benefits vary by patient.

Another commenter suggested that CMS expand the packaging threshold exemption to antineoplastic agents and other anticancer therapeutic agents. The commenter believed that anticancer agents, as a class, are not appropriate for packaging because of the toxicity, side effects, interactions with other drugs, and level of patient specificity associated with these therapies. Therefore, the commenter requested that CMS not apply the drug packaging threshold for anticancer agents and provide separate payment for all of these products in CY 2009.

Response: We appreciate the support for our proposal to continue exempting the 5HT3 anti-emetic products from our packaging determination. We note that as we continue to explore the possibility of additional encounter-based or episode-based payment in future years, and as we first discussed in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66757), we may consider additional options for packaging drug payment in the future. We also note that if we were to increase the OPPS drug packaging threshold, we might no longer need to make a special exemption for these products because all of the products might be packaged under such an approach. Similarly, a higher drug packaging threshold could eliminate existing disparities in payment methodologies for other drug groups and provide similar methods of payment across items in a group.

Nevertheless, while we may be interested in alternative threshold methodologies for future ratesetting purposes, we realize that there are existing situations where drugs in a particular category vary in their payment treatment under the OPPS, with some drugs packaged and other separately paid. We believe the challenges associated with categorizing drugs to assess them for difference in their OPPS payment methodologies are significant, and we are not convinced that ensuring the same payment treatment for all drugs in other drug categories is essential at this time, beyond the proposal we made for 5HT3 antiemetics. Therefore, we do not believe that it would be appropriate at this time to take any additional steps to ensure that all drugs in a specific category, including anticoagulants and antineoplastic agents, are all separately paid (or, alternatively, are all packaged), as requested by some commenters.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, to again exempt the oral and injectable forms of 5HT3 antiemetic products listed in Table 26 below from our drug packaging methodology for CY 2009.

TABLE 26—ANTI-EMETICS EXEMPTED FROM CY 2009 OPPS DRUG PACKAGING THRESHOLD

CY 2009 HCPCS code	CY 2009 short descriptor
J1260	Dolasetron mesylate.
J1626	Granisetron hcl injection.
J2405	Ondansetron hcl injection.
J2469	Palonosetron hcl.
Q0166	Granisetron hcl 1 mg oral.
Q0179	Ondansetron hcl 8 mg oral.
Q0180	Dolasetron mesylate oral.

To determine their CY 2009 packaging status for the proposed rule, we calculated the per day cost of all drugs, biologicals, and therapeutic radiopharmaceuticals that had a HCPCS code in CY 2007 and were paid (via packaged or separate payment) under the OPPS using claims data from January 1, 2007, to December 31, 2007. In order to calculate the per day costs for drugs, biologicals, and therapeutic radiopharmaceuticals to determine their packaging status in CY 2009, as we proposed, we used the methodology that was described in detail in the CY 2006 OPPS proposed rule (70 FR 42723 through 42724) and finalized in the CY 2006 OPPS final rule with comment period (70 FR 68636 through 70 FR 68638).

To calculate the CY 2009 proposed rule per day costs, we used an estimated payment rate for each drug and biological of ASP+4 percent (which is the payment rate we proposed for separately payable drugs and biologicals in CY 2009, as discussed in more detail in section V.B.3.b. of this final rule with comment period). We used the manufacturer submitted ASP data from the fourth quarter of CY 2007 (data that were used for payment purposes in the physician's office setting, effective April 1, 2008) to determine the proposed rule per day cost.

As is our standard methodology, for CY 2009, we proposed to use payment rates based on the ASP data from the fourth quarter of CY 2007 for budget neutrality estimates, packaging determinations, impact analyses, and completion of Addenda A and B to the proposed rule because these were the most recent data available for use at the time of development of the proposed rule. These data were also the basis for drug payments in the physician's office setting, effective April 1, 2008. For items that did not have an ASP-based payment rate, we used their mean unit cost derived from the CY 2007 hospital claims data to determine their proposed per day cost. We proposed to package items with a per day cost less than or equal to $60 and proposed to identify items with a per day cost greater than $60 as separately payable. Consistent with our past practice, we crosswalked historical OPPS claims data from the CY 2007 HCPCS codes that were reported to the CY 2008 HCPCS codes that we displayed in Addendum B to the proposed rule for payment in CY 2009.

Our policy during previous cycles of the OPPS has been to use updated ASP and claims data to make final determinations of the packaging status of drugs, biologicals, and radiopharmaceuticals for the final rule with comment period. We note that it is also our policy to make an annual packaging determination only when we develop the OPPS/ASC final rule for the update year. As indicated in the proposed rule (73 FR 41485), only items that are identified as separately payable in this final rule with comment period are subject to quarterly updates. For our calculation of per day costs of drugs and biologicals in this CY 2009 OPPS/ASC final rule with comment period, as we proposed, we used ASP data from the first quarter of CY 2008, which is the basis for calculating payment rates for drugs and biologicals in the physician's office setting using the ASP methodology, effective July 1, 2008, along with updated hospital claims data from CY 2007. As proposed, we note that we also used these data for budget neutrality estimates and impact analyses for this CY 2009 OPPS/ASC final rule with comment period. As proposed, payment rates for separately payable drugs and biologicals included in Addenda A and B to this final rule with comment period are based on ASP data from the second quarter of CY 2008, which are the basis for calculating payment rates for drugs and biologicals in the physician's office setting using the ASP methodology, effective October 1, 2008. Furthermore, as proposed, these rates will be updated in the January 2009 OPPS update, based on the most recent ASP data to be used for physician's office and OPPS payment as of January 1, 2009.

We note that we proposed to use hospital claims data to establish the packaging status of therapeutic radiopharmaceuticals in our CY 2009 OPPS/ASC proposed rule. As discussed previously, after issuance of the CY 2009 OPPS/ASC proposed rule, Public Law 110–275 was enacted and, as a result, we are required to provide payment for therapeutic radiopharmaceuticals at charges adjusted to cost for CY 2009. Therefore, we are not using hospital claims data to determine the packaging status of therapeutic radiopharmaceuticals based on their per day costs. Rather, all therapeutic radiopharmaceuticals will be paid separately in CY 2009 at hospital charges adjusted to cost.

Consequently, the packaging status for some drugs and biologicals in this CY 2009 OPPS/ASC final rule with comment period using the updated data is different from the same drug's packaging status determined based on the data used for the proposed rule. Under such circumstances, as we proposed, we are applying the following policies to these drugs and biologicals whose relationship to the $60 threshold changed based on the final updated data:

- Drugs and biologicals that were paid separately in CY 2008 and that were proposed for separate payment in CY 2009, and then have per day costs equal to or less than $60, based on the updated ASPs and hospital claims data used for this CY 2009 final rule with comment period, will continue to receive separate payment in CY 2009.
- Drugs and biologicals that were packaged in CY 2008 and that were proposed for separate payment in CY 2009, and then have per day costs equal to or less than $60, based on the updated ASPs and hospital claims data used for this CY 2009 final rule with comment period, will remain packaged in CY 2009.
- Drugs and biologicals for which we proposed packaged payment in CY 2009 but then have per day costs greater than $60, based on the updated ASPs and hospital claims data used for this CY 2009 final rule with comment period, will receive separate payment in CY 2009.

We note that HCPCS code J8510 (Busulfan; oral, 2 mg) was paid separately in CY 2008 and was proposed for separate payment in CY 2009, but had a final per day cost of approximately $57, which is less than the $60 threshold, based on the updated ASPs and hospital claims data used for this CY 2009 final rule with comment period. HCPCS code J8510 will continue to receive separate payment in CY 2009 according to the established methodology set forth above.

In addition, there were several drugs and biologicals that we proposed to package in the proposed rule and that now have per day costs greater than $60 using updated ASPs and all of the

hospital claims data from CY 2007 used for this final rule with comment period. In accordance with our established policy for such cases, for CY 2009 we will pay for these drugs and biologicals separately. Table 27 lists the drugs and biologicals that were proposed as packaged, but that will be paid separately in CY 2009. We note that for CY 2009, the CMS HCPCS Workgroup has established two new codes for the products that were previously assigned to HCPCS code J7341 (Dermal (substitute) tissue of nonhuman origin, with or without other bioengineered or processed elements, with metabolically active elements, per square centimeter) in CY 2008. HCPCS code J7341 was proposed to be packaged for CY 2009 but updated final rule data indicate a per day cost of over the $60 drug packaging threshold. As is our standard methodology, we are establishing separate payment for both of the new CY 2009 HCPCS codes, Q4102 (Skin substitute, Oasis wound matrix, per square centimeter) and Q4103 (Skin substitute, Oasis burn matrix, per square centimeter), as their predecessor code would have been separately payable in CY 2009.

TABLE 27—DRUGS AND BIOLOGICALS PROPOSED AS PACKAGED BUT WITH FINAL PER DAY COSTS ABOVE $60, FOR WHICH SEPARATE PAYMENT WILL BE MADE IN CY 2009

CY 2009 HCPCS code	CY 2009 short descriptor
J0630	Calcitonin salmon injection.
J1212	Dimethyl sulfoxide 50% 50 ML.
J2513	Pentastarch 10% solution.
J2515	Pentobarbital sodium inj.
J2805	Sincalide injection.
J2940	Somatrem injection.
J2995	Inj streptokinase /250000 IU.
J3350	Urea injection.
J3473	Hyaluronidase recombinant.
Q4102	Oasis wound matrix skin sub.
Q4103	Oasis burn matrix skin sub.
J8650	Nabilone oral.
J9270	Plicamycin (mithramycin) inj.
J9280	Mitomycin 5 MG inj.
J9290	Mitomycin 20 MG inj.
J9291	Mitomycin 40 MG inj.
J9357	Valrubicin injection.

c. Payment for Diagnostic Radiopharmaceuticals and Contrast Agents

As established in the CY 2008 final rule with comment period (72 FR 66766 through 66768), we began packaging payment for all diagnostic radiopharmaceuticals and contrast agents into the payment for the associated procedure, regardless of their per day costs. Packaging costs into a single aggregate payment for a service, encounter, or episode-of-care is a fundamental principle that distinguishes a prospective payment system from a fee schedule. In general, packaging the costs of items and services into the payment for the primary procedure or service with which they are associated encourages hospital efficiencies and also enables hospitals to manage their resources with maximum flexibility. Prior to CY 2008, we noted that the proportion of drugs, biologicals, and radiopharmaceuticals that were separately paid under the OPPS had increased in recent years, a pattern that we also observed for procedural services under the OPPS. Our final CY 2008 policy that packaged payment for all nonpass-through diagnostic radiopharmaceuticals and contrast agents, regardless of their per day costs, contributed significantly to expanding the size of the OPPS payment bundles and is consistent with the principles of a prospective payment system.

During the March 2008 meeting of the APC Panel, the APC Panel recommended that CMS continue to package payment for diagnostic radiopharmaceuticals for CY 2009 and present data at the first CY 2009 meeting on the usage and frequency, geographic distribution, and size and type of hospitals performing studies using radioisotopes in order to ensure that access is preserved for Medicare beneficiaries. We discuss our response to these APC Panel recommendations along with public comments we received in response to our proposed rule below.

Comment: Several commenters disagreed with the proposal to distinguish between diagnostic and therapeutic radiopharmaceuticals for payment purposes under the OPPS. Some of these commenters noted that CMS' identification of HCPCS codes A9542 (Indium In-111 ibritumomab ituxetan, diagnostic, per study dose, up to 5 millicuries) and A9544 (Iodine I–131 tositumomab, diagnostic, per study dose) as diagnostic radiopharmaceuticals was inappropriate because these radiopharmaceuticals function as dosimetric radiopharmaceuticals, and they have higher than average costs associated with their acquisition and significant compounding costs as compared to other nuclear medicine imaging agents. A few commenters explained that these are radiopharmaceutical products that are used as part of a therapeutic regimen and, therefore, should be considered therapeutic for OPPS payment purposes.

Several commenters disagreed with CMS' statement that radiopharmaceuticals are either diagnostic or therapeutic, and that they are mutually exclusive. These commenters noted that some products serve as ''theranostics'' and can be used both as a diagnostic and a therapeutic radiopharmaceutical.

Response: As discussed above, for the CY 2008 OPPS/ASC final rule with comment period and the CY 2009 OPPS/ASC proposed rule, we classified each radiopharmaceutical into one of two groups according to whether its long descriptor contained the term ''diagnostic'' or ''therapeutic.'' HCPCS codes A9542 and A9544 both contain the term ''diagnostic'' in their long code descriptors. Therefore, according to this methodology, we continue to classify them as diagnostic for the purposes of OPPS payment. While we understand that these items are provided in conjunction with additional supplies, imaging tests, and therapeutic radiopharmaceuticals for patients already diagnosed with cancer, we continue to believe that the purpose of administering the products described by HCPCS codes A9542 and A9544 is diagnostic in nature. As we first stated in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66641), we continue to believe that HCPCS codes A9542 and A9544 are diagnostic radiopharmaceuticals. While they are not used to diagnose disease, they are used to determine whether future therapeutic services would be beneficial to the patient and to determine how to proceed with therapy. While a group of associated services may be considered a therapeutic regimen by some commenters, HCPCS codes A9542 and A9544 are provided in conjunction with a series of nuclear medicine imaging scans. Many nuclear medicine studies using diagnostic radiopharmaceuticals are provided to patients who already have an established diagnosis. We do not consider HCPCS codes A9542 and A9544 to be therapeutic because these items are provided for the purpose of a diagnostic imaging procedure, and are used to identify the proper dose of the therapeutic agent to be provided at a later time.

Commenters who indicated that ''theranostic'' products can be used as either diagnostic or therapeutic radiopharmaceuticals failed to provide specific product names or HCPCS codes for these products. We have been unable to identify any of the products that the commenters were referring to, and we note that all radiopharmaceuticals with HCPCS codes currently have either ''diagnostic'' or ''therapeutic'' in their

long code descriptors. We are aware that, in some cases, a patient may receive a therapeutic radiopharmaceutical for treatment of disease and the patient may not then require further administration of a diagnostic radiopharmaceutical for a nuclear medicine study because the patient's body already contains sufficient radioactivity. However, in this case, we would consider the original radiopharmaceutical to be a therapeutic radiopharmaceutical because it was administered to treat the patient's disease and not mainly for purposes of the nuclear medicine study.

Comment: Several commenters objected to CMS' proposal to package payment for all diagnostic radiopharmaceuticals and contrast agents in CY 2009. A number of commenters stated that diagnostic radiopharmaceuticals and contrast agents with per day costs over the proposed OPPS drug packaging threshold are defined as specified covered outpatient drugs (SCODs) and, therefore, should be assigned separate APC payments. In particular, the commenters questioned CMS' authority to classify groups of drugs, such as diagnostic radiopharmaceuticals and contrast agents, and implement packaging and payment policies that do not reflect their status as SCODs. In addition, the commenters objected to the proposal to package payment for diagnostic radiopharmaceuticals and contrast agents because, as SCODs, the commenters believed these products were required by statute to be paid at average acquisition cost. The commenters explained that, when several different diagnostic radiopharmaceuticals or contrast agents may be used for a particular procedure, the costs of those diagnostic radiopharmaceuticals or contrast agents are averaged together and added to the cost for the procedure in order to determine the payment rate for the associated procedural APC. Therefore, the commenters argued that the amount added to the procedure cost through packaging, representing the cost of the diagnostic radiopharmaceutical or contrast agent, did not reflect the average acquisition cost of any one particular item but, rather, reflected the average cost of whatever items may have been used with that particular procedure.

Response: As discussed in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66767) and in the CY 2009 OPPS/ASC proposed rule (73 FR 41486), we believe diagnostic radiopharmaceuticals and contrast agents are different from other SCODs for several reasons. We note that the statutorily required OPPS drug packaging threshold has expired, and we continue to believe that diagnostic radiopharmaceuticals and contrast agents function effectively as supplies that enable the provision of an independent service, rather than serving themselves as the therapeutic modality. We packaged their payment in CY 2008 as ancillary and supportive services in order to provide incentives for greater efficiency and to provide hospitals with additional flexibility in managing their resources. We note that we currently classify different groups of drugs for specific payment purposes, as evidenced by our policy regarding the oral and injectable forms of the 5HT3 anti-emetics and our drug packaging threshold.

Although our final CY 2008 policy that we are continuing for CY 2009, as discussed below, packages payment for all diagnostic radiopharmaceuticals and contrast agents into the payment for their associated procedures, we will continue to provide payment for these items in CY 2009 based on a proxy for average acquisition cost. We believe that the line-item estimated cost for a diagnostic radiopharmaceutical or contrast agent in our claims data is a reasonable approximation of average acquisition and preparation and handling costs for diagnostic radiopharmaceuticals or contrast agents, respectively, because, as we discussed in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66766), we believe that hospitals have adapted to the CY 2006 coding changes for radiopharmaceuticals and responded to our instructions to include charges for radiopharmaceutical handling in their charges for the radiopharmaceutical products. Further, because the standard OPPS packaging methodology packages the total estimated cost for each radiopharmaceutical or contrast agent on each claim (including the full range of costs observed on the claims) with the cost of associated procedures for ratesetting, this packaging approach is consistent with considering the average cost for radiopharmaceuticals or contrast agents, rather than the median cost.

We further note that these drugs, biologicals, or radiopharmaceuticals for which we have not established a separate APC and, therefore, for which payment would be packaged rather than separately provided under the OPPS, could be considered to not be SCODs. Similarly, drugs and biologicals with mean per day costs of less than $60 that are packaged and for which a separate APC has not been established also would not be SCODs. This reading is consistent with our final payment policy whereby we package payment for diagnostic radiopharmaceuticals and contrast agents and provide payment for these products through payment for their associated procedures.

Comment: Several commenters recommended various methodologies for CMS to consider in the development of alternate payment mechanisms for identifying associated costs and providing separate payment for diagnostic radiopharmaceuticals. Some commenters supported the ASP methodology for payment of nonpass-through diagnostic radiopharmaceuticals and noted that it would be inconsistent for CMS to allow payment for diagnostic radiopharmaceuticals that have pass-through status based on the ASP methodology, and then, after the diagnostic radiopharmaceutical's pass-through payment status has expired, package the costs present on hospital claims data. The commenters believed that the ASP methodology would be more reflective of actual diagnostic radiopharmaceutical costs and would not be subject to the billing inconsistencies that are present in hospital claims data. Therefore, the commenters concluded that it would be illogical to transition from an accurate methodology to estimate hospital costs (such as the ASP methodology) to a less accurate methodology (based on hospital claims data) once a product is no longer eligible for pass-through payment.

Some commenters were not supportive of the ASP methodology because they indicated that some manufacturers would be unable to report patient-specific doses based on the HCPCS code descriptor. The commenters recommended that CMS establish a methodology that is similar to the ASP methodology but that uses alternative data sources (such as nuclear pharmacies) that could be used to calculate an ASP-like figure for all radiopharmaceuticals.

Other commenters suggested that CMS establish diagnostic radiopharmaceutical and nuclear medicine procedure composite APCs that group specific diagnostic radiopharmaceuticals with specific nuclear medicine procedures. The commenters stated that diagnostic radiopharmaceuticals are not interchangeable and carry high costs because hospitals have little or no flexibility in determining the diagnostic radiopharmaceutical that they must purchase because of product specificity and patient needs, and therefore have

little ability to achieve efficiency. The commenters believed that payment based on individualized combinations of these items and services would provide more accurate payment for the diagnostic radiopharmaceutical component of the service, and would decrease the payment variation (both overpayment and underpayment) for nuclear medicine procedures performed by hospitals that occurs under the current packaging methodology.

Several commenters expressed an interest in the establishment of a composite APC for CPT codes 78802 (Radiopharmaceutical localization of tumor or distribution of radiopharmaceutical agent(s); whole body, single day imaging) or 78804 (Radiopharmaceutical localization of tumor or distribution of radiopharmaceutical agent(s); whole body, requiring two or more days imaging) when billed with either HCPCS code A9542 (Indium In-111 ibritumomab ituxetan, diagnostic, per study dose, up to 5 millicuries) or A9544 (Iodine I–131 tositumomab, diagnostic, per study dose).

Response: We again note that there are currently no radiopharmaceuticals with pass-through status, nor do we have any pass-through applications for radiopharmaceuticals under review at the time of this final rule with comment period. While we understand that the commenters' request for the continued use of ASP data for purposes of packaging costs after a diagnostic radiopharmaceutical's pass-through payment period has ended, based on their belief that ASP data are more accurate than hospital claims data, we fully expect that hospitals have the ability to identify and set charges for any new diagnostic radiopharmaceutical product accurately during its 2 to 3 year pass-through time period while the product has the potential of being paid based on ASP. Packaging hospital costs based on hospital claims data is how all the costs of all packaged items are factored into payment rates for associated procedures under the OPPS. We believe that the costs reported on claims, as determined by hospitals, are the most appropriate representation of the costs of diagnostic radiopharmaceuticals that should be packaged into payment for the associated nuclear medicine procedures.

We further note that some commenters continued to report that not all manufacturers would be able to submit ASP data through the established ASP reporting methodology. Therefore, if we were to use ASP data to package the costs of some diagnostic radiopharmaceuticals, but use hospital claims data for others, our methodologies for packaging the costs of diagnostic radiopharmaceuticals into their associated nuclear medicine procedures would be inconsistent among nuclear medicine procedures. The foundation of a system of relative weights is the relativity of the costs of all services to one another, as derived from a standardized system that uses standardized inputs and a consistent methodology. Adoption of a ratesetting methodology for certain APCs containing nuclear medicine procedures that is different from the standard APC ratesetting methodology would undermine this relativity. For this reason, we believe it would not be appropriate to use external pricing information in place of the costs derived from the claims and Medicare cost report data because we believe that to do so would distort the relativity that is so fundamental to the integrity of the OPPS.

We recognize that radiopharmaceuticals are specialized products that have unique costs associated with them. However, we believe that the costs are reflected in the charges that hospitals set for them and in the Medicare cost report where the full costs and charges associated with the services are reported. Therefore, the packaged costs of diagnostic radiopharmaceuticals are calculated like any other OPPS costs and packaged into the cost of the nuclear medicine service to which they are ancillary and supportive. This methodology is the basis for the payment of nuclear medicine procedures in the same way that other packaged costs contribute to the payment rates for the services to which they are an integral part.

We do not agree with the commenters that it would be appropriate to create composite APCs for combinations of certain diagnostic radiopharmaceuticals and nuclear medicine procedures. We discuss our response to these public comments in detail in section II.A.2.d.(5) of this final rule with comment period.

Comment: Some commenters believed that packaging diagnostic radiopharmaceuticals would undermine the clinical and resource homogeneity of the nuclear medicine APCs, especially the cardiac imaging APCs, resulting in 2 times violations.

Response: We agree that packaging the costs of ancillary and supportive services into the median cost of an independent service can change the median cost for that service and could result in 2 times violations. However, we disagree that we should refrain from packaging payment for ancillary and supportive items into the payment for the service in which they are used in order to prevent the occurrence of 2 times violations. Instead, we believe that we should reconfigure APCs when necessary to resolve 2 times violations where they occur. Because we have traditionally paid for a service package under the OPPS as represented by a HCPCS code for the major procedure that is assigned to an APC group for payment, we assess the applicability of the 2 times rule to services at the HCPCS code level, not at a more specific level based on the individual diagnostic radiopharmaceuticals that may be utilized in a service reported with a single HCPCS code. If the use of a very expensive diagnostic radiopharmaceutical in a clinical scenario causes a specific procedure to be much more expensive for the hospital than the APC payment, we consider such a case to be the natural consequence of a prospective payment system that anticipates that some cases will be more costly and others less costly than the procedure payment. In addition, very high cost cases could be eligible for outlier payment. As we note elsewhere in this final rule with comment period, decisions about packaging and bundling payment involve a balance between ensuring some separate payment for individual services and establishing incentives for efficiency through larger units of payment. In the case of diagnostic radiopharmaceuticals, these products are part of the OPPS payment package for the procedures in which they are used.

Comment: A few commenters requested that CMS specify the methodology used to package diagnostic radiopharmaceuticals and contrast agents into their associated procedures. Some of these commenters also requested that CMS release data that indicate that there is a direct relationship between the cost of diagnostic radiopharmaceuticals or contrast agents and the resulting increase in the associated procedural APC payment rate. Other commenters expressed disappointment that CMS was not proposing any additional payment for compounding and handling costs for diagnostic radiopharmaceuticals. The commenters pointed out that compounding costs were especially high for products described by HCPCS codes A9542 and A9544.

Response: To set the payment for nuclear medicine procedures that require a radiolabeled product (usually a diagnostic radiopharmaceutical), we selected claims that contained a

radiolabeled product and used these selected claims (rather than all claims for these procedures) to set the median costs for nuclear medicine procedures so that we could ensure that the costs of the radiopharmaceutical were packaged into the median cost for the procedure. This methodology is discussed in detail in section II.A.2.d.(5) of this final rule with comment period. As we indicated in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66639), beginning on January 1, 2008, we implemented claims processing edits for procedures that we believe require a radiolabeled product, and we return to the provider to correct claims for nuclear medicine procedure that do not include a radiolabeled product. Therefore, for the CY 2010 OPPS our claims data should include a radiolabeled product on all of the nuclear medicine procedure claims. As discussed below, we have not implemented claims processing edits that require the inclusion of contrast agent HCPCS codes on claims for studies provided with contrast but we are interested in public comment on this topic.

According to our usual OPPS methodology, we package the costs of packaged items and services into the costs of the associated procedures on single and ''pseudo'' claims for those procedures. In the case of packaged diagnostic radiopharmaceuticals and contrast agents, in most cases packaging would be into the costs of associated nuclear medicine procedures and radiological studies performed with contrast, respectively. With respect to the request for data for these services, we make available a considerable amount of data for public analysis each year and, while we are not developing and providing the detailed information that commenters requested, we provide the public use files of claims and a detailed narrative description of our data process that the public can use to perform any desired analyses. In addition, we believe that the commenters must examine the data themselves when developing their comments on the OPPS/ASC proposed rules. We note that several commenters submitted detailed analyses of claims for packaged services of particular interest to them which we believe demonstrates that commenters are clearly able to perform meaningful analyses using the public claims data that we routinely make available.

With respect to the issue of payment for compounding and handling of radiopharmaceutical and contrast agents, in particular the products described by HCPCS codes A9542 and A9544, we believe that the costs derived from the application of the most specific CCR to the charges for these products produce an estimated cost that includes the costs of compounding and handling of the products. We have instructed hospitals to include the charge for radiopharmaceutical handling and compounding in their charge for the radiopharmaceutical in the CY 2007 OPPS/ASC final rule with comment period (71 FR 68096), and hospitals have told us that they do so. Moreover, the costs reported in the cost report are for both the acquisition costs for the products and the costs of compounding and handling for both inexpensive and expensive products. Therefore, we believe that the estimated cost derived by the application of the CCR to the charge for the product results in an estimated cost that includes both the product acquisition cost and the compounding and handling costs of the product and that this is true regardless of the cost of the product.

Comment: Some commenters expressed frustration with the I/OCE claims processing edits implemented in CY 2008 for nuclear medicine procedures that require a radiolabeled product in order for the claim to process to payment. The commenters reported that it has been administratively burdensome for hospitals to cope with these edits and conform claims to these requirements, and they noted that patient access to nuclear medicine procedures has been adversely affected.

Specifically, some commenters observed that there are situations that occur in the hospital outpatient setting that are not accounted for in these edits. For example, hospitals sometimes provide a nuclear medicine imaging service to a beneficiary who has been given a radiopharmaceutical in another location, such as in a physician's office. The commenters explained that, at this time, there is no way for these outpatient nuclear medicine procedure claims to process to payment. The commenters requested that CMS create a modifier or Level II HCPCS code so that hospitals could indicate that special circumstances applied, and that a radiolabeled product was not provided in the HOPD setting, thereby allowing payment for the nuclear medicine service.

Other commenters requested that CMS implement I/OCE edits for contrast agents and imaging studies provided with contrast, similar to the nuclear medicine procedure-to-radiolabeled product edits. The commenters believed that requiring hospitals to specifically report a contrast agent HCPCS code when performing an imaging study with contrast would result in more accurate claims data that fully reflected the costs of contrast agents.

Finally, some commenters requested that CMS only use claims with diagnostic radiopharmaceuticals, or contrast agents, when calculating payment rates for the associated nuclear medicine procedures or imaging procedures, respectively.

Response: In order to ensure that we capture appropriate diagnostic radiopharmaceutical costs for future ratesetting purposes once we began packaging payment for all of these products in CY 2008, we implemented nuclear medicine procedure-to-radiolabeled product claims processing edits in the I/OCE, effective January 2008, that required a diagnostic radiopharmaceutical to be present on the same claim as a nuclear medicine procedure for payment under the OPPS to be made. These edits ensure that hospitals submit correctly coded claims that report the HCPCS codes for the products and their charges that are necessary for performance of nuclear medicine procedures. We understand that the implementation of I/OCE claims processing edits may be challenging for a short period of time while hospitals become familiar with them, and while the edits are revised based on stakeholder feedback. However, we note that we implemented nuclear medicine procedure-to-radiolabeled product edits at the request of stakeholders based on concerns that hospitals were not always including a diagnostic radiopharmaceutical and its charge on the claim when a nuclear medicine procedure was provided. Stakeholders voiced complaints that these omissions led to inaccurate claims data for diagnostic radiopharmaceuticals and, once the OPPS began packaging payment for all diagnostic radiopharmaceuticals in CY 2008, there was inadequate payment for nuclear medicine procedures. We believe that the majority of hospitals are now able to submit claims that are able to pass these I/OCE edits, and that we have made the adjustments required to maintain the integrity of the edits while working with hospitals on special exceptions when a diagnostic radiopharmaceutical may not be provided with a nuclear medicine study. We discuss the nuclear medicine procedure-to-radiolabeled product edits and the evolution of our edit policy in greater detail in section II.A.2.d.(5) of this final rule with comment period. We implemented these edits because we believe that it is important to make sure that, when hospitals provide a packaged diagnostic radiopharmaceutical, the costs associated with the diagnostic

radiopharmaceutical are appropriately included on the same claim as the corresponding procedure to ensure that future ratesetting includes both the diagnostic radiopharmaceutical and the associated nuclear medicine procedure. These edits are especially important as payment for all diagnostic radiopharmaceuticals are packaged into the payment for the associated nuclear medicine procedure. The edits help ensure that hospitals are paid appropriately for diagnostic radiopharmaceutical costs, thus helping to maintain adequate patient access to nuclear medicine procedures.

We understand that some commenters believe that contrast agents may benefit from a similar set of I/OCE edits, and we are specifically requesting public comments on this topic in the final rule with comment period. Given that many contrast agents are low cost products with limited pharmacy handling costs and that advanced imaging studies are very common HOPD services, we are concerned that requiring the reporting of a contrast agent HCPCS code on every claim for an imaging study that specifies ''with contrast'' in its code descriptor could be quite administratively burdensome for hospitals. We are interested in the public's opinions on whether the potential benefits in capturing contrast agent costs that could occur as a result of a requirement for specific reporting of contrast agents on claims accompanied by claims processing edits to return incorrectly coded claims to hospitals for correction would outweigh the potential hospital burden of reporting these products and adjusting to a new set of claims processing edits.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, to continue to package payment for all nonpass-through diagnostic radiopharmaceuticals and contrast agents, regardless of their per day costs. In doing so, we are accepting the APC Panel's recommendation to package payment for diagnostic radiopharmaceuticals for CY 2009. Given the inherent function of contrast agents and diagnostic radiopharmaceuticals as ancillary and supportive to the performance of an independent procedure, we continue to view the packaging of payment for contrast agents and diagnostic radiopharmaceuticals as a logical expansion of packaging for SCODs. In addition, as we initially established in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66768), we are finalizing our proposal to continue to identify diagnostic radiopharmaceuticals specifically as those Level II HCPCS codes that include the term ''diagnostic'' along with a radiopharmaceutical in their long code descriptors, and therapeutic radiopharmaceuticals as those Level II HCPCS codes that include the term ''therapeutic'' along with a radiopharmaceutical in their long code descriptors.

During its March 2008 meeting, the APC Panel also recommended that CMS present data at the first CY 2009 APC Panel meeting on usage and frequency, geographic distribution, and size and type of hospitals performing nuclear medicine studies using radioisotopes in order to ensure that access is preserved for Medicare beneficiaries. We are accepting this recommendation and will present information to the APC Panel at its first CY 2009 meeting when initial claims data from CY 2008 will be available.

For more information on how we set CY 2009 payment rates for nuclear medicine procedures in which diagnostic radiopharmaceuticals are used and echocardiography services provided with and without contrast agents, we refer readers to sections II.A.2.d.(5) and (4), respectively, of this final rule with comment period.

3. Payment for Drugs and Biologicals Without Pass-Through Status That Are Not Packaged

a. Payment for Specified Covered Outpatient Drugs (SCODs)

Section 1833(t)(14) of the Act, as added by section 621(a)(1) of Public Law 108–173, requires special classification of certain separately paid radiopharmaceuticals, drugs, and biologicals and mandates specific payments for these items. Under section 1833(t)(14)(B)(i) of the Act, a ''specified covered outpatient drug'' is a covered outpatient drug, as defined in section 1927(k)(2) of the Act, for which a separate APC has been established and that either is a radiopharmaceutical agent or is a drug or biological for which payment was made on a pass-through basis on or before December 31, 2002.

Under section 1833(t)(14)(B)(ii) of the Act, certain drugs and biologicals are designated as exceptions and are not included in the definition of ''specified covered outpatient drugs,'' known as SCODs. These exceptions are—

- A drug or biological for which payment is first made on or after January 1, 2003, under the transitional pass-through payment provision in section 1833(t)(6) of the Act.
- A drug or biological for which a temporary HCPCS code has not been assigned.
- During CYs 2004 and 2005, an orphan drug (as designated by the Secretary).

Section 1833(t)(14)(A)(iii) of the Act, as added by section 621(a)(1) of Public Law 108–173, requires that payment for SCODs in CY 2006 and subsequent years be equal to the average acquisition cost for the drug for that year as determined by the Secretary, subject to any adjustment for overhead costs and taking into account the hospital acquisition cost survey data collected by the Government Accountability Office (GAO) in CYs 2004 and 2005. If hospital acquisition cost data are not available, the law requires that payment be equal to payment rates established under the methodology described in section 1842(o), section 1847A, or section 1847B of the Act, as calculated and adjusted by the Secretary as necessary.

In the CY 2006 OPPS proposed rule (70 FR 42728), we discussed the CY 2005 report by MedPAC regarding pharmacy overhead costs in HOPDs and summarized the findings of that study:

- Handling costs for drugs, biologicals, and radiopharmaceuticals administered in the HOPD are not insignificant;
- Little information is available about the magnitude of pharmacy overhead costs;
- Hospitals set charges for drugs, biologicals, and radiopharmaceuticals at levels that reflected their respective handling costs; and
- Hospitals vary considerably in their likelihood of providing services which utilize drugs, biologicals, or radiopharmaceuticals with different handling costs.

As a result of these findings, MedPAC developed seven drug categories for pharmacy and nuclear medicine handling costs based on the estimated level of hospital resources used to prepare the products. Associated with these categories were two recommendations for accurate payment of pharmacy overhead under the OPPS.

1. CMS should establish separate, budget neutral payments to cover the costs hospitals incur for handling separately payable drugs, biologicals and radiopharmaceuticals.

2. CMS should define a set of handling fee APCs that group drugs, biologicals, and radiopharmaceuticals based on attributes of the products that affect handling costs; CMS should instruct hospitals to submit charges for these APCs and base payment rates for the handling fee APCs on submitted charges reduced to costs.

In assigning drugs to the seven categories, MedPAC considered additional characteristics that contribute

to differential pharmacy handling costs, such as radioactivity, toxicity, mode of administration, and the need for special handling. While MedPAC was able to include information on a variety of drugs with many of these characteristics, hospitals participating in MedPAC's research were not able to provide sufficient cost information regarding the handling of outpatient radiopharmaceuticals for MedPAC to make a recommendation about overhead categories for these products.

In response to the MedPAC findings, in the CY 2006 OPPS proposed rule (70 FR 42729), we discussed our belief that, because of the varied handling resources required to prepare different forms of drugs, it would be impossible to exclusively and appropriately assign a drug to a certain overhead category that would apply to all hospital outpatient uses of the drug. Therefore, our CY 2006 OPPS proposal included a proposal to establish three distinct Level II HCPCS C-codes and three corresponding APCs for drug handling categories to differentiate overhead costs for drugs and biologicals. We also proposed: (1) To combine several overhead categories recommended by MedPAC according to Table 24 of the proposed rule; (2) to establish three drug handling categories, as we believed that larger groups would minimize the number of drugs that may fit into more than one category and would lessen any undesirable payment policy incentives to utilize particular forms of drugs or specific preparation methods; (3) to collect hospital charges for these C-codes for 2 years; and (4) to ultimately base payment for the corresponding drug handling APCs on CY 2006 claims data available for the CY 2008 OPPS. Both the MedPAC categories and the CY 2006 proposed categories are identified in Table 28 below.

TABLE 28—DRUG OVERHEAD CATEGORY GROUPINGS DISCUSSED IN THE CY 2006 OPPS PROPOSED RULE

MedPAC drug overhead category	Description	CMS proposed CY 2006 drug overhead category
Category 1	Orals (oral tablets, capsules, solutions)	Category 1.
Category 2	Injection/Sterile Preparation (draw up a drug for administration)	Category 2.
Category 3	Single IV Solution/Sterile Preparation (adding a drug or drugs to a sterile IV solution) or Controlled Substances.	Category 2.
Category 4	Compounded/Reconstituted IV Preparations (requiring calculations performed correctly and then compounded correctly).	Category 2.
Category 5	Specialty IV or Agents requiring special handling in order to preserve their therapeutic value or Cytotoxic Agents, oral (chemotherapeutic, teratogenic, or toxic) requiring personal protective equipment (PPE).	Category 3.
Category 6	Cytotoxic Agents (chemotherapeutic, teratogenic, or toxic) in all formulations except oral requiring PPE.	Category 3.
Category 7	Radiopharmaceutical: Basic and Complex Diagnostic Agents, PET Agents, Therapeutic Agents, and Radioimmunoconjugates.	

In the CY 2006 OPPS final rule with comment period (70 FR 68659 through 68665), we discussed the public comments we received on our proposal regarding pharmacy overhead. The overwhelming majority of commenters did not support our proposal and urged us not to finalize this policy, as it would be administratively burdensome for hospitals. Therefore, we did not finalize this proposal for CY 2006.

As we noted in the CY 2006 OPPS final rule with comment period (70 FR 68640), findings from a MedPAC survey of hospital charging practices indicated that hospitals set charges for drugs, biologicals, and radiopharmaceuticals high enough to reflect their pharmacy handling costs as well as their acquisition costs. After considering all of the public comments received, in the CY 2006 OPPS final rule with comment period (70 FR 68642), we established a policy to provide a combined payment rate of ASP+6 percent for both the hospital's drug and biological acquisition costs and associated pharmacy overhead costs, as this was the equivalent average ASP-based amount to the aggregate cost from CY 2004 hospital claims data for separately payable drugs under the OPPS. We acknowledged the limitations of this methodology, namely that pharmacy overhead costs of specific drugs and biologicals are not directly related to their specific acquisition costs. We also solicited additional comments on future options for ways to identify and provide an alternative payment methodology for pharmacy overhead costs under the OPPS.

In the CY 2007 OPPS/ASC final rule with comment period (71 FR 68091), we proposed and finalized a policy that provided a single payment of ASP+6 percent for the hospital's acquisition cost for the drug or biological and all associated pharmacy overhead and handling costs. The ASP+6 percent rate was higher than the equivalent average ASP-based amount calculated from claims of ASP+4 percent, but we adopted this methodology for stability while we continued to examine the issue of the costs of pharmacy overhead in the HOPD.

We continued to meet with interested pharmacy stakeholders regarding the various issues related to hospital charging practices and how these practices would affect our potential proposals for payment of drugs and pharmacy overhead under the OPPS. Many comments from the hospital industry reiterated that hospitals do not attach a specific pharmacy overhead charge to a particular drug. In particular, a more expensive drug with high pharmacy overhead costs does not commonly result in a sufficiently high hospital charge for the drug to account for all of the associated drug acquisition and pharmacy overhead costs. We have been told that hospitals frequently allocate a relatively greater pharmacy overhead charge to the single hospital charge for less expensive drugs to counterbalance the lesser charge for pharmacy overhead for more expensive drugs with high pharmacy overhead costs.

Therefore, the pharmacy overhead costs of one drug may be distributed among charges for many drugs. This practice of unequally distributing pharmacy overhead charges among all drugs provided by the hospital pharmacy makes the single CCR for cost center 5600 (Drugs Charged to Patients) applied for OPPS cost estimation of drugs through the revenue code-to-cost center crosswalk result in less accurate costs for individual drugs. The result is that the charges and estimated costs for less expensive drugs shoulder a higher burden of pharmacy overhead costs as compared to the charges and estimated costs for more expensive drugs.

Commenters have suggested that our OPPS methodology of applying a single CCR for the cost estimation of all drugs unfairly reduces payment amounts for separately payable expensive drugs, as the actual CCR varies widely across drugs. The concerns surrounding the impact on payment accuracy of differential hospital charging practices for pharmacy overhead costs resemble the concerns regarding charge compression that have been raised for expensive implantable devices over the past several years of the OPPS (72 FR 66599 through 66602). In general, differential hospital markup policies related to the cost of an item lead to overestimating the cost of inexpensive items and underestimating the cost of expensive items when a single CCR is applied to charges on claims.

In the CY 2008 OPPS/ASC proposed rule (72 FR 42735), in response to ongoing discussions with interested parties, we proposed to continue our methodology of providing a combined payment rate for drug and biological acquisition and pharmacy overhead costs. We also proposed to instruct hospitals to remove the pharmacy overhead charge for both packaged and separately paid drugs and biologicals from the charge for the drug or biological and report the pharmacy overhead charge on an uncoded revenue code line on the claim. We believed that this would provide us with an avenue for collecting pharmacy handling cost data specific to drugs in order to package the overhead costs of these items into the associated procedures, most likely drug administration services. We believed that this methodology of reporting pharmacy overhead costs on an uncoded revenue center line would increase the accuracy of pharmacy overhead payments for drugs and biologicals as it would package the overhead cost for similar drugs into the commonly associated separately payable services, for example, by packaging the pharmacy overhead cost for a chemotherapy drug with the cost of the chemotherapy drug administration service also included on the claim.

Similar to the public response to our CY 2006 pharmacy overhead proposal, the overwhelming majority of commenters did not support our CY 2008 proposal and urged us to not finalize this policy (72 FR 66761). While MedPAC supported the proposal for improving the accuracy of drug payment by incorporating variability in pharmacy overhead costs, most other commenters cited the increased hospital burden that would be associated with manipulating accounting systems and making manual calculations, along with concerns about making these changes to their billing operations while continuing to set charges for particular services that were the same for all payers. After hearing concerns about the burden of establishing a unique pharmacy overhead charge for every drug, at its September 2007 meeting, the APC Panel recommended that hospitals not be required to separately report charges for pharmacy overhead and handling and that payment for overhead be included as part of drug payment. The APC Panel also recommended that CMS continue to evaluate alternative methods to standardize the capture of pharmacy overhead costs in a manner that is simple to implement at the organizational level (72 FR 66761). Because of these concerns, we did not finalize the proposal to instruct hospitals to separately report pharmacy overhead charges for CY 2008. Instead, in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66763), we finalized a policy of providing payment for separately payable drugs and biologicals and their pharmacy overhead at ASP+5 percent as a transition from their CY 2007 payment of ASP+6 percent to payment based on the equivalent average ASP-based payment rate calculated from hospital claims, which was ASP+3 percent for the CY 2008 OPPS/ASC final rule with comment period. Hospitals continued to include charges for pharmacy overhead costs in the line-item charges for the associated drugs reported on claims.

b. Payment Policy for CY 2009

The provision in section 1833(t)(14)(A)(iii) of the Act, as described above, continues to be applicable to determining payments for SCODs for CY 2009. This provision requires that, in CY 2009, payment for SCODs be equal to the average acquisition cost for the drug for that year as determined by the Secretary, subject to any adjustment for overhead costs and taking into account the hospital acquisition cost survey data collected by the GAO in CYs 2004 and 2005. If hospital acquisition cost data are not available, the law requires that payment be equal to payment rates established under the methodology described in section 1842(o), section 1847A, or section 1847B of the Act, as calculated and adjusted by the Secretary as necessary. In addition, section 1833(t)(14)(E)(ii) authorizes the Secretary to adjust APC weights for SCODs to take into account the MedPAC report relating to overhead and related expenses, such as pharmacy services and handling costs.

During this past year, we have met with a variety of stakeholders regarding different proposals for collecting pharmacy overhead cost information for setting OPPS payment rates. One such proposal was endorsed by several stakeholders during the March 2008 APC Panel meeting. Presenters to the APC Panel explained that CMS' methodology of using a single CCR to determine the acquisition and pharmacy overhead cost for all drugs attributes a greater relative share of pharmacy overhead cost to the lower-priced packaged drugs and a lower relative share of pharmacy overhead cost to the more expensive, separately payable drugs. Because the OPPS packages payment for drugs and biologicals with an estimated per day cost of $60 or less and estimates the equivalent average ASP-based amount based only on the costs of separately payable drugs, some pharmacy overhead cost that should be associated with separately payable drugs is being packaged into payment for the procedures that are performed with lower cost packaged drugs.

This stakeholder proposal suggested that CMS recalculate the equivalent average ASP-based amount based on the costs of packaged and separately payable drugs with HCPCS codes, rather than on our current methodology of calculating an ASP-based amount solely from claims data for separately payable drugs. CMS would then use this equivalent average ASP-based amount (or the physician's office payment rate of ASP+6 percent) to represent the acquisition and pharmacy overhead cost of all packaged drugs and would substitute this figure for the costs of packaged drugs in ratesetting for their associated procedures. The pool of money under the budget neutral OPPS that would result from this methodology that would package lower drug costs with associated procedures than our current methodology could then be distributed to OPPS payment in a number of ways, such as increasing the combined acquisition and overhead cost payment for separately payable drugs to a higher average ASP-based amount and/or providing separate payment for pharmacy overhead costs for either all drugs or only separately payable drugs based on a flat add-on rate or on tiers of pharmacy service complexity. The stakeholders presented APC median cost estimates demonstrating that their recommendation would significantly impact drug payment rates but would only change the majority of APC median costs by less than 2 percent.

At its March 2008 meeting, the APC Panel recommended that CMS work with stakeholders to further develop

recommendations on the validity of this methodology and conduct an impact analysis, with consideration for CY 2009 rulemaking. During the August 2008 meeting, the APC Panel recommended that CMS continue to look at refining the methodology for payment of pharmacy overhead and handling costs, and that CMS work with stakeholders to find a feasible approach for payment of drugs and pharmacy overhead. Further, the APC Panel recommended that CMS package the cost of all drugs that are not separately paid at ASP+5 percent, use the difference between these costs and CMS' costs derived from charges to create a pool that funds payment for pharmacy overhead services and pay hospitals for pharmacy service costs using this pool by making payments based on some system of categorization determined by CMS. In addition, the APC Panel recommended that CMS take into consideration the impact on beneficiaries' copayments.

Because CMS would redistribute pharmacy overhead cost when modeling payment rates for ratesetting, we concluded for the proposed rule that the suggested methodology would be administratively simple for hospitals. We stated our belief that that this approach also would refine the existing OPPS methodology for estimating pharmacy overhead cost in a budget neutral manner, without redistributing money from the payment for nondrug components of other services to payment for drugs. However, in the proposed rule, we also expressed our belief that substituting an average ASP-based amount (or the physician's office payment rate of ASP+6 percent) on claims for purposes of packaging drug costs into associated procedures would be a highly significant change to our established methodology. It is our longstanding policy to accept hospital charge data as it is reported on claims, in order to capture variability in hospitals' unique charges that is specific to each hospital's charging structure, as well as other potential efficiencies. The stakeholder recommendation would eliminate the expected variability in hospitals' costs for drugs that are packaged into their associated procedures.

In the CY 2009 OPPS/ASC proposed rule, we did not propose to adopt this stakeholder methodology. We noted our appreciation of this thoughtful approach to OPPS payment for pharmacy overhead costs, but we sought public comment on several issues that needed to be seriously considered before we could potentially propose the adoption of such a methodology, including, but not limited to, its implications for how we would more generally estimate the costs of items packaged into an independent service. In addition to our packaging of relatively inexpensive drugs that are integral to separately payable independent services, we package payment under the OPPS for the costs of a variety of other items and services. In addition, it was not clear to us what approach for redistributing pharmacy overhead dollars would be most accurate and operationally feasible for CMS. Therefore, in the CY 2009 OPPS/ASC proposed rule, we specifically invited public comment on this potential approach for estimating pharmacy overhead costs and redistributing pharmacy overhead payment under the OPPS.

Comment: Several commenters were not supportive of the stakeholder approach to payment for pharmacy overhead costs. The commenters were concerned about the potential redistributive effects of the proposal and the impact on beneficiaries of higher copayments for separately payable drugs.

However, the majority of commenters expressed support for the stakeholder recommendation to redistribute a portion of pharmacy overhead costs from payment for packaged drugs and biologicals through payment for the associated procedures to payment for separately payable drugs and biologicals in a budget neutral manner. In general, the commenters believed that CMS' concerns regarding the substitution of ASP information on hospital claims to replace the costs reported by hospitals would have no other implications for OPPS cost estimation because no other item or service has a similar market-based payment methodology (such as ASP) for identifying hospital costs. The commenters noted that CMS already uses a non-standard methodology in providing payment for drugs and biologicals based on the ASP methodology. The commenters viewed the stakeholder proposal as a more accurate application of the standard CMS methodology. In addition, the commenters believed that adoption of the stakeholder approach to redistribute pharmacy overhead costs more accurately to separately payable drugs would be necessary if CMS were to continue to package payment for some drugs and biologicals with per day costs at or below the proposed CY 2009 drug packaging threshold.

Further, many commenters stated that the stakeholder recommendation for payment of drugs and pharmacy overhead costs would be administratively simple for hospitals to implement and would provide a more accurate payment solution for separately payable drugs and biologicals. Some commenters believed that implementing this approach could be relatively straightforward for CMS, and could include a processing step in the I/OCE that would add on the appropriate standard pharmacy overhead payment whenever a drug HCPCS code was billed.

Finally, many commenters also supported the redistribution of the resulting pharmacy overhead payments through three payment levels based on the estimated pharmacy overhead resource costs specific to each drug HCPCS code. The commenters included suggestions for drug assignments to three tiers of pharmacy overhead categories and suggested that these additional payments could be programmed into the I/OCE so that they would require no additional administrative changes by hospitals.

Many commenters concluded that the recommended stakeholder approach had been sufficiently reviewed by both hospital stakeholders and CMS, and they urged CMS to adopt this payment methodology for CY 2009.

Response: As we stated in the CY 2009 OPPS/ASC proposed rule (73 FR 41489 through 41490), we appreciate the creative approach to OPPS payment for pharmacy overhead costs as described above. We have continued to review and discuss this stakeholder recommendation in meetings with interested stakeholders and during the August 2008 APC Panel meeting. We remain interested in further exploring this approach that certain stakeholders have developed as a solution to the issue of uneven distribution of OPPS payment for pharmacy overhead costs, and we believe that such an approach, or modifications of the recommended approach, could potentially provide more accurate OPPS payment for drugs and biologicals in the future.

However, we do not believe that it would be appropriate to adopt such a payment approach for CY 2009 that is so different from our proposal for several reasons. First, as we noted in the CY 2006 OPPS final rule with comment period (70 FR 68640), findings from a MedPAC survey of hospital charging practices indicated that hospitals set charges for drugs, biologicals, and radiopharmaceuticals high enough to reflect their pharmacy handling costs as well as their acquisition costs. Similarly, in the Medicare Claims Processing Manual (Pub. 100–04, Chapter 17, Section 90.2), we have instructed hospitals to include both acquisition costs and pharmacy overhead or nuclear medicine handling

costs in their line-item charges for drugs, biologicals, and radiopharmaceuticals. Beyond drugs and biologicals, we expect that hospitals consider costs when setting charges for all hospital services. We believe that hospitals have internal policies for setting charges and are internally consistent when setting charges, although the manner in which charges are set relative to cost likely varies by hospital. Application of a hospital-specific CCR to estimate costs for purposes of OPPS ratesetting creates cost estimates that are internally consistent with the hospital's charging structure and retain the variability in charges, and variability in cost by association, experienced by each hospital. We observe a wide range in our estimates of costs for various drugs and biologicals, suggesting that hospitals have different estimated costs for these items. In part, our longstanding policy to accept hospital charge data as they are reported by hospitals is an attempt to appropriately capture the variability in hospitals' unique charges that reflects real differences in cost and other efficiencies at each hospital. Further, for all services, external estimates of cost created outside the hospital's billing and accounting information would not be based on the relative estimated costs for the hospital. We also utilize hospital charge data as reported by hospitals to avoid inappropriately redistributing money based on external estimates of costs from widely different sources. The stakeholder recommendation would eliminate the expected variability in hospitals' costs for drugs that are packaged into their associated procedures and substitute a static, external estimate of cost for one that would otherwise be established by the hospital's internal billing and accounting structure. While certain stakeholders have demonstrated how this approach would impact the median costs for drug administration services, the concept of substituting external cost estimates for certain items or services in the context of an otherwise internally consistent relative cost structure has importance for packaging costs in other APCs.

Second, because we have not yet fully analyzed a comprehensive drug payment methodology that would follow this general approach, nor have we provided sufficient information on the impacts of this proposal to the public, we do not believe that adopting this approach for CY 2009 would be appropriate. Therefore, we are not accepting the APC Panel's August 2008 recommendation to redistribute the pharmacy overhead costs currently associated with packaged drugs to a pool that would pay for pharmacy services, and pay for these pharmacy services by making payments based on a system of drug categorization established by CMS. As we did not propose a methodology like the stakeholder's model or the APC Panel's recommended approach, or a variation of that model, for the CY 2009 OPPS, we have not assessed the impact such a change would have on payment for other OPPS services, including those services with significant packaged drug costs, on payment to different classes of hospitals, or on beneficiary copayments. However, we are particularly interested in further exploring this approach, especially in light of the overwhelming lack of public support for our proposal to split the 5600 (Drugs Charged to Patients) cost center on the Medicare cost report into two new cost centers, Drugs With High Overhead Cost Charged To Patients and Drugs With Low Overhead Cost Charged To Patients, as discussed in more detail below.

As we explained in the CY 2009 OPPS/ASC proposed rule, recently RTI completed its evaluation of the OPPS cost-based weight methodology in general, and charge compression in particular. Pharmacy stakeholders have already noted that accurately estimating pharmacy overhead cost is intimately related to the CCR used to estimate costs from claims' charges. As discussed above, hospitals have informed us that they redistribute the cost of pharmacy overhead from expensive to inexpensive drugs when setting charges for drugs.

RTI determined that hospitals billing a greater percent of drug charges under revenue code 0636 (Drugs requiring detail coding) out of all revenue codes related to drugs had a significantly higher CCR for cost center 5600 (Drugs Charged to Patients). ''These findings are consistent with the a priori expectation that providers tend to use lower markup rates on these relatively expensive items, as compared with other items in their CCR group.'' (RTI report, ''Refining Cost to Charge Ratios for Calculating APC and MS–DRG Relative Payment Weights,'' July 2008). RTI, in its March 2007 report, noted that hospitals billing a greater percent of drug charges under revenue code 0258 (IV solutions) out of all revenue codes related to drugs had a significantly lower CCR for cost center 5600. In the short term, RTI recommended that CMS adopt regression-adjusted CCRs under the OPPS for drugs requiring detail coding (reported under revenue code 0636) and for IV solutions (reported under revenue code 0258) for purposes of estimating median costs. To eliminate the need for simulated CCRs in the longer term, RTI recommended that CMS create a new standard cost center in the cost report for drugs requiring detail coding (reported under revenue code 0636) to mitigate charge compression by acquiring more specific CCRs (RTI report, ''Refining Cost to Charge Ratios for Calculating APC and MS–DRG Relative Payment Weights,'' July 2008).

As discussed further in section II.A.1.c. of this CY 2009 OPPS/ASC final rule with comment period and consistent with our proposal for the FY 2009 IPPS, we did not propose to adopt regression-based CCRs for cost estimation in any area of the CY 2009 OPPS, including drugs requiring detail coding and IV solutions. Instead, we stated that we believed that RTI's empirical findings would appropriately be addressed through concrete steps to improve the quality of accounting information used to estimate future costs from drug charges. Cognizant of public comments on past proposals, we also stated that we believed that this should be done in a manner that is fairly simple for hospitals to implement.

For CY 2009, we proposed to continue our policy of making a combined payment for the acquisition and pharmacy overhead costs of separately payable drugs and biologicals at an equivalent average ASP-based amount calculated based on our standard methodology of estimating drug costs from claims. Using updated data, for the CY 2009 proposed rule, after determining the proposed CY 2009 packaging status of drugs and biologicals, we estimated the aggregate cost of all drugs and biologicals (excluding therapeutic radiopharmaceuticals for which no ASP data were available) that would be separately payable in CY 2009 based on costs from hospital claims data and calculated the equivalent average ASP-based payment rate that would equate to the aggregate reported hospital cost. The results of our analysis indicated that setting the payment rates for drugs and biologicals that would be separately payable in CY 2009 based on hospital costs would be equivalent to providing payment, on average, at ASP+4 percent. Therefore, we proposed to pay for separately payable drugs and biologicals under the CY 2009 OPPS at ASP+4 percent because we believed that this was the best currently available proxy for average hospital acquisition cost and associated pharmacy overhead costs.

Comment: Several commenters cited methodological concerns about the approach CMS used to calculate the equivalent average ASP-based payment amount for separately payable drugs and biologicals.

Some commenters noted that the statute requires drug cost surveys for payment purposes for SCODs under the OPPS, and the most recent survey available is outdated as it was performed in CY 2004 by the GAO. The commenters stated that the statute specifically required survey data as the basis for hospital acquisition costs in order to provide a more appropriate payment methodology for drugs and biologicals, instead of costs from claims data. They concluded that, by not performing a survey and by not paying for drugs and biologicals at the physician's office rate, CMS was not in compliance with the statute. The commenters acknowledged that drug cost surveys are difficult to perform. However, they believed that either a survey should be performed or payment should be made at ASP+6 percent, in accordance with the requirement of the statute.

Commenters reiterated that hospitals disproportionably mark up their charges for low cost drugs and biologicals to account for pharmacy overhead costs. They indicated that while the aggregate charges for inexpensive and expensive drugs may include the total pharmacy overhead costs of the hospital, the charges for individual drugs and biologicals do not represent the specific acquisition and pharmacy overhead costs of that particular drug or biological. The commenters explained that hospitals apply proportionately smaller markups to higher cost items and proportionately larger markups to lower cost items. The commenters believed that when CMS applies a single CCR to adjust charges to costs for these drugs and biologicals, charge compression leads to misallocation of the pharmacy overhead costs associated with high and low cost drugs and biologicals during ratesetting.

Commenters noted that by using only separately payable drugs in the calculation of the equivalent average ASP-based amount, the pharmacy overhead costs associated with these separately payable drugs that are disproportionately included in the charges for packaged drugs are not factored into the calculation, resulting in an artificially low ASP add-on percentage. The commenters suggested using the costs of both packaged drugs and separately payable drugs when calculating the equivalent average ASP-based payment amount for separately payable drugs, as they argued that this would provide a more accurate ASP percentage payment for separately payable drugs. As an alternative, the commenters recommended that CMS could eliminate the drug packaging threshold and provide separate payment for all Part B drugs under the OPPS.

Finally, the commenters noted that CMS included, in the calculation of the costs of separately payable drugs and biologicals, OPPS claims from hospitals that receive Federal discounts on drug prices under the 340B program. The commenters pointed out that hospital participation in the 340B program had grown substantially over the past few years, and they believed that the costs from these hospitals now constituted a significant proportion of hospital drug costs on CY 2007 OPPS claims. The commenters stated that including 340B hospital claims data when comparing aggregate hospital costs based on claims data to ASP rates contributed to an artificially low equivalent average ASP-based payment rate because ASP data specifically exclude drugs sales under the 340B program.

Response: As discussed above, the provision in section 1833(t)(14)(A)(iii) of the Act continues to be applicable to determining payments for SCODs for CY 2009. This provision requires that payment for SCODs be equal to the average acquisition cost for the drug for that year as determined by the Secretary, subject to any adjustment for overhead costs and taking into account the hospital acquisition cost survey data collected by the GAO in CYs 2004 and 2005 or if hospital acquisition cost data are not available, then the average price for the drug in the year established under section 1842(o), 1847A, or 1847B of the Act, as the case may be, as calculated and adjusted by the Secretary as necessary for purposes of section 1833(t)(14)(iii)(II) of the Act. In the CY 2006 OPPS final rule, we compared hospital drug cost data that were available to us at the time, specifically: (1) Data from the GAO survey; (2) hospital claims data from CY 2004; and (3) ASP information. In addition, we discussed our methodology for comparing these data that represented different timeframes from 2004 to 2006. As a result of our analysis comparing these three sources, we concluded that, on average, the costs from hospital claims data representing SCODs were roughly equivalent to payment ASP+6 percent. Therefore, we finalized a policy that used our hospital claims data as a proxy for average hospital acquisition cost and provided payment for separately payable drugs that do not have pass-through status at ASP+6 percent in CY 2006 (70 FR 68639 through 68642). The commenters are correct that the statute allows for the use of the methodology described in section 1842(o), section 1847A or section 1847B of the Act, as calculated and adjusted by the Secretary as necessary, but this is only when hospital acquisition cost data are not available. We believe that we have established our hospital claims data as an appropriate proxy for average hospital acquisition costs, taking the GAO survey information into account for the base year. While we have not yet performed hospital drug acquisition cost surveys similar to the GAO survey, we note that the statute only calls for ''periodic'' surveys, and we are considering the possibility of such a survey at some point in the future.

In addition, we understand that because hospital charges for drugs are adjusted to cost by a single CCR, but hospitals continue to apply differential markups to their charges for low and high cost drugs and biologicals, the result is an overestimation of costs for less expensive drugs and an underestimation of costs for more expensive drugs. In order to more accurately identify costs for drugs, we proposed to split the current single drug cost center into two standard cost centers on the Medicare cost report. By creating two standard cost centers (one for Drugs With High Overhead Cost Charged to Patients, the other for Drugs With Low Overhead Cost Charged to Patients), we believed that the resulting CCRs would provide a more accurate ASP-based estimate for those drugs that are separately paid, as each individual drug charge would be subject to a more accurate CCR, depending on whether the drug was classified by the hospital as having high or low overhead costs. We discuss this proposal, the public comments we received, and our final policy in detail below.

It has been our policy, since CY 2006, to only use separately payable drugs in the calculation of the equivalent average ASP-based payment amount under the OPPS. We do not include packaged drugs and biologicals in this analysis because cost data for these items are already accounted for within the APC ratesetting process through the median cost calculation methodology discussed in section II.A.2. of this final rule with comment period. To include the costs of packaged drugs in both our APC ratesetting process (for associated procedures present on the same claim) and in our ratesetting process to establish an equivalent average ASP-based payment amount for separately payable drugs and biologicals would give these data disproportionate

emphasis in the OPPS system by skewing our analyses, as the costs of these packaged items would be, in effect, counted twice. Accordingly, we are not adopting the suggestion from commenters that we include all packaged and separately payable drugs and biologicals when establishing an equivalent average ASP-based rate to provide payment for the hospital acquisition and pharmacy handling costs of drugs and biologicals. However, we remind commenters that because the costs of packaged drugs, including their pharmacy overhead costs, are packaged into the payments for the procedures in which they are administered, the OPPS provides payment for both the drugs and the associated pharmacy overhead costs through the applicable procedural APC payments.

We also are not adopting the alternative recommendation by some commenters that we eliminate the drug packaging threshold and pay separately for all drugs and biologicals with HCPCS codes. As we have stated previously (71 FR 68085), we believe that it is appropriate, at a minimum, to continue a modest drug packaging threshold under the OPPS. Packaging is a fundamental component of a prospective payment system that contributes to important flexibility and efficiency in the delivery of high quality outpatient care.

We have had several meetings with interested stakeholders over the past year regarding the drug costs of hospitals that participate in the Federal 340B program, and we are interested in gathering more information on their potential influence on our methodology for calculating payment rates for separately payable drugs. Specifically, we are requesting comments on this final rule with comment period that address: (1) Whether all HOPDs from a participating provider furnish drugs purchased under the 340B pricing program or only a subset of departments; (2) whether all drugs are available to participating hospitals under the 340B program; (3) whether hospital drugs provided to inpatients are purchased by hospitals at 340B program prices if the hospital is a participating provider; (4) what proportion of a participating hospital's total costs and charges for drugs reflect drugs purchased through the 340B program; (5) whether hospitals participating in the 340B program receive other manufacturer discounts that impact their final drug cost; (6) whether hospitals set different charges for drugs purchased through the 340B program than their charges for those same drugs purchased outside the program; (7) the impact 340B drug purchasing agreements have on OPPS hospital claims data used to estimate drug costs; (8) whether hospitals participating in the 340B program should be paid for drugs under the OPPS at adjusted rates because they have different average hospital acquisition costs for drugs and biologicals from nonparticipating hospitals, (9) whether we should use the equitable adjustment authority in section 1833(t)(2)(E) of the Act to adjust OPPS payments to hospitals for separately payable drugs based on hospitals' participation in the 340B program, so that drug payment for the two classes of hospitals (340B participating and 340B nonparticipating) would reflect the averge drug acquisition and pharmacy overhead costs specific to each class of hospital; and (10) any additional information that would assist us in understanding and considering this issue for potential rulemaking in the future.

As discussed above, in the CY 2009 OPPS/ASC proposed rule, we included a proposal to break the single standard cost center 5600 into two standard cost centers, Drugs with High Overhead Cost Charged to Patients and Drugs with Low Overhead Cost Charged to Patients, to reduce the reallocation of pharmacy overhead cost from expensive to inexpensive drugs and biologicals when setting an equivalent average ASP-based payment amount in the future. This proposal is consistent with RTI's recommendation for creating a new cost center whose CCR would be used to adjust charges to costs for drugs requiring detail coding. However, we noted that while improved CCRs would more accurately estimate the ASP-based amount for combined drug and pharmacy overhead payment, they would not capture within HCPCS code variability in pharmacy handling costs resulting from different methods of drug preparation used by hospitals. As discussed above, we believe that improved and more precise cost reporting is the best way to improve the accuracy of all cost-based payment weights, including relative weights for the IPPS MS–DRGs. Because both the IPPS and the OPPS rely on cost-based weights derived, in part, from data on the Medicare hospital cost report form, we indicated that public comment on the proposed change to the cost report to break the single standard cost center 5600 into two standard cost centers should address any impact on both the inpatient and outpatient payment systems.

We stated in the proposed rule that this proposal would not affect OPPS cost estimation for radiopharmaceuticals for several reasons. First, we would not expect the costs and charges for radiopharmaceuticals to be assigned to cost center 5600. Rather, cost center 4300 (Radioisotope) is more appropriate for these items. Second, our claims data demonstrated that some hospitals continued to bill radiopharmaceuticals under revenue code 0636, contrary to UB–04 instructions (Official UB04 Data Specifications Manual, AHA 2007, p. 127), specifically noting that radiopharmaceuticals should be billed under revenue codes 0343 (Diagnostic Radiopharmaceuticals) and 0344 (Therapeutic Radiopharmaceuticals). We believed that billing radiopharmaceuticals under revenue code 0636 could be a result of dated CMS' guidance regarding billing radiopharmaceuticals under revenue code 0636. On April 8, 2008, we deleted this guidance from our Claims Processing Manual through administrative issuance (Transmittal 1487, Change Request 5999). Finally, RTI did not observe evidence of differential markup in cost center 4300 (for hospitals reporting the cost center) for products reported under revenue codes 0343 and 0344 (RTI report, ''Refining Cost to Charge Ratios for Calculating APC and MS–DRG Relative Payment Weights,'' July 2008).

In the CY 2009 OPPS/ASC proposed rule, we discussed several ways we could define the new cost centers for purposes of hospital reporting. First, we could adopt the assumptions behind RTI's empirical findings and require that hospitals simply report the costs and charges associated with revenue code 0636 in the proposed new cost center Drugs with High Overhead Cost Charged to Patients. This approach would require hospitals to report charges and costs for all other drugs in the proposed new cost center Drugs with Low Overhead Cost Charged to Patients. We believed this approach would be administratively simple for hospitals to implement because it would easily align revenue code and cost center relationships and would not require hospitals to otherwise categorize drugs or estimate a unique pharmacy overhead cost for each drug. Notwithstanding our requirement for hospitals to report, consistent with CPT and CMS instructions, all services described by HCPCS codes provided in an encounter, to the extent that hospitals reported HCPCS codes for drugs that are not packaged, this

approach might isolate costs and charges for drugs that are separately paid under the OPPS for purposes of more accurately estimating their costs. While we believed that RTI's findings suggested an increase in the CCR for adjustment of drug charges to costs would result from isolating the costs and charges for drugs billed under revenue code 0636, one limitation of this approach is that it would not fully mitigate the disproportionate allocation of pharmacy overhead cost reflected in differential markup. Although clearly an improvement in accuracy over current cost estimation, it is likely that significant variability in markup and overhead cost for drugs currently billed under revenue code 0636 would remain in the new cost center CCR for Drugs with High Overhead Cost Charged to Patients.

Second, we could set a cost threshold for drug acquisition and pharmacy overhead cost for purposes of including costs and charges for the drug in one of the two proposed new cost centers. If we were to implement this methodology, we potentially could set the threshold at the OPPS drug packaging threshold, which was proposed to be $60 for CY 2009. This would clearly identify those drugs that would be billed in each cost center because all drug and biological HCPCS codes would be assigned either separately payable or packaged status under the CY 2009 OPPS. However, we believed that using the OPPS drug packaging threshold could be too low, and probably would not identify a cost point that would maximize cost differences between drugs with relatively high pharmacy overhead cost and drugs with relatively low pharmacy overhead cost. This approach has the benefit of considering cost, which appears largely to determine the amount of markup for pharmacy overhead costs a hospital incorporates into drug charges. Although some high cost drugs may have low pharmacy overhead costs, in general this alternative might do a better job of improving cost estimates for drugs with high pharmacy overhead costs through the use of more specific CCRs than the first alternative discussed, a cost center that would include all drugs currently billed under revenue code 0636. On the other hand, we were uncertain as to how we would identify the most appropriate cost threshold amount, or the manner and frequency with which we would update the threshold. More importantly, we expressed concern that identifying the unique acquisition and overhead cost for each drug could impose a comparable administrative burden as other prior proposals.

Third, as we discussed in the proposed rule, we could also set a cost threshold for pharmacy overhead specifically to define high versus low overhead cost for purposes of reporting costs and charges for drugs in the two new cost centers. This alternative would require hospitals to identify the cost of pharmacy overhead for every drug in order to assign it to a cost center. This approach would most accurately isolate drugs with high and low overhead costs, respectively. Therefore, the resulting CCRs would better estimate the average acquisition and overhead cost for these drugs. On the other hand, as with the second alternative, we were uncertain as to how we would identify the most appropriate pharmacy cost threshold amount, or the manner and frequency with which we would update the threshold. Further, this approach could also impose a significant hospital administrative burden, comparable to the burden identified by commenters regarding other prior proposals.

A fourth approach discussed in the proposed rule would be to instruct hospitals to assign those drugs they administer in the OPPS to the two proposed new cost centers according to the categories discussed in the CY 2006 final rule with comment period and presented in Table 24 of the CY 2009 OPPS/ASC proposed rule. Under this methodology, drugs falling in CMS categories 1 and 2 would be billed under revenue codes 025X or 063X (other than 0636) and captured in the cost report in the proposed new cost center Drugs with Low Overhead Cost Charged to Patients, while drugs falling in CMS category 3 would be billed under revenue code 0636 and reported in the proposed new cost center Drugs with High Overhead Cost Charged to Patients. CMS would provide some examples in the cost report instructions of appropriate drugs for each category. We indicated that we were aware that some pharmacy stakeholders have already categorized drug and biological HCPCS codes into the three CMS pharmacy overhead categories that were proposed for CY 2006. Because pharmacy overhead costs may vary depending on the preparation of a specific product at an individual hospital and hospital accounting also varies, the same drug could appear in a different cost center across hospitals. However, we indicated that we did not believe it would be necessary for hospitals to assign exactly the same drugs to each of the two proposed new cost centers, as long as hospitals' assessment of the pharmacy overhead cost category is consistent with their billing of these drugs under revenue codes 063X (other than 0636) and 025X or 0636 and the inclusion of these drugs in the associated cost centers. Prospectively, the OPPS cost estimation methodology would use the CCR calculated for the proposed new cost center Drugs with High Overhead Cost Charged to Patients to adjust drug charges billed under revenue code 0636 to cost and the CCR calculated for the proposed new cost center Drugs with Low Overhead Cost Charged to Patients to adjust drug charges billed under revenue codes 025X and 063X (other than 0636) to cost for determining drug acquisition and pharmacy overhead costs. We indicated in the proposed rule that we believed this fourth approach would best estimate a CCR for drugs with high pharmacy overhead cost and relatively low markup as reflected in hospitals' charges. Because the number of drugs in pharmacy overhead category three would be limited based on the specific category description, this approach should more accurately address the limited markup for very expensive drugs with high pharmacy overhead costs, where charges do not reflect the hospitals' pharmacy overhead costs for those drugs. We also believed that hospitals would find this alternative easier to implement than any policy requiring hospitals to identify a unique total acquisition and overhead cost or a specific pharmacy overhead cost for each drug for purposes of assigning the drug's costs and charges to one of the two proposed new cost centers. However, we realized that there would still be some additional administrative burden for hospitals that had not yet determined the appropriate pharmacy overhead category for each of their drugs, and that they would need to educate their billing staff, to modify their chargemasters, and to adapt other billing software.

In summary, we proposed to pay for the combined average acquisition and pharmacy overhead cost of separately payable drugs and biologicals at ASP+4 percent based on the costs of separately payable drugs calculated from claims data under the CY 2009 OPPS. In addition, we proposed to create two new cost centers when we revise the Medicare hospital cost report form, specifically Drugs with High Overhead Cost Charged to Patients and Drugs with Low Overhead Cost Charged to Patients. We indicated that we expected that CCRs from these new cost centers would be available in 2 to 3 years to refine OPPS drug cost estimates by accounting for differential hospital markup

practices for drugs with high and low pharmacy overhead costs. In the proposed rule, we specifically invited public comment on the policy and operational benefits, challenges, and concerns that might be associated with these proposals, specifically as they related to our proposed approach to distinguishing between drugs and biologicals for purposes of inclusion in the two proposed new cost centers and the other alternatives discussed above.

During its August 2008 meeting, the APC Panel recommended that CMS not implement the proposed change to the cost center for drugs on the Medicare cost report. In addition, the Panel recommended that CMS continue to provide payment for drugs at a rate of no less than ASP+5 percent. We discuss our response to these recommendations along with our responses to public comments below.

Comment: A few commenters supported CMS' proposal to split the single standard cost center for drugs (5600—Drugs Charged to Patients) into two standard cost centers (Drugs With High Overhead Cost Charged to Patients and Drugs With Low Overhead Cost Charged to Patients). Several of these commenters, including MedPAC, recommended splitting the single 5600 cost center into several cost centers, not just the two presented in the OPPS proposed rule. The commenters believed that this would create even more accurate CCRs for drug cost estimates that could be used for future ratesetting purposes.

However, the majority of commenters did not support this proposal. Commenters noted that, as in past proposals made by CMS to more specifically incorporate differential hospital charging practices for pharmacy overhead costs in ratesetting, this proposal was administratively burdensome for hospitals and was not likely to result in reliable information for future ratesetting purposes. The commenters pointed to the differences between the costs of drugs provided in the HOPD, which include significant personnel and specialized equipment costs that would need to be allocated between drugs assigned to the two proposed cost centers, and the costs of medical supplies, which principally include the costs of the items themselves. They cited these differences as the main reason many commenters opposed to the proposed drug cost center split in turn supported the policy finalized in the FY 2009 IPPS final rule (73 FR 48453) to split the current single cost center for Medical Supplies Charged to Patients into two cost centers, one for Medical Supplies Charged to Patients and another for Implantable Devices Charged to Patients, to account for charge compression in the payment weights for high cost medical devices under the IPPS and the OPPS. While this latter change was operationally feasible for hospitals, many commenters believed that the proposed changes to the cost center for drugs were either operationally impossible or would place a significant administrative burden on hospitals. In addition, the commenters noted substantial problems with each of options presented for classifying drugs into one of the two proposed cost centers. Finally, the commenters noted that the associated requirement to begin reporting HCPCS codes for inpatient drugs was not possible for many hospitals by January 1, 2009.

Some commenters also expressed frustration that this proposal because it was based in the hospital cost report, would take several years to impact OPPS payment rates for drugs. While only a few commenters requested that CMS implement immediate payment changes, such as the regression-based approach recommended by RTI, many other commenters specifically rejected RTI's recommendation to apply a regression-based approach to cost estimation for drugs and biologicals.

Response: Once again, we appreciate the commenters' many suggestions on ways to collect hospital pharmacy cost data and the commenters' concerns regarding our proposal. As noted by the overwhelming majority of commenters, we understand that our CY 2009 proposal to change the standard cost center for drugs could lead to increased hospital burden. Our intent in making this proposal was to address the issue of differential hospital markup policies for drugs that stakeholders believe result in inaccurate hospital payment and not to create hospital burden. We have made numerous attempts over the past several years to adopt methods for gathering hospital information regarding pharmacy overhead costs for possible use in future OPPS ratesetting. However, all of our prior proposals have resulted in feedback citing increased hospital burden and recommendations that we not adopt any of the proposals.

We remain interested in finding methodologies to further refine our payment methodology for drugs and biologicals under the OPPS. While we continue to believe that more refined and accurate hospital accounting data are the preferred long-term solution to mitigate charge compression in hospital cost-based weights, based on the public comments on this proposal and the recommendation of the APC Panel, we have decided not to finalize our proposal to split the 5600 cost center into two standard cost centers. We remain interested in continuing our dialogue with hospital stakeholders as we continue to explore reasonable ways to allocate pharmacy overhead costs to low and high cost drugs and as we further analyze the stakeholder proposal, discussed above.

Comment: Some commenters agreed with the APC Panel's recommendation to continue providing payment for separately payable drugs at no less than ASP+5 percent. However, the majority of commenters recommended that CMS provide payment for separately payable drugs and biologicals at ASP+6 percent for CY 2009. Some commenters noted that payment at ASP+6 percent would eliminate a site-of-service differential that would otherwise exist between the HOPD and physicians' office settings if HOPDs were paid at ASP+4 percent, as proposed, while physicians' offices were paid at ASP+6 percent in CY 2009.

In addition, some commenters expressed concern that hospitals may be unable to purchase many drugs at ASP+4 percent, and that this rate would be insufficient for certain drugs when considering both acquisition costs and pharmacy overhead costs. The commenters believed that the proposed payment rate could lead to access problems for Medicare beneficiaries.

Response: In analyzing updated claims data for the CY 2009 final rule with comment period, we again performed the analysis described in the CY 2009 proposed rule by comparing the aggregate costs for separately payable drugs and biologicals on claims to the ASP-based payment rates, weighting these HCPCS codes by their OPPS volumes, and calculating an equivalent average ASP-based payment rate for drugs and biologicals provided in HOPDs for CY 2009. We used updated CY 2007 mean unit costs and drug volumes and updated ASP data for this final rule analysis to determine the final packaging status for each drug. The result of our final analysis using updated hospital claims data for the full CY 2007 year and updated CCRs is that the equivalent average ASP-based payment amount for separately payable drugs and biologicals, including pharmacy handling costs, is equal to ASP+2 percent for CY 2009. Therefore, according to our CY 2009 proposal for payment of separately payable drugs and biologicals which includes pharmacy overhead payment, based on separately payable drug costs from CY 2007 hospital claims, the OPPS payment rate for separately payable drugs and biologicals would be ASP+2 percent.

We acknowledge that different payment rates for drugs and biologicals provided in the physician's office and HOPD settings are of concern to some commenters. However, the OPPS, the MPFS physician's office payments for services, and physician's office payments for Part B drugs are based on very different payment methodologies. In particular, the OPPS relies upon costs from the most updated claims and Medicare cost report data to develop payment rates. On the other hand, the MPFS pays for services based on estimates of input costs and pays for drugs and biologicals at ASP+6 percent, as required by statute. Therefore, it is not surprising to us that the estimated costs of drug and biologicals and their associated pharmacy overhead, like many other OPPS services, could be different in the HOPD than in the physician's office, resulting in different payments in the two settings. We do not believe that different payment rates for drugs and biologicals in HOPD or physicians' office settings would create beneficiary access problems for drug administration services because we have not seen problems with access in the two settings for other types of services, including diagnostic studies, surgical procedures, and visits, which generally have different payment rates under the two payment systems (unless there is an applicable externally applied statutory cap to payment, such as the cap on payment for imaging services provided in the physician's office based on the OPPS rates).

As we stated in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66763), after a period of continuing ASP+6 percent payment in CY 2007 while we gathered additional information regarding pharmacy overhead costs, we believe that it is most appropriate at this point to continue to pay for drugs and biologicals and their associated pharmacy overhead costs using an ASP-based system, but to determine the relative ASP percent based on hospital costs from claims rather than provide payment at ASP+6 percent that would be paid in the physician's office or at ASP+5 percent as recommended by the APC Panel for CY 2009. We note that, for CY 2008, we adopted a payment rate of ASP+5 percent as a transition between the CY 2007 OPPS payment rate of ASP+6 and the claims-based CY 2008 final rule rate of ASP+3 percent.

We continue to believe that pharmacy overhead and handling costs are included by hospitals in their drug charges and should be paid through the drug payment and that a payment rate reflecting costs from claims data is appropriate. However, we believe that a transition to a refined claims-based payment methodology continues to be appropriate as well, while we further explore the complex issues surrounding hospital allocation of pharmacy overhead costs to drug charges and differential hospital drug costs based on hospital participation in the 340B program. Therefore, we will provide a transitional payment rate of ASP+4 percent in CY 2009 for separately payable drugs and biologicals, the same payment rate that was proposed for CY 2009 based on hospital claims data available for the CY 2009 OPPS/ASC proposed rule. Moreover, we note that payment at ASP+4 percent is consistent with a 50/50 blend of the CY 2008 payment rate of ASP+5 percent and the final CY 2009 equivalent average ASP-based payment amount of ASP+2 percent, as caclculated from CY 2007 claims data available for this final rule with comment period. This is similar to our CY 2008 transition methodology for payment of separately payable drugs and biologicals. While payment at ASP+4 percent is slightly higher than the equivalent average ASP-based payment amount for all hospitals that we calculated from hospital costs according to the methodology we have used since CY 2006, we believe that another transitional payment year appropriately allows for a gradual change in hospital payment from the CY 2008 drug payment rate to a refined claims-based payment methodology. This CY 2009 transitional payment should help to ensure continued access to separately payable drugs and biologicals in the HOPD, while also providing us with another year to explore the complex issues surrounding hospital allocation of pharmacy overhead costs to drug charges and differential hospital drug costs based on hospital participation in the 340B program, in order to determine if a refined methodology could improve payment accuracy, while also ensuring equitable payments. In summary, we will provide another year of transitional payment for CY 2009 at ASP+4 percent for separately payable drugs and biologicals and associated pharmacy overhead costs. As a result, we are not accepting the recommendation of the APC Panel to continue to pay for separately payable drugs and biologicals at no less than ASP+5 percent for CY 2009.

As noted above, we will be further exploring the impact of hospitals participating in the 340B program on hospital drug costs calculated from OPPS claims during this CY 2009 transitional year, where the separately payable drug costs from OPPS claims would have otherwise led us to pay all hospitals at ASP+2 percent according to our proposed methodology. Given stakeholders' comments about increasing hospital participation in the 340B program and the significantly reduced drug acquisition costs that may result, we are considering various approaches to improve the accuracy of OPPS payment to all hospitals for the acquisition and pharmacy overhead costs of separately payable drugs, including whether we should use the equitable adjustment authority in section 1833(t)(2)(E) of the Act to adjust OPPS payments to hospitals for separtately payable drugs based on hospitals' participation in the 340B program, so that drug payment for the two classes of hospitals (340B participating and 340B nonparticipating) would reflect the average drug acquisition and pharmacy overhead costs specific to each class of hospital.

Comment: One commenter requested that CMS create an HCPCS J-code for tositumomab, currently provided under a radioimmunotherapy regimen and billed as part of HCPCS code G3001 (Administration and supply of tositumomab, 450 mg). The commenter argued that because tositumomab is listed in compendia, is approved by the FDA as part of the BEXXAR® regimen, and has its own National Drug Code (NDC) number, it should be recognized as a drug and, therefore, be paid as other drugs are paid under the OPPS methodology, instead of having a payment rate determined by hospital claims data. The commenter suggested that a payment rate could be established using the ASP methodology.

Response: We have consistently noted that unlabeled tositumomab is not approved as either a drug or a radiopharmaceutical, but it is a supply that is required as part of the radioimmunotherapy treatment regimen (November 27, 2007 OPPS/ASC final rule with comment period for CY 2008 (72 FR 66765); November 10, 2005 OPPS final rule with comment period for CY 2006 (70 FR 68654); November 7, 2003 OPPS final rule with comment period for CY 2004 (68 FR 63443)). We do not make separate payment for supplies used in services provided under the OPPS. Payments for necessary supplies are packaged into payments for the separately payable services provided by the hospital. Specifically, administration of unlabeled tositumomab is a complete service that qualifies for separate payment under its own clinical APC. This complete service

is currently described by HCPCS code G3001. Therefore, we do not agree with the commenter's recommendation that we should assign a separate HCPCS code to the supply of unlabeled tositumomab. Rather, we will continue to make separate payment for the administration of tositumomab, and payment for the supply of unlabeled tositumomab is packaged into the administration payment.

After consideration of the public comments received and the recommendations of the APC Panel, we are finalizing our proposal to provide payment for nonpass-through drugs and biologicals based on costs calculated from hospital claims, with modification to provide a 1-year transitional rate of ASP+4 percent for CY 2009. Moreover, we are not finalizing our proposal to split the single standard drug cost center into two cost centers. Instead, we will continue to explore other potential approaches to improving our drug cost estimation to improve payment accuracy for separately payable drugs and biologicals. Furthermore, we did not propose to adopt and, therefore, are not implementing the use of regression-based CCRs for cost estimation in any area of the CY 2009 OPPS, including drugs requiring detail coding and IV solutions.

c. Payment for Blood Clotting Factors

For CY 2008, we are providing payment for blood clotting factors under the OPPS at ASP+5 percent, plus an additional payment for the furnishing fee that is also a part of the payment for blood clotting factors furnished in physicians' offices under Medicare Part B. The CY 2008 updated furnishing fee increased by 4.0 percent to $0.158 per unit.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41492), we proposed to pay for blood clotting factors at ASP+4 percent, consistent with our proposed payment policy for other nonpass-through separately payable drugs and biologicals, and to continue our policy for payment of the furnishing fee using an updated amount for CY 2009. Because the furnishing fee update is based on the percentage increase in the Consumer Price Index (CPI) for medical care for the 12-month period ending with June of the previous year and the Bureau of Labor Statistics releases the applicable CPI data after the MPFS and OPPS/ASC proposed rules were published, we were not able to include the actual updated furnishing fee in the proposed rule. Therefore, in accordance with our policy as finalized in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66765), we will announce the actual figure for the percent change in the applicable CPI and the updated furnishing fee calculated based on that figure through applicable program instructions and posting on the CMS Web site at: *http://www.cms.hhs.gov/McrPartBDrugAvgSalesPrice/*.

Comment: Many commenters supported the CY 2009 OPPS proposal to continue to provide a furnishing fee for blood clotting factors. Several commenters requested that CMS provide payment for blood clotting factors at a rate of ASP+6 percent, in addition to providing the furnishing fee.

Response: We see no compelling reason to provide payment for blood clotting factors under a different methodology for OPPS purposes at this time. We believe that the payment rate of ASP+4 percent that we are finalizing for payment of all separately payable drugs and biologicals in CY 2009, and the additional blood clotting factor furnishing fee, are appropriate and will not jeopardize access to these treatments in the hospital outpatient setting.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, to provide payment for blood clotting factors under the same methodology as other separately payable drugs and biologicals under the OPPS and to continue paying an updated furnishing fee.

4. Payment for Therapeutic Radiopharmaceuticals

a. Background

Section 303(h) of Public Law 108–173 exempted radiopharmaceuticals from ASP pricing in the physician's office setting. Beginning in the CY 2005 OPPS final rule with comment period, we have exempted radiopharmaceutical manufacturers from reporting ASP data for payment purposes under the OPPS. (For more information, we refer readers to the CY 2005 OPPS final rule with comment period (69 FR 65811) and the CY 2006 OPPS final rule with comment period (70 FR 68655).) Consequently, we did not have ASP data for radiopharmaceuticals for consideration for previous years' OPPS ratesetting. In accordance with section 1833(t)(14)(B)(i)(I) of the Act, we have classified radiopharmaceuticals under the OPPS as SCODs. As such, we have paid for radiopharmaceuticals at average acquisition cost as determined by the Secretary and subject to any adjustment for overhead costs. Radiopharmaceuticals also are subject to the policies affecting all similarly classified OPPS drugs and biologicals, such as pass-through payment for diagnostic and therapeutic radiopharmaceuticals and individual packaging determinations for therapeutic radiopharmaceuticals, discussed earlier in this final rule with comment period.

For CYs 2006 and 2007, we used mean unit cost data from hospital claims to determine each radiopharmaceutical's packaging status and implemented a temporary policy to pay for separately payable radiopharmaceuticals based on the hospital's charge for each radiopharmaceutical adjusted to cost using the hospital's overall CCR. In addition, in the CY 2006 final rule with comment period (70 FR 68654), we instructed hospitals to include charges for radiopharmaceutical handling in their charges for the radiopharmaceutical products so these costs would be reflected in the CY 2008 ratesetting process. We note that this continues to be our expectation, and we believe that the charges for radiopharmaceuticals in the CY 2007 claims data that we are using for this final rule with comment period reflect both the acquisition cost of the radiopharmaceutical and its associated overhead. The methodology of providing separate payment based on the individual hospital's overall CCR for CYs 2006 and 2007 was finalized as an interim proxy for average acquisition cost because of the unique circumstances associated with providing radiopharmaceutical products to Medicare beneficiaries. The single OPPS payment represented Medicare payment for both the acquisition cost of the radiopharmaceutical and its associated handling costs.

During the CY 2006 and CY 2007 rulemaking processes, we encouraged hospitals and radiopharmaceutical stakeholders to assist us in developing a viable long-term prospective payment methodology for these products under the OPPS. As reiterated in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66766), we were pleased to note that we had many discussions with interested parties regarding the availability and limitations of radiopharmaceutical cost data.

In considering payment options for therapeutic radiopharmaceuticals for CY 2008, we examined several alternatives that we discussed in our CY 2008 OPPS/ASC proposed rule (72 FR 42738 through 42739) and CY 2008 OPPS/ASC final rule with comment period (72 FR 66769 through 66770). (We refer readers to these rules for a full discussion of all of the options that we considered.) After considering the options and the public

comments received, we finalized a CY 2008 methodology to provide a prospective payment for therapeutic radiopharmaceuticals (defined as those Level II HCPCS codes that include the term ''therapeutic'' along with a radiopharmaceutical in their long code descriptors) using mean costs derived from the CY 2006 claims data, where the costs are determined using our standard methodology of applying hospital-specific departmental CCRs to radiopharmaceutical charges, defaulting to hospital-specific overall CCRs only if appropriate departmental CCRs are unavailable (72 FR 66772). In addition, we finalized a policy to package payment for all diagnostic radiopharmaceuticals (defined as Level II HCPCS codes that include the term ''diagnostic'' along with a radiopharmaceutical in their long code descriptors) for CY 2008. As discussed in the CY 2008 OPPS/ASC proposed rule (72 FR 42739), we believed that adopting prospective payment based on historical hospital claims data was appropriate because it served as our most accurate available proxy for the average hospital acquisition cost of separately payable therapeutic radiopharmaceuticals. In addition, we noted that we have found that our general prospective payment methodology based on historical hospital claims data results in more consistent, predictable, and equitable payment amounts across hospitals and likely provides incentives to hospitals for efficiently and economically providing these outpatient services.

Prior to implementation of our finalized CY 2008 methodology of providing a prospective payment for therapeutic radiopharmaceuticals, section 106(b) of Public Law 110–173 was enacted on December 29, 2007, that provided payment for therapeutic radiopharmaceuticals based on individual hospital charges adjusted to cost. Therefore, hospitals continue to receive payment for therapeutic radiopharmaceuticals by applying the hospital-specific overall CCR to each hospital's charge for a therapeutic radiopharmaceutical from January 1, 2008 through June 30, 2008. As we stated in the CY 2009 OPPS/ASC proposed rule, thereafter, the OPPS would provide payment for separately payable therapeutic radiopharmaceuticals on a prospective basis, with payment rates based upon mean costs from hospital claims data as set forth in the CY 2008 OPPS/ASC final rule with comment period, unless otherwise required by law.

Following issuance of the CY 2009 OPPS/ASC proposed rule, section 142 of Public Law 110–275 amended section 1833(t)(16)(C) of the Act, as amended by section 106(a) of Public Law 110–173, to further extend the payment period for therapeutic radiopharmaceuticals based on hospitals' charges adjusted to cost through December 31, 2009. Therefore, we have continued to pay hospitals for therapeutic radiopharmaceuticals at charges adjusted to cost through the remainder of CY 2008.

b. Payment Policy

Since the start of the temporary cost-based payment methodology for radiopharmaceuticals in CY 2006, we have met with several interested parties on a number of occasions regarding payment under the OPPS for radiopharmaceuticals and have received numerous different suggestions from these stakeholders regarding payment methodologies that we could employ for future use under the OPPS.

In the CY 2008 OPPS/ASC final rule with comment period (72 FR 66771), we solicited comments requesting interested parties to provide information related to if and how the existing ASP methodology could be used to establish payment for specific therapeutic radiopharmaceuticals under the OPPS. We received several responses to our request for comments.

Similar to the recommendations we received during the CY 2008 OPPS/ASC proposed rule comment period (72 FR 66770), we received several suggestions regarding the establishment of an OPPS-specific methodology for radiopharmaceutical payment that would be similar to the ASP methodology, without following the established ASP procedures referenced at section 1847A of the Act and implemented through rulemaking. Some commenters recommended using external data submitted by a variety of sources other than manufacturers. Along this line, the commenters suggested gathering information from nuclear pharmacies using methodologies with a variety of names such as Nuclear Pharmacy Calculated Invoiced Price (Averaged) (CIP) and Calculated Pharmacy Sales Price (CPSP). Other commenters recommended that CMS base payment for certain radiopharmaceuticals on manufacturer-reported ASP.

As noted in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66771), a ratesetting approach based on external data would be administratively burdensome for us because we would be required to collect, process, and review external information to ensure that the information was valid, reliable, and representative of a diverse group of hospitals and, therefore, could be used to establish rates for all hospitals. However, we specifically requested additional comments regarding the use of the existing ASP reporting structure for therapeutic radiopharmaceuticals as this established methodology is already used for payment of other drugs provided in the hospital outpatient setting (72 FR 66771). While we received several recommendations from commenters on the CY 2008 OPPS/ASC final rule with comment period regarding payment of therapeutic radiopharmaceuticals based on estimated costs provided by manufacturers or other parties, we believe that the use of external data for payment of therapeutic radiopharmaceuticals should only be adopted if those external data are subject to the same well-established regulatory framework as the ASP data currently used for payment of separately payable drugs and biologicals under the OPPS. We have previously indicated that nondevice external data used for setting payment rates should be publicly available and representative of a diverse group of hospitals both by location and type. In addition, nondevice external data sources also would have to be identified. We do not believe that external therapeutic radiopharmaceutical cost data voluntarily provided outside of the established ASP methodology, either by manufacturers or nuclear pharmacies, would generally satisfy these criteria that are minimum standards for setting OPPS payment rates.

As noted in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66770), at its September 2007 meeting, the APC Panel recommended that CMS create a composite APC for Bexxar or related therapies and present it for the APC Panel's consideration at the next APC Panel meeting. We accepted this recommendation and modeled a radioimmunotherapy (RIT) composite APC for both Bexxar and Zevalin therapies using our final rule CY 2008 claims database. We discussed this analysis with the APC Panel at its March 2008 meeting.

To perform this analysis for the APC Panel, we first identified all claims that had an occurrence of a case-defining therapeutic radiopharmaceutical HCPCS code used for a RIT treatment: A9545 (Iodine I–131 tositumomab, therapeutic, per treatment dose) and A9543 (Yttrium Y–90 ibritumomab tiuxetan, therapeutic, per treatment dose, up to 40 millicuries). We then identified what we considered to be the HCPCS codes for services and products associated with RIT, based on information from the

manufacturers and suggestions from CMS medical advisors and identified associated claims (using beneficiary health insurance claim (HIC) numbers) to develop the total median cost for a RIT composite APC.

We note that very few hospitals billed all of the HCPCS codes for an individual beneficiary that we expected to be reported for a case of RIT treatment. We used this ''HIC-linked'' file consisting of all associated claims for each beneficiary from one hospital that we considered to be part of a single case of RIT treatment to develop a composite APC cost estimate for a course of RIT treatment, where a case required: (1) HCPCS code A9545 or A9543; (2) a HCPCS code for either nonradiolabeled tositumomab (G3001 (Administration or supply of tositumomab, 450 mg)) or rituximab (J9310 (Rituximab, 100 mg)) (which also would indicate the start of a RIT case); (3) a HCPCS code for the corresponding diagnostic radiopharmaceutical (A9544 (Iodine I–131 tositumomab, diagnostic, per study dose) or A9542 (Indium In-111, ibritumomab tiuxetan, diagnostic, per study dose, up to 5 millicuries)); and (4) at least one instance of a diagnostic imaging service (CPT code 78804 (Radiopharmaceutical localization of tumor or distribution of radiopharmaceutical agent(s); whole body, requiring two or more days imaging)) prior to the administration of the therapeutic radiopharmaceutical. In addition, in order to further define the case for an estimate of a composite APC cost, we did not include the costs of services occurring on dates before the provision of the nonradiolabeled tositumomab or rituximab or after the administration of the therapeutic radiopharmaceutical.

Other services we expected to be reported for a case, such as CPT code 79403 (Radiopharmaceutical therapy, radiolabeled monoclonal antibody by intravenous infusion) and CPT code 77300 (Basic radiation dosimetry calculation, central axis depth dose calculation, TDF, NSD, gap calculation, off axis factor, tissue inhomogeneity factors, calculation of non-ionizing radiation surface and depth dose, as required during course of treatment, only when prescribed by the treating physician), were considered optional and, although they were not required in order to determine the RIT case, the costs of these associated services were included when we established the median cost of the RIT composite APC.

We determined that the median cost for the RIT composite APC, including required and optional additional services directly related to the RIT treatment, would be approximately $19,000. This figure represents, at a minimum, the estimated cost of the nonradiolabeled tositumomab (or rituximab), the diagnostic radiopharmaceutical, the therapeutic radiopharmaceutical, and the imaging, based on costs from hospital claims data.

Upon review of this study, the APC Panel, at its March 2008 meeting, recommended that CMS pursue a RIT composite APC that uses existing claims and stakeholder data to establish appropriate payment rates for RIT protocols. In addition, the APC Panel recommended that CMS provide specific guidance to hospitals on appropriate billing for RIT under a composite APC methodology. As we discussed in the CY 2009 OPPS/ASC proposed rule (73 FR 41495), we are not accepting these recommendations of the APC Panel. First, we do not believe it would be appropriate to incorporate external data into a composite APC methodology, when composite APC median costs for a comprehensive service that the composite APC describes are based upon reported hospital costs on claims as described in section II.A.2.e. of this final rule with comment period. As we have hospital costs from CY 2007 claims for the services that would be paid through a RIT composite APC, we would have no reason to use external stakeholder data instead of reported hospital costs for ratesetting for such an APC. In addition, as the APC Panel alluded to in its second recommendation regarding billing guidance to hospitals, our claims analysis demonstrated that, according to hospital claims data, apparently few patients actually received all the component services associated with RIT treatment from a single hospital, or many RIT treatments were incorrectly reported by hospitals. A composite APC payment provides more accurate payment for a set of major services with only limited variation from hospital to hospital or from case to case and relies on correctly coded claims for the comprehensive service to develop the composite cost, whereas RIT treatment does not appear to have these characteristics. Stakeholders have confirmed that a proportion of patients receiving a diagnostic radiopharmaceutical and imaging in preparation for RIT treatment do not go on to receive the therapeutic radiopharmaceutical for a variety of specific clinical reasons. Furthermore, the whole course of RIT treatment may occur over a several week period, and the challenges associated with instructing hospitals to report component services in a timely fashion that would allow the I/OCE to determine whether a composite payment would be appropriate are significant. Therefore, as we proposed, we believe it would be premature to make payment of a composite APC for RIT treatment for CY 2009.

We received comments on the CY 2008 OPPS/ASC final rule with comment period from certain radiopharmaceutical manufacturers who indicated that the standard ASP methodology could be used for payment of certain therapeutic radiopharmaceutical products. Specifically, these manufacturers expressed interest in providing ASP for their therapeutic radiopharmaceutical products as a basis for payment under the OPPS. We appreciate the willingness of these manufacturers to provide ASP data, but we recognize that payment based on the ASP methodology may not be possible for all therapeutic radiopharmaceuticals if manufacturers are unable or unwilling to voluntarily submit ASP data. Therefore, in the CY 2009 OPPS/ASC proposed rule, we proposed the following payment methodology for therapeutic radiopharmaceuticals under the CY 2009 OPPS. For therapeutic radiopharmaceuticals where ASP information is submitted through the established ASP process by all manufacturers of the specific therapeutic radiopharmaceutical, we proposed to provide payment for the average acquisition and associated handling costs of the therapeutic radiopharmaceutical at the same relative ASP-based amount (proposed at ASP+4 percent for CY 2009) that we would pay for separately payable drugs and biologicals in CY 2009 under the OPPS. If sufficient ASP information is not submitted or appropriately certified by the manufacturer for a given calendar year quarter, for that quarter we proposed that the OPPS would provide a prospective payment based on the mean cost from hospital claims data as displayed in Table 25 of the proposed rule, as this was the methodology finalized in the CY 2008 OPPS/ASC final rule with comment period. Further, we proposed to continue the methodology, as discussed in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66772), of eliminating claims from providers that consistently (more than 2 times) reported charges in the CY 2007 claims data that were less than $100 when converted to costs for HCPCS codes A9543 and A9545 as part of the usual

ratesetting process. We believed that this would mitigate the effects of using incorrectly coded claims from several providers in our standard ratesetting methodology which calculates the mean costs for these two products from the claims available for the update year.

Because we did not have ASP data for therapeutic radiopharmaceuticals that were used for payment in April 2008, the proposed payment rates included in Addenda A and B to the proposed rule were based on mean costs from historical hospital claims data available for the proposed rule. Under our proposal that would initially look to ASP data to establish the payment rates for separately payable therapeutic radiopharmaceuticals, beginning in CY 2009, we proposed to update the payment rates for therapeutic radiopharmaceuticals quarterly as new ASP data become available, just as we would update the payment rates for separately payable drugs and biologicals under the OPPS.

We proposed to allow manufacturers to submit ASP information for any separately payable therapeutic radiopharmaceutical for payment purposes under the OPPS. However, we did not propose to compel manufacturers to submit ASP information. The ASP data submitted would need to be provided for a patient-specific dose, or patient-ready form, of the therapeutic radiopharmaceutical in order to properly calculate the ASP amount for a given HCPCS code. In addition, in those instances where there is more than one manufacturer of a particular therapeutic radiopharmaceutical, we noted that all manufacturers would need to submit ASP information in order for payment to be made on an ASP basis. In the proposed rule, we specifically requested public comment on the development of a crosswalk, similar to the NDC/HCPCS crosswalk for separately payable drugs and biologicals posted on the CMS Web site at: *http://www.cms.hhs.gov/McrPartBDrugAvgSalesPrice/01a_2008aspfiles.asp*, for use for therapeutic radiopharmaceuticals. We believed that the use of ASP information for OPPS payment would provide an opportunity to improve payment accuracy for these products by applying an established methodology that has already been successfully implemented under the OPPS for other separately payable drugs and biologicals. As is the case with other drugs and biologicals subject to ASP reporting, in order for a therapeutic radiopharmaceutical to receive payment based on ASP beginning January 1, 2009, we would need to receive ASP information from the manufacturer in October 2008 that would reflect therapeutic radiopharmaceutical sales in the third quarter of CY 2008 (July 1, 2008 through September 30, 2008). We indicated that these data would not be available for publication in this CY 2009 OPPS/ASC final rule with comment period but would be included in the January 2009 OPPS quarterly release that would update the payment rates for separately payable drugs, biologicals, and therapeutic radiopharmaceuticals based on the most recent ASP data, consistent with our customary practice over the past 3 years when we have used the ASP methodology for payment of separately payable drugs and biologicals under the OPPS. In addition, we indicated our need to receive information from radiopharmaceutical manufacturers that would allow us to calculate a unit dose cost estimate based on the applicable HCPCS code for the therapeutic radiopharmaceutical.

We realize that not all therapeutic radiopharmaceutical manufacturers may be willing or able to submit ASP information for a variety of reasons. We proposed to provide payment at the ASP rate if ASP information is available for a given calendar year quarter or, if ASP information is not available, we proposed to provide payment based on the most recent hospital mean unit cost data that we have available. We believed that both methodologies represented an appropriate and adequate proxy for average hospital acquisition cost and associated handling costs for these products. Therefore, if ASP information for the appropriate period of sales related to payment in any CY 2009 quarter was not available, we would rely on the CY 2007 mean unit cost data derived from hospital claims to set the payment rates for therapeutic radiopharmaceuticals. We noted that this is not the usual OPPS process that relies on alternative data sources, such as WAC or AWP, when ASP information is temporarily unavailable, prior to defaulting to the mean unit cost from hospital claims data. We proposed to use this methodology specifically for therapeutic radiopharmaceuticals whereby we would immediately default to the mean unit cost from hospital claims if sufficient ASP data were not available because we were not proposing to require therapeutic radiopharmaceutical manufacturers to report ASP data at this time. We did not believe that WAC or AWP would be an appropriate proxy for OPPS payment for average therapeutic radiopharmaceutical acquisition cost and associated handling costs when manufacturers would not be required to submit ASP data and, therefore, payment based on WAC or AWP could continue for the full calendar year. We remind readers that WAC or AWP provide temporary payment rates for drugs under the umbrella of the general ASP methodology, and these are typically used while we are awaiting ASP information on actual sales prices to be submitted by drug manufacturers. We do not believe that it would be most appropriate to provide payment through WAC or AWP on a long-term basis for radiopharmaceuticals sold by those manufacturers that choose not to or cannot submit ASP information.

Similar to the ASP process already in place for drugs and biologicals, we proposed to update ASP data for therapeutic radiopharmaceuticals through our quarterly process as updates become available. In addition, we proposed to assess the availability of ASP data for therapeutic radiopharmaceuticals quarterly, and if ASP data became available midyear, we would transition at the next available quarter to ASP-based payment. For example, if ASP data were not available for the quarter beginning January 2009 (that is, ASP information reflective of third quarter CY 2008 sales are not submitted in October 2008), the next opportunity to begin payment based on ASP data for a therapeutic radiopharmaceutical would be April 2009 if ASP data reflective of fourth quarter CY 2008 sales were submitted in January 2009.

Comment: Several commenters supported CMS' proposal to provide payment for therapeutic radiopharmaceuticals based on the ASP methodology. While some commenters acknowledged that ASP reporting may not be possible for all therapeutic radiopharmaceutical manufacturers, several commenters noted their intent to begin providing CMS with ASP data for specific therapeutic radiopharmaceuticals in CY 2009.

Finally, while many commenters noted that Public Law 110–275 would not allow the proposed ASP methodology to be adopted for CY 2009, many commenters urged CMS to consider this methodology for CY 2010 and beyond.

Response: We appreciate the support for our proposal to provide payment for therapeutic radiopharmaceuticals based on the ASP methodology for CY 2009. However, as the commenters noted, Public Law 110–275 has directed us to provide payment for therapeutic radiopharmaceuticals at hospital charges adjusted to cost throughout CY 2009. Therefore, our CY 2009 payment methodology for therapeutic

radiopharmaceuticals will be made in accordance with the statutory requirements. However, we appreciate the comments on the use of the ASP methodology and will consider them as we proceed with our CY 2010 ratesetting process.

After consideration of the public comments received, and taking into account the requirements of Public Law 110–275, we are finalizing a policy to provide payment for all therapeutic radiopharmaceuticals listed in Table 29 below at hospital charges adjusted to cost for CY 2009. These therapeutic radiopharmaceuticals are assigned status indicator ''H'' in Addendum B to this final rule with comment period, as discussed in section XIII.A. of this final rule with comment period. As described earlier, we are continuing to define therapeutic radiopharmaceuticals as those radiopharmaceuticals that contain the word ''therapeutic'' in their long HCPCS codes descriptors.

TABLE 29—CY 2009 THERAPEUTIC RADIOPHARMACEUTICALS PAID AT CHARGES ADJUSTED TO COST

CY 2009 HCPCS code	CY 2009 short descriptor	Final CY 2009 APC	Final CY 2009 SI
A9517	I131 iodide cap, rx	1064	H
A9530	I131 iodide sol, rx	1150	H
A9543	Y90 ibritumomab, rx	1643	H
A9545	I131 tositumomab, rx	1645	H
A9563	P32 Na phosphate	1675	H
A9564	P32 chromic phosphate	1676	H
A9600	Sr89 strontium	0701	H
A9605	Sm 153 lexidronm	0702	H

5. Payment for Nonpass-Through Drugs, Biologicals, and Radiopharmaceuticals With HCPCS Codes, but Without OPPS Hospital Claims Data

Public Law 108–173 does not address the OPPS payment in CY 2005 and after for drugs, biologicals, and radiopharmaceuticals that have assigned HCPCS codes, but that do not have a reference AWP or approval for payment as pass-through drugs or biologicals. Because there is no statutory provision that dictated payment for such drugs and biologicals in CY 2005, and because we had no hospital claims data to use in establishing a payment rate for them, we investigated several payment options for CY 2005 and discussed them in detail in the CY 2005 OPPS final rule with comment period (69 FR 65797 through 65799).

For CYs 2005 to 2007, we implemented a policy to provide separate payment for new drugs, biologicals, and radiopharmaceuticals with HCPCS codes, but which did not have pass-through status, at a rate that was equivalent to the payment they received in the physician's office setting, established in accordance with the ASP methodology. For CY 2008, we finalized a policy to provide payment for new drugs and biologicals with HCPCS codes but which did not have pass-through status and were without OPPS hospital claims data, at ASP+5 percent, consistent with the final OPPS payment methodology for other separately payable drugs and biologicals. In the CY 2009 OPPS/ASC proposed rule (73 FR 41496), we proposed to continue this methodology for CY 2009. Therefore, for CY 2009, we proposed to provide payment for new drugs and biologicals with HCPCS codes, but which do not have pass-through status and are without OPPS hospital claims data, at ASP+4 percent, consistent with the CY 2009 proposed payment methodology for other separately payable nonpass-through drugs and biologicals. We believed that this policy would ensure that new nonpass-through drugs and biologicals would be treated like other drugs and biologicals under the OPPS, unless they are granted pass-through status. Only if they are pass-through drugs and biologicals would they receive a different payment for CY 2009, generally equivalent to the payment these drugs and biologicals would receive in the physician's office setting, consistent with the requirements of the statute. We proposed to continue packaging payment for all new nonpass-through diagnostic radiopharmaceuticals in CY 2009.

In accordance with the ASP methodology, in the absence of ASP data, we proposed, for CY 2009, to continue the policy we implemented beginning in CY 2005 of using the WAC for the product to establish the initial payment rate for new nonpass-through drugs and biologicals with HCPCS codes, but which were without OPPS claims data. However, we noted that if the WAC was also unavailable, we would make payment at 95 percent of the product's most recent AWP. We also proposed to assign status indicator ''K'' to HCPCS codes for new drugs and biologicals for which we had not received a pass-through application. We further noted that, with respect to new items for which we did not have ASP data, once their ASP data became available in later quarter submissions, their payment rates under the OPPS would be adjusted so that the rates would be based on the ASP methodology and set to the finalized ASP-based amount (proposed for CY 2009 at ASP+4 percent) for items that had not been granted pass-through status. Furthermore, we proposed to package payment for new HCPCS codes that describe nonpass-through biologicals that are only implantable, as discussed further in section V.A.2. of this final rule with comment period.

For CY 2009, we also proposed to base payment for new therapeutic radiopharmaceuticals with HCPCS codes as of January 1, 2009, but which did not have pass-through status, on the WACs for these products if ASP data for these therapeutic radiopharmaceuticals were not available. If the WACs were also unavailable, we proposed to make payment for new therapeutic radiopharmaceuticals at 95 percent of their most recent AWPs because we would not have mean costs from hospital claims data upon which to base payment. Analogous to new drugs and biologicals, we proposed to assign status indicator ''K'' to HCPCS codes for new therapeutic radiopharmaceuticals for which we had not received a pass-through application.

Consistent with other ASP-based payments, for CY 2009, we proposed to make any appropriate adjustments to the payment amounts for new drugs and biologicals in this CY 2009 OPPS/ASC final rule with comment period and also on a quarterly basis on our Web site during CY 2009 if later quarter ASP submissions (or more recent WACs or AWPs) indicated that adjustments to the payment rates for these drugs and

biologicals were necessary. The payment rates for new therapeutic radiopharmaceuticals would also be adjusted accordingly. We noted in the proposed rule that the new CY 2009 HCPCS codes for drugs, biologicals, and therapeutic radiopharmaceuticals were not available at the time of development of the proposed rule. We indicated that they would be included in this CY 2009 OPPS/ASC final rule with comment period where they are assigned comment indicator ''NI'' to reflect that their interim final OPPS treatment is open to public comment in the CY 2009 OPPS/ASC final rule with comment period.

We did not receive any public comments specific to these CY 2009 proposals. Therefore, we are finalizing these proposals, with the following modification regarding payment for nonpass-through therapeutic radiopharmaceuticals. In accordance with Public Law 110–275, OPPS payment for nonpass-through therapeutic radiopharmaceuticals is made based on hospital charges adjusted to cost for CY 2009.

There are several nonpass-through drugs and biologicals that were payable in CY 2007 and/or CY 2008 for which we did not have any CY 2007 hospital claims data available for the CY 2009 proposed rule. In order to determine the packaging status of these items for CY 2009, we calculated an estimate of the per day cost of each of these items by multiplying the payment rate for each product based on ASP+4 percent, similar to other nonpass-through drugs and biologicals paid separately under the OPPS, by an estimated average number of units of each product that would typically be furnished to a patient during one administration in the hospital outpatient setting. We proposed to package items for which we estimated the per administration cost to be less than or equal to $60, which is the general packaging threshold that we proposed for drugs, biologicals, and therapeutic radiopharmaceuticals in CY 2009. We proposed to pay separately for items with an estimated per administration cost greater than $60 (with the exception of diagnostic radiopharmaceuticals and contrast agents which we proposed to continue to package regardless of cost, as discussed in more detail in section V.B.2.c. of this final rule with comment period) in CY 2009. We proposed that the CY 2009 payment for separately payable items without CY 2007 claims data would be based on ASP+4 percent, similar to payment for other separately payable nonpass-through drugs and biologicals under the OPPS. In accordance with the ASP methodology used in the physician's office setting, in the absence of ASP data, we proposed to use the WAC for the product to establish the initial payment rate. However, we noted that if the WAC was also unavailable, we would make payment at 95 percent of the most recent AWP available.

We did not receive any public comments on this CY 2009 proposal. Therefore, we are finalizing the proposal, without modification.

Table 30 lists all of the nonpass-through drugs and biologicals without available CY 2007 claims data to which these policies apply in CY 2009.

TABLE 30—DRUGS AND BIOLOGICALS WITHOUT CY 2007 CLAIMS DATA

CY 2008 HCPCS code	CY 2009 HCPCS code	CY 2009 short descriptor	Estimated average number of units per administration	Final CY 2009 SI	Final CY 2009 APC
C9237	J1930	Lanreotide injection	90	K	9237
J0400	J0400	Aripiprazole injection	39	N	
J2724	J2724	Protein c concentrate	630	K	1139
J3355	J3355	Urofollitropin, 75 iu	2	K	1741
Q4096	J7186	Antihemophilic viii/VWF comp	6825	K	1213

In the CY 2008 OPPS/ASC final rule with comment period (72 FR 66776), we began recognizing, for OPPS payment purposes, multiple HCPCS codes indicating different dosages for covered Part B drugs. In general, prior to CY 2008, the OPPS recognized the lowest available administrative dose of a drug if multiple HCPCS codes existed for the drug; for the remainder of the doses, the HCPCS codes were assigned status indicator ''B'' indicating that another code existed for OPPS purposes. For example, if drug X has 2 HCPCS codes, 1 for a 1 ml dose and a second for a 5 ml dose, prior to CY 2008, the OPPS would have assigned a payable status indicator to the 1 ml dose and status indicator ''B'' to the 5 ml dose. Hospitals were then responsible for billing the appropriate number of units for the 1 ml dose in order to receive payment for the drug under the OPPS.

As these HCPCS codes were previously unrecognized under the OPPS prior to CY 2008, we do not have claims data to determine their appropriate packaging status for CY 2009. For the CY 2008 OPPS/ASC final rule with comment period (72 FR 66775), we implemented a policy that assigned the status indicator of the previously recognized HCPCS code to the associated newly recognized code(s). For CY 2009, we proposed to continue to use this methodology.

Table 31 below shows the previously unrecognized HCPCS code, the previous status indicator for the unrecognized HCPCS code, the CY 2009 short descriptor for the previously unrecognized HCPCS code, the associated recognized HCPCS code, and the status indicator for the newly recognized code. As noted in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66775), we believed that this approach would be the most appropriate and reasonable way to implement this change in HCPCS code recognition under the OPPS without impacting payment. However, we noted that once claims data are available for these previously unrecognized HCPCS codes, we would determine the packaging status and resulting status indicator for each HCPCS code according to the general code-specific methodology for determining a code's packaging status for a given update year. As we stated in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66775), we plan to closely follow our claims data to ensure that our annual packaging determinations for the different HCPCS codes describing the same drug do not create inappropriate payment incentives for hospitals to report certain HCPCS codes instead of others.

Comment: One commenter requested that we recognize HCPCS codes Q0165 (Prochlorperazine maleate, 10 mg, oral, FDA approved prescription anti-emetic, for use as a complete therapeutic substitute for an IV anti-emetic at the time of chemotherapy treatment, not to exceed a 48-hour dosage regimen);

Q0168 (Dronabinol, 5 mg, oral, FDA approved prescription anti-emetic, for use as a complete therapeutic substitute for an IV anti-emetic at the time of chemotherapy treatment, not to exceed a 48-hour dosage regimen); Q0170 (Promethazine hydrochloride, 25 mg, oral, FDA approved prescription anti-emetic, for use as a complete therapeutic substitute for an IV anti-emetic at the time of chemotherapy treatment, not to exceed a 48-hour dosage regimen); Q0172 (Chlorpromazine hydrochloride, 25 mg, oral, FDA approved prescription anti-emetic, for use as a complete therapeutic substitute for an IV anti-emetic at the time of chemotherapy treatment, not to exceed a 48-hour dosage regimen); Q0176 (Perphenazine, 8 mg, oral, FDA approved prescription anti-emetic, for use as a complete therapeutic substitute for an IV anti-emetic at the time of chemotherapy treatment, not to exceed a 48-hour dosage regimen); and Q0178 (Hydroxyzine pamoate, 50 mg, oral, FDA approved prescription anti-emetic, for use as a complete therapeutic substitute for an IV anti-emetic at the time of chemotherapy treatment, not to exceed a 48-hour dosage regimen) that currently have OPPS status indicators of ''B,'' but that have related HCPCS codes for the same drugs with different dosages and that are recognized for payment under the OPPS.

Response: We appreciate the commenter identifying these additional HCPCS codes, and we agree that we should recognize these HCPCS codes for drugs that are payable under the OPPS in order to allow hospital to report all HCPCS codes for drugs. As we concluded for the drug HCPCS codes that that we newly recognized for CY 2008, we believe that recognizing all of these HCPCS codes for payment under the OPPS should not have a significant effect on our payment methodology for drugs. Stakeholders have told us that this policy reduces the administrative burden associated with hospitals' reporting of only the HCPCS code with the lowest increment in its code descriptor for the OPPS. Wherever possible and appropriate, we continue to seek to reduce hospitals' administrative burden in submitting claims for payment under the OPPS. In determining the packaging status of these HCPCS drug codes for CY 2009, we are following the methodology we implemented in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66725), and we have assigned them the same status indicators as the associated currently recognized HCPCS codes under the OPPS.

We are recognizing these additional 6 HCPCS codes under the OPPS, effective January 1, 2009. These codes are included in Table 31 below and identified with an (*) to denote that they are newly recognized in CY 2009, while the other HCPCS drug codes displayed in the table were newly recognized in CY 2008.

After consideration of the public comment received, we are finalizing our CY 2009 proposal to provide payment for newly recognized HCPCS drug codes for different doses of the same drugs on the same basis as the previously recognized HCPCS codes for those drugs, with modification to apply this policy to six additional HCPCS drug codes.

TABLE 31—HCPCS CODES UNRECOGNIZED IN CY 2007 OR CY 2008, ASSOCIATED RECOGNIZED HCPCS CODES, AND STATUS INDICATORS FOR CY 2009

CY 2009 HCPCS codes previously unrecognized	CY 2007 SI	CY 2009 short descriptor	Associated HCPCS recognized in CY 2007	Final CY 2009 SI for newly recognized HCPCS code
J1470	B	Gamma globulin 2 CC inj	J1460	K
J1480	B	Gamma globulin 3 CC inj	J1460	K
J1490	B	Gamma globulin 4 CC inj	J1460	K
J1500	B	Gamma globulin 5 CC inj	J1460	K
J1510	B	Gamma globulin 6 CC inj	J1460	K
J1520	B	Gamma globulin 7 CC inj	J1460	K
J1530	B	Gamma globulin 8 CC inj	J1460	K
J1540	B	Gamma globulin 9 CC inj	J1460	K
J1550	B	Gamma globulin 10 CC inj	J1460	K
J1560	B	Gamma globulin >10 CC inj	J1460	K
J8521	B	Capecitabine, oral, 500 mg	J8520	K
J9062	B	Cisplatin 50 MG injection	J9060	N
J9080	B	Cyclophosphamide 200 MG inj	J9070	N
J9090	B	Cyclophosphamide 500 MG inj	J9070	N
J9091	B	Cyclophosphamide 1.0 grm inj	J9070	N
J9092	B	Cyclophosphamide 2.0 grm inj	J9070	N
J9094	B	Cyclophosphamide lyophilized	J9093	N
J9095	B	Cyclophosphamide lyophilized	J9093	N
J9096	B	Cyclophosphamide lyophilized	J9093	N
J9097	B	Cyclophosphamide lyophilized	J9093	N
J9110	B	Cytarabine hcl 500 MG inj	J9100	N
J9140	B	Dacarbazine 200 MG inj	J9130	N
J9260	B	Methotrexate sodium inj	J9250	N
J9290	B	Mitomycin 20 MG inj	J9280	N
J9291	B	Mitomycin 40 MG inj	J9280	N
J9375	B	Vincristine sulfate 2 MG inj	J9370	N
J9380	B	Vincristine sulfate 5 MG inj	J9370	N
Q0165 *	B	Prochlorperazine maleate 10 mg	Q0164	N
Q0168 *	B	Dronabinol 5 mg oral	Q0167	N
Q0170 *	B	Promethazine HCl 25 mg oral	Q0169	N
Q0172 *	B	Chlorpromazine HCl 25 mg oral	Q0171	N
Q0176 *	B	Perphenazine 8 mg oral	Q0175	N

TABLE 31—HCPCS CODES UNRECOGNIZED IN CY 2007 OR CY 2008, ASSOCIATED RECOGNIZED HCPCS CODES, AND STATUS INDICATORS FOR CY 2009—Continued

CY 2009 HCPCS codes previously unrecognized	CY 2007 SI	CY 2009 short descriptor	Associated HCPCS recognized in CY 2007	Final CY 2009 SI for newly recognized HCPCS code
Q0178 *	B	Hydroxyzine pamoate 50 mg	Q0177	N

* Denotes newly recognized HCPCS code for the CY 2009 OPPS.

Finally, there were eight drugs and biologicals, shown in Table 28 of the proposed rule, that were payable in CY 2007 but for which we lacked CY 2007 claims data and any other data related to the ASP methodology and, therefore, we were unable to determine their per day cost based on the ASP methodology. As we were unable to determine the packaging status and subsequent payment rates, if applicable, for these drugs and biologicals for CY 2009 based on the ASP methodology and/or claims data, we proposed to package payment for these drugs and biologicals in CY 2009.

HCPCS code J0395 (Arbutamine HCl injection) did not have any data for the CY 2009 OPPS/ASC proposed rule. However, as a result of updated data used for this final rule with comment period, we received hospital claims data for this code and are, therefore, able to make a packaging determination for the drug for CY 2009. There was one claim for CY 2007 for HCPCS code J0395, with a per day cost estimate of approximately $58. Therefore, because this amount is below our final drug packaging threshold for CY 2009, we are packaging HCPCS code J0395.

We did not receive any public comments on our proposal to package payment for drugs that were payable in CY 2007 but for which we lack CY 2007 claims data and for which we are unable to determine the estimated per day cost based on the ASP methodology. Therefore, we are finalizing our CY 2009 proposal, with modification to exclude HCPCS code J0395 from packaging based on this rationale, to package payment for the seven drugs and biologicals listed in Table 32 below, due to missing data essential to calculating a per day cost. We are packaging payment for HCPCS code J0395 on the basis of an estimated per day cost of less than the final CY 2009 OPPS drug packaging threshold.

TABLE 32—DRUGS AND BIOLOGICALS WITHOUT INFORMATION ON PER DAY COST AND THAT ARE PACKAGED IN CY 2009

CY 2009 HCPCS code	CY 2009 short descriptor	Final CY 2009 SI
90393	Vaccina ig, im	N
90581	Anthrax vaccine, sc	N
J0350	Injection anistreplase 30 u.	N
J1452	Intraocular Fomivirsen na.	N
J2670	Totazoline hcl injection.	N
J3530	Nasal vaccine inhalation.	N
Q0174	Thiethylperazine maleate 10 mg.	N

VI. Estimate of OPPS Transitional Pass-Through Spending for Drugs, Biologicals, Radiopharmaceuticals, and Devices

A. Background

Section 1833(t)(6)(E) of the Act limits the total projected amount of transitional pass-through payments for drugs, biologicals, radiopharmaceuticals, and categories of devices for a given year to an ''applicable percentage'' of total program payments estimated to be made under 1833(t) of the Act for all covered services furnished for that year under the hospital OPPS. For a year before CY 2004, the applicable percentage was 2.5 percent; for CY 2004 and subsequent years, we specify the applicable percentage up to 2.0 percent.

If we estimate before the beginning of the calendar year that the total amount of pass-through payments in that year would exceed the applicable percentage, section 1833(t)(6)(E)(iii) of the Act requires a uniform reduction in the amount of each of the transitional pass-through payments made in that year to ensure that the limit is not exceeded. We make an estimate of pass-through spending to determine not only whether payments exceed the applicable percentage, but also to determine the appropriate reduction to the conversion factor for the projected level of pass-through spending in the following year.

For devices, developing an estimate of pass-through spending in CY 2009 entails estimating spending for two groups of items. The first group of items consists of device categories that were recently made eligible for pass-through payment and that would continue to be eligible for pass-through payment in CY 2009. The CY 2008 OPPS/ASC final rule with comment period (72 FR 66778) describes the methodology we have used in previous years to develop the pass-through spending estimate for known device categories continuing into the applicable update year. The second group contains items that we know are newly eligible, or project would be newly eligible, for device pass-through payment in the remaining quarters of CY 2008 or beginning in CY 2009. The sum of the CY 2009 pass-through estimates for these two groups of device categories would equal the total CY 2009 pass-through spending estimate for device categories with pass-through status.

For drugs and biologicals, section 1833(t)(6)(D)(i) of the Act establishes the pass-through payment amount for drugs and biologicals eligible for pass-through payment as the amount by which the amount authorized under section 1842(o) of the Act (or, if the drug or biological is covered under a competitive acquisition contract under section 1847B of the Act, an amount determined by the Secretary equal to the average price for the drug or biological for all competitive acquisition areas and year established under such section as calculated and adjusted by the Secretary) exceeds the portion of the otherwise applicable fee schedule amount that the Secretary determines is associated with the drug or biological. Because we finalized a policy to pay for nonpass-through separately payable drugs and biologicals under the CY 2009 OPPS at ASP+4 percent, which represents the otherwise applicable fee schedule amount associated with a pass-through drug or biological, and because we will pay for pass-through drugs and

biologicals at ASP+6 percent or the Part B drug CAP rate, if applicable, our estimate of drug and biological pass-through payment for CY 2009 is not zero. (We note that the Part B drug CAP program has been postponed for CY 2009. We refer readers to the Medicare Learning Network (MLN) Matters Special Edition article SE0833. Therefore, there will be no effective Part B drug CAP rate for pass-through drugs and biologicals as of January 1, 2009.) Similar to estimates for devices, the first group of drugs and biologicals requiring a pass-through payment estimate consists of those products that were recently made eligible for pass-through payment and that would continue to be eligible for pass-through payment in CY 2009. The second group contains drugs and biologicals that we know are newly eligible, or project would be newly eligible, beginning in CY 2009. The sum of the CY 2009 pass-through estimates for these two groups of drugs and biologicals would equal the total CY 2009 pass-through spending estimate for drugs and biologicals with pass-through status.

B. Estimate of Pass-Through Spending

As we proposed, in this final rule with comment period, we are finalizing a policy of setting the applicable percentage limit at 2.0 percent of the total OPPS projected payments for CY 2009, consistent with our OPPS policy from CYs 2004 through 2008.

As discussed in section IV.A. of this final rule with comment period, there are currently no known device categories receiving pass-through payment in CY 2008 that will continue for payment during CY 2009. Therefore, there are no device categories in the first group (that is, device categories recently made eligible for pass-through payment and continuing into CY 2009), and we estimated the pass-through spending to be $0 for this group in the proposed rule. For this final rule with comment period, we continue to estimate $0 for this group.

In estimating CY 2009 pass-through spending for device categories in the second group (that is, device categories that we knew at the time of the development of the proposed rule would be newly eligible for pass-through payment in CY 2009 (of which there were none), additional device categories that we estimate could be approved for pass-through status subsequent to the development of the proposed rule and before January 1, 2009, and contingent projections for new categories in the second through fourth quarters of CY 2009), we proposed to use the general methodology described in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66778), while also taking into account recent OPPS experience in approving new pass-through device categories. We estimated the CY 2009 pass-through spending for this second group to be $10 million in the proposed rule, and that continues to be our estimate for this final rule with comment period.

Employing our established methodology that the estimate of pass-through device spending in CY 2009 incorporates CY 2009 estimates of pass-through spending for known device categories continuing in CY 2009, those first effective January 1, 2009, and those device categories projected to be approved during subsequent quarters of CYs 2008 and 2009, in the proposed rule, we estimated the total pass-through spending for device categories to be $10 million for CY 2009. This estimate of $10 million remains our estimate for this CY 2009 final rule with comment period.

We did not receive any public comments regarding our proposed methodology for estimating transitional pass-through spending for devices for CY 2009. Therefore, we are adopting our final estimate of $10 million for total pass-through spending for device categories for CY 2009.

To estimate CY 2009 pass-through spending for drugs and biologicals in the first group, specifically those drugs and biologicals recently made eligible for pass-through payment and continuing into CY 2009, we proposed to utilize the most recent Medicare physician's office data regarding their utilization, information provided in the respective pass-through applications, historical hospital claims data, pharmaceutical industry information, and clinical information regarding those drugs or biologicals, in order to project the CY 2009 OPPS utilization of the products. For the known drugs and biologicals that would continue on pass-through status in CY 2009, we then estimate the total pass-through payment amount as the difference between ASP+6 percent or the Part B drug CAP rate, as applicable, and ASP+4 percent, aggregated across the projected CY 2009 OPPS utilization of these products. If payment for the drug or biological would be packaged if the product were not paid separately because of its pass-through status, we include in the pass-through estimate the full payment for the drug or biological at ASP+6 percent. Based on these analyses, our final estimate of pass-through spending attributable to the first group (that is, the known drugs and biologicals continuing with pass-through eligibility in CY 2009) described above is approximately $16.3 million for CY 2009. This $16.3 million estimate of CY 2009 pass-through spending for the first group of pass-through drugs and biologicals reflects the current pass-through drugs and biologicals that are continuing on pass-through status into CY 2009, and are displayed in Table 23 of this final rule with comment period.

To estimate CY 2009 pass-through spending for drugs and biologicals in the second group (that is, drugs and biologicals that we knew at the time of development of the proposed rule would be newly eligible for pass-through payment in CY 2009 (of which there were none), additional drugs and biologicals that we estimate could be approved for pass-through status subsequent to the development of the proposed rule and before January 1, 2009, and projections for new drugs and biologicals that could be initially eligible for pass-through payment in the second through fourth quarters of CY 2009), we used utilization estimates from applicants, pharmaceutical industry data, and clinical information as the basis for pass-through spending estimates for these drugs and biologicals for CY 2009, while also considering the most recent OPPS experience in approving new pass-through drugs and biologicals. Based on these analyses, we estimate pass-through spending attributable to this second group of drugs and biologicals to be about $7.0 million for CY 2009.

In the CY 2005 OPPS final rule with comment period (69 FR 65810), we indicated that we would be accepting pass-through applications for new radiopharmaceuticals that are assigned a HCPCS code on or after January 1, 2005. (Prior to this date, radiopharmaceuticals were not included in the category of drugs paid under the OPPS, and, therefore, were not eligible for pass-through status.) There were no radiopharmaceuticals that were eligible for pass-through payment at the time of publication of the CY 2009 OPPS/ASC proposed rule, and we have not received any pass-through applications for radiopharmaceuticals between the publication of the proposed rule and this final rule with comment period. As noted in the CY 2009 OPPS/ASC proposed rule (73 FR 41500), we also have no historical data regarding payment for new radiopharmaceuticals with pass-through status under the methodology that we specified for the CY 2005 OPPS or the CY 2009 methodologies for diagnostic and therapeutic radiopharmaceuticals that we finalized, as discussed in section

V.A.3. of this final rule with comment period. However, we do not believe that pass-through spending for new radiopharmaceuticals in CY 2009 would be significant enough to materially affect our estimate of total pass-through spending in CY 2009. Therefore, we did not include radiopharmaceuticals in our proposed estimate of pass-through spending for CY 2009, and we have not included them in our final estimate of pass-through spending for CY 2009. We discuss our final policy regarding payment for all new diagnostic radiopharmaceuticals without pass-through status in CY 2009 in section V.B.2.c. of this final rule with comment period.

We did not receive any public comments regarding our proposed methodology for estimating transitional pass-through spending for drugs, biologicals, and radiopharmaceuticals for CY 2009. Therefore, we are adopting our final estimate of $23.3 million for total pass-through spending for drugs, biologicals, and radiopharmaceuticals for CY 2009.

In accordance with the comprehensive methodology described above in this section, we estimate that total pass-through spending for the device categories and the drugs and biologicals that are continuing for pass-through payment into CY 2009 and those device categories, drugs, biologicals, and radiopharmaceuticals that first become eligible for pass-through status during CY 2009 would approximate $33.3 million, which represents 0.11 percent of total OPPS projected payments for CY 2009.

We estimate that pass-through spending in CY 2009 would not amount to 2.0 percent of total projected OPPS CY 2009 program spending.

Accordingly, we are finalizing our proposed methodology for estimating CY 2009 OPPS pass-through spending for drugs, biologicals, radiopharmaceuticals, and device categories. Our final pass-through estimate for CY 2009 is $33.3 million.

VII. OPPS Payment for Brachytherapy Sources

A. Background

Section 1833(t)(2)(H) of the Act, as added by section 621(b)(2)(C) of Public Law 108–173 (MMA), mandated the creation of separate groups of covered OPD services that classify brachytherapy devices separately from other services or groups of services. The additional groups must reflect the number, isotope, and radioactive intensity of the devices of brachytherapy furnished, including separate groups for palladium-103 and iodine-125 devices.

Section 1833(t)(16)(C) of the Act, as added by section 621(b)(1) of Public Law 108–173, established payment for devices of brachytherapy consisting of a seed or seeds (or radioactive source) based on a hospital's charges for the service, adjusted to cost. The period of payment under this provision is for brachytherapy sources furnished from January 1, 2004, through December 31, 2006. Under section 1833(t)(16)(C) of the Act, charges for the brachytherapy devices may not be used in determining any outlier payments under the OPPS for that period of payment. Consistent with our practice under the OPPS to exclude items paid at cost from budget neutrality consideration, these items were excluded from budget neutrality for that time period as well.

In our CY 2007 annual OPPS rulemaking, we proposed and finalized a policy of prospective payment based on median costs for the 11 brachytherapy sources for which we had claims data. We based the prospective payment rates on median costs for each source from our CY 2005 claims data (71 FR 68102 through 71 FR 68114).

Subsequent to publication of the CY 2007 OPPS/ASC final rule with comment period, section 107(a) of the MIEA–TRHCA (Pub. L. 109–432) amended section 1833(t)(16)(C) of the Act by extending the payment period for brachytherapy sources based on a hospital's charges adjusted to cost for 1 additional year, through December 31, 2007. Therefore, we continued to pay for brachytherapy sources based on charges adjusted to cost for CY 2007.

Section 107(b)(1) of the MIEA–TRHCA amended section 1833(t)(2)(H) of the Act by adding a requirement for the establishment of separate payment groups for ''stranded and non-stranded'' brachytherapy devices beginning July 1, 2007. Section 107(b)(2) of the MIEA–TRHCA authorized the Secretary to implement this new requirement by ''program instruction or otherwise.'' This new requirement is in addition to the requirement for separate payment groups based on the number, isotope, and radioactive intensity of brachytherapy devices that was previously established by section 1833(t)(2)(H) of the Act. We note that commenters who responded to the CY 2007 OPPS/ASC proposed rule asserted that stranded sources, which they described as embedded into the stranded suture material and separated within the strand by material of an absorbable nature at specified intervals, had greater production costs than non-stranded sources (71 FR 68113 through 68114).

As a result of the statutory requirement to create separate groups for stranded and non-stranded sources as of July 1, 2007, we established several coding changes via transmittal, effective July 1, 2007 (Transmittal 1259, dated June 1, 2007). Based on public comments received on the CY 2007 OPPS/ASC proposed rule and industry input, we were aware of three sources available in stranded and non-stranded forms at that time: Iodine-125; palladium-103; and cesium-131 (72 FR 42746). We created six new HCPCS codes to differentiate the stranded and non-stranded versions of iodine, palladium, and cesium sources.

In Transmittal 1259, we indicated that if we receive information that any of the other sources now designated as non-stranded are marketed as a stranded source, we would create a code for the stranded source. We also established two ''Not Otherwise Specified'' (NOS) codes for billing stranded and non-stranded sources that are not yet known to us and for which we do not have source-specific codes, that is, C2698 (Brachytherapy source, stranded, not otherwise specified, per source) for stranded NOS sources, and C2699 (Brachytherapy source, non-stranded, not otherwise specified, per source) for non-stranded NOS sources.

In the CY 2008 OPPS/ASC final rule with comment period (72 FR 66783 through 66784), we again finalized prospective payment for brachytherapy sources, beginning in CY 2008, with payment rates determined using the CY 2006 claims-based costs per source for each brachytherapy source. Consistent with our policy regarding APC payments made on a prospective basis, we finalized the policy in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66686) to subject the cost of brachytherapy sources to the outlier provision of section 1833(t)(5) of the Act, and to also subject brachytherapy source payment weights to scaling for purposes of budget neutrality. Therefore, brachytherapy sources could receive outlier payments if the costs of furnishing brachytherapy sources met the criteria for outlier payment. In addition, as noted in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66683), implementation of prospective payment for brachytherapy sources would provide opportunities for hospitals to receive additional payments under certain circumstances through the 7.1 percent rural SCH adjustment.

After we finalized our proposal to pay for brachytherapy sources in CY 2008 based on median costs, section 106(a) of

the MMSEA (Pub. L. 110–173) extended the charges-adjusted-to-cost payment methodology for brachytherapy sources for an additional 6 months, through June 30, 2008.

Status indicator ''H'' (defined in the CY 2008 OPPS/final rule with comment period as ''Pass-Through Device Categories. Separate cost-based pass-through payment; not subject to copayment.'') was continued for claims processing purposes for brachytherapy source payment through June 30, 2008, although a beneficiary copayment was applied to payment for these sources. We had finalized a policy in the CY 2008 OPPS/ASC final rule with comment period to assign status indicator ''K'' (defined as ''Nonpass-Through Drugs and Biologicals; Therapeutic Radiopharmaceuticals; Brachytherapy Sources; Blood and Blood Products. Paid under OPPS; separate APC payment.'') to all brachytherapy source APCs because the sources would be paid based on prospective payment. The definition of status indicator ''K'' was initially changed for CY 2007 to accommodate prospective payment for brachytherapy sources and this change was continued for CY 2008 (72 FR 66785). However, we never applied status indicator ''K'' to brachytherapy sources for the first 6 months of CY 2008, due to the requirements of the MMSEA.

For CY 2008, we also adopted the policy we established in the CY 2007 OPPS/ASC final rule with comment period (which was superseded by section 107 of the MIEA–TRHCA) regarding payment for new brachytherapy sources for which we have no claims data. We indicated we would assign future new HCPCS codes for new brachytherapy sources to their own APCs, with prospective payment rates set based on our consideration of external data and other relevant information regarding the expected costs of the sources to hospitals (72 FR 66785). When section 106(a) of the MMSEA extended the charges-adjusted-to-cost payment methodology for brachytherapy sources through June 30, 2008, this policy was not implemented as of January 1, 2008. We stated in the CY 2009 OPPS/ASC proposed rule (73 FR 41501) that we anticipated implementing this policy as of July 1, 2008.

B. OPPS Payment Policy

In the CY 2009 OPPS/ASC proposed rule (73 FR 41500), we again proposed prospective payment rates for brachytherapy sources for CY 2009. We proposed to use CY 2007 claims data for setting the CY 2009 rates for brachytherapy sources, as we proposed for most other items and services that would be paid under the CY 2009 OPPS, using our standard OPPS ratesetting methodology. We proposed to pay for brachytherapy sources at prospective rates based on their source-specific median costs as calculated from CY 2007 claims data available for CY 2009 ratesetting. The separately payable brachytherapy source codes, descriptors, APCs, approximate median costs, and status indicators were presented in Table 29 of the CY 2009 OPPS/ASC proposed rule.

We proposed to establish new status indicator ''U'' (Brachytherapy Sources. Paid under OPPS; separate APC payment.) for brachytherapy sources as of January 1, 2009. In the CY 2009 OPPS/ASC proposed rule, we noted that status indicator ''H'' has been used for the periods when brachytherapy sources were paid based on the charges-adjusted-to-cost payment methodology, while status indicator ''K'' was slated to be used for brachytherapy source payment as of July 1, 2008 through December 31, 2008, in accordance with the policy we finalized in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66785). Status indicator ''H'' is also used for devices paid at charges adjusted to cost during their period of pass-through payment. While the CY 2008 definition of status indicator ''K'' currently encompasses nonpass-through drugs and biologicals, therapeutic radiopharmaceuticals, brachytherapy sources, and blood and blood products, brachytherapy sources have never been actually assigned this payment indicator because they have not had a period of prospective payment in CY 2008. However, assigning a status indicator to several types of items and services with potentially differing payment policies has added unnecessary complexity to our operations. In addition, in CY 2009, we are implementing section 1833(t)(17)(A) of the Act that specifies payment to hospitals based on a reduced conversion factor when those hospitals fail to submit timely hospital outpatient quality data as required. Therefore, to facilitate implementation of this payment change and streamline operations, we proposed to assign new status indicator ''U'' to brachytherapy source HCPCS codes beginning in CY 2009.

For CY 2009, we also proposed to continue the policy we established in the CY 2007 OPPS/ASC final rule with comment period (which was superseded by section 107 of the MIEA–TRHCA) regarding payment for new brachytherapy sources for which we have no claims data. In accordance with that policy, we would assign future new HCPCS codes for new brachytherapy sources to their own APCs, with prospective payment rates set based on our consideration of external data and other relevant information regarding the expected costs of the sources to hospitals.

Subsequent to issuance of the CY 2009 OPPS/ASC proposed rule, Congress enacted Public Law 110–275 (MIPPA) on July 15, 2008. Section 142 of Public Law 110–275 amended section 1833(t)(16)(C) of the Act as amended by section 106(a) of the MMSEA to further extend the payment period for brachytherapy sources based on a hospital's charges adjusted to cost from July 1, 2008, through December 31, 2009. Therefore, we have continued to pay for brachytherapy sources at charges adjusted to cost in CY 2008 from July 1 through December 31, and we have maintained the assignment of status indicator ''H'' to brachytherapy sources for claims processing purposes. Furthermore, we will continue to pay for all separately payable brachytherapy sources based on a hospital's charges adjusted to cost for CY 2009. Because brachytherapy sources will be paid at charges adjusted to cost, we will not subject them to the outlier provision of section 1833(t)(5) of the Act, or subject brachytherapy source payment weights to scaling for purposes of budget neutrality. Moreover, during this CY 2009 period of payment at charges adjusted to cost, brachytherapy sources will not be eligible for the 7.1 percent rural SCH adjustment (as discussed in detail in section II.E. of this final rule with comment period).

Comment: Several commenters expressed support for the extension of brachytherapy source payment based on charges adjusted to cost through December 31, 2009, as required by Public Law 110–275. They cited concerns regarding CMS' brachytherapy source claims data used in the CY 2009 proposal to set the prospective brachytherapy source rates based on median costs. Examples of the data concerns presented by the commenters include the following: difficulty in establishing a prospective payment rate for high dose rate (HDR) sources which can be used for multiple patients; use of only partial CY 2007 claims data for stranded sources for the CY 2009 OPPS payment; high variation in unit cost for certain brachytherapy sources; costs from few hospitals represented in claims data for certain sources; and a proposed rate for high activity palladium-131 that was lower than low activity palladium, inconsistent with

the true costs of these sources as reported by commenters. One commenter did not support prospective payment rates for brachytherapy sources for which ASP data are not available. A few commenters recommended continuation of payment based on charges adjusted to cost for CY 2010 and beyond, adopted through regulation.

One commenter stated that the highly variable claims data for yttrium-90 (C2616, Brachytherapy source, non-stranded, Yttrium-90, per source), a source which is reported by only a small number of providers, in combination with possible charge compression for this very high cost source, result in variable and inaccurate claims data and, therefore, an inadequate proposed payment rate that would not pay appropriately for the source cost to permit access for Medicare beneficiaries. The commenter asserted generally that these factors result in unpredictable and inequitable payment rates for all such sources.

Response: We appreciate the detailed public comments that describe data characteristics and will take the issues raised by the commenters into consideration in future proposed ratesetting for brachytherapy sources. As noted previously in this section, for CY 2009, section 142 of Public Law 110–275 (MIPPA) requires us to pay for brachytherapy sources at charges adjusted to costs. Therefore, we are not considering any other payment methodologies for CY 2009, and we are not adopting our CY 2009 proposal. We will make a proposal for the CY 2010 payment of brachytherapy sources in the CY 2010 OPPS/ASC proposed rule, consistent with our annual OPPS/ASC update process.

Furthermore, for CY 2009, we are not adopting the policy we established in the CY 2008 OPPS/ASC final rule with comment period of paying stranded and non-stranded NOS codes for brachytherapy sources, C2698 and C2699, based on a rate equal to the lowest stranded or non-stranded prospective payment for such sources. Also, we are not adopting the policy we established in the CY 2007 OPPS/ASC final rule with comment period regarding payment for new brachytherapy sources for which we have no claims data. NOS codes C2698 and C2699 and newly established specific source codes will be paid at charges adjusted to cost through December 31, 2009, consistent with section 142 of Public Law 110–275.

In addition, we did not receive any public comments regarding the proposed policy to create new status indicator ''U'' for brachytherapy source payment. Therefore, we are finalizing this proposal, without modification, for CY 2009. As noted earlier in this section, assigning a status indicator to several types of items and services with potentially differing payment policies has added unnecessary complexity to our operations. Status indicator ''U'' will be used only for brachytherapy sources, regardless of their specific payment methodology for any period of time. The use of status indicator ''U'' is expected to eliminate the complexity in the payment of brachytherapy sources caused by using status indicator ''K'' for multiple types of items and services.

In summary, for CY 2009, we will continue to pay for all brachytherapy sources, assigned status indicator ''U,'' at charges adjusted to cost, consistent with section 142 of Public Law 110–275, by the overall hospital CCR on a claim-specific basis. All currently established brachytherapy source HCPCS codes that will be paid under the CY 2009 OPPS are listed in Table 33 below, along with their corresponding APCs and status indicator assignments.

In our CY 2009 OPPS/ASC proposed rule (73 FR 41503), we again invited hospitals and other parties to submit recommendations to us for new HCPCS codes to describe new brachytherapy sources consisting of a radioactive isotope, including a detailed rationale to support recommended new sources. We indicated that we would continue to add new brachytherapy source codes and descriptors to our systems for payment on a quarterly basis.

Comment: One commenter recommended that CMS establish a new HCPCS code specifically for high activity cesium-131, with a descriptor of ''Brachytherapy source, nonstranded, high activity cesium-131, greater than 3.25 mCi, per source.''

Response: Section 1833(t)(2)(H) of the Act requires that we create separate payment groups for brachytherapy sources which reflect the number, isotope, and radioactive intensity of devices of brachytherapy furnished. We have received a recommendation for creation of a new HCPCS code and APC group for a high activity cesium source, and we are currently evaluating whether to establish a new code for a high activity cesium source. Currently, there are two HCPCS codes recognized under the OPPS that describe cesium brachytherapy sources: C2642 (Brachytherapy source, stranded, Cesium-131, per source) and C2643 (Brachytherapy source, non-stranded, Cesium-131, per source). We will continue our established process of implementing new brachytherapy source codes on a quarterly basis as appropriate and providing necessary instruction through quarterly program transmittals.

Consistent with our general practice, we will consider recommendations for new brachytherapy sources during CY 2009, as discussed earlier in this section.

TABLE 33—CURRENT SEPARATELY PAYABLE BRACHYTHERAPY SOURCES FOR CY 2009

CY 2009 HCPCS code	CY 2009 long descriptor	Final CY 2009 APC	Final CY 2009 SI
A9527	Iodine I–125, sodium iodide solution, therapeutic, per millicurie	2632	U
C1716	Brachytherapy source, non-stranded, Gold-198, per source	1716	U
C1717	Brachytherapy source, non-stranded, High Dose Rate Iridium-192, per source.	1717	U
C1719	Brachytherapy source, non-stranded, Non-High Dose Rate Iridium-192, per source.	1719	U
C2616	Brachytherapy source, non-stranded, Yttrium-90, per source	2616	U
C2634	Brachytherapy source, non-stranded, High Activity, Iodine-125, greater than 1.01 mCi (NIST), per source.	2634	U
C2635	Brachytherapy source, non-stranded, High Activity, Palladium-103, greater than 2.2 mCi (NIST), per source.	2635	U
C2636	Brachytherapy linear source, non-stranded, Palladium-103, per 1MM	2636	U
C2638	Brachytherapy source, stranded, Iodine-125, per source	2638	U
C2639	Brachytherapy source, non-stranded, Iodine-125, per source	2639	U
C2640	Brachytherapy source, stranded, Palladium-103, per source	2640	U

TABLE 33—CURRENT SEPARATELY PAYABLE BRACHYTHERAPY SOURCES FOR CY 2009—Continued

CY 2009 HCPCS code	CY 2009 long descriptor	Final CY 2009 APC	Final CY 2009 SI
C2641	Brachytherapy source, non-stranded, Palladium-103, per source	2641	U
C2642	Brachytherapy source, stranded, Cesium-131, per source	2642	U
C2643	Brachytherapy source, non-stranded, Cesium-131, per source	2643	U
C2698	Brachytherapy source, stranded, not otherwise specified, per source	2698	U
C2699	Brachytherapy source, non-stranded, not otherwise specified, per source	2699	U

VIII. OPPS Payment for Drug Administration Services

A. Background

In CY 2005, in response to the recommendations made by commenters and the hospital industry, OPPS transitioned to the use of CPT codes for drug administration services. These CPT codes allowed specific reporting of services regarding the number of hours for an infusion and provided consistency in coding between Medicare and other payers. (For a discussion regarding coding and payment for drug administration services prior to CY 2005, we refer readers to the CY 2008 OPPS/ASC final rule with comment period (72 FR 66787).)

While hospitals began adopting CPT codes for outpatient drug administration services in CY 2005, physicians paid under the MPFS were using HCPCS G-codes in CY 2005 to report office-based drug administration services. These G-codes were developed in anticipation of substantial revisions to the drug administration CPT codes by the CPT Editorial Panel that were expected for CY 2006.

In CY 2006, as anticipated, the CPT Editorial Panel revised its coding structure for drug administration services, incorporating new concepts such as initial, sequential, and concurrent services into a structure that previously distinguished services based on type of administration (chemotherapy/nonchemotherapy), method of administration (injection/infusion/push), and for infusion services, first hour and additional hours. For CY 2006, we implemented the CY 2006 drug administration CPT codes that did not reflect the concepts of initial, sequential, and concurrent services under the OPPS, and we created HCPCS C-codes that generally paralleled the CY 2005 CPT codes for reporting these other services.

For CY 2007, as a result of comments on our proposed rule and feedback from the hospital community and the APC Panel, we implemented the full set of CPT codes, including codes incorporating the concepts of initial, sequential, and concurrent. In addition, the CY 2007 update process offered us the first opportunity to consider data gathered from the use of CY 2005 CPT codes for purposes of ratesetting. For CY 2007, we used CY 2005 claims data to implement a six-level APC structure for drug administration services. In CY 2008, we continued to use the full set of CPT codes for drug administration services and continued our assignment of drug administration services to this six-level APC structure.

B. Coding and Payment for Drug Administration Services

As we noted in the CY 2009 OPPS/ASC proposed rule (73 FR 41503), the CY 2009 ratesetting process affords us the first opportunity to examine hospital claims data for the full set of CPT codes that reflect the concepts of initial, sequential, and concurrent services. We performed our standard annual OPPS review of the clinical and resource characteristics of the drug administration HCPCS codes assigned to APCs 0436 (Level I Drug Administration), 0437 (Level II Drug Administration), 0438 (Level III Drug Administration), 0439 (Level IV Drug Administration), 0440 (Level V Drug Administration), and 0441 (Level VI Drug Administration) for CY 2008 based on the CY 2007 claims data available for the CY 2009 OPPS/ASC proposed rule. Under the CY 2008 APC configurations for drug administration services, we observed several 2 times violations among the 6 APCs. Therefore, we proposed to reconfigure the drug administration APCs for CY 2009 to improve the clinical and resource homogeneity of the APCs. (We refer readers to sections III.B.2. and 3. of this final rule with comment period for further discussion of the 2 times rule.)

As a result of our hospital cost analysis and detailed clinical review, we proposed a five-level APC structure for CY 2009 drug administration services to more appropriately reflect their resource utilization in APCs that also group clinically similar services. These APCs generally demonstrate the clinically expected and actually observed comparative relationships between the median costs of different types of drug administration services, including initial and additional services, chemotherapy and other diagnostic, prophylactic, or therapeutic services, injections and infusions, and simple and complex methods of drug administration. As indicated in the CY 2009 OPPS/ASC proposed rule (73 FR 41503), we do not believe that six drug administration APCs continue to be necessary to pay appropriately for drug administration services based on the significant clinical and resource differences among services. Instead, we believe that the proposed five-level APC structure for CY 2009 is the more appropriate structure based on hospital claims data for the full range of CPT drug administration codes. Our proposed five-level APC structure was originally included as Table 30 of the CY 2009 OPPS/ASC proposed rule and reprinted in replacement Table 30 included in a correction notice published in the **Federal Register** (73 FR 46575) on August 11, 2008, subsequent to the issuance of the CY 2009 OPPS/ASC proposed rule.

As noted in the CY 2009 OPPS/ASC proposed rule (73 FR 41503), we presented a potential four-level drug administration APC structure to the APC Panel during the March 2008 APC Panel meeting. After reviewing the data, the APC Panel recommended that CMS not implement this configuration until more data are available and that CMS provide the APC Panel with a crosswalk analysis of the data. We accepted the APC Panel's recommendation and, therefore, did not propose to implement a four-level APC structure for drug administration services in CY 2009.

Comment: Several commenters supported the continued use of the full range of CPT drug administration codes for billing purposes under the OPPS. Conversely, one commenter requested that CMS return to a coding system that groups hydration services with diagnostic, prophylactic and therapeutic services for the first hour of infusion and additional hours of infusions.

Response: We continue to believe that the use of the full set of drug administration CPT codes allows hospitals to use one set of codes for all

payers, minimizing the administrative burden on hospitals. Hospitals have described to us the challenges associated with maintaining different code sets for different payers, and we do not currently see any reason to change from the use of CPT codes for reporting drug administration services under the CY 2009 OPPS.

Our proposal to move from a six-level APC structure to a five-level structure does not affect hospital billing for drug administration services. We proposed to continue to allow hospitals to use the entire set of drug administration CPT codes for purposes of reporting these services. APC reconfiguration is a regular part of the annual OPPS update in response to our assessment of the most recent hospital claims data. Although changes to the APC assignments of HCPCS codes, including the drug administration CPT codes, affect hospital payment for services, they do not require any coding changes by hospitals.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, to continue use of the full range of CPT drug administration codes for the CY 2009 OPPS.

Comment: Several commenters supported the proposal to restructure the drug administration APCs to a five-level APC structure. These commenters expressed appreciation of the proposed increase in payment for certain drug administration services. Furthermore, several commenters expressed appreciation for the timely review and proposed modifications in response to new claims data and indicated their belief that the proposed structure would result in more accurate payment for drug administration services under the OPPS.

Some commenters objected to the proposed five-level APC structure because they believed that it would place an additional burden on hospitals. A few of these commenters asserted that the data used to establish the proposed five-level APC structure for drug administration services as shown in the CY 2009 OPPS/ASC proposed rule were incomplete or inconsistent. These commenters noted that hospitals had difficulty understanding and properly billing for drug administration services using these codes the first year they were introduced under the OPPS. The commenters argued that the data used for the CY 2009 OPPS/ASC final rule with comment period may be suspect because of widespread billing confusion. From their perspective, this confusion, compounded by CMS's failure to clarify the reporting of scenarios such as undocumented infusion stop times and lack of a universal list of drugs that are considered biological response modifiers, led to inconsistent reporting of these drug administration codes across hospitals. The commenters suggested that CMS collect at least 1 additional year of claims data before using this data to inform a restructuring of the drug administration APCs, in order to take into consideration the hospital learning curve that would result, ultimately, in accurate and stable claims data.

In addition, some commenters noted that the CY 2008 CPT hierarchy for reporting drug administration codes used in the facility setting (as included in CPT instructions preceding the Hydration, Therapeutic, Prophylactic, and Diagnostic Injections and Infusions section of CPT codes) was not in place in CY 2007, and because CMS uses CY 2007 hospital claims data to calculate the CY 2009 OPPS payment rates, this hierarchy was not appropriately reflected in the claims data. These commenters were concerned that the new CPT reporting hierarchy altered the billing practices of hospitals significantly so that CMS would eventually see a difference in costs from claims data and, therefore, a transition to a five-level APC structure before these CY 2008 data were available would be premature.

Another commenter also stated that the proposed APCs are inconsistent with CPT coding and medical practice, and that the CPT codes need to be grouped in a way that represents better clinical coherence. Finally, some commenters were concerned that payment for certain drug administration services would decline under the proposed five-level APC structure.

Response: We last reconfigured the drug administration APCs for CY 2007 when we first had 1 year of claims data reflecting the costs of predecessor drug administration CPT codes. Therefore, in parallel fashion we believe it was appropriate to propose to reconfigure the drug administration APCs for CY 2009 when we first have 1 year of hospital claims data for the full range of CPT codes. Our prior assignments of newly recognized CPT codes without historical costs from hospital claims data were based only on estimates of hospital resource costs, and our usual practice is to closely examine the APC assignments of all HCPCS codes once we have actual claims data.

As we noted in the CY 2009 OPPS/ASC proposed rule (73 FR 41503), the CY 2009 ratesetting process afforded us the first opportunity to examine hospital claims data for the full set of CPT codes implemented in CY 2007 for the OPPS that reflect the concepts of initial, concurrent, and sequential services. These CPT codes were first available to hospitals in CY 2006; however, because of hospital concerns regarding incorporating these new concepts into their systems, we chose at that time not to implement these codes under the OPPS. This provided hospitals with the opportunity to implement these codes for non-OPPS payers for CY 2006 and gain experience in their reporting, while retaining drug administration billing codes that did not include the concepts of initial, concurrent, and sequential services for OPPS reporting and payment. Therefore, we had no reason to suspect that hospitals would suffer from widespread billing confusion or inconsistent reporting of these drug administration codes across hospitals. Based on comments we received to our CY 2007 OPPS/ASC proposed rule, we believed that hospitals were prepared to fully implement these CPT drug administration codes for the CY 2007 OPPS, complying fully with the descriptors of the CPT codes. As stated in the CY 2007 OPPS/ASC final rule with comment period (71 FR 68116), ''* * * commenters responding to our CY 2007 proposed rule * * * noted that the operational issues were no longer a primary concern with drug administration and coding, and they had gained valuable experience over the past year reporting these codes to non-Medicare payers.''

As we first indicated in the CY 2009 OPPS/ASC proposed rule (73 FR 41503), and as we are confirming in this final rule with comment period, for most of the drug administration services, we have thousands of single bills available for ratesetting from the claims submitted by thousands of hospitals, increasing our confidence in the accuracy and stability of the claims data. In addition, our bypass code methodology as described in section II.A.1.b. of this final rule with comment period, which specifically incorporates packaged costs into the costs of the initial drug administration service and not into the additional drug administration services provided in the same hospital encounter, ensures that the single claims used for ratesetting represent a large proportion of total hospital claims for most drug administration services. Therefore, the CY 2007 hospital claims data essentially reflect the second year of hospitals' use of the CPT codes with the concepts of initial, concurrent, and sequential services. Although CY 2007 is only the first year of their use for

OPPS purposes, hospitals had been using these codes for other payers for a full year before they were implemented under the Medicare OPPS. As a result, we have no reason to believe that our data should not be used for ratesetting purposes. In addition, we note that there have been instances in the past for drug administration services where the first year of data was used to establish payment rates once it was available, such as for the additional hour infusion codes. Furthermore, for the above reasons we also believe it is unnecessary to collect an additional year of data before restructuring the drug administration APCs.

While commenters correctly observed that the drug administration hierarchy for services performed in the facility setting was not in place when hospitals implemented the revised CPT codes in CY 2007 and, therefore, is not reflected in our claims data for CY 2009 ratesetting purposes, it is our belief that the hierarchy detailed reporting practices were already commonly being used by the majority of hospitals. We do not believe that the hierarchy implemented in CY 2008 for drug administration services substantially changed hospital billing practices in most cases. For these reasons, we continue to believe that our hospital claims data for drug administration services provided in CY 2007 provide an accurate representation of the costs of these hospital services.

In addition, we believe that our APC groupings are consistent with CPT coding and medical practice because all services assigned to the drug administration APCs are drug administration services. While the specific resources used for different drug administration procedures may vary somewhat from CPT code to CPT code, this variation is not sufficient to warrant additional APCs for essentially similar services.

We have performed our standard review of the costs of drug administration services based on updated data for this final rule with comment period, and we continue to believe that a five-level structure for drug administration services is appropriate for CY 2009. Therefore, as a result of this analysis and for the reasons discussed above, we believe that the proposed five-level drug administration APC structure is the most appropriate after examination of the robust set of drug administration claims available for CY 2009 ratesetting because the proposed structure results in payment groups with greater clinical and resource homogeneity. In addition, we do not believe that a crosswalk analysis of the cost data to the CY 2008 six-level APC structure is pertinent because, for a number of the CPT codes, our APC assignments prior to CY 2009 were based only on our estimates of the expected procedure costs, and not based on hospitals' actual costs for services reported according to the current CPT code descriptors and guidelines.

Comment: A few commenters expressed specific concern that according to the CPT reporting hierarchy implemented for facilities in CY 2008, hospital claims data may not accurately represent the resources required when a hydration service is actually provided as the first service, especially when it is followed by a service, such as an injection of a drug, that would be reported as the initial service according to the CPT hierarchy.

Response: During the development of new drug administration codes implemented by CPT in CY 2006, the AMA, the creators and maintainers of the Level I HCPCS codes (CPT codes), determined that the required resources and clinical characteristics of hydration services and therapeutic, prophylactic, and diagnostic drug administration services were sufficiently distinct to warrant different codes for the first hour of infusion and additional hours of infusion for these two types of services. Further, the AMA implemented a hierarchy for reporting drug administration services in the facility setting where chemotherapy services are primary to therapeutic, prophylactic, and diagnostic services, which are primary to hydration services. In addition, the hierarchy specifies that infusions are considered primary to pushes, which are considered primary to injections. Just as the CPT codes are under the authority of the AMA, so are these instructions that preface the affected CPT codes and, in general, we adopt CPT instructions for reporting services under the OPPS. As discussed earlier, although reporting according to the hierarchy will first be specifically reflected in the CY 2008 OPPS claims data available for the CY 2010 OPPS update, we believe that the hierarchy detailed reporting practices that were already commonly being used by the majority of hospitals. We do not believe that the hierarchy implemented in CY 2008 for drug administration services substantially changed hospital billing practices in most cases, and we believe that our final CY 2009 payment rates for these services is appropriate for drug administration CPT codes reported in accordance with the specified hierarchy for CY 2009.

Comment: One commenter requested that CMS reconsider the proposed APC assignment of CPT code 90765 (Intravenous infusion, for therapy, prophylaxis, or diagnosis, initial, up to one hour), and stated that the CPT code median cost is substantially higher than the median cost of the APC.

Response: For the CY 2009 OPPS/ASC proposed rule, we proposed to assign CPT code 90765 to APC 0439 (Level IV Drug Administration). The proposed code-specific median cost for this service was approximately $127, and the proposed median cost for APC 0439 was also approximately $127. According to our standard practice, we reevaluate proposed HCPCS code assignments between the proposed and final rules after updating our data, as discussed in section II.A. of this final rule with comment period. For this final rule with comment period, the updated final median cost of CPT code 90765 of approximately $126 is the same as the APC median cost of approximately $126, and we believe that this is the most appropriate APC assignment for this drug administration code.

Comment: One commenter stated that, under the proposed five-level APC structure, a 2 times rule violation appears in APC 0436 (Level I Drug Administration). The commenter noted that the proposed median cost for CPT code 90779 (Unlisted therapeutic, prophylactic or diagnostic intravenous or intra-arterial injection or infusion) was approximately $77, while the proposed median cost for APC 0436 was approximately $25. The commenter suggested reassigning CPT code 90779 to APC 0438 (Level III Drug Administration), with a proposed median cost of approximately $74.

Response: As a matter of established OPPS policy described in the CY 2005 OPPS final rule with comment period (69 FR 65724 through 65725), we assign all unlisted HCPCS codes, such as CPT code 90779, to the lowest level APC within the appropriate clinical series. By definition, ''unlisted'' or ''not otherwise classified'' codes do not describe the services being performed, and the services coded using ''unlisted'' codes vary over time as new CPT and HCPCS codes are developed. Therefore, it is impossible for any level of analysis of past hospital data to result in appropriate placement of the service for the upcoming year in an APC in which there is clinical integrity of the groups and weights. Therefore, we continue to believe that the appropriate default, in the absence of a code that describes the service being furnished, is placement in the lowest level APC within the clinical category in which the unlisted code falls. The assignment of the unlisted codes to the lowest level APC in the

clinical category specified in the code provides a reasonable means for interim payment until such time as there is a code that specifically describes what is being paid. It encourages the creation of codes where appropriate and mitigates against overpayment of services that are not clearly identified on the bill. Our assignment of CPT code 90779 to APC 0436 is consistent with this policy. The hospital cost data for unlisted HCPCS codes, including CPT code 90779, are not used for ratesetting and, furthermore, the costs of unlisted HCPCS codes are not subject to the 2 times rule. For additional information on the 2 times rule, we refer readers to sections III.B.2 and 3 of this final rule with comment period.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, to implement a five-level APC structure for drug administration services, with final assignment of all HCPCS codes as proposed. Table 34 below displays the five finalized APC groups for drug administration services for CY 2009. We note that several of the CY 2008 CPT codes for drug administration services have been renumbered for CY 2009. We provide both the CY 2008 CPT codes and the CY 2009 CPT codes, along with the CY 2009 long code descriptors, in Table 34 below.

Comment: Several commenters requested that CMS reconsider the proposed packaged status of CPT code 90768 (Intravenous infusion, for therapy, prophylaxis, or diagnosis; concurrent infusion). The commenters noted that the service described by this code, for which hospital claims data are first available in CY 2007, requires additional facility resources. They believed that because CMS now has claims data upon which to set a specific payment rate for the service, the OPPS should pay separately for CPT code 90768 in CY 2009.

Response: We agree with commenters that this code was first introduced in CY 2007 under the OPPS and that we have cost data for this CPT code based on historical hospital claims data. However, we believe that this code remains appropriate for packaging. As we discussed in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66787 through 66788), in deciding whether to package a service or pay for it separately, we consider a variety of factors, including whether the service is normally provided separately or in conjunction with other services; how likely it is for the costs of the packaged code to be appropriately mapped to the separately payable codes with which it was performed; and whether the expected cost of the service is relatively low. CPT code 90768, by definition, is always provided in association with other intravenous infusions, and we continue to believe that it is most appropriately packaged under the OPPS. Furthermore, to reduce the size of the APC payment groups and establish separate payment for this currently packaged ancillary and supportive service would be inconsistent with our overall strategy to encourage hospitals to use resources more efficiently by increasing the size of the OPPS payment bundles.

After consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, to package payment for CPT code 90768 for CY 2009.

TABLE 34—CY 2009 DRUG ADMINISTRATION APCS

Final CY 2009 APC	Final CY 2009 approximate APC median cost	CY 2008 HCPCS code	CY 2009 HCPCS code	CY 2009 long descriptor
0436	$24	90471	90471	Immunization administration (includes percutaneous, intradermal, subcutaneous, or intramuscular injections); one vaccine (single or combination vaccine/toxoid).
		90472	90472	Immunization administration (includes percutaneous, intradermal, subcutaneous, or intramuscular injections); each additional vaccine (single or combination vaccine/toxoid)(List separately in addition to code for primary procedure).
		90473	90473	Immunization administration by intranasal or oral route; one vaccine (single or combination vaccine/toxoid).
		90474	90474	Immunization administration by intranasal or oral route; each additional vaccine (single or combination vaccine/toxoid) (List separately in addition to code for primary procedure).
		90761	96361	Intravenous infusion, hydration; each additional hour (List separately in addition to code for primary procedure).
		90766	96366	Intravenous infusion, for therapy, prophylaxis, or diagnosis (specify substance or drug); each additional hour (List separately in addition to code for primary procedure).
		90771	96371	Subcutaneous infusion for therapy or prophylaxis (specify substance or drug); additional pump set-up with establishment of new subcutaneous infusion site(s) (List separately in addition to code for primary procedure).
		90772	96372	Therapeutic, prophylactic or diagnostic injection (specify substance or drug); subcutaneous or intramuscular.
		90779	96379	Unlisted therapeutic, prophylactic, or diagnostic intravenous or intra-arterial injection or infusion.
		95115	95115	Professional services for allergen immunotherapy not including provision of allergenic extracts; single injection.
		95117	95117	Professional services for allergen immunotherapy not including provision of allergenic extracts; two or more injections.
		95145	95145	Professional services for the supervision of preparation and provision of antigens for allergen immunotherapy (specify number of doses); single stinging insect venom.
		95165	95165	Professional services for the supervision of preparation and provision of antigens for allergen immunotherapy; single or multiple antigens (specify number of doses).

TABLE 34—CY 2009 DRUG ADMINISTRATION APCS—Continued

Final CY 2009 APC	Final CY 2009 approximate APC median cost	CY 2008 HCPCS code	CY 2009 HCPCS code	CY 2009 long descriptor
		95170	95170	Professional services for the supervision of preparation and provision of antigens for allergen immunotherapy; whole body extract of biting insect or other arthropod (specify number of doses).
		96549	96549	Unlisted chemotherapy procedure.
0437	$35	90767	96367	Intravenous infusion, for therapy, prophylaxis, or diagnosis (specify substance or drug); additional sequential infusion, up to 1 hour (List separately in addition to code for primary procedure).
		90770	96370	Subcutaneous infusion for therapy or prophylaxis (specify substance or drug); each additional hour (List separately in addition to code for primary procedure).
		90773	96373	Therapeutic, prophylactic, or diagnostic injection (specify substance or drug); intra-arterial.
		90774	96374	Therapeutic, prophylactic, or diagnostic injection (specify substance or drug); intravenous push, single or initial substance/drug.
		90775	96375	Therapeutic, prophylactic, or diagnostic injection (specify substance or drug); each additional sequential intravenous push of a new substance/drug (List separately in addition to code for primary procedure).
		95144	95144	Professional services for the supervision of preparation and provision of antigens for allergen immunotherapy, single dose vial(s) (specify number of vials).
		95148	95148	Professional services for the supervision of preparation and provision of antigens for allergen immunotherapy (specify number of doses); four single stinging insect venoms.
		96401	96401	Chemotherapy administration, subcutaneous or intramuscular; non-hormonal anti-neoplastic.
		96402	96402	Chemotherapy administration, subcutaneous or intramuscular; hormonal anti-neoplastic.
		96405	96405	Chemotherapy administration; intralesional, up to and including 7 lesions.
		96415	96415	Chemotherapy administration, intravenous infusion technique; each additional hour (List separately in addition to code for primary procedure).
0438	$72	90760	96360	Intravenous infusion, hydration; initial, 31 minutes to 1 hour.
		90769	96369	Subcutaneous infusion for therapy or prophylaxis (specify substance or drug); initial, up to one hour, including pump set-up and establishment of subcutaneous infusion site(s).
		95146	95146	Professional services for the supervision of preparation and provision of antigens for allergen immunotherapy (specify number of doses); 2 single stinging insect venoms.
		95147	95147	Professional services for the supervision of preparation and provision of antigens for allergen immunotherapy (specify number of doses); 3 single stinging insect venoms.
		96406	96406	Chemotherapy administration; intralesional, more than 7 lesions.
		96411	96411	Chemotherapy administration; intravenous, push technique, each additional substance/drug (List separately in addition to code for primary procedure).
		96417	96417	Chemotherapy administration, intravenous infusion technique; each additional sequential infusion (different substance/drug), up to 1 hour (List separately in addition to code for primary procedure).
		96423	96423	Chemotherapy administration, intra-arterial; infusion technique, each additional hour (List separately in addition to code for primary procedure).
0439	$126	90765	96365	Intravenous infusion, for therapy, prophylaxis, or diagnosis (specify substance or drug); initial, up to 1 hour.
		95149	95149	Professional services for the supervision of preparation and provision of antigens for allergen immunotherapy (specify number of doses); 5 single stinging insect venoms.
		96409	96409	Chemotherapy administration; intravenous, push technique, single or initial substance/drug.
		96420	96420	Chemotherapy administration, intra-arterial; push technique.
		96522	96522	Refilling and maintenance of implantable pump or reservoir for drug delivery, systemic (e.g., intravenous, intra-arterial).
		96542	96542	Chemotherapy injection, subarachnoid or intraventricular via subcutaneous reservoir, single or multiple agents.
0440	$184	95990	95990	Refilling and maintenance of implantable pump or reservoir for drug delivery, spinal (intrathecal, epidural) or brain (intraventricular).
		95991	95991	Refilling and maintenance of implantable pump or reservoir for drug delivery, spinal (intrathecal, epidural) or brain (intraventricular); administered by physician.
		96413	96413	Chemotherapy administration, intravenous infusion technique; up to 1 hour, single or initial substance/drug.

TABLE 34—CY 2009 DRUG ADMINISTRATION APCS—Continued

Final CY 2009 APC	Final CY 2009 approximate APC median cost	CY 2008 HCPCS code	CY 2009 HCPCS code	CY 2009 long descriptor
		96416	96416	Chemotherapy administration, intravenous infusion technique; initiation of prolonged chemotherapy infusion (more than 8 hours), requiring use of a portable or implantable pump.
		96422	96422	Chemotherapy administration, intra-arterial; infusion technique, up to 1 hour.
		96425	96425	Chemotherapy administration, intra-arterial; infusion technique, initiation of prolonged infusion (more than 8 hours), requiring the use of a portable or implantable pump.
		96440	96440	Chemotherapy administration into pleural cavity, requiring and including thoracentesis.
		96445	96445	Chemotherapy administration into peritoneal cavity, requiring and including peritoneocentesis.
		96450	96450	Chemotherapy administration, into CNS (e.g., intrathecal), requiring and including spinal puncture.
		96521	96521	Refilling and maintenance of portable pump.
		C8957	C8957	Intravenous infusion for therapy/diagnosis; initiation of prolonged infusion (more than eight hours), requiring use of portable or implantable pump.

IX. OPPS Payment for Hospital Outpatient Visits

A. Background

Currently, hospitals report visit HCPCS codes to describe three types of OPPS services: clinic visits, emergency department visits, and critical care services. CPT indicates that office or other outpatient visit codes are used to report evaluation and management (E/M) services provided in the physician's office or in an outpatient or other ambulatory facility. For OPPS purposes, we refer to these as clinic visit codes. CPT also indicates that emergency department visit codes are used to report E/M services provided in the emergency department, which is defined as an ''organized hospital-based facility for the provision of unscheduled episodic services to patients who present for immediate medical attention. The facility must be available 24 hours a day.'' For OPPS purposes, we refer to these as emergency department visit codes that specifically apply to the reporting of visits to Type A emergency departments. Furthermore, for CY 2007 we established five new Level II HCPCS codes to report visits to Type B emergency departments (defined as dedicated emergency departments that incur Emergency Medical Treatment and Labor Act (EMTALA) of 1986 (Pub. L. 99–272) obligations but that do not meet the Type A emergency department definition, as described in more detail below). These new Level II HCPCS codes were developed because there were no CPT codes at that time that fully described services provided in this type of facility. CPT defines critical care services to be reported with critical care CPT codes as the ''direct delivery by a physician(s) of medical care for a critically ill or critically injured patient.'' Under the OPPS, in Transmittal 1139, Change Request 5438, dated December 22, 2006, we stated that the time that can be reported as critical care is the time spent by a physician and/or hospital staff engaged in active face-to-face critical care of a critically ill or critically injured patient. We also established HCPCS code G0390 (Trauma response team associated with hospital critical care service) in CY 2007 for the reporting of a trauma response in association with critical care services. We refer readers to section III.D.7.f. of this final rule with comment period for further discussion of payment for a trauma response associated with hospital critical care services.

Currently, CMS instructs hospitals to report the CY 2008 CPT codes that describe new and established clinic visits, Type A emergency department visits, and critical care services, and the six Level II HCPCS codes to report Type B emergency department visits and trauma activation provided in association with critical care services. These codes are listed below in Table 35. As we stated in the proposed rule (73 FR 41506), we are not changing the visit HCPCS codes that hospitals report for CY 2009.

TABLE 35—CY 2009 CPT E/M AND LEVEL II HCPCS CODES USED TO REPORT CLINIC AND EMERGENCY DEPARTMENT VISITS AND CRITICAL CARE SERVICES

CY 2009 HCPCS code	CY 2009 descriptor
Clinic Visit HCPCS Codes	
99201	Office or other outpatient visit for the evaluation and management of a new patient (Level 1).
99202	Office or other outpatient visit for the evaluation and management of a new patient (Level 2).
99203	Office or other outpatient visit for the evaluation and management of a new patient (Level 3).
99204	Office or other outpatient visit for the evaluation and management of a new patient (Level 4).
99205	Office or other outpatient visit for the evaluation and management of a new patient (Level 5).
99211	Office or other outpatient visit for the evaluation and management of an established patient (Level 1).
99212	Office or other outpatient visit for the evaluation and management of an established patient (Level 2).
99213	Office or other outpatient visit for the evaluation and management of an established patient (Level 3).
99214	Office or other outpatient visit for the evaluation and management of an established patient (Level 4).
99215	Office or other outpatient visit for the evaluation and management of an established patient (Level 5).

TABLE 35—CY 2009 CPT E/M AND LEVEL II HCPCS CODES USED TO REPORT CLINIC AND EMERGENCY DEPARTMENT VISITS AND CRITICAL CARE SERVICES—Continued

CY 2009 HCPCS code	CY 2009 descriptor
Emergency Department Visit HCPCS Codes	
99281	Emergency department visit for the evaluation and management of a patient (Level 1).
99282	Emergency department visit for the evaluation and management of a patient (Level 2).
99283	Emergency department visit for the evaluation and management of a patient (Level 3).
99284	Emergency department visit for the evaluation and management of a patient (Level 4).
99285	Emergency department visit for the evaluation and management of a patient (Level 5).
G0380	Type B emergency department visit (Level 1).
G0381	Type B emergency department visit (Level 2).
G0382	Type B emergency department visit (Level 3).
G0383	Type B emergency department visit (Level 4).
G0384	Type B emergency department visit (Level 5).
Critical Care Services HCPCS Codes	
99291	Critical care, evaluation and management of the critically ill or critically injured patient; first 30–74 minutes.
99292	Critical care, evaluation and management of the critically ill or critically injured patient; each additional 30 minutes.
G0390	Trauma response associated with hospital critical care service.

The majority of CPT code descriptors are applicable to both physician and facility resources associated with specific services. However, we have acknowledged from the beginning of the OPPS that we believe that CPT E/M codes were defined to reflect the activities of physicians and do not necessarily fully describe the range and mix of services provided by hospitals during visits of clinic or emergency department patients or critical care encounters. While awaiting the development of a national set of facility-specific codes and guidelines, we have advised hospitals that each hospital's internal guidelines that determine the levels of clinic and emergency department visits to be reported should follow the intent of the CPT code descriptors, in that the guidelines should be designed to reasonably relate the intensity of hospital resources to the different levels of effort represented by the codes.

During its March 2008 APC Panel meeting, the APC Panel recommended that CMS provide, for review by the Visits and Observation Subcommittee at the next CY 2008 APC Panel meeting: (1) Frequency and median cost data on new and established patient clinic visits and Type A and Type B emergency department visits; (2) data on CPT code 99291 (Critical care, evaluation and management of the critically ill or critically injured patient; first 30–74 minutes) and APC 617 (Critical Care); and (3) frequency and median cost data on the extended assessment and management composite APCs (that is, APCs 8002 and 8003). We adopted all three of these recommendations and provided frequency and cost data related to these services at the August 2008 APC Panel meeting. During its August 2008 meeting, the APC Panel requested, for review by the APC Panel at the next CY 2009 APC Panel meeting, an analysis of CY 2008 claims data for clinic visits, Type A and Type B emergency department visits, and extended assessment and management composite APCs. The APC Panel also recommended that the work of the Visits and Observation Subcommittee continue. We are adopting these recommendations.

The complete discussion related to visits is provided below. A complete discussion related to the extended assessment and management composite APCs can be found in section II.A.2.e.(1) of this final rule with comment period.

B. Policies for Hospital Outpatient Visits

1. Clinic Visits: New and Established Patient Visits

CPT defines an established patient as ''one who has received professional services from the physician or another physician of the same specialty who belongs to the same group practice, within the past 3 years.'' To apply this definition to hospital clinic visits, we stated in the April 7, 2000 OPPS final rule with comment period (65 FR 18451), that the meanings of ''new'' and ''established'' pertain to whether or not the patient already has a hospital medical record number. If the patient has a hospital medical record that was created within the past 3 years, that patient is considered an established patient to the hospital. The same patient could be ''new'' to the physician but an ''established'' patient to the hospital. The opposite could be true if the physician has a longstanding relationship with the patient, in which case the patient would be an ''established'' patient with respect to the physician and a ''new'' patient with respect to the hospital. Our resource cost data continue to show that new patient visits are consistently more costly than established patient visits of the same level.

Since the implementation of the OPPS, we have received very few comments related to the definitions of new and established patient visits. However, during the past year, we have heard from several provider groups that hospitals cannot easily distinguish between new and established patients for purposes of correctly reporting clinic visits under the OPPS, based on the definition above. We considered several options for refining the definitions of new and established patients as they would apply under the CY 2009 OPPS in order to reduce hospitals' administrative burden associated with reporting appropriate clinic visit CPT codes.

We considered proposing to eliminate the distinction between new and established patient visits under the OPPS, as had previously been recommended by the APC Panel for CY 2008. We considered instructing hospitals to bill all visits as established patient visits and the hospital would determine the appropriate code level based on the resources expended during the visit. However, because hospital claims data continue to show significant cost differences between new and established patient visits, we believe it is most appropriate to continue to recognize the CPT codes for both new

and established patient visits and, in some cases, provide differential payment for new and established patient visits of the same level. In addition, we continue to believe it is important that CPT codes be reported consistent with their code descriptors, and that some patients will always be new to the hospital, regardless of any potential refinement in the definition of ''new'' for reporting clinical visits under the OPPS. Therefore, as we stated in the CY 2009 OPPS/ASC proposed rule (73 FR 41507), we did not propose this approach for reporting CPT codes for clinic visits for CY 2009.

Another alternative we considered was proposing to define an established patient as a patient who already had a hospital medical record number at the hospital where he or she was currently receiving services, regardless of when this medical record was created. Several commenters to the CY 2008 OPPS/ASC proposed rule preferred this distinction rather than the current policy, which requires hospitals to determine if the patient's hospital medical record was created within the past 3 years (72 FR 66793). However, one commenter noted an extreme example in which a patient who was born at a hospital and assigned a medical record number would always be considered an established patient to that hospital, even if the patient was not treated again at that hospital until decades later. We continue to believe it is appropriate to include a time limit when determining whether a patient is new or established from the hospital's perspective because we would expect that care of a patient who was not treated at the hospital for several years prior to a visit could require significantly greater hospital resources than care for a patient who was recently treated at the hospital. Therefore, as we stated in the proposed rule (73 FR 41507), we did not propose this alternative for CY 2009.

We considered proposing to modify the new and established patient definitions for reporting clinic visits under the OPPS so they would pertain to whether or not the patient was registered in a specific hospital clinic within the past 3 years. However, we believe this approach could be problematic because we do not believe that every clinic has clear administrative boundaries that define whether the patient was previously seen in that particular clinic. For example, a hospital-based clinic may have several locations, including on-campus and off-campus sites, or a specific area of the hospital may house two or more specialty clinics that treat disparate types of clinical conditions.

We considered the options described above but did not propose to adopt these three alternatives for CY 2009. Instead, we proposed to modify the definitions of ''new'' and ''established'' patients as they apply to hospital outpatient visits. Specifically, the meanings of ''new'' and ''established'' patients would pertain to whether or not the patient has been registered as an inpatient or outpatient of the hospital within the past 3 years. Under this proposed modification, hospitals would not need to determine the specific clinic where the patient was previously treated because the modified definition would not rely upon when the medical record was initially created but rather would depend upon whether the individual has been registered as a hospital inpatient or outpatient within the previous 3 years.

In addition, hospitals would also not need to determine when the medical record was initially created. If the patient has been registered as an inpatient or outpatient of the hospital within the past 3 years, that patient is considered an ''established'' patient to the hospital. If a patient has been registered as an outpatient in a hospital's off-campus provider-based clinic or emergency department within the past 3 years, that patient would still be considered an ''established'' patient to the hospital for an on-campus or off-campus clinic visit even if the medical record was initially created by the hospital prior to the past 3 years. Consistent with past policy, the same patient may be ''new'' to the physician but an ''established'' patient to the hospital. The opposite would be true if the physician has a longstanding relationship with the patient, in which case the patient would be an ''established'' patient with respect to the physician and a ''new'' patient with respect to the hospital. We believe that our proposed modified definition of new and established patients for reporting visits under the OPPS would be administratively straightforward for hospitals to apply, while continuing to capture differences in hospital resources required to provide new and established patient clinic visits. Furthermore, we believe that costs from historical hospital claims data for services reported under the past OPPS interpretation of new and established patient visits could simply be crosswalked to the expected costs of the corresponding visit level reported under our proposed modified definition, thereby providing appropriate payment for new and established clinic visits for all five levels until CY 2009 claims data reflecting the refined definitions would be available for CY 2011 ratesetting. We expect only minimal cost differences for clinic visits based on these proposed new definitions established for CY 2009. We invited the public to specifically comment on the proposed modified definitions of new and established patients under the OPPS.

Comment: Most commenters supported the first alternative described above and requested that CMS eliminate the need for hospitals to distinguish between new and established patient visits because of the administrative difficulty in determining the correct visit type. Specifically, these commenters suggested that hospitals bill an appropriate visit code, based on the resources expended in the visit at a level determined by the hospitals' internal reporting guidelines, without distinguishing whether the patient is new or established. Several commenters requested that we adopt the APC Panel's March 2007 recommendation, as related to visits. Specifically, the APC Panel recommended at that time that CMS eliminate the ''new'' and ''established'' patient distinctions in the reporting of hospital clinic visits. During its discussion, the APC Panel suggested that hospitals bill the appropriate level clinic visit code according to the resources expended while treating the beneficiary, based on each hospital's internal guidelines. The APC Panel also suggested that each hospital's internal guidelines reflect resource cost differences (if a difference exists) between new and established patients.

Several commenters suggested that CMS change the status of the new patient visit CPT codes to nonpayable and require hospitals to bill the established patient visit codes exclusively. One commenter acknowledged the payment difference between new and established patient visits but noted that its hospital system chose to bill all visits as established patients because of the administrative burden associated with determining whether a patient is new or established. Other commenters suggested that CMS require hospitals to bill the new patient visit codes exclusively, particularly in urgent care clinics, claiming that the patients' previous encounters are rarely relevant to future visits. Another commenter noted that resource efficiencies that exist when treating an established patient do not pertain in the HOPD in the same way as they apply to the physician's office.

If CMS were to finalize a policy that required hospitals to bill only one type of visit code for a given visit level, several commenters suggested setting

the payment rate for the reportable visit code at a blend of the new and established patient visit rates for that level. Several commenters believed that, under both the current and proposed definitions for new and established patients, it is difficult for mid-sized hospitals and impossible for small hospitals to determine whether a patient visit should be reported with the new or established patient visit code. Many commenters suggested that the AMA create hospital-specific Category I CPT visit codes that do not distinguish between new and established patient visits, as appropriate for reporting hospital resource use. These commenters indicated that it would be most appropriate for the AMA to create these hospital-specific visit codes following implementation of national visit guidelines. Other commenters requested the creation of Level II HCPCS G-codes for reporting clinic visits, noting that implementation of national guidelines does not appear to be imminent, and that HCPCS G-codes would solve the immediate problem.

While most commenters recommended that CMS eliminate the distinction between new and established patient visits, other commenters supported the proposed definitions for new and established patients. Some commenters supported the general proposal to refine the definition of a new patient under the OPPS, but suggested that the 3 year window was too long because significant changes can occur in a patient's medical history that would not be reflected in a medical record that had not been updated for 3 years. Other commenters noted a preference for reporting visits without distinguishing between new and established patient visits, but stated that if it was necessary to distinguish between new and established patient visits, the proposed refinement to the definition of a new patient was an improvement from the previous definition.

One commenter suggested that CMS finalize another one of the alternatives discussed above and modify the new and established patient definitions for reporting clinic visits under the OPPS so they would pertain to whether or not the patient was registered in a specific hospital clinic within the past 3 years.

Response: Because hospitals will be reporting CPT codes for CY 2009 and we continue to observe significant cost differences between new and established patient visits of the same level, we will continue to recognize new and established patient visit codes under the CY 2009 OPPS, consistent with their CPT code descriptors. We agree with the commenters that it could be less burdensome from a coding perspective if hospitals only needed to report one set of codes, rather than continuing to distinguish between new and established patient visits. However, we do not believe that this would pay most appropriately and accurately for new and established visits at all five levels based on the costs that have been reported to us by hospitals for these services. For CY 2009, hospitals should continue to distinguish between new and established patient visits, consistent with their CPT code descriptors, in order to receive appropriate payment for these services and so that accurate claims data are available for future OPPS ratesetting. While we acknowledge that some hospitals may prefer HCPCS G-codes rather than continuing to distinguish between new and established patient visits in reporting CPT codes, we are reluctant to again consider establishing HCPCS G-codes, particularly in the absence of national guidelines, based on past comments we have received to prior proposed rules. Furthermore, public comments we have received to the CY 2009 OPPS/ASC proposed rule and prior proposed rules on the establishment of Level II HCPCS codes for services other than visits generally have reflected a strong general preference on the part of commenters for OPPS' use of CPT codes rather than Level II HCPCS codes.

The majority of commenters who expressed an opinion about the definitions of new and established patients, if we were to continue to recognize a distinction, believed that the proposed new and established patient definitions would be easier to apply than the current definitions. While we are continuing to recognize the CPT codes for new and established patient visits, we are interested in minimizing the administrative reporting burden of hospitals, while continuing to capture resource differences between new and established patient visits of the same level. Therefore, we believe that adopting our proposed modifications to these definitions is the most desirable approach for CY 2009.

Comment: One commenter asked whether the new and established patient definitions apply to CPT codes other than CPT codes 99201 through 99205 and CPT codes 99211 through 99215. Specifically, the commenter questioned whether the definitions would apply to CPT codes 99605 (Medication therapy management service(s) provided by a pharmacist, individual, face-to-face with patient, with assessment and intervention if provided; initial 15 minutes, new patient) and 99606 (Medication therapy management service(s) provided by a pharmacist, individual, face-to-face with patient, with assessment and intervention if provided; initial 15 minutes, established patient).

Response: CPT codes 99605 and 99606 are assigned status indicator ''E'' under the OPPS, indicating that they are not payable under the OPPS and should not be reported on OPPS claims. If a hospital provided medication therapy management services described by the CPT codes as part of a clinic visit, emergency department visit, or a procedure, that visit or procedure would be reportable, and the medication therapy management services provided as part of that service would be covered by Medicare, but would not be separately payable. For a complete discussion of these codes, we refer readers to the CY 2007 OPPS/ASC final rule with comment period (71 FR 68061). The discussion relates to CPT codes 0115T through 0117T, which were the predecessor codes to CPT codes 99605 through 99607.

In general, however, the new and established patient definitions for CY 2009 would also apply under the OPPS to payable CPT codes other than CPT codes 99201 through 99205 and 99211 through 99215 that distinguish between new and established patients unless we have specifically provided different instructions regarding the reporting of those codes.

After consideration of the public comments received, and for the reasons explained in this section, we are finalizing our CY 2009 proposal, without modification, to change the definitions of new and established patients as they relate to reporting hospital outpatient visits under the OPPS. Specifically, beginning in CY 2009, the meanings of ''new'' and ''established'' patients pertain to whether or not the patient has been registered as an inpatient or outpatient of the hospital within the past 3 years. A patient who has been registered as an inpatient or outpatient of the hospital within the 3 years prior to the visit would be considered to be an established patient for that visit, while a patient who has not been registered as an inpatient or outpatient of the hospital within the 3 years prior to the visit would be considered to be a new patient for that visit.

As discussed further in section II.A.2.e.(1) of this final rule with comment period and consistent with our CY 2008 policy, when calculating the median costs for the clinic visit APCs (0604 through 0608), we will

utilize our methodology that excludes those claims for visits that are eligible for payment through the extended assessment and management composite APC 8002 (Level I Extended Assessment and Management Composite). We believe that this approach will result in the most accurate cost estimates for APCs 0604 through 0608 for CY 2009.

2. Emergency Department Visits

As described in section IX.A. of this final rule with comment period, CPT defines an emergency department as ''an organized hospital-based facility for the provision of unscheduled episodic services to patients who present for immediate medical attention. The facility must be available 24 hours a day.'' Prior to CY 2007, under the OPPS we restricted the billing of emergency department CPT codes to services furnished at facilities that met this CPT definition. Facilities open less than 24 hours a day should not have reported the emergency department CPT codes for visits.

Sections 1866(a)(1)(I), 1866(a)(1)(N), and 1867 of the Act impose specific obligations on Medicare-participating hospitals and CAHs that offer emergency services. These obligations concern individuals who come to a hospital's dedicated emergency department and request examination or treatment for medical conditions, and apply to all of these individuals, regardless of whether or not they are beneficiaries of any program under the Act. Section 1867(h) of the Act specifically prohibits a delay in providing required screening or stabilization services in order to inquire about the individual's payment method or insurance status. Section 1867(d) of the Act provides for the imposition of civil monetary penalties on hospitals and physicians responsible for failing to meet the provisions listed above. These provisions, taken together, are frequently referred to as the EMTALA provisions.

Section 489.24 of the EMTALA regulations defines ''dedicated emergency department'' as any department or facility of the hospital, regardless of whether it is located on or off the main hospital campus, that meets at least one of the following requirements: (1) It is licensed by the State in which it is located under applicable State law as an emergency room or emergency department; (2) It is held out to the public (by name, posted signs, advertising, or other means) as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment; or (3) During the calendar year immediately preceding the calendar year in which a determination under the regulations is being made, based on a representative sample of patient visits that occurred during that calendar year, it provides at least one-third of all of its outpatient visits for the treatment of emergency medical conditions on an urgent basis without requiring a previously scheduled appointment.

In the CY 2008 OPPS/ASC proposed rule (72 FR 42756), we reiterated our belief that every emergency department that meets the CPT definition of emergency department also qualifies as a dedicated emergency department under EMTALA. However, we indicated that we were aware that there are some departments or facilities of hospitals that meet the definition of a dedicated emergency department under the EMTALA regulations, but that do not meet the more restrictive CPT definition of an emergency department. For example, a hospital department or facility that meets the definition of a dedicated emergency department may not be available 24 hours a day, 7 days a week. Nevertheless, hospitals with such departments or facilities incur EMTALA obligations with respect to an individual who presents to the department and requests, or has requested on his or her behalf, examination or treatment for an emergency medical condition. However, because they did not meet the CPT requirements for reporting emergency visit E/M codes, prior to CY 2007, these facilities were required to bill clinic visit codes for the services they furnished under the OPPS. We had no way to distinguish in our hospital claims data the costs of visits provided in dedicated emergency departments that did not meet the CPT definition of emergency department from the costs of clinic visits.

Prior to CY 2007, some hospitals requested that they be permitted to bill emergency department visit codes under the OPPS for services furnished in a facility that met the CPT definition for reporting emergency department visit E/M codes, except that the facility was not available 24 hours a day. These hospitals believed that their resource costs for visits were more similar to those of emergency departments that met the CPT definition than they were to the resource costs of clinics. Representatives of such facilities argued that emergency department visit payments would be more appropriate, on the grounds that their facilities treated patients with emergency conditions whose costs exceeded the resources reflected in the clinic visit APC payments, even though these emergency departments were not available 24 hours per day. In addition, these hospital representatives indicated that their facilities had EMTALA obligations and should, therefore, be able to receive emergency department visit payments. While these emergency departments may have provided a broader range and intensity of hospital services, and required significant resources to assure their availability and capabilities in comparison with typical hospital outpatient clinics, the fact that they did not operate with all capabilities full-time suggested that hospital resources associated with visits to emergency departments or facilities available less than 24 hours a day might not be as great as the resources associated with emergency departments or facilities that were available 24 hours a day, and that fully met the CPT definition.

In the CY 2007 OPPS/ASC final rule with comment period (71 FR 68132), we finalized the definition of Type A emergency departments to distinguish them from Type B emergency departments. A Type A emergency department must be available to provide services 24 hours a day, 7 days a week, and meet one or both of the following requirements related to the EMTALA definition of a dedicated emergency department, specifically: (1) It is licensed by the State in which it is located under the applicable State law as an emergency room or emergency department; or (2) It is held out to the public (by name, posted signs, advertising, or other means) as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment. For CY 2007 (71 FR 68140), we assigned the five CPT E/M emergency department visit codes for services provided in Type A emergency departments to the five newly created Emergency Visit APCs, specifically 0609 (Level 1 Emergency Visits), 0613 (Level 2 Emergency Visits), 0614 (Level 3 Emergency Visits), 0615 (Level 4 Emergency Visits), and 0616 (Level 5 Emergency Visits).

We defined a Type B emergency department as any dedicated emergency department that incurred EMTALA obligations under § 489.24 of the EMTALA regulations but that did not meet the Type A emergency department definition. To determine whether visits to Type B emergency departments have different resource costs than visits to either clinics or Type A emergency departments, in the CY 2007 OPPS/ASC final rule with comment period (71 FR 68132), we finalized a set of five HCPCS

G-codes for use by hospitals to report visits to all entities that meet the definition of a dedicated emergency department under the EMTALA regulations in § 489.24, but that are not Type A emergency departments. These codes are called ''Type B emergency department visit codes.'' In the CY 2007 OPPS/ASC final rule with comment period (71 FR 68132), we explained that these new HCPCS G-codes would serve as a vehicle to capture median cost and resource differences among visits provided by Type A emergency departments, Type B emergency departments, and clinics. For CYs 2007 and 2008, we assigned the five new Type B emergency department visit codes for services provided in a Type B emergency department to the five Clinic Visit APCs, specifically 0604 (Level 1 Hospital Clinic Visits), 0605 (Level 2 Hospital Clinic Visits), 0606 (Level 3 Hospital Clinic Visits), 0607 (Level 4 Hospital Clinic Visits), and 0608 (Level 5 Hospital Clinic Visits). This payment policy for Type B emergency department visits was similar to our previous policy, which required that services furnished in emergency departments that had an EMTALA obligation but did not meet the CPT definition of emergency department be reported using CPT clinic visit E/M codes, resulting in payments based upon clinic visit APCs. While maintaining the same payment policy for Type B emergency department visits in CYs 2007 and 2008, we believe the reporting of specific HCPCS G-codes for emergency department visits provided in Type B emergency departments would permit us to specifically collect and analyze the hospital resource costs of visits to these facilities in order to determine if in the future a proposal for an alternative payment policy might be warranted. We expected hospitals to adjust their charges appropriately to reflect differences in Type A and Type B emergency department visit costs. We noted that the OPPS rulemaking cycle for CY 2009 would be the first year that we would have cost data for these new Type B emergency department HCPCS codes available for analysis.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41509), we summarized the CY 2007 proposed rule cost data available for the CY 2009 ratesetting for the Type B emergency department HCPCS codes G0380 through G0384. Based on those data, 342 hospitals billed at least one Type B emergency department visit code in CY 2007, with a total frequency of visits provided in Type B emergency departments of approximately 200,000. All except 2 of the 342 hospitals reporting Type B emergency department visits in CY 2007 also reported Type A emergency department visits. Overall, many more hospitals (approximately 2,911 total hospitals) reported Type A emergency department visits than Type B emergency department visits. For comparison purposes, the total frequency of visits provided in hospital outpatient clinics and Type A emergency departments is approximately 14.5 million and 10.3 million, respectively.

As stated in the CY 2009 OPPS/ASC proposed rule (73 FR 41509), we performed additional data analyses to gather more information to support our proposal for payment of Type B emergency department visits. This included studying the emergency department visit charges and costs of hospitals that billed Type B emergency department visits, analyzing the cost data for various subsets of hospitals that billed the Type B emergency department visit codes, and comparing visit cost data for hospitals that did and did not bill Type B emergency department visit codes. Hospitals that reported both Type A and Type B emergency department visits billed lower charges for Type B emergency department visits than Type A emergency department visits, presumably reflecting the lower costs for Type B emergency department visits. Moreover, hospitals that billed both Type A and Type B emergency department visits also had lower costs for Type B emergency department visits than Type A emergency department visits at all levels except for the level 5 Type B emergency department visit. The Type A emergency department visit costs for hospitals that billed both Type A and Type B emergency department visits resembled the Type A emergency department visit costs of hospitals that billed only Type A emergency department visits and did not bill any Type B emergency department visits. We also determined that the majority of Type B emergency department visits were reported under an emergency department revenue code. In summary, our further analyses confirmed that the median costs of Type B emergency department visits were less than the median costs of Type A emergency department visits for all but the level 5 visit, and that the observed differences were not attributable to provider-level differences in the visit costs of the different groups of hospitals reporting Type A and Type B emergency department visits. In other words, the median costs from CY 2007 hospital claims represent real differences in the hospital resource costs for the same level of visit in a Type A or Type B emergency department. As noted earlier in this section, the CY 2007 claims data are the first year of claims data that include providers' cost data for the Type B emergency department visits. We indicated in the CY 2009 OPPS/ASC proposed rule (73 FR 41509) that we would continue to perform additional analyses to monitor patterns of billing and costs of these services as additional cost data become available.

We shared preliminary cost and frequency data with the Visits and Observation Subcommittee of the APC Panel and the full APC Panel during its March 2008 meeting. The APC Panel recommended that CMS continue to pay levels 1, 2, and 3 Type B emergency department visits at the corresponding clinic visit levels. The APC Panel also recommended that CMS consider using the clinic visit level 5 APC as the basis of payment for the level 4 Type B emergency department visit and the level 5 Type A emergency department visit APC as the basis of payment for the level 5 Type B emergency department visit. Given the limited data presently available for Type B emergency department visits, the APC Panel also recommended that CMS reconsider payment adjustments as more claims data become available. In general, the APC Panel's recommended configuration would pay appropriately for each level of the Type B emergency department visits, based on the resource costs of the Type B emergency department visits that are reflected in claims data.

In accordance with the APC Panel's assessment, we proposed to establish the payment for Type B emergency department visits in CY 2009 consistent with their median costs, although our proposal did not fully adopt the APC Panel's recommended payment configuration. Specifically, we proposed to establish payment for levels 1, 2, 3, and 4 Type B emergency department visits through four levels of newly created APCs, 0626 (Level 1 Type B Emergency Visits), 0627 (Level 2 Type B Emergency Visits), 0628 (Level 3 Type B Emergency Visits), and 0629 (Level 4 Type B Emergency Visits). In addition, for CY 2009, we proposed to assign HCPCS codes G0380, G0381, G0382, and G0383, the levels 1, 2, 3, and 4 Type B emergency department visit Level II HCPCS codes, to APCs 0626, 0627, 0628, and 0629, respectively. These HCPCS codes would be the only HCPCS codes assigned to these newly created APCs. Furthermore, to distinguish these new APCs from the APCs for levels 1,

2, 3, and 4 Type A emergency department visits, we proposed to modify the titles of the current APCs for these visits to incorporate Type A in their names. We proposed the following titles: APC 0609 (Level 1 Type A Emergency Visits); APC 0613 (Level 2 Type A Emergency Visits); APC 0614 (Level 3 Type A Emergency Visits); and APC 0615 (Level 4 Type A Emergency Visits). Finally, we proposed to map the level 5 Type B emergency department visit code, HCPCS code G0384, to APC 0616 (Level 5 Emergency Visits), which is the same APC that contains CPT code 99285, the level 5 Type A emergency department visit code. Consistent with the APC Panel recommendation, the level 5 Type B emergency department visit payment rate would be the same as the level 5 Type A emergency department visit payment rate based upon the similar median costs for these visits. For this highest level of emergency department visits, the costs of these relatively uncommon visits to Type A and Type B emergency departments are comparable, reflecting the considerable hospital resources required to care for these sick patients in both settings.

During its August 2008 meeting, the APC Panel recommended that CMS adopt the proposed APC assignments and payment rates for Type A and Type B emergency department visits for CY 2009.

The median costs using final rule data for the Type B emergency department visit HCPCS codes, as compared to the clinic visit and Type A emergency visit APC median costs, are shown in Table 36 below.

TABLE 36—COMPARISON OF MEDIAN COSTS FOR CLINIC VISIT APCS, TYPE B EMERGENCY DEPARTMENT VISIT HCPCS CODES, AND TYPE A EMERGENCY VISIT APCS

Visit level	Final CY 2009 clinic visit APC median cost	Final CY 2009 type B emergency department visit HCPCS code-specific median cost	Final CY 2009 type A emergency visit APC median cost
Level 1	$53	$44	$51
Level 2	67	60	84
Level 3	88	87	134
Level 4	111	156	213
Level 5	158	313	317

The median costs of the lowest level visit are similar across all settings, including clinic and Type A and B emergency departments. Visit levels 2 and 3 share similar resource costs in the clinic and Type B emergency department settings, while visits provided in Type A emergency departments have higher estimated resource costs at these levels. The level 4 clinic visit APC is less resource intensive than the level 4 Type B emergency department visit, which is similarly less resource intensive than the level 4 Type A emergency department visit. The Type A and B emergency department level 5 visit median costs are similar to each other and significantly exceed the level 5 clinic visit cost.

Table 37 below displays the APC median costs for each level of Type B emergency department visits using CY 2007 final rule data, under our proposed CY 2009 configuration.

TABLE 37—CY 2009 TYPE B EMERGENCY DEPARTMENT VISIT APC ASSIGNMENTS AND MEDIAN COSTS

Type B emergency department visit level	Final CY 2009 APC assignment	Final CY 2009 APC median cost
Level 1	0626	$44
Level 2	0627	60
Level 3	0628	87
Level 4	0629	156
Level 5	0616	317

For the CY 2009 OPPS, we also proposed to include HCPCS code G0384 in the criteria that determine eligibility for payment of composite APC 8003 (Level II Extended Assessment and Management Composite).

Comment: The commenters overwhelmingly supported the payment proposal related to Type B emergency department visits. One commenter specifically commended CMS for systematically creating HCPCS codes for Type B emergency department visits with the specific goal of measuring resource cost data to determine appropriate payment rates. While most commenters believed it was appropriate to assign HCPCS code G0384 (Level 5 Type B emergency visit) to APC 0616 (Level 5 Emergency Visit), thereby paying the level 5 Type B emergency department visit at the same rate as the level 5 Type A emergency department visit, several commenters requested that CMS assign HCPCS code G0384 to its own Type B emergency department APC. Other commenters requested that CMS instruct hospitals to set charges that specifically reflect resource use for Type B emergency department visits, whether provided in a separate area of the hospital, at an off-site location, or in a ''carved-out'' section of the main emergency department. Some commenters noted their surprise that hours of operation would lead to cost differences between Type A and Type B emergency department visits at most levels, particularly because level 5 emergency department visits in both Type A and Type B emergency departments have similar costs. One

commenter suggested that CMS should determine the true cause of cost differences between Type A and Type B emergency department visits. Many commenters recommended that CMS continue to monitor data and propose future payment changes as necessary. One commenter hypothesized that Type B emergency department visit costs would grow more similar to Type A emergency department visit costs than clinic visit costs over time. Another commenter noted that hospitals are still becoming familiar with the relatively new Type B emergency department visit HCPCS codes so CMS should perform similar analyses next year, using an additional year of data.

Response: We agree with the commenters that it would be appropriate and informative to update our analyses of the cost data related to Type A and Type B emergency department visits in preparation for the CY 2010 rulemaking, and periodically thereafter, to determine whether a modified APC configuration would be appropriate. This is, in fact, our regular practice in the course of the annual rulemaking cycle for all OPPS services. In addition, we will specifically analyze the Type B emergency department visit level distributions when an additional year of data are available, and regularly thereafter. We do not expect to see significant increases in the proportion of high level Type B emergency department visits as a result of the final CY 2009 payment policy for these visits, which pays more for these visits in CY 2009 than in CY 2008.

For CY 2009, we do not believe it is necessary to assign HCPCS code G0384 (Level 5 Type B emergency visit) to its own APC rather than assigning it to APC 0616 with the level 5 Type A emergency visit CPT code as proposed. For this highest level of emergency department visits, the costs of these relatively uncommon visits to Type A and Type B emergency departments are comparable, reflecting the considerable hospital resources required to care for these sick patients in both settings. We also believe that level 5 emergency department visits to Type A and Type B emergency departments are clinically similar as well, so that the two HCPCS codes are most appropriately assigned to the same clinical APC. As always, we encourage hospitals to set charges that specifically reflect resource use for all services provided, including Type A and Type B emergency department visits.

We continue to believe that an emergency department's hours of operation and associated available capacity contribute significantly to the cost differences between levels 1 through 4 Type A and Type B emergency department visits. We acknowledge that the costs of the level 5 emergency department visits in both the Type A and Type B emergency department settings are comparable, and we attribute this to the very significant hospital resources that are often used to care for the sickest patients in the emergency department. We also note that level 5 Type B emergency department visits account for less than 2 percent of total Type B emergency department visits, while level 5 Type A emergency department visits account for over 12 percent of total Type A emergency department visits, suggesting that for these intensive visits Type B emergency departments may be less able to benefit from efficiencies that may result from the proportionately higher volumes of lower level services in Type B emergency departments.

Comment: Some commenters are still concerned about the definition of a Type B emergency department and offered various suggestions for refining the definition. Most of these commenters requested that CMS adjust the policy to broaden the definition of Type A emergency departments, specifically to revise the rule that hospitals must carve out portions of the emergency department that are not available 24 hours a day. The commenters specifically requested that the definition be adjusted so that a ''fast track'' area of an emergency department, located within the same building as a Type A emergency department, would be considered Type A, regardless of its hours of operation, if it provides unscheduled emergency services and shares a common patient registration system with the Type A emergency department. These commenters also recommended that CMS analyze whether cost differences between Type A and Type B emergency departments result from varying contractor criteria as to what defines a Type A and Type B emergency department. One commenter suggested that we restrict the billing of Type B emergency department visit codes to emergency departments whose ''host provider'' is classified as a Type A emergency department.

Response: We consider the main distinguishing feature between Type A and Type B emergency departments to be the full-time versus part-time availability of staffed areas for emergency medical care, not the process of care or the site of care (on the hospital's main campus or offsite). We continue to believe, and as our CY 2007 claims data reflect, emergency departments or areas of the emergency department that are available less than 24 hours a day for visits of lower intensity have lower resource costs than emergency departments or areas of the emergency department that are available 24 hours a day. We have gathered 2 years of cost data based on the current definition and do not believe a policy change in the reporting of these Type A and Type B emergency department codes would be appropriate for CY 2009. In addition, if our Type A emergency department payments provide support for 24 hours a day, 7 days per week availability of services, then visits provided in areas of the hospital that are not staffed 24 hours a day could be overpaid if we were to redefine these services as Type A emergency department visits. This could also have the effect of diluting, and ultimately decreasing, the median resource costs associated with visits to Type A emergency departments.

As recommended by several commenters, we studied the cost differences between Type A and Type B emergency department visits by Medicare contractor. There were 43 contractors who handled claims from hospitals that reported both Type A and Type B emergency department visits. Our analyses revealed a distribution of visits costs as expected, including generally lower Type B emergency department visit costs in comparison with Type A emergency department visits, and increasing costs for Type B emergency department visits from levels 1 through 5, similar to the cost increases we observed for levels 1 through 5 Type A emergency department visits. There were several contractors with more unusual cost distributions for Type B emergency department visits, such as relatively similar costs across levels 1 through 5 visits for Type B emergency department visits, and we will continue to monitor these distributions in future years. While there are some limitations to our claims data, including that this is the first year of claims for the Type B emergency department visit HCPCS G-codes, that there are relatively small numbers of claims for Type B emergency department visits from CY 2007, and that certain hospitals began transitioning from fiscal intermediaries to MACs during CY 2007 and, therefore, may have received different contractor instructions during the claims year, overall, we have no reason to believe that the cost differences between Type A and Type B emergency departments evident in our aggregate OPPS claims data result from varying contractor criteria as to what defines Type A and Type B emergency departments. At this

time, we see no reason to modify our reporting instructions for Type A and Type B emergency department visits for CY 2009, and we see no evidence from the claims data available to date of markedly different interpretations of our national reporting instructions by Medicare contractors.

Comment: Several commenters expressed disappointment that CMS created Level II HCPCS G-codes for reporting Type B emergency department visits, an act which they believe is inconsistent with previous statements made by CMS that new codes would not replace existing CPT codes until national guidelines were implemented.

Response: We acknowledge that there may be some administrative burden for providers to bill HCPCS G-codes to report visits provided in Type B emergency departments rather than CPT codes. We first established these Level II HCPCS codes in CY 2007 and we will continue their use for the third year, in CY 2009. In this case, because current CPT emergency visit codes do not describe services provided in Type B emergency departments, we saw no alternative other than to create HCPCS G-codes in order to collect cost information specific to these Type B emergency department visits that would allow us to consider payment other than at the clinic visit rates which would have resulted from the continued reporting of these visits as clinic visits. In response to commenters past concerns about HCPCS G-codes, we have previously stated (71 FR 68127) that we would postpone implementing HCPCS G-codes for clinic and Type A emergency department visits until national guidelines have been established. At such time, we will again consider their possible utility.

Comment: Many commenters supported CMS' proposal to include HCPCS code G0384 in the criteria that determine eligibility for payment of the Level II Extended Assessment and Management Composite APC 8003.

Response: We are pleased that the commenters support the proposal to include HCPCS code G0384 as part of the criteria for payment of APC 8003. We believe that it is appropriate to provide payment of composite APC 8003 in those cases of an intensive level 5 Type B emergency department visit in association with 8 or more hours of observation care, when the other criteria for payment of composite APC 8003 are met. This parallels our treatment of CPT code 99285 for hospital reporting of level 5 Type B emergency department visits and payment of composite APC 8003.

We refer readers to section II.A.2.e.(1) of this final rule with comment period for further discussion related to the extended assessment and management composite APCs. As discussed in detail in section II.A.2.e.(1) of this final rule with comment period and consistent with our CY 2008 practice, when calculating the median costs for the Type A and Type B emergency visit APCs (0609 through 0616 and 0626 through 0629), we are utilizing our methodology that excludes those claims for visits that are eligible for payment through the extended assessment and management composite APC 8003. We believe that this approach results in the most accurate cost estimates for APCs 0609 through 0616 and 0626 through 0629 for CY 2009.

In summary, for CY 2009, we are finalizing our CY 2009 proposal, without modification, and adopting the August 2008 APC Panel recommendation to assign levels 1 through 4 Type B emergency department visits to their own APCs and to assign the level 5 Type B emergency department visit to the same APC as the level 5 Type A emergency department visit. Furthermore, we are also finalizing our CY 2009 proposal to include HCPCS code G0384 for reporting level 5 Type B emergency department visits as part of the criteria for payment of the Level II Extended Assessment and Management Composite APC 8003.

3. Visit Reporting Guidelines

As described in section IX.A. of this final rule with comment period, since April 7, 2000, we have instructed hospitals to report facility resources for clinic and emergency department hospital outpatient visits using the CPT E/M codes and to develop internal hospital guidelines for reporting the appropriate visit level.

As noted in detail in section IX.C. of the CY 2008 OPPS/ASC final rule with comment period (72 FR 66802 through 66805), we observed a normal and stable distribution of clinic and emergency department visit levels in hospital claims over the past several years. The data indicated that hospitals, on average, were billing all five levels of visit codes with varying frequency, in a consistent pattern over time. Overall, both the clinic and emergency department visit distributions indicated that hospitals were billing consistently over time and in a manner that distinguished between visit levels, resulting in relatively normal distributions nationally for the OPPS, as well as for specific classes of hospitals. The results of these analyses were generally consistent with our understanding of the clinical and resource characteristics of different levels of hospital outpatient clinic and emergency department visits. In the CY 2008 OPPS/ASC proposed rule (72 FR 42764 through 42765), we specifically invited public comment as to whether a pressing need for national guidelines continued at this point in the maturation of the OPPS, or if the current system where hospitals create and apply their own internal guidelines to report visits was currently more practical and appropriately flexible for hospitals. We explained that although we have reiterated our goal since CY 2000 of creating national guidelines, this complex undertaking for these important and common hospital services was proving more challenging than we initially thought as we received new and expanded information from the public on current hospital reporting practices that led to appropriate payment for the hospital resources associated with clinic and emergency department visits. We stated our belief that many hospitals had worked diligently and carefully to develop and implement their own internal guidelines that reflected the scope and types of services they provided throughout the hospital outpatient system. Based on public comments, as well as our own knowledge of how clinics operate, it seemed unlikely that one set of straightforward national guidelines could apply to the reporting of visits in all hospitals and specialty clinics. In addition, the stable distribution of clinic and emergency department visits reported under the OPPS over the past several years indicated that hospitals, both nationally in the aggregate and grouped by specific hospital classes, were generally billing in an appropriate and consistent manner as we would expect in a system that accurately distinguished among different levels of service based on the associated hospital resources.

Therefore, we did not propose to implement national visit guidelines for clinic or emergency department visits for CY 2008. Since publication of the CY 2008 OPPS/ASC final rule with comment period, we have once again examined the distribution of clinic and Type A emergency department visit levels based upon updated CY 2007 claims data available for the CY 2009 OPPS/ASC proposed rule and confirmed that we continue to observe a normal and stable distribution of clinic and emergency department visit levels in hospital claims. We continue to believe that, based on the use of their own internal guidelines, hospitals are

generally billing in an appropriate and consistent manner that distinguishes among different levels of visits based on their required hospital resources. As a result of our updated analyses, we are encouraging hospitals to continue to report visits during CY 2009 according to their own internal hospital guidelines.

In the absence of national guidelines, we will continue to regularly reevaluate patterns of hospital outpatient visit reporting at varying levels of disaggregation below the national level to ensure that hospitals continue to bill appropriately and differentially for these services. We do not expect to see an increase in the proportion of visit claims for high level visits as a result of the new extended assessment and management composite APCs 8002 and 8003 adopted for CY 2008 and finalized for CY 2009. Similarly, we expect that hospitals will not purposely change their visit guidelines or otherwise upcode clinic and emergency department visits reported with observation care solely for the purpose of composite APC payment. As stated in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66648), we expect to carefully monitor any changes in billing practices on a service-specific and hospital-specific level to determine whether there is reason to request that Quality Improvement Organizations (QIOs) review the quality of care furnished, or to request that Benefit Integrity contractors or other contractors review the claims against the medical record.

In addition, we note our continued expectation that hospitals' internal guidelines will comport with the principles listed in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66805). We encourage hospitals with more specific questions related to the creation of internal guidelines to contact their local fiscal intermediary or Medicare Administrative Contractor (MAC).

Comment: Several commenters noted that they are eagerly awaiting implementation of national guidelines, particularly because of the various problems that they believe exist due to the lack of national guidelines. Some of these commenters noted that some Medicare contractors use their own auditing methods rather than reviewing each hospital's internal guidelines while conducting medical review. These commenters requested that CMS require contractors to apply a hospital's internal guidelines while performing medical review. Another commenter performed extensive review on a large sample of hospital emergency department visits to determine whether the distributions seen in this sample resembled the distribution described by CMS and printed in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66804). The commenter explained that the results are similar to those of CMS at the national level, but that emergency departments have increased the proportion of level 4 and 5 emergency department visits in recent years, and that several outlier providers are billing significantly higher level visits than expected based on their geographic location and hospital type. Therefore, the commenter concluded that national guidelines would yield more accurate payment and would benefit all parties involved. The commenter also did not believe that all hospitals' internal guidelines fully comply with all the principles articulated by CMS. Other commenters supported moving cautiously toward implementation of national guidelines, acknowledging that implementation of national guidelines would create a major burden for hospitals. One commenter submitted a set of wound care guidelines for review by CMS. Many commenters requested that the AMA create CPT codes to report hospital-specific visits, after national guidelines are developed.

A few commenters recommended that, in the absence of national guidelines, CMS provide additional guidance relating to the specific services that should be included or bundled into the visit codes. One commenter specifically asked CMS to clarify what services are included in the reporting of critical care.

Response: We acknowledge that it would be desirable to many hospitals to have national guidelines. However, we also understand that it would be disruptive and administratively burdensome to other hospitals that have successfully adopted internal guidelines to implement any new set of national guidelines while we address the problems that would be inevitable in the case of any new set of guidelines that would be applied by thousands of hospitals. As noted in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66806), we encourage fiscal intermediaries and MACs to review a hospital's internal guidelines when an audit occurs. We appreciate the visit level distribution analysis provided to us by one commenter and note that in the absence of national guidelines, we will continue to regularly reevaluate patterns of hospital outpatient visit reporting at varying levels of disaggregation below the national level to ensure that hospitals continue to bill appropriately and differentially for these services. We plan to specifically analyze the Type B emergency department distributions when additional years of data are available. We do not expect to see significant increases in volume for high level Type B emergency department visits as a result of the CY 2009 payment policy for these visits, which pays more for these visits in CY 2009 than in CY 2008. In addition, we reiterate our expectation that hospitals' internal guidelines fully comply with the principles listed in the CY 2008 OPPS/ASC final rule with comment period (72 FR 68805). We appreciate receiving the set of wound care guidelines and will take these into consideration as we pursue implementation of national guidelines. We agree with the commenter that it is unlikely that one set of guidelines could be applied to visits to all HOPDs of the hospital, including specialty clinics.

Regarding the public comments requesting clarification of services that should be included or bundled into visit codes, hospitals should separately report all HCPCS codes in accordance with correct coding principles, CPT code descriptions, and any additional CMS guidance, when available. Specifically with respect to CPT code 99291 (Critical care, evaluation and management of the critically ill or critically injured patient; first 30–74 minutes), hospitals must follow the CPT instructions related to reporting that CPT code. Any services that CPT indicates are included in the reporting of CPT code 99291 should not be billed separately by the hospital. In establishing payment rates for visits, CMS packages the costs of certain items and services separately reported by HCPCS codes into payment for visits according to the standard OPPS methodology for packaging costs as outlined in sections II.A.2. and II.A.4. of this final rule with comment period.

Correct reporting by hospitals ensures the integrity of our CMS cost data. CMS developed the National Correct Coding Initiative (NCCI) to promote national correct coding methodologies and to prevent improper coding that could lead to inappropriate Part B payments. Medicare contractors implement NCCI edits in their systems for purposes of physician payment, and a subset of NCCI edits, commonly referred to as CCI edits, is incorporated into the I/OCE for claims processed through that system. While CMS currently applies CCI edits for many services under the OPPS but has temporarily suspended the application of certain edits for a period of time to allow hospitals to incorporate coding for these types of services in

their systems, CMS plans to soon apply all appropriate CCI edits for purposes of hospital reporting.

We refer readers to the July 2008 OPPS quarterly update, Transmittal 1536, Change Request 6094, issued on June 19, 2008, for further clarification about the reporting of CPT codes for hospital outpatient services paid under the OPPS. In that transmittal, we note that while CPT codes generally are created to describe and report physician services, they are also used by other providers/suppliers to describe and report services that they provide. Therefore, the CPT code descriptors do not necessarily reflect the facility component of a service furnished by the hospital. Some CPT code descriptors include reference to a physician performing a service. For OPPS purposes, unless indicated otherwise, the usage of the term ''physician'' does not restrict the reporting of the code or application of related policies to physicians only, but applies to all practitioners, hospitals, providers, or suppliers eligible to bill the relevant CPT codes pursuant to applicable portions of the Act, the CFR, and the Medicare rules. In cases where there are separate codes for the technical component, professional component, and/or complete procedure, hospitals should report the code that represents the technical component for their facility services. If there is no separate technical component code for the service, hospitals should report the code that represents the complete procedure. Consistent with past input we have received from many hospitals, hospital associations, the APC Panel, and others, we will continue to utilize CPT codes for reporting services under the OPPS whenever possible to minimize hospitals' reporting burden. If the AMA were to create facility-specific CPT codes for reporting visits provided in HOPDs, we would certainly consider such codes for OPPS use.

Comment: One commenter asked whether it was appropriate for a hospital to bill a visit code under the OPPS for care provided to a registered outpatient if the patient was not seen by a physician.

Response: Under the OPPS, unless indicated otherwise, we do not specify the type of hospital staff (for example, nurses or pharmacists) who may provide services in hospitals because the OPPS only makes payments for services provided incident to physicians' services. Hospitals providing services incident to physicians' services may choose a variety of staffing configurations to provide those services, taking into account other relevant factors such as State and local laws and hospital policies.

Billing a visit code in addition to another service merely because the patient interacted with hospital staff or spent time in a room for that service is inappropriate. A hospital may bill a visit code based on the hospital's own coding guidelines which must reasonably relate the intensity of hospital resources to different levels of HCPCS codes. Services furnished must be medically necessary and documented.

Comment: Several commenters requested that CMS allow hospitals to bill critical care with a minimum time requirement of 15 minutes rather than the current 30 minute time requirement. The commenters noted that the hospital may have its greatest resource use in the first 10 minutes of critical care which is much earlier than the 30 minute minimum required in the CPT code descriptor.

Response: The CPT instructions for reporting of critical care services with CPT code 99291 (Critical care, evaluation and management of the critically ill or critically injured patient; first 30–74 minutes) and the CPT code descriptor specify that the code can only be billed if 30 minutes or more of critical care services are provided. Because hospitals will be reporting CPT codes for critical care services for CY 2009, they must continue to provide a minimum of 30 minutes of critical care services in order to bill CPT code 99291, according to the CPT code descriptor and CPT instructions. We note that hospitals can report the appropriate clinic or emergency department visit code consistent with their internal guidelines if fewer than 30 minutes of critical care is provided.

We appreciate all of the comments we have received in the past from the public on visit guidelines, and we encourage continued submission of comments throughout the year that would assist us and other stakeholders interested in the development of national guidelines. Until national guidelines are established, hospitals should continue using their own internal guidelines to determine the appropriate reporting of different levels of clinic and emergency department visits. While we understand the interest of some hospitals in our moving quickly to promulgate national guidelines that would ensure standardized reporting of hospital outpatient visit levels, we believe that the issues and concerns identified both by us and others that may arise are important and require serious consideration prior to the implementation of national guidelines. Because of our commitment to provide hospitals with 6 to 12 months notice prior to implementation of national guidelines, we will not implement national guidelines prior to CY 2010. Our goal is to ensure that OPPS national or hospital-specific visit guidelines continue to facilitate consistent and accurate reporting of hospital outpatient visits in a manner that is resource-based and supportive of appropriate OPPS payments for the efficient and effective provision of visits in hospital outpatient settings.

X. Payment for Partial Hospitalization Services

A. Background

Partial hospitalization is an intensive outpatient program of psychiatric services provided to patients as an alternative to inpatient psychiatric care for beneficiaries who have an acute mental illness. Section 1833(t)(1)(B)(i) of the Act provides the Secretary with the authority to designate the HOPD services to be covered under the OPPS. The Medicare regulations at § 419.21(c) that implement this provision specify that payments under the OPPS will be made for partial hospitalization services furnished by CMHCs as well as those furnished to hospital outpatients. Section 1833(t)(2)(C) of the Act requires that we establish relative payment weights based on median (or mean, at the election of the Secretary) hospital costs determined by 1996 claims data and data from the most recent available cost reports. Because a day of care is the unit that defines the structure and scheduling of partial hospitalization services, we established a per diem payment methodology for the PHP APC, effective for services furnished on or after August 1, 2000 (65 FR 18452).

Historically, the median per diem cost for CMHCs greatly exceeded the median per diem cost for hospital-based PHPs and fluctuated significantly from year to year, while the median per diem cost for hospital-based PHPs remained relatively constant ($200-$225). We believe that CMHCs may have increased and decreased their charges in response to Medicare payment policies. As discussed in more detail in section X.B. of this final rule with comment period and in the CY 2004 OPPS final rule with comment period (68 FR 63470), we also believe that some CMHCs manipulated their charges in order to inappropriately receive outlier payments.

In the CY 2005 OPPS update, which was based on CY 2003 data, the CMHC median per diem cost was $310, the hospital-based PHP median per diem

cost was $215, and the combined CMHC and hospital-based median per diem cost was $289, a reduction in median cost from previous years. We believed the reduction indicated that the use of updated CCRs had accounted for the previous increase in CMHC charges and represented a more accurate estimate of CMHC per diem costs for PHP.

For the CY 2006 OPPS final rule with comment period, which was based on CY 2004 data, the median per diem cost for CMHCs dropped to $154, while the median per diem cost for hospital-based PHPs was $201. We believed that a combination of reduced charges and slightly lower CCRs for CMHCs resulted in a significant decline in the CMHC median per diem cost between CY 2003 and CY 2004.

The CY 2006 OPPS updated combined hospital-based and CMHC median per diem cost was $161, a decrease of 44 percent compared to the CY 2005 combined median per diem amount. Due to concern that this amount may not have covered the cost for PHPs, as stated in the CY 2006 OPPS final rule with comment period (70 FR 68548 and 68549), we applied a 15-percent reduction to the combined hospital-based and CMHC median per diem cost to establish the CY 2006 PHP APC. (We refer readers to the CY 2006 OPPS final rule with comment period for a full discussion of how we established the CY 2006 PHP rate (70 FR 68548).) In that rule, we stated our belief that a 15-percent reduction in the CY 2005 median per diem cost would strike an appropriate balance between using the best available data and providing adequate payment for a program that often spans 5–6 hours a day. We stated that 15 percent was an appropriate reduction because it recognized decreases in median per diem costs in both the hospital data and the CMHC data, and also reduced the risk of any adverse impact on access to these services that might result from a large single-year rate reduction. However, we adopted this policy as a transitional measure, and stated in the CY 2006 OPPS final rule with comment period that we would continue to monitor CMHC costs and charges for these services and work with CMHCs to improve their reporting so that payments could be calculated based on better empirical data (70 FR 68548). To apply this methodology for CY 2006, we reduced the CY 2005 combined unscaled hospital-based and CMHC median per diem cost of $289 by 15 percent, resulting in a combined median per diem cost of $245.65 for CY 2006.

For the CY 2007 OPPS/ASC final rule with comment period, we analyzed hospital and CMHC PHP claims for services furnished between January 1, 2005, and December 31, 2005, and used the most currently available CCRs to estimate costs. The median per diem cost for CMHCs was $173, while the median per diem cost for hospital-based PHPs was $190.

The combined hospital-based and CMHC median per diem cost would have been $175 for CY 2007. Rather than allowing the PHP per diem rate to drop to this level, we proposed to reduce the PHP median cost by 15 percent, similar to the methodology used for the CY 2006 update. However, after considering all of the public comments received concerning the proposed CY 2007 PHP per diem rate and results obtained using more current data, we modified our proposal. We made a 5-percent reduction to the CY 2006 median per diem rate to provide a transitional path to the per diem cost indicated by the data. This approach accounted for the downward direction of the data and addressed concerns raised by commenters about the magnitude of another 15-percent reduction in 1 year. Thus, to calculate the CY 2007 APC PHP per diem cost, we reduced $245.65 (the CY 2005 combined hospital-based and CMHC median per diem cost of $289 reduced by 15 percent) by 5 percent, which resulted in a combined per diem cost of $233.37.

For the CY 2008 OPPS/ASC final rule with comment period, we analyzed 12 months of current data for hospital-based PHP claims (condition code 41) and CMHC PHP claims for PHP services furnished between January 1, 2006, and December 31, 2006. We also used the most currently available CCRs to estimate costs for a day of PHP services. The median per diem cost for CMHCs was $172, while the median per diem cost for hospital-based PHPs was $177. The combined median per diem cost, which was computed from both hospital-based and CMHC PHP data, was $172.

For the prior 3 years, we have been concerned that we did not have sufficient evidence to support using the median per diem cost produced by the most current year's PHP data. As discussed in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66671), after extensive data analysis, we believed the data reflect the level of cost for the type of services that were being provided. This analysis included an examination of revenue-to-cost center mapping, refinements to the per diem methodology, and an in-depth analysis of the number of units of services per day. (We refer readers to the CY 2008 OPPS/ASC final rule with comment period (72 FR 66671 through 66675) for a detailed discussion of the data analysis.)

For CY 2008, we proposed and finalized two refinements to the methodology for computing the PHP median. However, these refinements did not appreciably impact the median per diem cost. We remapped the 10 revenue codes to the most appropriate cost centers and computed the median using a per day methodology (as described below). As noted in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66671), after extensive analysis, we believed the data reflected the level of cost for the type of services that were being provided. We continued to observe a clear downward trend in the CY 2006 data used to develop the CY 2008 OPPS/ASC final rule with comment period.

Thus, for CY 2008, we refined our methodology for computing PHP per diem costs. We developed an alternate method to determine median cost by computing a separate per diem cost for each day rather than for each bill. Under this method, we computed a cost separately for each day of PHP care. When there were multiple days of care entered on a claim, a unique cost was computed for each day of care. We only assigned costs for line items on days when a payment was made. All of these costs were then arrayed from lowest to highest and the middle value of the array was considered the median per diem cost. A complete discussion of the refined method of computing the PHP median cost can be found in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66672).

Because partial hospitalization is provided in lieu of inpatient care, it should be a highly structured and clinically-intensive program, usually lasting most of the day. Our goal is to improve the level of service furnished in a PHP day. For CY 2008, we were concerned that the proposed decrease in PHP payment might not have reflected the mix and quantity of services that should be provided under such an intensive program. In an effort to ensure access to this needed service to vulnerable populations, we mitigated the proposed reduction to 50 percent of the difference between the CY 2007 APC amount ($233) and the computed amount based on the PHP data ($172), resulting in an APC median cost of $203 for CY 2008. As stated in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66673), we believed this payment amount would give the providers an opportunity to increase the intensity of their programs and maintain

partial hospitalization as part of the continuum of mental health care.

In the CY 2008 OPPS/ASC final rule with comment period (72 FR 66673), we reiterated our expectation that hospitals and CMHCs will provide a comprehensive program consistent with the statutory intent. We also indicated that we intend to explore changes to our regulations and claims processing systems in order to deny payment for low intensity days.

B. PHP APC Update

In the CY 2008 OPPS/ASC final rule with comment period (72 FR 66672 through 66674), we presented our analysis of the number of units of service provided in a day of care, as a possible explanation for the low per diem cost for PHP. Both hospital-based and CMHC PHPs had a significant number of days where fewer than 4 units of service were provided. As noted in the CY 2008 OPPS/ASC final rule with comment period, review of CY 2006 data showed that 64 percent of the CMHC days were days where fewer than 4 units of service were provided, and 31 percent of the hospital-based PHP days were days where fewer than 4 units of service were provided (72 FR 66672).

As discussed in the CY 2009 OPPS/ASC proposed rule (73 FR 41513), we have updated this analysis using updated CY 2007 claims and found that the results and trends have continued for CMHCs. In fact, there are even more days with less than 4 units of service provided in CMHCs; however, there are fewer days with less than 4 units of service provided in hospital-based PHPs compared to the CY 2006 data. Using CY 2007 claims, 73 percent of CMHC days have fewer than 4 units of service, and 29 percent of hospital-based PHP days have fewer than 4 units of service. Based on these updated findings, we computed median per diem costs in the following three categories: (1) All days; (2) days with 3 units of service; and (3) days with 4 units or more of service. These updated median per diem costs were computed separately for CMHCs and hospital-based PHPs and are shown in the table below:

	CMHCs	Hospital-based PHPs	Combined
All Days	$145	$174	$148
Days with 3 units	139	157	139
Days with 4 units or more	172	200	174

Using updated CY 2007 data and our refined methodology for computing PHP per diem costs adopted in our CY 2008 OPPS/ASC final rule with comment period (72 FR 66672), the median per diem cost calculated from all claims is $148. Using the updated CY 2007 data, the trends noted in the CY 2009 OPPS/ASC proposed rule (73 FR 41513) have continued. The updated CY 2007 data indicate that CMHCs provide far fewer days with 4 or more units of service and that CMHC median per diem cost ($145) is substantially lower than the comparable data from hospital-based PHPs ($174). Medians for claims containing 4 or more units of service are $200 for hospital-based PHPs and $174 for all PHP claims regardless of site of service. Medians for claims containing 3 units of service are $139 for CMHCs, $157 for hospital-based PHPs, and $139 for all PHP claims regardless of site of service.

As we stated in our CY 2008 OPPS/ASC final rule with comment period (72 FR 66672), it was never our intention that days with only 3 units of service should represent the number of services provided in a typical day. Our intention was to cover days that consisted of 3 units of service only in certain limited circumstances. For example, as we noted in the CY 2009 OPPS/ASC proposed rule, we believe 3-service days may be appropriate when a patient is transitioning towards discharge (or days when a patient who is transitioning at the beginning of his or her PHP stay). Another example of when it may be appropriate for a program to provide only 3 units of service in a day is when a patient is required to leave the PHP early for the day due to an unexpected medical appointment (73 FR 41513). Therefore, we recognize there may be limited circumstances when it is appropriate for PHPs to receive payment for days when only 3 units of service are provided. However, as we indicated in the CY 2009 OPPS/ASC proposed rule (73 FR 41513), we believe that programs that provide 4 or more units of service should be paid an amount that recognizes that they have provided a more intensive day of care. A higher rate for more intensive days is consistent with our goal that hospitals and CMHCs provide a comprehensive program in keeping with the statutory intent.

Accordingly, although there are circumstances when 3 units of service provided may be appropriate, in order to reflect our general belief that 4 or more units of service more appropriately reflect the comprehensive nature of PHP services, for CY 2009, we proposed to create two separate APC payment rates for PHP: One for days with three services (APC 0172) and one for days with four or more services (APC 0173). For APC 0172, we proposed to use the median per diem cost for CMHC and hospital-based PHP days with 3 units of services ($140). For APC 00173, we proposed to use the median per diem cost for CMHC and hospital-based PHP days with 4 or more units of service ($174). As noted previously, these proposed payment rates are derived from both PHP-based and CMHC-based claims, and represent the median cost of providing PHP services for the unit of services described.

Comment: A number of commenters expressed concern about the magnitude of the PHP per diem rate reduction, particularly in light of reductions over the past few years (50 percent over 5 years). Many commenters believed that a reduction of 14.2 percent for CY 2009 would reduce the financial viability of PHP and possibly lead to the closure of many PHPs, thus affecting access to this crucial service that serves vulnerable populations. In addition, because hospital outpatient mental health services paid under the OPPS are capped at the PHP per diem rate, many commenters were concerned about overall access to outpatient mental health treatment. The majority of the commenters requested that CMS adjust the rate upward or freeze the PHP per diem rate at the CY 2008 level. Some commenters suggested leaving Level II services at the current rate, but reduce the rate for the Level I PHP services as proposed.

Several commenters requested that CMS withdraw the provisions pertaining to the proposal to create two separate APCs. The commenters stated that the split mechanism could encourage providers to provide patients with fewer services. Other commenters supported creation of a Level I PHP day,

stating that the two-tier payment proposal is good but does not go far enough to promote service intensity and continued access to their important services.

Many of the commenters supported the creation of two separate APC payment rates for PHPs based on the number of units of service provided to a patient per day but recommended that CMS use only hospital-based PHP data to determine the rates at which PHP services will be paid in hospital-based settings. These commenters believed that hospital-based data are reliable, predictable, and national in scope.

The commenters pointed out that while the aggregate number of PHP service providers has remained relatively stable over time, the number of hospital-based PHPs has dropped by 16 percent, while the number of CMHC PHPs has increased by 53 percent (with the majority of new CMHCs located in Florida, Louisiana, and Texas). The commenters reported that 80 percent of the States have two or more hospital programs, and only 30 percent of the States have more than one CMHC. The commenters believed that it is also important to note that the number of rural hospital-based PHPs has declined during the 2003–2006 period by 47 percent.

Response: After consideration of the public comments received on the two-tiered payment approach, we have decided to retain the two-tiered payment approach in order to provide PHPs scheduling flexibility to ensure that patients receive at least 20 hours of therapeutic services per week and to reflect the lower costs of a less intensive day. Although we do not expect Level I days to be frequent, we do recognize that there are times when a patient may need a less intensive day. Therefore, we recognize the need for a two-tiered payment system: One payment for those less intensive days with three services and another payment for those more intensive days with four or more services. We believe that were a PHP to provide only Level I days to a patient, it would be difficult for the patient to meet the eligibility criteria in 42 CFR 410.43 requiring a minimum of 20 hours of service per week (discussed later in this section).

We understand the commenters' concerns over the magnitude of the PHP per diem rate reduction and the impact the reduction has on the payment cap for other hospital outpatient mental health services. We also understand the commenters' concerns regarding continued access to the PHP benefit, particularly in hospital-based PHPs, which we believe are generally providing the mix and quantity of services that should be provided under such an intensive program.

Hospital-only data have been used in the past to set the PHP payment rates when the CMHC data were unavailable or too volatile to use. This year, using the CMHC data would significantly reduce the current rate and negatively impact hospital-based PHPs, resulting possibly in reduced access to care. Because hospital-based PHPs are geographically diverse, whereas CMHCs are located in only a few States, we are concerned that a significant drop in the rate could result in hospital-based PHPs closing and leading to possible access problems. In addition, using hospital-based PHP data alone results in a Level II Partial Hospitalization rate (APC 0173) that is close to the current payment level ($203).

In light of the reasons noted above, we are finalizing the two-tiered payment rates as proposed, but are instead using hospital-based PHP data only to calculate the two per diem payment rates. As we stated earlier in this section and in the CY 2009 OPPS/ASC proposed rule, although there are circumstances when 3 units of service provided may be appropriate, in order to reflect our general belief that 4 or more units of service more appropriately indicated the comprehensive nature of PHP services, for CY 2009, we are creating two separate APC payment rates for PHP: One for days with three services and one for days with four or more services. We are finalizing two new APCs for PHP as follows:

APC	Group title	Per diem rate
0172	Level I Partial Hospitalization (3 services)	$157
0173	Level II Partial Hospitalization (4 or more services)	200

For APC 0172, we are using the median per diem cost for hospital-based PHP days with 3 units of services ($157). For APC 00173, we are using the median per diem cost for hospital-based PHP days with 4 or more units of service ($200). These payment rates are derived from hospital-based PHP claims, and represent the median cost of providing PHP services for the unit of services described. We believe that creating a rate specific to days with three services is consistent with our policy to require CMHCs and hospital-based PHPs to provide a minimum of 3 units of service per day in order to receive payment as discussed below in section X.C.1. of this final rule with comment period. Creating two separate PHP rates provides a lower payment for days with only 3 units of services, while not penalizing programs that provide four or more units of service by excluding days with 3 units of service in the computation of APC 0173. As we stated in the CY 2009 OPPS/ASC proposed rule, we believe this two-tiered approach appropriately balances our concern that a PHP is an intensive program and should generally consist of 5 to 6 units of service, with the realization that there may be certain appropriate circumstances where 3 units of service may be provided in a day.

As the PHP rates are applied to both CMHC and hospital-based PHPs, we would prefer to use both hospital-based PHP and CMHC data in computing the PHP rates. The changes we are making with respect to the PHP benefit, providing a two-tiered payment approach, clarifying eligibility criteria and denying payment for low intensity days, are expected to create more comparable programs in terms of the number of units furnished in a typical day for both CMHCs and hospitals. We believe that these efforts also will reduce the difference in the median cost per day in these two settings over time and CMHC data will be available for future ratesetting.

Comment: A few commenters requested that CMS further consider separate payment rates for PHP provided in CMHCs versus hospital-based programs, given the significant difference in costs for providing those services in the two settings. The commenters suggested that CMS establish a total of four distinct rates based upon claim data. The commenters gave the following example: CMHC—Level I 3 services, $139; CMHC—Level II 4 or more services, $171; HB—Level

I 3 services, $151 and; HB—Level II 4 or more services, $205.

Response: We appreciate this comment, and we continue to evaluate ways to better reflect the costs in providing PHP services.

Comment: A few commenters disagreed with the CMS approach to establishing the median per diem cost by summarizing the line-item costs on each bill and dividing by the number of days on the bills. The commenters indicated that this calculation can severely dilute the rate and penalize providers. The commenters stated that all programs are strongly encouraged by the fiscal intermediaries to submit all PHP service days on claims, even when the patient receives less than 3 units of service. The commenters were concerned that programs are only paid their per diem when 3 or more qualified units of service are presented for a day of service. The commenters stated that if only 1 or 2 units of service are assigned a cost and the day is divided into the aggregate data, the cost per day is significantly compromised and diluted. They claimed that even days that are paid but only have 3 units of service dilute the cost factors on the calculations.

One commenter suggested that the CMS' methodology is flawed because it does not reflect actual costs. One commenter expressed the view that the CMS methodology for rate calculations using CCRs does not fairly reflect the actual costs of the providers. The commenter stated that, with the change to per diem payment in 2000, the CCRs do not have the same influence on services that they did under cost-based reimbursement. The commenter noted that, other than the reporting in the cost reports, the charge factor has no bearing on the services. The commenter believed that, regardless of the charge, payment is still made at the established rate influenced only by the wage index. The commenter stated that the higher the ''charge'' established by the provider and reported in the cost report, the lower the proportionate rate of cost is assigned by CMS when calculating the costs to determine the median cost rates. The commenter stated that hospitals and CMHCs can drastically influence the rates innocently, by the identification of the charge per service assigned to the particular intervention. The commenter mentioned that providers have unknowingly hurt their own programs by raising their identified charges for a service, as this lowers the percentage of the applicable ratio when applied to the claim services. The commenter stated that the charges themselves have no bearing whatsoever on the delivery or provision of the services.

Response: We expect that a provider's charges will reflect the level of services provided, which has a relationship to the cost of providing those services. In Medicare cost reporting, the total charges are to be reported along with the provider's cost. To the extent that a provider is submitting bills that have charges that do not directly relate to the delivery or provision of services, their CCRs will be unpredictable and would distort the costs of the services provided.

Moreover, in developing the CY 2009 PHP rates, we excluded days that have only 1 or 2 units of service. In addition, we did not include days where no payment was made. This resulted in our using data only from those days where we believe PHP services were actually provided. To calculate the Level I PHP rate, we used days with 3 units of service, and to calculate the Level II PHP rate, we used days with 4 or more units of service. We believe our methodology accurately reflects the median cost of providing these two levels of PHP.

As discussed in the CY 2008 OPPS final rule with comment period (72 FR 66671–66672), we have refined our methodology for computing per diem costs. We have developed an alternate way to determine median cost by computing a separate per diem cost for each day rather than for each bill and, in so doing, we believe it more accurately reflects the per diem cost of providing PHP services. Under this method, a cost is computed separately for each day of PHP care. When there are multiple days of care entered on a claim, a unique cost is computed for each day of care. We only assign costs for line items on days when a payment is made. All of these costs are then arrayed from lowest to highest and the middle value of the array would be the median per diem cost.

We adopted this alternative method of computing PHP per diem median cost because we believe it produces a more accurate estimate because each day gets an equal weight towards computing the median. This method for computing a PHP per diem median cost more accurately reflects the costs of a PHP day and uses all available PHP data. In addition, if a provider has charges on a bill for which the provider does not receive payment, this will be reflected in that provider's CCRs. This lower CCR will be applied to the larger charges and will result in the appropriate cost per diem.

Comment: Several commenters asked CMS to analyze the mapping of revenue-codes-to-cost centers for CMHCs similar to the analysis CMS completed for hospital-based programs and discussed in the CY 2007 OPPS/ASC final rule with comment period (71 FR 68000). The commenters indicated that CMHC PHP services have higher CCRs than the overall CMHC CCRs.

Response: We cannot conduct a revenue code mapping analysis for CMHCs because PHP is the CMHCs' only Medicare cost, and CMHCs do not have the same cost centers as hospitals. Therefore, for CMHCs, we use the overall facility CCR from the Outpatient Provider-Specific File.

Comment: One commenter stated that two of the PHP codes, activity therapy and education and training, are allowed to be performed multiple times per day, but only count as one therapy unit, regardless of how many sessions are actually provided.

Response: As we have stated in the past, there is a misconception that CMS only counts activity therapy and education and training services as one therapy unit, regardless of how many sessions are actually performed. We again note that when the PHP per diem is calculated, all therapy sessions are counted in the analysis. When we established HCPCS code G0176 for activity therapy, we defined the code as ''Activity therapy, such as music, dance, art or play therapies not for recreation, related to the care and treatment of patient's disabling mental problems, per session (45 minutes or more).'' In addition, when we established HCPCS code G0177 for education and training, we defined the code as ''Training and educational services related to the care and treatment of patient's disabling mental health problems, per session (45 minutes or more).'' Therefore, when PHPs provide and bill for multiple sessions of HCPCS codes G0176 and G0177, they are counted as multiple therapy units.

Comment: Many commenters stated that, as CMS is aware, cost report information for CMHCs is not currently included in the Healthcare Cost Report Information System (HCRIS) and recommended that CMS base its calculations only in the cost report information that the agency can verify directly and not on data provided by the fiscal intermediary.

Response: We understand the commenters' need to have CMHC data available through the HCRIS system and are working to include them in the system. However, we have no reason to believe the Medicare contractors enter incorrect CCRs in the Outpatient Provider Specific File.

Comment: With respect to the methodology used to establish the PHP APC amount, commenters were concerned that data from settled cost reports do not include costs reversed on appeal. The commenters stated that there are inherent problems in using claims data from a time period that is different from that for the CCRs from settled cost reports. They indicated that this methodology would artificially lower the computed median costs, and that the data used to calculate the PHP rate should be revised to include costs that were subsequently allowed. The commenters also stated that CMS uses costs that are at least 1 to 3 years old to project rates 2 years forward and that this approach does not accurately reflect the true costs of the providers.

Response: Since 2000, Medicare has paid for PHP through the OPPS, which is not a cost-based reimbursement system. We use the best available data in computing the APCs. On January 17, 2003, we issued Program Memorandum No. A–03–004 that directed fiscal intermediaries to update the CCRs on an ongoing basis whenever a more recent full year settled or tentatively settled cost report is available. In this way, we minimize the time lag between the CCRs and claims data and continue to use the best available data for ratesetting purposes.

Comment: A few commenters expressed their concern as to why CMS continues to state that a day of partial hospitalization should not equal the cost of the separate services provided in a non-PHP setting or that even a full partial day should not equal the cost of the separate services in an outpatient hospital setting. These commenters presented two different typical days using proposed CY 2008 rates: Typical Day 1 included three group therapy sessions (CPT code 90853, APC 0325, 3 × $64.45) and one individual psychotherapy session (CPT code 90818, APC 0323, $106.49). The commenter priced Typical Day 1 at $299.84. Typical Day 2 included one group therapy session (CPT code 90853, APC 0325, $64.45), one individual psychotherapy session (CPT code 90818, APC 0323, $106.49), and one family therapy session (CPT code 90847, APC 0324, $141.61). The commenter priced Typical Day 2 at $312.55. Based on the commenter's presented material, the commenter stated that the typical days yield an average componentized rate of $306. The commenter questioned how CMS can set rates for APCs 0322 through 0325, but is unable to determine a payment rate for a day that is comprised of a minimum of 3 to 4 units of those services. Other commenters stated that while CMS requires a minimum of four treatments per day to qualify for a day of PHP, the proposed per diem rate of $179.88 for PHP is less than what CMS would pay for four group therapy sessions.

Some commenters mentioned variations of using the median cost of $62.66 for APC 325 to illustrate the inadequacy of the proposed PHP per diem payment of $174.07. One commenter stated that by multiplying 4 group therapy services by $62.66 yields $250.64, which is more that $174.07. Another commenter claimed that CMS pays hospital facilities for outpatient services on a per unit basis up to the per diem PHP payment. The commenter mentioned that CMS has identified Group Therapy APC 0325 with a true median cost of $62.66. The commenter stated that the patients involved in outpatient services are participating 1 to 3 days and generally receive 4 or more units of service on those days. The commenter added that while programs are providing 4 or more units of service, the per diem limit will only allow them to be ''paid their cost'' for about 2.75 units of service (3 × $62.66 = $187.98). The commenter stated that the program is $13.91 short for the third service and the fourth service and any others are provided with no reimbursement.

Response: We do not believe that it is appropriate to compare the partial hospitalization services to separate mental health services. The commenter does not use the payment rates for the PHP APCs, that is, APCs 0172 and 0173, in its calculations. The payment rates for APC services cited by the commenter (APC 0323, APC 0324, and APC 0325) are not computed from PHP bills. As stated earlier, we used data from PHPs to determine the median cost of a day of PHP. PHP is a program of services where savings can be realized by hospitals and CMHCs over delivering individual psychotherapy services.

We structured the PHP APCs (APCs 0172 and 0173) as a per diem methodology in which the day of care is the unit that reflects the structure and scheduling of PHPs and the composition of the PHP APCs consist of the cost of all services provided each day. Although we require that each PHP day include a psychotherapy service, we do not specify the specific mix of other services provided, and our payment methodology reflects the cost per day rather than the cost of each service furnished within the day.

We examined both CMHC and hospital-based PHP data to determine what services these programs are providing to their patients. An important finding was that the ''typical'' days cited by the commenter are not typical days for most CMHCs. For CMHCs, 60 percent of services are group psychotherapy (CPT codes 90853 and 90857), 26 percent of services are training and education (HCPCS code G0177), 12 percent are activity therapy (HCPCS code G0176), and only 1 percent of PHP days included individual therapy (brief or extended (CPT code 90816 or 90818)).

The ''typical'' days cited by the commenter also are not typical days for hospital-based PHPs. For hospital-based PHPs, 47 percent of services are group psychotherapy (CPT codes 90853 and 90857), 27 percent of services are training and education (HCPCS code G0177), 16 percent are activity therapy (HCPCS code G0176), 3 percent are occupational therapy (HCPCS code G0129), 2 percent of PHP days include brief individual psychotherapy (CPT code 90816), and only 1 percent of PHP days include extended individual therapy (CPT code 90818).

We note that the APCs for training and education (HCPCS code G0177), activity therapy (HCPCS code G0176), and occupational therapy (HCPCS code G0129) are not separately payable under the OPPS. They are packaged services and only payable as part of a PHP day of care. In CMHCs, training and education (HCPCS code G0177) and activity therapy (HCPCS code G0176) account for 38 percent of PHP services. In hospital-based PHPs, training and education and activity therapy account for 43 percent of PHP services. In addition to not being separately payable, these services may be provided to patients by less costly staff than staff who provide psychotherapy and occupational therapy. Based on the mix of services provided on the majority of PHP days, we believe the data used for setting the PHP payment appropriately reflect the typical PHP day and its costs should not be compared to the costs of providing separate services.

Comment: Several commenters claimed that the costs of CMHCs are higher because ''hospitals can share and spread their costs to other departments.'' The commenters believed that the CMHC patient acuity level is more intense than that for hospital patients because HOPDs need only provide one or two therapies, yet still receive the full PHP per diem.

Response: We do not agree that CMHC costs are necessarily higher than that of a hospital. CMHCs are required to furnish an array of outpatient services, including specialized outpatient services for children, elderly persons, individuals with a serious mental illness, and residents of its service area

who have been discharged from inpatient treatment. Accordingly, CMHCs have the same ability as hospitals to share costs among its programs as needed. Further, we believe hospital costs in some areas, for example, capital and 24-hour maintenance costs, greatly exceed comparable CMHC costs. Regardless, we believe patient acuity across hospital-based and CMHC PHPs should be the same, that is, the patients would otherwise require inpatient psychiatric care regardless of setting (section 1835(a)(2)(F) of the Act).

Comment: Many commenters expressed concern that the proposed rates exclude substantial costs from the providers that should be considered for calculating the per diem PHP rates. In summary, the commenters stated ''that approximately 2.25 hours of direct services per day are provided to Medicare patients that are not billable or do not have codes available to bill Medicare.'' The commenters cited as examples: 100 percent of physician supervision and related overhead expenses; 85 to 93 percent of all nursing related direct services for physical health needs or family education services; 92 percent of case management services provided by licensed therapists and other support staff; 85 percent of unscheduled crisis intervention services; and 80 percent of family therapy without the client. Other commenters also provided specific examples of indirect services they provide that are not reimbursable, such as: assisting in finding housing; accessing other health care services; obtaining medications; working through issues with family members; providing transportation to medical and other appointments; assisting with the information and appointments regarding Social Security and Medicare questions; accessing food banks and food stamps; obtaining eye and dental services; providing occupational therapy, dual diagnosis (conducted by a licensed therapist), relaxation, humor, mindfulness, nutrition education (run by a registered dietician), pastoral care; and trying to integrate volatile/anxious patients into the milieu when they cannot tolerate a group process and need one-on-one attention.

Response: PHP services are specifically defined in section 1861(ff) of the Act. Meals and transportation are specifically excluded under section 1861(ff)(2)(I) of the Act. While some of the services the commenters list are provided in a PHP setting, we only pay for direct patient care costs. Other services, such as case management and team meetings, would be considered overhead costs and not direct patient care costs. All Medicare allowable costs will be included in the cost portion of the CCR. By applying this ratio to the billed charges, the cost estimate will reflect all allowable costs.

Comment: Many commenters expressed concern that CMS fails to protect rural mental health providers. The commenters claim that there is documented evidence, published by CMS, of the special hardships and needs of rural providers. They noted that most other rural provider types have been recognized for this hardship and have had allowance and special provisions to ensure their viability. The commenters requested that CMS consider treating CMHCs in an equitable manner to other rural provider types. The commenters also mentioned that they reviewed all of the documentation available and the impact statement, but found no evidence that any small rural providers had been included. The commenters wanted to remind CMS that the agency is required by law to calculate and disclose the impact of any action on small and rural providers. A few commenters specifically mentioned that there were no Louisiana CMHCs included in the impact.

Response: We believe we do take the concerns of rural mental health providers into account. Over the last several years, our mitigation of rate reductions for PHPs benefits all CMHCs, including rural providers. As to the particular treatment of rural providers, we believe the commenter may be referring to the statutory hold harmless provisions. Section 1833(t)(7)(D) of the Act authorizes such payments, on a permanent basis, for children's hospitals and cancer hospitals and, through CY 2009, for rural hospitals having 100 or fewer beds and is not a SCH, and for SCHs in rural areas. Section 1866(t)(7)(D) of the Act does not authorize hold harmless payments to CMHCs. In addition, another provision directed at rural providers, section 411 of Public Law 108–173 that requires CMS to determine the appropriateness of additional payments for certain rural hospitals, does not extend to CMHCs.

In this year's impact table, we included CMHCs in the total count of providers, but they are not shown separately. We typically do not report a separate impact for CMHCs because they are only paid for one service, PHP, under the OPPS, and each CMHC can typically easily estimate the impact of payment rate changes by referencing payment for PHP in Addendum A to both the proposed rule and this final rule with comment period. Because we proposed a CY 2009 policy change to PHP payment, we presented separate impacts for CMHCs in Table 45 and discussed the impact in section XXI.B.4 in the CY 2009 OPPS/ASC proposed rule (73 FR 41558). We have updated this analysis for this final rule with comment period. (For additional information, we refer readers to section XXIII of this final rule with comment period.)

Comment: Several commenters requested that CMS support a legislative amendment to remove PHP from the APC codes and create an independent status similar to home health and then establish a reasonable base rate for PHP such as the current 2008 per diem. The commenters also recommended that CMS annually adjust the base rate by a conservative inflation factor such as the CPI. Other commenters suggested establishing a PHP rate calculation task force to develop a new rate methodology that captures all relevant data and reflects the actual costs to providers to deliver PHP services. The commenter recommended that the ratesetting task force be composed of CMS staff and a diverse group of stakeholders that includes front-line providers of PHP services and representatives from national industry organizations.

Response: As the commenters stated, currently, the statutory authority does not provide for a separate payment system for partial hospitalization services. Therefore, it would require a statutory change to establish an independent payment system for PHPs. In response to commenters' request for a PHP rate calculation task force, we do not believe an official task force is required, but we continue to support an informal process. We have met with industry groups and providers numerous times over the years and continue to be open to discussion about the partial hospitalization benefit.

Comment: A few commenters recommended that CMS establish quality criteria to judge performance and that would influence future payment rates.

Response: We agree with the commenters that information about the status of quality benchmarks and indicators would be useful and we encourage providers to submit that information to us. While the commenters did not provide any specifics, we would be interested in how such a quality program would be structured.

Comment: A few commenters stated that the wage index adjustment does not accurately reflect the cost of labor in areas affected by Hurricanes Katrina and Rita. The commenters also pointed out that the proposed wage index in

Louisiana has decreased post-hurricane instead of increasing, which has resulted in a much lower payment rate in Louisiana. The commenters further stated that the time lag for wage indexing is a huge factor for Hurricane Zone providers and that the wage index decrease makes the assumption that the cost of labor has actually decreased since the hurricanes. Some commenters noted that the lack of facilities and trained professionals and inadequate reimbursement will make Louisiana worse off now than prior to Hurricanes Katrina and Rita.

Response: The hospital wage data used to compute the FY 2009 IPPS hospital wage index is from the FY 2005 hospital cost reports for all hospitals. This is the standard lag timeframe in determining the hospital wage index. The FY 2005 data are reflected in the FY 2009 IPPS hospital wage index. However, we note that the wage index is a relative measure of differences in area hourly wage levels. It compares a labor market's average hourly wage to the national average hourly wage. To the extent that post-hurricane hospital labor costs are higher relative to the national average, the wage index reflects the higher relative labor cost beginning with the FY 2005 data that are in the FY 2009 IPPS hospital wage index (which will be applied to the CY 2009 OPPS rate year). In addition, the statutory authority for the OPPS wage index policy in section 1833(t)(2)(D) of the Act requires that the wage adjustments be made in a budget neutral manner. Therefore, any increase in one wage area factor would need to be budget neutral. Finally, it should be noted that CMHCs and hospitals located in Federal Emergency Management Agency (FEMA) designated disaster areas received relief funds by the Department of Health and Human Services in 2007.

Comment: One commenter stated that CMS data and per diem payment rates are strongly biased by just a few providers. The commenter stated that CMS' data identifies 631 providers of partial hospitalization services and identifies the overall industry costs at $288 million with approximately 1,400,000 days of partial hospitalization services. The commenter stated that this suggests an average daily census per program of less than 9 patients per day, based on 250 days of services in a year. The commenter was aware of only 2 or 3 programs that maintain a daily census in PHPs in excess of 50 to 60 per day, some as high as 200 to 250 per day. The commenter stated that these individual providers skew the data and disproportionately influence the calculated rates with severe cost advantages that other providers cannot duplicate because of economies of scale. The commenter stated that these few high volume providers should not set the rates for all providers and should be excluded from the rate calculations.

Response: In response to this comment, we analyzed the cost per day for various high volume providers and determined that the high volume providers have a cost per day similar to that of smaller, lower volume providers. For this reason, although high volume providers may have a greater proportion of days used for median rate setting, we do not believe that including the data for these providers skews the resulting median. Our analysis shows that economies of scale do not appear to influence the cost per day for these providers.

Comment: One commenter expressed concern that the proposed PHP APC rate decrease is inconsistent with a response CMS gave to a MedPAC recommendation. The commenter claimed that MedPAC recommended that the Congress should increase payment rates for the acute inpatient and outpatient prospective payment systems in 2009 by the projected rate of increase in the hospital market basket index, concurrent with implementation of a quality incentive payment program. The commenter also claimed that CMS' response was that it was proposing to increase payment rates for the CY 2009 OPPS by the projected rate of increase in the hospital market basket through adjustment of the full CY 2009 conversion factor.

Response: All APCs under the OPPS receive a market basket increase as part of the calculation of the conversion factor. The proposed PHP APC rates were based upon standard OPPS ratesetting methodology. Barring a decrease due to the quality reporting requirements, we anticipate a full market basket increase and not an update of less than a full market basket to the OPPS payment rates. The PHP APCs are converted to a weight relative to the median cost of a Mid-Level Office Visit. The relative weight is multiplied by the conversion factor to convert it to a dollar amount. However, there are other factors in the conversion factor that may offset the market basket increase. For example, the conversion factor includes the wage index and rural budget neutrality adjustments, an adjustment for pass-through set asides, among others. (We refer readers to section X.D of this final rule with comment period for a more detailed discussion of the conversion factor update.)

Comment: One commenter suggested that CMS take a proactive step to prevent the duplication of services by CMHCs by implementing a ''Needs Assessment'' protocol before allowing centers to be established. The commenters stated that these assessments could be used as a way for CMS to determine if the establishment of a CMHC is necessary in a certain area.

Response: We believe the commenter is referring to certificate of need programs implemented by many States, which is beyond the scope of the proposed rule and this final rule with comment period.

Comment: Several commenters expressed concern that cost report data frequently do not reflect bad debt expense for the entire year. The commenters were concerned that these costs are not being considered in the CMS data and severely shortchange the rate calculations.

Response: The bad debt policy is outside the scope of the proposed rule and this final rule with comment period. We refer the commenter to 42 CFR 413.89 and the Provider Reimbursement Manual Part I (PRM), Chapter 3, concerning our bad debt requirements.

Comment: One commenter noted that CMS did not respond to previous statements from commenters that the industry would welcome accreditation rules and/or stricter policies for PHPs.

Response: We agree with the commenters that this is an area that should be addressed, and we are exploring proposing conditions of participation for CMHCs to establish minimum standards for patient rights, physical environment, staffing, and documentation requirements. We believe that adding conditions of participation would contribute to more consistency between CMHCs and hospital-based PHPs.

Comment: One commenter suggested that CMS should consider that licensed professionals with a master's degree in psychology to be equivalent to those with a master's degree in social work with an LCSW. Specifically, the commenter questioned how someone trained in the field to conduct therapy is considered less able than a social worker who may have had minimal or any clinical training.

Response: Specific policy related to the qualification or licensure requirements of mental health professionals is beyond the scope of the proposed rule and this final rule with comment period.

C. Policy Changes

1. Policy To Deny Payment for Low Intensity Days

In the CY 2008 OPPS/ASC final rule with comment period (72 FR 66673), we reiterated our expectation that hospitals and CMHCs will provide a comprehensive program consistent with the statutory intent. We also indicated that we intend to explore changes to our regulations and claims processing systems in order to deny payment for low intensity days, and we specifically invited public comment on the most appropriate threshold. We did not receive any public comments on this subject. Our analysis of claims data indicates that CMHCs (and to a lesser extent hospital-based PHPs) are furnishing a substantial number of low unit days. We consider providing only one or two services to be a low unit day. Although we currently consider the acceptable minimum units of PHP services required in a PHP day to be three, it was never our intention that three units of service should represent the number of services to be provided in a typical PHP day. PHP is furnished in lieu of an inpatient psychiatric hospitalization and is intended to be more intensive than a half-day program. We believe the typical PHP day should include five to six units of service with a break for lunch. As indicated in section X.B. of this final rule with comment period, we proposed two PHP per diem rates that reflect the level of care provided.

In conjunction with and to conform to our proposed CY 2009 PHP per diem rates that account for a minimum of 3 units of service provided, we also proposed changes to the existing PHP logic portion of the I/OCE to require that CMHCs and hospital-based PHPs provide a minimum of 3 units of service per day in order to receive PHP payment. Currently, the PHP logic portion of the I/OCE results in a ''suspension of claim for medical review'' for claims with fewer than three services provided in a day. For CY 2009, we proposed to deny payment for any PHP claims for days when fewer than three units of therapeutic services are provided. We believe that three units of services should be the minimum number of services allowed in a PHP day because a day with one or two units of services does not meet the statutory intent of a PHP program. Three units of services are a minimum threshold that permits unforeseen circumstances, such as medical appointments, while allowing payment, but still maintains the integrity of a comprehensive program. As noted previously, we also believe that a day where a patient receives only three units of services should only occur under certain circumstances. As we explained in section X.B. of this final rule with comment period, an example of when it may be appropriate to bill only three units of services a day would be when a patient might need to leave early for a medical appointment and, therefore, would be unable to complete a full day of PHP treatment. However, PHP programs that provide three units of services in a day should be the exception, as we expect PHP programs to generally provide a more intensive day of services as PHP is a more comprehensive program than three units of services. As we noted in the CY 2009 OPPS/ASC proposed rule (73 FR 41514), we will be observing trends and assessing the two payment rate approach in our continued review to protect the integrity of the PHP program.

Comment: Commenters supported CMS' proposal to deny payment for ''low unit'' days. However, they stated that CMS should contemplate that there are rare instances when a patient becomes ill or has a family or personal emergency and needs to leave the program early on that day; therefore, they receive fewer services. The commenters suggested that CMS create a modifier to be used to trigger a ''suspension of claim for medical review'' and potential payment at a reduced rate. Other commenters suggested that CMS continue to pay and maintain the current policy of suspending claims for medical review. The commenters believed that this is an appropriate way to make payment determinations. A few other commenters opposed the idea of denying payment; they proposed that CMS pay the fee schedule amount for the one or two services.

Response: While we recognize that special circumstances exist where a patient might have to leave a PHP early, we continue to believe that days with one or two units of services are inconsistent with a benefit designed as a full-day program and substitute for inpatient care. Therefore, we do not believe it is appropriate to establish a modifier at this time or continue to pay and are maintaining the current policy of suspending claims for medical review. In addition, we have codified patient eligibility criteria in this final rule with comment period that will require a minimum of 20 hours of service per week, which strengthens our view that these low intensity days are rare and do not represent a normal day, such that payment should be denied. If there are legitimate instances when one or two units of service days are justified, denial still leaves the provider the option to appeal as specified in the Medicare Claims Processing Manual, Pub. 100–04, Chapter 30, Section 30.2.2. We will continue to monitor data in the future to assess the potential later need for a modifier for such claims.

2. Policy To Strengthen PHP Patient Eligibility Criteria

As discussed in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66671), we established the current PHP payment rate of $203. As part of our ongoing review of ensuring the most appropriate payment is made for these intensive, service-oriented programs, we also explored changes that could enhance and strengthen the integrity of the PHP benefit overall. As part of this review, we looked at existing instructions to providers, including current regulations, manuals, and other guidance. In the CY 2009 OPPS/ASC proposed rule (73 FR 41514), we proposed to codify existing policy regarding PHP patient eligibility as we believe it will help strengthen the integrity of the PHP benefit by conforming our regulations to our longstanding policy and making available the general program requirements in one regulatory section. These requirements are currently stated in the Medicare Benefit Policy Manual, Pub. 100–02, Chapter 6, section 70.3, available on the CMS Web site at: *http://www.cms.hhs.gov/manuals/Downloads/bp102c06.pdf* and in Transmittal 10, Change Request 3298, dated May 7, 2004, but not codified. The regulatory text changes that we proposed are intended to strengthen PHP requirements by adding the existing patient eligibility conditions to the existing PHP regulations, and do not reflect a change in policy. Specifically, we proposed to revise 42 CFR 410.43 to add a reference to current regulations at § 424.24(e) that requires that PHP services are furnished pursuant to a physician certification and plan of care. While the requirements at § 424.24(e) are not new, we believe the addition of this reference to § 410.43 will provide a more complete description of our expectations for PHP programs in § 410.43.

We also proposed to revise 42 CFR 410.43 to add the following patient eligibility criteria. We proposed to state that partial hospitalization programs are intended for patients who—

(1) Require 20 hours per week of therapeutic services;

(2) Are likely to benefit from a coordinated program of services and

require more than isolated sessions of outpatient treatment;

(3) Do not require 24-hour care;

(4) Have an adequate support system while not actively engaged in the program;

(5) Have a mental health diagnosis;

(6) Are not judged to be dangerous to self or others; and

(7) Have the cognitive and emotional ability to participate in the active treatment process and can tolerate the intensity of the partial hospitalization program.

As we noted in the CY 2009 OPPS/ASC proposed rule (73 FR 41514), partial hospitalization is the level of intervention that falls between inpatient hospitalization and episodic treatment in the continuum of care for the mentally ill. While we require a patient to have a mental health diagnosis, we caution that the diagnosis in itself is not the sole determining factor for coverage.

Because partial hospitalization is provided in lieu of inpatient care, it should be a highly structured and clinically-intensive program. As reiterated in the CY 2009 OPPS/ASC proposed rule (73 FR 41514), our goal is to improve the level of service furnished in a PHP day, while also ensuring that the partial hospitalization benefit is being utilized by the appropriate population. For example, a PHP candidate should be able to tolerate a day of PHP and benefit from the intense treatment provided in the program. In addition, for the program to be fully beneficial, a PHP participant should have a strong support system outside of the PHP program to help to ensure success. Moreover, the safety of all PHP patients is extremely important and, therefore, all PHP participants should be able to live safely in the community, and not be a danger to self or others. For these reasons, it has been our longstanding policy that these criteria are vital in determining the patient's eligibility to participate in a PHP and we believed it necessary to propose to codify the above list of basic patient eligibility requirements in § 410.43.

In the CY 2008 OPPS/ASC final rule with comment period (72 FR 66673), we reiterated our expectation that hospitals and CMHCs will provide a comprehensive program consistent with the statutory intent. We believe the addition of these requirements to the regulations reflects our longstanding policy and helps provide a clear and consistent description of our expectations for PHP programs and would strengthen the integrity of the PHP benefit by noting such in the PHP regulations.

Comment: Generally, commenters supported the eligibility requirements and their incorporation in the regulations at § 410.43, with the exception of the requirement that PHPs are intended for patients who require 20 hours per week of therapeutic services. A few commenters requested that CMS clarify that the list of patient eligibility requirements will be used as general requirements or guidelines and not as patient-specific requirements with the potential to deny coverage of services or payments for individual patients. The commenters also indicated that the 20 hours per week requirement, while fundamentally sound, is insufficiently refined for inclusion in regulation and feared the impact of such a strict requirement on patient care. The commenters were concerned that a regulatory provision could result in the denial of coverage for services or payments for individual patients.

Some commenters indicated that a guideline of 16 to 20 hours per week could accommodate the beneficiary, particularly during the transition period following hospital discharge. They stated that partial hospitalization is an intensive form of outpatient care intended for patients with acute psychiatric illness who could benefit from ongoing intensive and structured psychotherapy. The commenters also stated that PHP is frequently used as a substitute or a step-down from hospital care with the patient being transitioned into a less intensive level of care. Other commenters expressed the concern that a patient may not be able to participate at the 20 hour per week minimum for intense therapy, particularly during the transition period. They stated that during the transition, the patient, in addition to psychiatric treatment, frequently needs to make and keep appointments to resolve physical or social issues. A few commenters also indicated that a patient may need an occasional day to acclimate to the rigorous demands of the very intensive level of PHP services. They added that the transition period either before or after hospitalization may frequently warrant clinical discretion and flexibility in patient care management.

Response: We note that the eligibility requirements that we proposed to codify in the regulations at § 410.43 are not new, and are currently a part of the operational policy that is contained in the Medicare Benefits Policy Manual, Pub. 100–02, Chapter 6, Section 70.3.

We understand commenters' concerns about the 20 hours per week requirement with regard to scheduling flexibility, but we are concerned that if we reduce the minimum number of hours lower than the current guideline, the low end of the range will become the new minimum. Therefore, instead of reducing the number of hours a patient needs in order to be eligible to receive the benefit, in this final rule with comment period, we are clarifying that the patient eligibility requirement that patients require 20 hours of therapeutic services is evidenced in a patient's plan of care rather than in the actual hours of therapeutic services a patient receives. The intent of this eligibility requirement is that for most weeks we expect attendance conforming to the patient's plan of care. We recognize that there may be times at the beginning (or end) of a patient's transition into (or out of) a PHP where the patient may not receive 20 hours of therapeutic services. For example, if a patient begins treatment on a Wednesday and receives services for the remainder of that week (Thursday and Friday), that patient's first week may not include 20 hours of therapeutic services. However, we expect that for generally all weeks the PHP patients are receiving the amount and type of services identified in the plan of care.

Therefore, we are finalizing our proposal, with the clarification noted above, the patient eligibility criteria at 42 CFR 410.43 as follows:

Partial hospitalization programs are intended for patients who—

(1) Require a minimum of 20 hours per week of therapeutic services as evidenced in their plan of care;

(2) Are likely to benefit from a coordinated program of services and require more than isolated sessions of outpatient treatment;

(3) Do not require 24-hour care;

(4) Have an adequate support system while not actively engaged in the program;

(5) Have a mental health diagnosis;

(6) Are not judged to be dangerous to self or others; and

(7) Have the cognitive and emotional ability to participate in the active treatment process and can tolerate the intensity of the partial hospitalization program.

We did not receive any public comments on our proposal to revise 42 CFR 410.43 to add a reference to current regulations at § 424.24(e) that requires that PHP services are furnished in accordance with a physician certification and plan of care. Therefore, we are finalizing the cross-reference change as proposed.

3. Partial Hospitalization Coding Update

As part of our ongoing evaluation of partial hospitalization codes, in the CY 2009 OPPS/ASC proposed rule (73 FR

41515), we proposed several coding changes. We identified several CPT codes that we believed were inappropriate for billing PHP claims. Upon further study and after consultation with CMS medical advisors, we proposed to eliminate use of the following three CPT codes for billing PHP claims: 90846 (Family psychotherapy (without the patient present)), 90849 (Multi-family group psychotherapy), and 90899 (Unlisted psychiatric service or procedure). While these three CPT codes constitute 0.157 percent of the total PHP claims for CY 2006, as explained in the CY 2009 OPPS/ASC proposed rule, we believe there are similar and more appropriate HCPCS codes to use to bill for these services.

Our review of the claims data associated with CPT code 90846 found that this code accounts for approximately 0.004 percent of the total services billed on PHP claims in CY 2006. In the CY 2009 OPPS/ASC proposed rule (73 FR 41515) we noted our belief that CPT code 90846 is not an appropriate code for the PHP benefit, because it excludes the beneficiary. We further noted that another available PHP code, CPT code 90847 (Family psychotherapy (conjoint psychotherapy with patient present)), which is currently a billable PHP code, is a more appropriate CPT code to use to bill for family psychotherapy services because it requires the presence of the patient as part of the family psychotherapy session.

In addition, our review of the CY 2006 claims data associated with CPT code 90849 found that this code accounts for approximately 0.058 percent of the total services billed on PHP claims in CY 2006. We also believe that the intended use of this code, which is for the reporting of multiple-family group therapy sessions, is not appropriate for our use under PHP because PHP care is centered on the beneficiary. As stated earlier, we believe that CPT code 90847 is the more appropriate code to use for PHP payment of family psychotherapy services because it provides for the conduct of individualized family psychotherapy with the patient present. Therefore, for CY 2009, we proposed to eliminate CPT code 90849 for use as a PHP code.

In addition, evaluation of the CY 2006 claims data found that CPT code 90899 accounted for approximately 0.095 percent of total services billed on PHP claims. Upon closer examination, we found that CPT code 90899 is predominantly used to bill for patient education services. This is an unlisted CPT procedure code and such CPT unlisted procedure codes are used to report unlisted psychiatric procedures that are not accurately described by any other more specific CPT codes. Because of our concerns about the type of services that may be billed using an unlisted CPT code and because a more appropriate code is currently available that better describes the patient education services for which PHP payment may be made, we proposed to eliminate PHP payment for CPT code 90899 in CY 2009. In the CY 2009 OPPS/ASC proposed rule (73 FR 41515), we further noted that eliminating unlisted CPT procedure codes is consistent with how other payment systems currently treat such codes, in that more specific coding is preferred over general coding.

In addition, we proposed to eliminate two group therapy CPT codes currently used in a PHP setting, 90853 (Group psychotherapy other than of a multiple-family group) and 90857 (Interactive group psychotherapy), and replace them with two new parallel timed HCPCS G-codes: GXXX1 (Group psychotherapy other than of a multiple-family group, in a partial hospitalization setting, approximately 45 to 50 minutes) (now identified as G0410); and GXXX2 (Interactive group psychotherapy, in a partial hospitalization setting, approximately 45 to 50 minutes) (now identified as G0411) (73 FR 41515). As most of the current PHP codes already include time estimates, we indicated in the CY 2009 OPPS/ASC proposed rule that we believe in order to maintain consistency with the existing HCPCS codes used in PHP, the group therapy codes should likewise include a time descriptor. We believe the time of 45 to 50 minutes for a group therapy session is reasonable as it approximately reflects the timing of group sessions in current clinical practices. Therefore, we proposed the two new timed HCPCS G-codes for PHP group therapies. As we noted in the CY 2009 OPPS/ASC proposed rule, both CPT codes 90853 and 90857 may still be used in a non-PHP setting.

Comment: Commenters generally supported the proposed PHP coding changes. Other commenters requested CMS to modify the original proposal and retain a couple of the codes. For example, the commenters agreed with eliminating CPT code 90899 (Unlisted psychiatric service or procedure); they believed removal is reasonable as the code is a generic code and is often misinterpreted by the payer. However, a few commenters opposed the elimination of CPT code 90846 (Family psychotherapy (without the patient present)), and suggested that there are times when family therapy without the patient is highly therapeutic and necessary. The commenters stated discussions with the family on how to handle potential volatile topics with the patient present could have an adverse effect on the patient's behavior.

Some commenters agreed with the removal of CPT code 90849 (Multi-family group psychotherapy). A few other commenters opposed the removal, stating that multigroup psychotherapy is especially beneficial in cases of addiction, as it impacts the entire family. A few commenters requested that CMS not replace the two existing group therapy CPT code 90853 and CPT 90857 with the two new timed G-codes because they believed that using G-codes may create programming and business operational issues and may be administratively burdensome for hospitals. The commenters further believed that the use of G-codes is not consistent with government and industry goals of data uniformity and consistency and, instead, recommended that CMS submit a code proposal to the AMA modifying the two existing group psychotherapy CPT codes 90853 and 90857 by adding the timed elements in their definitions and maintain only one set of codes for these services. Several commenters also believed that the new G-codes' time estimates are inadequate and requested the codes be extended to 60 to 90 minutes.

Response: We appreciate the support of the commenters for removal of CPT code 90899 and, therefore, are finalizing removal of this code from the PHP code set for CY 2009. Although CPT code 90899 will continue to be a billable mental health code, it will no longer be accepted as a PHP billable code. We also appreciate the commenters' support for the use of CPT code 90846 and believe the need for this code in specific clinical situations is valuable. While we remain concerned about therapy that excludes the patient, we agree that this code does have a narrow, although useful, scope. Therefore, CPT code 90846 will remain a billable PHP code. However, we will be monitoring the use of this code to ensure that the frequency of this code does not unduly increase.

We are finalizing the elimination of CPT code 90849 as proposed because we continue to believe that this code is not consistent with the intent of the statute that PHP treatment be focused on the patient's condition. We continue to believe CPT code 90849 focuses the service on the needs of the family and does not specifically focus therapeutic treatment on an individual patient. Therefore, although it will continue to be a billable mental health code, we are

finalizing our policy that CPT code 90849 will no longer be a PHP billable code.

After consideration of the public comments received concerning the creation of the two timed group psychotherapy G-codes, we continue to believe that we have a need to create and maintain G-codes when CPT codes are not available to meet our needs. Moreover, although we generally follow CPT guidelines, there are cases where the CPT system does not meet our payer needs for code specificity, payment and timeliness of assignment, and thus we assign HCPCS codes for those services. We acknowledge that there may be some administrative burden for providers to bill G-codes rather than CPT codes. However, we proposed to establish these two group therapy G-codes because existing CPT group therapy codes do not capture the time component that the proposed G-codes do and, therefore, we continue to believe that creation of G-codes in order to capture timed group psychotherapy visits is necessary. We continue to believe we defined the G-codes according to industry standard for group psychotherapy, allowing for 45 to 50 minutes of therapy with 10 to 15 minutes for documentation. Therefore, we are finalizing the proposed G-codes, with final assigned numbers as follows: G0410 (Group psychotherapy other than of a multiple-family group, in a partial hospitalization setting, approximately 45 to 50 minutes) and G0411 (Interactive group psychotherapy, in a partial hospitalization setting, approximately 45 to 50 minutes).

Lastly, as noted above, while we removed CPT code 90899 from the PHP billable code set, we did not intend to replace it with HCPCS code G0177 (Training and education services related to the care and treatment of patient's disabling mental health problems, per session (45 minutes or more)). HCPCS code G0177 is currently a valid HCPCS code for PHP and will remain a valid HCPCS code for billing patient education and training services in a PHP program. Although HCPCS code G0177 is a packaged code, it is the only valid HCPCS under PHP to bill patient education and training services. It was during data analysis for the CY 2009 OPPS/ASC proposed rule (73 FR 41515) that we observed some providers incorrectly billing patient and education services using CPT code 90899. To clarify, HCPCS code G0177 is the only valid PHP code to bill patient training and education services. We note that HCPCS code G0177 may also be used in a non-PHP setting.

In summary, after consideration of the public comments received, in this final rule with comment period, we are modifying the PHP billable code set to remove CPT codes 90899, 90853, and 90857 for CY 2009. We are retaining CPT code 90846 and adding two new timed G-codes: G0410 (Group psychotherapy other than of a multiple-family group, in a partial hospitalization setting, approximately 45 to 50 minutes) and G0411 (Interactive group psychotherapy in a partial hospitalization setting, approximately 45 to 50 minutes).

The table of billable PHP revenue and HCPCS codes originally published in the April 7, 2000 OPPS final rule with comment period (65 FR 18454) was updated and published in Transmittal 1487, Change Request 5999, dated April 8, 2008, and is currently located in the Medicare Claims Processing Manual, Pub. 100–04, Chapter 4, Section 260.1, which is available on the CMS Web site at: *http://www.cms.hhs.gov/manuals/downloads/clm104c04.pdf.* Table 38 below displays the revised list of billable PHP revenue codes and HCPCS codes shown in Transmittal 1487. This table also includes the four CPT codes that we are removing from the PHP code set for CY 2009 and the two new HCPCS G-codes we are adding to the PHP code set for CY 2009. The four CPT codes that we are removing are shown in the HCPCS code column with a line struck through each code. The two new HCPCS G-codes that we are adding are shown in the HCPCS code column, in the row with revenue code 0915 (Group Therapy). HCPCS code 90846 is shown as retained in the row with revenue code 0916 (Family Psychotherapy).

TABLE 38.--PARTIAL HOSPITALIZATION BILLABLE CODES

Revenue Code	Descriptor	HCPCS Code
043X	Occupational Therapy	G0129
0900	Behavioral Health Treatment/Services	90801 or 90802, ~~*90899*~~
0904	Activity Therapy	G0176
0910	Psychiatric General Services	90801, 90802, 90899 (Dates of Service prior to October 16, 2003)
0914	Individual Psychotherapy	90816, 90817, 90818, 90819, 90821, 90822, 90823, 90824, 90826, 90827, 90828, 90829, 90845, 90865, or 90880
0915	Group Therapy	~~*90849*, 90853, or 90857~~ G0410 or G0411
0916	Family Psychotherapy	90846 or 90847~~, or *90849*~~
0918	Psychiatric Testing	96101, 96102, 96103, 96116, 96118,96119, or 96120
0942	Education Training	G0177

D. Separate Threshold for Outlier Payments to CMHCs

In the November 7, 2003 final rule with comment period (68 FR 63469), we indicated that, given the difference in PHP charges between hospitals and CMHCs, we did not believe it was appropriate to make outlier payments to CMHCs using the outlier percentage target amount and threshold established for hospitals. There was a significant difference in the amount of outlier payments made to hospitals and CMHCs for PHP. In addition, further analysis indicated that using the same OPPS outlier threshold for both hospitals and CMHCs did not limit outlier payments to high cost cases and resulted in excessive outlier payments to CMHCs. Therefore, beginning in CY 2004, we established a separate outlier threshold

for CMHCs. For CYs 2004 and 2005, we designated a portion of the estimated 2.0 percent outlier target amount specifically for CMHCs, consistent with the percentage of projected payments to CMHCs under the OPPS in each of those years, excluding outlier payments. For CY 2006, we set the estimated outlier target at 1.0 percent and allocated a portion of that 1.0 percent, an amount equal to 0.6 percent (or 0.006 percent of total OPPS payments), to CMHCs for PHP outliers. For CY 2007, we set the estimated outlier target at 1.0 percent and allocated a portion of that 1.0 percent, an amount equal to 0.15 percent of outlier payments (or 0.0015 percent of total OPPS payments), to CMHCs for PHP outliers. For CY 2008, we set the estimated outlier target at 1.0 percent and allocated a portion of that 1.0 percent, an amount equal to 0.02 percent of outlier payments (or 0.0002 percent of total OPPS payments), to CMHCs for PHP outliers. The CY 2008 CMHC outlier threshold is met when the cost of furnishing services by a CMHC exceeds 3.40 times the PHP APC payment amount. The CY 2008 OPPS outlier payment percentage is 50 percent of the amount of costs in excess of the threshold.

The separate outlier threshold for CMHCs became effective January 1, 2004, and has resulted in more commensurate outlier payments. In CY 2004, the separate outlier threshold for CMHCs resulted in $1.8 million in outlier payments to CMHCs. In CY 2005, the separate outlier threshold for CMHCs resulted in $0.5 million in outlier payments to CMHCs. In contrast, in CY 2003, more than $30 million was paid to CMHCs in outlier payments. We believe this difference in outlier payments indicates that the separate outlier threshold for CMHCs has been successful in keeping outlier payments to CMHCs in line with the percentage of OPPS payments made to CMHCs.

As noted in section II.F. of this final rule with comment period, for CY 2009, we proposed to continue our policy of setting aside 1.0 percent of the aggregate total payments under the OPPS for outlier payments. We proposed that a portion of that 1.0 percent, an amount equal to 0.07 percent of outlier payments (or 0.0007 percent of total OPPS payments), would be allocated to CMHCs for PHP outliers. As discussed in section II.F. of this final rule with comment period, we again proposed to set a dollar threshold in addition to an APC multiplier threshold for OPPS outlier payments. However, because the PHP APC is the only APC for which CMHCs may receive payment under the OPPS, we would not expect to redirect outlier payments by imposing a dollar threshold. Therefore, we did not propose to set a dollar threshold for CMHC outliers. As noted in section II.F. of this final rule with comment period, we proposed to set the outlier threshold for CMHCs for CY 2009 at 3.40 times the APC payment amount and the CY 2009 outlier payment percentage applicable to costs in excess of the threshold at 50 percent.

Comment: A few commenters indicated that they are in favor of eliminating the outlier payments for CMHCs and returning the money in order to possibly increase the base for the PHP payments.

Response: We note that section 1833(t)(5) of the Act requires an outlier policy for covered HOPD services. Partial hospitalization program services are covered HOPD services. Because CMHCs are a provider of PHP services, outlier payments must be provided for them in accordance with the statute. Therefore, until the statute is changed to eliminate the statutory requirement for outlier payments that will affect payment to CMHCs, we are maintaining the current outlier threshold for CMHCs. We would anticipate that if the outlier authority were removed, all OPPS providers, not just CMHCs, would be affected.

As discussed in section II.F of this final rule with comment period, using more recent data for this final rule with comment period, we set the target for hospital outpatient outlier payments at 1.0 percent of total estimated OPPS payments. We allocated a portion of that 1.0 percent, and amount equal to 0.12 percent of outlier payments and 0.0012 percent of total estimated OPPS payments to CMHCs for PHP outliers. For CY 2009, as proposed, we are setting the outlier threshold at 3.40 times the APC amount and CY 2009 outlier percentage applicable to costs in excess of the threshold at 50 percent.

After considering the public comment received, and as noted above, we are finalizing our CY 2009 proposal to set a separate outlier threshold for CMHCs.

XI. Procedures That Will Be Paid Only as Inpatient Procedures

A. Background

Section 1833(t)(1)(B)(i) of the Act gives the Secretary broad authority to determine the services to be covered and paid for under the OPPS. Before implementation of the OPPS in August 2000, Medicare paid reasonable costs for services provided in the HOPD. The claims submitted were subject to medical review by the fiscal intermediaries to determine the appropriateness of providing certain services in the outpatient setting. We did not specify in regulations those services that were appropriate to provide only in the inpatient setting and that, therefore, should be payable only when provided in that setting.

In the April 7, 2000 final rule with comment period (65 FR 18455), we identified procedures that are typically provided only in an inpatient setting and, therefore, would not be paid by Medicare under the OPPS. These procedures comprise what is referred to as the ''inpatient list.'' The inpatient list specifies those services that are only paid when provided in an inpatient setting because of the nature of the procedure, the underlying physical condition of the patient, or the need for at least 24 hours of postoperative recovery time or monitoring before the patient can be safely discharged. As we discussed in that rule and in the November 30, 2001 final rule (66 FR 59856), we may use any of the following criteria when reviewing procedures to determine whether or not they should be moved from the inpatient list and assigned to an APC group for payment under the OPPS:

- Most outpatient departments are equipped to provide the services to the Medicare population.
- The simplest procedure described by the code may be performed in most outpatient departments.
- The procedure is related to codes that we have already removed from the inpatient list.

In the November 1, 2002 final rule with comment period (67 FR 66741), we added the following criteria for use in reviewing procedures to determine whether they should be removed from the inpatient list and assigned to an APC group for payment under the OPPS:

- We have determined that the procedure is being performed in numerous hospitals on an outpatient basis; or
- We have determined that the procedure can be appropriately and safely performed in an ASC, and is on the list of approved ASC procedures or has been proposed by us for addition to the ASC list.

We believe that these additional criteria help us to identify procedures that are appropriate for removal from the inpatient list.

The list of codes that we proposed to be paid by Medicare in CY 2009 only as inpatient procedures were included as Addendum E to the CY 2009 OPPS/ASC proposed rule.

B. Changes to the Inpatient List

For the CY 2009 OPPS, we used the same methodology as described in the November 15, 2004 final rule with comment period (69 FR 65835) to identify a subset of procedures currently on the inpatient list that are being performed a significant amount of the time on an outpatient basis. These procedures were then clinically reviewed for possible removal from the inpatient list. As discussed in the CY 2009 OPPS/ASC proposed rule (73 FR 41517), we solicited the APC Panel's input at its March 2008 meeting on the appropriateness of removing the following six CPT codes from the CY 2009 OPPS inpatient list: 21172 (Reconstruction superior-lateral orbital rim and lower forehead, advancement or alteration, with or without grafts (includes obtaining autografts)); 21386 (Open treatment of orbital floor blowout fracture; periorbital approach); 21387 (Open treatment of orbital floor blowout fracture; combined approach); 27479 (Arrest, epiphyseal, any method (eg, epiphysiodesis); combined distal femur, proximal tibia and fibula); 54535 (Orchiectomy, radical, for tumor; with abdominal exploration); and 61850 (Twist drill or burr hole(s) for implantation of neurostimulator electrodes, cortical).

In addition to presenting to the APC Panel the six candidate procedures that we believed could be appropriate for removal from the inpatient list for CY 2009, we also presented utilization data for two procedures, specifically CPT code 64818 (Sympathectomy, lumbar) and CPT code 20660 (Application of cranial tongs caliper, or stereotactic frame, including removal (separate procedure)) that were discussed as possible procedures for removal from the inpatient list during the March 2007 APC Panel meeting. At that meeting, the APC Panel recommended that we obtain additional utilization data for these two procedures for its consideration at the winter 2009 meeting.

Following discussion at the March 2008 APC Panel meeting, the APC Panel recommended that CMS remove from the inpatient list four of the six procedures (presented as candidates for removal from the list), specifically CPT codes 21172, 21386, 21387, and 27479, and one of the two codes for which additional utilization data had been presented, specifically CPT code 20660. The APC Panel also recommended that CMS seek input from relevant physician specialty groups on the removal of two of the six procedures (presented to them as possible candidates for removal from the inpatient list), CPT codes 54535 and 61850. The APC Panel made no recommendation regarding removal of CPT code 64818 from the inpatient list after review of the additional data presented. For CY 2009, we proposed to remove all of the codes except for CPT code 64818 from the inpatient list that were presented to the APC Panel as candidates for removal during its March 2008 meeting and, as recommended by the APC Panel, specifically solicited public comment on the proposed removal of CPT codes 54535 and 61850 from the inpatient list.

In addition to the procedures discussed at the APC Panel's March 2008 meeting, we also reviewed and proposed to remove three procedures from the inpatient list that commenters on the CY 2008 OPPS/ASC proposed rule had requested to be removed. As indicated in the CY 2009 OPPS/ASC proposed rule (73 FR 41517), we believe that these procedures are appropriate for removal from the inpatient list and specifically solicited public comment on our proposal to remove the following three procedures: CPT codes 27886 (Amputation, leg, through tibia and fibula; reamputation); 43420 (Closure of esophagostomy or fistula; cervical approach); and 50727 (Revision of urinary-cutaneous anastomosis (any type urostomy)).

Furthermore, during the APC Panel's March 2008 meeting, a meeting attendee requested removal of several CPT codes from the inpatient list. The attendee's verbal request was followed by written correspondence in which the stakeholder requested that we remove five additional procedures from the inpatient list for CY 2009. These procedures were: CPT code 50580 (Renal endoscopy through nephrotomy or pyelotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with removal of foreign body or calculus); CPT code 51845 (Abdomino-vaginal vesical neck suspension, with or without endoscopic control (e.g., Stamey, Raz, modified Pereyra); CPT code 51860 (Cystorrhaphy, suture of bladder wound, injury or rupture; simple); CPT code 54332 (One stage proximal penile or penoscrotal hypospadias repair requiring extensive dissection to correct chordee and urethroplasty by use of skin graft tube and/or island flap); and CPT code 54336 (One stage perineal hypospadias repair requiring extensive dissection to correct chordee and urethroplasty by use of skin graft tube and/or island flap). Based on our utilization data and clinical review, we proposed to remove one of these procedures from the inpatient list, specifically CPT code 54332, and noted that effective January 1, 2008, CPT code 50580 was removed from the inpatient list and assigned to APC 0161.

At its August 2008 meeting, the APC Panel recommended that we remove three of the procedures that were proposed for removal from the inpatient list, CPT codes 50727, 54332, and 54535, and three additional procedures that were discussed at the meeting in a public presentation. The three additional procedures were CPT codes 51845, 51860, and 54336, codes that were first brought to our attention after the March 2008 APC Panel meeting in the stakeholder letter discussed earlier in this section.

Consistent with our established policy for removing procedures from the inpatient list, we rely on recommendations from the public and the APC Panel, combined with our utilization data and review by CMS medical advisors, to determine which procedures are candidates for removal. We believe that our policy of proposing the procedures for removal and soliciting comments from the public, which includes physician specialty societies, is the most appropriate process to receive input from the public on this issue. Rather than solicit approval from a select group (for example, specific physician specialty societies), we believe that solicitation of comments from all interested parties is more consistent with meeting our obligation to the public regarding outpatient services provided by hospitals. Therefore, as noted in the CY 2009 OPPS/ASC proposed rule (73 FR 41517), we accepted both recommendations of the APC Panel from its March 2008 meeting regarding the inpatient list and (1) proposed to remove the five specific procedures the APC Panel recommended for removal (CPT codes 21172, 21386, 21387, 27479, and 20660) and (2) sought input from relevant professional societies regarding our CY 2009 proposal to remove from the inpatient list CPT codes 54535 and 61850.

Comment: One commenter expressed concerns about the proposed removal of CPT codes 27886 and 54535 from the inpatient list. The commenter stated that there is uncertainty about whether these procedures can be safely performed in an outpatient setting and asked that CMS reconsider the proposed removal of these two procedures. Another commenter supported the proposed removal of CPT code 54535 from the inpatient list.

A few commenters recommended that CMS not remove CPT code 61850 from the inpatient list. One of the

commenters reported that the procedure requires careful observation for hemorrhaging, and expressed the opinion that the procedure should be performed only on an inpatient basis.

Response: Because of the concerns raised by the commenters, we reevaluated CPT codes 27886, 54535, and 61850 in light of the commenters' recommendations combined with our review of updated utilization data and the clinical judgment of our medical advisors. For CPT codes 27886 and 61850, the updated physician billing data for all sites of service indicate that the inpatient utilization for these two CPT codes is higher than their outpatient utilization. In addition, as noted earlier, a commenter has indicated that there is some degree of uncertainty as to whether CPT code 27886 can be performed safely in an outpatient setting. With regard to CPT code 61850, the commenters contended that this procedure cannot be performed safely on an outpatient basis. As stated earlier, one of the commenters indicated that there is a risk of hemorrhaging associated with this procedure. Therefore, based on our reevaluation of CPT codes 27886 and 61850, we agree with the commenters and are not finalizing our proposal to remove these two procedures from the inpatient list for CY 2009.

In reevaluating CPT code 54535 for removal from the inpatient list, we took several additional factors into consideration. First, according to our updated physician billing utilization data, the outpatient utilization for this procedure is somewhat higher than the inpatient utilization. Second, when we presented this procedure to the APC Panel as a possible candidate for removal from the inpatient list at its March 2008 meeting and again at its August 2008 meeting, the APC Panel first requested that we seek stakeholder input on removing CPT code 54535 from the inpatient list at its March meeting and then provided a specific recommendation at its August meeting to remove CPT code 54535 from the inpatient list for CY 2009. Finally, we note that commenters were split in their opinion to remove CPT code 54535 from the inpatient list, with one commenter concerned about the safety of performing this procedure in the outpatient setting while the other commenter supported its removal from the inpatient list. Based on our reevaluation of CPT code 54535, we continue to believe that this procedure can be safely performed in the outpatient setting and we are removing it from the inpatient list for CY 2009.

Comment: One commenter supported CMS' proposal to remove CPT codes 21386 and 21387 from the inpatient list and requested that CMS also remove CPT code 21385 (Open treatment of orbital floor blowout fracture; transantral approach (Caldwell-Luc operation)) from the inpatient list. The commenter pointed out that it was questionable why CMS would propose to remove CPT codes 21386 and 21387 from the inpatient list, but not also remove CPT code 21385 from the inpatient list for CY 2009.

Response: We appreciate the commenter's support for our proposal to remove CPT codes 21386 and 21387 from the CY 2009 inpatient list. We are removing these two procedures from the CY 2009 inpatient list as proposed.

With regard to CPT code 21385, that procedure is not currently on the inpatient list. For CY 2008, CPT code 21385 is assigned to APC 0256 (Level V ENT Procedures). For CY 2009, CPT code 21385 is retained in APC 0256, which we have retitled (Level VI ENT Procedures), and to which CPT codes 21386 and 21387 are assigned.

Comment: One commenter requested that CMS remove CPT code 0184T (Excision of rectal tumor, transanal endoscopic microsurgical approach (i.e., TEMS)) from the inpatient list. The commenter stated that the procedure is minimally invasive and is comparable to CPT code 45170 (Excision of rectal tumor, transanal approach), which is not on the inpatient list.

Response: We consulted with our medical advisors in reevaluating CPT code 0184T for removal from the inpatient list. We note that this CPT code was implemented on January 1, 2008, and was approved by the CPT Editorial Panel in the prior year. When the service was reviewed by the CPT Editorial Panel based on a request for a new CPT code, the procedure was described as requiring a full thickness excision of the rectal wall, with a typical site of service in the inpatient setting and not the HOPD. We have no utilization data for this procedure but, based on the clinical judgment of our medical advisors and the recent deliberations in establishing this new CPT code, we believe that this procedure should remain on the inpatient list.

Comment: One commenter supported CMS' proposal to remove CPT codes 54332 and 50727 from the inpatient list and further recommended that CMS also remove CPT codes 51845, 51860, and 54336 from the inpatient list for CY 2009.

Response: We appreciate the commenter's support. After reevaluating these five CPT codes for payment under the OPPS in CY 2009, we continue to agree that CPT codes 54332 and 50727 can be appropriately performed in the HOPD, consistent with our proposal and the APC Panel's August 2008 recommendation in support of their removal from the inpatient list, and that CPT codes 51845, 51860, and 54336, as recommended by the APC Panel in August 2008, can be safely performed on Medicare beneficiaries in the outpatient setting. Therefore, for CY 2009, we are removing all five of these CPT codes from the inpatient list.

Comment: Many commenters suggested that CMS eliminate the inpatient list and gave several reasons why it should be eliminated. They stated that there was inconsistency between the Medicare payment policies for hospitals and physicians related to performance of inpatient procedures in the HOPD that allows physicians to receive full payment for inpatient procedures that are performed on beneficiaries who are not inpatients but denies hospitals payment for those same procedures. They noted that under, current payment policy, physicians have little incentive to avoid providing inpatient procedures to beneficiaries who are outpatients. The commenters argued that there are a variety of circumstances that result in procedures on the inpatient list being performed without an inpatient admission. For example, they explained that sometimes during the intraoperative period, due to clinical circumstances, the surgeon performs a procedure that is on the inpatient list rather than the procedure that was planned. Further, they asserted that because the inpatient list changes every year, physicians may not always be aware that a particular procedure is on the inpatient list. Finally, some commenters contended that the decision about whether the beneficiary should be an inpatient for surgery should be left to the surgeon and should not be regulated by CMS. They pointed out the many safety provisions that are met by hospitals participating in the Medicare program as evidence that hospitals would provide care safely and appropriately.

Response: We appreciate the comments and understand the commenters' reasons for advocating the elimination of the inpatient list. However, we continue to believe that the inpatient list serves an important purpose in identifying procedures that cannot be safely and effectively provided to Medicare beneficiaries in the HOPD. We are concerned that elimination of the inpatient list could result in unsafe or uncomfortable care

for Medicare beneficiaries. Therefore, we are not discontinuing our use of the inpatient list at this time.

In addition to the above concerns about differences in physician and hospital outpatient payment policy, hospitals have expressed ongoing concerns related to inpatient procedures being performed inappropriately for beneficiaries who are not inpatients and that, as a result, beneficiaries may be liable for the charges for the services. We believe that it is the responsibility of physicians and hospitals to know which procedures are on the inpatient list.

We also are concerned about the potential results of eliminating the inpatient list on beneficiary liability. For instance, we are concerned that, without the inpatient list, beneficiaries could experience longer stays in observation units after some procedures. The APC Panel has discussed its concern with extended time in observation units, frequently exceeding 24 hours. We know that it is not unusual in such cases for the beneficiary to be unaware of his or her outpatient status, which typically means he or she incurs higher out-of-pocket costs. Moreover, the financial liability for OPPS copayments for complex surgical procedures and long periods in the HOPD differs significantly from a beneficiary's inpatient cost-sharing responsibilities.

Comment: In addition to requesting elimination of the inpatient list, a few commenters suggested that if CMS chooses to maintain the list that CMS should establish an appeal process to address those circumstances in which OPPS payment for a service provided on an outpatient basis is denied because it is on the inpatient list. The commenters believed that if CMS maintains the inpatient list that there should be a mechanism by which payment could still be made in some cases. For instance, commenters suggested an appeal process that would allow hospitals to submit information to explain the unusual circumstances that necessitated performance of an inpatient procedure for a beneficiary who is an outpatient.

Response: We appreciate the commenters' suggestions. We intend to continue to encourage physicians' awareness of the implications for beneficiaries and hospitals of performing the inpatient list procedures on beneficiaries who are not inpatients. We do not plan to adopt a specific appeals process for claims related to inpatient list procedures performed in the HOPD at this time. The existing established processes for a beneficiary or provider to appeal a specific claim remain in effect.

Comment: One commenter suggested that CMS implement a method by which the ancillary services related to unscheduled inpatient procedures performed on an outpatient basis could be recognized for payment. The commenter asserted that due to hospital billing practices, hospital coding staff do not know until well after the surgery is complete that an unscheduled inpatient procedure was performed on an outpatient who was not admitted as an inpatient. The commenter requested that CMS create a modifier that hospitals could append to the HCPCS codes for unscheduled inpatient procedures that would enable CMS to recognize and pay for the ancillary services associated with them, comparable to the –CA modifier that addresses situations where a procedure on the OPPS inpatient list must be performed to resuscitate or stabilize a patient (whose status is that of an outpatient) with an emergent, life-threatening condition, and the patient dies before being admitted as an inpatient.

Response: We thank the commenter for the suggestion but do not believe there is a need for a specific modifier to identify unscheduled outpatient performance of inpatient procedures on Medicare beneficiaries. We continue to believe that the inpatient list procedures are not appropriate for performance in the HOPD, and therefore, we expect that when such a procedure is performed on a Medicare beneficiary, the patient would be admitted as an inpatient. We established payment for ancillary services reported in association with an inpatient procedure to which the –CA modifier is appended in order to provide payment to hospitals for services provided in those rare cases when the patient dies before being admitted as an inpatient. In these situations, hospitals are absolutely unable to admit these patients. In the circumstances described by the commenter concerning unscheduled inpatient procedures in the HOPD, we do not believe it would be appropriate to make payment under the OPPS for ancillary services that are provided in association with a procedure that we have designated as only safe for performance on inpatients, and we see no insurmountable hospital barriers to admitting those patients as inpatients of the hospital. We understand hospitals' dilemma when the decision is made intraoperatively to perform an unscheduled procedure. However, we continue to believe that it is very important for hospitals to educate physicians on Medicare services paid under the OPPS to avoid inadvertently providing services in a hospital outpatient setting that would be paid only during an inpatient stay because we believe that the HOPD is not an appropriate site of service for the procedures.

After consideration of the public comments received, we are modifying our CY 2009 proposal to remove 12 CPT codes from the inpatient list. The final list of 12 procedures that we are removing from the inpatient list for CY 2009 is displayed in Table 39 below. The table shows each CPT code and the APC to which the procedure is assigned for OPPS payment in CY 2009. Also, as stated earlier in this section, we will present data regarding CPT codes 20660 and 64818 to the APC Panel at its first CY 2009 meeting. Therefore, in this final rule with comment period, we are accepting the APC Panel's August 2008 recommendation to remove CPT codes 51845, 51860, and 54336 from the inpatient list for CY 2009. We also are accepting the APC Panel's August 2008 recommendation which supported our proposal to remove CPT codes 50727, 54332, and 54535 from the inpatient list for CY 2009.

TABLE 39—HCPCS CODES REMOVED FROM THE INPATIENT LIST AND THEIR APC ASSIGNMENTS FOR CY 2009

CY 2009 HCPCS Code	CY 2009 Long descriptor	Final CY 2009 APC	Final CY 2009 SI
20660	Application of cranial tongs caliper, or stereotactic frame, including removal (separate procedure).	0138	T
21172	Reconstruction superior-lateral orbital rim and lower forehead, advancement or alteration, with or without grafts (includes obtaining autografts).	0256	T

TABLE 39—HCPCS CODES REMOVED FROM THE INPATIENT LIST AND THEIR APC ASSIGNMENTS FOR CY 2009—Continued

CY 2009 HCPCS Code	CY 2009 Long descriptor	Final CY 2009 APC	Final CY 2009 SI
21386	Open treatment of orbital floor blowout fracture; periorbital approach.	0256	T
21387	Open treatment of orbital floor blowout fracture; combined approach.	0256	T
27479	Arrest, epiphyseal, any method (eg, epiphysiodesis); combined distal femur proximal tibia and fibula.	0050	T
43420	Closure of esophagostomy or fistula; cervical approach	0254	T
50727	Revision of urinary-cutaneous anastomosis (any type urostomy)	0165	T
51845	Abdomino-vaginal vesical neck suspension, with or without endoscopic control (eg, Stamey, Raz, modified Pereyra).	0202	T
51860	Cystorrhaphy, suture of bladder wound, injury or rupture; simple	0162	T
54332	One stage proximal penile or penoscrotal hypospadias repair requiring extensive dissection to correct chordee and urethroplasty by use of skin graft tube and/or island flap.	0181	T
54336	One stage perineal hypospadias repair requiring extensive dissection to correct chordee and urethroplasty by use of skin graft tube and/or island flap.	0181	T
54535	Orchiectomy, radical, for tumor; with abdominal exploration	0181	T

XII. OPPS Nonrecurring Technical and Policy Changes and Clarifications

A. Physician Supervision of HOPD Services

In the CY 2009 OPPS/ASC proposed rule (73 FR 41518), we provided a restatement and clarification of the requirements for physician supervision of diagnostic and therapeutic hospital outpatient services that were set forth in the April 7, 2000 OPPS final rule with comment period (65 FR 18524 through 18526).

As we stated before, section 1861(s)(2)(C) of the Act authorizes payment for diagnostic services that are furnished to a hospital outpatient for the purpose of diagnostic study. We have further defined the requirements for diagnostic services furnished to hospital outpatients, including requirements for physician supervision of diagnostic services, in §§ 410.28 and 410.32 of our regulations. Section 410.28(e) states that Medicare Part B will make payment for diagnostic services furnished at provider-based departments of hospitals ''only when the diagnostic services are furnished under the appropriate level of physician supervision specified by CMS in accordance with the definitions in §§ 410.32(b)(3)(i), (b)(3)(ii), and (b)(3)(iii).'' In addition, in the April 7, 2000 OPPS final rule with comment period (65 FR 18526), we stated that our model for the requirement was the requirement for physician supervision of diagnostic tests payable under the MPFS that was set forth in the CY 1998 MPFS final rule (62 FR 59048) that was published in the **Federal Register** on October 31, 1998. We also explained with respect to the supervision requirements for individual diagnostic tests that we intended to instruct hospitals and fiscal intermediaries to use the MPFS as a guide pending issuance of updated requirements. For diagnostic services not listed in the MPFS, we stated that fiscal intermediaries, in consultation with their medical directors, would define appropriate supervision levels in order to determine whether claims for these services are reasonable and necessary. We have not subsequently issued new requirements for the physician supervision of diagnostic tests in provider-based departments of hospitals. Instead, we have continued to follow the supervision requirements for individual diagnostic tests as listed in the Physician Fee Schedule Relative Value File. The file is updated quarterly and is available on the CMS Web site at *http://www.cms.hhs.gov/PhysicianFeeSched/.*

Section 1861(s)(2)(B) of the Act authorizes payment for hospital services ''incident to physicians'' services rendered to outpatients.'' We have further defined the requirements for outpatient hospital therapeutic services and supplies ''incident to'' a physician's service in § 410.27 of our regulations. More specifically, § 410.27(f) states, ''Services furnished at a department of a provider, as defined in § 413.65(a)(2) of this subchapter, that has provider-based status in relation to a hospital under § 413.65 of this subchapter, must be under the direct supervision of a physician. 'Direct supervision' means the physician must be present and on the premises of the location and immediately available to furnish assistance and direction throughout the performance of the procedure. It does not mean that the physician must be present in the room when the procedure is performed.'' This language makes no distinction between on-campus and off-campus provider-based departments.

However, in the preamble of the April 7, 2000 OPPS final rule with comment period (68 FR 18525), we further discussed the requirement for physician supervision and the finalization of the proposed regulation text. In that discussion, we stated that the language of § 410.27(f) ''applies to services furnished at an entity that is located off the campus of a hospital that we designate as having provider-based status as a department of a hospital in accordance with § 413.65.'' We also stated that, for services furnished in a department of a hospital that is located on the campus of a hospital, ''we assume the direct supervision requirement to be met as we explain in section 3112.4(a) of the Intermediary Manual.'' We further stated that ''we assume the physician supervision requirement is met on hospital premises because staff physicians would always be nearby within the hospital.''

As we explained in the CY 2009 OPPS/ASC proposed rule (73 FR 41519), we restated the existing policy because we were concerned that some stakeholders may have misunderstood our use of the term ''assume'' in the April 7, 2000 OPPS final rule with comment period, believing that our statement meant that we do not require any supervision in the hospital or in an on-campus provider-based department for therapeutic OPPS services, or that we only require general supervision for those services. This is not the case. It

has been our expectation that hospital outpatient therapeutic services are provided under the direct supervision of physicians in the hospital and in all provider-based departments of the hospital, specifically both on-campus and off-campus departments of the hospital. The expectation that a physician would always be nearby predates the OPPS and is related to the statutory authority for payment of hospital outpatient services—that Medicare makes payment for hospital outpatient services ''incident to'' the services of physicians in the treatment of patients as described in section 1861(s)(2)(B) of the Act. Longstanding hospital outpatient policy language states that ''the services and supplies must be furnished as an integral though incidental part of the physicians' professional services in the course of treatment of an illness or injury.'' We refer readers to § 410.27(a) of our regulations and to the Medicare Benefit Policy Manual, Pub. 100–2, Chapter 6, Section 20.5.1, for further description of hospital outpatient services incident to a physician's service. The Medicare Benefit Policy Manual also states in Chapter 6, Section 20.5.1, that services and supplies must be furnished on a physician's order and delivered under physician supervision. However, the manual indicates further that each occasion of a service by a nonphysician does not need to also be the occasion of the actual rendition of a personal professional service by the physician responsible for the care of the patient. Nevertheless, as stipulated in that same section of the manual ''during any course of treatment rendered by auxiliary personnel, the physician must personally see the patient periodically and sufficiently often enough to assess the course of treatment and the patient's progress and, where necessary, to change the treatment regimen.''

The expectation that a physician would always be nearby also dates back to a time when inpatient hospital services provided in a single hospital building represented the majority of hospital payments by Medicare. Since that time, advances in medical technology, changes in the patterns of health care delivery, and changes in the organizational structure of hospitals have led to the development of extensive hospital campuses, sometimes spanning several city blocks, as well as off-campus and satellite provider-based campuses at different locations. In the April 7, 2000 OPPS final rule with comment period (65 FR 18525), we described the focus of the direct physician supervision requirement on off-campus provider-based departments. We will continue to emphasize the physician supervision requirement for off-campus provider-based departments. However, we note that if there were problems with outpatient care in a hospital or in an on-campus provider-based department where direct supervision was not in place (that is, the expectation of direct physician supervision was not met), we would consider that to be a quality concern. We want to ensure that OPPS payment is made for high quality hospital outpatient services provided to beneficiaries in a safe and effective manner and consistent with Medicare requirements.

The definition of direct supervision in § 410.27(f) requires that the physician must be present and on the premises of the location and immediately available to furnish assistance and direction throughout the performance of the procedure. In the April 7, 2000 OPPS final rule with comment period (65 FR 18525), we define ''on the premises of the location'' by stating ''* * * a physician must be present on the premises of the entity accorded status as a department of the hospital and therefore, immediately available to furnish assistance and direction for as long as patients are being treated at the site.'' We also stated that this does not mean that the physician must be physically in the room where a procedure or service is furnished. Although we have not further defined the term ''immediately available'' for this specific context, the lack of timely physician response to a problem in the HOPD would represent a quality concern from our perspective that hospitals should consider in structuring their provision of services in ways that meet the direct physician supervision requirement for HOPD services.

Comment: Several commenters supported the clarification that was provided as a clear and warranted safeguard to individuals being served in on-campus and off-campus departments of hospitals. One commenter was concerned that the restatement and clarification of policy included in the proposed rule would interfere with its ability to provide services in PHP programs and rural CMHCs and stated that ''the current policy is appropriate.'' Another commenter stated that the clarification of policy would cause hospitals to incur significant costs and would result in physician contractual problems and suggested that CMS conduct a study to better understand outpatient settings and the physician supervision currently available to them.

Response: We agree with many of the commenters that appropriate supervision is a key aspect of the delivery of safe and high quality hospital outpatient services to Medicare beneficiaries. As for the concerns of commenters related to hospital staffing and costs, we note that the discussion in the CY 2009 OPPS proposed rule was not a proposed change in policy but was an intended clarification to assist providers who may have misunderstood the policy in the past.

Comment: One commenter requested clarification about whether a nonphysician practitioner can provide supervision of ''incident to'' services in the hospital outpatient setting when the ''incident to service'' is within the practitioner's scope of practice.

Response: According to section 1861(r) of the Act, ''[t]he term 'physician' '', when used in connection with the performance of any function or action, means (1) a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he performs such function or action * * *; (2) a doctor of dental surgery or of dental medicine * * *; (3) a doctor of podiatric medicine * * *; (4) a doctor of optometry * * *; or (5) a chiropractor. In addition, the conditions of participation for hospitals under § 482.12(c)(1)(i) through (c)(1)(vi) of our regulations require that every Medicare patient is under the care of a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, a chiropractor, or a clinical psychologist; each practicing within the extent of the Act, the Code of Federal Regulations, and State law. Further, § 482.12(c)(4) of our regulations requires that a doctor of medicine or osteopathy must be responsible for the care of each Medicare patient with respect to any medical or psychiatric condition that is present on admission or develops during hospitalization and is not specifically within the scope of practice of one of the other practitioners listed in § 482.12(c)(1)(ii) through (c)(1)(vi). Also, section 1861(s)(2)(B) of the Act authorizes payment for hospital services ''incident to physicians' '' services rendered to outpatients.'' We have further defined the requirements for outpatient hospital therapeutic services and supplies ''incident to'' a physician's service in § 410.27 of our regulations. Section 410.27(a)(1)(ii) describes payment for hospital outpatient services when they are ''an integral though incidental part of a physician's services.'' Also, § 410.27(f) requires that hospital outpatient services provided in

provider-based departments must be under the direct supervision of a physician. Direct supervision is defined in this paragraph: ''Direct supervision means that the physician must be present and on the premises of the location and immediately available to furnish assistance and direction throughout the performance of the procedure. It does not mean that the physician must be present in the room when the procedure is performed.'' The language of the statute and regulations does not include other nonphysician practitioners. Therefore, it would not be in accordance with the law and regulations for a nonphysician practitioner to be providing the physician supervision in a provider-based department, even if a nurse practitioner's or a physician assistant's professional service was being billed as a nurse practitioner or a physician assistant service and not a physician service.

Comment: One commenter requested clarification of the supervision required for diagnostic services provided in a department of a hospital that is located on the hospital campus.

Response: As explained above, § 410.28(e) of our regulations states that Medicare Part B will make payment for diagnostic services furnished at provider-based departments of hospitals ''only when the diagnostic services are furnished under the appropriate level of physician supervision specified by CMS in accordance with the definitions in §§ 410.32(b)(3)(i), (b)(3)(ii), and (b)(3)(iii).'' We also explained that we have continued to follow the supervision requirements for individual diagnostic tests as listed in the Physician Fee Schedule Relative Value File, updated quarterly and maintained on the CMS Web site as shown above. For diagnostic services not listed in the MPFS, Medicare contractors, in consultation with their medical directors, would define appropriate supervision levels in order to determine whether claims for these services are reasonable and necessary. Section 410.28(e) does not distinguish between on-campus and off-campus provider-based departments. Therefore, all provider-based departments providing diagnostic services, whether on or off the hospital's main campus, should follow the requirements of the MPFS or their Medicare contractor, as appropriate, for individual diagnostic services.

Comment: Several commenters provided specific hypothetical scenarios related to the location of the physician and asked whether these situations would meet the definition of direct supervision. One commenter asked for further clarification regarding the supervision level required for specific services.

Response: As stated above and in the CY 2009 OPPS/ASC proposed rule, we require direct supervision for therapeutic services provided in the hospital or in provider-based departments of the hospital. For diagnostic services furnished in provider-based departments, the MPFS level of supervision is applied or the Medicare contractor determines the level of supervision required for services not listed in the MPFS. The definition of direct supervision in § 410.27(f) requires that the physician must be present and on the premises of the location and immediately available to furnish assistance and direction throughout the performance of the procedure. In the April 7, 2000 OPPS final rule with comment period (65 FR 18525), we further clarified that ''on the premises of the location'' means that the physician must be present on the premises of the entity accorded status as a department of the hospital. This means that the physician must be present in the provider-based department. As we explained in the April 7, 2000 final rule with comment period (65 FR 18526), the direct supervision requirement for provider-based departments of hospitals was taken from and parallels the definition of direct supervision in § 410.32(b)(3)(ii), which requires that the physician must be present in the office suite.

Comment: A number of commenters requested that CMS change the level of physician supervision listed in the MPFS for CPT code 77421 (Stereoscopic X-Ray guidance for localization of target volume for the delivery of radiation therapy) from personal supervision to direct supervision.

Response: Changes to supervision requirements for specific CPT codes under the MPFS are outside of the scope of this CY 2009 OPPS/ASC final rule with comment period. We have referred these comments to the appropriate CMS component and would encourage individuals to work with the appropriate specialty society to bring future requests to CMS' attention.

In summary, direct physician supervision is the standard set forth in the April 7, 2000 OPPS final rule with comment period for supervision of hospital outpatient therapeutic services covered and paid by Medicare in hospitals and provider-based departments of hospitals. While we have emphasized and will continue to emphasize the direct supervision requirement for off-campus provider-based departments, we do expect direct physician supervision of all hospital outpatient therapeutic services, regardless of their on-campus or off-campus location. Appropriate supervision is a key aspect of the delivery of safe and high quality hospital outpatient services that are paid based on the statutory authority of the OPPS.

B. Reporting of Pathology Services for Prostate Saturation Biopsy

Prostate saturation biopsy is a technique currently described by Category III CPT code 0137T (Biopsy, prostate, needle, saturation sampling for prostate mapping). Typically this service entails obtaining 40 to 80 core samples from the prostate under general anesthesia. The samples are reviewed by a pathologist, and the pathology service is reported with CPT code 88305 (Level IV—Surgical pathology, gross and microscopic examination). Since the beginning of the OPPS, Medicare has paid for the gross and microscopic pathology examination of prostate biopsy specimens using CPT code 88305. This CPT code has been paid separately under the OPPS and assigned to APC 0343 (Level III Pathology) with status indicator ''X'' since August 2000. For CY 2008, CPT code 88305 is assigned to APC 0343 with a payment rate of approximately $33.

In view of the large number of samples that are taken from a single body organ during prostate saturation biopsy and that must undergo gross and microscopic examination by a pathologist, in the CY 2009 OPPS/ASC proposed rule (73 FR 41519 through 41520), we proposed to recognize four new more specific Level II HCPCS G-codes under the CY 2009 OPPS for these pathology services, consistent with the CY 2009 proposal for the MPFS. The proposed HCPCS codes were: GXXX1 (Surgical pathology, gross and microscopic examination for prostate needle saturation biopsy sampling, 1–20 specimens); GXXX2 (Surgical pathology, gross and microscopic examination for prostate needle saturation biopsy sampling 21–40 specimens); GXXX3 (Surgical pathology, gross and microscopic examination for prostate needle saturation biopsy sampling, 41–60 specimens); and GXXX4 (Surgical pathology, gross and microscopic examination for prostate needle saturation biopsy sampling, greater than 60 specimens). We stated in the CY 2009 OPPS/ASC proposed rule (73 FR 41520), that we believe that the descriptors of these proposed HCPCS G-codes more specifically reflect the

characteristics of prostate saturation biopsy pathology services so that reporting would result in more accurate cost data for OPPS ratesetting and, ultimately, more appropriate payment. CPT code 88305 would continue to be recognized under the OPPS for those surgical pathology services unrelated to prostate needle saturation biopsy sampling. Consistent with the proposed CY 2009 APC assignment for CPT code 88305, we proposed to assign these four new HCPCS G-codes to APC 0343 with a proposed APC median cost of approximately $35. We specifically solicited public comment on the appropriateness of recognizing these proposed new HCPCS G-codes under the OPPS and their proposed APC assignments especially with regard to the expected hospital resources required for the preparation of the biopsy specimens that would be reported with the proposed new HCPCS G-codes and the extent to which those resources necessary to provide a single unit of each proposed new HCPCS G-code would differ from the resources required to provide a single unit of CPT code 88305 for a conventional prostate needle biopsy specimen.

Comment: One commenter opposed the proposal to utilize HCPCS G-codes to report pathology services for prostate saturation biopsy and requested that CMS seek CPT codes for these services in order to avoid coding confusion and the administrative burden of having two code sets for the same service. Another commenter supported the creation of HCPCS G-codes for services involving the examination of more than 21 core samples, but stated that a HCPCS G-code for 20 or fewer samples would be unnecessary and confusing because it would be highly unlikely that a saturation biopsy would be performed to obtain less than 20 specimens. This latter commenter stated that a pathologist would not know whether core samples came from a sextant biopsy versus a saturation biopsy and, therefore, would not know whether to report the proposed HCPCS code GXXX1 or CPT code 88305. The commenter recommended that CPT code 88305 be used for saturation biopsy to report the examination of up to 20 core samples and the following HCPCS G-codes be used to report the examination of more than 20 core samples: GXXX1 (21–40 specimens); GXXX2 (41–60 specimens); and GXXX3 (greater than 60 specimens). The commenter also opposed the proposed assignment of all of the HCPCS G-codes to APC 0343 because the commenter was unclear as to how the proposed payment rate of $35 was calculated. The commenter also believed that CMS did not provide information about whether there would be increased payment for each successive level of specimen samples.

Response: We continue to believe that it is important to pay more appropriately for the pathology services associated with examination of core samples obtained during prostate saturation biopsy. No new CPT codes are being implemented to describe these services for CY 2009. Therefore, we believe that the creation of Level II HPCPCS codes, as we proposed, is essential to providing more appropriate payment for the services in the short term and to collecting claims data that reflect hospitals' costs for the services for future OPPS ratesetting. In contrast to the perspective of one commenter, we believe that, in uncommon cases, prostate saturation biopsy may result in 20 or fewer core samples for examination and that, in such cases, we would expect the hospital resources to differ from the hospital resources required to provide CPT code 88305. Therefore, we are finalizing the creation of the proposed four new more specific Level II HCPCS G-codes under the OPPS for these pathology services, consistent with the CY 2009 final payment policy for the MPFS. As stated in the CY 2009 OPPS/ASC proposed rule (73 FR 41519 through 41520), we believe the proposed descriptors of these HCPCS G-codes more specifically reflect the characteristics of prostate saturation biopsy pathology services so that reporting will result in more accurate cost data for OPPS ratesetting and, ultimately, more appropriate payment.

In considering the commenter's concerns related to the proposed APC assignments for the HCPCS G-codes, we took into account the characteristics of the prostate saturation biopsy pathology services, including typical cases and typical complexity of the pathology review, and we examined the OPPS claims data available for CPT code 88305 and related surgical pathology services. Furthermore, we explicitly assessed the expected incremental hospital resource costs associated with examination of an increasing number of core samples. Based on these analyses and review of the public comments, we concluded that all four HCPCS G-codes are more appropriately assigned to New Technology APCs under the OPPS because there are no established clinical APCs that we believe are appropriate based on consideration of the clinical characteristics and expected hospital resources costs of the services described by the HCPCS G-codes. As discussed further in section III.C. of this final rule with comment period, we maintain new services in New Technology APCs until we have sufficient data to reassign them to appropriate clinical APCs.

After consideration of the public comments received, we are finalizing our CY 2009 proposal to recognize four new HCPCS G-codes for pathology services associated with prostate saturation biopsy, specifically HCPCS codes G0416 (Surgical pathology, gross and microscopic examination for prostate needle saturation biopsy sampling, 1–20 specimens); G0417 (Surgical pathology, gross and microscopic examination for prostate needle saturation biopsy sampling 21–40 specimens); G0418 (Surgical pathology, gross and microscopic examination for prostate needle saturation biopsy sampling, 41–60 specimens); and G0419 (Surgical pathology, gross and microscopic examination for prostate needle saturation biopsy sampling, greater than 60 specimens). CPT code 88305 will continue to be recognized under the OPPS for those surgical pathology services unrelated to prostate saturation biopsy. CPT code 88305 will also continue to be assigned to APC 0343, with a final CY 2009 median cost of approximately $34.

We are not adopting our proposal to assign these four HCPCS G-codes to APC 0343. Instead, in this final rule with comment period, we are assigning these HCPCS G-codes to four different New Technology APCs for CY 2009. For the CY 2009 OPPS, HCPCS code G0416 is assigned to APC 1505 (New Technology—Level V ($300–400)), with a CY 2009 final payment rate of approximately $350; HCPCS code G0417 is assigned to APC 1507 (New Technology—Level VII ($500–600)), with a CY 2009 final payment rate of approximately $550; HCPCS code G0418 is assigned to APC 1511 (New Technology—Level XI ($900–1000)), with a CY 2009 final payment rate of approximately $950; and HCPCS code G0419 is assigned to APC 1513 (New Technology—Level XIII ($1,100–1,200)), with a CY 2009 final payment rate of approximately $1,150. Payment for these services is made at the midpoint of each New Technology APC cost band. Furthermore, each of these New Technology APCs has a status indicator of ''S,'' indicating that there is no discount when multiple significant procedures are provided on the same day to a single Medicare beneficiary. Because the four HCPCS G-codes are new for CY 2009, we are assigning comment indicator ''NI'' in Addendum B to this final rule with comment

period, indicating that their CY 2009 interim OPPS treatment is open to public comment in this final rule with comment period.

C. Changes to the Initial Preventive Physical Examination (IPPE)

In order to implement section 101(b) of the MIPPA, beginning January 1, 2009, we will pay for an IPPE performed not later than 12 months after the date of the beneficiary's initial enrollment in Medicare Part B. Any beneficiary who has not yet had an IPPE and whose initial enrollment in Medicare began in CY 2008 will be able to have an IPPE in CY 2009, as long as it is done within 12 months of the beneficiary's initial enrollment. We will pay for one IPPE for each beneficiary in a lifetime. The Medicare deductible does not apply to the IPPE if it is performed on or after January 1, 2009. Providers paid under the OPPS will report IPPE visits occurring on or after January 1, 2009, using new HCPCS code G0402 (Initial preventive physical examination; face-to-face visit, services limited to new beneficiary during the first 12 months of Medicare enrollment). HCPCS code G0344 (Initial preventive physical examination; face-to-face visit, services limited to new beneficiary during the first 6 months of Medicare enrollment) will be active until December 31, 2008 for beneficiaries who have the IPPE prior to January 1, 2009.

In the CY 2009 OPPS/ASC proposed rule, we proposed to continue the assignment of HCPCS code G0344 to APC 0605 (Level 2 Hospital Clinic Visits) for CY 2009, with a proposed payment rate of approximately $68. We did not receive any public comments on our proposed CY 2009 OPPS treatment of HCPCS code G0344, and therefore, are adopting it as final. We are crosswalking new HCPCS code G0402 to HCPCS code G0344 because of their clinical and expected resource similarity and assigning the new code to APC 0605 on an interim basis for CY 2009. As a new HCPCS code for CY 2009, the OPPS treatment of HCPCS code G0402 is open to public comment in this final rule with comment period. The final CY 2009 median cost of APC 0605 is approximately $67.

We note that the policy for reporting a medically necessary hospital visit during the same visit as the IPPE still applies. CPT codes 99201 through 99215 for hospital clinic visits of new and established patients at all five levels of resource intensity may also be appropriately reported, depending on the circumstances, but they must be appended with the CPT–25 modifier, identifying the hospital visit as a separately identifiable service from the IPPE described by HCPCS code G0402.

Section 101(b) of the MIPPA also removes the screening electrocardiogram (EKG) as a mandatory requirement, as identified in section 1861(ww)(1) of the Act, to be performed as part of the IPPE. The MIPPA requires that there be education, counseling, and referral for an EKG, as appropriate, for a once-in-a lifetime screening EKG performed as a result of a referral from an IPPE. The facility service for the screening EKG (tracing only) is payable under the OPPS when it is the result of a referral from an IPPE. Providers paid under the OPPS should report new HCPCS code G0404 (Electrocardiogram, routine ECG with 12 leads, tracing only, without interpretation and report, performed as a screening for the initial preventive physical examination) for services furnished on or after January 1, 2009. HCPCS code G0367 (Tracing only, without interpretation and report, performed as a component of the initial preventive physical exam) will be active until December 31, 2008 for reporting the facility service for a screening EKG performed prior to January 1, 2009.

In the CY 2009 OPPS/ASC proposed rule, we proposed to continue the assignment of HCPCS code G0367 to APC 0099 (Electrocardiograms) for CY 2009, with a proposed payment rate of approximately $26. We did not receive any public comments on our proposed CY 2009 OPPS treatment of HCPCS code G0367 and, therefore, are adopting it as final. We are crosswalking new HCPCS code G0404 to HCPCS code G0367 because of their clinical and expected resource similarity and assigning the new code to APC 0099 on an interim basis for CY 2009. As a new HCPCS code for CY 2009, the OPPS treatment of HCPCS code G0404 is open to public comment in this final rule with comment period. We note that the two other new related screening EKG codes, specifically HCPCS code G0403 (Electrocardiogram, routine ECG with 12 leads; performed as a screening for the initial preventive physical examination with interpretation and report) and HCPCS code G0405 (Electrocardiogram, routine ECG with 12 leads; interpretation and report only, performed as a screening for the initial preventive physical examination), include an interpretation and report and, therefore, are assigned status indicators ''M'' and ''B,'' respectively, on an interim basis for the CY 2009 OPPS. HCPCS code G0403 and HCPCS code G0405 replace predecessor HCPCS code G0366 (Electrocardiogram, routine ECG with 12 leads; performed as a component of the initial preventive examination with interpretation and report) and HCPCS code G0368 (Interpretation and report only, performed as a component of the initial preventive examination), respectively. Our instructions in the July 2008 OPPS quarterly update, Transmittal 1536, Change Request 6094, issued on June 19, 2008, specify that, in cases where there are separate codes for the technical component, professional component, and/or complete procedure, hospitals paid under the OPPS should report the code that represents the technical component for their facility services. Therefore, hospitals that are billing for HOPD services paid under the OPPS should not report new HCPCS code G0403 or HCPCS code G0405 for payment of the screening EKG under the CY 2009 OPPS, but should instead report new HCPCS code G0404. The final CY 2009 median cost of APC 0099 is approximately $26.

D. Reporting of Wound Care Services

Section 1834(k) of the Act, as added by section 4541 of the BBA, allows payment at 80 percent of the lesser of the actual charge for the services or the applicable fee schedule amount for all outpatient therapy services; that is, physical therapy services, speech-language pathology services, and occupational therapy services. As provided under section 1834(k)(5) of the Act, we created a therapy code list based on a uniform coding system (that is, the HCPCS) to identify and track these outpatient therapy services paid under the MPFS. We provide this list of therapy codes along with their respective designation in the Medicare Claims Processing Manual, Pub 100–04, Chapter 5, Section 20. Two of the designations that we use in that manual denote whether the listed therapy code is an ''always therapy'' service or a ''sometimes therapy'' service. We define an ''always therapy'' service as a service that must be performed by a qualified therapist under a certified therapy plan of care, and a ''sometimes therapy'' service as a service that may be performed by an individual outside of a certified therapy plan of care. We provide payment for several ''sometimes therapy'' wound care services under OPPS if they are provided by the hospital outside of a certified therapy plan of care.

As added to the OPPS via the MPFS process, for CY 2009, CPT code 0183T (Low frequency, non-contact, non-thermal ultrasound, including topical application(s), when performed, wound assessment, and instruction(s) for ongoing care, per day) is newly designated as a ''sometimes therapy''

service. In CY 2009, hospitals will receive separate payment under the OPPS when they bill for wound care services described by CPT code 0183T that are furnished to hospital outpatients by individuals independent of a therapy plan of care. In contrast, when such services are performed by a qualified therapist under a certified therapy plan of care, providers should attach an appropriate therapy modifier (that is, ''GP'' for physical therapy, ''GO'' for occupational therapy, and ''GN'' for speech language pathology) or report their charges under a therapy revenue code (that is, revenue codes in the 042x, 043x, or 044x series), or both, to receive payment under the MPFS. For CY 2009, the I/OCE logic assigns this service to APC 0015 (Level III Debridement & Destruction) for payment under the OPPS if the service is not provided under a certified therapy plan of care or directs contractors to pay under the MPFS if the service is identified on a hospital claim with a therapy modifier or therapy revenue code as a therapy service.

E. Standardized Cognitive Performance Testing

Section 1834(k) of the Act, as added by section 4541 of the BBA, essentially establishes that payment for all outpatient therapy services, that is, physical therapy services, speech-language pathology services, and occupational therapy services be provided under a fee schedule. As provided under section 1834(k)(5) of the Act, we created a therapy code list based on a uniform coding system (that is, the HCPCS) to identify and track these outpatient therapy services paid under the MPFS. This list of therapy codes, along with their respective designation, is set forth in the Medicare Claims Processing Manual, Pub. 100–04, Chapter 5, Section 20. Two of the designations that we use in that manual denote whether the listed therapy code is an ''always therapy'' service or a ''sometimes therapy'' service. We define an ''always therapy'' service as a service that must be performed by a qualified therapist under a certified therapy plan of care, and a ''sometimes therapy'' service as a service that may be performed by an individual outside of a certified therapy plan of care.

CPT code 96125 (Standardized cognitive performance testing (eg, Ross Information Processing Assessment) per hour of a qualified health care professional's time, both face-to-face time administering tests to the patient and time interpreting these test results and preparing the report) was a new CPT code effective January 1, 2008, and was assigned status indicator ''A'' in the CY 2008 OPPS/ASC final rule with comment period because it is designated as an ''always'' therapy service under the MPFS. When CPT code 96125 is reported by a hospital, the hospital should attach an appropriate therapy modifier (that is, ''GP'' for physical therapy, ''GO'' for occupational therapy, and ''GN'' for speech language pathology), as noted in the Medicare Claims Processing Manual, Pub. 100–04, Chapter 5, Section 20, and the hospital will receive payment for the service under the MPFS.

Comment: One commenter who addressed our CY 2008 interim assignment of CPT code 96125 asked why this CPT code was assigned status indicator ''A,'' while many other central nervous system assessments and tests were assigned status indicator ''Q'' for the CY 2008 OPPS.

Response: CPT code 96125 is correctly assigned status indicator ''A'' because it is designated as an ''always therapy'' service, as described earlier. The other similar central nervous system assessments and tests are not designated as ''always therapy'' services codes and, therefore, are assigned other appropriate status indicators.

After consideration of the public comment received, we are finalizing the CY 2008 interim assignment of status indicator ''A'' to CPT code 96125 which is designated as an ''always therapy'' service. When reported appropriately by hospitals as a therapy service, CPT code 96125 will be paid under the MPFS.

XIII. OPPS Payment Status and Comment Indicators

A. OPPS Payment Status Indicator Definitions

The OPPS payment status indicators (SIs) that we assign to HCPCS codes and APCs play an important role in determining payment for services under the OPPS. They indicate whether a service represented by a HCPCS code is payable under the OPPS or another payment system and also whether particular OPPS policies apply to the code. Our CY 2009 status indicator assignments for APCs and HCPCS codes are shown in Addendum A and Addendum B, respectively, to this final rule with comment period. As we proposed in the CY 2009 OPPS/ASC proposed rule (73 FR 41520), in this final rule with comment period, we are using the status indicators that were listed in Addendum D1 to the proposed rule, which we discuss below in greater detail. We have made several modifications to the information included in the two columns labeled Item/Code/Service and OPPS Payment Status as displayed in the tables below for this final rule with comment period in response to public comments and to reflect implementation of certain provisions of Public Law 110–275 applicable to services paid under the OPPS in CY 2009.

1. Payment Status Indicators To Designate Services That Are Paid under the OPPS

We proposed several changes to these status indicators for the CY 2009 OPPS, and the Item/Code/Service and OPPS Payment Status columns listed in the table below reflect further modifications based on the provisions of Public Law 110–275 for CY 2009.

Indicator	Item/code/service	OPPS Payment status
G	Pass-Through Drugs and Biologicals	(1) Paid under OPPS; separate APC payment.
H	(1) Pass-Through Device Categories	(1) Separate cost-based pass-through payment; not subject to copayment.
	(2) Therapeutic Radiopharmaceuticals	(2) Separate cost-based nonpass-through payment; subject to copayment.
K	Nonpass-Through Drugs and Biologicals	Paid under OPPS; separate APC payment.
N	Items and Services Packaged into APC Rates	Paid under OPPS; payment is packaged into payment for other services. Therefore, there is no separate APC payment.
P	Partial Hospitalization	Paid under OPPS; per diem APC payment.
Q1	STVX-Packaged Codes	Paid under OPPS; Addendum B displays APC assignments when services are separately payable.

Indicator	Item/code/service	OPPS Payment status
		(1) Packaged APC payment if billed on the same date of service as a HCPCS code assigned status indicator ''S,'' ''T,'' ''V,'' or ''X.'' (2) In all other circumstances, payment is made through a separate APC payment.
Q2	T-Packaged Codes	Paid under OPPS; Addendum B displays APC assignments when services are separately payable. (1) Packaged APC payment if billed on the same date of service as a HCPCS code assigned status indicator ''T.'' (2) In all other circumstances, payment is made through a separate APC payment.
Q3	Codes that may be paid through a composite APC.	Paid under OPPS; Addendum B displays APC assignments when services are separately payable. Addendum M displays composite APC assignments when codes are paid through a composite APC. (1) Composite APC payment based on OPPS composite-specific payment criteria. Payment is packaged into a single payment for specific combinations of service. (2) In all other circumstances, payment is made through a separate APC payment or packaged into payment for other services.
R	Blood and Blood Products	Paid under OPPS; separate APC payment.
S	Significant Procedure, Not Discounted when Multiple.	Paid under OPPS; separate APC payment.
T	Significant Procedure, Multiple Reduction Applies.	Paid under OPPS; separate APC payment.
U	Brachytherapy Sources	Paid under OPPS; separate APC payment.
V	Clinic or Emergency Department Visit	Paid under OPPS; separate APC payment.
X	Ancillary Services	Paid under OPPS; separate APC payment.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41521), we proposed to replace current status indicator ''Q'' with three new separate status indicators: ''Q1,'' ''Q2,'' and ''Q3'' for CY 2009. We proposed that status indicator ''Q1'' would be assigned to all ''STVX-packaged codes,'' status indicator ''Q2'' would be assigned to all ''T-packaged codes;'' and status indicator ''Q3'' would be assigned to all codes that may be paid through a composite APC based on composite-specific criteria or separately through single code APCs when the criteria are not met. We believe this proposed change to establish new status indicators ''Q1,'' ''Q2,'' and ''Q3'' would make our policies more transparent to hospitals and would facilitate the use of status indicator-driven logic in our ratesetting calculations, and in hospital billing and accounting systems.

For CY 2009, we also proposed to use new payment status indicator ''R'' for all blood and blood product APCs and to use new payment status indicator ''U'' for brachytherapy source APCs. Nonpass-through drugs and biologicals which do not require a conversion factor to calculate their payment rates would continue to be assigned status indicator ''K.'' We proposed to create these new status indicators for blood and blood products and for brachytherapy sources to facilitate implementation of the reduced conversion factor that would apply to payments to hospitals that are required to report quality data but that fail to meet the established quality data reporting standards.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41521), we noted our belief that this proposal was necessary to continue the final CY 2008 policies of setting prospective payment rates for brachytherapy sources and blood and blood products calculated as the product of scaled relative weights and the conversion factor. Under our CY 2009 proposal, payment for blood and blood products and brachytherapy sources would have been subject to the reduced market basket conversion factor for hospitals that failed to meet the requirements of the HOP QDRP, while separately payable nonpass-through drugs and biologicals would not have been paid based on the conversion factor. We would have been unable to use status indicator ''K'' alone to indicate application of the reduced conversion factor to payment for the appropriate products if we continued to assign status indicator ''K'' to all of these items. Section XVI. of this final rule with comment period provides a full discussion of the requirements of the HOP QRDP and the reduced market basket conversion factor that will apply to payment for specific services when hospitals for which the reporting is required fail to meet the reporting standards.

Subsequent to issuance of the CY 2009 OPPS/ASC proposed rule, Public Law 110–275 was enacted on July 15, 2008. Section 142 of Public Law 110–275 requires CMS to continue to pay for brachytherapy sources and therapeutic radiopharmaceuticals for the period of July 1, 2008 through December 31, 2009, at hospitals' charges adjusted to the costs, a methodology that is different from the approaches we proposed for these items in CY 2009. We have continued to assign status indicator ''H'' to brachytherapy sources for July 1, 2008 through December 1, 2008, to ensure appropriate payment for these items. Moreover, we are not adopting the proposed prospective payment for brachytherapy sources and therapeutic radiopharmaceuticals, and we are not assigning status indicator ''K'' to therapeutic radiopharmaceuticals for CY 2009, as proposed. For this final rule with comment period, we have modified our proposed definition of status indicator ''K'' to include only nonpass-through drugs and biologicals and, in parallel fashion, we have modified our proposed definition of status indicator ''H'' to include therapeutic radiopharmaceuticals for CY 2009. We note that beneficiary copayment does apply to payment for therapeutic radiopharmaceuticals assigned status indicator ''H,'' although pass-through device category, also assigned status indicator ''H,'' will continue to have no beneficiary copayment applied. The national unadjusted copayment or minimum

unadjusted copayment, as applicable, applies to all APC payments for OPPS services unless there is a statutory exception. There is no statutory exception for payment of therapeutic radiopharmaceuticals and, therefore, copayment applies to these products in CY 2009. However, where additional pass-through payment is made for a device category or drug that has pass-through status, section 1833(t)(8)(E) of the Act requires that the copayment for the device category or drug furnished be calculated as though the additional pass-through payment had not been made. Therefore, there is no copayment for the additional pass-through payment for a device category with OPPS pass-through status. The OPPS PRICER would continue to ensure that no copayment would be assigned for pass-through device categories that may be approved for CY 2009.

CY 2009 payment for therapeutic radiopharmaceuticals, to which the reduced market basket conversion factor does not apply, is discussed in detail in section V.B.4. of this final rule with comment period. The payment methodology for brachytherapy sources specified by section 142 of Public Law 110–275 requires no changes to our proposed definition of status indicator ''U'' for brachytherapy sources because the definition only indicated that separate payment would be made, without specifying the payment methodology. CY 2009 payment for brachytherapy sources, to which the reduced market basket conversion factor does not apply, is discussed in detail in section VII. of this final rule with comment period.

Comment: Several commenters supported the proposed assignment of a separate status indicator to blood and blood products and encouraged CMS to make status indicator ''R'' final.

Response: We appreciate the commenters' support of status indicator ''R.'' New status indicator ''R'' for blood and blood products was created in order to facilitate implementation of the reduced market basket conversion factor that applies to payments to hospitals that are required to report quality data but fail to meet the established quality reporting standards. This reduced conversion factor applies to CY 2009 payment for blood and blood products, as further discussed in section XVI.D.2. of this final rule with comment period.

Comment: Several commenters supported the proposal to refine status indicator ''Q'' by creating three related status indicators: ''Q1,'' ''Q2,'' and ''Q3.'' These commenters stated that these changes would allow providers to quickly and easily isolate HCPCS codes that are packaged for different reasons. Commenters believed that the creation of status indicators ''Q1,'' ''Q2,'' and ''Q3'' make the conditionally packaged payment policy for each HCPCS code more transparent and urged CMS to finalize this proposal.

Response: We appreciate the commenters' support regarding the development and use of status indicators ''Q1,'' ''Q2,'' and ''Q3'' to identify different types of conditionally packaged services. We continue to believe that these refinements are helpful in identifying the packaging rationale for different HCPCS codes under the OPPS.

After consideration of the public comments received, we are finalizing our CY 2009 proposal for status indicators to designate services payable under the OPPS, with modification to take into consideration provisions of Public Law 110–275 for CY 2009. The final status indicators and their descriptions are displayed in the table above, as well as in Addendum D1 to this final rule with comment period.

2. Payment Status Indicators To Designate Services That Are Paid Under a Payment System Other Than the OPPS

We did not propose any changes to the status indicators as listed below for the CY 2009 OPPS.

Indicator	Item/code/service	OPPS Payment status
A	Services furnished to a hospital outpatient that are paid under a fee schedule or payment system other than OPPS, for example:	Not paid under OPPS. Paid by fiscal intermediaries/MACs under a fee schedule or payment system other than OPPS.
	• Ambulance Services	
	• Clinical Diagnostic Laboratory Services	Not subject to deductible or coinsurance.
	• Non-Implantable Prosthetic and Orthotic Devices	
	• EPO for ESRD Patients	
	• Physical, Occupational, and Speech Therapy	
	• Routine Dialysis Services for ESRD Patients Provided in a Certified Dialysis Unit of a Hospital.	
	• Diagnostic Mammography	
	• Screening Mammography	Not subject to deductible.
C	Inpatient Procedures	Not paid under OPPS. Admit patient. Bill as inpatient.
F	Corneal Tissue Acquisition; Certain CRNA Services; and Hepatitis B Vaccines.	Not paid under OPPS. Paid at reasonable cost.
L	Influenza Vaccine; Pneumococcal Pneumonia Vaccine.	Not paid under OPPS. Paid at reasonable cost; not subject to deductible or coinsurance.
M	Items and Services Not Billable to the Fiscal Intermediary/MAC.	Not paid under OPPS.
Y	Non-Implantable Durable Medical Equipment	Not paid under OPPS. All institutional providers other than home health agencies bill to DMERC.

We did not receive any public comments regarding the status indicators that designate services paid under a payment system other than the OPPS. Therefore, we are finalizing our CY 2009 proposal, without modification. The final status indicators are displayed in the table above, as well as in Addendum D1 to this final rule with comment period.

3. Payment Status Indicators To Designate Services That Are Not Recognized Under the OPPS But That May Be Recognized by Other Institutional Providers

We did not propose any changes to the status indicators listed below for the CY 2009 OPPS.

Indicator	Item/code/service	OPPS Payment status
B	Codes that are not recognized by OPPS when submitted on an outpatient hospital Part B bill type (12x and13x).	Not paid under OPPS. • May be paid by fiscal intermediaries/MACs when submitted on a different bill type, for example, 75x (CORF), but not paid under OPPS. • An alternate code that is recognized by OPPS when submitted on an outpatient hospital Part B bill type (12x and 13x) may be available.

We did not receive any public comments regarding the status indicators that designate services that are not recognized under the OPPS but that may be recognized for payment to other institutional providers. Therefore, we are finalizing our CY 2009 proposal, without modification. The final status indicators are displayed in the table above, as well as in Addendum D1 to this final rule with comment period.

4. Payment Status Indicators To Designate Services That Are Not Payable by Medicare on Outpatient Claims

We did not propose any changes to these status indicators for the CY 2009 OPPS, but the Item/code/service and OPPS Payment status columns for status indicator ''E'' listed in this table below reflect modifications in response to public comments.

Indicator	Item/code/service	OPPS Payment status
D	Discontinued Codes	Not paid under OPPS or any other Medicare payment system.
E	Items, Codes, and Services: • That are not covered by any Medicare outpatient benefit based on statutory exclusion. • That are not covered by any Medicare outpatient benefit for reasons other than statutory exclusion. • That are not recognized by Medicare for outpatient claims; alternate code for the same item or service may be available. • For which separate payment is not provided on outpatient claims.	Not paid by Medicare when submitted on outpatient claims (any outpatient bill type).

Comment: Several commenters observed that as the Medicare program has evolved to incorporate other benefits, such as payment for prescription drugs under Medicare Part D, the historical definition of status indicator ''E,'' specifically that these items and services are not paid under the OPPS or any other Medicare payment system, is no longer accurate.

Response: We appreciate the commenters' concern and have clarified the definition of status indicator ''E'' in the table above to indicate more precisely that status indicator ''E'' designates items and services that are not payable when submitted on outpatient claims of any bill type. We have also clarified that these items and services are not covered by the Medicare outpatient benefit, in recognition that they may be covered under some circumstances under other benefits of the Medicare program.

After consideration of the public comments received, we are finalizing our CY 2009 proposal for payment status indicators to designate services that are not payable by Medicare for outpatient claims, with modification to clarify that status indicator ''E'' indicates no payment for outpatient claims, rather than no payment under any Medicare benefit. The final status indicators are displayed in the table above, as well as in Addendum D1 to this final rule with comment period.

To address providers' broader interests and to make the published Addendum B more convenient for public use, we are displaying in Addendum B to this final rule with comment period all active HCPCS codes for CY 2009 and currently active HCPCS codes that will be discontinued at the end of CY 2008 that describe items and services that are: (1) Payable under the OPPS; (2) paid under a payment system other than the OPPS; (3) not recognized under the OPPS but that may be recognized by other institutional providers; and (4) not payable by Medicare. The universe of CY 2009 status indicators that we are finalizing for these items and services are listed in the tables above and in Addendum D1 to this final rule with comment period.

Addendum B, with a complete listing of HCPCS codes that includes their payment status indicators and APC assignments for CY 2009, is available electronically on the CMS Web site under supporting documentation for this final rule with comment period at: *http://www.cms.hhs.gov/HospitalOutpatientPPS/HORD/list.asp#TopOfPage*

B. Comment Indicator Definitions

In the CY 2009 OPPS/ASC proposed rule (73 FR 41522), we proposed to use for the CY 2009 OPPS the two comment indicators that are in effect for the CY 2008 OPPS. These two comment indicators are listed below.

- ''CH''—Active HCPCS codes in current and next calendar year; status indicator and/or APC assignment have changed or active HCPCS code that will be discontinued at the end of the current calendar year.
- ''NI''—New code, interim APC assignment; Comments will be accepted on the interim APC assignment for the new code.

Except as discussed below with regard to services to which we have assigned status indicators ''R,'' ''Q1,'' ''Q2,'' ''Q3,'' and ''U,'' we proposed to use the ''CH'' comment indicator in this

final rule with comment period to indicate HCPCS codes for which the status indicator or APC assignment, or both, will change in CY 2009 compared to their assignment as of December 31, 2008.

As was proposed, we are using the ''CH'' indicator in this CY 2009 OPPS/ASC final rule with comment period to call attention to changes in the payment status indicator and/or APC assignment for HCPCS codes for CY 2009 compared to their assignment as of December 31, 2008. We believe that use of the ''CH'' indicator in the CY 2009 OPPS/ASC final rule with comment period will facilitate the public's review of the changes that we are finalizing for CY 2009. The use of the comment indicator ''CH'' in association with a composite APC indicates that the configuration of the composite APC is changed in this CY 2009 OPPS/ASC final rule with comment period.

''STVX-packaged codes,'' ''T-packaged codes,'' and other HCPCS codes that could be paid through a composite APC with final CY 2009 changes in status indicator assignments from ''Q'' to ''Q1,'' from ''Q'' to ''Q2,'' and from ''Q'' to ''Q3,'' as well as HCPCS codes for blood and blood products and for brachytherapy sources with final CY 2009 changes in status indicator assignments from ''K'' to ''R'' and from ''H'' to ''U,'' respectively, are not flagged with comment indicator ''CH'' in Addendum B to this final rule with comment period. As noted in the CY 2009 OPPS/ASC proposed rule (73 FR 41522), these changes in status indicators are to facilitate policy transparency and operational logic rather than to reflect changes in OPPS payment policy for these services, so we believe that identifying these HCPCS codes with ''CH'' could be confusing to the public.

As was proposed, we are continuing our policy of using comment indicator ''NI'' in this CY 2009 OPPS/ASC final rule with comment period. Only HCPCS codes with comment indicator ''NI'' in this CY 2009 OPPS/ASC final rule with comment period are subject to comment. HCPCS codes that do not appear with comment indicator ''NI'' in this CY 2009 OPPS/ASC final rule with comment period are not open to public comment, unless we specifically have requested additional comments elsewhere in this final rule with comment period. The CY 2009 treatment of HCPCS codes that appear in this CY 2009 OPPS/ASC final rule with comment period to which comment indicator ''NI'' is not appended was open to public comment during the comment period for the CY 2009 OPPS/ASC proposed rule, and we are responding to those comments in this final rule with comment period.

We did not receive any public comments regarding comment indicators. Therefore, we are continuing to use the two comment indicators, ''CH'' and ''NI,'' for CY 2009 and their definitions are listed in Addendum D2 to this final rule with comment period.

XIV. OPPS Policy and Payment Recommendations

A. Medicare Payment Advisory Commission (MedPAC) Recommendations

MedPAC was established under section 1805 of the Act to advise the U.S. Congress on issues affecting the Medicare program. As required under the statute, MedPAC submits reports to Congress not later than March and June of each year that present its Medicare payment policy recommendations. The following section describes recent recommendations relevant to the OPPS that have been made by MedPAC.

1. March 2008 Report

The March 2008 MedPAC ''Report to Congress: Medicare Payment Policy'' included the following recommendation relating specifically to the Medicare hospital OPPS:

Recommendation 2A–1: The Congress should increase payment rates for the acute inpatient and outpatient prospective payment systems in 2009 by the projected rate of increase in the hospital market basket index, concurrent with implementation of a quality incentive payment program.

CMS Response: As proposed in the CY 2009 OPPS/ASC proposed rule (73 FR 41457), in this final rule with comment period we are increasing the payment rates for the CY 2009 OPPS by the projected rate of increase in the hospital market basket through adjustment of the full CY 2009 conversion factor. We also are implementing, effective for CY 2009, the reduction in the annual update factor by 2.0 percentage points for hospitals that are defined under section 1886(d)(1)(B) of the Act and that do not meet the hospital outpatient quality data reporting required by section 1833(t)(17) of the Act, as added by section 109(a) of the MIEA–TRHCA (Pub. L. 109–432). Specifically, we have calculated two conversion factors: A full conversion factor based on the full hospital market basket increase and a reduced conversion factor that reflects the 2.0 percentage point reduction to the market basket. Our update of the conversion factor and our adoption and implementation of the reduced conversion factor that will apply to hospitals that fail their quality reporting requirements for the CY 2009 OPPS are discussed in detail in section XVI.D.2. of this final rule with comment period.

This full MedPAC report can be downloaded from MedPAC's Web site at: *http://www.medpac.gov/documents/Mar08_EntireReport.pdf*.

2. June 2007 Report

In its June 2007 ''Report to the Congress: Promoting Greater Efficiency in Medicare,'' MedPAC included analysis and recommendations on alternatives to the current method for computing the IPPS wage index for FY 2009. (We refer readers to Chapter 6 of the June 2007 MedPAC report to Congress.) In accordance with our established policy, under the OPPS we adopt the IPPS wage indices to adjust the OPPS standard payment amounts for labor market differences. Therefore, MedPAC's analysis and recommendations have implications for the CY 2009 OPPS. We considered MedPAC's recommendations and analysis in making a proposal to revise the IPPS wage indices in the FY 2009 IPPS proposed rule (73 FR 23617 through 23623), as required by section 106(b)(2) of the MIEA–TRHCA, and we briefly highlighted the CMS contractor's comparative and impact analyses of the MedPAC and CMS wage indices and the public comments received regarding the recommendations in the FY 2009 IPPS final rule (73 FR 48564 through 48567). In section II.C. of this final rule with comment period, we discuss changes to the wage index related to the MedPAC recommendations that were adopted in the FY 2009 IPPS final rule and our application of these changes to the wage index for the CY 2009 OPPS.

This full MedPAC report can be downloaded from MedPAC's Web site at: *http://www.medpac.gov/documents/Jun07_EntireReport.pdf*.

B. APC Panel Recommendations

Recommendations made by the APC Panel at its March 2008 and August 2008 meetings are discussed in sections of this final rule with comment period that correspond to topics addressed by the APC Panel. The report and recommendations from the APC Panel's March 5–6, 2008 and August 27–28, 2008 meetings are available on the CMS Web site at: *http://www.cms.hhs.gov/FACA/05_AdvisoryPanelonAmbulatoryPaymentClassificationGroups.asp.*

C. OIG Recommendations

The mission of the OIG, as mandated by Public Law 95–452, as amended, is

to protect the integrity of the U.S. Department of Health and Human Services (HHS) programs, as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections. In June 2007, the OIG released a report, entitled ''Impact of Not Retroactively Adjusting Outpatient Outlier Payments,'' that described the OIG's research into sources of error in CMHC outlier payments. The OIG report included the following two recommendations related specifically to the hospital OPPS under which payment is made for outpatient services provided by CMHCs.

Recommendation 1: The OIG recommended that CMS require adjustments of outpatient outlier payments at final cost report settlement, retroactive to the beginning of the cost report period.

CMS Response: We have been proactive in addressing this issue for partial hospitalization prospective payment by designating a unique outlier threshold for CMHCs beginning in CY 2004. As discussed in the CY 2007 OPPS/ASC final rule with comment period (71 FR 68002 through 68003), differences in total CMHC outlier payments between CY 2004 and CY 2005 demonstrate that designating a separate threshold has successfully restrained CMHC outlier payments. Moreover, until the CY 2005 implementation of a fixed-dollar outlier threshold for most other hospital outpatient services that concentrates outlier payments on costly and complex services, we did not believe it would be cost-effective to pursue adjustments of outlier payments for all of the OPPS. However, in addition to the unique outlier threshold for CMHCs that we have recently adopted to address excessive CMHC outlier payments, we proposed to provide for reconciliation of outlier payments under the OPPS at final cost report settlement as recommended by the OIG, beginning in CY 2009. We discuss our final policy to reconcile outlier payments, beginning in CY 2009, in more detail in section II.F.3. of this final rule with comment period.

Recommendation 2: The OIG recommended that CMS require retroactive adjustments of outpatient outlier payments when an error caused by the fiscal intermediary or provider is identified after the cost report is settled.

CMS Response: We note that the OIG's findings were based largely on information from the OPPS' early implementation period, between CY 2000 and CY 2003. We believe we have taken several steps since that time in order to improve the accuracy and frequency of the Medicare contractors' CCR calculations, including updating our instructions for calculating CCRs, increasing the frequency of CCR calculation, and conducting an annual review of CMHC CCRs. However, in light of this OIG recommendation, for the CY 2009 OPPS, we also proposed to provide for reconciliation of outlier payments under the OPPS. We discuss our final policy to reconcile outlier payments in more detail in section II.F.3. of this final rule with comment period.

XV. Ambulatory Surgical Centers: Updates and Revisions to the Ambulatory Surgical Center Conditions for Coverage and Updates to the Revised Ambulatory Surgical Center Payment System

A. Legislative and Regulatory Authority for the ASC Conditions for Coverage

As the single largest payer for health care services in the United States, the Federal Government assumes a critical responsibility for the quality of care furnished under its programs. Historically, the Medicare program's quality assurance approach was focused on identifying health care entities that furnished poor quality care or that failed to meet minimum Federal standards. Overall, we found that this problem-focused approach had inherent limitations and did not necessarily translate into better care for patients. Ensuring quality through the enforcement of prescriptive health and safety standards alone has resulted in us expending many of our resources on working with marginal providers, rather than stimulating broad-based improvements in quality of care.

Section 1832(a)(2)(F)(i) of the Act provides that benefits under Medicare Part B include payment for facility services furnished in connection with surgical procedures specified by the Secretary that are performed in an ASC. To participate in the Medicare program as an ASC, a facility must meet health, safety, and other requirements under the statutory authority of section 1832(a)(2)(F)(i) of the Act. The substantive requirements are set forth in 42 CFR Part 416, Subpart B and Subpart C of our regulations. The regulations at 42 CFR Part 416, Subpart B describe the general conditions and requirements for ASCs, and the regulations at 42 CFR Part 416, Subpart C specify the conditions for coverage (CfCs) for ASCs. The Secretary is responsible for ensuring that the CfCs and their enforcement are adequate to protect the health and safety of individuals treated by ASCs.

To implement the CfCs, we determine compliance through State survey agencies or accreditation organizations that conduct onsite inspections utilizing these requirements. In order to participate in the Medicare program, ASCs must meet Medicare standards as determined by a State agency or by a national accrediting organization approved by the Secretary and whose standards meet or exceed the CfCs. Currently, there are four national accreditation organizations that are approved by the Secretary:

- The Joint Commission;
- The American Association for Accreditation of Ambulatory Surgical Facilities (AAAASF);
- The Accreditation Association for Ambulatory Health Care (AAAHC); and
- The American Osteopathic Association (AOA).

With respect to payment for surgical procedures performed in a Medicare-certified ASC, there are two primary elements to the total cost of performing a surgical procedure: (a) The cost of the physician's professional services to perform the procedure; and (b) the cost of items and services furnished by the facility where the procedure is performed (for example, surgical supplies, equipment, and nursing services). Payment for the first element is made under the Medicare Physician Fee Schedule (MPFS). We address the second element, payment for the cost of items and services furnished by the facility, in sections XV.C. through XV.F. of this document.

B. Updates and Revisions to the ASC Conditions for Coverage

1. Background

On August 31, 2007, we published a proposed rule in the **Federal Register** entitled ''Medicare and Medicaid Programs; Ambulatory Surgical Centers, Conditions for Coverage'' (72 FR 50470). In that proposed rule, we proposed to revise the definitions of certain terms used in the ASC CfCs set forth in § 416.2 and some of the existing specific CfCs pertaining to the ASC governing body and management, evaluation of quality, and laboratory and radiologic services, which are set forth in §§ 416.41, 416.43, and 416.49, respectively, to reflect current ASC practices. In addition, we proposed to add several new CfCs on patient rights, infection control, and patient admission, assessment, and discharge to promote and protect patient health and safety.

The current ASC CfCs were originally published on August 5, 1982 (47 FR

34082), and, for the most part, these regulations have remained unchanged since that time. From 1990 to 2000, the number of ASCs participating in the Medicare program has increased at a rate of about 175 facilities a year. The total number of ASCs more than doubled from 1,197 to 2,966 during this 10-year period, making ASCs one of the fastest growing facility types in the Medicare program. The annual volume of procedures performed on both Medicare and non-Medicare patients has tripled.

Currently, over 5,100 ASCs participate in the Medicare program.[1] This growth is due in part to advances in medical technology that allow additional surgical procedures to be safely performed outside of a hospital setting. This shift has paved the way for increasing numbers of procedures to be performed in an ASC. The changes we proposed are more aligned with today's ASC health care industry standards.

In addition, HHS' health care information transparency initiative (discussed more fully in the CY 2007 OPPS/ASC final rule with comment period (71 FR 67960)) gives consumers what we believe to be accessible and useful information on the price and quality of health care items and services so that they can more meaningfully exercise choices in selecting health care. In support of this initiative, in August 2006, we announced the release of Medicare payment information for 61 procedures performed in ASCs. This information is available on the CMS Web site at: *http://www.cms.hhs.gov/HealthCareConInit/* and will assist patients undergoing surgical procedures to select the most appropriate setting for the delivery of high quality, efficient care. The information shows ''Commonly Performed Procedures in ASCs'' and contains ASC charges and Medicare payment data for ASC facility costs for a limited number of services administered in States and counties. The data are broken down at the county, State, and national level. Moreover, the CMS Web site at *http://www.cms.hhs.gov/center/ombudsman.asp* is available to the public and ASC patients to get information about the Medicare and Medicaid programs, prescription drug coverage, and how to coordinate Medicare benefits with other health insurance programs. The Web site also includes information about filing a grievance or complaint.

Section 109(b) of the MEIA–TRHCA (Pub. L. 109–432) amended section 1833(i) of the Act to authorize the Secretary to develop measures that are appropriate to determine the measurement of quality care (including medication errors) furnished by ASCs that reflect the consensus among affected parties and to reduce the annual payment update by 2 percentage points for any ASC that does not submit data on quality measures in the form and manner required by the Secretary. These measures, to the extent feasible and practicable, must include measures set forth by one or more national consensus building entities (section 1833(t)(17)(C) of the Act). We refer readers to section XVI.H. of this rule for a more detailed discussion of these measures. We expect Medicare beneficiaries to receive high quality surgical services and, for that reason, we proposed a Quality Assessment Performance Improvement (QAPI) requirement as a new condition for coverage (§ 416.43). (We refer readers to section XV.B.2.b.(2) of this final rule for a more detailed discussion of the QAPI provision.)

2. Provisions of the Proposed and Final Regulations

As stated earlier, the ASC CfCs were originally issued in 1982. Most of the revisions made since then have been payment-related. Since 1982, significant innovations in ASC patient care delivery and quality assessment practices have emerged. In an effort to ensure continued quality in the ASC setting, in the 2007 ASC CfCs proposed rule, we proposed to revise three of the existing conditions and create three new conditions. The proposed revised conditions are: Governing body and management; Evaluation of quality (renamed Quality Assessment and Performance Improvement (QAPI)); and Laboratory and radiologic services. The proposed new conditions are: Patient rights; Infection control, and Patient admission, assessment, and discharge. As stated in the 2007 ASC CfCs proposed rule (72 FR 50470), our objective is to achieve a balanced regulatory approach by ensuring that an ASC furnishes health care to meet essential health and quality standards, while ensuring that it monitors and improves its own performance.

In this section, we discuss the revised and new ASC requirements that we proposed, summarize the public comments received, present our responses, and set forth our final policies.

a. Definitions (§ 416.2)

Existing § 416.2 sets forth definitions for terms used in the ASC CfCs. We proposed to revise the definition of ''Ambulatory surgical center'' or ''ASC.'' In addition, we proposed to add a definition for ''overnight stay'' to § 416.2.

We proposed to revise the ASC definition to read as follows:

Ambulatory surgical center or *ASC* means any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring an overnight stay following the surgical services, has an agreement with CMS to participate in Medicare as an ASC, and meets the conditions set forth in subparts B and C of this part [416].

We proposed to revise the overnight stay definition to read as follows:

Overnight stay means the patient's recovery requires active monitoring by qualified medical personnel, regardless of whether it is provided in the ASC, beyond 11:59 p.m. of the day on which the surgical procedure was performed.

In the Medicare cost reporting manual (Provider Reimbursement Manual, Part 1, Section 2205 (Medicare Patient Days, page 22–16)), we have defined a hospital inpatient day as beginning at midnight and ending 24 hours later. Consistent with this longstanding policy, we proposed to codify in regulations that any patient whose recovery requires active monitoring by qualified personnel beyond 11:59 p.m. of the day on which the surgical procedure was performed, is a patient who may require hospitalization or more intensive care. Accordingly, we proposed that ASCs that are Medicare-certified may not keep patients beyond 11:59 p.m. of the day on which the surgical procedure was performed.

In the August 2, 2007 final rule that established the revised ASC payment system (72 FR 42546), we added in new § 416.166(b) that covered surgical procedures ''would not typically be expected to require active medical monitoring and care at midnight following the procedure.'' In the CY 2007 OPPS/ASC proposed rule and CY 2007 OPPS/ASC final rule with comment period (71 FR 49639 and 71 FR 68168, respectively), we addressed the denial of payment of an ASC facility fee for any procedure for which prevailing medical practice dictated that the beneficiary would typically be expected to require active medical monitoring and care at midnight following the procedure. We also note that the patient's location at midnight was a generally accepted standard for

[1] Only comprehensive rehabilitation facilities and rural health clinics have experienced a higher rate of growth. Office of Evaluations and Inspections (OEI) analysis of Part B Medicare data. See Office of Inspector General Quality Oversight of Ambulatory Surgical Centers Supplemental Report 1: The Role of Certification and Accreditation.

determining his or her status as a hospital inpatient or SNF patient and, as such, it is reasonable to apply the same standard in the ASC setting.

Comment: Many commenters suggested that CMS keep the current ASC definition as it is currently written. The commenters believed the proposed definition was too restrictive. Other commenters noted that some ASCs operate on a 24-hour basis and that the 11:59 p.m. cutoff time was not in keeping with current practice.

Response: After consideration of the public comments received, we are not finalizing the proposed definition of ''overnight stay'' and have revised the proposed definition of ''ASC'' to recognize that the hours of operation of an ASC have an impact on patient discharge schedules. In this final rule, we have defined ''ASC'' to mean a ''distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization and in which the expected duration of services would not exceed twenty-four hours following admission. The entity must have an agreement with CMS to participate in Medicare as an ASC and must meet the conditions set forth in subparts B and C of this part [416].''

Patients admitted to an ASC will be allowed to stay in the facility for 23 hours and 59 minutes starting at the time of admission. This policy will create a 24-hour rolling clock that will allow ASCs the flexibility to perform procedures later in the day or to perform those procedures that require more lengthy patient recovery times.

In summary, we are finalizing our proposal, with modification, to revise the definition of ''ASC'' at § 416.2 to state that an ASC means any distinct entity that operates exclusively for the purpose of providing surgical services to ''patients not requiring hospitalization and in which the expected duration of services would not exceed 24 hours following an admission,'' instead of ''patients not requiring an overnight stay following the surgical services,'' as proposed. There may be rare instances when a Medicare patient is required to stay beyond 24 hours due to an unexpected result from a surgery that would require further monitoring and care. Such a stay would be unplanned and the ASC would continue to be responsible for the patient and provide care until the patient is stable and able to be discharged in accordance with the ASC regulations and facility policy.

b. Specific Conditions for Coverage

(1) Condition for Coverage: Governing Body and Management (§ 416.41)

The proposed Governing body and management CfC was separated into three standards to more clearly articulate CMS expectations. We also proposed two new items: First, the governing body would have oversight and be accountable for the quality assessment and performance improvement program; and second, the ASC would be expected to maintain a written disaster preparedness plan for the emergency care of patients to address fire, natural disaster, functional failure of equipment, or other unexpected events or circumstances that are likely to threaten the health and safety of its patients. The ASC would coordinate the plan with State and local agencies and would be responsible for conducting annual drills, written evaluations and implementation of any corrections needed to improve the plan.

Comment: One commenter suggested the disaster preparedness plan should only require ASCs to have a plan to provide for the emergency care of the ASC's patients on the premises during events that threaten their health and safety.

Response: We disagree with the commenter. Our intent is for the ASC to have a disaster preparedness plan in place to care not only for the facility's patients on the premises, but also staff, and others who may be in the facility during an emergency if intervention is needed. We believe that the safety of others in the facility is not subject to individual facility decisionmaking. Therefore, we have revised § 416.41(c)(1) accordingly.

Comment: Several commenters were concerned that the proposed language to ''coordinate'' the disaster preparedness plan with State and local agencies could be interpreted by survey officials as a requirement to integrate the ASC facility into State and local disaster relief efforts. The commenters recommended that CMS modify the proposed language and utilize the word ''communicate'' as an alternative.

Response: After consideration of the public comments received, we are retaining the proposed language at § 416.41(c)(2) as final, and are requiring that ASCs coordinate their disaster preparedness plan with State and local authorities. Coordinating the plan with State and local authorities would assist in overall planning efforts and would make known the availability of assets and capabilities that exist during an emergency.

Comment: One commenter expressed support for the requirement that the ASC conduct disaster preparedness drills. However, the commenter believed that to require an ASC to ''immediately implement any corrections'' would be unrealistic.

Response: We agree that an overly literal interpretation of the phrase ''immediately implement any corrections'' located at proposed § 416.41(c)(3) could be problematic. However, we continue to believe an inordinate delay in addressing concerns with the disaster preparedness plan would not be beneficial. In response to the public comment, in this final rule, we have changed § 416.41(c)(3) to read, ''The ASC conducts drills, at least annually, to test the plan's effectiveness. The ASC must complete a written evaluation of each drill and promptly implement any corrections to the plan.'' We believe this change will provide an appropriate balance between urgency of correction and thoughtful planning.

Comment: One commenter stated that the reference to a ''local'' Medicare-participating or nonparticipating hospital in proposed § 416.41(b)(2) is too vague and suggested an alternate definition.

Response: We understand there have been problems in the past related to the definition of ''local'' when referring to the requirement that ASCs must have an effective procedure for the immediate transfer to a local Medicare-participating hospital or a local nonparticipating hospital. We specifically addressed this issue in the ASC CfCs proposed rule and are reiterating our position here. The definition of local hospital would require the ASC to consider the most appropriate facility to which the ASC would transport its patients in the event of an emergency. If the closest hospital could not accommodate the patient population or the predominant medical emergencies associated with the types of surgeries performed by the ASC, a more distant hospital might also meet the ''local'' definition. In this case, transfer to the more distant hospital would be appropriate. However, under normal circumstances, the ASC would be required to transfer patients to the nearest, most appropriate local hospital, as transfer to a more distant hospital could affect patient health.

After consideration of the public comments received, we are finalizing the proposed revisions to § 416.41 with the following modifications.

In § 416.41(c)(1) of this final rule, we have revised the proposed language to state that the ASC must maintain a written disaster preparedness plan that

provides for the emergency care of patients, staff, and others in the facility in the event of fire, natural disaster, functional failure of equipment, or other unexpected events or circumstances that are likely to threaten ''the health and safety of those in the ASC'' instead of the ''health and safety of its patients'' as proposed.

In § 416.41(c)(3) of this final rule, we have revised the proposed language to state that when the ASC conducts drills, at least annually, to test the disaster preparedness plan's effectiveness, the ASC must complete a written evaluation of each drill and ''promptly'' implement any corrections to the plan, instead of ''immediately'' as proposed. (2) Condition for Coverage: Quality Assessment and Performance Improvement (QAPI) (§ 416.43)

The existing § 416.43, ''Condition for coverage: Evaluation of quality,'' relies on a reactive problem-oriented approach to identify and resolve patient care issues. Failure to meet this requirement has consistently been one of the top 10 deficiencies cited by Medicare surveyors nationwide.

During the last decade, the health care industry has moved beyond the problem-oriented, after-the-fact, corrective approach of quality assurance to an approach that focuses on a proactive, preemptive plan that continuously addresses quality improvement. We proposed that each ASC would develop, implement, and maintain an effective, continuous quality assessment and performance improvement program that stimulates it to constantly monitor and improve its own performance, and to be responsive to the needs, desires, and satisfaction levels of the patients and families it serves. The desired outcome of this proposed requirement would be that an ASC improve its provision of services by proactively implementing its own quality improvement activities. With an effective quality assessment and performance improvement program in place and operating properly, an ASC would be able to prevent the adverse affects of care by identifying the activities that lead to poor patient outcomes. Therefore, an ASC would be free to develop its own individualized program. As proposed, an ASC's QAPI program would not be judged against a specific model.

The proposed QAPI requirement was divided into five standards. Under standard § 416.43(a), ''Program scope,'' an ASC's quality assessment and performance improvement program would include, but not be limited to, an ongoing program that would be able to show measurable improvement in indicators that were associated with improved health outcomes and with the identification and reduction of medical errors. We expect that an ASC would use standards of care and the findings made available in current literature to select indicators to monitor its program. The ASC would measure, analyze, and track these quality indicators, including areas such as adverse patient events, infection control and other aspects of performance that include processes of care and services furnished in the ASC. (''Adverse patient events,'' as used in the field, generally refer to occurrences that are harmful or contrary to the targeted patient outcomes.)

The second proposed standard at § 416.43(b), ''Program data,'' would require the ASC program to incorporate quality indicator data into its QAPI program, including patient care and other relevant data regarding services furnished in the ASC. We did not propose to require that ASCs use any particular process or outcome measures. Proposed standard (b) also would require that data collected by the ASC, regardless of the source of the data elements, would be collected in accordance with the detail and frequency specifications established by the ASC's governing body. Once collected, ASCs would analyze the data to determine the effectiveness and safety of its services, and to identify opportunities for improvement.

The third standard as proposed at § 416.43(c), ''Program activities,'' would require the ASC to set priorities for its performance improvement activities that focused on high risk, high volume and problem-prone areas, that considered the incidence, prevalence and severity of identified problems, and that gave priority to improvement activities that affected health outcomes, patient safety, and quality of care. In § 416.43(c), we also proposed to require the ASC to track adverse patient events, analyze their causes, implement improvements and ensure that the improvements are sustained over time.

The fourth standard as proposed at § 416.43(d), ''Performance improvement projects,'' would require the number and scope of improvement projects that the ASC conducted annually reflect the scope and complexity of the ASC's services and operations. The ASC would document what improvement projects were being conducted, the reasons for conducting them, and the measurable progress achieved on them.

Finally, at § 416.43(e), ''Governing body responsibilities,'' we proposed that the ASC's governing body would be responsible and accountable for ensuring that the ongoing quality improvement program was defined, implemented, and maintained, and that ASC resources were adequately allocated for implementing the facility's program. The governing body would ensure that the program addressed priorities for improved quality of care and patient safety. The governing body would also specify the frequency and detail of the data collection and ensure that all quality improvement actions were evaluated for effectiveness. It would be incumbent on the governing body to lend its full support to all ASC quality assessment and performance improvement efforts.

Comment: Some commenters indicated that the QAPI approach in the 2007 ASC CfCs proposed rule is impractical compared to the existing requirement, ''Evaluation of quality.''

Response: We disagree that the QAPI approach is impractical. The QAPI focus for ASCs, and other Medicare-certified providers and suppliers, is aimed at proactively accessing the quality of care provided and improving health outcomes. A more effective QAPI program will allow ASCs to improve patient care. Many ASCs have already implemented a more effective quality improvement program in place of the current ASC requirement.

Comment: One commenter stated the details of the proposed QAPI program duplicated the requirements imposed by the accrediting bodies.

Response: As stated in the preamble of the 2007 ASC CfCs proposed rule, one of the intents of the revisions to the ASC regulations is to update some of the CfCs. As such, the QAPI CfC is being updated to reflect the current standards of practice in the ASC facility setting. We support the ASC accrediting organizations that have adopted proactive quality improvement programs as current standards of practice. The consistency in philosophy between the Medicare ASC program and those of the accrediting organizations should be comforting to patients and families. Moreover, the specifics of the proposed ASC program are similar to the quality improvement programs that have been included in the Medicare rules governing hospices, and that are being developed for other Medicare facilities. However, we did not intentionally duplicate material from any specific accrediting organization. Because each ASC will determine the specifics of its program, any similarity between it and other QAPI programs, intentional or not, is irrelevant.

Comment: Many commenters expressed enthusiastic support for the updated and expanded QAPI CfC.

Response: We appreciate the overall support for data collection and QAPI. We note that the new regulation does not require ASCs to use electronic health records or any specific software for data collection. ASCs are free to choose the data collection methods and tools that best suit their needs. We do not believe that this new regulation imposes an undue burden on ASCs because it does not require them to obtain sophisticated data collection and analysis computer programs.

Comment: A few commenters expressed concerns as to whether State surveyors would receive adequate training on the new QAPI program, and wondered whether it would be enforced in a consistent manner.

Response: A newly designed surveyor training program is expected to be available online in 2010, thus making uniform training accessible to State surveyors. Once every surveyor is exposed to the same training program, we expect the decisions surveyors make, based on the findings, will be more consistent.

Comment: Several commenters submitted topic areas they would like to include in a QAPI program, such as evaluation and documentation of surgical and anesthesia risk, surgical infection prevention via prophylactic antibiotic administration, utilization of proper medications at admission, and reporting of the number of cases requiring transfer to hospitals due to complications.

Response: ASCs may choose from these and other topic areas when developing their QAPI programs, but not to the exclusion of those topics set out at § 416.43(c).

Comment: One commenter expressed concern that the QAPI CfCs could limit the effectiveness of efforts to ensure safety because, if adopted, the new regulations would allow ASCs to develop and implement their own standards. In addition, the commenter argued, State agencies would have the option to enforce such standards differently among States. Another commenter questioned how CMS would monitor the quality of care being provided across ASCs.

Response: The proposed QAPI standards would serve as an outline to the ASC industry and will aid each ASC in developing, implementing and maintaining its own QAPI program. State survey agencies will be receiving standardized surveyor training to assist in decreasing or eliminating surveyor inconsistency. In addition to training surveyors, we will address any surveyor inconsistency through interpretive guidelines. We note that the QAPI standards do not in any way replace the other substantive standards that ASCs must meet.

We will monitor the quality of care through the results from State survey agencies and deemed national accreditation organizations. The QAPI CfC reflects current industry standards for evaluating quality of care and will help ASCs adopt the universal approach of a proactive program that encourages facilities to make improvements that will prevent patients from being adversely affected. In the near future, we will require ASCs to report quality measures. These quality measures will be utilized to calculate whether ASCs receive full payment updates and as comparative tools for the industry.

Comment: One commenter suggested that CMS include language that would require the ASC governing body to appoint in writing an appropriately trained individual to be responsible for the implementation and oversight of the facility's QAPI program.

Response: While some ASCs may desire to assign a single individual the responsibility of managing the QAPI program, others may find alternate ways that are appropriate to meet this responsibility. ASCs, like other health entities, operate in ways that are advantageous to their own needs. In keeping with this philosophy, we are not requiring that an ASC follow a specific template related to the development and management of its QAPI program. We believe each ASC should have the flexibility to determine how that program should be implemented.

Comment: One commenter suggested that the QAPI program require a leadership component and that the program include activities dealing with high-risk patients, adverse events, and staff resources.

Response: We agree. The QAPI oversight and accountability requirements are part of the Governing body and management CfC; therefore, leadership would be held responsible for direct involvement in the QAPI program. Within the revised QAPI CfC, the ASC QAPI program would be required to set priorities for program activities, focus on high-risk, high-volume, and problem-prone areas, maintain an effective program that includes leadership involvement, and ensure that appropriate resources are allocated for an effective program.

Comment: One commenter expressed concern with the use of the word ''annually'' in proposed § 416.43(d)(1) when referencing ''distinct'' improvement projects and questioned whether this would require a set of separate and distinct projects every year. In addition, the commenter requested that the word ''number'' be removed, to keep the focus on the scope.

Response: We stated in the preamble of the 2007 ASC CfCs proposed rule that we recognize that ASCs serve different populations and provide different services. The words ''distinct,'' ''annually,'' and ''number'' are not new terms for the QAPI Medicare regulations and simply mean that when the ASC conducts its projects, those projects need to take into consideration the types of services it furnishes and any other aspect of its operation so that the effort is meaningful. While we would expect that ASCs will engage in specific projects on an annual basis, there may be a detailed project that will require a long range approach and could be the project that consumes available ASC resources for a period of time, thus making it difficult to undertake more than one project in a particular year.

Comment: One commenter stated that the word ''resources'' in the QAPI CfC should be enhanced by including specific references to staff, time, information systems and training.

Response: We agree that the term ''resources'' should be clarified, and therefore, in this final rule we have revised proposed § 416.43(e)(5) to refer instead to staff, time, information systems and training.

After consideration of the public comments received, and with the exception of § 416.43(e)(5) and some minor nonsubstantive revisions, we are adopting the proposed revisions to § 416.43 as final, without modification. In § 416.43(e)(5), we have modified the proposed requirement to specify that the governing body must allocate adequate ''staff, time, information systems, and training'' to the QAPI program, instead of ''resources,'' as proposed.

(3) Condition for Coverage: Laboratory and Radiologic Services (§ 416.49)

The existing laboratory and radiologic requirement is located at § 416.49. We proposed to divide the condition into a laboratory standard and a radiologic standard. We also proposed to modify the radiology services standard requiring that an ASC meet the Conditions for Coverage for Portable X-Ray Services.

Comment: A few commenters expressed concern that the proposed changes to the radiologic services standard could severely restrict the ability of ASCs to perform procedures requiring imaging guidance. One commenter stated the proposed changes would also impose impractical physician ordering criteria and other

requirements that are not applicable in the ASC setting. In general, while understanding CMS' rationale for presenting the proposed change, commenters believed that this change would disrupt ASC operations on a continuing scale.

Response: The proposed change to the radiologic services requirement was intended to parallel the requirement in the current laboratory standard. That is, an ASC would be required to obtain both laboratory and radiology services from entities that were already certified in accordance with Medicare requirements. We believed this change would establish a higher level of patient safety. We proposed to replace the current requirement that requires ASCs to meet the hospital radiology department requirement (Condition of Participation for Hospitals at § 482.26—Radiologic Services) with the requirement for ASCs to meet the Conditions for Coverage for Portable X-Ray Suppliers (Conditions for Coverage of Portable X-Ray Services at §§ 486.100 through 486.110). These requirements are detailed, thorough, and provide a good foundation for the protection of Medicare beneficiaries. However, it has been pointed out by many of the commenters that the proposed requirements are better suited and more practical for ASCs that perform diagnostic as opposed to imaging services, and that the training requirement for technicians was problematic. The portable x-ray conditions are geared toward the technicians that perform the technical component of diagnostic radiology services without the physician being present, in contrast to ASCs, where the imaging guidance is provided under the direct, personal supervision of the surgeon performing the procedure.

After consideration of the public comments and the impact of the proposed change on an ASC's daily operation, we believe that the change we proposed may be overly restrictive. Therefore, we are not adopting the requirement in proposed § 416.49(b)(2). Instead, we are retaining the existing radiology services requirement applicable to ASCs, at § 482.26 (Hospital Conditions of Participation—Radiologic services). These conditions include the requirements for the safety of patients and personnel, maintenance of equipment, and qualifications for personnel as they relate to radiologic services. However, we have maintained in this final rule the proposed formatting change that separates the laboratory and radiology portion of the existing § 416.49 into two standards.

(4) Condition for Coverage: Patient Rights (§ 416.50)

The proposed patient rights CfC was divided into four standards. Under the first standard, § 416.50(a), ''Notice of rights,'' the ASC would be required to provide the patient or the patient's representative with notice of the patient's rights in advance of the date of the procedure, in a language and manner that the patient or patient representative understands. We proposed the following: An ASC would have to post the written notice of patient rights in a place or places within the ASC where patients or their representatives are likely to notice it; and the notice of rights would have to include (1) the name, address, and telephone number for a representative in the State agency to whom patients could report complaints about an ASC; and (2) the Web site for the Medicare Beneficiary Ombudsman. We also proposed that the ASC would be responsible for the following: Providing the patient (or his or her representative) with verbal and written information concerning its policies on advance directives; establishing procedures for documenting the existence, submission, investigation and disposition of a patient's written or verbal grievance to the ASC; fully documenting all alleged violations/grievances; and specifying timeframes for the grievance process regarding review of the grievance and provision of a response.

The second proposed standard at § 416.50(b), ''Exercise of rights and respect for property and person,'' specifies the patient's right to exercise his or her rights without being subject to discrimination or reprisal. It also specifies the patient's right to voice grievances regarding treatment or care that is (or fails to be) furnished by the ASC; the patient's right to be fully informed about a treatment or procedure and about the expected outcome; the patient's right, if adjudged incompetent under State law by a court of proper jurisdiction, to have his or her rights exercised by the person appointed under State law to act on the patient's behalf; and the patient's right, if a State court has not adjudged a patient incompetent, to any legal representative designated by the patient in accordance with State law to exercise the patient's rights to the extent allowed by State law.

The third proposed standard at § 416.50(c), ''Privacy and safety,'' would require the ASC to acknowledge the patient has the right to personal privacy, the right to receive care in a safe setting, and the right to be free from all forms of abuse or harassment.

The fourth proposed standard at § 416.50(d), ''Confidentiality of clinical records,'' would require the ASC to acknowledge the patient's right expect that his or her clinical records maintained by the ASC will be held in strict confidentiality. We also proposed that access to or release of patient information and clinical records is permitted only with written consent of the patient or the patient's representative or as authorized by law.

Comment: Some commenters believed CMS should allow more flexibility for ASCs to develop their own process for apprising patients of their rights. Several of the commenters referred CMS to the Title VI, Prohibition Against National Origin Discrimination—Persons with Limited-English Proficiency (42 U.S.C. 2000d *et seq.*). One commenter referred CMS to the Hospital conditions of participation. Both laws permit facility flexibility in informing the patient, or when appropriate, the patient's representative, about the patient's rights. These commenters pointed out that Title VI specifies that the extent of the facility's obligation to provide written translation of documents should be determined by the recipient on a case-by-case basis. They also believed that ASCs' flexible options could include such methods as posting signs and providing information in patient brochures.

Response: We agree that facilities should have flexibility in informing patients of their rights. We also believe that when a patient undergoes a surgical procedure at an ASC that has some physical risk, even a slight risk, the patient needs to be able to have information at hand that explains the procedure(s) at least in a general way. Therefore, we are retaining the proposed requirement that the ASC must post the written notice of patient rights in a place or places within the ASC likely to be noticed by patients (or their representatives, if applicable) waiting for treatment. We also are retaining the proposed requirement that the patient be informed verbally and in writing. The written portion may be a printed information sheet or other more sophisticated documents. The document needs to include basic information as required by § 416.50. It may not be practical for an ASC to have available a printed patient rights information document in the language that every patient can understand. However, it is expected that where, a written document is not practical the ASC would make certain that its verbal explanation is clear and thorough. HHS

has published guidance on serving individuals with limited English proficiency in the **Federal Register** at 67 FR 4968 (February 1, 2002).

Comment: Several commenters believed that the Patient rights condition for coverage is too prescriptive and could create administrative burdens which would negatively affect the delivery of care. These commenters suggested CMS delete the phrase ''post the written notice.'' They also recommended that CMS adopt a broader interpretation of the phrase ''informing the patient or patient representative.''

Response: Patient rights and the explanation of patient rights are important elements in this and other Medicare health and safety rules. We agree that procedures that ASCs must follow should be the least prescriptive possible. That is why we have not been explicit in detailing the specifics of the verbal and written information that needs to be included when informing patients of their rights. Regarding the commenters' suggestion to broaden the interpretation of ''informing the patient or patient representative,'' we believe the proposed language is appropriate and we are retaining the language in this final rule.

Comment: Several commenters agreed that disclosure of a physician's ownership interest in a facility is critical, but believe patients should be notified of this financial interest at the point of physician referral and not burden the ASC. The commenters expressed concern that if a beneficiary is not told of a physician's financial interest until a procedure is scheduled, the beneficiary may feel uncomfortable requesting an alternative physician or alternative facility for fear of offending the surgeon. They also asserted that seeking an alternative physician or facility could delay the procedure.

Response: While it may be advantageous to patients to know as early as possible if their physician has an ownership interest in the ASC, we are unable to require physicians to impart that information because we do not regulate physician offices.

Comment: Several commenters suggested that the requirement to propose written ownership disclosure information to patients prior to the first visit embodies the potential to needlessly disrupt patient care, and inconvenience patients. Commenters recommended that CMS adopt the requirement that ownership information be made available to patients upon request or that it be posted in the facility.

Response: Our proposal to require ASCs to be responsible for physician disclosure of financial interests in or ownership of an ASC is based on our existing rules set out at 42 CFR Part 420—Program Integrity. Our goal is to assist Medicare beneficiaries in their efforts to make informed health care decisions through disclosure of all pertinent treatment information, and to achieve a basic level of knowledge across provider settings.

We did not propose to specify in the 2007 ASC CfCs proposed rule how the ownership disclosure information would be provided to the patient, only that it would be provided in writing prior to the first visit to the ASC. To respond to commenters' concerns, we have revised the proposed regulation text to require that the ASC must notify the patient in advance of the date of the procedure regarding physician ownership (for example, it could be at the same time that the ASC provides the package of information regarding pre-surgical testing for the planned ASC surgical procedure). Patients scheduled for a surgical procedure at an ASC almost always receive a package of information containing pre-surgical testing and physical examination requirements to which patients need to adhere. We believe that a simple ''check box'' form could be included in this information packet, for example, specifying whether the referring physician has a financial interest in the facility.

Comment: Several commenters suggested that ASCs should not be required to comply with an advance directive requirement because ASCs perform elective surgeries and because ASC staff are dedicated to doing everything within their power and training to ensure a patient survives the procedure. These commenters further stated that because Medicare does not pay for surgical procedures in the ASC that pose a significant risk to beneficiaries, it is not necessary to require an advance directives policy for ASCs.

The commenters also expressed concern that a patient arriving only 90 minutes in advance of an ASC procedure would not have sufficient time within which to complete an advance directive in addition to the other forms that he or she may be required to complete. Instead, the commenters suggested that advance directives could be made available by the ASC for the patients to obtain and read at their leisure prior to the procedure. The commenters further stated that the proposed requirements would be financially burdensome.

Response: Virtually all Medicare providers and suppliers have an advance directive requirement, with the exception of ASCs and rural health clinics. We agree that explaining an advance directive to patients prior to surgery could be cumbersome depending upon the patient's level of understanding and other circumstances. However, we also believe that patient health and safety must be the primary consideration in determining whether to have ASCs assume some responsibility for an advance directive requirement. We considered the policies behind the Consumer Bill of Rights and Responsibilities (CBRR), which recommended measures to promote and assure health care quality and value and to protect consumers and workers in the health care system. We were interested in whether ASC patients should be treated differently than other patients by virtue of the fact that the surgical procedures they undergo are voluntary and are provided exclusively on an ambulatory basis. CBRR is very specific in stating that consumers must be able to discuss advance directives with their health care provider. We concur. Although surgical procedures performed at ASCs are elective, in the event that any unforeseen complications arise that require transferring the patient to a hospital, an advance directive could be important upon the patient's arrival at the hospital. To ensure consumers' rights and ability to participate in treatment decisions, we believe that ASC health care personnel should discuss the use of advance directives with patients and their designated family members. Discussing advance directives with patients, regardless of the health care setting, is becoming the standard of practice. To actively participate in decisionmaking about their care, consumers must have complete information about their treatment options, including the alternative of no intervention, as well as the risks, benefits, and consequences of any options. Conversely, a health care provider may indicate that it is against its policy to comply with certain advance directives. When such conscience objections are expected to occur, patients should be made aware of it in advance of the date of the procedure. As is the case with patient rights information, advance directive forms can be mailed in the same packet to patients.

Comment: Several commenters were critical of the proposed requirement that ASCs report substantiated and unsubstantiated complaints to State and local authorities. The commenters

argued that unsubstantiated complaints should not be reported, as this might cause inappropriate disclosure of confidential information. Commenters recommended revising this provision to require that all allegations of neglect be promptly reported to a person in authority at the ASC. The commenters indicated that if the ASC determined that the grievance constituted a violation of applicable laws, regulations, or health care program requirements, the ASC would then report the allegation(s) to appropriate State and/or local authorities.

Response: We agree with the commenters. In this final rule, we have revised the proposed ''Submission and investigation of grievances'' requirement at § 416.50(a)(3)(iv) to specify that only substantiated allegations must be reported to State and/or local authorities.

Comment: Commenters believed that confidentiality of clinical records creates unnecessary confusion with the more comprehensive HIPAA privacy standards applicable to ASCs. They believed that permitting access to or release of patient records only with the patient's written consent is more stringent than the HIPAA standards, which permit routine disclosures without patient consent for purposes of payment, treatment, and health care operations. These commenters recommended instead that CMS develop a new standard which cross-references the HIPAA standard for confidentiality of clinical records.

Response: We agree with these commenters and in this final rule have revised the proposed regulation at § 416.50(d) to reflect a cross-reference to the HIPAA standards at 45 CFR Parts 160 and 164.

After consideration of the public comments received, we are finalizing the proposed revisions to § 416.50 with modifications to the following provisions.

In § 416.50(a)(1), we have made editorial revisions, using the phrase ''in advance of the date of the procedure'' instead of the proposed phrase ''prior to furnishing care to the patient and''.

We have made two editorial revisions to § 416.50(a)(1)(i): First, to refer to the ''The ASC's'' notice of rights; and second, to refer to the correct name of the Office of the Medicare Beneficiary Ombudsman.

In § 416.50(a)(1)(ii), we have made a minor editorial revision to the proposed first sentence, using the phrase ''where applicable,'' instead of the proposed phrase ''if applicable''.

In §§ 416.50(a)(2)(i) and (b)(2), we have changed references to ''applicable State law'' to specify ''applicable State health and safety laws''.

In § 416.50(a)(3)(iv), we added the words ''Only substantiated'' to specify the types of allegations that must be reported to ''State or local authorities, or both''.

In § 416.50(d), we have revised the paragraph to reflect a cross-reference to the HIPAA standards at 45 CFR Parts 160 and 164.

(5) Condition for Coverage: Infection Control. (§ 416.51)

The proposed infection control CfC was divided into two standards. Under standard § 416.51(a), ''Sanitary environment,'' we would require the ASC to provide a functional and sanitary environment for the provision of surgical services by adhering to professionally acceptable standards of practice. We proposed to allow the ASCs to have flexibility in designing their own infection control program that would meet CMS regulations and also meet the needs of their particular facility. The second proposed standard at § 416.51(b), ''Infection control,'' would require the ASC to maintain an ongoing program designed to prevent, control, and investigate infections and communicable diseases. The program would be required to designate a qualified professional who has training in infection control, integrate the infection control program into the ASC's QAPI program and be responsible for providing a plan of action for preventing, identifying and managing infections and communicable diseases and for immediately implementing corrective and preventive measures that result in improvement. Because the prevention and control of infection is so critically important to overall patient and staff health and safety, we have proposed to elevate the current standard-level requirement to a condition-level requirement and expand the requirements to include the designation of a qualified professional to direct the infection control program.

Comment: One commenter recommended that CMS include language that requires the ASC to base its policies for its infection control program on nationally recognized guidelines and standards. Another commenter also suggested the use of nationally recognized guidelines as the basis for ASC selection of approved and scientifically based methods and equipment for cleaning, disinfection and sterilization as outlined in nationally recognized guidelines.

Response: In this final rule, we have revised proposed § 416.51(b) to add a provision to read, ''In addition, the infection control and prevention program must include documentation that the ASC has considered, selected, and implemented nationally recognized infection control guidelines.'' As stated in the preamble to the 2007 ASC CFCs proposed rule (72 FR 50477), we expect ASCs to utilize nationally recognized and approved standards and guidelines for their infection control procedures. We stated that we did not want to restrict an ASC's flexibility in utilizing the guidelines that best suited its method of operation and, therefore, have chosen not to accept the comment that we select specific infection control methods as requirements.

Comment: A few commenters asked for clarification regarding the requirement that the designated professional have training in infection control. One commenter suggested the inclusion of examples of nationally recognized organizations that ASCs may seek out for guidance and continuing education. Other commenters suggested the designated infection control individual be identified as an infection control professional rather than infection control officer.

Response: We are not mandating one specific set of guidelines or infection and control standards that an ASC must employ but rather, it must consider, select and implement from nationally recognized guidelines. The preeminent organization that addresses infection issues is the Centers for Disease Control and Prevention. Hospitals and hospital organizations as well as national health care organizations also would have information regarding infection control. Training in infection control is available through a variety of services such as health care organizations, professional associations, and government entities. For example, an ASC could obtain information from the Healthcare Infection Control Practice Advisory Committee (HICPAC), Occupational Safety and Health Administration (OSHA), Association for Professionals in Infection Control and Epidemiology (APIC), Society for Healthcare Epidemiology of America (SHEA), Association of PeriOperative Registered Nurses (AORN) and/or the Association for the Advancement of Medical Instrumentation (AAMI). At this time, we will continue to allow the ASCs the flexibility in setting up the infection control program in a manner which best meets the organization's needs. Moreover, we expect that the ASC will be able to provide verification of staff training and current competency related to infection control standards of practice.

We do not find that it is necessary to associate a title with the qualified professional who directs the program.

Comment: Several commenters requested flexibility in designating an infection control professional to serve multiple facilities that are under common ownership.

Response: There may be rationale for those ASC facilities that are under common ownership to utilize a single infection control professional to direct more than one facility program concurrently. However, we believe that this type of arrangement would potentially hinge on the proximity of the ASCs to each other, the frequency of onsite visits by the designated individual, and the ability of each facility to respond to an infection control issue in a timely manner. We will address these and other issues in more detail in subregulatory guidance.

Comment: One commenter questioned the rationale for elevating infection control to the condition level. A commenter noted that requiring the program to be under the direction of a designated professional who has training in infection control, should not be necessary in the smaller ASC setting.

Response: The infection control requirement located at § 416.44(a)(3) currently requires both large and small ASC organizations to establish a program for identifying and preventing infections, maintaining a sanitary environment, and reporting the results to appropriate authorities. Considering the huge growth in the ASC industry since we issued the current ASC regulations in 1982, we believe that infection control in a surgical facility should be a high priority. All ASCs, regardless of size, must therefore have an infection control program where the person in charge is knowledgeable and is aware of current advances in the field.

After consideration of the public comments received, we are finalizing the proposed revisions to § 416.51, with some modification.

In the introductory test of § 416.51, we have revised an editorial change to the proposed language, using the phrase ''The ASC,'' instead of the proposed phrase ''The Ambulatory Surgical Center (ASC).'' We are not adopting the proposed ending phrase ''for patients and ASC staff''. Thus, the final language of the introductory text reads: ''The ASC must maintain an infection control program that seeks to minimize infections and communicable diseases.''

In § 416.51(b), we have added a sentence to the proposed requirements for infection control which states, ''In addition, the infection control and prevention program must include documentation that the ASC has considered, selected, and implemented nationally recognized infection control guidelines.''

(6) Condition for Coverage—Patient Admission, Assessment, and Discharge (§ 416.52)

The proposed admission, assessment and discharge requirement identified the three general areas that would be applicable to a surgical procedure and the timeframes for completing the assessments to help ASCs ensure they are identifying patient issues and needs in a timely and safe manner.

The proposed patient admission, assessment and discharge condition was divided into three standards. The first standard, § 416.52(a), ''Admission and pre-surgical assessment,'' would require the patient to have a comprehensive medical history and physical assessment completed by a physician or other qualified practitioner in accordance with State law and ASC policy not more than 30 days before the date of the scheduled surgery. The purpose of this medical history and physical assessment not more than 30 days before the date of the scheduled surgery is to ensure the medical professionals at the ASC have up-to-date and pertinent patient information available to perform safe and effective surgical procedures. In the second standard, § 416.52(b), ''Post-surgical assessment,'' we proposed that a thorough assessment of the patient's post-surgical condition must be completed and documented, and that any post-surgical needs are addressed and included in the discharge notes. In the third standard, § 416.52(c), ''Discharge,'' we proposed that the ASC must provide each patient with written discharge instructions; ensure the patient has a safe transition to home; ensure post-surgical needs are met; ensure each patient has a discharge order; and ensure the discharge order indicates the patient has been evaluated for proper anesthesia and medical recovery.

Comment: The majority of commenters supported the overall goals of the proposed patient admission, assessment, and discharge requirement. Several commenters suggested the removal of the specific language, ''who performed the surgery or procedures unless otherwise specified by State law'' found in proposed § 416.52(c)(3). Several other commenters questioned the rationale for the addition of the condition itself and believed the requirement is more stringent than that developed by accrediting bodies.

Response: After consideration of the public comments received and further review of the existing standards for assessment, anesthesia evaluation, and discharge, we have modified some of our proposed requirements in this final rule. We are not adopting that portion of proposed § 416.52(a)(2) that would require the pre-surgical assessment to include a determination of the patient's mental ability to undergo surgery. This may be beyond the scope of a surgical team.

Comment: Several commenters argued that CMS should not require ASCs to assess a patient's subjective ''mental ability'' to undergo surgery, especially where such an assessment conflicts with the legal right of a patient to make his or her own health care decisions or to have those decisions made by his or her designated representatives rather than by health care providers. One commenter had two suggestions. The first was that CMS change the language at proposed § 416.52(a)(1) to include the requirement that the physician who will be performing the procedure complete the comprehensive history and physical assessment, and that if the physician delegates this responsibility to another physician, such as the primary care physician, the operating physician review and authenticate the assessment prior to the date of surgery. Secondly, the commenter requested that CMS change the language at proposed § 416.52(a)(3) to state that ''the patient's medical history and physical assessment must be placed in the patient's medical record prior to the patient being taken to the operating room,'' rather than ''before the surgical procedure is started.''

Response: It is customary for the patient's primary care physician to perform the patient's comprehensive history and physical assessment, and it is also customary for the operating physician to determine from the pre-surgical assessment that is based on the required history and physical assessment requirement at § 416.52(a)(2) of the final rule that the patient will be able to tolerate surgery. We believe the second suggestion of the commenter for changes to § 416.52(a)(3) is a reiteration of what was proposed. However, in the final rule we have changed the language from ''before the surgical procedure is started'' to ''prior to the surgical procedure.''

Comment: Some commenters suggested alternative language to the post-surgical assessment located at § 416.52(b)(1). Commenters stated that a thorough assessment would require a review of all body systems and that it is not standard practice to do full body

assessments post-operatively and there is no evidence-based clinical rationale for such a broad requirement. One commenter suggested that well-trained professional nurses are capable of performing patient monitoring and assessment for anesthesia recovery.

Response: We agree and in this final rule have revised the requirement to allow for sufficient flexibility based on ASC policy to determine the assessment appropriate to the nature and scope of the procedure performed as well as the specific medical condition of the individual patient. The final regulation text at § 416.52(b)(1) reads, ''The patient's post-surgical condition must be assessed and documented in the medical record by a physician, other qualified practitioner, or a registered nurse with, at a minimum, post-operative care experience, in accordance with applicable State health and safety laws, standards of practice, and ASC policy.''

Comment: Some commenters indicated the requirement in the proposed Discharge standard at § 416.52(c)(2) that the ASC ensure that the patient have a safe transition to home was overly broad and opposed the language. Commenters were concerned that the language could be interpreted to mean the ASCs would be obligated to assume full responsibility for transporting patients to their homes using ambulances or other extraordinary precautions. They stated that there was no way for ASCs to ''ensure'' against car accidents or other events outside of their control that could interfere with a patient's safe transition to home.

Response: We agree that the proposed language could be construed too broadly and that there would be room for interpretation about the ASC's responsibility for patients after they had left the facility enroute to their home. Therefore, in this final rule we have removed that proposed requirement to limit ASC responsibility.

Comment: Many commenters suggested CMS move the discharge language located in the existing Surgical services requirement at § 416.42(c) to the new Patient admission, assessment, and discharge requirement at proposed § 416.52. Commenters also recommended that CMS expand the requirement currently set out at § 416.42(a) to specify that other qualified anesthesia providers, in addition to a physician, may evaluate each patient's proper anesthesia recovery before discharge from the ASC. In addition, commenters suggested that CMS group all the discharge requirements together in one section.

Response: As noted previously, we have clarified and amended the language at proposed § 416.52(b)(1) in this final rule to state that the patient's post-surgical condition must be assessed and documented in the medical record by a physician, other qualified practitioner, or a registered nurse with, at a minimum, post-operative care experience, in accordance with applicable State health and safety laws, standards of practice, and ASC policy.

In addition, it is customary for the operating physician to write a discharge order indicating ''the patient may be discharged when stable.'' Thus, in this final rule we are retaining, with some modification, the proposed language at § 416.52(c)(2) which now states: ''Ensure each patient has a discharge order signed by the physician who performed the surgery or procedure in accordance with applicable State health and safety laws, standards of practice, and ASC policy.'' These modifications to our proposal do not detract from the intent or value of the requirement.

Based on the public comments we received regarding proposed § 416.52(b)(1) and our corresponding changes, we believe a companion change can be made to § 416.42. We believe that discharged patients should be free of the effects of anesthesia to the greatest extent possible. Because we are permitting a physician, other qualified practitioner, or a registered nurse with experience in post-operative care at a minimum in § 416.52(b)(1) to assess and document the patient's post-surgical condition, we believe that we should permit a qualified practitioner, as defined at § 410.69(b), to determine if the lingering effects of anesthesia adversely affect discharge as noted in proposed § 416.42(a)(2). Therefore, in this final rule, we are conforming the existing regulation at § 416.42(a) (we refer readers to Subpart C—Specific Conditions for coverage—Surgical services) to the policy proposed at § 416.52(c) of the proposed rule by separating the existing two sentences into § 416.42(a)(1) and § 416.42(a)(2), and we are expanding the language under paragraph (a)(2) to state that ''before discharge from the ASC, each patient must be evaluated by a physician or by a practitioner qualified to administer anesthesia as defined at § 410.69(b) of this chapter, in accordance with applicable State health and safety laws, standards of practice, and ASC policy, for proper anesthesia recovery.'' These changes will provide flexibility for an ASC and are reflective of current practice.

We agree with the suggestion that we group the discharge requirements together in one section and have moved the requirement located at existing § 416.42(c), ''Standard: Discharge,'' to the new patient admission, assessment and discharge requirement at § 416.52 (c)(3). As adopted, this paragraph requires the ASC to ''Ensure all patients are discharged in the company of a responsible adult, except those patients exempted by the attending physician.''

After consideration of the public comments received, we are adopting the provisions of proposed § 416.52 as final with modifications as discussed below. As discussed earlier, we also are adopting revisions to §§ 416.42(a) and 416.42(c) based on public comments received regarding proposed changes to § 416.52(c) to conform them to the final policy.

In § 416.52, we revised the proposed introductory language to state that, ''The ASC must ensure each patient has the appropriate pre-surgical and post-surgical assessments completed and that all elements of the discharge requirements are completed.''

In § 416.52(a)(1), we have changed the proposed language ''State law and ASC policy'' to specify ''applicable State health and safety laws, standards of practice, and ASC policy''.

In § 416.52(a)(2), we added language to state that the pre-surgical assessment must be completed by a physician ''or other qualified practitioner in accordance with applicable State health and safety laws, standards of practice, and ASC policy'' and that the documented medical history and physical assessment includes ''documentation of any allergies to drugs and biologicals''. We are not adopting the proposed language that would have required that ''The assessment must include documentation to determine the patient's mental ability to undergo the surgical procedure.''

In § 416.52(a)(3), we have changed the language ''before the surgical procedure is started'' to ''prior to the surgical procedure''.

In § 416.52(b)(1), we have revised the proposed language to state ''The patient's post-surgical condition must be assessed and documented in the medical record by a physician, other qualified practitioner, or a registered nurse with post-operative care experience at a minimum, in accordance with applicable State health and safety laws, standards of practice, and ASC policy.''

In § 416.52(c)(1), we have added language to state that the ASC must, ''Provide each patient with written discharge instructions and overnight supplies. When appropriate, make a followup appointment with the

physician, and ensure that all patients are informed, either in advance of their surgical procedure or prior to leaving the ASC, of their prescriptions, post-operative instructions and physician contact information for followup care.''

In § 416.52(c)(2), we did not adopt the proposed requirement that the ASC must ensure ''the patient has a safe transition to home and that the post-surgical needs are met.''

In § 416.52(c)(3), we have renumbered the proposed section as § 416.52(c)(2) and revised the proposed first sentence to state that the ASC must, ''Ensure each patient has a discharge order, signed by the physician who performed the surgery or procedure in accordance with applicable State health and safety laws, standards of practice, and ASC policy.''

We are not adopting as final the proposed language of § 416.52(c)(3), which would have required that ''The discharge order must indicate that the patient has been evaluated for proper anesthesia and medical recovery.'' We have moved the provision of existing § 416.42(c) to new final § 416.52(c)(3), and made editorial revisions so that the provision now reads, ''Ensure all patients are discharged in the company of a responsible adult, except those patients exempted by the attending physician.''

In § 416.42(a), we have separated the two existing sentences into two subsections and added language in the newly designated § 416.42(a)(2) to permit ''a practitioner qualified to administer anesthesia as defined at § 410.69(b) of this chapter, in accordance with applicable State health and safety laws, standards of practice, and ASC policy'' or a physician to evaluate a patient for proper anesthesia recovery before the patient is discharged from the ASC.

In § 416.42(c), we have made minor editorial revisions to the existing requirement and moved the requirement to new § 416.52(c)(3).

c. Comments Outside the Scope of the Proposed Rule

Comment: One commenter requested that CMS change emergency equipment language to say ''available in the ASC'' instead of the current language ''available to the operating rooms.'' Other commenters suggested that CMS allow surgeons to have consulting privileges instead of admitting privileges at local hospitals. Some commenters suggested that CMS remove the requirement that mandates all ASCs have a mechanical ventilator, or exclude ASCs not administering general anesthesia from the requirement to have a ventilator in the ASC. Some commenters expressed concern over the variance in State licensing requirements. One commenter recommended that CMS establish an ''ASC compare'' site for comparison of safety and quality of services. Other commenters suggested that CMS add language to allow other individuals permitted by State law or regulation to order drugs or biologicals. Finally, one commenter requested that CMS amend the waiting area requirement.

Response: These issues are outside the scope of the 2007 ASC CfCs proposed rule and are not addressed in this final rule.

C. Updates to the Revised ASC Payment System

1. Legislative Authority for the ASC Payment System

Section 1832(a)(2)(F)(i) of the Act provides that benefits under Medicare Part B include payment for facility services furnished in connection with surgical procedures specified by the Secretary that are performed in an ASC. To participate in the Medicare program as an ASC, a facility must meet the standards specified in section 1832(a)(2)(F)(i) of the Act, which are set forth in 42 CFR Part 416, Subpart B and Subpart C of our regulations. The regulations at 42 CFR Part 416, Subpart B describe the general conditions and requirements for ASCs, and the regulations at Subpart C explain the specific conditions for coverage for ASCs.

Section 141(b) of the Social Security Act Amendments of 1994, Public Law 103–432, requires us to establish a process for reviewing the appropriateness of the payment amount provided under section 1833(i)(2)(A)(iii) of the Act for intraocular lenses (IOLs) that belong to a class of new technology intraocular lenses (NTIOLs). That process was the subject of a final rule entitled ''Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers,'' published on June 16, 1999, in the **Federal Register** (64 FR 32198).

Section 626(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), Public Law 108–173, added section 1833(i)(2)(D) to the Act, which required the Secretary to implement a revised ASC payment system to be effective not later than January 1, 2008. Section 626(c) of the MMA amended section 1833(a)(1) of the Act to require that, beginning with implementation of the revised ASC payment system, payment for surgical procedures furnished in ASCs shall be 80 percent of the lesser of the actual charge for the services or the amount determined by the Secretary under the revised payment system.

Section 5103 of the Deficit Reduction Act of 2005 (DRA), Public Law 109–171, amended section 1833(i)(2) of the Act by adding a new subparagraph (E) to place a limitation on payment amounts for surgical procedures in ASCs. Section 1833(i)(2)(E) of the Act provides that if the standard overhead amount under section 1833(i)(2)(A) of the Act for an ASC facility service for such surgical procedures, without application of any geographic adjustment, exceeds the Medicare payment amount under the hospital OPPS for the service for that year, without application of any geographic adjustment, the Secretary shall substitute the OPPS payment amount for the ASC standard overhead amount. This provision applied to surgical procedures furnished in ASCs on or after January 1, 2007, but before the effective date of the revised ASC payment system (that is, January 1, 2008). Section 109(b) of the Medicare Improvements and Extension Act of 2006 of the Tax Relief and Health Care Act of 2006 (MIEA–TRHCA), Public Law 109–432, amended section 1833(i) of the Act, in part, by redesignating clause (iv) as clause (v) and by adding a new clause (iv) to paragraph (2)(D) and adding paragraph (7)(A), which authorize the Secretary to require ASCs to submit data on quality measures and to reduce the annual update by 2 percentage points for an ASC that fails to submit data as required by the Secretary on selected quality measures. Section 109(b) of the MIEA–TRHCA also amended section 1833(i) of the Act by adding new paragraph (7)(B), which requires that certain quality of care reporting requirements mandated for hospitals paid under the OPPS, under section 109(a) of the MIEA–TRHCA, be applied in a similar manner to ASCs unless otherwise specified by the Secretary.

For a detailed discussion of the legislative history related to ASCs, we refer readers to the June 12, 1998 proposed rule (63 FR 32291 through 32292).

2. Prior Rulemaking

On August 2, 2007, we published in the **Federal Register** (72 FR 42470) the final rule for the revised ASC payment system, effective January 1, 2008. We revised our criteria for identifying surgical procedures that are eligible for Medicare payment when furnished in ASCs and adopted the method we would use to set payment rates for ASC covered surgical procedures and

covered ancillary services furnished in association with those covered surgical procedures beginning in CY 2008. In that final rule, we also established a policy for updating on an annual calendar year basis the ASC conversion factor, the relative payment weights and APC assignments, the ASC payment rates, and the list of procedures for which Medicare would not make an ASC payment. We also established a policy for treating new and revised HCPCS and CPT codes under the ASC payment system. This policy is consistent with the OPPS to the extent possible (72 FR 42533).

In the CY 2008 OPPS/ASC final rule with comment period (72 FR 66827), we updated and finalized the CY 2008 ASC rates and lists of covered surgical procedures and covered ancillary services. We also made regulatory changes to 42 CFR Parts 411, 414, and 416 related to our final policies to provide payments to physicians who perform noncovered ASC procedures in ASCs based on the facility practice expense (PE) relative value units (RVUs), to exclude covered ancillary radiology services and covered ancillary drugs and biologicals from the categories of designated health services (DHS) that are subject to the physician self-referral prohibition, and to reduce ASC payments for surgical procedures when the ASC receives full or partial credit toward the cost of the implantable device.

3. Policies Governing Changes to the Lists of Codes and Payment Rates for ASC Covered Surgical Procedures and Covered Ancillary Services

The August 2, 2007 final rule established our policies for determining which procedures are ASC covered surgical procedures and covered ancillary services. Under §§ 416.2 and 416.166, subject to certain exclusions, covered surgical procedures are surgical procedures that are separately paid under the OPPS, that would not be expected to pose a significant risk to beneficiary safety when performed in an ASC, and that would not be expected to require active medical monitoring and care at midnight following the procedure (''overnight stay''). We adopted this standard for defining which surgical procedures are covered surgical procedures under the ASC payment system as an indicator of the complexity of the procedure and its appropriateness for Medicare payment in ASCs. We use this standard only for purposes of evaluating procedures to determine whether or not they are appropriate for Medicare beneficiaries in ASCs. Prior to the revised ASC payment system, procedures were excluded from the ASC list of covered surgical procedures based on whether they were expected to require more than four hours of recovery time. Both the previous 4-hour limit on the expected length of recovery time and the current criterion related to the expected need for active medical monitoring at midnight following the procedure were based on our longstanding requirement that procedures on the Medicare ASC list of covered surgical procedures do not require an extended recovery time and do not require an ''overnight'' stay.

We defined surgical procedures as those described by Category I CPT codes in the surgical range from 10000 through 69999, as well as those Category III CPT codes and Level II HCPCS codes that crosswalk or are clinically similar to ASC covered surgical procedures (72 FR 42478). We note that we added over 800 surgical provedures to the list of covered surgical procedures for ASC payment in CY 2008, the first year of the revised ASC payment system, based on the criteria for payment that we adopted in the August 2, 2007 revised ASC payment system final rule as described above in this section. Patient safety and health outcomes continue to be important to us as more health care moves to the ambulatory care setting. Therefore, as we gain additional experience with the revised ASC payment system, we are interested in any information the public may have regarding the comparative patient outcomes of surgical care provided in ambulatory settings, including HOPDs, ASCs, and physicians' offices, particularly with regard to the Medicare population.

In the August 2, 2007 final rule, we also established our policy to make separate ASC payments for the following ancillary services, for which separate payment is made under the OPPS, when they are provided integral to ASC covered surgical procedures: Brachytherapy sources; certain implantable items that have pass-through status under the OPPS; certain items and services that we designate as contractor-priced, including, but not limited to, procurement of corneal tissue; certain drugs and biologicals; and certain radiology services. These covered ancillary services are specified in § 416.164(b) and are eligible for separate ASC payment (72 FR 42495). Payment for ancillary services that are not paid separately under the ASC payment system is packaged into the ASC payment for the covered surgical procedure.

The full CY 2008 lists of ASC covered surgical procedures and covered ancillary services are included in Addenda AA and BB, respectively, to the CY 2008 OPPS/ASC final rule with comment period (72 FR 66945 through 66993 and 67165 through 67188).

We update the lists of, and payment rates for, covered surgical procedures and covered ancillary services, in conjunction with the annual proposed and final rulemaking process to update the OPPS and ASC payment systems (§ 416.173; 72 FR 42535). In addition, because we base ASC payment policies for covered surgical procedures, drugs, biologicals, and certain other covered ancillary services on the OPPS payment policies, we also provide quarterly updates for ASC services throughout the year (January, April, July, and October), just as we do for the OPPS. The updates are to implement newly created Level II HCPCS codes and Category III CPT codes for ASC payment and to update the payment rates for separately paid drugs and biologicals based on the most recently submitted ASP data.

In our annual updates to the ASC list of, and payment rates for, covered surgical procedures and covered ancillary services, we undertake a review of excluded surgical procedures, new procedures, and procedures for which there is revised coding, to identify any that we believe meet the criteria for designation as ASC covered surgical procedures or covered ancillary services. Updating the lists of covered surgical procedures and covered ancillary services, as well as their payment rates, in association with the annual OPPS rulemaking cycle is particularly important because the OPPS relative payment weights and, in some cases, payment rates, are used as the basis for the payment of covered surgical procedures and covered ancillary services under the revised ASC payment system. This joint update process ensures that the ASC updates occur in a regular, predictable, and timely manner.

Comment: Commenters provided a number of general suggestions related to the ASC list of covered surgical procedures. They contended that CMS should not restrict which procedures are payable in ASCs any more than CMS restricts which procedures are payable in HOPDs. The commenters also enumerated more specific modifications that they said would make the ASC payment system more equitable. They suggested that CMS allow payment for procedures reported by unlisted codes when the only possible procedures reported by the unlisted code are from anatomic sites that could not possibly pose a potential risk to beneficiary safety. They gave as an example of such

an unlisted code, CPT code 67999 (Unlisted procedure, eyelids). In addition, the commenters recommended that CMS automatically evaluate, for addition to the ASC list of covered surgical procedures, all procedures that are removed from the OPPS inpatient list and that, in all cases, CMS should provide specific reasons that procedures are excluded from the ASC list of covered surgical procedures. The commenters questioned why there are instances in which all but one or two of the procedures in a given APC are included on the ASC list. They stated that the APCs are clinically homogeneous and that as such, all of the procedures in an APC should be determined either to be excluded from or included on the ASC list. Finally, some commenters requested that ASCs be paid for certain services outside the CPT surgical code range, including certain Category III CPT codes and radiology services when packaged surgical procedures would also be performed.

Response: We appreciate the commenters' suggestions regarding the consistency of the decisions about which procedures are excluded from the ASC list. However, as we explained in the August 2, 2007 revised ASC payment system final rule (72 FR 42479), we do not believe that all procedures that are appropriate for performance in HOPDs are appropriate in ASCs. HOPDs are able to provide much higher acuity care than ASCs. ASCs have neither patient safety standards consistent with those in place for hospitals, nor are they required to have the trained staff and equipment needed to provide the breadth and intensity of care that hospitals are required to maintain. Therefore, we will not modify our policy to exclude from the ASC list of covered surgical procedures only those procedures for which no payment is made in HOPDs.

We do not agree with the commenters' recommendation that we include certain unlisted codes on the list of covered procedures. Even though it may be highly unlikely that any procedures that would be expected to pose a risk to beneficiary safety or to require an overnight stay would be reported by an unlisted code from certain anatomic sites, we cannot know what surgical procedure is being reported by an unlisted code, and because we cannot evaluate any such procedure, we believe that we must exclude unlisted codes from the list of covered surgical procedures.

Each year in the annual OPPS/ASC proposed rule, we present the procedures we are proposing to remove from the OPPS inpatient list for the upcoming calendar year. In the past, we have not consistently reviewed procedures removed from the OPPS inpatient list to evaluate their appropriateness for payment under the ASC payment system. Because our policy under the revised ASC payment system is to annually evaluate all surgical procedures that are excluded from the ASC list for potential inclusion in the following year, we believe it is appropriate to include a review of surgical procedures that are proposed for removal from the OPPS inpatient list as part of our annual review of procedures excluded from the ASC list of covered surgical procedures. Therefore, we are adopting the commenters' suggestion to evaluate for appropriateness of ASC payment surgical procedures removed from the OPPS inpatient list. We will include in the annual OPPS/ASC proposed rule, our proposals to include or not include on the ASC list of covered surgical procedures those procedures proposed for removal from the OPPS inpatient list. We will include our final decisions in the OPPS/ASC final rule with comment period.

We do not agree with the commenters' request that we provide specific reasons for our decisions to exclude procedures from the ASC list other than that we believe a procedure is expected to pose a significant risk to beneficiary safety or to require an overnight stay. We believe that these reasons are sufficiently specific. Our decisions to exclude procedures from the ASC list are based on a number of the criteria listed at § 416.166, and we believe that it would be unnecessary and overly burdensome to list each and every reason for those decisions.

For each of the specific examples that the commenters provided of inconsistent ASC treatment of procedures assigned to a single APC under the OPPS, we have evaluated the individual procedures for inclusion on the ASC list and each is discussed in section XV.E.1.a. of this final rule with comment period. During our development of the proposed CY 2010 update to the ASC payment system, we will perform a comprehensive review of the APCs to address other potential inconsistencies.

Finally, currently the revised ASC payment system provides payment only for surgical procedures within the surgical code range of CPT and for those Category III CPT codes and Level II HCPCS codes that directly crosswalk or are clinically similar to surgical procedures that are on the ASC list of covered surgical procedures (72 FR 42478). Furthermore, radiology services are only separately paid when they are provided integral to the performance of covered surgical procedures (72 FR 42498). Therefore, we will not provide ASC payment in CY 2009 for services that do not meet these criteria. However, we note that while section 1832(a)(2)(F) of the Act defines the ASC benefit as ''facility services furnished in connection with surgical procedures specified by the Secretary,'' some stakeholders have raised the possibility of ASCs providing a broader range of services in the future, including services such as cardiac catheterization and hyperbaric oxygen therapy (which are included in the medicine range of CPT codes). While we are not making any changes to the existing criteria for ASC services for CY 2009, we may consider proposing changes in the future.

After consideration of the public comments received, we are accepting the commenters' recommendation to include in our annual evaluation of excluded surgical procedures all procedures proposed for removal from the OPPS inpatient list, and agree to evaluate the OPPS APCs for potential inconsistencies related to exclusion from the ASC list of covered surgical procedures. We are not accepting the commenters' recommendations to not exclude all procedures reported by unlisted codes and procedures that we determine would be expected to pose a significant risk to beneficiary safety or require an overnight stay. Further, we also are not accepting the commenters' recommendation that CMS provide more specific reasons for its decisions regarding exclusion of specific procedures from the ASC list of covered surgical procedures or their recommendation that we pay ASCs for services in CY 2009 that do not meet the current criteria for ASC services.

D. Treatment of New Codes

1. Treatment of New Category I and III CPT Codes and Level II HCPCS Codes

We finalized a policy in the August 2, 2007 final rule to evaluate each year all new Category I and Category III CPT codes and Level II HCPCS codes that describe surgical procedures, to make preliminary determinations in the annual OPPS/ASC final rule with comment period regarding whether or not they meet the criteria for payment in the ASC setting and, if so, whether they are office-based procedures (72 FR 42533). In addition, we identify new codes as ASC covered ancillary services based upon the final payment policies of the revised ASC payment system. New HCPCS codes that are released in

the summer through the fall of each year, to be effective January 1, are included in the final rule with comment period updating the ASC payment system for the following calendar year. These new codes are flagged with comment indicator ''NI'' in Addenda AA and BB to the OPPS/ASC final rule with comment period to indicate that we are assigning them an interim status. The interim payment indicators assigned to the new codes under the revised ASC payment system are subject to public comment in that final rule with comment period. These interim determinations must be made in the OPPS/ASC final rule with comment period because, in general, the new HCPCS codes and their descriptors for the upcoming calendar year are not available at the time of development of the OPPS/ASC proposed rule. We will respond to those comments in the OPPS/ASC final rule with comment period for the following calendar year. We proposed to continue this recognition process for CY 2009 (73 FR 41525).

We did not receive any public comments regarding this proposal. For CY 2009, we are continuing our established policy for recognizing new Category I and Category III CPT codes and Level II HCPCS codes.

In addition, we proposed to continue our policy of implementing through the ASC quarterly update process new mid-year CPT codes, generally Category III CPT codes, that the AMA releases in January to become effective the following July (73 FR 41525). Therefore, we proposed to include in Addenda AA or BB, as appropriate, to the CY 2009 OPPS/ASC final rule with comment period the new Category III CPT codes released in January 2008 for implementation on July 1, 2008 (through the ASC quarterly update process) that we identify as ASC covered services. Similarly, we proposed to include in Addenda AA and BB to this final rule with comment period any new Category III CPT codes that the AMA releases in July 2008 to be effective on January 1, 2009 that we identify as ASC covered services. However, only those new Category III CPT codes implemented effective January 1, 2009 are designated by comment indicator ''NI'' in the Addenda to this CY 2009 OPPS/ASC final rule with comment period, to indicate that we have assigned them an interim payment status which is subject to public comment. The Category III CPT codes implemented in July 2008 for ASC payment, which appeared in Table 36 of the CY 2009 OPPS/ASC proposed rule (73 FR 41525), were subject to comment on the CY 2009 OPPS/ASC proposed rule, and we proposed to finalize their payment indicators in this CY 2009 OPPS/ASC final rule with comment period. We proposed to assign payment indicator ''G2'' (Non office-based surgical procedure added in CY 2008 or later; payment based on OPPS relative payment weight) to each of the three new codes. Because new Category III CPT codes that become effective for July are not available to CMS in time for incorporation into the Addenda to the OPPS/ASC proposed rule, our policy is to include the codes, their proposed payment indicators, and proposed payment rates in the preamble to the proposed rule but not in the Addenda to the proposed rule. These codes and their final payment indicators and rates are included in the appropriate Addenda to the OPPS/ASC final rule with comment period.

We did not receive any public comments regarding this proposal. We are continuing our established policy for recognizing new mid-year CPT codes, and the new mid-year codes implemented in July 2008 are displayed in Table 40 below, as well as in Addendum AA to this final rule with comment period.

TABLE 40—NEW CATEGORY III CPT CODES IMPLEMENTED IN JULY 2008 FOR ASC PAYMENT

CY 2009 HCPCS code	CY 2009 Long descriptor	Final CY 2009 ASC payment indicator
0190T	Placement of intraocular radiation source applicator	G2
0191T	Insertion of anterior segment aqueous drainage device, without extraocular reservoir; internal approach.	G2
0192T	Insertion of anterior segment aqueous drainage device, without extraocular reservoir; external approach.	G2

2. Treatment of New Level II HCPCS Codes Implemented in April and July 2008

New Level II HCPCS codes may describe covered surgical procedures or covered ancillary services. All new Level II HCPCS codes implemented in April and July 2008 for ASCs describe covered ancillary services. During the second quarter of CY 2008, we added to the list of covered ancillary services a total of four new Level II HCPCS codes for drugs and biologicals because they are eligible for separate payment under the OPPS. Those HCPCS codes are: C9241 (Injection, doripenem, 10 mg); Q4096 (Injection, von willebrand factor complex, human, ristocetin cofactor (not otherwise specified), per i.u. VWF.RCO); Q4097 (Injection, immune globulin (Privigen), intravenous, non-lyophilized (e.g., liquid), 500 mg); and Q4098 (Injection, iron dextran, 50 mg). Similarly, for the third quarter of CY 2008, we added a total of four new Level II HCPCS codes to the list of ASC covered ancillary services for drugs and biologicals because they are eligible for separate payment under the OPPS. Those HCPCS codes are: C9242 (Injection, fosaprepitant, 1 mg); C9356 (Tendon, porous matrix of cross-linked collagen and glycosaminoglycan matrix (TenoGlide Tendon Protector Sheet), per square centimeter); C9357 (Dermal substitute, granulated cross-linked collagen and glycosaminoglycan matrix (Flowable Wound Matrix), 1 cc); and C9358 (Dermal substitute, native, non-denatured collagen (SurgiMend Collagen Matrix), per 0.5 square centimeters).

We assigned the payment indicator ''K2'' (Drugs and biologicals paid separately when provided integral to a surgical procedure on ASC list; payment based on OPPS rate) for all of these new Level II HCPCS codes and added them to the list of covered ancillary services either through the April update (Transmittal 1488, Change Request 5994, dated April 9, 2008) or the July update (Transmittal 1540, Change Request 6095, dated June 20, 2008) of the CY 2008 ASC payment system. In the CY 2009 OPPS/ASC proposed rule (73 FR 41526), we solicited public comment on the proposed ASC payment indicators and payment rates for these codes, as listed in Tables 37 and 38 of the proposed rule. The codes listed in

Table 37 also were included in Addendum BB to the CY 2009 OPPS/ASC proposed rule. Those HCPCS codes are paid in ASCs, beginning in either April or July 2008, based on the ASC rates posted for the appropriate calendar quarter on the CMS Web site at: *http://www.cms.hhs.gov/ASCPayment/.*

However, because HCPCS codes that become effective for July are not available to CMS in time for incorporation into the Addenda to the OPPS/ASC proposed rule, our policy is to include the HCPCS codes, their proposed payment indicators, and proposed payments rates in the preamble to the proposed rule but not in the Addenda to the proposed rule. The HCPCS codes and their final payment indicators and rates are included in the appropriate Addenda to the OPPS/ASC final rule with comment period. Thus, the codes implemented by the July 2008 ASC update and their proposed CY 2009 payment rates (based on July 2008 ASP data) that were displayed in Table 38 of the CY 2009 OPPS/ASC proposed rule were not included in Addendum BB to the CY 2009 OPPS/ASC proposed rule. We proposed to include the new HCPCS codes displayed in Tables 37 and 38 and, for the codes in Table 37, in Addendum BB to the list of covered ancillary services and to incorporate all of them into Addendum BB to this CY 2009 OPPS/ASC final rule with comment period, consistent with our annual update policy.

For CY 2009, the CMS HCPCS Workgroup created permanent HCPCS J-codes for the four codes that were implemented in April 2008 and one of the codes that was implemented in July 2008, and we will be recognizing these HCPCS J-codes for payment of these drugs and biologicals under the CY 2009 ASC payment system, consistent with our general policy to use permanent HCPCS codes, if appropriate, for the reporting of drugs. Tables 41 and 42 show the new permanent HCPCS J-codes that replace several HCPCS C-codes and Q-codes that will be deleted, effective December 31, 2008. The HCPCS J-codes, effective January 1, 2009, describe the same drugs and the same dosages as the HCPCS codes they are replacing. Because the new HCPCS codes describe the same drugs and the same dosages as do the current codes, there is no effect on the payment indicators.

In addition, a new HCPCS Q-code, Q4114, that is effective January 1, 2009, was created to replace HCPCS code C9357. Although the long descriptor is changed, the new code describes the same biological and dosage as did HCPCS code C9357. Therefore, we will recognize HCPCS code Q4114 for payment under the CY 2009 ASC payment system, and no change to the payment indicator of the HCPCS code is warranted.

We did not receive any public comments regarding our proposal. We are adopting the ASC payment indicators for the new Level II HCPCS codes implemented in April and July 2008 as shown in Tables 41 and 42, respectively. Moreover, we are adopting as final the replacement HCPCS codes, specifically J1267, J7186, J1459, J1750, and J1453, as well as HCPCS codes C9356, Q4114, and C9358, as show in Tables 41 and 42 below, and in Addendum BB to this final rule with comment period.

TABLE 41—LEVEL II HCPCS CODES IMPLEMENTED IN APRIL 2008

CY 2008 HCPCS code	CY 2009 HCPCS code	CY 2009 Long descriptor	Final CY 2009 ASC payment indicator
C9241	J1267	Injection, doripenem, 10 mg	K2
Q4096	J7186	Injection, antihemophilic factor viii/von willebrand factor complex (human), per factor viii i.u.	K2
Q4097	J1459	Injection, immune globulin (Privigen), intravenous, non-lyophilized (e.g. liquid), 500 mg.	K2
Q4098	J1750	Injection, iron dextran, 50 mg	K2

TABLE 42—LEVEL II HCPCS CODES IMPLEMENTED IN JULY 2008

CY 2008 HCPCS code	CY 2009 HCPCS code	CY 2009 Long descriptor	Final CY 2009 ASC payment indicator
C9242	J1453	Injection, fosaprepitant, 1 mg	K2
C9356	C9356	Tendon, porous matrix of cross-linked collagen and glycosaminoglycan matrix (TenoGlide Tendon Protector Sheet), per square centimeter.	K2
C9357	Q4114	Allograft, Integra Flowable Wound Matrix, injectible, 1 cc	K2
C9358	C9358	Dermal substitute, native, non-denatured collagen (SurgiMend Collagen Matrix), per 0.5 square centimeters.	K2

E. Update to the Lists of ASC Covered Surgical Procedures and Covered Ancillary Services

1. Covered Surgical Procedures

a. Additions to the List of ASC Covered Surgical Procedures

In the CY 2009 OPPS/ASC proposed rule (73 FR 41526), we proposed to update the ASC list of covered surgical procedures by adding nine procedures to the list. Three of the nine procedures, specifically CPT code 0190T (Placement of intraocular radiation source applicator), CPT code 0191T (Insertion of anterior segment aqueous drainage device, without extraocular reservoir; internal approach), and CPT code 0192T (Insertion of anterior segment aqueous drainage device, without extraocular reservoir; external approach) are new Category III CPT codes that became effective July 1, 2008 and were implemented in the July 2008 ASC update. The other six procedures were among those excluded from the ASC list for CY 2008 because we believed they did not meet the definition of a covered surgical procedure based on our expectation that they would pose a significant safety risk to Medicare beneficiaries or would require an overnight stay if performed in ASCs. During our annual review of excluded codes in which we used the most recent

available utilization data, we identified the following six procedures that we believed should no longer be excluded from the ASC list: CPT code 31293 (Nasal/sinus endoscopy, surgical; with medial orbital wall and inferior orbital wall decompression); CPT code 34490 (Thrombectomy, direct or with catheter; axillary and subclavian vein, by arm incision); CPT code 36455 (Exchange transfusion, blood; other than newborn); CPT code 49324 (Laparoscopy, surgical; with drainage of lymphocele to peritoneal cavity); CPT code 49325 (Laparoscopy, surgical; with revision of previously placed intraperitoneal cannula or catheter, with removal of intraluminal obstructive material if performed); and CPT code 49326 (Laparoscopy, surgical; with omentopexy (omental tacking procedure)). The nine codes that we proposed to add to the ASC list of covered surgical procedures and their proposed CY 2009 payment indicator ''G2'' (Non office-based surgical procedure added in CY 2008 or later; payment based on OPPS relative payment weight) were displayed in Table 39 of the CY 2009 OPPS/ASC proposed rule (73 FR 41527).

Comment: Commenters requested that CMS add a number of additional procedures to the ASC list of covered surgical procedures. Some commenters requested that CMS add CPT codes 15170 (Acellular dermal replacement, trunk, arms, legs; first 100 sq cm or less, or 1% of body area of infants and children); 15171 (Acellular dermal replacement, trunk, arms, legs; each additional 100 sq cm, or each additional 1% of body area of infants and children, or part thereof); 15175 (Acellular dermal replacement, face scalp, eyelids, mouth, neck, ears, orbits, genitalia, hands, feet, and/or multiple digits; first 100 sq cm or less, or 1% of body area of infants and children); and 15176 (Acellular dermal replacement, face scalp, eyelids, mouth, neck, ears, orbits, genitalia, hands, feet, and/or multiple digits; each additional 100 sq cm or each additional 1% of body area of infants and children, or part thereof) because they believed that those procedures met the criteria CMS has established for ASC payment and are comparable to surgical procedures already included on the list of covered surgical procedures.

Response: We reviewed these codes and agree with the commenters that the procedures would not be expected to pose a significant risk to beneficiary safety and to require an overnight stay. Therefore, we are adding these procedures to the ASC list of covered surgical procedures, and we have assigned payment indicator ''G2'' to CPT codes 15170, 15171, 15175 and 15176 in Addendum AA to this final rule with comment period.

Comment: Several commenters requested that CMS add to the ASC list the procedures reported by CPT codes 21385 (Open treatment of orbital floor blowout fracture; transantral approach (Caldwell-Luc type operation); 21386 (Open treatment of orbital floor blowout fracture; periorbital approach); and 21387 (Open treatment of orbital floor blowout fracture; combined approach). The commenters stated that although the majority of these cases result from trauma and, therefore, present in the hospital emergency department, delayed presentation occasionally occurs. In those cases, they argued that the ASC setting would be an appropriate site for the procedures because blood loss is minimal and patients do not require an overnight stay. They also noted that CMS had proposed to remove CPT codes 21386 and 21387 from the OPPS inpatient list for CY 2009 and that because these procedures would be payable in the hospital outpatient setting, they requested that CMS provide a reason for its decision to continue to exclude the procedures from the ASC list.

Response: Although we agree with the commenters that these procedures rarely would be performed in ASCs because of the typically urgent nature of their presentation, our medical advisors found that the typical post-operative course for the procedures includes a need for active medical monitoring for at least 24 hours following surgery. Based on our review of the three procedures, we will continue to exclude them from the list of covered surgical procedures for CY 2009 because we expect that they would pose a significant risk to beneficiary safety or require an overnight stay following surgery, even on those rare occasions that the beneficiary presents in the ASC after a delay in seeking treatment.

Comment: Commenters requested the addition of CPT codes 29867 (Arthroscopy, knee, surgical; osteochondral allograft (eg, mosaicplasty)) and 29868 (Arthroscopy, knee, surgical; meniscal transplantation (includes arthrotomy for meniscal insertion), medial or lateral) to the ASC list of covered surgical procedures because they would not be expected to require overnight care and are comparable to procedures such as CPT code 29880 (Arthroscopy, knee, surgical; with meniscectomy (medial AND lateral, including any meniscal shaving)) that are included on the ASC list.

Response: We reviewed the utilization and clinical information for the two procedures discussed. We continue to believe that the post-operative care that is likely to be required for the procedures includes inpatient hospital care in many cases, and we expect would at least require active medical monitoring and care at midnight following the procedure. Therefore, we will continue to exclude CPT codes 29867 and 29868 from the ASC list of covered surgical procedures for CY 2009.

Comment: Commenters requested that CMS add CPT codes 31292 (Nasal/sinus endoscopy, surgical; with medial or inferior orbital wall decompression) and 31294 (Nasal/sinus endoscopy, surgical; with optic nerve decompression) to the ASC list. Commenters contended that because CMS proposed to add CPT code 31293 (Nasal/sinus endoscopy, surgical; with medial orbital wall and inferior wall decompression) to the list for CY 2009, CMS should also add these two closely related procedures. The three procedures were proposed for assignment to APC 0075 (Level V Endoscopy Upper Airway) under the OPPS, and the commenters indicated that CPT codes 31292 and 31294 were the only procedures assigned to that APC that are not on the ASC list. They stated their belief that the clinical homogeneity of the APC provides supporting evidence that these two procedures should also be included for payment in ASCs.

Response: In response to the public comments, we reexamined CPT codes 31292 and 31294 and continue to expect that these procedures would pose a significant safety risk to beneficiaries in ASCs or require monitoring at midnight following the surgery. In addition, in reviewing those procedures, we reevaluated our proposed addition of CPT code 31293 to the ASC list and determined that it should remain excluded from the ASC list. Our medical advisors agreed with the commenters that the procedure reported by CPT code 31293 is closely related to those procedures reported using CPT codes 31292 and 31294 and determined that it, too, would be expected to pose a significant risk to beneficiary safety and require an overnight stay. Therefore, we will not add CPT codes 31292 and 31294 to the ASC list, and we also are not finalizing our proposal to add CPT code 31293 to the ASC list of covered surgical procedures for CY 2009.

Comment: One commenter requested that CMS add CPT code 37205 (Transcatheter placement of an intravascular stent(s) (except coronary,

carotid, and vertebral vessel), percutaneous; initial vessel) to the ASC list of covered surgical procedures for CY 2009. The commenter said that one of the procedures described by CPT code 37205 is increasingly employed by surgeons in attempts to extend the patency of a fistula or graft for hemodialysis longer than may be accomplished by angioplasty alone. The commenter believed that continued exclusion of CPT code 37205 from the ASC list would interfere with the physician-patient decision-making process related to the most appropriate site for the service to be provided. Further, the commenter noted that CPT code 37205 is used to report other surgeries, some of which may not be appropriately provided in ASCs, and strongly encouraged CMS to consider creating a separate code(s) for the placement of dialysis vascular access stents, similar to the hemodialysis access angioplasty HCPCS G-codes (G0392 (Transluminal balloon angioplasty, percutaneous; for maintenance of hemodialysis access, arteriovenous fistula or graft; arterial) and G0393 (Transluminal balloon angioplasty, percutaneous; for maintenance of hemodialysis access, arteriovenous fistula or graft; venous)) created for CY 2007.

Response: We continue to find that many of the procedures that could be reported by CPT code 37205 would be expected to present significant risks to beneficiary safety if they were to be performed in ASCs. Therefore, we will continue to exclude this procedure from the ASC list for CY 2009. However, we understand the commenter's points that the procedure, when performed peripherally, may be valuable for maintaining vascular access for dialysis patients and that the clinical characteristics of stenting to maintain hemodialysis access may differ from the features of other surgical procedures that could also be described by CPT code 37205. As we develop the proposals to update the OPPS and ASC payment system for CY 2010, we will consider the commenter's recommendation regarding the creation of a HCPCS G-code to describe the insertion of vascular stents for the purpose of extending the patency of fistulae or grafts for dialysis patients.

Comment: One commenter requested that CMS add CPT code 50593 (Ablation, renal tumor(s), unilateral, percutaneous, cryotherapy) to the ASC list of covered surgical procedures. The commenter noted that the procedure is assigned to APC 0423 (Level II Percutaneous Abdominal and Biliary Procedures) under the OPPS and is the only procedure in that APC that is excluded from the ASC list. The commenter believed that, because APCs are clinically homogeneous, CPT code 50593 should also be included for ASC payment.

Response: Our medical advisors reviewed the procedure described by CPT code 50593. We have no physician claims data to indicate in which sites-of-service the procedure was performed because the Category I CPT code was new for CY 2008, and physician data are not available for the predecessor Category III CPT code. Based on the judgment of our medical advisors, we continue to expect that the procedure would pose a significant safety risk to beneficiaries if performed in an ASC. When we prepare the CY 2010 OPPS/ASC proposed rule, we will review utilization data that have become available for the procedure.

Comment: Commenters on the CY 2008 OPPS/ASC final rule with comment period and commenters on the CY 2009 OPPS/ASC proposed rule requested that CMS add CPT code 52649 (Laser enucleation of the prostate with morcellation, including control of postoperative bleeding, complete (vasectomy, meatotomy, cystourethroscopy, urethral calibration and/or dilation, internal urethrotomy and transurethral resection of prostate are included if performed)), a new code for CY 2008, to the ASC list of covered surgical procedures. The commenters asserted that the procedure is comparable to those reported by CPT codes 52647 (Laser coagulation of prostate, including control of postoperative bleeding, complete (vasectomy, meatotomy, cystourethroscopy, urethral calibration and/or dilation, and internal urethrotomy are included if performed)) and 52648 (Laser vaporization of prostate, including control of postoperative bleeding, complete (vasectomy, meatotomy, cystourethroscopy, urethral calibration and/or dilation, internal urethrotomy and transurethral resection of prostate are included if performed)). They believed that, like CPT codes 52647 and 52648, CPT code 52649 could be safely performed in an ASC and does not require an overnight stay. One commenter explained that the primary difference between CPT codes 52648 and 52649 is the additional amount of physician time involved for the enucleation technique.

Response: CPT code 52649 was new for CY 2008, so it was assigned interim treatment under the ASC payment system and its status was, therefore, open to comment on the CY 2008 OPPS/ASC final rule with comment period. Because CPT code 52649 was new for CY 2008, we have no physician utilization data regarding the procedure's sites-of-service. Our medical advisors continue to expect that CPT code 52649 would pose a significant risk to beneficiary safety or require an overnight stay and should be excluded from the ASC list for CY 2009. Therefore, we are excluding it from the ASC list of covered surgical procedures. However, we will reevaluate this procedure as part of our annual review of procedures that are excluded from the ASC list during development of the CY 2010 OPPS/ASC proposed rule.

Comment: One commenter requested that CMS add CPT code 57310 (Closure of urethrovaginal fistula) to the ASC list of covered surgical procedures. The commenter contended that the procedure is less complex than the procedure reported by CPT code 57320 (Closure of vesicovaginal fistula; vaginal approach), which is on the ASC list, and that the procedure would be safe for performance in ASCs and would not require an overnight stay.

Response: The utilization data for CPT code 57310 show that the procedure is performed roughly half of the time on an inpatient basis and that there is no utilization in physicians' offices or ASCs. Based on those data, in addition to the clinical judgment of our medical advisors that the procedure would be expected to pose a significant risk to beneficiary safety and require an overnight stay when performed in an ASC, we believe that CPT code 57310 should continue to be excluded from the ASC list of covered procedures for CY 2009.

Comment: One commenter, on behalf of many ASCs, requested the addition of CPT codes 64448 (Injection, anesthetic agent; femoral nerve, continuous infusion by catheter (including catheter placement) including daily management for anesthetic agent administration) and 64449 (Injection, anesthetic agent; lumbar plexus, posterior approach, continuous infusion by catheter (including catheter placement) including daily management for anesthetic agent administration) to the ASC list of covered surgical procedures for CY 2009. The commenter stated that these procedures are provided to non-Medicare patients in ASCs on a regular basis and that patients would not require care overnight.

Response: Our medical advisors examined the utilization data and available clinical information for these procedures and determined that they are appropriate for Medicare payment as covered surgical procedures in ASCs.

Although the utilization data show that the procedures are usually provided to inpatients as a component of anesthesia for an inpatient surgical procedure, such as total knee replacement, we realize that both CPT code 64448 and 64449 also may be provided as independent, primary procedures. When the procedures are the primary procedures provided to the beneficiary, we agree with the commenter that the ASC is an appropriate site-of-service. Therefore, we will assign payment indicator ''G2'' to CPT codes 64448 and 64449 for CY 2009.

Comment: As discussed further in section XI. of this final rule with comment period, commenters requested that CPT code 0184T (Excision of rectal tumor, transanal endoscopic microsurgical approach (i.e., TEMS)) be removed from the OPPS inpatient list. They also recommended that once the procedure was removed from the inpatient list, it should be added to the ASC list of covered surgical procedures because the procedure is minimally invasive and is clinically comparable to CPT code 45170 (Excision of rectal tumor, transanal approach), which is not excluded from the ASC list.

Response: As discussed in section XI. of this final rule with comment period, we consulted with our medical advisors in reevaluating CPT code 0184T for removal from the inpatient list and determined that the procedure should remain on the inpatient list. Therefore, the procedure will continue to be excluded from the ASC list.

Comment: Several commenters asked that CMS remove a number of procedures from the list of covered surgical procedures. They expressed their concern that CMS has not excluded these procedures and strongly urged CMS to remove the procedures from the list because they are not safely performed in ASCs. Specifically, one commenter asserted that CPT codes 21215 (Graft, bone; mandible (includes obtaining graft)); 40700 (Plastic repair of cleft lip/nasal deformity; primary, partial or complete, unilateral); 40701 (Plastic repair of cleft lip/nasal deformity, primary bilateral, one stage procedure); 42200 (Palatoplasty for cleft palate, soft and/or hard palate only); 42205 (Palatoplasty for cleft palate, with closure of alveolar ridge; soft tissue only); 42210 (Palatoplasty for cleft palate, with closure of alveolar ridge; with bone graft to alveolar ridge includes obtaining graft)), 42215 (Palatoplasty for cleft palate; major revision); and 42220 (Palatoplasty for cleft palate; secondary lengthening procedure) require general anesthesia and close postoperative monitoring and are often performed in the inpatient setting.

The commenters would like the procedures removed from the ASC list for a number of reasons. First, they asserted that the eight procedures are unsafe for performance in ASCs due to the need for general anesthesia and postoperative airway monitoring and reminded CMS that most of the patients who undergo these procedures are children and that very few are Medicare beneficiaries. They believed that the close monitoring of the airway postoperatively is beyond the typical ASC scope of observation. They also requested that the procedures be excluded from ASC payment because they are concerned that private insurers may misinterpret the procedures' inclusion on the ASC list as a Medicare policy that means the procedures should never be provided in the inpatient setting.

Response: We do not see a basis for removing these procedures from the ASC list. All eight of these procedures were on the list of covered surgical procedures even before CY 2007 and, to our knowledge, have been safely performed in ASCs all of that time. Our policy to not exclude a procedure from the ASC list is not an indication that a procedure should no longer be provided in other settings, including the hospital inpatient setting. We take this opportunity to reiterate two points relative to the ASC list: we make decisions regarding procedures excluded from the ASC list based on our assessments of the needs of Medicare beneficiaries; and we include on the ASC list all procedures we believe are appropriate in order to provide physicians and patients with the most choices possible for sites-of-service. We expect that physicians will consider for each individual patient which site-of-service is most appropriate. We understand that the procedures on the ASC list are sometimes more appropriately performed on an inpatient basis due to the individual's age or other clinical considerations.

After consideration of the public comments received, as discussed above, we are adopting for CY 2009 the 14 ASC covered surgical procedures and payment indicators as set out in Table 43 below.

TABLE 43—ASC COVERED SURGICAL PROCEDURES ADDED FOR CY 2009

CY 2009 HCPCS code	CY 2009 Short descriptor	Final CY 2009 ASC payment indicator
15170	Acell graft trunk/arms/legs	G2
15171	Acell graft t/arm/leg add-on	G2
15175	Acellular graft, f/n/hf/g	G2
15176	Acell graft, f/n/hf/g add-on	G2
34490	Removal of vein clot	G2
36455	Bl exchange/transfuse non-nb	G2
49324	Lap insertion perm ip cath	G2
49325	Lap insertion perm ip cath	G2
49326	Lap w/omentopexy add-on	G2
64448	N block inj fem, cont inf	G2
64449	N block inj, lumbar plexus	G2
0190T	Place intraoc radiation src	G2
0191T	Insert ant segment drain int	G2
0192T	Insert ant segment drain ext	G2

b. Covered Surgical Procedures Designated as Office-Based

(1) Background

In the August 2, 2007 final rule, we finalized our policy to designate as ''office-based'' those procedures that are added to the ASC list of covered surgical procedures in CY 2008 or later years that we determine are performed more than 50 percent of the time in physicians' offices based on consideration of the most recent available volume and utilization data for each individual procedure code and/or, if appropriate, the clinical characteristics, utilization, and volume of related codes. In that rule, we also finalized our policy to exempt all procedures on the CY 2007 ASC list from application of the office-based classification (72 FR 42512).

In the August 2, 2007 final rule, we identified a list of procedures as office-based after taking into account the most recently available CY 2005 volume and utilization data for each individual procedure or group of related procedures. We believed that the resulting list accurately reflected Medicare practice patterns and that the procedures were of similar complexity. In Addendum AA to that final rule, each of the office-based procedures was identified by payment indicator ''P2'' (Office-based surgical procedure added to ASC list in CY 2008 or later with MPFS nonfacility PE RVUs; payment based on OPPS relative payment weight); ''P3'' (Office-based surgical procedure added to ASC list in CY 2008 or later with MPFS nonfacility PE RVUs; payment based on MPFS nonfacility PE RVUs); or ''R2'' (Office-based surgical procedure added to ASC list in CY 2008 or later without MPFS nonfacility PE RVUs; payment based on OPPS relative payment weight), depending on whether we estimated it would be paid according to the standard ASC payment methodology based on its OPPS relative payment weight or at the MPFS nonfacility PE RVU amount.

In the CY 2008 OPPS/ASC final rule with comment period (72 FR 66840 through 66841), we finalized the temporary office-based designations of 4 procedures, while newly designating 19 procedures as permanently office-based, In addition, we designated 3 procedures reported by CPT codes 21073 (Manipulation of temporomandibular joint(s) (TMJ), therapeutic, requiring an anesthesia service (ie, general or monitored anesthesia care); 67229 (Treatment of extensive or progressive retinopathy, one or more sessions; preterm infant (less than 37 weeks gestation at birth), performed from birth up to 1 year of age (eg, retinopathy of prematurity), photocoagulation or cryotherapy); and 68816 (Probing of nasolacrimal duct, with or without irrigation; with transluminal balloon catheter dilation) that were new for CY 2008 as temporarily office-based on an interim basis. Those 3 temporary designations for the new CY 2008 CPT codes were open to comment during the 60-day comment period for the CY 2008 OPPS/ASC final rule with comment period. We indicated that we would respond to public comments on those designations in the CY 2009 OPPS/ASC final rule with comment period, which we do in the discussion in section XV.E.1.b.(2) of this final rule with comment period.

(2) Changes to Covered Surgical Procedures Designated as Office-Based for CY 2009

In developing the CY 2009 OPPS/ASC proposed rule, we followed our final policy to annually review and update the surgical procedures for which ASC payment is made and to identify new procedures that may be appropriate for ASC payment, including their potential designation as office-based. We reviewed the CY 2007 utilization data and clinical characteristics for all those surgical procedures newly added for ASC payment in CY 2008 that were assigned payment indicator ''G2'' in the CY 2008 OPPS/ASC final rule with comment period.

As a result of that review, we identified the following 5 procedures that we proposed to newly designate as office-based procedures for CY 2009: CPT code 0084T (Insertion of a temporary prostatic urethral stent); CPT code 36515 (Therapeutic apheresis; with extracorporeal immunoadsorption and plasma reinfusion); CPT code 36516 (Therapeutic apheresis; with extracorporeal selective adsorption or selective filtration and plasma reinfusion); CPT code 65436 (Removal of corneal epithelium; with application of chelating agent (e.g., EDTA)); and CPT code 67505 (Retrobulbar injection; alcohol) (73 FR 41527). We proposed to make the office-based designation of CPT code 0084T temporary because we did not have adequate data upon which to base a permanent designation. We proposed to make permanent office-based designations for the remaining four procedures. The codes that we newly proposed as office-based were displayed in Table 40 of the CY 2009 OPPS/ASC proposed rule (73 FR 41527–8).

Comment: Commenters stated that CMS should not finalize any of its proposed new designations of procedures as office-based, in order to limit the exposure of the ASC payment system to the vulnerabilities of the MPFS. Further, they asserted that CMS did not provide publicly accessible data to validate the agency's assertions that the procedures proposed for temporary or permanent assignment as office-based procedures were commonly performed in physicians' offices in CY 2007. They also shared their belief that, as more procedures are designated office-based, the linkage between the ASC and OPPS ratesetting methodology would be eroded and relative weight scaling based on changes in OPPS median costs would be confounded.

Response: We continue to believe that our policy to identify low complexity procedures that are usually provided in physicians' offices is necessary and valid. We believe this is the most appropriate approach to preventing the creation of payment incentives for services to move from physicians' offices to ASCs for the many newly-covered low complexity procedures on the ASC list. Moreover, we are confident that the CY 2007 claims data, the most recent full year of volume and utilization data, is an appropriate source to inform our decisions regarding the site-of-service for procedures. Our office-based designations are based on our medical advisors' clinical judgments, utilization data for procedures that are closely related to the procedures being evaluated, and any other information that is available to us, in addition to the claims data. We post a number of supporting data files on the CMS Web site for each proposed and final rule for the annual OPPS/ASC update. Although we do not post all relevant Medicare data on the CMS Web site, Medicare claims data are available to any member of the public who chooses to purchase and use these data. Therefore, we believe that commenters have access to relevant Medicare claims and utilization data in order to conduct analyses that would assist them in evaluating all of our ASC proposals.

Regarding the commenters' assertions that increasing the number of procedures designated as office-based further erodes the linkage between the OPPS and ASC ratesetting methodologies and increases the exposure of the ASC payment system to the ''vulnerabilities of the MFPS,'' it is unclear to what vulnerabilities of MPFS the commenters are referring. However, we continue to believe that it is appropriate that ASCs be paid no more for performing office-based procedures than those procedures would be paid when performed in physicians' offices, in order to deter inappropriate

migration of these surgical procedures to ASCs based on financial considerations rather than clinical needs. Therefore, we believe it is necessary to update the office-based list of ASC covered surgical procedures annually, to account for changes in medical practice and new surgical procedures that may result in additional surgical procedures that are predominantly performed in physicians' offices.

Comment: One commenter supported the designation of CPT codes 0084T (Insertion of a temporary prostatic urethral stent) and 55876 (Placement of interstitial device(s) for radiation therapy guidance (e.g., fiducial markers, dosimeter), prostate (via needle, any approach), single or multiple) as office-based procedures. The commenter stated that the procedure reported by CPT code 0084T is minimally invasive and can be safely performed in the physician's office setting. The commenter also requested that CMS make permanent the office-based designation of CPT code 55876. The commenter stated that the procedure is being performed safely in the physician office setting and believed that office-based utilization is increasing.

Response: We thank the commenter for the support. However, we will maintain the temporary office-based designations for CPT codes 0084T and 55876 until we are able to evaluate more complete utilization and clinical information for those procedures. CPT Code 55876 is discussed below in more detail.

The utilization data for the procedures listed in Table 44 did not change between the proposed rule and this final rule with comment period. Therefore, after consideration of the public comments received, we are finalizing our CY 2009 proposal, without modification, to designate the procedures displayed in Table 44 as office-based for CY 2009. The office-based designation of CPT code 0084T remains temporary.

TABLE 44—CY 2009 FINAL DESIGNATIONS OF ASC COVERED SURGICAL PROCEDURES NEWLY DESIGNATED AS OFFICE-BASED

CY 2009 HCPCS code	CY 2009 short descriptor	CY 2008 ASC payment indicator	Proposed CY 2009 ASC payment indicator	Final CY 2009 ASC payment indicator
0084T	Temp prostate urethral stent	G2	R2*	R2*
36515	Apheresis, adsorp/reinfuse	G2	P2	P2
36516	Apheresis, selective	G2	P2	P2
65436	Curette/treat cornea	G2	P3	P3
67505	Inject/treat eye socket	G2	P3	P3

* If designation is temporary.

Furthermore, during the development of the CY 2009 OPPS/ASC proposed rule, we reviewed CY 2007 utilization and other information for the seven procedures with temporary office-based designations for CY 2008. Of those procedures, in the CY 2009 OPPS/ASC proposed rule, we proposed to make permanent the office-based designation for CPT code 28890 (Extracorporeal shock wave, high energy, performed by a physician, requiring anesthesia other than local, including ultrasound guidance, involving the plantar fascia) (73 FR 41528). In response to comments on the CY 2008 OPPS/ASC proposed rule, in the CY 2008 OPPS/ASC final rule with comment period, we made the office-based designation for CPT code 28890 temporary rather than permanent as was proposed (72 FR 66839 through 66840). Although the CY 2006 utilization data available for development of the CY 2008 OPPS/ASC final rule with comment period showed that the service was provided more than 70 percent of the time in the physician's office setting, we were persuaded by commenters that providers may have been using CPT code 28890, which was new for CY 2006, erroneously to report less intensive extracorporeal shock wave procedures that would be more frequently performed in the physician's office. Our review of the CY 2007 data continues to support our designation of this procedure as office-based and thus, we believed it was appropriate to propose to make that designation permanent for CY 2009.

In the CY 2009 OPPS/ASC proposed rule, we proposed to not make permanent the office-based designations for the 6 other procedures for which the CY 2008 designations are temporary (73 FR 41528). For those procedures, we did not believe that the currently available utilization data provided an adequate basis for proposing permanent office-based designations. In our review of these six codes, we determined that it would be consistent for the office-based assignment of HCPCS code C9728 (Placement of interstitial device(s) for radiation therapy/surgery guidance (e.g., fiducial markers, dosimeter), other than prostate (any approach), single or multiple) also to be temporary. This procedure is paid under the CY 2008 ASC payment system as an office-based procedure but is analogous to CPT code 55876 (Placement of interstitial device(s) for radiation therapy guidance (e.g., fiducial markers, dosimeter), prostate (via needle, any approach), single or multiple), for which we proposed to maintain the temporary office-based payment indicator for CY 2009. Therefore, we also proposed to assign a temporary office-based payment indicator to HCPCS code C9728 for CY 2009. The procedures with temporary office-based status for the CY 2008 ASC payment system that we proposed to continue to temporarily designate as office-based procedures for CY 2009 were displayed in Table 40A of the CY 2009 OPPS/ASC proposed rule (73 FR 41528).

Those procedures and their CY 2009 proposed and final payment indicators are displayed in Table 45 below. All procedures for which the proposed office-based designation for CY 2009 was temporary also were indicated by an asterisk in Addendum AA to the CY 2009 OPPS/ASC proposed rule.

Comment: Commenters on the CY 2008 OPPS/ASC final rule with comment period and commenters on the CY 2009 OPPS/ASC proposed rule objected to the temporarily office-based designation for CPT code 21073 (Manipulation of temporomandibular joint(s) (TMJ), therapeutic, requiring an anesthesia service (i.e., general or monitored anesthesia care). They asserted that, because CPT code 21073 is new for CY 2008 and is not analogous, or essentially equivalent, to any previously existing code, CMS has no data upon which to base its

designation of CPT code 21073 as office-based. One commenter said that CMS bears the burden of proof in categorizing a service as office-based, especially because that categorization is permanent. Further, the commenters noted that, by definition, the procedure requires anesthesia services and they believe it is unlikely that physicians' offices would be the primary site for this service.

Response: We reexamined the utilization and clinical information available to us for this procedure. As noted by the commenters, CPT code 21073 is new for CY 2008 and, therefore, we do not have physician utilization data upon which to base designation of the procedure as office-based. However, our medical advisors continue to believe that CPT code 21073 describes a surgical procedure that they expect will be performed in physician's offices. In support of their clinical perspective are the clinical example and description of the procedure included in *CPT 2008 Changes: An Insider's View*. In that description, the patient undergoes the procedure under general anesthesia in the physician's office. However, because we have no Medicare utilization data for this service, we believe that a temporary office-based designation is most appropriate.

Comment: A commenter requested that CMS reconsider the designation of CPT code 67229 (Treatment of extensive or progressive retinopathy, one or more sessions; preterm infant (less than 37 weeks gestation at birth), performed from birth up to 1 year of age (e.g., retinopathy of prematurity), photocoagulation or cryotherapy) as temporarily office-based. The commenter said that, by its very nature, it is clear that the procedure is performed on premature newborns and that it would never be done in the office setting. Further, the commenter stated that, because the procedure is not as likely to be done in ASCs as in the HOPD or hospital neonatal intensive care unit, CMS should not preclude its performance in ASCs by setting a payment that is too low to cover the costs of the treatment.

Response: We reviewed our temporary designation for this code as office-based. Although we do not have data indicating physicians' office utilization, according to the clinical example published in *CPT 2008 Changes: An Insider's View*, the procedure requires only topical anesthesia and we continue to believe that, in the circumstances that the procedure is being performed on a child outside of the hospital setting, it would most likely be performed in the physicians' office. We would also point out that, at this time, the procedure has not been priced in the office and, as a result, the temporary assignment of payment indicator R2 results in payment at the fully implemented ASC rate. Therefore, we are maintaining for CY 2009 our designation of CPT code 67229 as temporarily office-based.

Comment: Commenters on the CY 2008 OPPS/ASC final rule with comment period and commenters on the CY 2009 OPPS/ASC proposed rule strongly opposed the interim designation of new CPT code 68816 (Probing of nasolacrimal duct, with or without irrigation; with transluminal balloon catheter dilation) as office-based. They stated that the procedure is not furnished in physicians' offices more than 50 percent of the time. They explained that because the typical patient is a 14-month old infant the surgical procedure reported by CPT code 68816 usually requires general anesthesia and absolutely requires the use of either the hospital outpatient or ASC setting.

Response: CPT code 68816 is a new code for CY 2008 and, as such, we do not have utilization data for review. We are persuaded by the commenters, however, that there is a need for a facility setting to perform most of these procedures and believe that it would be appropriate not to finalize our proposal to designate the procedure as office-based, even temporarily. Therefore, we are assigning payment indicator ''G2'' to CPT code 68816 for CY 2009.

After consideration of the public comments received, as displayed in Table 45, we are adopting for CY 2009 the following payment indicators for those procedures that were designated temporarily office-based for CY 2008 and for which we proposed to maintain their CY 2009 designation as temporarily office-based.

TABLE 45—FINAL CY 2009 PAYMENT INDICATORS FOR CY 2008 OFFFICE-BASED PROCEDURES FOR WHICH THEIR PROPOSED CY 2009 DESIGNATION WAS TEMPORARILY OFFICE-BASED*

CY 2009 HCPCS code	CY 2009 short descriptor	CY 2008 ASC payment indicator	Proposed CY 2009 ASC payment indicator	Final CY 2009 ASC payment indicator
0099T	Implant corneal ring	R2*	R2*	R2*
0124T	Conjunctival drug placement	R2*	R2*	R2*
21073	Mnpj of tmj w/anesthesia	P3*	P3*	P3*
55876	Place rt device/marker, pros	P3*	P3*	P3*
67229	Tr retinal les preterm inf	R2*	R2*	R2*
68816	Probe nl duct w/balloon	P3*	P3*	G2
C9728	Place device/marker, non pro	R2*	R2*	R2*

* If designation is temporary.

Displayed in Table 46 are new CY 2009 HCPCS codes (excluding renumbered codes) to which we have assigned temporary office-based payment indicators. As explained in section XV.D.1. of this final rule with comment period, we reviewed all of the newly created HCPCS codes that became available after the issuance of the CY 2009 OPPS/ASC proposed rule that will be used to report surgical procedures in CY 2009 to evaluate their appropriateness for the ASC list of covered surgical procedures. Of the 16 new CY 2009 HCPCS codes that we determined should not be excluded from the ASC list based on our clinical review, including assessment of available utilization and volume data for any closely related procedures and consideration of other available information, we determined that three of the procedures would usually be performed in physicians' offices. However, because we had no utilization data for the procedures described by these new HCPCS codes, we made the office-based designations temporary rather than permanent and will reevaluate the procedures when data

become available. The temporary payment indicators for the three office-based procedures displayed in Table 46 are interim designations and are open to public comment during the 60-day comment period for this final rule with comment period. HCPCS codes that are new for CY 2009 are designated with an ''NI'' comment indicator in Addenda AA. We will respond to public comments on the interim designations in the CY 2010 OPPS/ASC final rule with comment period.

TABLE 46—CY 2009 PAYMENT INDICATORS FOR NEW CY 2009 HCPCS CODES FOR ASC COVERED SURGICAL PROCEDURES ASSIGNED TEMPORARY OFFICE-BASED PAYMENT INDICATORS ON AN INTERIM BASIS

CY 2009 HCPCS code	CY 2009 long descriptor	CY 2009 Interim ASC payment indicator
46930	Destruction of internal hemorrhoid(s) by thermal energy (eg, infrared coagulation, cautery, radio-frequency).	P3*
64455	Injection(s), anesthetic agent and/or steroid, plantar common digital nerve(s) (eg, Morton's neuroma).	P3*
64632	Destruction by neurolytic agent; plantar common digital nerve	P3*

* If designation is temporary.

c. Covered Surgical Procedures Designated as Device-Intensive

(1) Background

As discussed in the August 2, 2007 ASC final rule (72 FR 42503 through 42508), we adopted a modified payment methodology for calculating the ASC payment rates for covered surgical procedures that are assigned to the subset of OPPS device-dependent APCs with a device offset percentage greater than 50 percent under the OPPS, in order to ensure that payment for the procedure is adequate to provide packaged payment for the high-cost implantable devices used in those procedures. We assigned payment indicators ''H8'' (Device-intensive procedure on ASC list in CY 2007; paid at adjusted rate) and ''J8'' (Device-intensive procedure added to ASC list in CY 2008 or later; paid at adjusted rate) to identify the procedures that were eligible for ASC payment calculated according to the modified methodology, depending on whether the procedure was included on the ASC list of covered surgical procedures prior to CY 2008 and therefore, subject to transitional payment as discussed in the CY 2009 OPPS/ASC proposed rule (73 FR 41530). The 45 ''device-intensive'' procedures for which the modified rate calculation methodology applies in CY 2008 were displayed in Table 56 and in Addendum AA to the CY 2008 OPPS/ASC final rule with comment period (72 FR 66843 and 66945 through 66993).

(2) Changes to List of Covered Surgical Procedures Designated as Device-Intensive for CY 2009

In the CY 2009 OPPS/ASC proposed rule (73 FR 41528 through 41529), we proposed to update the ASC list of covered surgical procedures that are eligible for payment according to the device-intensive procedure payment methodology for CY 2009, consistent with the proposed OPPS device-dependent APC update, reflecting the proposed APC assignments of procedures, designation of APCs as device-dependent, and APC device offset percentages based on CY 2007 claims data. OPPS device-dependent APCs are discussed further in section II.A.2.d.(1) of this final rule with comment period. The ASC covered surgical procedures that we proposed to designate as device-intensive and that would be subject to the device-intensive procedure payment methodology were listed in Table 41 of the CY 2009 OPPS/ASC proposed rule (73 FR 41529 through 41530). The HCPCS code, the HCPCS code short descriptor, the proposed payment indicator, the proposed CY 2009 OPPS APC assignment, and the proposed CY 2009 OPPS APC device offset percentage were also listed in Table 41 of the proposed rule. Each proposed device-intensive procedure was assigned payment indicator ''H8'' or ''J8,'' depending on whether it is subject to transitional payment, and all of these codes were included in Addendum AA to the CY 2009 OPPS/ASC proposed rule.

Comment: The commenters generally supported the continuation of a modified payment methodology for ASC covered surgical procedures designated as device-intensive. However, several commenters stated that many of the procedures CMS identifies as device-dependent under the OPPS are not treated as device-intensive under the revised ASC payment system, and that the resulting ASC payment rates proposed for these procedures are too low to ensure patient access to these procedures in the ASC setting. According to these commenters, the placement of an APC on the OPPS device-dependent list means that a significant portion of the procedure cost is not influenced by factors such as labor costs. They argued that ASC procedures that are device-dependent under the OPPS should likewise be protected from the full application of the ASC conversion factor, in order to properly account for the fixed cost of the device or implant, and recommended that CMS treat as device-intensive all ASC procedures that are assigned to an OPPS device-dependent APC.

The commenters expressed general concerns about the payment adequacy of procedures mapping to OPPS device-dependent APC 0083 (Coronary or Non-Coronary Angioplasty and Percutaneous Valvuloplasty); APC 0115 (Cannula/Access Device Procedures); APC 0202 (Level VII Female Reproductive Procedures); and APC 0623 (Level III Vascular Access Procedures). Some commenters asked that CMS reconsider the criteria for recognizing procedures as device-intensive for ASC payment purposes to include procedures where the OPPS device offset percentage is lower than 50 percent, while others requested that CMS add to the ASC list of device-intensive procedures those procedures that require items that would have been separately payable under the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) fee schedule prior to the implementation of the revised ASC payment system on January 1, 2008.

Several commenters did not request that CMS modify the methodology for designating ASC covered surgical procedures as device-intensive, but requested that specific procedures that were not included in Table 41 of the CY 2009 OPPS/ASC proposed rule (73 FR 41529 through 41530) be recognized as

device-intensive in CY 2009. Some commenters argued that the procedures described by the following codes always require the use of an auditory osseointegrated device and should be considered device-intensive for ASC payment purposes: CPT code 69714 (Implantation, osseointegrated implant, temporal bone, with percutaneous attachment to external speech processor/cochlear stimulator; without mastoidectomy); CPT code 69715 (Implantation, osseointegrated implant, temporal bone, with percutaneous attachment to external speech processor/cochlear stimulator; with mastoidectomy); CPT code 69717 (Replacement (including removal of existing device), osseointegrated implant, temporal bone, with percutaneous attachment to external speech processor/cochlear stimulator; without mastoidectomy); and CPT code 69718 (Replacement (including removal of existing device), osseointegrated implant, temporal bone, with percutaneous attachment to external speech processor/cochlear stimulator; with mastoidectomy). According to these commenters, the proposed ASC payment rate of approximately $3,086 would be inadequate to cover the device costs associated with these procedures and, therefore, would prevent ASCs from providing these services. The commenters added that these CPT codes map to device-dependent APC 0425 (Level II Arthroplasty or Implantation with Prosthesis), and that it is inconsistent for a procedure to be considered device-driven in one setting of care and not another setting of care.

Several commenters also pointed out that CPT code 19296 (Placement of radiotherapy afterloading balloon catheter into the breast for interstitial radioelement application following partial mastectomy, includes imaging guidance; on date separate from partial mastectomy) and CPT code 19297 (Placement of radiotherapy afterloading balloon catheter into the breast for interstitial radioelement application following partial mastectomy, includes imaging guidance; concurrent with partial mastectomy), which map to OPPS device-dependent APC 0648 (Level IV Breast Surgery), require the use of a device that has a list price that clearly exceeds 50 percent of the median costs calculated for those CPT codes and, therefore, concluded that these procedures should be added to the ASC list of device-intensive procedures.

Response: We appreciate commenters' recommendations on how we should designate procedures as device-intensive under the revised ASC payment system. In the August 2, 2007 revised ASC payment system final rule (72 FR 42508), we established that the modified payment methodology for calculating ASC payment rates for device-intensive procedures shall apply to ASC covered surgical procedures that are assigned to device-dependent APCs under the OPPS for the same calendar year, where those APCs have a device cost of greater than 50 percent of the APC cost (that is, the device offset percentage is greater than 50). We believe these criteria ensure that ASC payment rates are adequate to provide packaged payment for high cost implantable devices and ensure beneficiaries have access to these procedures in all appropriate care settings. We do not agree that we should change our criteria and treat as device-intensive all ASC services that map to OPPS device-dependent APCs, or the subset of procedures that are assigned to OPPS device-dependent APCs with device offset percentages less than 50 percent, regardless of whether those procedures require items that would have been separately payable under the DMEPOS fee schedule prior to the implementation of the revised ASC payment system on January 1, 2008. Under the modified payment methodology for ASC covered surgical procedures designated as device-intensive, we separately determine both the device payment and service payment portions of the ASC payment rate, and apply the ASC conversion factor only to the specially calculated OPPS relative payment weight for the service portion, while providing the same packaged payment for the device portion as would be made under the OPPS. The 50-percent device offset threshold is established to ensure that the ASC conversion factor is not applied to the costs of high cost implantable devices, which likely do not vary between ASCs and OPPS hospitals in the same manner service costs have been shown to vary. We believe that when device costs comprise less than 50 percent of total procedure costs, those costs are less likely to be as predictable across sites-of-service. Accordingly, we believe that it is possible for ASCs to achieve efficiencies relative to OPPS hospitals when providing those procedures, and that the application of the ASC conversion factor to the entire ASC payment weight is appropriate.

We note that, due to additional claims and revised cost report data that have become available since we issued the CY 2009 OPPS/ASC proposed rule, the OPPS device offset percentage for device-dependent APC 0425 is now greater than 50 percent. Therefore, the procedures that are on the list of ASC covered surgical procedures and assigned to this APC, including auditory osseointegrated device implantation procedures, are designated as device-intensive for ASC payment purposes for CY 2009, as shown in Table 47 below. However, the device offset percentages for APC 0083, APC 0115, APC 0202, APC 0623, and APC 0648 remain below 50 percent based on the CY 2007 claims data available for this final rule with comment period. Therefore, the surgical procedures that are assigned to these APCs under the OPPS and that are on the ASC list of covered surgical procedures are not considered to be device-intensive procedures for CY 2009 and they are not subject to the modified ASC payment methodology.

Comment: Some commenters urged CMS to move to the fully implemented transitional payment rate in CY 2009 for procedures that require implantable devices but are not designated as device-intensive. According to commenters, ASCs cannot afford to perform procedures with significant device costs for which no payment for the device is made during the transition. Commenters offered as an example the procedure described by CPT code 26535 (Arthroplasty, interphalangeal joint; each joint), which requires implantation of a prosthetic joint. Commenters noted that because the procedure does not map to a device-dependent APC and is not considered device-intensive for ASC payment purposes, the procedure would not be economically feasible to perform in the ASC setting until full implementation of the revised ASC payment rates in CY 2011. Some commenters stated that the payment rates calculated for ASC device-intensive procedures that are subject to transitional payment also are too low.

One commenter recommended that CMS exempt CPT code 51715 (Endoscopic injection of implant material into the submucosal tissues of the urethra and/or bladder neck) from the 4-year transition and immediately adopt the ''fully implemented'' ASC payment rate in order to recognize more appropriately the procedure's device costs. The commenter calculated the OPPS device offset percentage of CPT code 51715 and found that it equals 29 percent of the CY 2009 OPPS proposed payment rate for CPT code 51715, but 68 percent of the CY 2009 ASC proposed payment rate. According to the commenter, prior to implementation of the revised ASC payment system on January 1, 2008, ASCs would have received payment for these high device costs under the DMEPOS fee schedule rather than through the ASC facility

payment for CPT code 51715. The commenter reasoned that since the devices are no longer paid separately, the procedure described by CPT code 51715 is in the same situation as a procedure code that is newly assigned to payment in the ASC setting (that is, there is no longer a relevant payment within the prior ASC system upon which to base the transition). The commenter concluded that this was an analogous case warranting the same remedy of full implementation of the ASC rate without phase-in.

Several commenters argued that CMS should not subject procedures that were on the ASC list of covered surgical procedures in CY 2007 but were rarely performed in ASCs prior to 2008 to the transitional adjustment. One commenter provided its data analysis demonstrating that CPT code 55873 (Cryosurgical ablation of the prostate (includes ultrasonic guidance for interstitial cryosurgical probe placement)) was present on three ASC claims in CY 2007, on one claim in CY 2006, and was not billed at all by ASCs in CY 2005. According to the commenters, the transitional payment for CPT code 55873 is inadequate to cover ASCs' costs of providing the procedure and will prevent beneficiaries from accessing this procedure in the ASC setting.

Response: We do not agree that we should move to the full revised ASC payment rates in CY 2009 for all ASC covered surgical procedures that may require implantable devices but are not designated as device-intensive for ASC payment purposes. As we stated in the August 2, 2007 revised ASC payment system final rule (72 FR 42520), the transition to the fully implemented revised ASC payment system should not be asymmetrical, meaning that procedures with decreasing payments under the revised payment system should not be transitioned differently from those with increasing payments. We also do not agree that procedures not designated as device-intensive that require items that would have been separately payable under the DMEPOS fee schedule prior to the implementation of the revised ASC payment system on January 1, 2008, are in the same situation as a procedure code that is newly covered in the ASC setting, and thus not subject to the transition.

As stated above, only those ASC covered surgical procedures that are assigned to OPPS device-dependent APCs and have OPPS device offset percentages greater than 50 percent are designated as device-intensive for ASC payment purposes. CPT code 26535 and CPT code 51715 are not assigned to OPPS device-dependent APCs, and thus do not meet the criteria established for designating ASC covered surgical procedures as device-intensive. Accordingly, we do not distinguish between the device and service portions of ASC payment for these procedures, and the transitional adjustment is applied to the total ASC payment rates. As established in regulation at § 416.171(c), the transitional adjustment applies to all services on the CY 2007 ASC list of covered services. We cannot make an exception for procedures, such as the one described by CPT code 55873, that were on the CY 2007 ASC list of covered services but were rarely performed in ASCs according to commenters.

We disagree with commenters that payment rates for ASC device-intensive procedures that are subject to transitional payment also are too low. Consistent with the approach under the modified payment methodology for ASC covered surgical procedures designated as device-intensive whereby we only apply the ASC conversion factor to the service payment portion of the ASC payment rate and not the device payment portion, we also apply the transition policy differentially to the device and service payment portions of the total ASC payment. While we do not subject the device payment portion of the total ASC payment for the procedure to the transition policy, we do transition the service payment portion of the total ASC payment for the procedure over the 4-year phase-in period. As described in the August 2, 2007 revised ASC payment system final rule (72 FR 42521), during each of the transition years, when the CY 2007 ASC payment rate for a device-intensive procedure that did not previously include packaged ASC payment for the implantable device itself is blended with the payment developed under the methodology of the revised ASC payment system that would otherwise package the device payment, the full device payment amount is paid to ASCs in the transition year, with blended payment determined only for the service portion of the ASC payment, for which a corresponding CY 2007 ASC payment rate exists. This specific transition approach helps ensure that ASCs receive appropriate packaged payment for implantable devices during the transition years, even though payment for such devices is generally not included in their base CY 2007 ASC payment rate.

Comment: Some commenters urged CMS not to adjust the device-or implant-related portion of ASC payment by the Medicare wage index. According to commenters, the acquisition of devices and implants occurs on a national market, and ASCs in rural areas pay approximately the same for medical devices and equipment as are facilities in more expensive labor markets. The commenters stated that CMS is underpaying device costs in markets where the wage index is low, and overpaying in markets where the wage index is high. The commenters recommended CMS use the OPPS device offset percentage where calculated for OPPS device-dependent procedures to determine what portion of the ASC payment should be excluded from wage index adjustment. For other services that are not device-dependent under the OPPS, commenters recommended CMS calculate the amount of the payment attributable to the median device cost and apply the wage index to the remainder of the payment.

Response: We do not believe it is appropriate to vary the percentage of the national payment that is wage adjusted for different services. Under the revised ASC payment system, we utilize 50 percent as the labor-related share to adjust national ASC payment rates for geographic wage differences. We apply to ASC payments the IPPS pre-floor, pre-reclassification wage index values associated with the June 2003 OMB geographic localities, as recognized under the IPPS and OPPS, in order to adjust the labor-related portion of the national ASC payment rates for geographic wage differences. Consistent with the OPPS, we apply the ASC geographic wage adjustment to the entire ASC payment rate for device-intensive procedures. MedPAC has indicated its intent to evaluate CMS' method for adjusting payments for variations in labor costs in light of differences in labor-related costs for device-implantation services. We look forward to reviewing the results of its evaluation, as well as any recommendations it may provide, regarding the OPPS or ASC wage adjustment policy.

Comment: Commenters expressed concern that the payment increase proposed for cochlear implant procedures would be insufficient to cover the true costs associated with the cochlear implant device, described by HCPCS code L8614 (Cochlear device, includes all internal and external components), and related surgical procedure, described by CPT code 69930 (Cochlear device implantation, with or without mastoidectomy), which is assigned to OPPS device-dependent APC 0259 (Level VII ENT Procedures).

In order to preserve access to this service in the ASC setting, commenters urged CMS to reconsider the CY 2009 proposed ASC payment rate of approximately $22,744 based on estimates of the selling price of the cochlear implant device as calculated using hospital invoice data supplied separately by the two leading cochlear implant manufacturers. Other commenters encouraged CMS to continue to monitor and adjust payments for cochlear implant claims including CPT code 69930 paired with HCPCS code L8614.

Response: We calculate the ASC relative payment weights using the OPPS relative weights, which are based on hospitals' costs as reported on claims and in cost reports. As discussed in section II.A.2.d.(1). of this final rule with comment period, we disagree with the commenters that it would be appropriate to use external pricing information in place of the costs derived from the claims and Medicare cost report data for APC 0259 because we believe that to do so would distort the relativity that is fundamental to the integrity of the OPPS. We do not believe it would be appropriate to deviate from our standard ratesetting methodologies, either for OPPS device-dependent APCs or ASC device-intensive procedures, based on manufacturer estimates of a particular device's selling price relative to the OPPS or ASC payment rate.

Comment: One commenter requested CMS adjust the OPPS device offset percentages for ASC device-intensive payment purposes to account for the effects of charge compression. According to the commenter, CMS should ''decompress'' the supply median costs to minimize any artificial reductions that charge compression causes in the estimate of the OPPS device offset percentages.

Response: As discussed in section II.A.1.c.(2) of this final rule with comment period, for CY 2009, we are not adopting any short-term statistical regression-based adjustments under the OPPS that would serve to ''decompress'' the median costs for procedures involving devices, or for any other procedures. Rather, we are focusing on long-term changes to Medicare cost reporting to address the effects of charge compression, including the creation of two new cost centers, Medical Supplies Charged to Patients and Implantable Devices Charged to Patients, to replace the current cost center called Supplies Charged to Patient as discussed in section II.A.1.c.(2) of this final rule with comment period. We believe that this change to how hospitals report costs for devices and supplies will improve our future estimates of costs related to high cost implantable devices, including the device offset percentages upon which we base the device portion of ASC payment rates for device-intensive procedures.

Comment: One commenter recommended that CMS adopt the OPPS concepts of pass-through payments and New Technology APCs into the ASC payment system. According to the commenter, adequate payment for newer advanced technologies in the most appropriate setting will ensure optimum care for Medicare beneficiaries.

Response: Under the revised ASC payment system, we provide separate payment at contractor-priced rates for devices that are included in device categories with pass-through status under the OPPS when the devices are an integral part of a covered surgical procedure. As discussed in section IV.A. of this final rule with comment period, new pass-through device categories may be established on a quarterly basis, but currently there are no OPPS device pass-through categories that would continue for OPPS pass-through payment (and, correspondingly, separate ASC payment) in CY 2009. New technology surgical procedures described by Category III CPT codes or Level II HCPCS codes that crosswalk directly or are clinically similar to established procedures already on the ASC list of covered surgical procedures, including those assigned to New Technology APCs under the OPPS, are eligible for ASC payment if we believe they would not be expected to pose a significant risk to the safety of Medicare beneficiaries and to require an overnight stay when provided in an ASC.

Under the OPPS, new technology procedures that are not eligible for pass-through payment may be assigned temporarily to a New Technology APC. Those APCs are designated by cost bands, with payment under the OPPS at the midpoint of the cost band, and were created to allow CMS to make appropriate and consistent payment for new procedures, based on their estimated costs, that are not yet reflected in OPPS claims data. This OPPS methodology provides a mechanism for timely Medicare payment for some new technologies. ASC payment for procedures assigned to New Technology APCs under the OPPS and included on the ASC list of covered surgical procedures is made at the ASC rate calculated according to the standard methodology for the ASC payment system. Thus, ASCs have the same timely access to payment for any new technology procedure that is a covered ASC surgical procedure assigned to a New Technology APC under the OPPS.

We do not believe it is necessary to implement any additional ASC-specific policies to ensure adequate payment for newer advanced technologies in the ASC setting. As discussed in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66843), we believe these policies serve to appropriately incorporate payment for new technologies under the revised ASC payment system. After consideration of the public comments received, we are designating the ASC covered surgical procedures displayed in Table 47 below as device-intensive for CY 2009.

TABLE 47—ASC COVERED SURGICAL PROCEDURES DESIGNATED AS DEVICE-INTENSIVE FOR CY 2009

CY 2009 HCPCS code	CY 2009 short descriptor	Final CY 2009 ASC payment indicator	Final CY 2009 OPPS APC	CY 2009 OPPS APC title	Final CY 2009 device-dependent APC offset percentage
24361	Reconstruct elbow joint	H8	0425	Level II Arthroplasty or Implantation with Prosthesis.	59
24363	Replace elbow joint	H8	0425	Level II Arthroplasty or Implantation with Prosthesis.	59
24366	Reconstruct head of radius	H8	0425	Level II Arthroplasty or Implantation with Prosthesis.	59
25441	Reconstruct wrist joint	H8	0425	Level II Arthroplasty or Implantation with Prosthesis.	59

TABLE 47—ASC COVERED SURGICAL PROCEDURES DESIGNATED AS DEVICE-INTENSIVE FOR CY 2009—Continued

CY 2009 HCPCS code	CY 2009 short descriptor	Final CY 2009 ASC payment indicator	Final CY 2009 OPPS APC	CY 2009 OPPS APC title	Final CY 2009 device-dependent APC offset percentage
25442	Reconstruct wrist joint	H8	0425	Level II Arthroplasty or Implantation with Prosthesis.	59
25446	Wrist replacement	H8	0425	Level II Arthroplasty or Implantation with Prosthesis.	59
27446	Revision of knee joint	J8	0681	Knee Arthroplasty	71
33206	Insertion of heart pacemaker	J8	0089	Insertion/Replacement of Permanent Pacemaker and Electrodes.	72
33207	Insertion of heart pacemaker	J8	0089	Insertion/Replacement of Permanent Pacemaker and Electrodes.	72
33208	Insertion of heart pacemaker	J8	0655	Insertion/Replacement/Conversion of a permanent dual chamber pacemaker.	76
33212	Insertion of pulse generator	H8	0090	Insertion/Replacement of Pacemaker Pulse Generator.	74
33213	Insertion of pulse generator	H8	0654	Insertion/Replacement of a permanent dual chamber pacemaker.	77
33214	Upgrade of pacemaker system	J8	0655	Insertion/Replacement/Conversion of a permanent dual chamber pacemaker.	76
33224	Insert pacing lead & connect	J8	0418	Insertion of Left Ventricular Pacing Elect..	71
33225	Lventric pacing lead add-on	J8	0418	Insertion of Left Ventricular Pacing Elect..	71
33240	Insert pulse generator	J8	0107	Insertion of Cardioverter-Defibrillator.	89
33249	Eltrd/insert pace-defib	J8	0108	Insertion/Replacement/Repair of Cardioverter-Defibrillator Leads.	88
33282	Implant pat-active ht record	J8	0680	Insertion of Patient Activated Event Recorders.	71
53440	Male sling procedure	H8	0385	Level I Prosthetic Urological Procedures.	59
53444	Insert tandem cuff	H8	0385	Level I Prosthetic Urological Procedures.	59
53445	Insert uro/ves nck sphincter	H8	0386	Level II Prosthetic Urological Procedures.	69
53447	Remove/replace ur sphincter	H8	0386	Level II Prosthetic Urological Procedures.	69
54400	Insert semi-rigid prosthesis	H8	0385	Level I Prosthetic Urological Procedures.	59
54401	Insert self-contd prosthesis	H8	0386	Level II Prosthetic Urological Procedures.	69
54405	Insert multi-comp penis pros	H8	0386	Level II Prosthetic Urological Procedures.	69
54410	Remove/replace penis prosth	H8	0386	Level II Prosthetic Urological Procedures.	69
54416	Remv/repl penis contain pros	H8	0386	Level II Prosthetic Urological Procedures.	69
55873	Cryoablate prostate	H8	0674	Prostate Cryoablation	59
61885	Insrt/redo neurostim 1 array	H8	0039	Level I Implantation of Neurostimulator.	84
61886	Implant neurostim arrays	H8	0315	Level III Implantation of Neurostimulator.	88
62361	Implant spine infusion pump	H8	0227	Implantation of Drug Infusion Device.	82
62362	Implant spine infusion pump	H8	0227	Implantation of Drug Infusion Device.	82
63650	Implant neuroelectrodes	H8	0040	Percutaneous Implantation of Neurostimulator Electrodes.	57
63655	Implant neuroelectrodes	J8	0061	Laminectomy, Laparoscopy, or Incision for Implantation of Neurostimulator Electr.	62
63685	Insrt/redo spine n generator	H8	0222	Level II Implantation of Neurostimulator.	85
64553	Implant neuroelectrodes	H8	0040	Percutaneous Implantation of Neurostimulator Electrodes.	57
64555	Implant neuroelectrodes	J8	0040	Percutaneous Implantation of Neurostimulator Electrodes.	57

TABLE 47—ASC COVERED SURGICAL PROCEDURES DESIGNATED AS DEVICE-INTENSIVE FOR CY 2009—Continued

CY 2009 HCPCS code	CY 2009 short descriptor	Final CY 2009 ASC payment indicator	Final CY 2009 OPPS APC	CY 2009 OPPS APC title	Final CY 2009 device-dependent APC offset percentage
64560	Implant neuroelectrodes	J8	0040	Percutaneous Implantation of Neurostimulator Electrodes.	57
64561	Implant neuroelectrodes	H8	0040	Percutaneous Implantation of Neurostimulator Electrodes.	57
64565	Implant neuroelectrodes	J8	0040	Percutaneous Implantation of Neurostimulator Electrodes.	57
64573	Implant neuroelectrodes	H8	0225	Implantation of Neurostimulator Electrodes, Cranial Nerve.	62
64575	Implant neuroelectrodes	H8	0061	Laminectomy, Laparoscopy, or Incision for Implantation of Neurostimulator Electr.	62
64577	Implant neuroelectrodes	H8	0061	Laminectomy, Laparoscopy, or Incision for Implantation of Neurostimulator Electr.	62
64580	Implant neuroelectrodes	H8	0061	Laminectomy, Laparoscopy, or Incision for Implantation of Neurostimulator Electr.	62
64581	Implant neuroelectrodes	H8	0061	Laminectomy, Laparoscopy, or Incision for Implantation of Neurostimulator Electr.	62
64590	Insrt/redo pn/gastr stimul	H8	0039	Level I Implantation of Neurostimulator.	84
65770	Revise cornea with implant	H8	0293	Level V Anterior Segment Eye Procedures.	65
69714	Implant temple bone w/stimul	H8	0425	Level II Arthroplasty or Implantation with Prosthesis.	59
69715	Temple bne implnt w/stimulat	H8	0425	Level II Arthroplasty or Implantation with Prosthesis.	59
69717	Temple bone implant revision	H8	0425	Level II Arthroplasty or Implantation with Prosthesis.	59
69718	Revise temple bone implant	H8	0425	Level II Arthroplasty or Implantation with Prosthesis.	59
69930	Implant cochlear device	H8	0259	Level VII ENT Procedures	84

d. Surgical Procedures Removed From the OPPS Inpatient List for CY 2009

As discussed in section XV.C.3. of this final rule with comment period, we will evaluate all procedures at the time they are removed from the OPPS inpatient list for inclusion on the ASC list of covered surgical procedures. The final list of procedures removed from the inpatient list for CY 2009 may be found in section XI.B. of this final rule with comment period.

We evaluated each of the 12 procedures removed from the OPPS inpatient list for CY 2009. We determined that all of these procedures will be excluded from the ASC list of covered surgical procedures for CY 2009 because they may be expected to pose a significant risk to beneficiary safety in ASCs or require an overnight stay. The procedures will be evaluated again as part of our annual review of excluded surgical procedures in preparation for the CY 2010 update to the ASC payment system.

2. Covered Ancillary Services

In the CY 2009 OPPS/ASC proposed rule (73 FR 41530), we proposed to update the ASC list of covered ancillary services to reflect the services' proposed separate payment status under the CY 2009 OPPS. Maintaining consistency with the OPPS resulted in proposed changes to ASC payment indicators because some covered ancillary services that are paid separately under the revised ASC payment system in CY 2008 were proposed for packaged status under the OPPS for CY 2009. Comment indicator ''CH,'' as discussed in section XV.F. of the CY 2009 OPPS/ASC proposed rule (73 FR 41537), was used in Addendum BB to that proposed rule to indicate covered ancillary services for which we proposed a change in the ASC payment indicator to reflect, for example, our proposal to package payment for the service under the CY 2009 ASC payment system consistent with its proposed treatment under the CY 2009 OPPS.

Comment: Several commenters requested that CMS remove CPT codes 77520 (Proton treatment delivery; simple, without compensation); 77522 (Proton treatment delivery; simple, with compensation); 77523 (Proton treatment delivery; intermediate); and 77525 (Proton treatment delivery; complex) from the list of covered ancillary services. The reasons the commenters provided for this request are that proton beam therapy is never provided integral to a surgical procedure and, as such, would never be eligible for payment in ASCs and providing proton beam therapy requires a much larger capital investment than would be feasible for ASCs. The commenters believed that because the services would not be provided in ASCs, including them on the list of covered ancillary services was unnecessary, and that having ASC rates published for the services could result in confusion on the part of other payers who mistakenly believe that the published Medicare ASC rates for proton beam therapy are actually used by Medicare to pay for those services when they are performed alone.

Response: While we understand the commenters' concerns, our policy is to include as covered ancillary services all

procedures with CPT codes in the radiology range of CPT, specifically CPT codes 70000 through 79999 (72 FR 42497). We do not evaluate those services to determine whether or not they would ever be provided in ASCs integral to covered surgical procedures. By definition, CPT codes 77520, 77522, 77523 and 77525 are included as covered ancillary services and, therefore, we are not removing proton beam therapy codes from that list for CY 2009.

Comment: Several commenters requested that HCPCS codes G0339 (Image guided robotic linear accelerator-based stereotactic radiosurgery, complete course of therapy in one session, or first session of fractionated treatment) and G0340 (Image guided robotic linear accelerator-based stereotactic radiosurgery, delivery including collimator changes and custom plugging, fractionated treatment, all lesions, per session, second through fifth sessions, maximum five sessions per course of treatment); and CPT codes 0071T (Focused ultrasound ablation of uterine leiomyomata, including MR guidance; total leiomyomata volume less than 200 cc of tissue) and 0072T (Focused ultrasound ablation of uterine leiomyomata, including MR guidance; total leiomyomata volume greater or equal to 200 cc of tissue) be removed from the ASC list of covered ancillary services and instead be included on the ASC list of covered surgical procedures. The commenters stated that these services are surgical procedures.

One commenter asserted that the procedures described by HCPCS codes G0339 and G0340 require joint participation of a surgeon and a radiation oncologist and treat tumors that have not responded to traditional radiation therapy. As procedures that can be provided without a covered surgical procedure, the commenter requested that CMS allow the procedures to be eligible for separate payment in ASCs as covered surgical procedures. Similarly, the commenter contended that the procedures reported by CPT codes 0071T and 0072T also are noninvasive surgical procedures that should be payable as covered surgical procedures in ASCs. The commenter noted that CMS defined those two procedures as noninvasive surgical procedures in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66710).

Response: While we originally included the services described by CPT codes 0071T and 0072T on the list of covered ancillary services because of the similarities between these services and stereotactic radiosurgery services and, although they are assigned to the same APCs under the OPPS as stereotactic radiosurgery services, we agree with the commenter that they are not sufficiently similar to services in the radiology range of CPT codes to be placed on the list of covered ancillary services. Therefore, we are not including them in Addendum BB to this final rule with comment period.

We define surgical procedures as those described by Category I CPT codes in the surgical range from 10000 through 69999, as well as those Category III CPT codes and Level II HCPCS codes that directly crosswalk or are clinically similar to ASC covered surgical procedures (72 FR 42478). Because Category III CPT codes 0071T and 0072T do not directly crosswalk and are not clinically similar to any ASC covered surgical procedures, we are not placing them on the list of ASC covered surgical procedures. Therefore, we are not including them in Addendum AA to this final rule with comment period.

We do not agree with the commenters that G0339 and G0340 represent surgical procedures. These HCPCS codes were developed for reporting stereotactic radiosurgery services under the OPPS and crosswalk directly to CPT codes in the radiology range of CPT. As such, we are not removing HCPCS codes G0339 and G0340 from the ASC list of covered ancillary services and we are not adding them to the list of covered surgical procedures. These HCPCS codes are included in Addendum BB to this final rule with comment period.

All CY 2009 ASC covered ancillary services and their payment indicators for CY 2009 are included in Addendum BB to this final rule with comment period.

F. ASC Payment for Covered Surgical Procedures and Covered Ancillary Services

1. Payment for Covered Surgical Procedures

a. Background

Our final payment policy for covered surgical procedures under the revised ASC payment system is described in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66828 through 66831). In that rule, we updated the CY 2008 rates for covered surgical procedures with payment indicators of ''A2,'' ''G2,'' ''H8,''and ''J8'' using CY 2006 data, consistent with the CY 2008 OPPS update. We also updated the payment amounts for office-based procedures (payment indicators ''P2,'' ''P3,'' and ''R2'') using the most recent available MPFS and OPPS data. We compared the estimated CY 2008 rate for each of the office-based procedures, calculated according to the standard methodology of the revised ASC payment system to the MPFS nonfacility PE RVU amount, to determine which was the lower payment amount that, therefore, would be the payment for the procedure according to the final policy of the revised ASC payment system (see § 416.171(d)).

Subsequent to publication of that rule, the Congress enacted the Medicare, Medicaid, and SCHIP Extension Act of 2007, Public Law 110–173. That law required changes to the rates paid under the MPFS for the first 6 months of CY 2008, and therefore, the ASC rates for some office-based procedures were also affected. We revised the CY 2008 ASC payment rates and made them available by posting them to the CMS Web site at: *http://www.cms.hhs.gov/ASCPayment/*.

Subsequent to publication of the CY 2009 OPPS/ASC proposed rule, section 131 of the MIPPA, Public Law 110–275, restored MPFS payments to the levels in effect prior to July 1, 2008 for the remainder of CY 2008 and increased the update to the conversion factor for the MPFS to 1.1 percent for CY 2009. Therefore, the ASC rates for some office-based procedures and covered ancillary radiology services for the second half of CY 2008 were affected, and the CY 2009 conversion factor increase for the MPFS also affects CY 2009 ASC payments for certain of these services.

b. Update to ASC Covered Surgical Procedure Payment Rates for CY 2009

In the CY 2009 OPPS/ASC proposed rule (73 FR 41530), we proposed CY 2009 payment rates for procedures with payment indicator ''G2'' that were calculated according to the standard methodology of multiplying the proposed CY 2009 ASC relative payment weight for the procedure by the proposed CY 2009 ASC conversion factor (72 FR 42492 through 42493). Also, according to our established policy, we proposed CY 2009 payments for procedures subject to the transitional payment methodology (payment indicators ''A2'' and ''H8'') using a blend of 50 percent of the proposed CY 2009 ASC rate calculated according to the standard or device-intensive methodology, respectively, and 50 percent of the CY 2007 ASC payment rate (72 FR 42520 through 42521).

We proposed payment rates for office-based procedures (payment indicators ''P2,'' ''P3,'' and ''R2'') and device-intensive procedures not subject to transitional payment (payment indicator ''J8'') calculated according to our established policies (72 FR 42504 and 42511). Thus, we proposed to update

the payment amounts for device-intensive procedures based on the CY 2009 OPPS proposal that reflected updated OPPS claims data and to make payment for office-based procedures at the lesser of the proposed CY 2009 MPFS nonfacility PE RVU amount or the CY 2009 ASC payment amount calculated according to the standard methodology.

Comment: Several commenters requested that CMS provide a higher ASC payment for the procedure reported by CPT code 0192T (Insertion of anterior segment aqueous drainage device, without extraocular reservoir; external approach). Commenters stated that the proposed ASC payment rate was inadequate to cover the cost of the device and, therefore, ASCs would not be able to provide the procedures.

Response: As discussed fully in section III.A.2. of this final rule with comment period, we are reassigning CPT code 0192T to APC 0673 (Level IV Anterior Segment Eye Procedures) from APC 0234 (Level III Anterior Segment Eye Procedures), where it was proposed for assignment under the CY 2009 OPPS. This code was first implemented in July 2008, so is not subject to the transition under the ASC payment system. APC 0673 has a higher OPPS payment rate for CY 2009 than the proposed OPPS payment and, therefore, the final CY 2009 ASC payment is also higher than the proposed ASC rate. We believe that the CY 2009 ASC payment is appropriate and ensures access to this procedure for Medicare beneficiaries in ASCs.

Comment: One commenter was concerned about the proposed payment for HCPCS code G0393 (Transluminal balloon angioplasty, percutaneous; for maintenance of hemodialysis access, arteriovenous fistula or graft; venous). The commenter requested that CMS correct the payment rate for G0393 because the commenter believed it should be equal to the ASC payment for CPT code 35476 (Transluminal balloon angioplasty, percutaneous; venous). The commenter noted that in past regulations CMS crosswalked HCPCS code G0393 to that CPT code.

Response: As discussed in the CY 2007 OPPS/ASC final rule with comment period (71 FR 68168), we created HCPCS codes G0392 (Transluminal balloon angioplasty, percutaneous; for maintenance of hemodialysis access, Arteriovenous fistula or graft; arterial) and G0393 in order to make those angioplasty procedures for arteriovenous fistulae maintenance available for Medicare payment in ASCs. At that time, the only codes available to report the procedures were CPT codes 35475 (Transluminal balloon angioplasty, percutaneous; brachiocephalic trunk or branches, each vessel) and 35476, which were excluded from the ASC list at that time. The two new HCPCS G-codes specifically described arterial and venous angioplasty procedures to maintain hemodialysis access through arteriovenous fistulae or grafts for dialysis patients.

Subsequently, in response to comments, we added CPT code 35476 to the ASC list of covered surgical procedures in our CY 2008 final rule with comment period (72 FR 66838). HCPCS code G0393 and CPT code 35476 have the same CY 2009 OPPS payment because they are both assigned to the same APC, APC 0083 (Coronary or Non-Coronary Angioplasty and Percutaneous Valvuloplasty).

Although HCPCS code G0393 was created as an alternative to CPT code 35476 for some clinical situations, it was added to the ASC list in CY 2007 and is, therefore, subject to the ASC transitional payment methodology. In contrast, CPT code 35476 was added to the ASC list CY 2008 and is paid according to the standard ASC revised rate calculation methodology. Consequently, the ASC payment rates for the two procedures cannot be the same in CY 2009.

Comment: Commenters suggested that CMS abandon the office-based procedure payment policy. Their reasons for making this suggestion include a belief that CMS does not need the policy to avoid creating a payment incentive for procedures often furnished in physicians' offices to migrate to ASCs. They also believed that implementation of the payment caps is, in fact, creating payment incentives for the affected procedures to migrate to more expensive and less efficient HOPDs. They contended that CMS has overestimated the likelihood that procedures usually furnished in physicians' offices would migrate to ASCs if there are no payment limits in place. They asserted that physicians should be able to make the decision about the site-of-service based on the individual beneficiary's circumstances and that the payment limits instituted by CMS for office-based procedures interfere with that patient-physician decision-making because the rates for procedures that are capped at the nonfacility PE RVU amount are often too low to support performance of the procedure in an ASC. Thus, they argued that the policy to cap payment for some procedures effectively removes the ASC as an option for the beneficiary's care. The commenters were concerned that Medicare has not fully considered the consequences of this payment policy. They believed that in addition to limiting beneficiary access to ASCs as a site for service, this policy will result in higher Medicare costs due to the ''reverse migration'' of cases that could have been performed in efficient and lower cost ASCs migrating to more costly HOPDs.

Response: As noted by the commenters, we implemented the payment policy for office-based procedures to mitigate potentially inappropriate migration of services from the physicians' office setting to the ASC. Contrary to the commenters' beliefs that the CMS actuarial estimates for expected migration of procedures from physicians' offices to ASCs are exaggerated, our experience indicates that payment differentials do have a significant effect on practice patterns. We continue to believe the policy is appropriate in light of the many low complexity procedures we have added to the ASC list under the revised payment system. Further, we note that, prior to the revised payment system, procedures that were commonly performed in physicians' offices were excluded from the ASC list. Our policy under the revised payment system results in Medicare payment for many of those previously-excluded procedures at the full revised ASC payment rate, without a transition. We view our policy to make payment to ASCs for many of these procedures that were previously excluded as an important step in expanding the choices of sites for care available to physicians and beneficiaries. In addition, we do not view our policy to limit payment for the least complex procedures that are commonly provided in physicians' offices as a loss for ASCs. In contrast to the prior ASC payment system, our current policy provides an ASC payment for the procedures and we believe that amount is appropriate.

As discussed fully in the August 2, 2007 final rule for the revised ASC payment system (72 FR 42521 through 42535), we believe we gave full consideration to all aspects of our final payment policies for the revised ASC payment system. Our policies related to office-based procedures were adopted to avoid creating incentives for migration of surgical procedures from physicians' offices to ASCs. The low complexity procedures that were on the CY 2007 ASC list of covered surgical procedures are performed, on average, 17 percent of the time in ASCs. We expected that with the payment limits on office-based procedures, the newly added low complexity procedures would have

similar utilization patterns. Each year as we develop our proposed and final updates to the payment system, we will continue to evaluate the effects of our payment policies on ASCs, including the utilization patterns of low complexity procedures paid under the revised ASC poayment system.

Comment: Several commenters recommended that if CMS chooses not to abandon the policy to designate certain procedures as office-based and subject to payment limits, that it should modify its policy. Included in the recommended modifications to the policy related to office-based procedures, commenters suggested the following:

- Increase the utilization threshold to some level greater than 50 percent to identify office-based procedures. Although no commenters recommended an alternate threshold as a criterion for determining that a procedure is office-based, they did suggest that the threshold should be higher than 50 percent and that it should be reevaluated periodically.
- Consider utilization variation over multiple years and across geographic areas. The commenters recommended that CMS consider utilization data from multiple years and from different geographic regions to account for variability in physicians' office utilization across states for procedures. One commenter asserted that CMS' reliance on national averages to gauge practice patterns was a weakness of the policy and that the variations the commenter found across States are an indication that the payment caps might not be an effective tool for influencing site selection for surgery because many factors, such as the number of ASCs in the area, influence the site-of-service decision. With regard to fluctuations in site-of-service utilization over time, the commenter believed that the year-to-year variation reflects significant volatility and CMS' policy to make the office-based designation permanent ignores that finding. Further, the commenter asserted that the Medicare Part B claims data that CMS uses to evaluate site-of-service utilization is not a sound approach because the data are flawed.
- Discontinue use of temporary office-based designations. Commenters suggested that CMS discontinue use of temporary office-based designations because they believed that CMS usually assigns temporary designations to procedures for which there is no utilization data and that CMS should not make a determination for those procedures until some data become available. In addition, some commenters expressed frustration that the temporary designations may remain in place for years and, as such, are not really temporary. Further, payment for the procedures with temporary status is subject to the payment limits.
- Reevaluate the office-based procedures periodically so that the designation as office-based is not permanent. Several commenters did not believe it was fair to make office-based designations permanent because the policy may compromise physicians' ability to make appropriate changes in their practices as new technology and other advances become available. They urged CMS to reevaluate the procedures periodically to ensure that the designations as office-based reflect practice patterns over time.
- Limit the reduction in payment for office-based procedures and do not base payment limit on the MPFS. A few commenters asserted that CMS' policy to cap payment for office-based ASC procedures at the MPFS amount is flawed because the policy results in fluctuations in the ASC relative weights for those procedures based both on the PE RVU values and the MPFS conversion factor, both of which may vary from year to year. Rather, they believed that all ASC relative payment weights should be based on OPPS relative payment weights.

Response: We selected 50 percent as the physicians' office utilization threshold because we intended to make new ASC procedures that are usually (greater than 50 percent of the time) provided in physicians' offices subject to the payment limits. However, our decisions regarding office-based status are not entirely based on the utilization data. Physicians' office utilization is an important aspect of our evaluation but so are the volume of procedures, the clinical characteristics of procedures, and the characteristics and utilization of related and similar procedures. We continue to believe that a threshold of 50 percent is the most appropriate threshold to identify those surgical procedures that are commonly performed in physicians' offices, specifically more than half of the time. We believe that adoption of a threshold higher than 50 percent would result in ASC payment for low complexity procedures at ASC rates that could encourage migration of these procedures from physicians' offices to ASCs, even in cases where the less costly office setting was clinically appropriate.

We do not agree with the commenters' recommendations that we should consider multiple years of utilization data and variation in utilization across geographic areas to determine office-based status for each procedure. There are cases in which we do look at multiple years of utilization data in determining whether or not a procedure is office-based, such as for very low volume procedures, but that is not necessary for most procedures. Although the commenters asserted that there is significant volatility in the year-to-year utilization data for surgical procedures, we do not agree that is the case. Generally, Medicare Part B claims data reflect relatively stable site-of-service utilization across years, and we continue to see increasing physician's office utilization of new low complexity procedures rather than decreasing levels.

We believe that our national policy should be guided by national data and not subject to the uncertainties of local practice patterns that may depend more on the availability of certain types of providers or suppliers in communities than the care needs of Medicare beneficiaries. Medicare is a national program and our policies are designed to ensure that all Medicare beneficiaries receive the same benefits and the same high quality care regardless of where they reside or travel in the United States. It would be inappropriate to institute different policies related to covered services by geographic area.

As stated above, we use physicians' claims data, the clinical judgments of our medical advisors, and any other relevant information that is available to make our determination that a procedure is office-based. We believe that our data are reliable, and we will continue to rely on the claims data as one source of information to evaluate the sites-of-service for surgical procedures.

We apply the temporary designation when our clinical evaluation suggests that the procedure is of a complexity level such that performance in the physician's office is the most appropriate and likely site for care, but there are little or no data or experience so we are not certain that the procedure will be provided most of the time in physicians' offices. We also handle the designation of office-based status, including temporary status, through the annual notice and comment rulemaking process to allow for public input into those determinations.

Once we have completed the process and designated ASC covered surgical procedures as office-based, we are confident that our permanent office-based designations are appropriate and that the resulting payment amounts are appropriate for providing the service in ASCs if a facility site is required for a particular beneficiary. We expect that it

would be extremely rare for procedures that were usually provided in physicians' offices to become more complex procedures that require facility settings due to new technology or other advances, while the CPT coding for such procedures is unchanged. In general, advances in technology and medical practice have historically led to less-invasive surgical methods and allowed for less-intensive sites-of-service. We do not see a need for the periodic reevaluation of all office-based designations.

Finally, there are several instances in which Medicare payment systems use values and relative weights that are external, or from other systems, to make payment. We believe that making payment to ASCs at the nonfacility PE RVU amount for procedures that have been priced specifically for the physicians' office setting is entirely appropriate given our intention to not create an incentive for those procedures to migrate to another setting. Further, we believe that limiting the ASC payment for office-based procedures to the physician's office rate provides appropriate payment to the ASC for those procedures when an ASC setting is necessary for the beneficiary's care.

Comment: One commenter requested that the CY 2009 ASC payment rate for CPT code 55876 (Placement of interstitial device(s) for radiation therapy guidance (eg, fiducial markers, dosimeter), prostate (via needle, any approach), single or multiple) be revised to be consistent with the payment for HCPCS code C9728 (Placement of interstitial devices(s) for radiation therapy/surgery guidance (eg, fiducial markers, dosimeter), other than prostate (any approach), single or multiple) because the procedures are analogous to one another.

Response: We proposed to continue the temporary office-based designation for CPT code 55876 and to designate HCPCS code C9728 as temporarily office-based because the codes are clinically similar, but correspond to different anatomic regions of the body. However, HCPCS code C9728 has not been priced for performance in physicians' offices and, therefore, is assigned temporary office-based payment indicator ''R2,'' resulting in ASC payment at the rate calculated according to the standard ASC ratesetting methodology. Conversely, CPT code 55876 does have a nonfacility PE RVU amount and, because that amount is less than the ASC rate, payment for CPT code 55876 is made at the nonfacility PE RVU amount for the procedure.

We understand the commenter's desire for consistency, but we believe that our designation of the procedures as temporarily office-based is appropriate and we do not assign nonfacility PE RVUs to HCPCS C-codes which are not recognized for payment under the MPFS. We do not believe the payment differential between the two procedures provides sufficient justification for changing the payment indicator for CPT code 55876 so that its CY 2009 payment amount would be equal to that for HCPCS code C9728.

c. Adjustment to ASC Payments for No Cost/Full Credit and Partial Credit Devices

Under § 416.179, our ASC policy with regard to payment for costly devices implanted in ASCs at no cost or with full or partial credit is consistent with the OPPS policy. The CY 2009 OPPS APCs and devices subject to the adjustment policy are discussed in section IV.B.2. of this final rule with comment period. The ASC policy includes adoption of the OPPS policy for reduced payment to providers when a specified device is furnished without cost or with full credit for the cost of the device for those ASC covered surgical procedures that are assigned to APCs under the OPPS to which this policy applies. Specifically, as we described in the CY 2008 OPPS/ASC final rule with comment period, when a procedure provided in CY 2008 that was listed in Table 58 of the CY 2008 OPPS/ASC final rule with comment period was performed in an ASC and the case involved implantation of a no cost or full credit device listed in Table 59 of the final rule with comment period, the ASC must report the HCPCS ''FB'' modifier on the line with the covered surgical procedure code to indicate that an implantable device in Table 59 was furnished without cost. The contractor reduces payment to the ASC by the device offset amount that we estimate represents the cost of the device when the necessary device is furnished without cost to the ASC or with a full credit (72 FR 66845). We provide the same amount of payment reduction based on the device offset amount in ASCs that would apply under the OPPS under the same circumstances. The reduction of ASC payment in this circumstance was necessary to pay appropriately for the covered surgical procedure being furnished by the ASC.

Consistent with the OPPS policy, we also adopted an ASC payment policy for certain procedures involving partial credit for a specified device. Specifically, as we explained in the CY 2008 OPPS/ASC final rule with comment period, we reduce the payment for implantation procedures listed in Table 58 of the CY 2008 OPPS/ASC final rule with comment period by one half of the device offset amount that would be applied if a device were provided at no cost or with full credit, if the credit to the ASC is 50 percent or more of the cost of the new device (72 FR 66846). In CY 2008, ASCs must append the modifier ''FC'' to the HCPCS code for a surgical procedure listed in Table 58 of the CY 2008 OPPS/ASC final rule with comment period when the facility received a partial credit of 50 percent or more of the cost of a device listed in Table 59. In order to report that they received a partial credit of 50 percent or more of the cost of a new device, ASCs had the option of either: (1) Submitting the claim for the device replacement procedure to their Medicare contractor after the procedure's performance but prior to manufacturer acknowledgment of credit for the device, and subsequently contacting the contractor regarding a claim adjustment once the credit determination is made; or (2) holding the claim for the device implantation procedure until a determination is made by the manufacturer on the partial credit and submitting the claim with the ''FC'' modifier appended to the implantation procedure HCPCS code if the partial credit was 50 percent or more of the cost of the replacement device. Beneficiary coinsurance was based on the reduced payment amount.

Consistent with the OPPS, we proposed to update the list of ASC device-intensive procedures that would be subject to the no cost/full credit and partial credit device adjustment policy for CY 2009. Table 42 of the CY 2009 OPPS/ASC proposed rule displayed the ASC covered implantation procedures and their payment indicators that we proposed would be subject to the no cost/full credit and partial credit device adjustment policy for CY 2009. Specifically, when a procedure that was listed in Table 42 of the proposed rule is performed in an ASC and the case involves implantation of a no cost/full credit device, or a partial credit device for which the ASC received at least a 50 percent partial credit, and the device was listed in Table 43 of the proposed rule, the ASC would report the HCPCS ''FB'' or ''FC'' modifier, as appropriate, on the line with the covered surgical procedure code. The procedures listed in Table 42 were those ASC covered device-intensive procedures assigned to APCs under the OPPS to which the policy would apply. We did not propose to apply this policy to the procedures

and devices associated with APCs 0425 (Level II Arthroplasty or Implantation with Prosthesis) and 0648 (Level IV Breast Surgery), which were proposed for inclusion in the OPPS no cost/full credit and partial credit device adjustment policy for CY 2009, because ASC covered procedures assigned to these two APCs under the OPPS did not qualify for payment as ASC covered device-intensive surgical procedures (that is, their estimated device offset percentages were less than 50 percent based on partial year data available for the proposed rule).

Comment: One commenter expressed support for the continuation of the no cost/full credit and partial credit device adjustment policy for ASCs in CY 2009.

Response: We appreciate the commenter's support of the no cost/full credit and partial credit device adjustment policy.

For CY 2009, we will reduce the payment for device implantation procedures listed in Table 48 below by the full device offset amount for no cost/full credit cases. ASCs must append the modifier ''FB'' to the HCPCS procedure code when the device furnished without cost or with full credit is listed in Table 49, below, and the associated implantation procedure code is listed in Table 48. In addition, for CY 2009, we will reduce the payment for implantation procedures listed in Table 48 by one half of the device offset amount that would be applied if a device were provided at no cost or with full credit, if the credit to the ASC is 50 percent or more of the device cost. If the ASC receives a partial credit of 50 percent or more of the cost of a device listed in Table 49, the ASC must append the modifier ''FC'' to the associated implantation procedure code if the procedure is listed in Table 48. We are adding procedures assigned to APC 0425 and their associated devices to Tables 48 and 49, respectively, because these procedures now qualify for ASC payment as device-intensive procedures based on updated claims and cost report data, as described in section XV.E.1.c. of this final rule with comment period.

TABLE 48—CY 2009 PROCEDURES TO WHICH THE NO COST/FULL CREDIT AND PARTIAL CREDIT DEVICE ADJUSTMENT POLICY APPLIES

CY 2009 HCPCS code	CY 2009 Short descriptor	Final CY 2009 ASC payment indicator	Final CY 2009 OPPS APC	CY 2009 OPPS APC Title	Final CY 2009 OPPS full offset percentage	Final CY 2009 OPPS partial offset percentage
24361	Reconstruct elbow joint.	H8	0425	Level II Arthroplasty or Implantation with Prosthesis.	59	29
24363	Replace elbow joint.	H8	0425	Level II Arthroplasty or Implantation with Prosthesis.	59	29
24366	Reconstruct head of radius.	H8	0425	Level II Arthroplasty or Implantation with Prosthesis.	59	29
25441	Reconstruct wrist joint.	H8	0425	Level II Arthroplasty or Implantation with Prosthesis.	59	29
25442	Reconstruct wrist joint.	H8	0425	Level II Arthroplasty or Implantation with Prosthesis.	59	29
25446	Wrist replacement	H8	0425	Level II Arthroplasty or Implantation with Prosthesis.	59	29
27446	Revision of knee joint.	J8	0681	Knee Arthroplasty	71	35
33206	Insertion of heart pacemaker.	J8	0089	Insertion/Replacement of Permanent Pacemaker and Electrodes.	72	36
33207	Insertion of heart pacemaker.	J8	0089	Insertion/Replacement of Permanent Pacemaker and Electrodes.	72	36
33208	Insertion of heart pacemaker.	J8	0655	Insertion/Replacement/Conversion of a permanent dual chamber pacemaker.	76	38
33212	Insertion of pulse generator.	H8	0090	Insertion/Replacement of Pacemaker Pulse Generator.	74	37
33213	Insertion of pulse generator.	H8	0654	Insertion/Replacement of a permanent dual chamber pacemaker.	77	38
33214	Upgrade of pacemaker system.	J8	0655	Insertion/Replacement/Conversion of a permanent dual chamber pacemaker.	76	38
33224	Insert pacing lead & connect.	J8	0418	Insertion of Left Ventricular Pacing Elect.	71	36
33225	Lventric pacing lead add-on.	J8	0418	Insertion of Left Ventricular Pacing Elect.	71	36
33240	Insert pulse generator.	J8	0107	Insertion of Cardioverter-Defibrillator.	89	45
33249	Eltrd/insert pace-defib.	J8	0108	Insertion/Replacement/Repair of Cardioverter-Defibrillator Leads.	88	44
33282	Implant pat-active ht record.	J8	0680	Insertion of Patient Activated Event Recorders.	71	36
53440	Male sling procedure.	H8	0385	Level I Prosthetic Urological Procedures.	59	29
53444	Insert tandem cuff	H8	0385	Level I Prosthetic Urological Procedures.	59	29

TABLE 48—CY 2009 PROCEDURES TO WHICH THE NO COST/FULL CREDIT AND PARTIAL CREDIT DEVICE ADJUSTMENT POLICY APPLIES—Continued

CY 2009 HCPCS code	CY 2009 Short descriptor	Final CY 2009 ASC payment indicator	Final CY 2009 OPPS APC	CY 2009 OPPS APC Title	Final CY 2009 OPPS full offset percentage	Final CY 2009 OPPS partial offset percentage
53445	Insert uro/ves nck sphincter.	H8	0386	Level II Prosthetic Urological Procedures.	69	34
53447	Remove/replace ur sphincter.	H8	0386	Level II Prosthetic Urological Procedures.	69	34
54400	Insert semi-rigid prosthesis.	H8	0385	Level I Prosthetic Urological Procedures.	59	29
54401	Insert self-contd prosthesis.	H8	0386	Level II Prosthetic Urological Procedures.	69	34
54405	Insert multi-comp penis pros.	H8	0386	Level II Prosthetic Urological Procedures.	69	34
54410	Remove/replace penis prosth.	H8	0386	Level II Prosthetic Urological Procedures.	69	34
54416	Remv/repl penis contain pros.	H8	0386	Level II Prosthetic Urological Procedures.	69	34
61885	Insrt/redo neurostim 1 array.	H8	0039	Level I Implantation of Neurostimulator.	84	42
61886	Implant neurostim arrays.	H8	0315	Level III Implantation of Neurostimulator.	88	44
62361	Implant spine infusion pump.	H8	0227	Implantation of Drug Infusion Device.	82	41
62362	Implant spine infusion pump.	H8	0227	Implantation of Drug Infusion Device.	82	41
63650	Implant neuroelectrodes.	H8	0040	Percutaneous Implantation of Neurostimulator Electrodes, Excluding Cranial Nerve.	57	29
63655	Implant neuroelectrodes.	J8	0061	Laminectomy, Laparoscopy, or Incision for Implantation of Neurostimulator Electr.	62	31
63685	Insrt/redo spine n generator.	H8	0222	Level II Implantation of Neurostimulator.	85	42
64553	Implant neuroelectrodes.	H8	0040	Implantation of Neurostimulator Electrodes, Cranial Nerve.	57	29
64555	Implant neuroelectrodes.	J8	0040	Percutaneous Implantation of Neurostimulator Electrodes, Excluding Cranial Nerve.	57	29
64560	Implant neuroelectrodes.	J8	0040	Percutaneous Implantation of Neurostimulator Electrodes, Excluding Cranial Nerve.	57	29
64561	Implant neuroelectrodes.	H8	0040	Percutaneous Implantation of Neurostimulator Electrodes, Excluding Cranial Nerve.	57	29
64565	Implant neuroelectrodes.	J8	0040	Percutaneous Implantation of Neurostimulator Electrodes, Excluding Cranial Nerve.	57	29
64573	Implant neuroelectrodes.	H8	0225	Implantation of Neurostimulator Electrodes, Cranial Nerve.	62	31
64575	Implant neuroelectrodes.	H8	0061	Laminectomy, Laparoscopy, or Incision for Implantation of Neurostimulator Electr.	62	31
64577	Implant neuroelectrodes.	H8	0061	Laminectomy, Laparoscopy, or Incision for Implantation of Neurostimulator Electr.	62	31
64580	Implant neuroelectrodes.	H8	0061	Laminectomy, Laparoscopy, or Incision for Implantation of Neurostimulator Electr.	62	31
64581	Implant neuroelectrodes.	H8	0061	Laminectomy, Laparoscopy, or Incision for Implantation of Neurostimulator Electr.	62	31
64590	Insrt/redo pn/gastr stimul.	H8	0039	Level I Implantation of Neurostimulator.	84	42
69714	Implant temple bone w/stimul.	H8	0425	Level II Arthroplasty or Implantation with Prosthesis.	59	29
69715	Temple bne implnt w/stimulat.	H8	0425	Level II Arthroplasty or Implantation with Prosthesis.	59	29
69717	Temple bone implant revision.	H8	0425	Level II Arthroplasty or Implantation with Prosthesis.	59	29

TABLE 48—CY 2009 PROCEDURES TO WHICH THE NO COST/FULL CREDIT AND PARTIAL CREDIT DEVICE ADJUSTMENT POLICY APPLIES—Continued

CY 2009 HCPCS code	CY 2009 Short descriptor	Final CY 2009 ASC payment indicator	Final CY 2009 OPPS APC	CY 2009 OPPS APC Title	Final CY 2009 OPPS full offset percentage	Final CY 2009 OPPS partial offset percentage
69718	Revise temple bone implant.	H8	0425	Level II Arthroplasty or Implantation with Prosthesis.	59	29
69930	Implant cochlear device.	H8	0259	Level VII ENT Procedures	84	42

TABLE 49—DEVICES FOR WHICH THE "FB" OR "FC" MODIFIER MUST BE REPORTED WITH THE PROCEDURE CODE WHEN FURNISHED AT NO COST OR WITH FULL OR PARTIAL CREDIT

CY 2009 Device HCPCS code	CY 2009 Short descriptor
C1721	AICD, dual chamber.
C1722	AICD, single chamber.
C1764	Event recorder, cardiac.
C1767	Generator, neurostim, imp.
C1771	Rep dev, urinary, w/sling.
C1772	Infusion pump, programmable.
C1776	Joint device (implantable).
C1778	Lead, neurostimulator.
C1779	Lead, pmkr, transvenous VDD.
C1785	Pmkr, dual, rate-resp.
C1786	Pmkr, single, rate-resp.
C1813	Prosthesis, penile, inflatab.
C1815	Pros, urinary sph, imp.
C1820	Generator, neuro rechg bat sys.
C1881	Dialysis access system.
C1882	AICD, other than sing/dual.
C1891	Infusion pump, non-prog, perm.
C1897	Lead, neurostim, test kit.
C1898	Lead, pmkr, other than trans.
C1900	Lead coronary venous.
C2619	Pmkr, dual, non rate-resp.
C2620	Pmkr, single, non rate-resp.
C2621	Pmkr, other than sing/dual.
C2622	Prosthesis, penile, non-inf.
C2626	Infusion pump, non-prog, temp.
C2631	Rep dev, urinary, w/o sling.
L8614	Cochlear device/system.
L8690	Aud osseo dev, int/ext comp.

2. Payment for Covered Ancillary Services

a. Background

Our final CY 2008 payment policies under the revised ASC payment system for covered ancillary services vary according to the particular type of service and its payment policy under the OPPS. Our overall policy provides separate ASC payment for certain ancillary services integrally related to the provision of ASC covered surgical procedures that are paid separately under the OPPS and provides packaged ASC payment for other ancillary services that are packaged under the OPPS. Thus, we established a final policy to align ASC payment bundles with those under the OPPS (72 FR 42495).

Our ASC payment policies provide separate payment for drugs and biologicals that are separately paid under the OPPS at the OPPS rates, while we pay for separately payable radiology services at the lower of the MPFS nonfacility PE RVU (or technical component) amount or the rate calculated according to the standard ASC payment methodology (72 FR 42497). In all cases, ancillary services must be provided integral to the performance of ASC covered surgical procedures for which the ASC bills Medicare. As noted in section XV.D.1.a. of the CY 2009 OPPS/ASC proposed rule (73 FR 41530), changes were made to the MPFS payment rates for the period of January 1, 2008 through June 30, 2008 as a result of the enactment of the Medicare, Medicaid, and SCHIP Extension Act of 2007. In addition to changing the ASC payment rates for some office-based procedures, those changes also affected the ASC rates for some covered ancillary radiology services for the first 6 months of CY 2008.

ASC payment policy for brachytherapy sources generally mirrors the payment policy under the OPPS. We finalized our policy to pay for brachytherapy sources applied in ASCs at the same prospective rates that were adopted under the OPPS or, if OPPS rates were unavailable, at contractor-priced rates in the CY 2008 OPPS/ASC final rule with comment period (72 FR 42499). Subsequent to publication of that rule, section 106 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 mandated that, for the period January 1, 2008 through June 30, 2008, brachytherapy sources be paid under the OPPS at charges adjusted to cost. Therefore, consistent with our final overall ASC payment policy, we paid ASCs at contractor-priced rates for brachytherapy sources provided in ASCs during that period of time.

Beginning July 1, 2008, brachytherapy sources applied in ASCs were to be paid at the same prospectively set rates that were finalized in the CY 2008 OPPS/ASC final rule with comment period (72 FR 67165 through 67188). Immediately prior to the publication of the CY 2009 OPPS/ASC proposed rule, section 142 of the MIPPA amended section 1833(t)(16)(C) of the Act (as amended by section 106 of the Medicare, Medicaid, and SCHIP Extension Act of 2007) to extend the requirement that brachytherapy sources be paid under the OPPS at charges adjusted to cost through December 31, 2009. Therefore, consistent with final ASC payment policy, ASCs will continue to be paid at contractor-priced rates for brachytherapy sources provided in ASCs during that period of time.

Other separately paid covered ancillary services in ASCs, specifically corneal tissue acquisition and device categories with OPPS pass-through status, do not have prospectively established ASC payment rates according to the final policies of the revised ASC payment system (72 FR 42502 and 42509). Under the revised ASC payment system, corneal tissue acquisition is paid based on the invoiced costs for acquiring the corneal tissue for transplantation. As discussed in section IV.A.1. of this CY 2009 OPPS/ASC final rule with comment period, new pass-through device categories may be established on a quarterly basis, but currently there are no OPPS device pass-through categories that would continue for OPPS pass-through payment (and, correspondingly, separate ASC payment) in CY 2009.

b. Payment for Covered Ancillary Services for CY 2009

In the CY 2009 OPPS/ASC proposed rule, for CY 2009, we proposed to update the ASC payment rates and make changes to payment indicators as necessary in order to maintain consistency between the OPPS and ASC payment systems regarding the packaged or separately payable status of services and the proposed CY 2009 OPPS and ASC payment rates (73 FR

41530). The proposed CY 2009 OPPS payment methodologies for separately payable drugs and biologicals and brachytherapy sources were discussed in sections V. and VII. of the CY 2009 OPPS/ASC proposed rule, respectively (73 FR 41480 and 41500), and the CY 2009 ASC payment rates for those services were proposed to equal the proposed CY 2009 OPPS rates. In Addendum BB to the CY 2009 OPPS/ASC proposed rule, we indicated whether the proposed CY 2009 payment rate for radiology services was based on the MPFS PE RVU amount or the standard ASC payment calculation. Thus, the proposed CY 2009 payment indicator for a covered radiology service could differ from its CY 2008 payment indicator based on packaging changes under the OPPS or the comparison of the CY 2009 proposed MPFS nonfacility PE RVU amount to the CY 2009 ASC payment rate calculated according to the standard methodology. Services that we proposed to pay based on the standard ASC rate methodology were assigned payment indicator ''Z2'' (Radiology service paid separately when provided integral to a surgical procedure on ASC list; payment based on OPPS relative payment weight) and those for which payment is based on the MPFS PE RVU amount were assigned payment indicator ''Z3'' (Radiology service paid separately when provided integral to a surgical procedure on ASC list; payment based on MPFS nonfacility PE RVUs).

Covered ancillary services and their proposed payment indicators were listed in Addendum BB to the CY 2009 OPPS/ASC proposed rule.

Comment: One commenter expressed concern that payments for certain radiological services commonly provided to patients with end-stage renal disease (ESRD) are packaged into payment for surgical procedures under the ASC payment system. They requested that 11 of those services be paid separately in ASCs and asked CMS to reexamine the packaging for the radiological services displayed below.

HCPCS code	Long descriptor	Proposed CY 2009 OPPS status indicator	Proposed CY 2009 ASC payment indicator
75710	Angiography, extremity, unilateral, radiological supervision and interpretation	Q2	N1.
75790	Angiography, arteriovenous shunt (e.g., dialysis patient), radiological supervision and interpretation.	Q2	N1.
75798	Not a valid CPT code	N/A	N/A.
75820	Venography, extremity, unilateral, radiological supervision and interpretation	Q2	N1.
75898	Angiography through existing catheter for follow-up study for transcatheter therapy, embolization or infusion.	Q1	N1.
75902	Mechanical removal of intraluminal (intracatheter) obstructive material from central venous device through device lumen, radiologic supervision and interpretation.	N	N1.
75962	Transluminal balloon angioplasty, peripheral artery, radiological supervision and interpretation.	Q2	N1.
75984	Change of percutaneous tube or drainage catheter with contrast monitoring (e.g., genitourinary system, abscess), radiological supervision and interpretation.	N	N1.
76937	Ultrasound guidance for vascular access requiring ultrasound evaluation of potential access sites, documentation of selected vessel patency, concurrent realtime ultrasound visualization of vascular needle entry, with permanent recording and reporting.	N	N1.
77011	Computed tomography guidance for stereotactic localization	N	N1.
78827	Not a valid CPT code	N/A	N/A.

The commenter expressed concern that packaging payment for these services limits full access to services for ESRD patients for the repair and maintenance of vascular access. The commenter recommended that CMS give particular attention to the packaged status of CPT codes 75710, 75790, 75962 and 75798 because they are commonly used for vascular access procedures and are critical to beneficiaries living with ESRD.

The commenter also expressed support for an APC Panel recommendation to delay packaging under the OPPS until analyses can be performed to determine the impact on beneficiaries and the viability of ASCs providing these services.

Response: We continue to believe that packaging payment for those ancillary radiology services integral to surgical procedures that would be packaged under the OPPS in an HOPD is appropriate under the revised ASC payment system. This policy is aligned with the recommendation of the Practicing Physicians Advisory Council (PPAC) to apply payment policies uniformly in the ASC and HOPD settings. It also maintains comparable payment bundles under the OPPS and the revised ASC payment system, consistent with the recommendation of MedPAC to maintain consistent payment bundles under both payment systems. Our ASC payment policy would not permit separate payment for the radiology procedures discussed by the commenter when they are provided integral to covered surgical procedures (the only case in which they would be covered and paid to the ASC), just as these same radiology services would not be paid separately under the OPPS if they accompanied a surgical procedure.

The APC Panel did make a recommendation during its August 2008 meeting for the OPPS regarding packaging for radiation therapy guidance services. The APC Panel recommended that CMS pay separately for radiation therapy guidance for 2 years and then reevaluate packaging on the basis of claims data. The Panel further recommended that CMS evaluate possible models for threshold levels for packaging radiation therapy guidance and other new technologies.

ASCs are not within the purview of the APC Panel. The APC Panel's advisory role includes specific areas of focus related to the OPPS. We would not expect the APC Panel to make any recommendations related to ASCs and, in fact, there was no APC Panel recommendation related to the impact of packaging for radiation therapy guidance services on the viability of ASCs providing the services as was reported by the commenter. A full discussion of the final OPPS policy related to packaging of radiation therapy guidance services for CY 2009 may be

found in section II.A.4. of this final rule with comment period.

Comment: Many commenters requested that CMS modify the packaging policy to provide separate payment for some services that are not reported by any of the codes within the CPT surgical code range. The commenters stated their belief that as a result of CMS' packaging policy, procedural services that they believe would meet the criteria for performance in ASCs and thereby, would be eligible for payment as covered surgical procedures in ASCs, are being inappropriately excluded from eligibility for payment. More specifically, the commenters disagreed with the ASC packaging policy under which a minor surgical procedure (reported by a code within the CPT surgical code range) is packaged into payment for a radiology service. The commenters argued that the result of the packaging policy is that the surgical procedure is not eligible for separate payment. Because the radiology service is only eligible for separate payment when it is provided integral to a covered surgical procedure, the radiology service is not separately payable when it is the only service being provided.

The commenters expressed particular concern regarding discography services. Packaged into the CPT codes 72285 (Discography, cervical or thoracic, radiological supervision and interpretation) and 72295 (Discography, lumbar, radiological supervision and interpretation) are CPT codes 62290 (Injection procedure for discography, each level; lumbar) and 62291 (Injection procedure for discography, each level; cervical or thoracic). The injection procedures are, by definition, surgical procedures because they are reported by CPT codes in the surgical range. Commenters noted that packaging the surgical code into the radiology service means that the radiology service is included on the ASC list of covered ancillary services and that, therefore, separate payment is only made to an ASC when the radiology service is provided integral to a covered surgical procedure. They believe the radiology service should be separately payable when it is performed alone. The commenters argued that discography services would migrate to HOPDs as a result of this packaging policy. They contended that CMS should provide ASC payment for both the traditional forms of surgery and other invasive procedures appropriate to the outpatient surgical setting.

Response: Packaged surgical services are minor procedures and are usually reported with a more comprehensive procedure that may be nonsurgical and, therefore, excluded from payment under the revised ASC payment system. In the circumstances referred to by the commenters, the minor surgical procedures are performed in support of comprehensive nonsurgical services and payment for the minor surgical procedures is packaged into payment for the nonsurgical services under the OPPS. We do not agree that we should define surgical procedures under the revised ASC payment system to include other types of services, such as radiology services, even though some minor component(s) of the service may be defined as surgical. Instead, we continue to believe that the other types of services, including radiology services, are not appropriate for performance and separate payment in ASCs unless they are integral to covered surgical procedures.

After consideration of the public comments received, we are providing CY 2009 payment for covered ancillary services in accordance with the final policies of the revised ASC payment system as described in the CY 2008 OPPS/ASC final rule with comment period. Covered ancillary services and their final CY 2009 payment indicators are listed in Addendum BB to this final rule with comment period.

G. New Technology Intraocular Lenses

1. Background

In the CY 2007 OPPS/ASC final rule with comment period, we finalized our current process for reviewing applications to establish new active classes of new technology intraocular lenses (NTIOLs) and for recognizing new candidate intraocular lenses (IOLs) inserted during or subsequent to cataract extraction as belonging to a NTIOL class that is qualified for a payment adjustment (71 FR 67960 and 68176). Specifically, we established the following process:

• We will announce annually in the **Federal Register** document that proposes the update of ASC payment rates for the following calendar year, a list of all requests to establish new NTIOL classes accepted for review during the calendar year in which the proposal is published and the deadline for submission of public comments regarding those requests. Pursuant to Section 141(b)(3) of P.L. 103–432 and our regulations at 42 CFR 416.185(b), the deadline for receipt of public comments will be 30 days following publication of the list of requests.

• In the **Federal Register** document that finalizes the update of ASC payment rates for the following calendar year, we will—

+ Provide a list of determinations made as a result of our review of all new class requests and public comments; and

+ Announce the deadline for submitting requests for review of an application for a new NTIOL class for the following calendar year.

In determining whether a lens belongs to a new class of NTIOLs and whether the ASC payment amount for insertion of that lens in conjunction with cataract surgery is appropriate, we expect that the insertion of the candidate IOL would result in significantly improved clinical outcomes compared to currently available IOLs. In addition, to establish a new NTIOL class, the candidate lens must be distinguishable from lenses already approved as members of active or expired classes of NTIOLs that share a predominant characteristic associated with improved clinical outcomes that was identified for each class. Furthermore, in the CY 2007 OPPS/ASC final rule with comment period, we finalized our proposal to base our determinations on consideration of the following factors set out at 42 CFR 416.195 (71 FR 67960 and 68227):

• The IOL must have been approved by the FDA and claims of specific clinical benefits and/or lens characteristics with established clinical relevance in comparison with currently available IOLs must have been approved by the FDA for use in labeling and advertising.

• The IOL is not described by an active or expired NTIOL class; that is, it does not share the predominant, class-defining characteristic associated with improved clinical outcomes with designated members of an active or expired NTIOL class.

• Evidence demonstrates that use of the IOL results in measurable, clinically meaningful, improved outcomes in comparison with use of currently available IOLs. According to the statute, and consistent with previous examples provided by CMS, superior outcomes that would be considered include the following:

+ Reduced risk of intraoperative or postoperative complication or trauma;

+ Accelerated postoperative recovery;

+ Reduced induced astigmatism;

+ Improved postoperative visual acuity;

+ More stable postoperative vision;

+ Other comparable clinical advantages, such as—

++ Reduced dependence on other eyewear (for example, spectacles, contact lenses, and reading glasses);

++ Decreased rate of subsequent diagnostic or therapeutic interventions, such as the need for YAG laser treatment;

++ Decreased incidence of subsequent IOL exchange;

++ Decreased blurred vision, glare, other quantifiable symptom or vision deficiency.

For a request to be considered complete, we require submission of the information that is found in the guidance document entitled ''Application Process and Information Requirements for Requests for a New Class of New Technology Intraocular Lens (NTIOL)'' posted on the CMS Web site at: *http://www.cms.hhs.gov/ASC Payment/08_NTIOLs.asp#TopOfPage.*

As we stated in the CY 2007 OPPS/ASC final rule with comment period (71 FR 68180), there are three possible outcomes from our review of a request for establishment of a new NTIOL class. As appropriate, for each completed request for consideration of a candidate IOL into a new class that is received by the established deadline, one of the following determinations would be announced annually in the final rule updating the ASC payment rates for the next calendar year:

- The request for a payment adjustment is approved for the candidate IOL for 5 full years as a member of a new NTIOL class described by a new HCPCS code.
- The request for a payment adjustment is approved for the candidate IOL for the balance of time remaining as a member of an active NTIOL class.
- The request for a payment adjustment is not approved.

We also discussed our plan to summarize briefly in the final rule with comment period the evidence that was reviewed, the public comments, and the basis for our determinations in consideration of applications for establishment of a new NTIOL class. We established that when a new NTIOL class is created, we would identify the predominant characteristic of NTIOLs in that class that sets them apart from other IOLs (including those previously approved as members of other expired or active NTIOL classes) and that is associated with improved clinical outcomes. The date of implementation of a payment adjustment in the case of approval of an IOL as a member of a new NTIOL class would be set prospectively as of 30 days after publication of the ASC payment update final rule, consistent with the statutory requirement.

2. NTIOL Application Process for Payment Adjustment

In CY 2007, we posted an updated guidance document to the CMS Web site to provide process and information requirements for applications requesting a review of the appropriateness of the payment amount for insertion of an IOL to ensure that the ASC payment for covered surgical procedures includes payment that is reasonable and related to the cost of acquiring a lens that is approved as belonging to a new class of NTIOLs. This guidance document can be accessed on the CMS Web site at: *http://www.cms.hhs.gov/ASCPayment/08_NTIOLs.asp#TopOfPage.*

We note that we have also issued a guidance document entitled ''Revised Process for Recognizing Intraocular Lenses Furnished by Ambulatory Surgery Centers (ASCs) as Belonging to an Active Subset of New Technology Intraocular Lenses (NTIOLs).'' This guidance document can be accessed on the CMS Web site at: *http://www.cms.hhs.gov/ASCPayment/Downloads/Request_for_inclusion_in_current_NTIOL_subset.pdf.*

This second guidance document provides specific details regarding requests for recognition of IOLs as belonging to an existing, active NTIOL class, the review process, and information required for a request to review. Currently, there is one active NTIOL class whose defining characteristic is the reduction of spherical aberration. CMS accepts requests throughout the year to review the appropriateness of recognizing an IOL as a member of an active class of NTIOLs. That is, review of candidate lenses for membership in an existing, active NTIOL class is ongoing and not limited to the annual review process that applies to the establishment of new NTIOL classes. We ordinarily complete the review of such a request within 90 days of receipt, and upon completion of our review, we notify the requestor of our determination and post on the CMS Web site notification of a lens newly approved for a payment adjustment as an NTIOL belonging to an active NTIOL class when furnished in an ASC.

3. Classes of NTIOLs Approved and New Requests for Payment Adjustment

a. Background

Since implementation of the process for adjustment of payment amounts for NTIOLs that was established in the June 16, 1999 **Federal Register**, we have approved three classes of NTIOLs, as shown in the following table, with the associated qualifying IOLs to date:

NTIOL class	HCPCS code	$50 Approved for services furnished on or after	NTIOL characteristic	IOLs eligible for adjustment
1	Q1001	May 18, 2000, through May 18, 2005.	Multifocal	Allergan AMO Array Multifocal lens, model SA40N.
2	Q1002	May 18, 2000, through May 18, 2005.	Reduction in Pre-existing Astigmatism.	STAAR Surgical Elastic Ultraviolet-Absorbing Silicone Posterior Chamber IOL with Toric Optic, models AA4203T, AA4203TF, and AA4203TL.
3	Q1003	February 27, 2006, through February 26, 2011.	Reduced Spherical Aberration.	Advanced Medical Optics (AMO) Tecnis® IOL models Z9000, Z9001, Z9002, ZA9003, AR40xEM and Tecnis® 1-Piece model ZCB00; Alcon Acrysof® IQ Model SN60WF and Acrysert Delivery System model SN60WS; Bausch & Lomb Sofport AO models LI61AOV, and LI61AOV; STAAR Affinity Collamer model CQ2015A, CC4204A, and Elastimide AQ2015A.

b. Request To Establish New NTIOL Class for CY 2009

As discussed below and explained in the guidance document on the CMS Web site, a request for review for a new class of NTIOLs for CY 2009 must have been submitted to CMS by March 14, 2008, the due date published in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66855). We received one request for review of the appropriateness of the ASC payment amount for insertion of a candidate IOL as a member of a new class of NTIOLs

for CY 2009 by the March 14, 2008 due date. A summary of this request follows.

Requestor: Rayner Surgical, Inc.

Manufacturer: Rayner Intraocular Lenses Limited

Lens Model Number: C-Flex IOL, Model Number 570C

Summary of the Request: Rayner Surgical, Inc. (Rayner) submitted a request for CMS to determine that its C-Flex Model 570C intraocular lens meets the criteria for recognition as an NTIOL and to concurrently establish a new class of NTIOLs, with this lens as a member. As part of its request, Rayner submitted descriptive information about the candidate IOL as outlined in the guidance document that we make available on the CMS Web site for the establishment of a new class of NTIOLs, as well as information regarding approval of the candidate IOL by the U.S. Food and Drug Administration (FDA). This information included the approved labeling for the candidate lens, a summary of the IOL's safety and effectiveness, a copy of the FDA's approval notification, and instructions for its use. In addition, Rayner also submitted several peer-reviewed articles in support of its claim that the design features and hydrophilic properties of the candidate lens would reduce silicone oil adhesion and silicone oil-induced opacification. We note that we have previously considered other candidate IOLs for which ASC payment review was requested on the basis of their hydrophilic characteristics or their associated reduction in cellular deposits. We discussed these types of lenses in the December 20, 1999 and May 3, 2000 NTIOL proposed and final rules published in the **Federal Register** (64 FR 71148 through 71149 and 65 FR 25738 through 25740, respectively).

In its CY 2009 request, Rayner asserted that the design features and hydrophilic properties of the candidate lens would reduce silicone oil adhesion and silicone oil-induced opacification problems associated with FDA-approved IOL materials currently marketed in the United States. Rayner stated that silicone oil is widely used as a tamponade in vitreoretinal surgery, and that silicone oil-induced opacification of an IOL, through adherence of the oil to the IOL surface, is a well-known surgical complication. Rayner also stated that at present, there are no active or expired NTIOL classes that describe IOLs similar to its IOL.

We established in the CY 2007 OPPS/ASC final rule with comment period that when reviewing a request for recognition of an IOL as an NTIOL and a concurrent request to establish a new class of NTIOLs, we would base our determination on consideration of the three major criteria that are outlined in the discussion above. In the CY 2009 OPPS/ASC proposed rule, we noted that we had begun our review of Rayner's request to recognize its C-Flex IOL as an NTIOL and concurrently establish a new class of NTIOLs. In the CY 2009 OPPS/ASC proposed rule, we solicited comments on this candidate IOL with respect to the established NTIOL criteria as discussed above (73 FR 41536).

First, for an IOL to be recognized as an NTIOL we require that the IOL must have been approved by the FDA and claims of specific clinical benefits and/or lens characteristics with established clinical relevance in comparison with currently available IOLs must have been approved by the FDA for use in labeling and advertising. We noted in the CY 2009 OPPS/ASC proposed rule that FDA approval for the candidate lens was granted in May of 2007 and in its request, Rayner provided FDA approval documentation, including a copy of the FDA's approval notification, the FDA's summary of the IOL's safety and effectiveness, and the labeling approved by the FDA. The approved label for the Rayner C-Flex stated, ''The hydrophilic nature of the Rayacryl material and the design features of the Rayner C-Flex lens reduce the problems of silicone oil adhesion and silicone oil opacification.'' The FDA label did not otherwise reference specific clinical benefits or lens characteristics with established clinical relevance in comparison with currently available IOLs. Although the labeling reference to reduced ''problems'' could imply clinical relevance and clinical benefits of the lens, the label did not indicate the specific clinical benefits associated with the lens. In the CY 2009 OPPS/ASC proposed rule (73 FR 41536), we noted that we were interested in public comments on the specific clinical benefits and/or lens characteristics with established clinical relevance in comparison with currently available IOLs that may be associated with the silicone adherence and silicone oil-induced opacification reducing characteristics of this candidate lens.

Second, we also require that the candidate IOL not be described by an active or expired NTIOL class, that is, it does not share the predominant, class-defining characteristic associated with improved clinical outcomes with designated members of an active or expired NTIOL class. As noted in the table above regarding active and expired NTIOL classes, since implementation of the NTIOL review process that was established in the June 16, 1999 **Federal Register**, we have approved three classes of NTIOLs: Multifocal and Reduction in Preexisting Astigmatism classes, both of which were created in 2000 and expired in 2005, and the currently active Reduced Spherical Aberration class, which was created in 2006 and will expire in 2011. The class-defining characteristic specific to IOLs that are members of these classes is evident in the name assigned to the class. For example, IOLs recognized as members of the reduced spherical aberration class are characterized by their aspheric design that results in reduced spherical aberration. Please refer to the table above for information about the NTIOL classes that have been created since the implementation of the review process. Based on this information, the candidate lens may not be described by an active or expired NTIOL class. Its proposed class-defining characteristic and associated clinical benefits that were described in the submitted request, specifically the hydrophilic nature of the Rayacryl material and the design features of the C-Flex lens to reduce problems with silicone oil adhesion and silicone oil-induced opacification, may not be similar to the class-defining characteristics and associated benefits of the two expired NTIOL classes, the Multifocal and Reduction in Preexisting Astigmatism classes, or to the class-defining characteristic and associated benefits of the currently active Reduced Spherical Aberration class. In the CY 2009 OPPS/ASC proposed rule (73 FR 41536), we noted that we welcomed public comments that address whether the proposed class-defining characteristic and associated clinical benefits of the candidate Rayner IOL are described by the expired or currently active NTIOL classes.

Third, our NTIOL evaluation criteria also require that an applicant submit evidence that demonstrates use of the IOL results in measurable, clinically meaningful, improved outcomes in comparison with use of currently available IOLs. We note that in the CY 2007 OPPS/ASC final rule with comment period, we sought comments as to what constitutes currently available IOLs for purposes of such comparisons, and we received several comments in response to our solicitation (71 FR 68178). We agreed with commenters that we should remain flexible with respect to our view of ''currently available lenses'' for purposes of reviewing NTIOL requests, in order to allow for consideration of technological advances in lenses over time. For purposes of reviewing this

request to establish a new NTIOL class for CY 2009, we stated our belief that foldable, spherical, monofocal IOLs made of acrylic, silicone, or polymethylmethacrylate materials represented the currently available lenses against which the candidate NTIOL to establish a new class should be compared. The Rayner request asserted that the hydrophilic material of the candidate lens with respect to silicone oil adhesion made the lens a novel IOL in the U.S. market. In the CY 2009 OPPS/ASC proposed rule (73 FR 41536), we sought public comment on our view of ''currently available lenses'' for the purposes of this CY 2009 review.

We reviewed the four peer-reviewed articles submitted by Rayner with the request, specifically three bench studies of silicone oil coverage of various IOL materials and a single series of three clinical case histories where silicone oil adhesion was documented. The literature did not clearly provide information regarding the clinical benefit to patients who received the candidate lens in conjunction with cataract removal surgery compared to patients receiving currently available IOLs. As stated in the Rayner request, the potential benefits of the candidate lens would apply only to individuals undergoing vitreoretinal surgery, in which silicone oil was used as a tamponade at some time after insertion of the intraocular lens. The size and composition of this population that could potentially benefit was unclear, and it was also unclear how often and what other alternative tamponade materials may be employed in the U.S relative to silicone oil. In the CY 2009 OPPS/ASC proposed rule (73 FR 41536), we welcomed public comments and relevant data specifically addressing whether use of the Rayner C-Flex IOL resulted in measurable, clinically meaningful, improved outcomes in comparison with use of currently available IOLs.

In accordance with our established NTIOL review process, we sought public comments on all of the review criteria for establishing a new NTIOL class with the characteristic of reduced silicone oil-induced opacification based on the request for the Rayner C-Flex IOL Model 570C lens. All comments on this request must have been received by August 18, 2008. We stated that the announcement of CMS' determination regarding this request would appear in this CY 2009 OPPS/ASC final rule with comment period. If a determination of membership of the candidate lens in a new or currently active NTIOL class is made, this determination would be effective 30 days following the date that this final rule with comment period is published in the **Federal Register**.

We thank the public for their comments concerning our review of the request from Rayner Surgical, Inc. to establish a new class of NTIOLs based on the characteristics of its C-Flex IOL Model 570C. Some of the comments we received raised additional questions about the proven effectiveness of the Rayner C-Flex lens, especially when compared to other currently available lenses. These public comments and our responses to them are summarized below.

Comment: One commenter expressed general support for CMS' integration of the new NTIOL notice and comment process into the annual OPPS/ASC rulemaking cycle. The commenter cautioned that the process should be monitored to ensure that the consideration of these new technologies is not impeded or slowed by the rulemaking process. Additionally, the commenter requested that for consistency the NTIOL comment period should coincide with the comment period for the remainder of the issues included in the annual OPPS/ASC proposed rule.

Response: We thank the commenter for the support of our integration of the new NTIOL notice and comment process into the annual OPPS/ASC rulemaking cycle. However, in response to the request that the comment period regarding requests to establish new classes of NTIOLs should coincide with the comment period for all other issues included in the annual OPPS/ASC proposed rule, we note that section 141(b)(3) of the Social Security Act Amendments of 1994, Public Law 103–432, clearly requires us to provide a 30-day comment period on lenses that are the subject of requests for recognition as belonging to a new class of NTIOLs. Therefore, we will continue to provide a 30-day comment period on lenses that are the subject of requests for recognition as members of a new class of NTIOLs.

Comment: One commenter responded to CMS' view of the present definition of currently available lenses. The commenter believed that the definition of ''currently available IOLs'' should take into account the most recent preceding level of technological advancement and corresponding patient benefit that has been or is rapidly becoming accepted by the ophthalmologic medical community. The commenter suggested that in order to identify the latest technological advancement, CMS should consider market shares and/or growth rates of various classes of currently available IOLs. The commenter further stated that IOLs that reduce spherical aberration have become the technology of choice for most cataract surgeons because of the greater quality of vision they provide. The commenter concluded that CMS should be reluctant to establish a new NTIOL class for a future candidate IOL that does not reduce spherical aberration.

Response: We will consider and evaluate this particular concept of ''currently available lenses'' for its applicability to our future reviews of NTIOL applications. While we would expect that use of IOLs seeking NTIOL recognition would result in improved clinical outcomes when compared to currently available lenses, which includes lenses with the characteristic of reducing spherical aberration, we do not require that lenses seeking NTIOL recognition also share the same characteristics as other lenses that are in currently active NTIOL classes. As discussed in the CY 2007 OPPS/ASC final rule with comment period (71 FR 68178), we continue to believe that flexibility is critical when identifying what the public considers ''currently available lenses,'' in order to allow for consideration of technological advances in lenses over time.

Comment: One commenter questioned how CMS could expect a comparison reference to be included in an FDA-approved label, as the FDA's legal authority is only to determine if a product is safe and effective. Furthermore, the commenter stated that to expect a device label to contain language remarking about the device's performance in relation to other similar devices makes meeting the NTIOL criteria impossible. The commenter did not believe that the labels of the IOLs that have received NTIOL status contained such language.

Response: In response to the comment regarding the FDA's legal authority to make comparative decisions, we note that it was not our intent to suggest that the FDA makes comparative decisions, but rather that the FDA-approved label, submitted by an applicant, may include benchmark studies that have compared the performance of the applicant's lens against the performance of other lenses. We have reviewed requests for NTIOL class recognition where the FDA-approved label has included such comparative bench studies, and we do use this information in our review process.

Comment: One commenter claimed that the C-Flex lens application to establish a new NTIOL category meets the specific NTIOL review criteria and that the applicant lens is not described

by current or prior classes of NTIOLs. This commenter asserted that the C-Flex IOL offers patients who go on to require vitreoretinal surgery clinically meaningful improvements, such as a decreased rate of subsequent therapeutic interventions and a decreased incidence of subsequent IOL exchange. The commenter also argued that the C-Flex IOL provides beneficiaries who go on to require vitreoretinal surgery with more stable postoperative vision because patients who suffer from silicone oil adhesion to their implanted IOL lose visual acuity and either must live with impaired vision or undergo another surgical procedure to remove the damaged lens and have a new IOL inserted. The commenter pointed out that silicone oil used as a tamponade agent during vitreoretinal surgery may need to be left in the vitreal space for many months following surgery, resulting in silicone adherence to a vast majority of the currently available IOLs identified by CMS. The commenter concluded that silicone oil adherence to the IOL creates both immediate and long-term problems for patients, as well as the retinal surgeon. Such problems include decreased visualization of the operative area by the surgeon and reoperation on the eye, which exposes the patient to significant surgical risks.

The commenter claimed that 15,000 to 30,000 of the approximately 1.5 million cataract surgery patients per year in the United States go on to require vitreoretinal surgery, and not an insignificant number of these individuals face surgical risks associated with silicone oil adherence. The commenter stated that the benefit from the C-Flex IOL is not dependent on the number of patients who might be impacted but rather the clinical outcomes at issue.

Another commenter explained that problems of silicone oil adhesion and silicone oil opacification have been primarily attributed to silicone IOLs, and some experts advise that silicone IOLs not be implanted in patients at risk for vitreoretinal surgery. This commenter asserted that published peer-reviewed articles in the medical literature conclude that either a hydrophobic or a hydrophilic acrylic IOL is preferable (for greater visibility) to a silicone IOL in patients at risk for future vitreoretinal surgery. The commenter further stated that silicone IOLs have been replaced in the United States to a large extent by hydrophobic acrylic IOLs based on surgeon preferences and common clinical scenarios. In addition, the commenter explained that many studies have documented postoperative optic opacification due to calcification in hydrophilic acrylic IOLs and that postoperative opacification of these lenses is of concern, given that the supposed additional benefit of the hydrophilic C-Flex IOL is superior clarity in eyes exposed to silicone oil. The commenter further claimed that recent publications identify ''secondary calcification'' with hydrophilic acrylic IOLs as a phenomenon seen in eyes with complicated pathology (such as vitreoretinal surgery). The commenter questioned the bench studies cited in the C-Flex IOL FDA label, stating that there is no evidence that relatively small differences in silicone oil coverage (as measured in the bench tests) translates into any clinically meaningful benefit.

Two commenters responded to the question as to whether surgeons have alternatives to silicone oil. One commenter stated that retinal surgeons could opt to use gas or air for their tamponade effect, but that use of these substitutes during vitreoretinal surgery did not avoid visual problems. This commenter believed that while there are some options to address certain aspects of the silicone oil adherence problem, none of these options completely resolves the problem and therefore the C-Flex lens provides a clinical benefit as compared to each of these alternatives. The other commenter asserted that choices of retinal tamponades include silicone oil, gases, and perfluorocarbon liquids, all of which are indicated for use in treating retinal detachments. This commenter further stated that the choice of tamponade is based on each patient's presentation and specific pathology, and that the alternatives are generally not interchangeable. The commenter also explained that silicone oil is not used in every retinal detachment procedure and that in some cases of retinal detachment, surgeons use a scleral buckle procedure that does not utilize a retinal tamponade. Another commenter did not offer alternative materials that could be used as a tamponade but stated that published peer-reviewed articles in the medical literature conclude that either a hydrophobic or a hydrophilic acrylic IOL is preferable (for greater visibility) to a silicone IOL in patients at risk for retinal surgery.

Response: As we have stated in prior rulemaking, we fully expect that to be recognized as an NTIOL and to subsequently establish a new NTIOL class, the insertion of the candidate IOL would result in significantly improved clinical outcomes compared to currently available IOLs, and the candidate lens must be distinguishable from lenses already approved as members of active or expired classes of NTIOLs that share a predominant characteristic associated with improved clinical outcomes that were identified for each class. We agree that the applicant lens is not described by current or prior classes of NTIOLs. We also agree that clinical outcomes rather than number of patients that may be impacted should be the focus of our decision. However, we note that with respect to the applicant lens, there are no published comparable clinical data available or presented by the applicant which demonstrate that use of the C-Flex IOL results in measurable, clinically meaningful, improved outcomes in comparison with use of currently available IOLs. The applicant submitted studies that evaluated the adhesion of silicone oil to various IOL materials and these studies conclude, to varying degrees, that lenses made of hydrophilic material exhibit lower silicone oil adhesion than lenses made of hydrophobic materials. However, the clinical relevance of these bench studies submitted by the applicant has not been established. We agree with the comment that several studies have documented postoperative opacification of hydrophilic lenses. In our review of the studies submitted by the applicant and other available data and studies, we encountered information, similar to the peer-reviewed journal articles submitted by one commenter that suggested that hydrophilic lenses may be susceptible to other forms of opacification. If this were the case, any potential visual benefit from reduced silicone oil opacification might not be realized.

After consideration of the public comments received, we conclude that the Rayner C-Flex IOL does not demonstrate substantial clinical benefit in comparison with currently available IOLs. Therefore, we are disapproving Rayner's request to recognize its C-Flex (model 570) IOL as an NTIOL and, therefore, we are not establishing a new class of NTIOL for payment as a result of this CY 2009 review cycle.

4. Payment Adjustment

The current payment adjustment for a 5-year period from the implementation date of a new NTIOL class is $50. In the CY 2007 OPPS/ASC final rule with comment period, we revised § 416.200(a) through (c) to clarify how the IOL payment adjustment will be made and how an NTIOL will be paid after expiration of the payment adjustment, and made minor editorial changes to § 416.200(d). For CY 2008, we did not revise the current payment adjustment amount, and we did not propose to revise the payment adjustment amount for CY 2009 in light of our very short experience with the

revised ASC payment system, implemented initially on January 1, 2008. Therefore, the final ASC payment adjustment amount for NTIOLs in CY 2009 is $50.

5. ASC Payment for Insertion of IOLs

In accordance with the final policies of the revised ASC payment system, for CY 2009, payment for IOL insertion procedures is established according to the standard payment methodology of the revised payment system, which multiplies the ASC conversion factor by the ASC payment weight for the surgical procedure to implant the IOL. CY 2009 ASC payment for the cost of a conventional lens is packaged into the payment for the associated covered surgical procedures performed by the ASC. The proposed CY 2009 ASC payment rates for IOL insertion procedures were included in Table 44 of the CY 2009 OPPS/ASC proposed rule (73 FR 41537).

We did not receive any public comments concerning the proposed CY 2009 payment rates for the insertion of IOL procedures. Therefore, we are finalizing the payment rates for the insertion of IOL procedures, calculated according to the standard methodology of the revised ASC payment system, as shown in Table 50 below for CY 2009.

TABLE 50—INSERTION OF IOL PROCEDURES AND THEIR CY 2009 ASC PAYMENT RATES

CY 2009 HCPCS code	CY 2009 Long descriptor	Final CY 2009 ASC payment
66983	Intracapsular cataract extraction with insertion of intraocular lens prosthesis (one stage procedure)	$964.70
66984	Extracapsular cataract removal with insertion of intraocular lens prosthesis (one stage procedure), manual or mechanical technique (e.g., irrigation and aspiration or phacoemulsification).	964.70
66985	Insertion of intraocular lens prosthesis (secondary implant), not associated with concurrent cataract removal	893.03
66986	Exchange of intraocular lens	893.03

6. Announcement of CY 2009 Deadline for Submitting Requests for CMS Review of Appropriateness of ASC Payment for Insertion of an NTIOL Following Cataract Surgery

In accordance with § 416.185(a) of our regulations as revised by the CY 2007 OPPS/ASC final rule with comment period, CMS announces that in order to be considered for payment effective January 1, 2010, requests for review of applications for a new class of new technology IOLs must be received at CMS by 5 p.m. EST, on March 2, 2009. Send requests to ASC/NTIOL, Division of Outpatient Care, Mailstop C4–05–17, Centers for Medicare and Medicaid, 7500 Security Boulevard, Baltimore, MD 21244–1850.

To be considered, requests for NTIOL reviews must include the information on the CMS Web site at: *http://www.cms.hhs.gov/ASCPayment/08_NTIOLs.asp#TopOfPage*.

H. ASC Payment and Comment Indicators

1. Background

In addition to the payment indicators that we introduced in the August 2, 2007 final rule for the revised ASC payment system, we also created final comment indicators for the ASC payment system in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66855). We created Addendum DD1 to define ASC payment indicators that we use in Addenda AA and BB to provide payment information regarding covered surgical procedures and covered ancillary services, respectively, under the revised ASC payment system. The ASC payment indicators in Addendum DD1 are intended to capture policy-relevant characteristics of HCPCS codes that may receive packaged or separate payment in ASCs, including: Their ASC payment status prior to CY 2008; their designation as device-intensive or office-based and the corresponding ASC payment methodology; and their classification as separately payable radiology services, brachytherapy sources, OPPS pass-through devices, corneal tissue acquisition services, drugs or biologicals, or NTIOLs.

We also created Addendum DD2 that lists the ASC comment indicators. The ASC comment indicators used in Addenda AA and BB to this final rule with comment period serve to identify, for the revised ASC payment system, the status of a specific HCPCS code and its payment indicator with respect to the timeframe when comments will be accepted. The comment indicator ''NI'' is used in the final rule to indicate new HCPCS codes for which the interim payment indicator assigned is subject to comment on this final rule with comment period.

The ''CH'' comment indicator was used in Addenda AA and BB to the CY 2009 OPPS/ASC proposed rule to indicate that: A new payment indicator (in comparison with the indicator for the CY 2008 ASC April quarterly update) was proposed for assignment to an active HCPCS code for the next calendar year; an active HCPCS code was proposed for addition to the list of procedures or services payable in ASCs; or an active HCPCS code was proposed for deletion at the end of the current calendar year. The ''CH'' comment indicators that are published in this final rule with comment period are provided to alert readers that a change has been made from one calendar year to the next, but do not indicate that the change is subject to comment.

The full definitions of the payment indicators and comment indicators are provided in Addenda DD1 and DD2, respectively, to this final rule with comment period.

2. ASC Payment and Comment Indicators

In the CY 2009 OPPS/ASC proposed rule, we proposed to revise the definition of one ASC payment indicator for CY 2009 (73 FR 41537). We proposed that the definition of payment indicator ''F4'' would be changed from ''Corneal tissue acquisition; paid at reasonable cost'' to ''Corneal tissue acquisition, hepatitis B vaccine; paid at reasonable cost'' for CY 2009. The revised definition was displayed in Addendum DD1 to the CY 2009 OPPS/ASC proposed rule.

We did not receive any public comments that addressed our proposal related to implementation of a revised definition for payment indicator ''F4''. We are finalizing our proposal, without modification, to adopt the payment indicators as defined in Addendum DD1 to this final rule with comment period.

I. Calculation of the ASC Conversion Factor and ASC Payment Rates

1. Background

In the August 2, 2007 final rule, we made final our proposal to base ASC relative payment weights and payment rates under the revised ASC payment system on APC groups and relative payment weights (72 FR 42493). Consistent with that policy and the

requirement at section 1833(i)(2)(D)(ii) of the Act that the revised payment system be implemented so that it would be budget neutral, the initial ASC conversion factor (CY 2008) was calculated so that estimated total Medicare payments under the revised ASC payment system in the first year would be budget neutral to estimated total Medicare payments under the existing (CY 2007) ASC payment system. That is, application of the ASC conversion factor was designed to result in aggregate expenditures under the revised ASC payment system in CY 2008 equal to aggregate expenditures that would have occurred in CY 2008 in the absence of the revised system, taking into consideration the cap on payments in CY 2007 as required under section 1833(i)(2)(E) of the Act (72 FR 42521 through 42522).

We note that we consider the term ''expenditures'' in the context of the budget neutrality requirement under section 1833(i)(2)(D)(ii) of the Act to mean expenditures from the Medicare Part B Trust Fund. We do not consider expenditures to include beneficiary coinsurance and copayments. This distinction was important for the CY 2008 ASC budget neutrality model that considered payments across hospital outpatient, ASC, and MPFS payment systems. However, because coinsurance is almost always 20 percent for ASC services, this interpretation of expenditures has minimal impact for subsequent budget neutrality adjustments calculated within the revised ASC payment system.

In the CY 2008 OPPS/ASC final rule with comment period (72 FR 66857 through 66858), we set out a step-by-step illustration of the final budget neutrality adjustment calculation based on the methodology finalized in the August 2, 2007 final rule (72 FR 42521 through 42531) and as applied to updated data available for the CY 2008 OPPS/ASC final rule with comment period. The application of that methodology to the data available for the CY 2008 OPPS/ASC final rule with comment period resulted in a budget neutrality adjustment of 0.65.

For CY 2008, we adopted the OPPS relative payment weights for most services as the ASC relative payment weights and, consistent with the final policy, we calculated the CY 2008 ASC payment rates by multiplying the ASC relative payment weights by the CY 2008 ASC conversion factor of $41.401. For covered office-based surgical procedures and covered ancillary radiology services, the final policy is to set the relative payment weights so that the national unadjusted ASC payment rate does not exceed the MPFS unadjusted nonfacility PE RVU amount. Further, as discussed in section XV. of the CY 2009 OPPS/ASC proposed rule, in addition to the standard payment methodology, we also adopted several other alternative payment methods for specific types of services (for example, device-intensive procedures) (73 FR 41523 through 41539).

Beginning in CY 2008, Medicare accounts for geographic wage variation in labor cost when calculating individual ASC payments by applying the pre-floor and pre-reclassified hospital wage index values that CMS calculates for payment, using updated Core Based Statistical Areas (CBSAs) issued by the Office of Management and Budget in June 2003. The reclassification provision provided at section 1886(d)(10) of the Act is specific to hospitals. We believe the use of the most recent available raw pre-floor and pre-reclassified hospital wage index results in the most appropriate adjustment to the labor portion of ASC costs. In addition, use of the unadjusted hospital wage data avoids further reductions in certain rural statewide wage index values that result from reclassification. We continue to believe that the unadjusted hospital wage index, which is updated yearly and is used by many other Medicare payment systems, appropriately accounts for geographic variances in labor costs for ASCs.

As discussed in the August 2, 2007 revised ASC payment system final rule (72 FR 42518), the revised ASC payment system accounts for geographic wage variation when calculating individual ASC payments by applying the pre-floor and pre-reclassified hospital wage index to the labor-related portion, which is 50 percent of the ASC payment amount.

In the CY 2009 OPPS/ASC proposed rule, we noted that as part of our review of the hospital wage index, in accordance with section 106(b)(2) of the MIEA–TRHCA, CMS has initiated a research contract that will include analysis and recommendations on alternatives to the current method for computing the IPPS wage index for FY 2009. We received an interim report on this analysis in August 2008 that is available on the Web site at *http://www.acumenllc.com/reports/cms/RevisedImpactAnalysisfor2009FinalRule.pdf.* We anticipate a final report in the winter of 2009. While the majority of that final report will address the impact of changes on the IPPS wage index, report recommendations should provide some information about how proposals to refine the IPPS wage index, including modification or elimination of the reclassification process and adoption of Bureau of Labor Statistics data, may result in a more appropriate wage index for non-IPPS providers (73 FR 48564).

2. Policy Regarding Calculation of the ASC Payment Rates

a. Updating the ASC Relative Payment Weights for CY 2009 and Future Years

We update the ASC relative payment weights in the revised ASC payment system each year using the national OPPS relative payment weights (and MPFS nonfacility PE RVU amounts, as applicable) for that same calendar year and uniformly scale the ASC relative payment weights for each update year to make them budget neutral (72 FR 42531 through 42532). Consistent with our established policy, in the CY 2009 OPPS/ASC proposed rule (73 FR 41538), we proposed to scale the CY 2009 relative payment weights for ASCs according to the following method. Holding ASC utilization and the mix of services constant from CY 2007, for CY 2009, we would compare the total payment weight using the CY 2008 ASC relative payment weights under the 75/25 blend (of the CY 2007 payment rate and the revised ASC payment rate) with the total payment weight using the CY 2009 ASC relative payment weights under the 50/50 blend (of the CY 2007 ASC payment rate and the revised ASC payment rate) to take into account the changes in the OPPS relative payment weights between CY 2008 and CY 2009. We would use the ratio of CY 2008 to CY 2009 total payment weight (the weight scaler) to scale the ASC relative payment weights for CY 2009. The proposed CY 2009 ASC scaler was 0.9753 and scaling of ASC relative payment weights would apply to covered surgical procedures and covered ancillary radiology services whose ASC payment rates are based on OPPS relative payment weights.

Scaling would not apply in the case of ASC payment for separately payable covered ancillary services that have a predetermined national payment amount (that is, their national ASC payment amounts are not based on OPPS relative payment weights), such as drugs and biologicals that are separately paid under the OPPS or services that are contractor-priced or paid at reasonable cost in ASCs. Any service with a predetermined national payment amount would be included in the ASC budget neutrality comparison, but scaling of the ASC relative payment weights would not apply to those services. The ASC payment weights for those services without predetermined national payment amounts (that is,

those services with national payment amounts that would be based on OPPS relative payment weights if a payment limitation did not apply) would be scaled to eliminate any difference in the total payment weight between the current year and the update year.

The proposed weight scaler used to model ASC fully implemented rates in order to reflect our estimate of rates if there was no transition for CY 2009 was equal to 0.9412. This scaler was applied to all payment weights subject to scaling, in order to estimate the fully implemented payment rates for CY 2009 without the transition, for purposes of the ASC impact analysis discussed in section XXI.C. of the CY 2009 OPPS/ASC proposed rule (73 FR 41562).

For any given year's ratesetting, we typically use the most recent full calendar year of claims data to model budget neutrality adjustments. When we developed the CY 2009 OPPS/ASC proposed rule, we had available 95 percent of CY 2007 ASC claims data. These claims did not include new covered surgical procedures and covered ancillary services under the revised ASC payment system that were first payable in ASCs in CY 2008 and only contained data for ASC services billed in CY 2007 that were eligible to receive payment under the previous ASC payment system. We did not have sufficiently robust CY 2008 ASC claims data upon which to base the CY 2009 ASC payment system update. Therefore, for CY 2009 budget neutrality adjustments, we assumed that there would be no significant change in the weight scaler or wage adjustment attributable to new covered surgical and covered ancillary services.

To create an analytic file to support calculation of the weight scaler and budget neutrality adjustment for the wage index (discussed below), we summarized available CY 2007 ASC claims by provider and by HCPCS code. We created a unique supplier identifier solely for the purpose of identifying unique providers within the CY 2007 claims data. We used the provider zip code reported on the claim to associate state, county, and CBSA with each ASC. This file, available to the public as a supporting data file for the CY 2009 OPPS/ASC proposed rule, is posted on the CMS Web site at: *http://www.cms.hhs.gov/ASCPayment/01_Overview.asp#TopOfPage*.

Comment: Many commenters opposed scaling the ASC relative payment weights, expressing similar opinions to those public comments that were summarized when CMS finalized the CY 2009 scaling policy in the August 2, 2007 revised ASC payment system final rule. These commenters expressed many concerns, including that scaling is inappropriate and will continue to erode the relationship between the ASC payment system and the OPPS.

Numerous commenters asserted that CMS is not required to scale the ASC relative weights and that it should use its administrative authority and not apply the ''secondary'' scaler to ASC relative weights in CY 2009. They noted that CMS established at § 416.171(e)(2) a process by which it *may* (emphasis added) make annual adjustment to the relative payment weights, *as needed* (emphasis added).

Most commenters believed that the scaling would result in decreased ASC expenditures in CY 2009. On the other hand, some commenters contended that suspending application of the scaler would result in an aggregate increase in spending in the ASC setting in CY 2009, although the commenters believed this increase in spending would be appropriate. In addition, many of the commenters indicated that the fact that the weights are already scaled to ensure budget neutrality under the OPPS means that they should not be scaled (''secondary rescaling'') to ensure budget neutrality under the ASC system.

Many commenters expressed concern that other payment adjustments are already depressing the ASC payments for many procedures, including the freeze on the ASC payment update and the transition policy and that scaling further reduces rates to inappropriately low levels. Further, the commenters stated that scaling has a disproportionate impact on some types of covered surgical procedures and that the differences in the mix of services between the OPPS (where lower cost primary care and diagnostic services are included in relative weight scaling) and ASCs, as well as the ''secondary rescaling'' of the relative weights for ASC procedures effectively resulted in penalizing ASCs for performing only surgical procedures.

The commenters also expressed their belief that the lack of ASC volume data for 40 percent of the covered surgical procedures raises substantial methodological issues. They stated that perhaps CMS should put off scaling the ASC weights until there are ASC data that reflect actual experience under the revised payment system.

Finally, the commenters asserted that the scaling would lead to access to care problems for Medicare beneficiaries.

Response: Many of these comments are similar to public comments on the proposal for the revised ASC payment system that we responded to in the August 2, 2007 revised ASC payment system final rule. For example, we noted in that August 2, 2007 final rule that commenters ''were concerned that annual rescaling would cause divergence of the relative weights between the OPPS and the revised ASC payment system for individual procedures.'' (72 FR 42532) While we continue to appreciate the commenters' concerns, we refer the commenters to the discussion in the August 2, 2007 revised ASC payment system final rule for our detailed response in promulgating the final CY 2009 scaling policy (72 FR 42531 through 42533). Below, we address new issues raised by the commenters and provide a general summary of some of the relevant responses from the August 2, 2007 final rule.

With respect to the use of ''as needed'' in the text of § 416.171(e)(2), we note that this section says ''* * * CMS adjusts the ASC relative payment weights under 416.167(b)(2) as needed so that any updates and adjustments made under 419.50(a) of this subchapter are budget neutral as estimated by CMS.'' This does not mean that CMS will determine whether or not to adjust for budget neutrality. Rather, it means that CMS adjusts the relative payment weights as needed to ensure budget neutrality. If we were not to scale the ASC relative payment weights, we estimate that the CY 2009 updates and adjustments would not be budget neutral. This result would be counter to the rationale for the scaling policy described in the August 2, 2007 revised ASC payment system final rule (72 FR 42532).

We agree with the commenters who indicated that suspending application of the scaler would result in an aggregate increase in spending in the ASC setting in CY 2009. However, we disagree with the commenters that this increase in spending would be appropriate because, as we discussed in the August 2, 2007 revised ASC payment system final rule, we continue to believe that it is inappropriate for ASC expenditures to increase or decrease as a result of changes in the relative payment weights or the wage index. Changes in aggregate ASC expenditures related to payment rates should be determined by the update to the ASC conversion factor. Specifically, we stated that, ''Rescaling of relative weights or the application of a budget neutrality adjustment is a common feature of Medicare payment systems, designed to ensure that estimated aggregate payments under a payment system for an upcoming year would be neither greater nor less than the aggregate payments that would be made in the prior year, taking into

consideration any changes or recalibrations for the upcoming year. * * * We continue to believe that this principle should apply as well in the revised ASC payment system.'' (72 FR 42532)

The ASC weight scaling methodology is entirely consistent with the OPPS methodology for scaling the relative payment weights. Establishing budget neutrality under the OPPS does not result in budget neutrality under the revised ASC payment system. Scaling the ASC relative payment weights is not a ''secondary rescaling'' of the OPPS relative payment weights; there are two separate processes for the two separate payment systems.

In order to maintain budget neutrality of the ASC payment system, CMS needs to adjust for the effects of wage index changes and relative weight changes even though there are other factors affecting ASC payment rates. However, the use of a uniform scaling factor does not alter the relativity of the OPPS payment weights as used in the ASC payment system. Differences in the relativity between the ASC relative payment weights and the OPPS relative payment weights are not driven by the application of the uniform scaling factor. To the extent that commenters objected to the effects of other payment policies of the revised ASC payment system, the uniform scaling factor is not the driver of the effects of those payment policies. Our ASC weight scaling methodology is entirely consistent with the OPPS weight scaling methodology.

Regarding commenters' concern that scaling has a disproportionate effect on some types of covered surgical procedures, we note that, as explained in the August 2, 2007 revised ASC payment system final rule (72 FR 42542), a major effect of the revised ASC payment system is redistribution of payments across all ASC procedures. Historically, the highest volume ASC procedures had payment rates that were close to the payments in HOPDs and, as such, accounted for most of the total Medicare payments to ASCs. As a result, payments for many of those high volume services are the most adversely affected under the revised payment system as the relative weights across all ASC procedures become more closely aligned with those under the OPPS.

With respect to the use of CY 2007 ASC claims data, we typically use the most recent full calendar year of claims data to model budget neutrality adjustments. For CY 2009, the most recent full year of data available is CY 2007 ASC claims data. On the other hand, we recognize that partial 2008 ASC claims data do contain at least some utilization for the new covered surgical procedures and covered ancillary services under the revised ASC payment system. We considered trying to use CY 2008 ASC data in developing the CY 2009 OPPS/ASC proposed rule and, on balance, concluded that given the newness of the revised ASC payment system, we continue to believe that it is more appropriate to use full CY 2007 data in the development of the CY 2009 ASC payment rates, rather than incomplete CY 2008 claims data. We expect to use the full, complete CY 2008 claims data in the development of the CY 2010 ASC payment rates.

We do not believe that the application of the scaler will lead to beneficiary access problems. We believe that the fully implemented relative weights will be representative of relative costs across all ASC services and that payments will support the continued provision of high quality surgical procedures to Medicare beneficiaries. We also expect that over time ASCs will provide an increased breadth of services. However, appropriate beneficiary access to services in appropriate care settings is always an important concern and we will continue to monitor access under the revised ASC payment system.

Comment: Commenters also criticized the relative weight scaler and transitional payment methodologies for resulting in relatively larger ASC payment decreases for the highest volume ASC procedures than for other ASC procedures. They estimated that payment decreases for the seven highest volume ASC procedures are responsible for financing 50 percent of the payment increases for other procedures that have payment rates that have historically lagged far below the OPPS rates. They asserted that this represented a disproportionate and inappropriate effect on the highest volume ASC services. They argued that it was not fair for CMS to attempt to balance budget neutrality for the revised ASC payment system on reduced payment for only a few ASC services.

Response: The GAO found that OPPS relative payment weights were reflective of the relative costs among the same procedures in ASCs. As we explained in the August 2, 2007 revised ASC payment system final rule (72 FR 42542), a major effect of the use of the OPPS relativity in the revised ASC payment system is a redistribution of payments across all ASC procedures. We noted that many procedures for which the relativity under the OPPS was higher than the relativity under the old ASC payment system would experience significant payment increases as payments under the revised ASC payment system would be made based on the relativity found under the OPPS. Many of those procedures were historically lower volume ASC services. Conversely, however, procedures for which the relativity under the old ASC payment system was higher than the relativity under the OPPS, like many of the high volume ASC procedures mentioned by the commenters, would see payment decreases under the revised ASC payment system. As described in the August 2, 2007 revised ASC payment system final rule, we are transitioning these payment changes over 4 years to allow time for ASCs to adjust to the new payment structure (72 FR 42521).

As stated earlier, the use of a uniform scaling factor does not alter the relativity of the OPPS payment weights as used in the ASC payment system. Differences in the relativity between the ASC relative payment weights and the OPPS relative payment weights are not driven by application of the uniform scaling factor. For a further discussion of the transition policy and the effect of scaling on the relativity of the ASC payment weights, we refer readers to the August 2, 2007 revised ASC payment system final rule (72 FR 42519 through 42521 and 42531 through 42533).

Comment: A number of commenters requested that CMS recalculate the payment rate for CPT code 66984 (Extracapsular cataract removal with insertion of intraocular lens prosthesis (one stage procedure), manual or mechanical technique (e.g., irrigation and aspiration or phacoemulsification), the highest volume ASC procedure. Some commenters stated that they could not calculate the payment amount that CMS published as the national unadjusted rate in the CY 2009 OPPS/ASC proposed rule. Other commenters noted that the ASC payment rate for CPT code 66984 should have increased slightly for CY 2009 because the OPPS rate increased. They argued that if the payment system was functioning as it was described in the August 2, 2007 revised ASC payment system final rule, the CY 2009 payment for CPT code 66984 should have increased by $1.13, but instead, due to rescaling, the proposed CY 2009 ASC payment for the procedure decreased.

Other commenters understood the method for calculation and indicated their belief that CMS should not apply the scaler to the CY 2007-based portion of the CY 2009 payment rate for this or other HCPCS codes subject to the transition. They noted that, in the August 2, 2007 revised ASC payment system final rule, the final policy called

for a CY 2009 transitional blend of 50 percent of the CY 2007 payment rate for a covered surgical procedure on the CY 2007 ASC list of covered surgical procedures and 50 percent of the CY 2009 payment rate for the procedure calculated under the ASC standard methodology. Thus, these commenters believed that CMS' scaling of the entire blended CY 2009 ASC payment weight was not appropriate because this methodology decreased the CY 2007 payment amount contributing to the procedure's lower CY 2009 proposed transitional ASC payment rate.

Response: To calculate the transitional rate for CY 2009 for CPT code 66984, the CY 2007 payment rate portion of the blended rate must be adjusted by the relative weight scaling factor. The commmenters who could not calculate a CY 2009 payment rate for CPT code 66984 that matched the rate included in the CY 2009 OPPS/ASC proposed rule likely did not scale the ASC transitional payment weight associated with the blended CY 2009 payment rate for CPT code 66984.

The issue of the inclusion of the transition in the calculation of the CY 2009 scaling factor was clearly addressed in the August 2, 2007 revised ASC payment system final rule where we specifically indicated that ''holding ASC utilization and the mix of services constant, for CY 2009, we will compare the total weight using the CY 2008 ASC relative payment weights under the 75/25 blend (of the CY 2007 payment rate and the revised payment rate) with the total weight using CY 2009 relative payment weights under the 50/50 blend (of the CY 2007 payment rate and the revised payment rate), taking into account the changes in the OPPS relative payment weights between CY 2008 and CY 2009. We will use the ratio of CY 2008 to CY 2009 total weight to scale the ASC relative payment weights for CY 2009.'' (72 FR 42533)

In addition to explicitly stating in the August 2, 2007 revised ASC payment system final rule how we would incorporate the transition into the CY 2009 scaling calculation, we indicated in the methodology describing our calculation of the final estimated CY 2008 budget neutrality adjustment that ''the budget neutrality calculation is calibrated to take into account the CY 2008 transitional payment rates for procedures on the CY 2007 list of covered surgical procedures.'' (72 FR 42531) In other words, the CY 2008 budget neutrality adjustment took into account the transition and was not based on the fully implemented system.

It would be inconsistent with the final policies established in the August 2, 2007 revised ASC payment system final rule and the calculation of the CY 2008 ASC conversion factor for us to calculate the CY 2009 budget neutrality adjustment without taking the transition into account and base it only on the fully implemented system, as was suggested by some commenters.

After consideration of the public comments received, we are finalizing, without modification, our CY 2009 ASC relative payment weight scaling methodology. The final CY 2009 ASC payment weight scaler is 0.9751.

b. Updating the ASC Conversion Factor

Under the OPPS, we typically apply a budget neutrality adjustment for provider-level changes, most notably a change in the wage index for the upcoming year, to the conversion factor. For the CY 2009 ASC payment system, we proposed to calculate and apply the pre-floor and pre-reclassified hospital wage index that is used for ASC payment adjustment to the ASC conversion factor, just as the OPPS wage index adjustment is calculated and applied to the OPPS conversion factor (73 FR 41539). For CY 2009, we calculated this proposed adjustment for the revised ASC payment system by using the most recent CY 2007 claims data available and estimating the difference in total payment that would be created by introducing the CY 2009 pre-floor and pre-reclassified hospital wage index. Specifically, holding CY 2007 ASC utilization and service-mix and CY 2009 national payment rates after application of the weight scaler constant, we calculated the total adjusted payment using the CY 2008 pre-floor and pre-reclassified hospital wage index and a total adjusted payment using the proposed CY 2009 pre-floor and pre-reclassified hospital wage index. We used the 50-percent labor-related share that we finalized for the revised ASC payment system in CY 2008 for both total adjusted payment calculations. We then compared the total adjusted payment calculated with the CY 2008 pre-floor and pre-reclassified hospital wage index to the total adjusted payment calculated with the proposed CY 2009 pre-floor and pre-reclassified hospital wage index and applied the proposed rule resulting ratio of 0.9996 (the ASC wage index budget neutrality adjustment) to the CY 2008 ASC conversion factor to calculate the proposed CY 2009 ASC conversion factor.

Section 1833(i)(2)(C) of the Act requires that, if the Secretary has not updated the ASC payment amounts in a calendar year after CY 2009, the payment amounts shall be increased by the percentage increase in the Consumer Price Index for All Urban Consumer (CPI–U) as estimated by the Secretary for the 12-month period ending with the midpoint of the year involved. Therefore, as discussed in the August 2, 2007 revised ASC payment system final rule, we adopted a final policy to update the ASC conversion factor using the CPI–U in order to adjust ASC payment rates for inflation (72 FR 42518 through 42519). We will implement the annual updates through an adjustment to the conversion factor under the revised ASC payment system beginning in CY 2010 when the statutory requirement for a zero update no longer applies. Therefore, for CY 2009, we only proposed to update the ASC conversion factor with the budget neutrality adjustment due to the revised CY 2009 pre-floor and pre-reclassified hospital wage index, resulting in a proposed CY 2009 ASC conversion factor of $41.384, which was the product of $41.401 multiplied by 0.9996.

Comment: One commenter questioned CMS' determination of the CY 2008 wage index as finalized in the CY 2008 OPPS/ASC final rule with comment period. The commenter inquired as to how local wage index assignments were determined and, more specifically, how a facility was determined to be rural.

Response: In June 2003, the Office of Management and Budget (OMB) announced revised standards for designating the geographic statistical areas that CMS uses to define labor market areas for purposes of assigning the wage index. Specifically, the OMB announced that labor market areas would no longer be defined as Metropolitan Statistical areas (MSAs), but instead as Core Based Statistical Areas (CBSA). OMB further divided these CBSAs into metropolitan statistical areas and micropolitan statistical areas, which, in accordance with established policy, CMS treats as urban and rural, respectively (69 FR 49026 through 49034). Areas not located in any CBSA also are considered rural.

Since June 2003, CMS has transitioned from MSA designations to the CBSA designations. As a result of this change, some facilities that were previously located in urban areas might now be located in areas deemed as rural under the revised standards. The same would also apply to facilities that were previously located in rural areas and are now located in urban areas. In the August 2, 2007 revised ASC payment system final rule (72 FR 42517 through 42518), we finalized the policy of assigning the wage index to ASCs based on their CBSA designation, instead of MSAs, under the revised ASC payment

system. Therefore, the wage index that is assigned to an ASC is based on the CBSA in which the facility is physically located. The OMB periodically updates the CBSA designations using census data, and we reflect those updates in assignment of the wage index each year. A crosswalk that maps the prior MSA labor market area designations to the revised CBSA designations is available on the CMS Web site and can be accessed at: *http://www.cms.hhs.gov/AcuteInpatientPPS/WIFN.*

Comment: Many commenters requested that CMS adopt the same wage index for ASCs as CMS uses to adjust payment under the OPPS. Commenters contended that because ASCs offer services that are very similar to those provided in HOPDs and, therefore, the facilities are competing for the same type of staff, the same wage adjustments should apply.

Response: We believe that the pre-floor, pre-reclassification hospital wage index that we use for our other nonacute care hospital payment systems is appropriate for the ASC payment system. However, as noted in the CY 2009 OPPS/ASC proposed rule (73 FR 41538), in accordance with section 106(b)(1) of the MIEA–TRCHA, CMS has initiated a research contract that will evaluate the application of the hospital wage index in noninpatient settings. We may reconsider our wage policies in light of the findings from that study when they become available.

Comment: Many commenters contended that payment for services provided in ASCs should be made based on a fixed percentage of the OPPS rates. Several commenters indicated that two bills have been introduced in Congress to set and keep ASC payment rates at 75 percent of HOPD payments. These commenters expressed support for the legislation and their belief that 75 percent would balance Medicare's need for savings with an ASC payment rate that could promote growth and development of ASCs and ultimately lead to greater long-term savings for Medicare as procedures shift from more costly HOPDs. These commenters reiterated their belief that CMS' method for establishing budget neutrality for the revised ASC payment system was flawed and has resulted in payments that are too low to sustain ASC services for Medicare beneficiaries.

Commenters were also concerned that updating the conversion factor for the revised ASC payment system using the CPI–U instead of the hospital market basket used to update the OPPS would cause divergence in the relationship between payment to HOPDs and ASCs over time that would not be based on growing differences between the costs of providing procedures in those two different settings. The commenters asserted that hospitals and ASCs experience similar inflationary pressures. Therefore, they recommended that CMS use the hospital market basket as the update for inflation under the revised ASC payment system because that update would more appropriately reflect inflation in the costs of providing surgical services. In addition, the commenters believed that the same update under the two payment systems would allow for a consistent relationship between their payments for the same surgical procedures.

Response: Many of these comments are similar to comments we responded to in the August 2, 2007 revised ASC payment system final rule. For example, we noted in that final rule that ''[s]everal commenters specifically recommended that CMS adopt 75 percent as the multiplier to the OPPS conversion factor, so that payment rates under the revised ASC payment system would be 75 percent of the OPPS rates. They cited legislation that was introduced in the U.S. Senate in 2003 in which payments to ASCs were to have been provided at 75 percent of the OPPS rates.'' (72 FR 42526) We also stated in the final rule (72 FR 42518) that commenters ''expressed concern that the use of two different factors to update payments for ASCs and HOPDs would further increase the discrepancies between payments in the two settings.''

While we continue to appreciate the commenters' concerns, to the extent that the commenters are addressing the methodology for calculating the CY 2008 conversion factor, we refer them to the discussion of the methodology in the August 2, 2007 revised ASC payment system final rule (72 FR 42521 through 42531). To the extent commenters are concerned about the CY 2009 update to the conversion factor, ASCs are not eligible for an update in CY 2009, as required by statute. Finally, to the extent commenters are concerned about updates to the ASC conversion factor for years after CY 2009, we note that we did not propose to change the conversion factor update methodology and we refer readers to the discussion in the August 2, 2007 revised ASC payment system final rule on this issue (72 FR 42518 through 42519).

After consideration of the public comments received, we are finalizing our proposed methodology for determining the final CY 2009 ASC conversion factor. Using more complete CY 2007 data for this final rule with comment period, we calculated a wage index budget neutrality adjustment of 0.9998 for this final rule with comment period. The final ASC conversion factor of $41.393 is the product of the CY 2008 conversion factor of $41.401 multiplied by 0.9998.

3. Display of ASC Payment Rates

Addenda AA and BB to this CY 2009 OPPS/ASC final rule with comment period display the updated ASC payment rates for CY 2009 for covered surgical procedures and covered ancillary services, respectively. These addenda contain several types of information related to the CY 2009 payment rates. Specifically, in Addendum AA, the column titled ''Subject to Multiple Procedure Discounting'' indicates whether a surgical procedure would be subject to the multiple procedure payment reduction policy. As discussed in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66829 through 66830), most covered surgical procedures are subject to a 50-percent reduction in the ASC payment for the lower-paying procedure when more than one procedure is performed in a single operative session. Display of the comment indicator ''CH'' in the column titled ''Comment Indicator'' indicates a change in payment policy for the item or service from CY 2008 to CY 2009, including identifying new or discontinued HCPCS codes, designating items or services new for payment under the ASC payment system, and identifying items or services with changes in the ASC payment indicator for CY 2009.

The column titled ''CY 2009 Second Year Transition Payment Weight'' is the relative transition payment weight for the service. CY 2009 is the second year of a 4-year transition to ASC payment rates calculated according to the standard methodology of the revised ASC payment system. The CY 2009 ASC payment rates for the covered surgical procedures subject to transitional payment (payment indicators ''A2'' and ''H8'' in Addendum AA) are based on a blend of 50 percent of the CY 2007 ASC payment weight for the procedure and 50 percent of the CY 2009 fully implemented ASC weight before scaling for budget neutrality, calculated according to the standard methodology. The payment weights for all covered surgical procedures and covered ancillary services whose ASC payment rates are based on OPPS relative payment weights are scaled for budget neutrality. Thus, scaling was not applied for the device portion of the device-intensive procedures, services that are paid at the MPFS nonfacility PE RVU amount, separately payable

covered ancillary services that have a predetermined national payment amount, such as drugs and biologicals that are separately paid under the OPPS or services that are contractor-priced or paid at reasonable cost in ASCs.

To derive the CY 2009 payment rate displayed in the ''CY 2009 Second Year Transition Payment'' column, each ASC payment weight in the ''CY 2009 Second Year Transition Payment Weight'' column was multiplied by the CY 2009 ASC conversion factor of $41.393. The conversion factor includes a budget neutrality adjustment for changes in the wage index. Items and services with a predetermined national payment amount, such as separately payable drugs and biologicals which are displayed in Addendum BB, may not show a relative payment weight. The ''CY 2009 Second Year Transition Payment'' column displays the CY 2009 national unadjusted ASC payment rates for all items and services. The CY 2009 ASC payment rates for separately payable drugs and biologicals are based on ASP data used for payment in physicians' offices in October 2008.

Comment: Several commenters requested that CMS display in Addendum AA the fully implemented ASC payment rates. They stated that it would be helpful to them to see what ASC payment rates would be expected to look like once the transitional period is over.

Response: The fully transitioned ASC payment rates do not represent what the payment rates would be once the transitional period is over. They represent what the payment rates would be in CY 2009 in the absence of a transition. However, in response to these requests by these commenters, we will make the fully transitioned CY 2009 ASC payment weights available on the CMS Web site at *http://www.cms.hhs.gov/ASCPayment/* shortly after the publication of this final rule with comment period.

After consideration of the public comments received, we are finalizing our CY 2009 proposal to display the updated CY 2009 ASC payment rates for covered surgical procedures and covered ancillary services in Addenda AA and BB, respectively, to this final rule with comment period. We also will make available on the CMS Web site what the ASC payment weights would be in CY 2009 without the transition.

XVI. Reporting Quality Data for Annual Payment Rate Updates

A. Background

1. Reporting Hospital Outpatient Quality Data for Annual Payment Update

Section 109(a) of the MIEA–TRHCA (Pub. L. 109–432) amended section 1833(t) of the Act by adding a new subsection (17) that affects the payment rate update applicable to OPPS payments for services furnished by hospitals in outpatient settings on or after January 1, 2009. Section 1833(t)(17)(A) of the Act, which applies to hospitals as defined under section 1886(d)(1)(B) of the Act, requires that hospitals that fail to report data required for the quality measures selected by the Secretary in the form and manner required by the Secretary under section 1833(t)(17)(B) of the Act will incur a reduction in their annual payment update factor by 2.0 percentage points. Section 1833(t)(17)(B) of the Act requires that hospitals submit quality data in a form and manner, and at a time that the Secretary specifies. Sections 1833(t)(17)(C)(i) and (ii) of the Act require the Secretary to develop measures appropriate for the measurement of the quality of care (including medication errors) furnished by hospitals in outpatient settings and that these measures reflect consensus among affected parties and, to the extent feasible and practicable, include measures set forth by one or more national consensus building entities. The Secretary is not prevented from selecting measures that are the same as (or a subset of) the measures for which data are required to be submitted under section 1886(b)(3)(B)(viii) of the Act for the IPPS Reporting Hospital Quality Data for Annual Payment Update (RHQDAPU) program. Section 1833(t)(17)(D) of the Act gives the Secretary the authority to replace measures or indicators as appropriate, such as when all hospitals are effectively in compliance or when the measures or indicators have been subsequently shown not to represent the best clinical practice. Section 1833(t)(17)(E) of the Act requires the Secretary to establish procedures for making data submitted available to the public. Such procedures must give hospitals the opportunity to review data before these data are released to the public.

In the CY 2007 OPPS/ASC final rule with comment period (71 FR 68189), we indicated our intent to establish an OPPS payment program modeled after the current IPPS RHQDAPU program. We stated our belief that the quality of hospital outpatient services would be most appropriately and fairly rewarded through the reporting of quality measures developed specifically for application in the hospital outpatient setting. We agreed that assessment of hospital outpatient performance would ultimately be most appropriately based on reporting of hospital outpatient measures developed specifically for this purpose. We stated our intent to implement the full OPPS payment rate update beginning in CY 2009 based upon hospital reporting of quality data beginning in CY 2008, using effective measures of the quality of hospital outpatient care that have been carefully developed and evaluated, and endorsed as appropriate, with significant input from stakeholders.

The amendments to the Act made by section 109(a) of the MIEA–TRHCA are consistent with our intent and direction outlined in the CY 2007 OPPS/ASC final rule with comment period. Under these amendments, we were statutorily required to establish a program under which hospitals would report data on the quality of hospital outpatient care using standardized measures of care in order to receive the full annual update to the OPPS payment rate, effective for payments beginning in CY 2009. We refer to the program established under these amendments as the Hospital Outpatient Quality Data Reporting Program (HOP QDRP). In the CY 2008 OPPS/ASC final rule with comment period (72 FR 66860), we established a separate reporting program, and adopted quality measures that were deemed appropriate for measuring hospital outpatient quality of care that reflected consensus among affected parties, and were set forth by one or more national consensus building entities. Validation, as discussed in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66871), is intended to provide assurance of the accuracy of the hospital abstracted data. A data validation requirement was not implemented for purposes of the CY 2009 annual payment update. In the CY 2009 OPPS/ASC proposed rule (73 FR 41546), we proposed to implement validation requirements that will apply beginning with the CY 2010 payment determinations. As discussed in section XVI.E.3.a. of this preamble, we are not adopting our validation proposal, but instead are adopting a voluntary test validation process for CY 2010.

In reviewing the measures currently available for care in the hospital outpatient settings, we continue to believe that it would be most appropriate and desirable to use

measures that specifically apply to the hospital outpatient setting. In other words, we do not believe that we should simply, without further analysis, adopt the IPPS RHQDAPU program measures as the measures for the HOP QDRP. Nonetheless, we note that section 1833(t)(17)(C)(ii) of the Act allows the Secretary to ''[select] measures that are the same as (or a subset of) the measures for which data are required to be submitted'' under the IPPS RHQDAPU program. In the CY 2009 OPPS/ASC proposed rule (73 FR 41540), we invited public comment on whether we should select for the HOP QDRP some or all measures from the current RHQDAPU program measure set that apply to the outpatient setting.

Comment: One commenter recommended that CMS move beyond pay-for-reporting toward pay-for-performance so that payment updates depend on empirical results from quality data, not on whether the data are submitted, and encouraged CMS to request this authority from Congress.

Response: We thank the commenter for sharing this suggestion for future program directions.

Comment: One commenter requested that CMS not penalize hospitals by cutting their payment update if hospitals can demonstrate that they are currently working to comply with the reporting requirements, but do not yet have the infrastructure to fully comply.

Response: We understand that setting up a new reporting program has challenges. We recognize that, unlike the RHQDAPU program, the reporting of hospital outpatient data did not have the benefit of existing reporting systems. However, section 109(a) of MIEA–TRHCA requires that the reporting system apply to payment for services furnished on or after January 1, 2009. In order to assist hospitals in meeting this requirement, we have provided support to hospitals with the provision of a data reporting tool, known as the CMS Abstraction and Reporting Tool for Outpatient Department measures (CART–OPD), which is available at the QualityNet Web site (*http://www.qualitynet.org*). We also have delayed the submission of data as much as possible. As required by statute, hospitals failing to report the required data will be subject to a reduction in their annual payment update.

Comment: One commenter questioned the intent of the quality data reporting program, how fairness for all providers is achievable, and how payment and quality are linked with respect to hospitals and physicians. The commenter stated that hospitals have been singled out and unfairly penalized for services and care they have limited ability to control.

Response: We are required to implement the amendments made to the Act by section 109(a) of the MIEA–TRHCA regarding data for measures appropriate for the measurement of the quality of care (including medication errors) furnished by hospitals in outpatient settings. The HOP QDRP program provides an incentive to hospitals to report quality data. Under the statute, there is no penalty applied to hospitals based on the quality of the services provided.

Comment: Several commenters suggested that critical access hospitals (CAHs) be allowed to voluntarily report outpatient hospital data. Some of these commenters expressed the desire that CMS address this issue formally in some manner, including suggesting addressing this issue in OPPS rulemaking.

Response: We thank the commenters for their support of having CAHs voluntarily report outpatient data. However, because CAHs are not subject to the OPPS or the revised ASC payment system, we do not, at this time, plan to address this issue in the OPPS/ASC rulemaking process.

Comment: Several commenters suggested that CMS evaluate RHQDAPU program measures for their suitability for outpatient setting. The commenters recommended re-specification and refinement for the outpatient setting of inpatient measures determined suitable upon testing. The commenters suggested that the following specific RHQDAPU program measures were potentially appropriate for use in the outpatient setting: [Acute Myocardial Infarction] AMI–2 (Aspirin prescribed at discharge); AMI–6 (Beta blocker at arrival); AMI–5 (Beta blocker prescribed at discharge); HF–1 (Discharge instructions); and PN–3b (Blood culture performed before first antibiotic received in hospital).

Response: We welcome these suggestions. We support the use of similar measures in different settings to promote broader and more consistent attention to specific processes of care. We also agree that such efforts of aligning inpatient and outpatient measures can allow for greater efficiencies in data collection and submission by hospitals across health care settings. We note that some of the existing OPPS measures focus on the same processes of care included in similar IPPS measures. We will investigate the suitability of the IPPS measures suggested and other measures currently in use in CMS reporting programs for future use in the outpatient setting.

After consideration of the public comments received, we are finalizing measures that specifically apply to services furnished in the hospital outpatient setting. In the future, we will consider adapting more measures from the current IPPS RHQDAPU program measure set for use in the OPPS measures set.

2. Reporting ASC Quality Data for Annual Payment Update

Section 109(b) of the MIEA–TRHCA amended section 1833(i) of the Act by redesignating clause (iv) to clause (v) and adding new sections 1833(i)(2)(D)(iv) and 1833(i)(7) to the Act. These amendments may affect ASC payments for services furnished in ASC settings on or after January 1, 2009. Section 1833(i)(2)(D)(iv) of the Act authorizes the Secretary to implement the revised payment system for services furnished in ASCs (established under section 1833(i)(2)(D) of the Act), ''so as to provide for a reduction in any annual update for failure to report on quality measures. * * *''

Section 1833(i)(7)(A) of the Act authorizes the Secretary to provide that any ASC that fails to report data required for the quality measures selected by the Secretary in the form and manner required by the Secretary under section 1833(i)(7) of the Act will incur a reduction in any annual payment update of 2.0 percentage points. Section 1833(i)(7)(A) of the Act also specifies that a reduction for one year cannot be taken into account in computing the ASC update for a subsequent calendar year.

Section 1833(i)(7)(B) of the Act provides that, ''[e]xcept as the Secretary may otherwise provide,'' the hospital outpatient quality data provisions of sections 1833(t)(17)(B) through (E) of the Act, summarized above, shall apply to ASCs. We did not implement an ASC quality reporting program for CY 2008 (72 FR 66875).

We refer readers to section XVI.H. of this final rule with comment period for a discussion of our decision to implement ASC quality data reporting in a later rulemaking.

3. Reporting Hospital Inpatient Quality Data for Annual Payment Update

Section 5001(a) of Public Law 109–171 (DRA) set out the current requirements for the IPPS RHQDAPU program. We established the RHQDAPU program in order to implement section 501(b) of Public Law 108–173 (MMA). The program builds on our ongoing voluntary Hospital Quality Initiative.

The Initiative is intended to empower consumers with quality of care information so that they can make more informed decisions about their health care while also encouraging hospitals and clinicians to improve the quality of their care. Under the current statutory provisions found in section 1886(b)(3)(B)(viii) of the Act, the IPPS annual payment update for ''subsection (d)'' hospitals that do not submit inpatient quality data in a form and manner, and at a time specified by the Secretary is reduced by 2.0 percentage points.

We used an initial ''starter set'' of 10 quality measures for the IPPS RHQDAPU program under section 501(b) of Public Law 108–173 and have expanded the measures as required under section 1886(b)(3)(B)(viii)(III), (IV) and (V) of the Act, as added by section 5001(a) of Public Law 109–171. We initially added measures as a part of the annual IPPS rulemaking process. In response to public comments asking that we issue IPPS RHQDAPU program quality measures and other requirements as far in advance as possible, we also have used the OPPS annual payment update rulemaking process to adopt IPPS RHQDAPU program measures and requirements. In the CY 2007 OPPS final rule (71 FR 68201), we included six additional IPPS RHQDAPU program quality measures for the FY 2008 update. In the CY 2008 OPPS/ASC final rule with comment period, we added two additional National Quality Forum (NQF)-endorsed quality measures to the IPPS RHQDAPU program (72 FR 66875–66876).

In the FY 2009 IPPS proposed rule (73 FR 23642), we proposed to retire one of the existing 30 quality measures and to add 43 additional quality measures for the FY 2010 payment update (73 FR 23647, 23651). In the FY 2009 IPPS final rule (73 FR 48604), we retired one existing measure, but only adopted 13 of the proposed additional 43 measures (73 FR 48609). We indicated that we intended to adopt two additional measures in this CY 2009 OPPS/ASC final rule with comment period, but only if the measures were endorsed by a national consensus-based entity such as the NQF (73 FR 48611). The NQF is a voluntary consensus-based standard-setting organization established to standardize health care quality measurement and reporting through its consensus development process. Under section 1886(b)(3)(B)(viii)(V) of the Act, we are required to add measures that reflect consensus among affected parties and, to the extent feasible and practicable, include measures set forth by one or more national consensus building entities. As discussed in section XVI.I. of this CY 2009 OPPS/ASC final rule with comment period, we are adding two additional quality measures to the IPPS RHQDAPU program for FY 2010 because the NQF has endorsed these measures.

B. Hospital Outpatient Quality Measures for CY 2009

For the CY 2009 annual payment update, we required HOP QDRP reporting using seven quality measures—five Emergency Department (ED) AMI measures plus two Perioperative Care measures. These measures address care provided to a large number of adult patients in hospital outpatient settings, across a diverse set of conditions, and were selected for the initial set of HOP QDRP measures based on their relevance as a set to all HOPDs.

The five ED–AMI measures capture the quality of care for acute myocardial infarction in the outpatient setting in hospital EDs, specifically for those adult patients with AMI who are treated and then transferred to another facility for further care. Outpatients treated for AMI receive many of the same interventions as patients who are evaluated and admitted at the same facility. Three (ED–AMI–1 [OP–4], ED–AMI–3 [OP–2] and ED–AMI–5 [OP–3]) of these five measures, except for their limitation to outpatients (transferred patients), are equivalent to those currently reported under the IPPS RHQDAPU program for admitted patients, and are published on the Hospital Compare Web site at: *http://www.HospitalCompare.hhs.gov.* The other two ED–AMI measures encompass timely delivery of care and transfer for patients presenting to a hospital with an AMI who are not admitted but transferred to another facility. Transferred AMI patients are currently not included in the calculation of the inpatient AMI measures because of the limitation of the RHQDAPU program measures to inpatients.

In addition to the five ED–AMI measures, we required reporting of two measures related to surgical care improvement. These two surgical care improvement measures derived from the Physician Quality Reporting Initiative (PQRI) are directly related to interventions provided in the outpatient setting and address selection and timely administration of prophylactic antibiotics for surgical infection prevention, similar to measures in the IPPS RHQDAPU program.

Specifically, in order for hospitals to receive the full OPPS payment update for services furnished in CY 2009, in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66860), we required that subsection (d) hospitals paid under the OPPS submit data on the following seven measures as designated below, effective for hospital outpatient services furnished on or after April 1, 2008:

CY 2009 HOP QDRP QUALITY MEASURES

ED–AMI–1—Aspirin at Arrival.
ED–AMI–2—Median Time to Fibrinolysis.
ED–AMI–3—Fibrinolytic Therapy Received within 30 Minutes of Arrival.
ED–AMI–4—Median Time to Electrocardiogram (ECG).
ED–AMI–5—Median Time to Transfer for Primary PCI.
PQRI #20: Perioperative Care: Timing of Antibiotic Prophylaxis.
PQRI #21: Perioperative Care: Selection of Perioperative Antibiotic.

C. Quality Measures for CY 2010 and Subsequent Calendar Years and the Process To Update Measures

1. Quality Measures for CY 2010 Payment Determinations

In the CY 2009 OPPS/ASC proposed rule (73 FR 41541), for CY 2010, we proposed to require continued submission of data on the existing seven measures discussed above and to adopt four imaging measures. We proposed to designate the existing seven measures as follows:

CY 2009 QUALITY MEASURES WITH PROPOSED CY 2010 DESIGNATIONS

Current designation	Proposed quality measure designation
ED–AMI–2	OP–1: Median Time to Fibrinolysis.
ED–AMI–3	OP–2: Fibrinolytic Therapy Received Within 30 Minutes.
ED–AMI–5	OP–3: Median Time to Transfer to Another Facility for Acute Coronary Intervention.
ED–AMI–1	OP–4: Aspirin at Arrival.
ED–AMI–4	OP–5: Median Time to ECG.

CY 2009 QUALITY MEASURES WITH PROPOSED CY 2010 DESIGNATIONS—Continued

Current designation	Proposed quality measure designation
PQRI #20	OP–6: Timing of Antibiotic Prophylaxis.
PQRI #21	OP–7: Prophylactic Antibiotic Selection for Surgical Patients.

Comment: Commenters supported the current HOP QDRP measures, which were seen as having a positive impact on quality of care. One commenter recommended limiting the measures for 2009 to those seven that are currently implemented.

Response: We agree that the current HOP measures are important to the quality of care patients receive in the HOPD and will continue their collection. We also are committed to broadening the scope of measurement for the HOP QDRP and, therefore, have proposed additional measures for the CY 2010 annual payment update and have solicited comments on measures being considered for implementation in future years.

Comment: One commenter did not support the proposed quality measure OP–3: Median Time to Transfer to Another Facility for Acute Coronary Intervention (formerly, ED–AMI–5). The commenter stated that this measure would result in additional burden to hospitals without an increase in meaningful quality data.

Response: We believe that, when percutaneous intervention (PCI) is indicated, timely transfer of patients is an important aspect of quality of care in the hospital outpatient setting; hence our inclusion of this measure in the HOP QDRP measure set. National guidelines recommend the prompt initiation of PCI in patients presenting with ST-segment elevation myocardial infarction. The early use of primary PCI in patients with acute myocardial infarction who present to the ED with ST-segment elevation or LBBB results in a significant reduction in mortality and morbidity. Despite these recommendations, few eligible older patients hospitalized with AMI receive primary angioplasty in a timely manner. Patients transferred for primary PCI rarely meet recommended guidelines for door-to-balloon time, which under current American College of Cardiology/American Hospital Association recommendations is 90 minutes or less. Therefore, we believe that reporting on this measure will increase meaningful quality of care data.

Comment: One commenter did not support the current HOP QDRP measure set and perceived the set as not adequately measuring the breadth of coverage in the ED or the HOPD. The commenter suggested that CMS adopt cross-cutting measures, outcomes measures, and process measures that are correlated to outcomes.

Response: Because CY 2008 was the first year of the OPPS reporting program, we decided to limit the number of HOP QDRP reporting requirements. In future years, we anticipate that the scope of outpatient services covered by measures will increase. For HOP QDRP reporting for CY 2009, we are adding four imaging efficiency measures, which add another topic to the HOP QDRP measure set. We support the development and implementation of cross-cutting, outcome, and process measures that are correlated to outcomes and intend to consider such measures for future rulemaking.

Comment: Several commenters expressed concern that the current HOP QDRP measure set (OP–1 to OP–7) was not fully field-tested for its use in HOP QDRP. They urged CMS to fully test in order to identify and correct operational issues before data validation on the CY 2009 measures begin. One commenter expressed concern over frequent changes in the consensus base, citing the reversal of consensus on whether prophylaxis is necessary for bunion surgery, and recommended that new quality measures be based in valid clinical studies.

Response: The HOP QDRP measures were selected and implemented as required under section 1833(t)(17) of the Act. While the short timeframe available to implement the program as required by statute did not permit extensive field testing prior to implementation in CY 2008, we did conduct limited pilot testing on a small convenience sample. Specifically, the measure specifications were used to collect data from 189 medical records in Oklahoma and Illinois. Additionally, these seven HOP QDRP measures are NQF-endorsed and are supported by clinical evidence. The measures have been in effect for services furnished on or after April 1, 2008 and hospitals have been submitting data successfully to the OPPS Clinical Warehouse. We plan to analyze the data collected under the HOP QDRP to evaluate the seven initial HOP QDRP measures and to address operational issues in data collection for these already implemented measures before CY 2009 validation. We also believe that our plan to conduct a voluntary test validation on these measures as outlined in section XVI.E.3.a. of this preamble will provide sufficient time to assess the relevant issues for these measures, and will provide both CMS and the sampled hospitals with valuable feedback for measure maintenance purposes during this voluntary validation test period. We have a measures development contractor working to maintain and refine the measures specifications as needed. In terms of the comment on consensus base of the measures, we intend to utilize our measure maintenance processes and, as appropriate, consensus building entities such as the NQF to address changes in the clinical evidence base that may require changes to measure specifications that will be described in the CMS Hospital Outpatient Quality Measures Specifications Manual (Specifications Manual). CMS believes that, while this may result in changes that occur more frequently than the usual 3 year re-evaluation intervals, such flexibility is necessary to accommodate changes in the clinical evidence base informing these measures.

After consideration of the public comments received, we are finalizing for continued data collection in CY 2009 for the CY 2010 annual payment update the following seven current HOP QDRP measures, redesignated as discussed above: (1) OP–1: Median Time to Fibrinolysis; (2) OP–2: Fibrinolytic Therapy Received Within 30 Minutes; (3) OP–3: Median Time to Transfer to Another Facility for Acute Coronary Intervention; (4) OP–4: Aspirin at Arrival; (5) OP–5: Median Time to ECG; (6) OP–6: Timing of Antibiotic Prophylaxis; and (7) OP–7: Prophylactic Antibiotic Selection for Surgical Patients.

The four imaging measures that we proposed to adopt beginning with the CY 2010 payment determination are claims-based measures that CMS would calculate using Medicare Part B claims data without imposing on hospitals the burden of additional chart abstraction. For purposes of the CY 2010 payment determination, CMS would calculate these measures using CY 2008 Medicare administrative claims data.

The proposed imaging measures are based on clinical evidence that they promote efficient and high quality patient care. Efficient healthcare is that which neither underutilizes nor over utilizes healthcare resources. This approach to defining efficiency is supported by the observation of widespread process variation in healthcare that is not associated with variation in outcome. The Institute of Medicine has identified efficiency as an important quality aim. However, despite the identification of efficiency as an important factor in the provision health care, there currently are few healthcare efficiency quality measures available. MedPAC's description of the rapid growth in the volume of imaging services in 2000 as compared to 2006, coupled with the significant level of these services rendered under the OPPS suggests that imaging is an area to investigate with regard to efficiency. In the CY 2009 OPPS/ASC proposed rule (73 FR 41541), we proposed four imaging measures that measure high quality, efficient use of services for the hospital outpatient setting.

PROPOSED ADDITIONAL QUALITY MEASURES FOR CY 2010

Topic	Measure
Imaging Efficiency	OP–8: MRI Lumbar Spine for Low Back Pain. OP–9: Mammography Follow-up Rates. OP–10: Abdomen CT—Use of Contrast Material: • OP–10: CT Abdomen—Use of Contrast Material. • OP–10a: CT Abdomen—Use of Contrast Material excluding calculi of the kidneys, ureter, and/or urinary tract. • OP–10b: CT Abdomen—Use of Contrast Material for diagnosis of calculi in the kidneys, ureter, and/or urinary tract. OP–11: Thorax CT—Use of Contrast Material.

We invited public comment on these four proposed imaging measures, which had been submitted to the NQF for consideration.

Comment: Several commenters supported the proposed imaging efficiency measures. The commenters agreed that these claims-based imaging efficiency measures avoid increased data collection burden. One commenter was pleased that the proposed rule includes cancer related quality measures, in particular the mammography follow-up rates. One commenter agreed that ''combined studies with and without contrast'' in thorax CT should be ordered infrequently and that this is an area where cost could possibly be reduced. One commenter was supportive of the use of claims data to gather information on OP–8: MRI Lumbar Spine for Low Back Pain, as the information is not available using chart abstraction. This commenter was also pleased that measure OP–8 is harmonized with the NCQA low back pain measure. One commenter, in support of measure OP–9: Mammography Follow-up Rates, stated that the measure has the potential to positively affect the quality of life and health of Medicare patients, and also believed that the measure supports the work of organizations such as the American Cancer Society Cancer Action Network.

Response: We thank these commenters for their supportive statements, and are adopting the four imaging efficiency measures in this final rule with comment period.

Comment: Several other commenters believed that the four new imaging efficiency measures are still in the developmental phase and have not yet received NQF endorsement nor have they been considered for adoption by the Hospital Quality Alliance (HQA). They urged CMS to not adopt the four imaging efficiency measures at this time and to reevaluate the measures at such time as essential measure specifications, NQF endorsement and AQA–HQA collaboration can be accomplished. One commenter stated that data specifications should be available when public comment is requested.

Response: We believe that the four new imaging efficiency measures meet the requirements of section 1833(t)(17)(C)(i) of the Act, as added by section 109(a) of MIEA–TRHCA, and we are adopting them in this final rule with comment period. Section 1833(t)(17)(C)(i) of the Act requires the Secretary to ''develop measures that the Secretary determines to be appropriate for the measurement of the quality of care (including medication errors) furnished by hospitals in outpatient settings and that reflect consensus among affected parties and, to the extent feasible and practicable, shall include measures set forth by one or more national consensus building entities.'' We believe that these imaging efficiency measures are appropriate for the measurement of the quality of care furnished by hospitals in outpatient settings. The proposed imaging efficiency measures have gone through an extensive development process with broad stakeholder input incorporated throughout the development process. Specifically, the measures development process for the imaging efficiency measures included the convening of a Technical Expert Panel (TEP) by a contractor comprised of affected parties affiliated with hospitals, payers, practitioners from various medical specialties, consumers, as well as clinical, scientific, and performance measurement experts. The TEP was convened multiple times to identify, develop, and refine measures associated with an area requiring quality measurement. The TEP did not move forward measures for development upon which the TEP did not agree.

The measure development process also included a public comment period. The measures development contractor publicly posted the measure specifications during this time. In the future, we also will make relevant measure specifications available during public comment periods following proposed rulemakings. Comments during the measure development public comment period included supportive comments from many affected parties, including comments indicating that these measures are a timely and much needed addition to imaging efficiency measurement given the scarcity of such measures that have been set forth by a national consensus building entity, that they address areas of great epidemiologic relevance, and that they address the needs of affected parties for accountability and transparency for an area of increasing waste and inefficiency. These measures were modified based upon public comments received during the public comment period. Given this process, we believe that these measures are no longer in the development phase and are appropriate

for the measurement of quality of care furnished by hospitals in outpatient settings.

These measures also reflect consensus among affected parties, as required by section 1833(t)(17)(C)(i) of the Act. The proposed measures have been developed by the Secretary through a consensus-building process that included a broadly representative TEP and a public comment period, as discussed above. We believe that this statutory requirement is met when the development process for the completed measures reflects consensus of a broad representation of affected parties.

Finally, we believe the requirement that the measures developed by the Secretary, to the extent feasible and practicable, include measures set forth by one or more national consensus building entities is met, as required by section 1833(t)(17)(C)(i) of the Act. Two of the four imaging efficiency measures (OP–8 and OP–11) have been endorsed by NQF, a national consensus building entity. We note, however, that the statute does not require that each measure be endorsed by NQF or other national consensus building entities. Further, the statute does not require that the Secretary limit measures to those adopted by stakeholder organizations not meeting the requirements of voluntary consensus organizations under the National Technology Transfer and Advancement Act (NTTAA), such as the HQA or AQA. Moreover, we believe it is not feasible and practicable to adopt only imaging efficiency measures that have been endorsed by a national consensus building entity.

The measurement area of efficiency is currently in its infancy, and there are few measures available for adoption that have been set forth by a national consensus building entity, such as NQF. We have given consideration to measures that have been endorsed by NQF. However, except for the two efficiency measures included in this final rule with comment period, we did not find that these other measures meet program needs because other NQF-endorsed measures are not measures at the facility level or do not sufficiently address the quality aim of efficiency. For example, other NQF-endorsed measures may focus on documentation requirements and not efficiency. As the area of efficiency measurement matures, it will become more feasible and practicable to adopt additional measures that have been set forth by a national consensus building entity.

With respect to the proposed imaging efficiency measures, we believe that there are important factors involving patient safety weighing in favor of including these measures in the HOP QDRP, even if they have not been set forth by a national consensus building entity. Specifically, these measures address the unnecessary administration of contrast materials and the unnecessary radiation exposure resulting from unnecessary imaging studies. These measures fill a significant gap given the few existing imaging efficiency measures available at the outpatient facility level. Therefore, we are adopting these measures in this final rule with comment period.

Comment: Several commenters opposed the use of CY 2008 claims to calculate compliance with the imaging efficiency measures for the CY 2010 payment determination. The commenters also stated that the use of claims data assesses a facility's utilization of imaging services as opposed to assessing the practice of the ordering physician. Numerous commenters stated that all of the imaging efficiency measures seemed to be more appropriately used in assessing physician quality rather than that for the HOPD, because, the commenters argued, the four measures are all physician-driven. One commenter stated that it was unclear whether compliance is based on ''reporting'' through claims submission or whether compliance is based on an unknown performance rate.

Response: We use CY 2008 claims to calculate the imaging efficiency measures for the CY 2010 payment determination because the CY 2008 claims are the most current existing claims data available to us. We do not require any additional data submission from hospitals for these measures to satisfy the requirements of the HOP QDRP.

The four imaging efficiency measures that we proposed are for the HOP QDRP and measurement is at the facility level, not at the physician level. We believe that, because HOPDs are receiving payment for these imaging services under the OPPS, these data are appropriate for use in measuring HOPD quality of care. There is no requirement that hospitals must meet a particular performance score in order to satisfy the requirements of the HOP QDRP in regard to the imaging efficiency measures, just that the hospitals report the required information.

Comment: Several commenters stated that the collection of imaging efficiency measures was inappropriately named and that the measures were unadjusted utilization rates. One commenter stated that the selection of the MRI and CT measures has raised suspicion with imaging services staff that CMS' motive is cost reduction only.

Response: We disagree with the characterization of the measures as utilization rates. These measures were constructed using the definition of efficiency adopted by the IOM, and are intended to address waste and promote the efficient beneficial use of services. We received input from affected parties, such as hospitals and consumers, and received agreement from such parties that these are efficiency measures as defined by the IOM criteria, and that they measure imaging efficiency. We select HOP QDRP measures in order to provide hospitals with a greater awareness of the quality of care they provide and to provide actionable information for consumers to make more informed decisions about their health care providers and treatments. For the imaging measures, the focus is on hospitals and consumers reducing unnecessary exposure to radiation and contrast materials as a result of duplicative imaging services.

Comment: Several commenters were concerned that the billing data proposed for the imaging efficiency measures would include Medicare patients only, which they believed could distort the true picture of the delivery of imaging services.

Response: While the distribution of the rates may be different when calculated using Medicare claims only, Medicare claims comprise a substantial portion of total hospital outpatient claims for these services therefore we believe that the use of these claims data would not provide a distorted view of the delivery of imaging services in the outpatient setting. We would be interested in calculating measures based on all-payer claims data and may propose to collect such data in the future. However, collection of all-payer data presents additional infrastructure issues.

Comment: One commenter asked what administrative processes will be implemented for claims-based measures and whether the administrative claims data will undergo reliability testing or validation by CMS. The commenter was concerned that if a hospital does not submit a claim for payment, this could result in the loss of 2 percentage points of the OPPS annual payment update for the hospital. The commenter asked if there would be a review period for hospitals of the administrative data before it was released to the public.

Response: CMS employs a variety of measures to ensure the accuracy of coding for outpatient claims from the provider to postpayment levels. All Medicare providers are required to have compliance programs in place. At the claims processing level, edits are in

place to ensure that claims are completed in a manner consistent with payment policy, and prepayment edits may flag claims for review. At the postpayment level, a variety of entities are utilized to detect improper payments. Prior to public reporting, we will provide each hospital an opportunity to review its data. Hospitals should submit claims for services they have furnished in order to receive payment on the claims and to receive the full annual payment update.

Comment: Several commenters did not believe that the OP–8: MRI Lumbar Spine for Low Back Pain measure is ready for implementation, and even with further testing and improvement, this measure is more suitable for physicians who order imaging tests than to the HOPD that implement or furnish physician orders. Some commenters stated that the measure does not allow for consideration of over-the-counter (OTC) medications as an indicator of antecedent therapy. Several commenters stated that they were unclear as to what steps they should take to improve their performance on this measure. These commenters were uncertain if CMS believes that hospitals should refuse access to MRIs for low back pain for those patients and whether they should provide proof of antecedent conservative therapy. One commenter stated that this measure is potentially a dangerous incentive where it aims for reductions without qualifiers because there are cases of epidural abscesses as well as abdominal aortic aneurisms that present with low back pain. This commenter believed that using a less costly diagnostic approach will delay diagnosis and potentially cause harm to the patient. One commenter believed that there are factors such as the lack of provider documentation that may lead to the appearance of inappropriate MRI orders for low back pain, and believed that this measure would be burdensome for the hospital and should be directed at the clinician. One commenter also stated that it will be important to communicate what OP–8 portrays, and whether better quality is indicated by a higher or lower efficiency score, and whether there is an appropriate benchmark or rate.

Response: This measure has undergone a rigorous development process and has been endorsed by NQF for accountability at the facility level. Although we believe that the basis for the measure may be appropriately applied at the ordering physician level, it is also a facility measure as considered by the NQF and we believe that this measure is ready for implementation at the facility level.

There is evidence that a substantial portion of MRIs for low back pain are potentially not beneficial and do not lead to any modification of therapy based on the MRI results, especially when performed on the first visit prior to any attempt to diagnose or treat the patient through more conservative means. OP–8 measures the rate of usage of MRI for low back pain and it accounts for a 6-week window between the time of presentation with low back pain and the imaging service, during which time it is expected that any OTC or other antecedent therapy would have occurred. This measure does not establish absolute parameters for the use of imaging services, but rather identifies variations from norms for the efficient use of imaging services. The focus of the measure is not on increasing rates to 100 percent or reducing rates to 0 percent or any other values; rather, the focus is on promoting efficient use of imaging services.

As for the role of the hospital, the hospital has control over the use of the MRI machine. HOPDs can improve their efficiency because they are in a position to promote consultation between ordering physicians and the radiologists engaged by the HOPD, to communicate directly with the ordering physician as needed, and otherwise to educate and communicate with and engage the hospital medical staff and community physicians on the appropriate use of MRI for low back pain. CMS does not believe that hospital outpatient departments should refuse access to MRIs for low back pain. Further, we disagree that this measure provides an inappropriate incentive for reductions in MRI for low back pain or it encourages the inappropriate use of less costly diagnostic approaches. The intent of the measure is to assess the appropriateness of the imaging study and, if a less costly approach is equally or more effective than the MRI, the HOPD should employ the less costly approach.

Finally, while provider documentation is important, these measures will be calculated by CMS based solely on claims that have been submitted to Medicare by HOPDs. Thus, there would be no collection burden associated with the calculation of these measures at the hospital outpatient level.

Comment: Several commenters stated that they did not believe that the OP–11: Thorax CT—Use of Contrast Material measure should be implemented at this time because preliminary calculations of the measure rate found a relatively low use of combined studies. They believed it was unclear to what extent there is room for improvement on this measure. One commenter was concerned that undefined and nonstratified use of administrative data may push physicians to treat patients on guidelines, not on how the patient presents.

Response: Our claims-based evidence indicates that there is significant practice variation in the use of combined studies, indicating room for improvement, and in many instances, a high level of use of combined studies in outpatient settings. This measure seeks to identify practice variation in the use of combined Thorax CT, which may be considered inefficient. The focus of this measure is to help identify inefficient use of imaging studies and it is important because it addresses important patient safety concerns including the unnecessary administration of contrast materials and the unnecessary radiation exposure resulting from unnecessary imaging studies. The measure specifications and administrative data are defined and incorporate inclusion and exclusion criteria to stratify the populations being observed. Additionally, they have been endorsed by a national consensus building entity, the NQF, which reviews the possible unintended consequences of the measures on physician practice patterns. Also, the imaging efficiency measures are at a facility level and not a physician level.

Comment: Numerous commenters stated that OP–10: Abdomen CT—Use of Contrast Material measure should not be implemented as it is currently defined because there is a lack of evidence in the published literature to determine the appropriate use of contrast material for these patients. One commenter stated that the order for use of contrast material may be difficult to attribute to a specific physician as one may order contrast, but many rely on the radiologist to determine whether contrast is needed. One commenter stated this would be difficult to implement due to the vast exclusions and, therefore, this was not a good choice to introduce quality measures to the imaging area.

Response: We disagree that evidence does not exist in the published literature concerning the appropriate use of contrast material for these patients. Regarding difficulty in implementing this measure, we conducted an extensive claims analysis during the development and evaluation of this measure. The results of this analysis indicate that a significant pattern of variation among providers exists in the use of combination examinations in conjunction with an abdomen CT. We

are not attributing the measure to individual physicians, as the furnishing of the service and its measurement occur at the facility level and the measure will be calculated using outpatient hospital claims. Any ''vast exclusions'' would not impede implementation of this measure because it will be calculated by Medicare billing data which is already submitted by hospitals' outpatient departments, thus, not providing additional implementation burden to HOPDs.

Comment: Numerous commenters recommended that the imaging efficiency measures be reviewed by the AMA Physician Consortium for Performance Improvement (PCPI) because they believed this group was best qualified to consider the appropriateness of the measures for numerous health conditions. They also stated that OPPS measures that relate to physician performance should be aligned with physician measures utilized in the PQRI.

Response: Although the AMA–PCPI is an important and active developer of physician level quality measures, the AMA–PCPI is not a primary developer of facility level measures. However, in some instances, measures developed by the AMA–PCPI can be adapted for facility use as were the two surgical infection measures included in the current HOP QDRP set of measures. Members of the AMA–PCPI frequently contribute comments to other measures developers, including comments on the development of these facility level measures. Harmonizing measures across settings is desirable and we agree that it may be useful to examine opportunities to align measures in the future.

Comment: Several commenters expressed concern that the Mammography Follow-Up Rates imaging efficiency measure (OP–9) was not ready for implementation. These commenters believed there was a lack of consensus as to what the appropriate recall rate should be, and thus, it was unclear to them what rate the hospitals should be striving to achieve. One commenter stated that appropriate follow-up for a normal screening mammogram might be a phone call or letter from the provider. The commenter was concerned that existing claims data are not adequate for this purpose, and the state of the art of electronic health records is not sufficiently developed to allow a meaningful calculation of follow-up without extensive manual collection and reporting. One commenter stated that this information creates redundancy as the information is already collected for the American College of Radiologists and the commenter's State. Another commenter stated that this measure inappropriately makes the hospital responsible for both the provider and the patient. The commenter stated that an educational campaign through a public service announcement would be just as effective and would not require the hospital to invest more money in developing an automated method to inform patients that their mammogram is due.

Response: We believe that the Mammography Follow-Up Rates imaging efficiency measure is ready for implementation because it underwent a consensus-based development process that meets the statutory requirement for adoption of a measure, and includes testing and public comment. The imaging efficiency measure OP–9: Mammography Follow-up Rates does not seek to establish or identify a specific range within which follow-up rates must fall. There has been considerable research done on appropriate ranges and, during the development process, we also found a range of rates among hospitals. The measure will identify differing relative performance rates. We are not attempting to determine whether follow-up occurred in terms of notification, but rather seek to measure the degree to which a facility must repeat mammography imaging for its patients. We appreciate the fact that hospitals may be responding to a number of reporting requests or requirements. However, the HOP QDRP is a separate reporting program for hospitals receiving payment under the OPPS, and, at this time, HOP QDRP requirements cannot be met by reporting under other programs. Because the imaging efficiency measures are claims based, hospitals will not need to collect and submit additional data; they need only to submit claims for services for which they are to be paid under Medicare. We performed extensive claims analysis for this measure using Medicare claims and also other claims databases available, and our results indicate that it is appropriate, valid and reliable to calculate this measure using claims data. The measure carries significant epidemiologic relevance in that it is aimed at optimizing the use of an examination that carries a proven benefit in terms of quality and longevity of life. We agree that educational campaigns and public service announcements may be beneficial to Medicare beneficiaries. We do not believe that these programs would replace or should supplant quality of care measurement and public reporting of the HOP QDRP measures because the data collected for HOP QDRP includes all OPPS hospitals and are not limited to only certain States or voluntary participation as other programs are, thus making HOP QDRP a more comprehensive quality reporting program.

Comment: One commenter wanted to know whether measure OP–11: Thorax CT—Use of Contrast Material will answer the question of what medical benefit the administration of contrast material provides.

Response: The measure is intended to measure the efficient use of imaging services and not answer specific clinical questions.

Comment: One commenter wanted CMS to specify a benchmark for measure OP–8: MRI Lumbar Spine for Low Back Pain to assess the percentage of cases where MRI intervention altered the course of patient management.

Response: We do not have a predetermined benchmark for this measure. However, the range of performance, including national and State averages, will become available as we publicly report the information.

Comment: One commenter requested that CMS risk-adjust the data for what it believed to be a more accurate representation of the patient population of tertiary hospitals and academic medical centers.

Response: In general, process of care measures do not require the use of risk adjustment. Process of care measures reflect best practices and clinical guidelines that apply independent of the condition of the patient. When certain conditions or circumstances for which the particular intervention being measured would not be appropriate, these cases are removed from the denominator of the process of care measure.

Comment: One commenter stated that in the field, hospitals find the issue of overuse of imaging services is often provider specific for the services included in the four proposed imaging efficiency measures and that these measures, in the commenter's opinion, involve the hospital being the policing entity for accepting an order for MRI and CT scans. The commenter requested that CMS consider making the overuse of imaging services an issue for the PQRI rather than one for the hospital that receives the physician orders. Another commenter argued that imaging services are targeted for measures because of the expense to CMS rather than patient safety issues. The commenter stated that its imaging services providers voiced immediate objections to these measures because

these are revenue generating examinations, ordered by physicians that they have little control over, and the proposed imaging efficiency measures have little to do with quality and all to do with cost.

Response: In our response to an earlier commenter, we discussed the role of the hospital with respect to the use of imaging services it controls. We believe that the commenters understate considerably the effective roles hospitals can play in promoting the efficient use of imaging services. Further, we disagree with the commenters' statements that these measures are focused on cost or expenses rather than on patient safety. As discussed previously, the focus of the four proposed imaging efficiency measures is on reducing unnecessary exposure to radiation and contrast materials as a result of duplicative imaging services.

Comment: One commenter stated that CMS has inappropriately assumed that hospitals fail to provide quality care due to the number of imaging services they perform, when, in fact, according to the commenter, the hospitals are merely working with their physicians and following orders to provide high-quality health care to Medicare beneficiaries.

Response: America's Health Insurance Plans (AHIP) estimates that a range of 20 percent to 50 percent of high-technology diagnostic imaging for a variety of conditions fails to provide information that improves patient diagnosis and treatment and may be considered redundant or unnecessary (July 2008 monograph *http://www.ahip.org/content/default.aspx?docid=24057*). There is a growing interest in pursuing strategies that promote the appropriate use of imaging services, avoid redundancy and unnecessary exposure to radiation, reduce painful and wasteful follow-up procedures, and ensure that the patient is getting the right service the first time. As discussed above, hospitals can play a role in promoting the efficient use of imaging services.

Comment: One commenter stated that none of these measures relates to radiation oncology.

Response: We did not intend for these measures to focus on radiation oncology. These measures are intended to measure imaging efficiency.

After consideration of the public comments received and as discussed in the above responses to those comments, we are finalizing the following four imaging efficiency measures for the CY 2010 payment determination: (1) OP–8: MRI Lumbar Spine for Low Back Pain; (2) OP–9: Mammography Follow-up Rate; (3) OP–10: Abdomen CT—Use of Contrast Material; and (4) OP–11: Thorax CT—Use of Contrast Material. Adoption of these four measures into the HOP QDRP meets the requirements of section 1833(t)(17)(C)(i) of the Act that the measures are appropriate for measurement of quality of care furnished by hospitals in outpatient settings, reflect consensus among affected parties and, to the extent feasible and practicable, include measures set forth by a national consensus building entity. All four of the proposed imaging efficiency measures reflect consensus among affected parties as meeting IOM criteria of measuring efficiency in general, and imaging efficiency in particular. In addition, two of the imaging efficiency measures we are finalizing (OP–8 and OP–11) are NQF-endorsed. For program purposes, the technical specifications for these four new HOP QDRP measures will be published in the January 2009 Specification Manual located at *http://www.qualitynet.org.*

The measures for the 2009 HOP QDRP measurement set to be used for the CY 2010 payment determination are as follows:

2009 HOP QDRP Measurement Set To Be Used for 2010 Payment Determination
OP–1: Median Time to Fibrinolysis.
OP–2: Fibrinolytic Therapy Received Within 30 Minutes.
OP–3: Median Time to Transfer to Another Facility for Acute Coronary Intervention.
OP–4: Aspirin at Arrival.
OP–5: Median Time to ECG.
OP–6: Timing of Antibiotic Prophylaxis.
OP–7: Prophylactic Antibiotic Selection for Surgical Patients.
OP–8: MRI Lumbar Spine for Low Back Pain.
OP–9: Mammography Follow-up Rates.
OP–10: Abdomen CT—Use of Contrast Material.
OP–11: Thorax CT—Use of Contrast Material.

2. Process for Updating Measures

Although we adopt measures through the rulemaking process, in the CY 2009 OPPS/ASC proposed rule (73 FR 41541), we proposed to establish a subregulatory process that would allow us to update the technical specifications that we use to calculate those measures when we believe such updates are warranted based on scientific evidence and guidance from a national consensus building entity. We believe that the establishment of a subregulatory process is necessary so that the HOP QDRP measures are calculated based on the most up-to-date scientific and consensus standards. We also recognize that neither scientific advances nor updates to measure specifications made by a consensus building entity are linked to the timing of regulatory actions. An example of changes that would prompt us to update a measure would be a change in antibiotic selection and/or timing (see measures OP–6 and OP–7) based on updated clinical guidelines or best practices.

Therefore, we proposed that when a national consensus building entity updates the measure specifications for a measure that we have adopted for the HOP QDRP program, we would update our measure specifications for that measure accordingly. We would provide notification of the measure specification updates on the QualityNet Web site, *http://www.qualitynet.org,* and in the Specifications Manual no less than 3 months before any changes become effective for purposes of reporting under the HOP QDRP. We invited public comments on this proposal.

Comment: Several commenters supported issuing measure specification updates to reflect the current standard of care based on scientific evidence and in accordance with the latest specifications endorsed by a national consensus organization through a subregulatory process. They stated that use of measures based on the most up to date scientific evidence will best ensure that patients receive high quality and appropriate care.

Response: We appreciate these supportive statements to our proposal that when a national consensus building entity updates the measure specifications for a measure that we have adopted for the HOP QDRP program, we would update our measure specifications for that measure accordingly through a subregulatory process. National consensus building entities issue changes of a substantive nature to measures they have endorsed which may occur off-schedule from the rulemaking cycle, but which nonetheless carry clinical significance, warranting updates to measures using a subregulatory process. This subregulatory process is in addition to the existing technical updates that are routinely made and posted to QualityNet and which constitute technical business requirements for data submission such as updates to ICD–9 or HCPCS codes.

For measures that are not endorsed by a national consensus building entity, the measures would be updated through the subregulatory process based on scientific advances as determined necessary by CMS. Once measures have been adopted by the HOP QDRP

program there is a measure maintenance process that occurs where Technical Expert Panels that represent consensus among affected parties review the measure specifications and take into account changes in scientific evidence as they evaluate the measure specifications and make recommendations to refine them. Changes such as this have occurred using this subregulatory mechanism to date, and we believe that it should continue to occur using this mechanism. Changes made in this manner would reflect current consensus resulting from changes in science and clinical evidence, and changes in consensus for which public input is sought through a national consensus process.

Comment: Many commenters also agreed that 90 days notice prior to implementation is sufficient. One commenter recommended that CMS consider issuing notification through additional systems (such as CMS listserv groups) as well as through QualityNet notices and regularly scheduled changes to the Specifications Manual, and to consider providing notification about such changes 6 months prior to implementation rather than 3 months.

Response: We will update our measure specifications for a measure through a subregulatory process providing at least 3 months advance notice for changes. QualityNet and the regularly scheduled Specifications Manual updates are our primary mechanisms for communicating changes relating to technical aspects of the measures as well as changes consistent with those made as part of endorsement status that reflect current science and consensus. We will investigate supplementing this communication through other means as well. We agree that if changes to measures result in changes in the data elements to be submitted and, therefore, require significant system changes, hospitals would require sufficient time to accommodate such changes, which we believe will be satisfied with 6-months notice. However, if changes do not affect data elements to be submitted, we intend to provide no less than 3 months notification for the change, which we believe would be sufficient.

Comment: Numerous commenters urged CMS to utilize the rulemaking process to announce quality measure changes and make accompanying measure specification changes. While many commenters agreed that a subregulatory process would be appropriate for minor changes, the commenters expressed concern that use of a subregulatory process would not afford hospitals sufficient time to consider substantive changes or new measures, and that the formal regulatory process should be utilized in order to provide an opportunity for public input to such changes.

Response: We did not propose to adopt new measures using a subregulatory process. Rather, a subregulatory process will be used in order to maintain specifications for existing quality measures to be consistent with current science and consensus among affected parties. This measure maintenance process has occurred using this subregulatory mechanism to date, and we believe that it should continue to occur using this mechanism. Changes made in this manner would reflect current consensus resulting from changes in science and clinical evidence, and changes in consensus for which public input is sought through a national consensus process. The adoption of new outpatient measures will continue to be through an annual notice-and-comment rulemaking process. However, we will provide a 6-month notice for substantive changes to data elements that will require significant systems changes, such as the addition of required new data elements.

Comment: One commenter stated that, prior to linking measures to outpatient payment, there should be evidence that the measures have an impact on quality and outcome for patients treated in the outpatient setting, and that the services measures should be reevaluated each year so that areas that are no longer a problem can be removed from the list.

Response: As part of the measure development process, the HOP QDRP measures have undergone rigorous scrutiny for validity as indicators of outpatient quality of care. Measures that are implemented in this reporting program will undergo regular reevaluation every 3 years as part of the measure maintenance and reevaluation process. However, we also may decide upon reviewing measures to suspend measures from the reporting program, and these decisions would be announced during the annual rulemaking process. While improvability is an important criterion for measure selection, we do not limit measure selection solely to areas perceived as problem areas.

After consideration of the public comments received, we are finalizing the use of the subregulatory process described to ensure that the HOP QDRP measures are calculated based on the most up-to-date scientific and consensus standards. We will continue to release a HOPD Specification Manual every 6 months and addenda as necessary providing at least 3 months of advance notice for non-substantive changes such changes to ICD–9 and HCPCS codes and at least 6 months notice for substantive changes to data elements that will require significant systems changes.

3. Possible New Quality Measures for CY 2011 and Subsequent Calendar Years

In the CY 2009 OPPS/ASC proposed rule (73 FR 41542), we sought comment on possible new quality measures for CY 2011 and subsequent calendar years. The following table contains a list of 18 measures included within 9 measure sets from which additional quality measures could be selected for inclusion in the HOP QDRP. This table includes measures and measure sets that are part of clinical topics for which we currently do not require quality measure data reporting, such as cancer. We note that we also sought comment on some of these measures in the CY 2008 OPPS/ASC proposed rule. We sought public comment on the measures and measure sets that are listed below as well as on any possible critical gaps or missing measures or measure sets. We specifically requested input concerning the following:

- Which of the measures or measure sets should be included in the HOP QDRP for CY 2011 or subsequent calendar years?
- What challenges for data collection and reporting are posed by the identified measures and measure sets?
- What improvements could be made to data collection or reporting that might offset or otherwise address those challenges?

We solicited public comment on the following measure sets and measures for consideration in CY 2011 and subsequent calendar years.

MEASURES UNDER CONSIDERATION FOR CY 2011 AND SUBSEQUENT CALENDAR YEARS

Topic		Measure
Cancer	1	Radiation Therapy is Administered within 1 Year of Diagnosis for Women Under Age 70 Receiving Breast Conserving Surgery for Breast Cancer.*
	2	Adjuvant Chemotherapy is Considered or Administered within 4 Months of Surgery to Patients Under Age 80 with AJCC III Colon Cancer.*
	3	Adjuvant Hormonal Therapy for Patients with Breast Cancer.*
	4	Needle Biopsy to Establish Diagnosis of Cancer Precedes Surgical Excision/Resection.*
ED Throughput	5	Median Time from ED Arrival to ED Departure for Discharged ED Patients.
Diabetes	6	Low Density Lipoprotein Control in Type 1 or 2 Diabetes Mellitus.*
	7	High Blood Pressure Control in Type 1 or 2 Diabetes Mellitus.*
Falls	8	Screening for Fall Risk.*
Depression	9	Antidepressant Medication During Acute Phase for Patients with New Episode of Major Depression.*
Stroke & Rehabilitation	10	Computed Tomography (CT) or Magnetic Resonance Imaging (MRI) Reports.*
	11	Carotid Imaging Reports.*
Osteoporosis	12	Communication with the Physician Managing Ongoing Care Post Fracture.*
	13	Screening or Therapy for Women Aged 65 Years and Older.*
	14	Pharmacologic Therapy.*
	15	Management Following a Fracture.*
Medication Reconciliation	16	Medication Reconciliation.*
Respiratory	17	Asthma Pharmacological Therapy.*
	18	Assessment of Mental Status for Community Acquired Pneumonia.*

* One of the 30 measures included as ''under consideration'' in the CY 2008 OPPS/ASC proposed rule.

We welcomed suggestions regarding other additional measures and topics relevant to the hospital outpatient setting that we could use to further develop the measure set, and indicated that we were particularly interested in receiving comments on potential HOP QDRP measures that could be used to measure the quality of care in other settings (such as hospital inpatient, physician office, and emergency care settings) and, thus, contribute to improved coordination and harmonization of high-quality patient care.

Comment: One commenter strongly supported inclusion of measure 5, Median Time from ED Arrival to ED Departure for Discharged ED Patients. The commenter believed that this measure is reasonable for assessing patient delays in receiving ED care. The commenter also recommended inclusion of a companion measure, Median Time from ED Arrival to ED Departure for Admitted Patients, because this measure assesses ''boarding'' time in the ED. This measure was not included in the CY 2009 OPPS/ASC proposed rule. Further, the commenter suggested that these measures be stratified by psychiatric population, ED observation, transferred patients, and all others.

Response: We thank the commenter for its support of the inclusion of measure 5. The Median Time from ED Arrival to ED Departure for Admitted Patients was specified to collect data on patients in the inpatient population and, therefore, is not appropriate for the outpatient setting. In the FY 2009 IPPS proposed rule (73 FR 23652), we solicited comments on this measure as a possible measure to be used in the RHQDAPU program for FY 2011 and subsequent years. We appreciate the suggestion regarding the stratification of the measure. We intend to stratify both measures by psychiatric, observation, and transferred patients, and those other patients who do not meet the other stratification criteria.

Comment: Several commenters described the challenges for data collection and reporting resulting from the proposed measures, and stated CMS should assess the amount of chart review required for different populations.

Response: We are interested in minimizing the burden on hospitals associated with data collection and reporting. We have sought to address this by using claims-based measures, where appropriate, and we are evaluating the use of data from clinical data registries. In the case of the ED timing measures, these data are routinely collected by hospitals currently. In addition, we are evaluating the potential for such data to be submitted electronically from hospital information systems. We have assessed collection burden for each measure as a whole for the global population. There is no additional burden of chart review for the stratified populations, since there is no requirement for an additional or separate chart review for the stratified populations.

Comment: One commenter stated that some of the measures do not add value for consumers, citing its belief that measure 4, the percentage of time a needle biopsy was used in diagnosis, has nothing to do with an accurate diagnosis or appropriate treatment; and that measure 16, the medication reconciliation, does not measure medication errors or avoidable harm.

Response: We believe that these measures would be of use to consumers. Literature indicates that needle biopsy results in a lower incidence of re-excision, reduced number of total operations, and a shorter time to complete surgery compared with surgical biopsy. Medication reconciliation review promotes the examination of inpatient and outpatient differences in patient medication, which helps reduce medical errors and supports the provision of quality care to patients.

Comment: One commenter stated that future measures should be more specific in terms of size, volume of services, type and level of care, geographical regions, and electronic health record (EHR)-implementation status. The commenter also stated that related measures should be assessed for alignment across settings or under different conditions.

Response: We appreciate these suggestions for possible future consideration. We agree that alignment across settings is an important goal.

Comment: One commenter stated the measures are too similar to measures used in physician office setting and should be setting specific. Other commenters stated that several of the measures are better suited for the physician office rather than the HOPD, and the measures should be thoroughly field tested before implementation.

Response: We believe that these measures are specific to the HOPD

because HOP QDRP measures pertain to services payable under the OPPS system. These include a variety of hospital services, including ED, outpatient surgery, and imaging services. While we understand that hospital outpatient services, such as in a hospital outpatient clinic, may appear similar to the physician office setting, these procedures and care are furnished and paid for at the HOPD level; therefore, accountability at this level is appropriate. We agree that measures should be field tested before implementation, and strives to do so during the measures development process.

Comment: Several commenters were concerned that the measures proposed for use in CY 2011 or beyond did not have full NQF endorsement.

Response: We previously discussed the consensus requirements for the HOP QDRP program under section 1833(t)(17)(C) of the Act. Although we prefer measures that represent voluntary consensus standards, such as provided by NQF-endorsed measures, we also take into account other considerations, including the availability of adequate NQF-endorsed measures, to meet program requirements.

Comment: Several commenters suggested additional measurement topics and measures for future implementation in the HOP QDRP. These included:

- Healthcare-associated infections
- MRSA process of care measures
- Cross-cutting risk-adjusted measures
- Surgical site infection
- Appropriate hair removal for surgery patients
- Central line associated blood-stream infections and central line bundle compliance
- Claims based measures of infections after outpatient hospital procedures
- Data and measures from national data registries
- High-risk disease
- Post-fracture care
- Acute and chronic pain management
- Anticoagulant therapy safety and education
- PQRI CAD and osteoporosis measures
- Coordination of care
- ED AMI mortality
- Severe sepsis and septic shock management bundle
- Confirmation of endotracheal tube placement
- Overall cardiac care
- Use and overuse of cardiac CT
- Inappropriate use of percutaneous cardiac interventions
- Measures that can be collected via electronic health records (EHRs)
- ASC measures

Response: We appreciate these suggestions and will consider these topic areas for future implementation. We agree with the importance of actively working to move to a system of data collection based on submission of data from EHRs. To this end, we are engaged with HIT standards setting organizations to promote the adoption of the necessary standards for the HOP QDRP and for quality measures for other settings.

Comment: Numerous commenters stated that CMS should only select NQF-endorsed measures for the HOP QDRP, and should work with large stakeholder organizations such as HQA, PCPI, AHQA, AMA, QASC, and IHI to prioritize measurement areas and measure selection. Commenters suggested other selection criteria, such as national priority areas identified by HHS, and called for CMS to develop a framework for the selection of measures that includes public input, priority setting, consultation with other Federal agencies, NQF endorsement, field testing, and staggered implementation. Commenters also suggested that hospital inpatient measures adopted for the RHQDAPU program should be reviewed for applicability when selecting measures for the hospital outpatient setting, and that CMS should make specifications for new hospital outpatient measures available for review through QualityNet at the time they are proposed.

Response: We discussed above the requirements of section 1833(t)(17)(C) of the Act. We prefer to use measures that have been adopted by national consensus building entities when such measures are available and adequately meet program needs. Our measure selection is generally guided by Departmental and CMS priorities supplemented by stakeholder input. For example, we are examining measures currently used in our reporting programs in other settings for potential applicability to the outpatient setting and ways we can harmonize measures across settings. We value stakeholder input which we receive from a broad range of stakeholders. However, ultimately, measures are selected through notice-and-comment rulemaking reflecting input from the public at large. The input we consider is not limited to particular stakeholders or groups of stakeholders. We will make outpatient measure specifications available to the public during the public comment period for the proposed rule on the CMS Web site. In future proposed rules, we will provide the Web site address at which the technical specifications for future proposed measures will be available during the public comment period.

Comment: One commenter stated that hospital-acquired condition (HAC) measures are not ready for implementation in the outpatient setting because care in the outpatient setting is much more varied and much less life-threatening than in the inpatient setting and because coding is more difficult. The commenter believed that HAC measures are difficult to establish and prone to subjectivity.

Response: We have not proposed any HAC measures for the HOP QDRP; however, we will consider the commenter's concerns as we develop proposed measures for CY 2011 and subsequent years.

Based on the public comments received, we will consider the recommended topic areas as we develop new quality measures for CY 2011 and subsequent calendar years.

D. Payment Reduction for Hospitals That Fail To Meet the HOP QDRP Requirements for the CY 2009 Payment Update

1. Background

Section 1833(t)(17)(A) of the Act, which applies to hospitals as defined under section 1886(d)(1)(B) of the Act, requires that hospitals that fail to report data required for the quality measures selected by the Secretary, in the form and manner required by the Secretary under section 1833(t)(17)(B) of the Act, incur a 2.0 percentage point reduction to their OPD fee schedule increase factor, that is, the annual payment update factor. Section 1833(t)(17)(A)(ii) of the Act specifies that any reduction would apply only to the payment year involved and would not be taken into account in computing the applicable OPD fee schedule increase factor for a subsequent payment year.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41542), we discussed how the proposed payment reduction for failure to meet the administrative, data collection, and data submission requirements of the HOP QDRP will affect the CY 2009 payment update applicable to OPPS payments for HOPD services furnished by the hospitals defined under section 1886(d)(1)(B) of the Act to which the program applies. The application of a reduced OPD fee schedule increase factor results in reduced national unadjusted payment rates that will apply to certain outpatient items and services provided by hospitals that are required to report

outpatient quality data and that fail to meet the HOP QDRP requirements. All other hospitals paid under the CY 2009 OPPS will receive the full OPPS payment update without the reduction.

2. Reduction of OPPS Payments for Hospitals That Fail To Meet the HOP QDRP CY 2009 Payment Update Requirements

a. Calculation of Reduced National Unadjusted Payment Rates

The national unadjusted payment rates for many services paid under the OPPS equal the product of the OPPS conversion factor and the scaled relative weight for the APC to which the service is assigned. The OPPS conversion factor is updated annually by the OPD fee schedule increase factor. The conversion factor is used to calculate the OPPS payment rate for services with the following status indicators (listed in Addendum B to this final rule with comment period): ''P,'' ''Q1,'' ''Q2,'' ''Q3,'' ''R,'' ''S,'' ''T,'' ''V,'' or ''X.'' We proposed that payment for all services assigned these status indicators would be subject to the reduction of the national unadjusted payment rates for applicable hospitals, with the exception of services assigned to New Technology APCs. While services assigned to New Technology APCs, specifically APCs 1491 (New Technology-Level IA ($0–$10)) through 1574 (New Technology-Level XXXVII ($9,500–$10,000)), are assigned status indicator ''S'' or ''T,'' the payment rates for New Technology APCs are set at the midpoint of a cost-band increment, rather than based on the product of the OPPS conversion factor and the relative payment weight. Therefore, in the CY 2009 OPPS/ASC proposed rule (73 FR 41543), we proposed to exclude services assigned to New Technology APCs from the list of services that are subject to the reduced national unadjusted payment rates because the OPD fee schedule increase factor is not used to update the payment rates for these APCs. We note that we also proposed that the reduction would apply to brachytherapy sources for which we proposed to assign status indicator ''U'' (Brachytherapy Sources. Paid under OPPS; separate APC payment). Subsequent to issuance of the proposed rule, Congress enacted Public Law 110–275 (MIPPA). Section 142 of Public Law 110–275 specifically requires that brachytherapy sources be paid during CY 2009 on the basis of charges adjusted to cost, rather than under the standard OPPS methodology. Therefore, the reduced conversion factor would not be applicable to CY 2009 payment for brachytherapy sources because payment would not be based on the OPPS conversion factor and, consequently, the payment rates for these services are not updated by the OPD fee schedule increase factor. We refer readers to section VII. of this CY 2009 OPPS/ASC final rule with comment period for further discussion of payment for brachytherapy sources.

Comment: One commenter supported the CMS proposal to not apply payment and copayment reductions to New Technology APCs for hospitals that did not meet the requirements of the HOP QDRP.

Response: We appreciate the commenter's support. We believe that, because New Technology APC payments are set using the cost-band methodology described above, the statutory requirement would not apply the reduction to these APCs.

The conversion factor is also not used to calculate the OPPS payment rates for separately payable services that are assigned status indicators other than status indicators ''P,'' ''Q1,'' ''Q2,'' ''Q3,'' ''R,'' ''S,'' ''T,'' ''V,'' or ''X.'' These services include separately payable drugs and biologicals, separately payable therapeutic radiopharmaceuticals, pass-through drugs and devices and brachytherapy sources that are paid at charges adjusted to cost, and a few other specific services that receive cost-based payment. As a result, in the CY 2009 OPPS/ASC proposed rule (73 FR 41543), with the exception of brachytherapy sources, we also proposed that the OPPS payment rates for these services would not be reduced because the payment rates for these services are not calculated using the conversion factor and, therefore, the payment rates for these services are not updated by the OPD fee schedule increase factor. In the CY 2009 OPPS/ASC proposed rule (73 FR 41502), we proposed prospective payment based on median costs for brachytherapy sources and proposed to assign brachytherapy sources status indicator ''U'' but, subsequent to the issuance of the CY 2009 OPPS/ASC proposed rule, Congress enacted Public Law 110–275, which further extended the payment period for brachytherapy sources based on a hospital's charges adjusted to cost.

Comment: One commenter suggested that reducing payment and copayment for pharmacy services for hospitals that fail to meet the requirements of the HOP QDRP is excessively punitive.

Response: As described above, the market basket reduction would not apply to separately paid drugs and biologicals that are assigned status indicator ''K'' or to therapeutic radiopharmaceuticals, assigned status indicator ''H'' in this final rule with comment period, which are paid at charges adjusted to cost for CY 2009 based on the provisions of section 142 of Public Law 110–275. The market basket reduction for hospitals that fail to meet the reporting requirements would only apply to those services whose payment rates are calculated using the conversion factor.

The OPD fee schedule increase factor, or market basket update, is an input into the OPPS conversion factor, which is used to calculate OPPS payment rates. To implement the requirement to reduce the market basket update for hospitals that fail to meet reporting requirements, in the CY 2009 OPPS/ASC proposed rule, we proposed that, effective for services paid under the CY 2009 OPPS, CMS would calculate two conversion factors: A full market basket conversion factor (that is, the full conversion factor), and a reduced market basket conversion factor (that is, the reduced conversion factor). It is necessary to calculate a reduced market basket conversion factor for hospitals that fail to meet reporting requirements because section 1833(t)(17)(A)(i) of the Act requires a reduction of 2.0 percentage points from the market basket update for those hospitals. (We implemented this statutory requirement in regulations at 42 CFR 419.43(h).) For a complete discussion of the calculation of the OPPS conversion factor, we refer readers to section II.B. of this CY 2009 OPPS/ASC final rule with comment period. Therefore, we proposed to calculate a reduction ratio by dividing the reduced conversion factor by the full conversion factor. We refer to this reduction ratio as the ''reporting ratio'' to indicate that it applies to payment for hospitals that fail to meet their reporting requirements. Beginning January 1, 2009, the PRICER will calculate reduced national unadjusted payment rates that will be used as a basis for paying hospitals that fail to meet the requirements of the HOP QDRP by multiplying the national unadjusted payment rates by the reporting ratio. This will result in reduced national unadjusted payment rates that are mathematically equivalent to the reduced national unadjusted payment rates that would result if we multiplied the scaled OPPS relative weights by the reduced conversion factor. For CY 2009, we proposed a reporting ratio of 0.981, calculated by dividing the reduced conversion factor of $64.409 by the full conversion factor of $65.684. As stated above, the use of the reporting ratio is mathematically equivalent to the creation and application of a reduced conversion factor to the OPPS payment

weights. The final CY 2009 reporting ratio is 0.981, calculated by dividing the reduced conversion factor of $64.784 by the full conversion factor of $66.059.

To determine the reduced national unadjusted payment rates that would apply to hospitals that fail to meet their quality reporting requirements for the CY 2009 OPPS, we will multiply the final full national unadjusted payment rate in Addendum B to this CY 2009 OPPS/ASC final rule with comment period by the final reporting ratio of 0.981. For example, CPT code 11401 (Excision, benign lesion including margins, except skin tag (unless listed elsewhere) trunk, arms or legs; excised diameter 0.6 to 1.0 cm), is assigned to APC 0019, with a final national unadjusted payment rate of $295.69. Where a hospital fails to meet the reporting requirements of the HOP QDRP for the CY 2009 payment update, the reduced national unadjusted payment rate for that hospital would be $290.07 (the reporting ratio of 0.981 multiplied by the full national unadjusted payment rate for CPT code 11401).

We did not receive any public comments on our proposal for determining the reduced national unadjusted payment rates that would apply to hospitals that fail to meet their quality reporting requirements for the CY 2009 OPPS.

After consideration of the public comments received, we are finalizing our proposal, without modification, to apply the market basket update reduction to payments for all services calculated using a conversion factor through application of the reporting ratio. The final CY 2009 reporting ratio is 0.981, calculated by dividing the reduced market basket conversion factor of $64.784 by the full market basket conversion factor of $66.059.

b. Calculation of Reduced Minimum Unadjusted and National Unadjusted Beneficiary Copayments

Under the OPPS, we have two levels of Medicare beneficiary copayment for many services: the minimum unadjusted copayment, and the national unadjusted copayment. The minimum unadjusted copayment is always 20 percent of the national unadjusted payment rate for each separately payable service. The national unadjusted copayment is determined based on the historic coinsurance rate for the services assigned to the APC. Where the national unadjusted copayment is blank for an item or service listed in Addendum B to this CY 2009 OPPS/ASC final rule with comment period, the national unadjusted copayment is equal to the minimum unadjusted copayment. In general, under our longstanding copayment policy, the coinsurance percentage (the ratio of the copayment to the service payment) for a particular service may decline over time to a minimum of 20 percent but will never increase. This is consistent with the statute's intent that eventually all services paid under the OPPS would be subject to a 20-percent coinsurance percentage. We refer readers to section 1833(t)(3)(B)(ii) of the Act for the specific statutory language. For additional background on the standard OPPS copayment calculation, we refer readers to the CY 2004 OPPS final rule with comment period (68 FR 63458 through 63459).

For hospitals that receive the reduced OPPS payment for failure to meet the HOP QDRP requirements, we believe that it is both equitable and appropriate that a reduction in the payment for a service should result in proportionately reduced copayment liability for Medicare beneficiaries. Similarly, we believe that it would be inequitable to the beneficiary and in conflict with the intent of the law (section 1833(t)(3)(B)(ii) of the Act) and our longstanding policy (68 FR 63458 through 63459) if the coinsurance percentage of the total payment for certain OPPS services to which reduced national unadjusted payment rates apply was to increase as a result of using the reduced conversion factor to calculate these reduced national unadjusted payment rates. Therefore, in the CY 2009 OPPS/ASC proposed rule (73 FR 41544), we proposed that the Medicare beneficiary's minimum unadjusted copayment and national unadjusted copayment for a service to which a reduced national unadjusted payment rate applies would each equal the product of the reporting ratio and the national unadjusted copayment or the minimum unadjusted copayment, as applicable, for the service, under the authority of section 1833(t)(2)(E) of the Act, which authorizes the Secretary to ''establish, in a budget neutral manner, * * * adjustments as determined to be necessary to ensure equitable payments'' under the OPPS.

We considered calculating the national unadjusted copayments and the minimum unadjusted copayments based on the reduced national unadjusted payment rates, using our standard copayment methodology. We found that, in many cases, the beneficiary's copayment amount would remain the same as calculated based on the full national unadjusted payment rate, although the total reduced national unadjusted payment rate would decline because of the reduction to the conversion factor. Therefore, in these cases, the ratio of the copayment to the total payment (the coinsurance percentage) would increase rather than decrease if we were to calculate copayments based on the reduced national unadjusted payment rates. For example, in the case of APC 0019 (Level I Excision/Biopsy), the full national unadjusted payment rate for CY 2008 is $274.13 and the national unadjusted copayment is $71.87 or 26 percent of the full national unadjusted payment rate for the APC. If the reduction were in effect for CY 2008, the reduced national unadjusted payment rate would be $268.65 but the national unadjusted copayment, if calculated under the standard rules, would continue to be $71.87, which represents 27 percent of the reduced national unadjusted payment rate. We believe that the increased coinsurance percentage that results from this methodology is contradictory to the intent of the statute that the coinsurance percentage would never increase and is also contradictory to our copayment rules that are intended to gradually reduce the percentage of the payment attributed to copayments until the national unadjusted copayment is equal to the minimum unadjusted copayment for all services.

To avoid this inconsistent result, in the CY 2009 OPPS/ASC proposed rule (73 FR 41544), we proposed to apply the reporting ratio to the national unadjusted copayment and the minimum unadjusted copayment to calculate the national unadjusted copayments that would apply to each APC for hospitals that receive the reduced CY 2009 OPPS payment update. This application of the reporting ratio would be to the national unadjusted and minimum unadjusted copayments as calculated according to § 419.41 of the regulations, prior to any adjustment for hospitals' failure to meet the quality reporting standards according to § 419.43(h). Beneficiaries and secondary payers would thereby share in the reduction of payments to these hospitals. We believe that applying this copayment calculation methodology for those hospitals that fail to meet the HOP QDRP requirements would allow us to appropriately set the national unadjusted copayments for the reduced OPPS national unadjusted payment rates and would be most consistent with the eventual establishment of 20 percent of the payment rate as the uniform coinsurance percentage for all services

under the OPPS. In the CY 2009 OPPS/ASC proposed rule, we proposed to revise §§ 419.41, 419.42, and 419.43 to reflect this policy.

Comment: Some commenters supported the CMS proposal for beneficiaries and secondary payers to share in the payment reduction for hospitals that fail to meet the HOP QDRP requirements.

Response: We appreciate the support for our proposed policy. In order to ensure that beneficiaries and secondary payers do not pay a higher share of the reduced payment that results from a hospital's failure to meet the reporting requirements, we believe that a copayment calculation methodology that applies the reporting ratio to the national unadjusted copayment and the minimum unadjusted copayment is most appropriate.

After consideration of the public comments received, we are finalizing our proposal, without modification, for beneficiaries and secondary payers to share in the payment reduction for hospitals that fail to meet the HOP QDRP requirements. We also are finalizing our revisions to §§ 419.41, 419.42, and 419.43 of the regulations, without modification, to reflect this policy.

c. Treatment of Other Payment Adjustments

In the CY 2009 OPPS/ASC proposed rule (73 FR 41544), we proposed that all other applicable adjustments to the OPPS national unadjusted payment rates would apply in those cases when the OPD fee schedule increase factor is reduced for hospitals that fail to meet the requirements of the HOP QDRP. For example, the following standard adjustments would apply to the reduced national unadjusted payment rates: The wage index adjustment; the multiple procedure adjustment; the interrupted procedure adjustment; the rural sole community hospital adjustment; and the adjustment for devices furnished with full or partial credit or without cost. We believe that these adjustments continue to be equally applicable to payments for hospitals that do not meet the HOP QDRP requirements.

Similarly, we proposed that outlier payments would continue to be made when the criteria are met. For hospitals that fail to meet the quality data reporting requirements, we proposed that the hospitals' costs would be compared to the reduced payments for purposes of outlier eligibility and payment calculation. We believe no changes in the regulation text would be necessary to implement this policy because using the reduced payment for these outlier eligibility and payment calculations is contemplated in the existing regulations at § 419.43(d). This proposal conforms to current practice under the IPPS in this regard. Specifically, under the IPPS, for purposes of determining the hospital's eligibility for outlier payments, the hospital's estimated operating costs for a discharge are compared to the outlier cost threshold based on the hospital's actual DRG payment for the case. For a complete discussion of the OPPS outlier calculation and eligibility criteria, we refer readers to section II.F. of this CY 2009 OPPS/ASC final rule with comment period.

We did not receive any public comments on this proposal and, therefore, are finalizing our proposal without modification.

E. Requirements for HOPD Quality Data Reporting for CY 2010 and Subsequent Calendar Years

In the CY 2008 OPPS/ASC final rule with comment period (72 FR 66869), we stated that in order to participate in the HOP QDRP for CY 2009 and subsequent calendar years, hospitals must meet administrative, data collection and submission, and data validation requirements. Hospitals that do not meet the requirements of the HOP QDRP, as well as hospitals not participating in the program and hospitals that withdraw from the program, will not receive the full OPPS payment rate update. Instead, in accordance with section 1833(t)(17)(A) of the Act, those hospitals would receive a reduction of 2.0 percentage points in their updates for the affected payment year.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41544), for payment determinations affecting the CY 2010 payment update, we proposed to implement the requirements listed below. Most of these requirements are the same as the requirements we implemented for the CY 2009 payment determination.

1. Administrative Requirements

To participate in the HOP QDRP, several administrative steps must be completed. These steps require the hospital to:

- Identify a QualityNet administrator who follows the registration process and submits the information to the appropriate CMS designated contractor. All CMS designated contractors will be identified on the QualityNet Web site. The same person may be the QualityNet administrator for both the IPPS RHQDAPU program and the OPPS HOP QDRP. This designation must be kept current and must be done, regardless of whether the hospital submits data directly to the CMS designated contractor or uses a vendor for transmission of data.
- Register with QualityNet regardless of the method used for data submission.
- Complete the Notice of Participation form if one has not been completed or if a hospital has previously submitted a withdrawal form. We remind hospitals that they do not need to submit another Notice of Participation form if they have already done so and they have not withdrawn from participation. At this time, the participation form for the HOP QDRP is separate from the IPPS RHQDAPU program and completing a Notice of Participation form for each program is required. Agreeing to participate includes acknowledging that the data submitted to the CMS designated contractor will be submitted to CMS and may also be shared with a different CMS contractor or contractors supporting the implementation of the HOP QDRP program. For HOP QDRP decisions affecting CY 2010 payment determinations, hospitals that share the same Medicare Provider Number (MPN), now known as the CMS Certification Number (CCN) must complete a single Notice of Participation form.

Hospitals with a newly acquired CCN and hospitals that are not participating in the CY 2009 HOP QDRP must send a completed paper copy of the Notice of Participation form to the appropriate CMS designated contractor in order to participate in the CY 2010 HOP QDRP. Hospitals with a newly acquired CCN must submit a Notice of Participation form no later than 30 days after receiving their new provider CCN. Hospitals that did not participate or withdrew from participation in the CY 2009 HOP QDRP must submit a Notice of Participation form by January 31, 2009 in order to participate in the CY 2010 HOP QDRP. We proposed for CY 2011 to implement an on-line registration form and eliminate the paper form. We invited public comment on this proposed change.

Comment: Commenters supported the use of an on-line registration form.

Response: We thank these commenters for their support for our proposal to use an on-line registration form. We are finalizing the use of an on-line registration form with the concomitant elimination of the paper form for the Notice of Participation requirement for CY 2011.

Hospitals with newly acquired CCNs, as well as hospitals that are not participating in the CY 2009 HOP QDRP, that do not properly submit a

Notice of Participation form for CY 2010 as described above will be deemed as non-participatory, will not be able to submit data to the OPPS Clinical Warehouse, and will be deemed as not meeting reporting requirements under the HOP QDRP for CY 2010. Hospitals that have previously completed a Notice of Participation form and subsequently wish to terminate participation in the HOP QDRP must submit a withdrawal form. We did not receive comments on these proposed requirements.

After consideration of the public comments received and as discussed above, we are finalizing these administrative requirements as proposed.

2. Data Collection and Submission Requirements

In the CY 2009 OPPS/ASC proposed rule (73 FR 41545), we proposed that, to be eligible for the full OPPS payment update in CY 2010, hospitals must:

• Collect data required for the CY 2010 measure set that are finalized in this CY 2009 OPPS/ASC final rule with comment period and that will be published and maintained in the Specifications Manual that can be found at: *http://www.qualitynet.org.*We proposed that it will not be necessary to submit data for all eligible cases for some measures if sufficient eligible case thresholds are met. Instead, for those measures where a hospital has a sufficiently large number of cases, we proposed that the hospital will be allowed to sample cases and submit data for these sampled cases rather than submitting data from all eligible cases. We proposed that this sampling scheme will be set out in the Specifications Manual at least four months in advance of required data collection.

In addition, in order to reduce the burden on hospitals that treat a low number of patients who meet the submission requirements for a particular quality measure, we proposed that beginning with services furnished on or after January 1, 2009, hospitals that have five or fewer claims (both Medicare and non-Medicare) for any measure included in a measure topic in a quarter will not be required to submit patient level data for the entire measure topic for that quarter. However, hospitals would still be required to submit aggregate measure population and sample size counts for the applicable measure topic as part of their quarterly data submissions.

• Submit the data according to the data submission schedule that will be available on the QualityNet Web site. HOP QDRP data will continue to be submitted through the QualityNet secure Web site (*https://www.qualitynet.org*). This Web site meets or exceeds all current Health Insurance Portability and Accountability Act requirements. Submission deadlines will be 4 months after the last day of each calendar quarter for measures finalized in the CY 2009 OPPS/ASC final rule with comment period. Thus, for example, the submission deadline for data for services occurring during the first calendar quarter of 2009 (January-March 2009) will be August 1, 2009, and the submission deadline for the second calendar quarter of 2009 (April-June 2009) will be November 1, 2009.

• Submit data to the OPPS Clinical Warehouse using either the CMS Abstraction and Reporting Tool for Outpatient Department measures (CART-OPD) or the tool of a third-party vendor that meets the measure specification requirements for data transmission to QualityNet. We proposed that hospitals must submit quality data through the QualityNet Web site to the OPPS Clinical Warehouse; a CMS-designated contractor will submit OPPS Clinical Warehouse data to CMS. Under current implementation, OPPS Clinical Warehouse data are not considered QIO data. However, it is possible that the information in the OPPS Clinical Warehouse may at some point be considered QIO information. If this occurs, OPPS Clinical Warehouse data may become subject to the stringent QIO confidentiality regulations in 42 CFR Part 480.

We proposed that hospitals are to submit data under the HOP QDRP on outpatient episodes of care to which the required measures apply. For the purposes of the HOP QDRP, an outpatient episode-of-care is defined as care provided to a patient who has not been admitted as an inpatient but who is registered on the hospital's medical records as an outpatient and receives services (rather than supplies alone) directly from the hospital. Every effort will be made to assure that data elements common to both inpatient and outpatient settings are defined consistently (such as ''time of arrival'').

To be accepted by the CMS designated contractor, submissions would, at a minimum, need to be timely, complete, and accurate. Data submissions are considered to have been ''timely'' when data are submitted prior to the reporting deadline and have passed all CMS designated contractor edits. A ''complete'' submission is determined based on sampling criteria that will be published and maintained in the Specifications Manual to be found on the Web site at *http://www.qualitynet.org*, and must correspond to both the aggregate number of cases submitted by a hospital and the number of Medicare claims it submits for payment. To be considered ''accurate,'' submissions must pass validation, if applicable.

• Submit the aggregate numbers of outpatient episodes of care which are eligible for submission under the HOP QDRP. These aggregated numbers of outpatient episodes would represent the number of outpatient episodes of care in the universe of all possible cases eligible for data reporting under the HOP QDRP. We plan to use the aggregate population and sample size data to assess data submission completeness and adherence to sampling requirements for Medicare and non-Medicare patients.

Comment: One commenter asked what authority or rationale CMS had to require the submission of non-Medicare population counts. Some commenters questioned the requirement to submit aggregate Medicare population figures as CMS has this information from submitted Medicare claims. Some commenters stated that there was no demonstrable reason that aggregate population data are meaningful for quality improvement. Several commenters stated that the submitting of aggregate numbers of outpatient episodes of care is resource intensive. One commenter stated that because outpatient billing is not as standardized and structured as inpatient billing, without further field-testing to address the problem with population identification counts, unintended consequences with the reporting of incomplete and inaccurate data will result. One commenter suggested that, due to time required to recount cases with information systems limitations, a 10-percent variance be considered.

Response: Our authority for proposing that hospitals submit aggregate population data is found in section 1833(t)(17)(A) of the Act, which applies to hospitals as defined under section 1886(d)(1)(B) of the Act. That provision states that subsection (d) hospitals that do not report data required for the quality measures selected by the Secretary in the form and manner required by the Secretary will not receive the full payment rate update. We have stated that we intended to model the HOP QDRP after the RHQDAPU program for hospital inpatient services. The RHQDAPU program requires hospitals to comply with CMS/Joint Commission sampling requirements for submitting data. These requirements require hospitals to submit a random sample or a population count of their

caseloads for RHQDAPU program measures for both Medicare and non-Medicare patients. We do not currently have any patient population counts for non-Medicare patients. Because we do not have patient population counts for non-Medicare patients, we believe that this information would help us to better assess the completeness of hospital submitted HOP QDRP data for all treated patients. It is important to know how complete measurements are while considering them for quality improvement efforts or as results of quality improvement interventions. Further, the HOP QDRP measures are intended to provide the public with information on all patients treated in the outpatient hospital setting, including both Medicare and non-Medicare patients. We proposed to have hospitals report aggregate Medicare populations and sampling figures in order to assess whether hospitals are conducting appropriate sampling to what they believe their respective populations by measure to be.

However, we understand that outpatient data systems are more disparate and varied than inpatient data systems. We also realize that, in some cases, considerable effort has been required in order for a hospital to be able to determine how many patients it has who have received care meeting specifications. We are aware that there have been issues with translating HOP QDRP measure specifications to some hospital outpatient data systems. We acknowledge that there are issues with determining population counts based upon some existing measure specifications and share concerns regarding unintended consequences due to the reporting of incomplete and inaccurate information. Therefore, we are making the reporting of aggregate population figures voluntary (Medicare and non-Medicare) and not a requirement for payment decisions affecting the CY 2010 payment update. We emphasize that we are making this requirement voluntary only for data reported for CY 2009 to be used for the CY 2010 payment update. We intend to check reporting of Medicare claims in order to supply information to hospitals on their efforts to fully collect quality measure data on all eligible Medicare cases, but will not make any payment decisions affecting the CY 2010 payment update contingent on any comparisons made of CMS and population figures supplied voluntarily by hospitals.

Comment: Several commenters supported CMS' proposal to allow hospitals that have five or fewer claims (both Medicare and non-Medicare) for any measure included in a measure topic in a quarter to not be required to submit patient level data for the entire measure topic for that quarter. The commenters believed that this approach is a sensible way to reduce the reporting burden on hospitals with a very small number of cases. However, commenters believed that hospitals should always be able to voluntarily report on quality measures if they want to do so.

Response: We appreciate the commenters' support. This proposal strives to minimize the reporting burden for hospitals with small patient caseloads. We welcome voluntary data submission by hospitals with smaller than the minimum number of cases. As we discussed above, the reporting of population figures by all hospitals will be voluntary.

Comment: One commenter suggested that the minimum number of claims to exempt a hospital from reporting be raised to 10 claims per quarter because 10 is still a small sample and should not be used to determine the annual payment update, nor be publicly reported when a statistical sample size is greater than 25.

Response: We selected more than 5 cases per quarter (more than 20 cases per year) as the minimum threshold to ensure that the vast majority of hospitals with sufficient caseload would be required to submit data, while easing the burden on hospitals whose patient counts were too small to reliably predict hospital performance. We have selected a quarterly basis for the minimum threshold as data reporting requirements are on a quarterly basis. We acknowledge that there may be some hospitals that may have smaller, fluctuating case number such that there are less than five cases one quarter and more than 5 another, but believe that these hospitals will be few. We believe that hospital level performance can be reliably estimated with 20 to 30 cases reported annually, consistent with commonly used statistical sampling practice (for reference, see Wilson Van Voorhis, Carmen R. and Morgan, Betsey L. (2007) Understanding Power and Rules of Thumb for Determining Sample Sizes, Tutorials in Quantitative Methods for Psychology, volume 3(2), pages 43 to 50). We believe that the more than five cases quarterly threshold is a fair, consistent, and easily understandable requirement that would not reduce the amount of reliable data publicly reported. It is likely that the vast majority of hospitals affected by this requirement would not have sufficient annual caseload for us to publicly report their data. We also chose the more than five cases quarterly threshold to be consistent with the RHQDAPU program for reporting hospital inpatient quality measure data.

Comment: One commenter argued that, if the proposed imaging measures were adopted, these data should be submitted at the patient level, regardless of whether or not the hospital has five or fewer claims for a measure within a certain set.

Response: The proposed imaging measures are Medicare claim-based measures. Therefore, we anticipate that hospitals (regardless of the number of claims for a measure within a certain measure set) will submit claims for these services because they will want to receive Medicare payment. Because we proposed to calculate these measures using CY 2008 Medicare claims data, we would expect that most of such claims have been submitted for payment.

Comment: Some commenters that supported CMS' proposal to allow hospitals that have five or fewer claims (both Medicare and non-Medicare) for any measure included in a measure topic in a quarter to not be required to submit patient level data for the entire measure topic for that quarter believed that these hospitals should also be exempt from reporting their aggregate population numbers. The commenters believed the administrative burden of determining these numbers for outpatient encounters was so difficult that exempting hospitals due to low volume did little to reduce burden if efforts to prove small numbers were still required and suggested methods for CMS to deem hospitals as small volume, for example, based upon Medicare claims. Some of these commenters suggested the criteria should be number of cases per year rather than number of cases per quarter. Several commenters argued that these hospitals should be exempt from reporting aggregate population figures because hospitals that may never report quality data would still have to establish a mechanism to identify their patient populations every quarter.

Response: We thank these commenters for expressing their concerns regarding burden to small hospitals. As discussed above, for the CY 2010 payment update, we are not requiring the submission of aggregate population figures, either Medicare or non-Medicare, in this final rule with comment period, although hospitals may voluntarily submit such data. We may address this issue in a future rulemaking as hospital outpatient data systems and measure specifications mature and improve.

Comment: One commenter expressed the view that technical limitations of

QualityNet require further evaluation and review. The commenter also recommended that the same processes be used for both the inpatient and outpatient programs rather than creating a separate system and warehouse because the commenter believed that adding a second Web site and different timelines will have negative repercussions for the hospitals.

Response: We have made recent improvements to the infrastructure to process data submitted by hospitals, such as procuring additional bandwidth to accommodate increased data flow. We believe that the processes for the inpatient and outpatient programs are consistent, and the official information source for the two programs is a single Web site: *http://www.qualitynet.org.* There are circumstances that require operational separation of the two programs. It is necessary to have separate data collection tools for the two programs because the two programs are on separate payment cycles with corresponding data cycles. The inpatient hospital payment system operates on a fiscal year basis beginning in October and the outpatient payment system operates on a calendar year basis beginning with January. In addition, due to funding issues under initial implementation, the inpatient and outpatient data systems had to be kept separate. We will consider these comments in the future and thank the commenter for its suggestion for improving processes under the HOP–QDRP.

Comment: Some commenters expressed concerns regarding the differing submission deadlines for HOP–QDRP and RHQDAPU program data. Some commenters objected to what, in their view, was a submission timeline that is 15 days earlier than the current inpatient time line.

Response: It is necessary to separate the data submission schedules to ease the burden on the data warehouse infrastructure, preventing data delays as much as possible. The data collection timeline under initial implementation of the HOP–QDRP was set to allow as much time as possible for hospitals to comply with data reporting requirements for any decisions regarding whether or not a hospital would receive the full CY 2009 payment update. The HOP–QDRP quarterly data reporting deadline of 4 months following the last quarterly discharge date is necessary to provide CMS with more time to process the data and provide hospitals with earlier feedback about their quality measures for improvement work. Based on previous experience with the RHQDAPU program, CMS believes that this timeframe provides hospitals with sufficient time to identify and abstract the data. November 1 is the latest date that we can accept HOP–QDRP data and still compile a list of reporting hospitals to make payment decisions toward the upcoming calendar year payment update; the rest of the reporting schedule follows from this date. For the RHQDAPU program, the quarterly data reporting deadline is 4.5 months after the end of the preceding quarter (the exact dates are posted on the QualityNet Web site). The 4.5 month RHQDAPU program time lag was chosen in order to allow hospitals sufficient time to submit data to The Joint Commission before submitting data to CMS. The majority of hospitals also submit data for many RHQDAPU measures to The Joint Commission, and their data submission deadline is approximately 4 months after the end of the preceding quarter.

After consideration of the public comments received and as discussed in the above responses to those comments, we are adopting as final the proposed data collection and submission requirements with modifications. We are finalizing that hospitals that have five or fewer cases (both Medicare and non-Medicare) for any measure included in a measure topic will not be required to submit patient level data for that entire measure topic for that quarter; however, these hospitals may voluntarily submit these data. We are not requiring the submission of aggregate population figures, Medicare or non-Medicare, for data reported for CY 2009 in order to receive the full CY 2010 payment update, although hospitals may voluntarily submit these data.

3. HOP QDRP Validation Requirements

a. Data Validation Requirements for CY 2010

Validation, as discussed in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66871), is intended to provide assurance of the accuracy of the hospital abstracted data. A data validation requirement was not implemented for purposes of the CY 2009 annual payment update. In the CY 2009 OPPS/ASC proposed rule (73 FR 41546), we proposed to implement validation requirements that would apply beginning with the CY 2010 payment determinations.

Specifically, we proposed to randomly select, per year, 50 patient episodes of care that a hospital successfully submitted to the OPPS Clinical Warehouse for the relevant time period and validate those data by requesting that the hospital send the supporting medical record documentation that corresponds to each selected episode to a CMS contractor within 30 calendar days of the date of the request. The CMS contractor would then independently reabstract quality measure data elements from those records, compare the reabstracted data to the data originally submitted by the hospital, and provide feedback to each hospital on the results of the reabstraction.

We proposed to validate data reported beginning with January 2009 episodes of care to be used for CY 2010 payment determinations.

Unlike the IPPS RHQDAPU program, where we validate data for each participating hospital each quarter (for a total of 20 cases per year), we proposed to not validate data submitted by every hospital participating in the HOP QDRP every year. Instead, we proposed to validate data from 800 randomly selected hospitals (approximately 20 percent of all participating HOP QDRP hospitals) each year. In other words, only 800 participating HOP QDRP hospitals will have their data validated each year. However, we noted that, because the 800 hospitals will be selected randomly, every HOP QDRP-participating hospital will be eligible each year for validation selection. We believe that the approach of validating a larger number of cases per hospital will produce a more reliable estimate of whether that hospital's data has been submitted accurately and will provide more reliable estimates of measure level data.

For calculation of a hospital's validation score, we proposed that percent agreement for each calculated clinical measure rather than for the individual data elements would be calculated. Due to the contingent nature of data elements comprising quality measures, a mismatch of a few data elements can result in the elimination of subsequent data elements from the data abstraction process. Thus, while the quality measure calculation can match, a low validation score based upon level of data element match can occur. Calculating match rates at the quality measure level obviates the issue of low validation scores at the data element level and also validates the data as they are publicly reported, that is, at the measure level.

To receive the full OPPS payment rate update, we proposed that hospitals must pass our validation requirement of a minimum of 80 percent reliability, based upon our validation process, for the designated time periods. In addition, we proposed that an upper bound of 95

percent confidence interval to measure accuracy would be used.

The methodology we proposed to use for calculating the confidence intervals under the HOP QDRP is the methodology currently utilized for the IPPS RHQDAPU program. We anticipate estimating the percent reliability based upon a review of submitted documentation and then calculating the upper 95 percent confidence limit for that estimate. If that upper limit is above the required 80 percent reliability threshold, we proposed to consider the hospital's data ''validated'' for payment update purposes for CY 2010. We proposed to use the design specific estimate of the variance for the confidence interval calculation, which, in this case, is a single stage cluster sample, with unequal cluster sizes. (For reference, see Cochran, William G. (1977) Sampling Techniques, John Wiley & Sons, New York, chapter 3, section 3.12.) Each sampled medical record is considered as a cluster for variance estimation purposes, as documentation and abstraction errors are believed to be clustered within specific medical records.

We solicited comment on this validation methodology, and stated our belief that this approach is a reliable process that is suitable for the HOP QDRP. We also noted that we are considering whether to propose a similar approach for the RHQDAPU program in future years. We also stated that CMS continues to study approaches to improve its quality data reporting program, and aligning the RHQDAPU program and HOP QDRP validation approaches in the future is one possible area of improvement.

After careful consideration of the following comments received, and as discussed more fully below, we are adopting a voluntary test validation program, the results of which will not affect the CY 2010 payment update for any hospital. Under this program, we intend to conduct a test validation using a random sample of approximately 800 hospitals, sampling 50 or less patient episodes of care per hospital from data submitted to the OPPS Clinical Warehouse for the relevant time period. Participation in the test validation for CY 2010 is voluntary for hospitals, and CMS encourages hospital participation to learn about their data abstraction accuracy.

Comment: Some commenters supported the proposed validation methodology contingent on the incorporation of additional conditions. Some commenters proposed that a test validation be done for each hospital, either for the first year of validation or prior to the first year using a smaller sample, such as 5 patient episodes of care per hospital, and done with sufficient time so that hospitals could learn from any mistakes. One commenter suggested that this ''test'' validation be done using second quarter 2008 data. Other commenters recommended that the first validation done be considered a ''test run,'' tying validation to payment determinations in CY 2011.

Response: We thank the commenters for these suggestions. We acknowledge the need for hospitals to gain experience with any validation process for HOP QDRP data collection. After consideration of the public comments received, we are adopting a voluntary test validation program, the results of which will not affect the CY 2010 payment update for any hospital. Under this program, we intend to conduct a test validation using a random sample of approximately 800 hospitals, sampling 50 or less patient episodes of care per hospital from data submitted to the OPPS Clinical Warehouse for the relevant time period. We intend to utilize data beginning with January 1, 2009 patient episodes of care. We will validate those data by requesting that the hospital voluntarily send the supporting medical record documentation that corresponds to each selected episode-of-care to a CMS contractor within 30 calendar days of the date of the request. The CMS contractor will independently reabstract quality measure data elements from those records, compare the reabstracted data to the data originally submitted by the hospital and provide feedback to each sampled hospital on the results of the reabstraction. We will utilize a measure match approach. We intend to calculate confidence intervals for data validated for feedback purposed, but will not require the passing of any validation threshold for purposes of the CY 2010 update. We intend to provide additional feedback to all hospitals participating in the HOP QDRP in a manner that does not identify individual hospitals or hospital information in any way. Hospitals are encouraged to participate in any validation efforts undertaken so that the information gleaned can be used toward improving their and other hospitals' data abstraction and collection processes. We plan to propose a validation program for the CY 2011 payment update in our CY 2010 OPPS/ASC proposed rule.

Comment: Many commenters supported the proposed validation process and agreed with the approach of validating the measure rates rather than the data element rate. The commenters cited various reasons for supporting the proposed validation process, stating that it was a reasonable approach to ensure accuracy, would provide a more accurate picture of performance, and was an improvement of the inpatient validation process. One commenter agreed with the proposed validation approach using a sample of hospitals as long as lessons learned are shared with hospitals in a timely manner. Some commenters expressed appreciation for providing time for hospitals to implement quality measures and work on their performance data before validation and public reporting occur.

Some commenters requested more detail with regard to the selection process for the sampled hospitals, the notification process, or the actual validation process. Some commenters urged that the selection process be totally random and unbiased. Another commenter stated that hospitals should also continue to validate their own data for overall accuracy and for abstractor accuracy because the integrity of the data is critical. Several commenters recommended that the timeframe to provide the information for validation be established as 60 days rather than 30 days to allow additional time to retrieve, duplicate, and submit records. A few commenters believed that hospitals selected for validation in one year be excluded from the validation pool for some specified time, for example, 1 to 2 years, or should be selected no more than twice in 5 years based upon a criteria, such as there being no identified errors or passing at the 80-percent level with those not meeting the criteria being subject to potential selection again the following year. One commenter believed that, for there to be no bias in the selection methodology, statistically speaking, a hospital should not be selected 2 years in a row. Some commenters asked that CMS indicate how the proposed validation approach would be applied for measures calculated from claims data. Many commenters recommended using a similar validation approach for the RHDQAPU program. Some commenters recommended that the proposed HOP QDRP approach be used for all Medicare quality measure data reporting programs, including the PQRI.

One commenter did not agree with validation of a larger number of cases, though all hospitals are eligible. The commenter was concerned that if not all hospitals are validated on a regular basis, this could lead to lower standards, that 50 charts would unduly burden smaller hospitals, and supported the first alternative approach for

validation requiring 20 charts per year for each hospital. Commenters expressed concerns about current factors that could adversely affect validation. One concern was that CPT and E&M codes were being required to be part of documentation required for submission for validation. Another concern was that the criteria for inclusion do not take into account cancelled procedures, which the commenters indicated was an issue because HOP QDRP abstraction does not allow for the collection of CPT coding modifiers, resulting in these records failing the measure criteria. Some commenters expressed concern that hospitals risk the potential to appear worse at the quality measure related to prophylactic antibiotic prior to incision than actually exists and would lose their full payment update. Commenters expressed concerns regarding the 80-percent reliability threshold from chart validation. Some commenters stated that the 80 percent threshold was too stringent, urging a lower level set. Some of these commenters stated that statistical analysis of collected data should be done to assess if 80 percent is an objective number for passing the validation process. Other commenters asked that CMS include more information about the methodology and how it would be applied in this final rule with comment period.

Response: We thank those commenters that supported our proposed validation method. As discussed above, we are implementing a voluntary test validation program in CY 2009, the results of which will not affect the CY 2010 payment update for any hospital. We will consider all of the commenters' suggestions and concerns when we propose a HOP QDRP validation program for the CY 2011 payment update in our CY 2010 OPPS/ASC proposed rule and when we propose RHQDAPU program validation requirements in the FY 2010 IPPS proposed rule.

After consideration of the public comments received and as discussed above, we are not finalizing the proposed validation method to be used toward CY 2010 payment decisions. We acknowledge the need for hospitals to gain experience with any validation process for HOP QDRP data collection. In light of the public comments received, we are voluntary test validation program in CY 2009, the results of which will not affect the CY 2010 payment update for any hospital. Under this program, we intend to conduct a test validation using a sample of approximately 800 hospitals, sampling 50 or less patient episodes of care per hospital from data submitted to the OPPS Clinical Warehouse for the relevant time period. We intend to utilize data beginning with January 1, 2009 patient episodes of care. We will validate those data by requesting that the hospital voluntarily send the supporting medical record documentation that corresponds to each selected episode-of-care to a CMS contractor within 30 calendar days of the date of the request. The CMS contractor will independently reabstract quality measure data elements from those records, compare the reabstracted data to the data originally submitted by the hospital and provide feedback to each sampled hospital on the results of the reabstraction. We will utilize a measure match approach. We will not require the passing of any validation threshold for purposes of the CY 2010 update, but will calculate these values as part of feedback supplied to hospitals which participate in validation efforts. We intend to provide feedback to all hospitals participating in the HOP QDRP in a manner that does not identify individual hospitals or hospital information in any way. Hospitals are encouraged to participate in any validation efforts undertaken so that the information gleaned can be used toward improving their and other hospitals' data abstraction and collection processes. We plan to propose a validation program for the CY 2011 payment update in our CY 2010 OPPS/ASC proposed rule.

b. Alternative Data Validation Approaches for CY 2011

In the CY 2009 OPPS/ASC proposed rule (73 FR 41546), we also solicited comments on three alternative validation methodologies. We are considering whether we could apply one of these methodologies to validate data as part of our CY 2011 payment determination. The first alternative approach would be to validate data from all participating HOP QDRP hospitals, as is currently done under the RHQDAPU program. Under this approach, data validation would be done on a random sample of 5 records per quarter (20 records per year) per hospital.

A second alternative approach would be to select targeted hospitals based on criteria designed to measure whether the data being reported by them raises a concern regarding their accuracy. We welcomed suggestions for criteria to be used for targeting hospitals for validation. Either percent agreement at the clinical measure level or the data element level (currently used for the RHQDAPU program) could be calculated for the validation score. Because few data have been collected under the HOP QDRP at this point, we are considering this approach for possible use in future years.

A third alternative approach would involve some combination of the two approaches discussed above.

Comment: Many commenters disagreed with validating data from all participating HOP QDRP hospitals following the process currently used under the RHQDAPU program. The commenters stated that a measure match rate approach as proposed was preferable.

Response: We thank the commenters for expressing their views.

Comment: Some commenters supported the second and third alternative methods proposed as also effective approaches for data validation and suggested criteria for targeting. In support of the third alternative method, commenters stated that this would be an efficient use of both hospital and CMS resources and would assure that all participating HOP QDRP hospital data are valid. Other commenters expressed opposition to use of criteria to target hospitals for validation or the inability to comment due to lack of detail.

Response: We thank these commenters for their views on the use of criteria for targeting hospitals for validation purposes. As we stated, these additional validation approaches were for consideration in future years and that we did not yet have criteria for targeting. We will consider the suggested criteria in future validation planning in future rulemaking. As discussed in section 3(a) of the HOP–QDRP portion of this final rule, we will be conducting a test validation program this year and the results of the validation will not affect the CY 2010 annual payment update.

Comment: One commenter stated that some vendors provide data validation services to hospitals and suggested that CMS entertain a formal relationship with such entities rather than being solely responsible for national data validation.

Response: We thank the commenter for this information.

We appreciate all the public comments received regarding the alternate validation approaches proposed and will take them into account as we develop validation proposals for CY 2011.

F. Publication of HOP QDRP Data

Section 1833(t)(17)(E) of the Act requires that the Secretary establish procedures to make data collected under this program available to the public and

to report quality measures of process, structure, outcome, patients' perspectives of care, efficiency, and costs of care that relate to services furnished in outpatient settings in hospitals on the CMS Web site. We intend to make the information collected under the HOP QDRP public in CY 2010 by posting it on the CMS Web site. Participating hospitals will be granted the opportunity to review this information as we have recorded it before the information is published.

CMS requires hospitals to sign and submit a Notice of Participation form in order to participate in the HOP QDRP. Hospitals signing this form agree that they will allow CMS to publicly report the quality measures as required by the HOP QDRP.

All hospitals have a unique CCN, whereas a single hospital may have multiple National Provider Identifiers (NPI), another CMS identifier. In the CY 2009 OPPS/ASC proposed rule, we proposed for CY 2010 that hospitals sharing the same CCN must combine data collection and submission across their multiple campuses for all clinical measures for public reporting purposes (73 FR 41546). We also proposed to publish quality data by CCN under the HOP QDRP; however, we will note on our Web site where the publicly reported measures combine results from two or more hospitals. This approach is consistent with the approach taken under the IPPS RHQDAPU program.

Comment: Several commenters agreed with the proposal that hospitals with the same CCN have their data publicly reported as one facility (with a notation when data from more than one hospital is combined). Some of these commenters supported the proposal that they believed that the proposal would add important alignment of clinical reporting with financial reporting.

Response: We thank the commenters for their support of our proposal to report data by CCN. We proposed to report data by CCN for several reasons. First, the unit affected by the OPPS annual payment update subject to meeting the requirements under the HOP QDRP is handled by CCN; it is not separated by NPI or other individual facility identifier. Second, hospitals meet survey and certification requirements by CCN, again not by any other individual facility identifier. Third, the additional Medicare identifier for facilities, the NPI, is not a uniform identifier; the NPI can refer to, for example, an individual clinic, a provider group, or a hospital. Fourth, as stated by several commenters, reporting by CCN would align the reporting of quality of care data with financial data. For these reasons, at this time, we consider the CCN as the payment and hospital certification identifier representative of entire hospital entity to be the appropriate identifier for public reporting.

Comment: A few commenters urged CMS to identify a means to report each facility's performance in order to provide accurate information to consumers trying to assess the quality of a given hospital.

Response: For reasons discussed above, we believe that the CCN is currently the most appropriate identifier for public reporting. However, we are aware that this aspect of shared CCNs is a serious and complex problem and we are continuing to work toward a resolution of the problem that accommodates both consumer and hospital payment needs. We understand that there is not always a one-to-one relationship between the NPI and the CCN upon which the HOP QDRP is based. At this time, we are trying to assess the extent of this problem. In terms of determining eligibility of an HOPD's full annual payment update, we have addressed this by maintaining an NPI to CCN crosswalk. For CY 2010 public reporting, data would be publicly reported on the CMS Web site by CCN, but we intend to indicate instances where data from two or more hospitals are combined.

Comment: Numerous commenters expressed support for public reporting of the hospital outpatient measures, and recommended that the hospital outpatient measures be added to the existing Hospital Compare tool. The commenters also recommended evaluation of the HOP QDRP data and consumer testing before any information is released publicly to ensure that information provided to consumers and physicians is not misleading. One commenter expressed concern over the possibility of less than 12 months of data being used for public reporting, and recommended that all measures have a minimum of 12 months implementation before they are eligible for inclusion in public reporting and the validation process affecting hospitals' annual payment updates.

Response: We will consider using Hospital Compare for the public reporting of HOPD data. However, no decision has been made at this time. As part of our measure maintenance contract, we continue to evaluate the measure specifications and measures data. We conduct consumer testing on a regular basis to inform decisions about Web site display, language and navigation. We will implement public reporting for outpatient measures in CY 2010, but have not made any decisions about what quarters will be reported when they are reported. In the case of our other public reporting timeframes, data reported in March 2010 are to be based upon 3Q08 through 2Q09, and data reported in December 2010 are to be based upon 2Q09 through 1Q10. However, we may also choose to report less than a full 12 months when we begin public reporting under HOP QDRP.

Comment: One commenter believed that, for providers and consumers, the information presented on Hospital Compare is confusing, and it is difficult to decipher which information is representative of the total population or only the Medicare population. The commenter stated that Medicare claims-based information under the HOP QDRP will continue to add to the confusion of what is representative of the total population served by the hospital versus which is only representative of the Medicare population.

Response: We understand that this is a problem and would prefer to have data that represent the entire population, that is, all-payer, for all measures. Unfortunately, this is not possible at this time. We have access only to Medicare administrative (claims and enrollment) data that are used for the outcome measures (30-day risk-standardized mortality and newly adopted readmission rates) reported on Hospital Compare. We are interested in obtaining all-payer administrative data, but there are infrastructure and other challenges. Until we have access to all-payer administrative data, we make every effort to label the data sources on Hospital Compare so that users understand that the underlying populations differ for some measures.

After consideration of the public comments received and as noted in the above responses, in this rule with comment period, we are finalizing our proposal that hospitals sharing the same CCN must combine data collection and submission across their multiple campuses for all HOP QDRP measures. We also are finalizing our proposal to publicly report HOP QDRP measures by CCN with notation on the Web site where the publicly reported measures combine results from two or more hospitals. Participating hospitals will be granted the opportunity to review this information as we have recorded it before the information is published. We intend to publicly report on our Web site hospital outpatient measures data in CY 2010 but have not made a decision regarding what quarters will be reported or when these data will be reported. In addition, we will continue to explore

the use of Hospital Compare and other locations for the public reporting of HOPD data. We anticipate communicating our decision about these reporting issues in the CY 2010 OPPS/ASC proposed rule.

G. HOP QDRP Reconsideration and Appeals Procedures

When the IPPS RHQDAPU program was initially implemented, it did not include a reconsideration submission process for hospitals. Subsequently, we received many requests for reconsideration of those payment decisions and, as a result, established a process by which participating hospitals would submit requests for reconsideration. We anticipated similar concerns with the HOP QDRP and, therefore, in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66875) we stated our intent to implement for the HOP QDRP a reconsideration process modeled after the reconsideration process we implemented for the IPPS RHQDAPU program. In the CY 2009 OPPS/ASC proposed rule (73 FR 41547), we proposed a mandatory reconsideration and appeals process that would apply to the CY 2010 payment decisions. Under our proposal, in order to receive reconsideration of a CY 2010 payment decision, the hospitals must—

(1) Submit to CMS, via QualityNet, a Reconsideration Request form that will be made available on the QualityNet Web site. This form shall contain the following information:

- Hospital Medicare ID number known as the CCN.
- Hospital Name.
- CMS-identified reason for failure (as provided in any CMS notification of failure to the hospital).
- Hospital basis for requesting reconsideration. This must identify the hospital's specific reason(s) for believing it met the HOP QDRP program requirements and should receive a full annual payment update.
- CEO contact information, including name, e-mail address, telephone number, and mailing address (must include physical address, not just a post office box).
- A copy of all material that the hospital submitted to CMS in order to receive the full payment update for the year that is the subject of the reconsideration request. Such material would include, but not be limited to, the applicable Notice of Participation form, quality measure data that the hospital submitted, and data that the hospital submitted in response to a validation request.
- QualityNet System Administrator contact information, including name, e-mail address, telephone number, and mailing address (must include physical address, not just the post office box).
- The request must be signed by the hospital's CEO.

(2) Following receipt of a request for reconsideration, CMS will—

- Provide an e-mail acknowledgement, using the contact information provided in the reconsideration request, to the CEO and the QualityNet Administrator notifying them that the hospital's request has been received.
- Provide a formal response to the hospital CEO, using the contact information provided in the reconsideration request, notifying the hospital of the outcome of the reconsideration process.

If a hospital is dissatisfied with the result of a HOP QDRP reconsideration decision, the hospital may file a claim under 42 CFR Part 405, Subpart R (PRRB appeal).

Comment: Several commenters supported hospital appeals and reconsideration processes and urged CMS to have these processes in place at the same time as the validation process and that strict timelines be defined so that the public has access to information as quickly as possible.

Response: We thank these commenters for their support of hospital appeals and reconsideration processes. We plan to complete any CY 2009 reconsideration reviews and communicate the results of these determinations within 60 to 90 days following the date of the request for reconsideration. If a hospital is dissatisfied with the result of this reconsideration, the hospital may file a claim under the PRRB process with its associated timelines. As discussed previously, we will be conducting a voluntary test validation program using data from services beginning January 1, 2009; there is no validation requirement to be met to be considered toward payment decisions affecting CY 2010 payment. The results of this test validation program will not affect the CY 2010 payment update for any hospital.

Comment: One commenter stated that the PRRB process under the RHQDAPU program upon which the proposed reconsideration and appeals process for the HOP QDRP is modeled has been unduly long and hospitals do not learn of CMS' decision on reconsideration requests in a timely manner. The commenter urged CMS to revise the process to produce more timely decisions. Another commenter recommended that an appeal process be at least 90 days due to the time involved to investigate and respond.

Response: We interpret the comment to refer to the proposed HOP–QDRP reconsideration process. We believe that there are competing interests of timeliness and completeness in any reconsideration and appeals process. We agree that hospitals need to know the results of any reconsideration and appeals process as quickly as possible. As stated above, we plan to complete the reconsideration process within 60 to 90 days following the date of the request for reconsideration. Based on previous experience with the RHQDAPU reconsideration process, we believe that this timeframe is necessary to adequately review the estimated volume of HOP–QDRP reconsideration cases. If a hospital is dissatisfied with the result of this reconsideration, the hospital may file a claim under the PRRB process, with its associated timelines (see 42 CFR Part 405, Subpart R (PRRB appeal)).

After consideration of the public comments received, we are adopting as final the HOP QDRP reconsideration and appeals process as proposed. We believe that any CY 2009 reconsideration review will require 60 to 90 days for completion based upon experience with the RHQDAPU program and we plan to communicate all determinations within 60 to 90 days following the request for reconsideration.

H. Reporting of ASC Quality Data

As discussed above, section 109(b) of the MIEA–TRHCA amended section 1833(i) of the Act by redesignating clause (iv) as clause (v) and adding sections 1833(i)(2)(D)(iv) and1833(i)(7) to the Act. These amendments authorize the Secretary to require ASCs to submit data on quality measures and to reduce the annual payment update in a year by 2.0 percentage points for ASCs that fail to do so. These provisions permit, but do not require, the Secretary to require ASCs to submit such data and to reduce any annual increase for noncompliant ASCs.

In the CY 2008 OPPS/ASC final rule with comment period (72 FR 66875), we indicated that we intended to implement the provisions of section 109(b) of the MIEA–TRHCA in a future rulemaking. While we believe that promoting high quality care in the ASC setting through quality reporting is highly desirable and fully in line with our efforts under other payment systems, we believed that the transition to the revised payment system in CY 2008 posed such a significant challenge to ASCs that it would be most

appropriate to allow some experience with the revised payment system before introducing other new requirements. We believed that implementation of quality reporting in CY 2008 would require systems changes and other accommodations by ASCs, facilities which do not have prior experience with quality reporting as hospitals already have for inpatient quality measures, at a time when they are implementing a significantly revised payment system. We believed that our CY 2008 decision to implement quality reporting for HOPDs prior to establishing quality reporting for ASCs would allow time for ASCs to adjust to the changes in payment and case-mix that are anticipated under the revised payment system. We would also gain experience with quality measurement in the ambulatory setting in order to identify the most appropriate measures for quality reporting in ASCs prior to the introduction of the requirement in ASCs.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41547), we noted that we continue to believe that promoting high quality care in the ASC setting through quality reporting is highly desirable and fully in line with our efforts under other payment systems. However, we continue to have the concerns outlined above for CY 2009 and, therefore, we intend to implement the provisions of section 109(b) of the MIEA–TRHCA in a future rulemaking. We invited public comment on this deferral of quality data reporting for ASCs and invited suggestions for quality measures geared toward the services provided by ASCs. We also sought comment on potential reporting mechanisms for ASC quality data, including electronic submission of these data.

Comment: Many commenters agreed with the CMS proposal to defer quality data reporting from ASCs until a later rulemaking. Some of the commenters agreed with CMS' assessment regarding the need to complete implementation of the revised ASC payment system before implementing quality measure data reporting.

Response: We thank these commenters for their support of our decision to defer quality data reporting from ASCs until a later rulemaking.

Comment: One commenter disagreed with CMS' assessment regarding the revised ASC payment system posing ongoing challenges to such a magnitude as to prevent the reporting of quality of care data in 2009.

Response: We thank the commenter for this view, but we still believe that we should not increase burdens on ASCs at this time with a new data reporting system while implementing a revised payment system.

Comment: Several commenters supported measuring the quality of services provided in the ASC setting. Some commenters urged the implementation of a quality reporting system for ASCs as soon as possible. Some commenters stated that such reporting with similar measures would allow the same level of transparency for both hospitals and ASCs. Some commenters suggested that reporting begin in CY 2009 on the five NQF-endorsed quality measures that were developed by the ASC Quality Collaboration. Some commenters stated that selected measures should include an electronic data submission mechanism. Several commenters expressed concerns of the potential data collection burden for ASCs; some of these commenters suggested the administrative claims approach to be the most feasible for ASCs to submit quality of care data. One commenter recommended that ASCs not be required to report the same quality data as that as HOPDs due to the nature of their services.

Response: We will consider these comments and suggestions for future implementation of ASC quality measure data.

Comment: One commenter suggested that a mandatory reconsideration and appeals process provided that data under reconsideration or appeal not be publicly displayed until resolution of such reconsideration or appeal for ASC reporting and that an appropriate method of applying the required reduction to payments for ASCs that do not meet requirements be devised.

Response: We have not proposed any reconsideration and appeals process for ASC quality measure reporting. However, we appreciate these comments and suggestions for future implementation of a reconsideration and appeals process for ASC quality measure data reporting and will consider them for future implementation.

After consideration of the public comments received, we continue to believe that promoting high quality care in the ASC setting through quality reporting is highly desirable and is fully in line with our efforts under other payment systems. We intend to implement quality measures in the ASC setting in a future rulemaking.

I. FY 2010 IPPS Quality Measures Under the RHQDAPU Program

In the FY 2009 IPPS proposed rule (73 FR 23651), we noted that, to the extent that the proposed quality measures for FY 2010 under the RHQDAPU program had not already been endorsed by a consensus building entity such as the NQF, we anticipated that they would be endorsed prior to the time that we issued the FY 2009 IPPS final rule. We stated that we intended to finalize the FY 2010 RHQDAPU program measure set for the FY 2010 payment determination in the FY 2009 IPPS final rule, contingent upon the endorsement status of the proposed measures. However, we stated that, if a measure had not received NQF endorsement by the time we issued the FY 2009 IPPS final rule, we intended to finalize that measure for the RHQDAPU program measure set in this CY 2009 OPPS/ASC final rule with comment period if the measure received endorsement prior to the time we issued this CY 2009 OPPS/ASC final rule with comment period (73 FR 23651). We previously have finalized some measures in this manner when endorsement of a measure is expected by the publication date of an upcoming rule (72 FR 66876). We requested public comment on these measures in the FY 2009 IPPS proposed rule and received comments on these measures during the FY 2009 IPPS proposed rule public comment period. We responded to these comments in the FY 2009 IPPS final rule (73 FR 48606).

In the FY 2009 IPPS final rule (73 FR 48611), we set out, as listed below, two measures which had not yet received NQF endorsement, and stated that we intended to adopt for the FY 2010 RHQDAPU program measure set in this CY 2009 OPPS/ASC final rule with comment period if the measures receive endorsement from a national consensus-based entity such as NQF:

PROPOSED QUALITY MEASURES TO BE FINALIZED IN THE CY 2009 OPPS/ASC FINAL RULE WITH COMMENT PERIOD

[Contingent on endorsement by national consensus-building entity]

Readmission Measures (Medicare Patients)

- AMI 30–Day Risk Standardized Readmission Measure (Medicare patients).
- Pneumonia (PN) 30–Day Risk Standardized Readmission Measure (Medicare patients).

NQF has endorsed the two measures listed above and we are finalizing the Risk-Standardized Readmission measures (Medicare patients) for AMI and Pneumonia to be included in the CY 2010 RHQDAPU program measure set.

XVII. Healthcare-Associated Conditions

A. Background

As noted in its landmark 1999 report ''To Err is Human: Building a Safer Health System,'' the Institute of Medicine found that medical errors are a leading cause of morbidity and mortality in the United States. Total national costs of these errors due to lost productivity, disability, and health care costs were estimated at $17 billion to $29 billion.[2] As one approach to combating healthcare-associated conditions, in 2005, Congress authorized CMS to adjust Medicare IPPS hospital payments to encourage the prevention of these conditions. Section 1886(d)(4)(D) of the Act (as added by section 5001(c) of the Deficit Reduction Act (DRA) of 2005, Public Law 109–171) required the Secretary to select by October 1, 2007, at least two conditions that are: (1) High cost, high volume, or both; (2) assigned to a higher paying DRG when present as a secondary diagnosis; and (3) could reasonably have been prevented through the application of evidence-based guidelines. CMS has titled this initiative Hospital-Acquired Conditions (HAC) and Present on Admission (POA) Indicator Reporting. Beginning October 1, 2008, Medicare cannot assign an inpatient discharge that includes only the selected conditions to a higher-paying MS–DRG unless these conditions were present on admission. Beginning October 1, 2007, CMS required hospitals to begin submitting information on Medicare inpatient hospital claims specifying whether diagnoses were present on admission. Through FY 2008 and FY 2009 IPPS rulemaking, CMS selected 10 categories of hospital-acquired conditions (72 FR 47202 through 47218 and 73 FR 23547 through 23562).

The preventable hospital-acquired conditions payment provision at section 1886(d)(4)(D) of the Act is part of an array of Medicare value-based purchasing (VBP) tools that CMS is using to promote increased quality and efficiency of care. These tools include measuring performance, using payment incentives, publicly reporting performance results, applying national and local coverage policy decisions, enforcing conditions of participation, and providing direct support for providers through QIO activities. CMS' application of VBP tools through various initiatives is transforming Medicare from a passive payer to an active purchaser of higher-value health care services. CMS is applying these strategies across the continuum of care for Medicare beneficiaries.

B. Expanding the Principles of the IPPS Hospital-Acquired Conditions Payment Provision to the OPPS

As discussed in the CY 2009 OPPS/ASC proposed rule (73 FR 741548), the principle of Medicare not paying more for the preventable hospital-acquired conditions during inpatient stays paid under the IPPS could be applied more broadly to other Medicare payment systems for conditions that occur or result from health care delivered in other settings. Other potential settings of care include HOPDs, ASCs, SNFs, home health care, end-stage renal disease (ESRD) facilities, and physician practices; therefore, we will refer to conditions that occur in settings other than the inpatient hospital setting as ''healthcare-associated conditions'' and continue to refer to those that occur in the inpatient setting as ''hospital-acquired conditions.'' Implementation of this concept would be different for each setting, as each Medicare payment system is different. In addition, selected conditions must be reasonably preventable through the application of evidence-based guidelines and this might vary for candidate conditions across the various care settings. However, CMS is committed to aligning incentives across settings of care for all of CMS' VBP initiatives, including the hospital-acquired conditions payment provision.

The risks of preventable medical errors leading to the occurrence of healthcare-associated conditions are likely to be high in the outpatient setting, given the large number of encounters and exposures that occur in these settings. Approximately 530,000 preventable drug-related injuries are estimated to occur each year among Medicare beneficiaries in outpatient clinics.[3] These statistics clearly point to the significant magnitude of the problem of healthcare-associated conditions in outpatient settings. Recent trends have shown a shift in services from the inpatient setting to the HOPD, and we expect the occurrence of healthcare-associated conditions stemming from outpatient care to grow directly as a result of this shift in sites of service.

For these reasons, we believe the HOPD, where a broad array of services covered and paid under the OPPS are provided, could be another setting for Medicare to extend the concept of not paying more for preventable healthcare-associated conditions that occur as a result of care provided during an encounter. Hospitals provide a range of services under the OPPS that may overlap or precede the inpatient activities of the hospital, including many surgical procedures and diagnostic tests that are commonly performed on both hospital inpatients and outpatients. Similarly, individuals who are eventually admitted as hospital inpatients often initiate their hospital encounter in the HOPD, where they receive clinic or emergency department visits or observation care that precede their inpatient hospital admission. In addition, like the IPPS, the OPPS is also subject to the ''pay-for-reporting'' provision that affects the hospital annual payment update, by the authority of section 1833(t)(17) of the Act (as amended by section 109(a) of the MIEA–TRHCA). Under this authority, hospitals report quality data for specified performance measures related to hospital outpatient services under the HOP QDRP. Hospitals that fail to meet the reporting requirements established by CMS for the payment update year receive a reduced payment update that

[2] Institute of Medicine: To Err Is Human: Building a Safer Health System, November 1999. Available at: *http://www.iom.edu/Object.File/Master/4/117/ToErr-8pager.pdf.*

[3] Asplen, P., Wolcott, J., Bootman, J.L., Cronenwett, L.R. (editors): Preventing Medication Errors: Quality Chasm Series, The National Academy Press, 2007. Available at: *http://www.nap.edu/catalog.php?record_id=11623.*

is applicable to OPPS payments for most services furnished by hospitals in outpatient settings in the succeeding year. The HOP QDRP is further discussed in section XVI. of this final rule with comment period.

As noted in the CY 2009 OPPS/ASC proposed rule (73 FR 41548), we did not propose new Medicare policy in this discussion of healthcare-associated conditions as they relate to the OPPS. Instead, we solicited public comments on options and considerations, including statutory authority, related to extending the IPPS hospital-acquired conditions payment provision for hospitals to the OPPS. As indicated in the proposed rule, we understand that there would be challenges in expanding the IPPS provision to other settings paid under different Medicare payment systems, and we specifically invited public comments that present ideas and models for extending the principle behind the IPPS provision to the OPPS. To stimulate reflection and creativity, we presented discussion in the following areas:

- Criteria for possible candidate OPPS conditions
- Collaboration process
- Potential OPPS healthcare-associated conditions
- OPPS infrastructure and payment for encounters resulting in healthcare-associated conditions

1. Criteria for Possible Candidate OPPS Conditions

We have applied the following statutory criteria to the analysis of candidate inpatient conditions for the IPPS hospital-acquired conditions payment provision:

- Cost or Volume—Medicare data must support that the selected inpatient conditions are high cost, high volume, or both.
- Complicating Conditions (CC) or Major Complication Conditions (MCC)—Selected inpatient conditions must be represented by ICD–9–CM diagnosis codes that clearly identify the condition, are designated as a CC or an MCC, and result in the assignment of the case to an MS–DRG that has a higher payment when the code is reported as a secondary diagnosis. That is, selected inpatient conditions must be a CC or an MCC that would, in the absence of this provision, result in assignment to a higher paying MS–DRG.
- Evidence-Based Guidelines—Selected inpatient conditions must be reasonably preventable through the application of evidence-based guidelines. By reviewing guidelines developed by professional organizations, academic institutions, and other entities such as the Healthcare Infection Control Practices Advisory Committee (HICPAC), we evaluated whether guidelines are available that hospitals should follow to prevent the condition from occurring in the hospital.
- Reasonably Preventable—Selected inpatient conditions must be reasonably preventable through the application of evidence-based guidelines.

In the CY 2009 OPPS/ASC proposed rule (73 FR 41549), we specifically sought public comment on the applicability of these criteria to the selection of candidate healthcare-associated conditions for the OPPS. We indicated in the proposed rule that we were specifically interested in public comment on the reasonably preventable criterion in the HOPD setting. As we explained in that rule, there are significant infrastructure differences between the IPPS and the OPPS, as discussed further in section XVII.B.4. of this final rule with comment period. Thus, in the proposed rule, we expressed interest in receiving public comments generally and specifically those that would help answer the following questions:

- Are there examples within the context of the reporting of ICD–9–CM codes for diagnoses and HCPCS codes for services on OPPS claims that could be used to identify where a higher payment for a hospital outpatient encounter would result from a healthcare-associated condition?
- Are there examples of evidence-based guidelines related to the prevention of high volume or high cost conditions, or both, that are sufficiently rigorous to permit selection of healthcare-associated conditions that could reasonably have been prevented in the HOPD setting?
- What other criteria should be considered in the selection of healthcare-associated conditions for the OPPS?

2. Collaboration Process

CMS has worked with public health and infectious disease experts from the Centers for Disease Control and Prevention (CDC) to select hospital-acquired conditions, including infections, that meet the statutory criteria under section 1886(d)(4)(D) of the Act for application in the hospital inpatient setting. CMS and CDC have also collaborated to develop the process for submission of a present on admission (POA) indicator on the inpatient claim for each diagnosis. We would expect to continue our collaboration with CDC to examine the relevance and applicability of a POA indicator in the HOPD setting, and also to utilize its expertise in chronic diseases in the selection of candidate healthcare-associated conditions for the OPPS. In addition, we would expect to seek collaboration with the Agency for Healthcare Research and Quality (AHRQ) to utilize its expertise in patient safety. We would also expect to seek collaboration with other Federal agencies and with medical specialty societies. In the CY 2009 OPPS/ASC proposed rule, we specifically solicited public comment regarding a collaborative process for the identification of candidate healthcare-associated conditions for hospital outpatient services and a mechanism for public input from stakeholders.

3. Potential OPPS Healthcare-Associated Conditions

The FY 2008 IPPS final rule (72 FR 47202 through 47218) and the FY 2009 IPPS final rule with comment period (73 FR 48471 through 48491) provided a detailed analysis supporting the selection of the hospital-acquired conditions. In the CY 2009 OPPS/ASC proposed rule (73 FR 41550), we solicited public comments on the following conditions that have been selected as inpatient hospital-acquired conditions:

- Object left in during surgery;
- Air embolism;
- Blood incompatibility; and
- Falls and trauma fractures, dislocations, intracranial injuries, crushing injuries, and burns.

We observed that the characteristics of these conditions are such that they would be relatively straightforward to incorporate in an OPPS healthcare-associated conditions payment provision. For example, these events would likely occur and be coded in the timeframe of an OPPS encounter reported on a single claim and determination of the occurrence of these events would probably not require sequential evaluation of claims over time. We specifically requested public comment on the potential for considering these conditions as healthcare-associated conditions for the HOPD.

We acknowledged that reporting even this short list of healthcare-associated conditions as a secondary diagnosis on a claim in order to attribute their occurrence to the HOPD encounter might present problems for hospitals, particularly for the conditions resulting from falls or trauma. Thus, we specifically requested public comment on whether or not we could assume that these conditions reported as secondary diagnoses on OPPS claims would have

developed during the encounter or whether the reporting of POA indicator information should be required under the OPPS (and perhaps under every Medicare payment system) because POA data increase the utility of claims for analyzing the characteristics of a clinical encounter. More generally, we explained that we recognize that patients may be cared for by different providers across settings and that the provider caring for certain types of complicating conditions may not have provided the healthcare services that led to the healthcare-associated condition. Therefore, we indicated in the CY 2009 OPPS/ASC proposed rule (73 FR 41550) that we welcomed broad public comment on the approaches and challenges related to the appropriate attribution of different types of healthcare-associated conditions encountered in the HOPD. Moreover, we also understand that patients differ in their severity and complexity of disease, as well as their likelihood of following medical recommendations. Therefore, we specifically requested public comment on how to account for patient-specific risk factors that would increase the likelihood of the occurrence of healthcare-associated conditions (73 FR 41550).

Ultimately, payment policy for healthcare-associated conditions under the OPPS should fully address the broad range of clinical services in the HOPD where preventable healthcare-associated conditions may harm Medicare beneficiaries. Therefore, we solicited public comment on additional candidate conditions that could have applicability to the OPPS, beyond those mentioned above that would be extensions from the IPPS final or proposed hospital-acquired conditions. We indicated that we were particularly interested in recommendations of preventable healthcare-associated conditions that are likely to occur with frequency in the HOPD (and other outpatient settings) and that may be associated with significant harm, such as adverse drug events related to medication errors or other complications of care for which we either currently have no diagnosis codes or where correct coding for such occurrences has not been clearly defined.

External Cause-of-Injury coding (E-coding) may represent a mechanism for coding clarity for preventable healthcare-associated conditions such as adverse drug events related to medication errors. The CDC has been interested in further developing and expanding strategies to improve E-coding. A recent CDC Workgroup report discussed the importance and value of using high-quality E-coding.[4] Workgroup recommendations included enhancing the completeness and accuracy of E-coding and making E-coded data more useful for injury surveillance and prevention activities (including medical errors) at the local, State, and Federal levels.

4. OPPS Infrastructure and Payment for Encounters Resulting in Healthcare-Associated Conditions

The OPPS infrastructure is a prospective payment system based on relative costs from hospital claims for services assigned to APC groups, where there is an individual payment rate that is specific to each APC. Each APC contains HCPCS codes for items or services that are clinically similar and that have comparable resource costs. In most cases, an APC payment is made for each unit of each separately payable HCPCS code through the code's assigned APC. For a single hospital outpatient clinical encounter in which a patient receives services described by several HCPCS codes with individual APC assignments (for example, emergency department visit, first hour of therapeutic intravenous infusion, chest x-ray, and electrocardiogram), the hospital would receive multiple APC payments for that encounter. This payment approach is altogether different from the MS–DRG-based IPPS, which groups the services provided to an inpatient into an assigned MS–DRG for which a single payment for the inpatient case is made. Under the MS–DRGs that took effect in FY 2008, there are currently 258 sets of MS–DRGs that can split into 2 or 3 subgroups based on the presence or absence of a CC or an MCC. (We refer readers to the FY 2008 IPPS final rule with comment period for a discussion of DRG reforms (72 FR 47141).) Prior to the October 1, 2008 effective date of the IPPS hospital-acquired conditions payment provision, if a condition acquired during a hospital stay was one of the conditions on the CC or MCC list, the hospital received a higher payment under the MS–DRGs. Beginning October 1, 2008, Medicare can no longer assign an inpatient hospital discharge to a higher paying MS–DRG if a selected hospital-acquired condition was not present on admission and if no other CC or MCC is present. That is, the case will be paid as though the secondary diagnosis (selected hospital-acquired condition) was not present, unless a nonselected secondary diagnosis that is a CC or an MCC is also present. Medicare will continue to assign a discharge to a higher paying MS–DRG if the selected condition was present on admission.

As discussed previously, the OPPS currently has neither the infrastructure to identify POA indicator data nor the ability to stratify by CC or MCC for differential payment under the present APC payment methodology. OPPS claims report an ''admitting diagnosis'' that identifies the reason for the encounter prior to the establishment of the principal diagnosis, but the admitting diagnosis cannot be presumed to be equivalent to a diagnosis that is present on admission as reported on an inpatient claim. As a consequence, initial application of a healthcare-associated conditions payment policy under the OPPS might be limited in its scope of conditions as discussed above and in its options for payment adjustment. We specifically requested public comment on how necessary a POA indicator would be for the candidate conditions we had identified for potential use in the OPPS setting, and on how the OPPS infrastructure could be modified to allow for the incorporation of any POA information (73 FR 41550 through 41551).

Further, we also solicited recommendations on how hospital payment for a clinical encounter in the hospital outpatient setting (which could include multiple individual APC payments) could be adjusted to reflect a derivative payment reduction similar to the CC/MCC MS–DRG adjustment for hospital-acquired conditions under the IPPS. Without a POA and risk stratification infrastructure for the OPPS, one approach to limiting OPPS payment for healthcare-associated conditions in the short term could be to pay for all services provided in the encounter that led to the healthcare-associated condition at the same reduced rate that would be paid to a hospital that failed to meet the quality reporting requirements. Currently, this would mean that the hospital payment for an encounter where a healthcare-associated condition resulted would be based on the OPPS conversion factor reduced by a 2 percentage point reduction to the market basket increase for the year. Alternatively, a flat case rate reduction percentage could be considered for all, or a subset, of services provided in the clinical encounter. This reduction could potentially be empirically derived from analyzing the costs of subsets of OPPS claims for Medicare beneficiaries with and without healthcare-associated

[4] Centers for Disease Control and Prevention: Morbidity and Mortality Weekly Report, March 28, 2008, Vol. 57, No. RR–1. Available at: *http://cdc.gov/mmwr/mmwr_rr.html.*

conditions, or could possibly be developed through analysis of the IPPS payment relationship between MS–DRGs with the presence or absence of a CC or an MCC. Any reduction in OPPS payment should also be applied to the 20-percent beneficiary copayment requirement for the OPPS so that the beneficiary's cost sharing (which is paid for each service furnished) would not rise as a proportion of the total Medicare payment when the payment would be reduced. Furthermore, the hospital should not be able to bill the beneficiary for OPPS services that either would not be paid or would be paid at an adjusted amount under an OPPS healthcare-associated conditions payment provision.

In contrast to the payment limitation approach used for the IPPS, we explained in the CY 2009 OPPS/ASC proposed rule that we recognized that neither of the possible payment limitation approaches discussed above would specifically target the separate OPPS payment for those additional hospital services provided as a result of the healthcare-associated condition (as opposed to the payment for the services that initially brought the beneficiary to the HOPD). We noted that the current OPPS payment structure sets a single payment rate for a service based on the APC median cost from all claims for services assigned to the APC, including cases with healthcare-associated conditions as well as cases without healthcare-associated conditions. Therefore, we stated that we believe it could be appropriate to reduce the single OPPS payment through one of the general payment limitation approaches described above for the OPPS because any additional costs of encounters resulting in healthcare-associated conditions would already be included in the base OPPS payment rates for most OPPS services. We specifically requested public comment on these possibilities or other ways to use or adapt the current OPPS infrastructure for purposes of implementing a healthcare-associated conditions payment provision.

As discussed in the CY 2009 OPPS/ASC proposed rule (73 FR 41551), a related application of the broad principle behind the IPPS hospital-acquired conditions payment provision could be accomplished through Medicare secondary payer policy by requiring the provider that failed to prevent the occurrence of a healthcare-associated condition in one setting to pay for all or part of the necessary followup care in a second setting. This would shield the Medicare program from paying for the downstream effects of a condition acquired in the first setting but treated in the second setting. This type of scenario would likely be common for certain healthcare-associated conditions related to HOPD care, given the relatively short lengths of stay for HOPD services. We indicated that we were interested in receiving public comments regarding this more general approach to extending beyond the inpatient setting the concept of not providing Medicare payment for healthcare-associated conditions, including the advantages and disadvantages of taking a payment system by payment system approach or of adopting the general principle of holding the provider that failed to prevent the occurrence of a condition in one setting responsible for payment of the followup care in any other setting.

Comment: Several commenters fully supported expanding the IPPS hospital-acquired conditions policy to HOPDs and ASCs. They encouraged CMS to expand the policy as supported by the clinical evidence base in order to improve patient outcomes and work toward aligning payment toward higher value across settings. They also expressed full support for the criteria used and the four specific healthcare-associated conditions discussed.

However, the majority of commenters had specific concerns with the suggested conditions or concerns about CMS' authority and ability to fairly implement such a policy for outpatient settings. Some commenters supported the general idea of a healthcare-associated conditions payment policy for HOPDs, while others opposed any expansion of the IPPS hospital-acquired conditions payment provision to other settings. Some commenters stated that CMS should not/cannot implement an OPPS healthcare-associated condition payment policy without explicit statutory authority. Many commenters also stated that CMS should not implement a related policy in HOPDs, ASCs, or physicians' offices without gathering several years of data and gaining implementation experience for IPPS hospital-acquired conditions. Several commenters recommended that CMS develop an advisory panel of clinicians and scientists, including both academic researchers and clinicians active in patient care in HOPDs, to provide the agency with assistance in developing the policy.

Response: Given that so much medical care is now provided to Medicare beneficiaries outside of the hospital inpatient setting, we believe that extending a healthcare-associated conditions payment policy to the OPPS is an important and essential next step in Medicare's focus on quality and value. We believe it is fully appropriate to adopt a policy of not paying more for medical care that harms patients or leads to complications that could have been prevented. Because the high volume services delivered in the HOPD are so varied, we believe a healthcare-associated conditions payment policy in the HOPD would allow CMS to extend its quality activities and drive quality and value by stimulating behaviors that are patient-centered and focus on the continuum of care and patient safety goals. The hospital community has already begun to focus on quality in the HOPD by submitting relevant quality data through the HOP QDRP, and hospital participation in the program determines the hospital's annual payment update. We believe that a healthcare-associated conditions payment policy would take this initial effort to the next level of quality improvement.

Moreover, we believe that we have statutory authority to implement a healthcare-associated conditions payment policy for the OPPS. Specifically, section 1833(t)(2)(E) of the Act provides that the '' * * * Secretary shall establish, in a budget neutral manner, * * * adjustments as determined to be necessary to ensure equitable payments * * *.'' Consistent with our usual practice, we would pursue the development and adoption of such a policy through our annual notice and comment rulemaking to update the OPPS. We believe an urgent and compelling rationale exists for considering a healthcare-associated conditions payment policy necessary to ensuring equitable payments under the OPPS. While we plan to attend to and learn from our experience with the implementation and ongoing development of the IPPS hospital-acquired conditions policy, we do not believe that it is necessary for us to gain years of experience with that program before pursuing a healthcare-associated conditions payment policy for the OPPS. As the commenters pointed out, the IPPS and OPPS are very different payment systems, and we believe that the most appropriate course at this point is to consider a healthcare-associated conditions payment policy for the OPPS that takes into account the most current and emerging knowledge and experience in this rapidly evolving area of health care policy.

We appreciate the challenges raised by commenters, and we will continue to evaluate and seek input from stakeholders and other potential collaborators to identify healthcare-associated conditions that are

meaningful in the HOPD setting and may propose payment adjustments for them, as appropriate, in a future OPPS annual rulemaking cycle, to ensure equitable payments. We understand the importance and value of identifying appropriate collaborators to work with us as we develop the policy, identify conditions, and address implementation issues. Therefore, we intend to continue an open dialogue with stakeholders regarding all issues relevant to the development of a healthcare-associated conditions policy over the upcoming months, which we anticipate will begin this winter with an IPPS/OPPS hospital-acquired/healthcare-associated conditions listening session, jointly sponsored with the CDC.

Comment: Some commenters suggested that CMS should reconsider the criteria for possible candidate OPPS conditions and specifically define ''reasonably preventable'' for the HOPD setting. Several commenters stated that clinically-proven guidelines for prevention should be available and that there should be solid evidence that, by following the guidelines, the likelihood of the occurrence of an event can be reduced to zero or near zero. Other commenters suggested that CMS define rates or frequencies of ''reasonably preventable'' events and design a strategy to both reward and penalize hospitals based on data-driven findings that would ultimately also serve to drive quality improvement.

Several commenters addressed some of the potential specific healthcare-associated conditions discussed in the CY 2009 OPPS/ASC proposed rule (73 FR 41549), as well as suggested other conditions that might be considered or should not be considered. Two commenters were concerned with the potential inclusion of falls and trauma as a condition. Another commenter requested that hospitals providing rehabilitation therapy services be exempt from a healthcare-associated conditions payment policy because of the inherent risk of falls associated with the provision of rehabilitation services. In addition, one commenter requested that if CMS were to implement a policy for healthcare-associated conditions in the HOPD setting, CMS should continue the established IPPS policy of excluding *Staphylococcus aureus* septicemia and methicillin-resistant *Staphylococcus aureus* infection because these infections are not ''reasonably preventable.'' One commenter stated that blood is rarely transfused in the outpatient setting and, therefore, blood incompatibility should be removed from consideration. A few commenters stated that CMS should not simply incorporate all of the IPPS hospital-acquired conditions into the OPPS. Several commenters suggested that CMS consider adding serious disability or death caused by adverse events and serious disability or death caused by medication errors as future healthcare-associated conditions. Finally, several commenters recommended that CMS should use a process similar to that used for identifying IPPS hospital-acquired conditions, that is, working with the CDC, before implementation of a healthcare-associated conditions program in the HOPD setting.

Many commenters requested that CMS delay any implementation of a healthcare-associated conditions payment policy under the OPPS until adoption of ICD–10, to facilitate the collection of more accurate data and the use of E-codes. In addition, many commenters stated that the attribution of healthcare-associated conditions in the HOPD setting is difficult because patients often see multiple physicians or practitioners in multiple distinct hospital outpatient departments and settings. Finally, several commenters believed that there was a serious need to develop risk adjustment techniques to account for differences in patient severity and other patient characteristics, especially for teaching hospitals and other hospitals, such as cancer hospitals, that see many high-risk patients.

Response: We understand the commenters' concerns about the choice of conditions for a healthcare-associated conditions payment policy in the outpatient environment, and we plan to work with knowledgeable experts in hospital outpatient care to choose reasonably preventable conditions based on solid evidence for future proposed policies. Our goal is to eliminate preventable events to the extent possible, while stimulating hospitals to design system changes to minimize the occurrence of errors broadly.

We appreciate the public comments about the specific healthcare-associated conditions discussed in the CY 2009 OPPS/ASC proposed rule, as well as other suggestions made by commenters regarding other potential HOPD-specific conditions. We note that each of the four conditions discussed in the CY 2009 OPPS/ASC proposed rule is among the Serious Reportable Events (commonly referred to as ''never events'') identified by the NQF and included in the current IPPS hospital-acquired conditions payment provision. We will continue to consider each of these conditions, as well as others suggested by commenters, as we move forward to develop a healthcare-associated conditions payment policy for the OPPS. We agree that the future implementation of ICD–10 will be helpful to identify adverse events and medical errors, but we do not see the necessity of waiting for ICD–10 to initiate a healthcare-associated conditions program under the OPPS.

We agree that the OPPS APC payment methodology currently does not distinguish the severity of illness of patients being treated within each APC group. Hospital claims for both low and high severity patients contribute to the calculation of the overall median cost for the services and procedures assigned to each APC. We also understand that a process to document and capture patient comorbidities and existing complications in outpatient settings is not yet fully developed. As a result, a healthcare-associated conditions payment policy for the OPPS would need to be initiated and then incrementally refined, potentially using Serious Reportable Events as a starting point until a fair risk adjustment program could be implemented.

Likewise, we acknowledge that Medicare patients may see physicians or other practitioners in multiple HOPDs and clinics, physicians' offices, ASCs, or other settings during a given episode-of-care; therefore, accountability could be difficult to assign. While we understand that there are complexities associated with attribution in any setting, particularly ambulatory settings, complications are most likely the result of a breakdown in communication of accurate, timely, and relevant information among practitioners and providers. Consequently, we believe that expansion of healthcare-associated conditions to settings beyond the IPPS is an urgent and essential next stage in encouraging the coordination of the highest quality health care for Medicare beneficiaries.

Comment: Several commenters stated that the IPPS hospital-acquired conditions payment reduction methods would not be appropriate for the OPPS because the OPPS APC payments are HCPCS code-based and not based on diagnosis and disease severity, as is the IPPS. Several commenters suggested that without changes to the OPPS payment structure, there would be no fair or straightforward methodology for adjusting hospital payment. Several commenters recommended that CMS use a flat case rate reduction, but cautioned that this would require a comparison of costs for services between claims with healthcare-associated conditions and those without healthcare-associated conditions. The commenters also recommended several

other alternative payment mechanisms. For example, some commenters suggested episode-based payments encompassing the continuum of care that recognize and reward effective post-discharge care. Other commenters offered a data-driven approach to establish benchmark and best practice complication rates for healthcare-associated conditions where CMS could set payment rates based on average complication rates and provide evidence-based tools to help hospitals work toward lower complication rates. Several commenters argued that holding one provider responsible for payment of costs downstream would not be viable because of multiple payment systems, contractors, and providers.

Response: We appreciate the concerns of the commenters about developing a payment reduction policy associated with healthcare-associated conditions under the OPPS, given the differences between the HCPCS code-based OPPS and MS–DRG-based IPPS payment infrastructures, and we welcome consideration of the payment reduction methodologies suggested by others. We note that we received no public comments on the possibility of providing the same reduced payment rate for services in the HOPD encounter that led to the healthcare-associated condition that would be paid to a hospital that failed to meet the quality reporting requirements. We will fully consider each of the payment reduction methodologies suggested by commenters and discussed in the CY 2009 OPPS/ASC proposed rule (73 FR 41550). We also plan to continue an open dialogue with stakeholders as we move forward over the coming months toward the goal of establishing a strong connection between an OPPS healthcare-associated conditions payment policy and the delivery of the highest quality health care. We also expect that the future development and refinement of a healthcare-associated conditions payment policy, as well as POA indicators for the outpatient setting, will lead to increased communication among providers, contractors, and policymakers, as well as potentially more integrated payment for Part B services across payment systems. This, in turn, could allow for holding one provider responsible to another for payment of costs downstream for healthcare-associated conditions.

Comment: Many commenters asserted that the POA indicators in use for the IPPS hospital-acquired conditions policy beginning October 1, 2008 may need to be modified as a requirement for healthcare-associated conditions in the HOPD or ASC setting. Several commenters observed that the conditions CMS proposed for consideration (air embolism, object left in during surgery, blood incompatibility, and falls and trauma) would likely result in an inpatient admission with the healthcare-associated condition reported as present on admission. Many commenters also argued that the HOPD episode-of-care is often too short to identify whether a condition was present at the beginning of the hospital outpatient stay. They also believed that there would likely be unintended consequences to using a POA indicator for the OPPS, such as hospitals providing increased and unnecessary diagnostic testing. Several commenters claimed that having to report POA indicators for all ICD–9–CM diagnosis codes would be an administrative burden on hospitals. They requested that CMS consider narrowing hospital outpatient POA data collection to specific conditions or specific populations of beneficiaries. In addition, one commenter suggested that the entire current ICD–9–CM Official Coding Guidelines for POA would have to be evaluated and possibly revised or rewritten for outpatient settings, due to potential complications of collecting POA information in the outpatient setting using the current guidelines. A number of commenters believed the term ''present on admission'' was not applicable to the HOPD setting and suggested the term would need to be changed to ''present on arrival.'' Finally, some commenters suggested that a ''present on encounter'' indicator or another form of incorporation of pre-existing conditions into an episode-of-care might be more useful than a POA indicator because care may extend into other settings or to other caregivers or practitioners.

Response: We acknowledge that the POA indicator was designed for hospital inpatient use and would need to be refined for the HOPD setting, both to accommodate events occurring in the hospital outpatient setting that directly result in hospital admission (for example, air embolism), as well as to allow identification of HOPD initiated healthcare-associated conditions that may become apparent distinct from the date of the initiating event (for example, object left in during surgery). We believe that accountability of a single hospital provider for the quality of medical care provided across its outpatient and inpatient settings should be a central component of patient-centered care coordination and effective implementation of hospital-acquired and healthcare-associated conditions payment policies. For instance, we do not believe that a preventable condition acquired in the HOPD that results in an inpatient admission should be considered POA because it occurred before there was a physician's written order to admit the patient. In such a case, it was the hospital's care that caused the condition and the inpatient admission and, in our view, the condition should not be considered as a complication or major complication in determining the Medicare inpatient hospital payment. It would be clinically non-intuitive and counter to the goals of patient safety and value-based purchasing if healthcare-associated conditions that developed during an HOPD encounter and resulted in an inpatient admission could not be identified through our coding systems and, therefore, an appropriate payment adjustment could not be provided. We will raise this issue with the NUBC, which is responsible for maintaining the POA reporting definitions. In addition, we believe that it would be both inappropriate and a disservice to beneficiaries for hospitals to engage in activities such as delayed admission or transfer between a provider's facilities or satellites in order to avoid an IPPS hospital-acquired condition payment reduction.

It is imperative that as we consider expansion of the IPPS hospital-acquired conditions payment policy to other settings, we synchronize policies across Medicare payment systems. Therefore, we look forward to working with the NUBC to develop POA indicators appropriate to outpatient settings. We also plan to work with the NUBC to refine and update the POA reporting definitions so that we can accomplish the goals of the IPPS hospital-acquired and OPPS healthcare-associated conditions policies of holding a provider responsible for preventable conditions attributable to care provided in its own outpatient or inpatient settings, while also ensuring that the reporting definitions continue to be appropriate and effective for nonhospital-acquired conditions payment and research purposes. As we move toward an OPPS healthcare-associated conditions payment policy, we will work with hospitals and other stakeholders to ensure that reporting of conditions in outpatient settings could be accomplished in a way that would be administratively manageable for hospitals, while discouraging potential undesirable effects on beneficiaries and the Medicare program, such as overutilization of diagnostic testing.

In summary, we thank commenters for their thoughtful responses and suggestions to our CY 2009 OPPS/ASC proposed rule discussion and questions regarding the potential for extension of the IPPS hospital-acquired conditions payment provision to outpatient settings through a healthcare-associated conditions payment policy. We view addressing the ongoing problem of preventable healthcare-associated conditions in outpatient settings, including the HOPD, as a key value-based purchasing strategy to sharpen the focus on such improvements beyond hospital inpatient care to those settings where the majority of Medicare beneficiaries receive most of their health care services. We look forward to continuing to work with stakeholders to improve the quality, safety, and value of healthcare provided to Medicare beneficiaries, beginning with the joint IPPS/OPPS listening session that we anticipate holding this winter.

XVIII. Hospital Conditions of Participation: Requirements for Approval and Re-Approval of Transplant Centers To Perform Organ Transplants; Policy Clarification

On March 30, 2007, we published in the **Federal Register** (72 FR 15198) a final rule that set forth the requirements that heart, heart-lung, intestine, kidney, lung, and pancreas transplant centers must meet to participate as Medicare-approved transplant centers. These requirements included procedures for approval and re-approval, as well as disapproval, of transplant centers. In that final rule, we summarized and responded to the public comments that we had received on a preceding proposed rule published in the **Federal Register** on February 4, 2005 (70 FR 6140).

This final rule clarifies and revises several statements of policy that were provided in the March 30, 2007 final rule as responses to public comments received on the proposed rule. Specifically, among the public comments received, a few commenters recommended that ''a center should be allowed to continue Medicare participation pending exhaustion of any appeals, provided that its treatment of Medicare beneficiaries does not jeopardize their health and safety.'' In the March 30, 2007 final rule (72 FR 15242), we responded, in part, to this public comment by stating that ''[i]f a transplant center appeals a termination of Medicare approval under 42 CFR part 498, the termination will not occur until the appeals process, if any, is completed.'' This statement is contrary to longstanding Medicare policy.

In addition, in the February 4, 2005 proposed rule, we had proposed at § 482.104(c)(2) to require a transplant center being terminated to inform patients on the center's waiting list of that fact 30 days prior to the termination. One commenter who responded to the proposed rule recommended that CMS modify the proposed 30-day notification requirement by adding language to indicate that patients on the center's waiting list must be informed 30 days prior to the termination ''and following the exhaustion of all appeals provided pursuant to [part] 498.'' In the preamble to the March 30, 2007 final rule at page 15248, we responded to this comment in part by stating that ''[i]n most cases Medicare providers and suppliers are permitted to continue to participate in Medicare while an appeal is pending. * * *'' This response statement is also contrary to longstanding Medicare policy.

In this final rule, we are clarifying the two responses in the preamble of the March 30, 2007 final rule to make clear that longstanding Medicare policy does not permit a provider to continue to participate in the Medicare program until the provider has exhausted all appeals. In fact, it has been the consistent policy of this Department for more than 30 years to make provider agreement terminations, and most alternative sanctions, effective prior to the running of the administrative appeals process. Where the matter has arisen in litigation over the years, the courts have upheld this position. We cite the following court cases as examples: *Cathedral Rock of North College Hill, Inc.* v. *Shalala,* 223 F.3d 354 (6th Cir. 2000); *Caton Ridge Nursing Home, Inc.* v. *Califano,* 596 F.2d 608 (4th Cir. 1979); and *Geriatrics, Inc.* v. *Harris,* 640 F.2d 262 (10th Cir. 1981). While there are many legal arguments that have been made in support of this view, the Department has taken this position largely based on its underlying belief that patients or residents of health care facilities should not be subjected to continued poor quality of care for the pendency of an appeal which can be lengthy in duration. In this context, the interests of providers wanting to stay in the program must be of secondary importance to the well-being of the Medicare patient population.

Thus, if a provider, such as a transplant center, appeals a termination of Medicare approval under 42 CFR part 498, termination occurs on the date established by CMS, and termination will be prior to the onset of any appeals process, whether or not the deficiency poses immediate jeopardy to the health and safety of patients.

Therefore, in this final rule, we are clarifying the response to comment language of the preamble of the March 30, 2007 final rule at page 15242 by revising it to read ''Thus, if a transplant center appeals a termination of Medicare approval under 42 CFR part 498, the termination *will* occur *before* the appeals process, if any, begins.'' (Emphasis added) We are clarifying the response to comment language of the preamble of the March 30, 2007 final rule at page 15248 by revising it to read ''Medicare providers and suppliers are not entitled to have their program participation continue during the pendency of the administrative appeals process.'' We note that no change is being made to the regulation text because the regulation itself does not call for a prior hearing. Our intent is only to clarify and correct earlier preamble statements that ran contrary to a longstanding policy of this Department.

This clarification does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

The revised preamble statements merely clarify existing policy and, therefore, the impact is negligible.

XIX. Files Available to the Public via the Internet

A. Information in Addenda Related to the CY 2009 Hospital OPPS

Addenda A and B to this final rule with comment period provide various data pertaining to the CY 2009 payment for items and services under the OPPS. Addendum A, which includes a list of all APCs to be payable under the OPPS, and Addendum B, which includes a list of all active HCPCS codes and all currently active HCPCS codes that will be discontinued at the end of CY 2008 with their assigned OPPS payment status and comment indicators, are available to the public by clicking ''Hospital Outpatient Regulations and Notices'' on the CMS Web site at: *http://www.cms.hhs.gov/HospitalOutpatientPPS/.*

For the convenience of the public, we also are including on the CMS Web site a table that displays the HCPCS code data in Addendum B sorted by APC assignment, identified as Addendum C.

Addendum D1 defines the payment status indicators that are used in Addenda A and B. Addendum D2

defines the comment indicators that are used in Addendum B. Addendum E lists the HCPCS codes that only are payable to hospitals as inpatient procedures and are not payable under the OPPS. Addendum L contains the out-migration wage adjustment for CY 2009. Addendum M lists the HCPCS codes that are members of a composite APC and identifies the composite APC to which each is assigned. This addendum also identifies the status indicator for the code and a comment indicator if there is a change in the code's status with regard to its membership in the composite APC. Each of the HCPCS codes included in Addendum M has a single procedure payment APC, listed in Addendum B, to which it is assigned when the criteria for assignment to the composite APC are not met. When the criteria for payment of the code through the composite APC are met, one unit of the composite APC payment is paid, thereby providing packaged payment for all services that are assigned to the composite APC according to the specific I/OCE logic that applies to the APC. We refer readers to the discussion of composite APCs in section II.A.2.e. of this final rule with comment period for a complete description of the composite APCs.

These addenda and other supporting OPPS data files are available on the CMS Web site at: *http://www.cms.hhs.gov/HospitalOutpatientPPS/.*

B. Information in Addenda Related to the CY 2009 ASC Payment System

Addenda AA and BB to this final rule with comment period provide various data pertaining to the CY 2009 payment for ASC covered surgical procedures and covered ancillary services for which ASCs may receive separate payment. Addendum AA lists the ASC covered surgical procedures and the CY 2009 ASC payment indicators and payment rates for each procedure. Addendum BB displays the ASC covered ancillary services and their CY 2009 payment indicators and payment rates. All relative payment weights and payment rates for CY 2009 are a result of applying the revised ASC payment system methodology established in the final rule for the revised ASC payment system published in the **Federal Register** on August 2, 2007 (72 FR 42470 through 42548) to the final CY 2009 OPPS and MPFS ratesetting information.

Addendum DD1 defines the payment indicators that are used in Addenda AA and BB. Addendum DD2 defines the comment indicators that are used in Addenda AA and BB.

Addendum EE (available only on the Internet) lists the surgical procedures that are excluded from Medicare payment if furnished in ASCs. The excluded procedures listed in Addendum EE are surgical procedures that are either assigned to the OPPS inpatient list, are not covered by Medicare, are reported using a CPT unlisted code, or have been determined to pose a significant safety risk or are expected to require an overnight stay when performed in ASCs.

These addenda and other supporting ASC data files are included on the CMS Web site at: *http://www.cms.hhs.gov/ASCPayment/.* The MPFS data files are located at: *http://www.cms.hhs.gov/PhysicianFeeSched/.*

The links to all of the FY 2009 IPPS wage index related tables (that are to be used for the CY 2009 OPPS) that were published as tentative and final in the FY 2009 IPPS final rule (73 FR 48779 through 49021) and that were issued as final in a subsequent document published in the **Federal Register** on October 3, 2008 (73 FR 57888) are accessible on the CMS Web site at: *http://www.cms.hhs.gov/AcuteInpatientPPS/WIFN.*

XX. Collection of Information Requirements

A. Legislative Requirement for Solicitation of Comments

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

B. ASC Conditions for Coverage Collections

In the August 31, 2007 ASC CfCs proposed rule (72 FR 50478), we solicited public comments on each of the issues outlined under section XX.A. of this preamble for the sections under items XX.B.1. through 4. below included in the proposed rule that contain information collection requirements.

1. Condition for Coverage—Governing Body and Management (§ 416.41)

Section 416.41 sets out the conditions for coverage related to the governing body and management of ASCs. Each ASC must have a governing body that assumes full legal responsibility for determining, implementing, and monitoring policies governing the ASC's total operation. Section 416.41(b)(3) states that, as a condition for coverage, an ASC must have a written transfer agreement with the hospital as referenced in §§ 416.41(b)(1) and (b)(2).

The burden associated with this requirement is the time and effort involved in the ASC having a written transfer agreement with the hospital receiving the transfer. This requirement is subject to the PRA, and is currently approved under OMB No. 0938–0266, with an expiration date of June 30, 2011.

Section 416.41(c)(1) requires that an ASC maintain a written disaster preparedness plan that provides for the emergency care of patients in the event of fire, natural disaster, functional failure of equipment, or other unexplained circumstances that are likely to threaten personal health and safety. Section 416.41(c)(3) requires that an ASC complete a written evaluation of each drill conducted to test the effectiveness of the disaster preparedness plan.

The burden associated with the requirements in §§ 416.41(c)(1) and (c)(3) is the time and effort necessary to draft and maintain the written disaster preparedness plan. In addition, there is burden associated with drafting and maintaining the reports on the effectiveness of the plan. We estimate that an administrator, earning $49.00 per hour, would be largely responsible for developing the plan and for managing the yearly drills and evaluations. We are estimating that the yearly cost for one ASC to develop and implement a disaster preparedness plan will be approximately 4 hours at $49.00 per hour, with a net cost of $196.00 per ASC. The total cost for all ASCs is estimated to be $999,600.

We did not receive any public comments on these information collection requirements.

2. Condition for Coverage—Quality Assessment and Performance Improvement (§ 416.43)

Section 416.43 sets out the conditions for coverage for quality assessment and performance improvement. ASCs,

through the governing body and with the active participation of the medical staff, must develop, implement, and maintain an ongoing, data-driven QAPI program. This section outlines the standards for the scope of the QAPI program, the use of quality indicator data, the prioritization of performance improvement program activities, the complexity of performance improvement projects, and the responsibilities of ASC governing bodies. Specifically, § 416.43(d)(2) states that an ASC must fully document the performance improvement projects that are being conducted. The documentation, at a minimum, must include the reason(s) for implementing the project, and a description of the results of the project.

The burden associated with this requirement is the time and effort involved in collecting, analyzing, and documenting the performance improvement projects. We estimate that each ASC would spend 18 hours a year collecting, analyzing, and documenting the findings. These activities would most likely be managed by the ASC's administrator. Based on an hourly rate of $49.00, the total cost of these activities is estimated to be $882 per ASC.

We did not receive any public comments on this information collection requirement.

3. Condition for Coverage—Patient Rights (§ 416.50)

Section 416.50 sets out the requirements an ASC must meet when informing a patient of his or her rights, in addition to requirements for the protection and promotion of these rights. Section 416.50(a)(1) requires that an ASC provide the patient or, as appropriate, the patient's representative with verbal and written notice of the patient's rights in advance of the procedure to be performed at the ASC and in a language and manner that the patient or patient's representative understands.

The burden associated with these requirements is the time and effort required to inform the patient or, as appropriate, the patient's representative of the patient's rights. Because ASCs must notify patients either verbally or in writing in advance of the patient coming under the ASC's care, ASCs may choose to mail the patient rights notification to the patient along with the pre-surgical information, the physician's financial interests or ownership, and the advance directives. Generally, the most effective and efficient manner to furnish a notice of rights is to initially develop a general notice which can be subsequently discussed and/or distributed as needed. We expect that an ASC will use this simple and inexpensive approach in order to meet this requirement. In response to the needs of their specific patient populations, some ASCs might choose to have their patient rights notification written in the predominant language(s) of their patients. More than likely, this message would be written by a registered nurse or similar professional. A typical message might be in three parts: An introduction; the information section; and a section for follow-up questions and issues. We expect the effort to develop this one-time message would not exceed 1 hour at a cost of $39.00 for each ASC. We believe that this would be a one-time cost for ASCs and estimate that the total costs would be $198,900 for all ASCs.

Section 416.50(a)(2)(i) requires ASCs to provide the patient or representative with information concerning its policies on advance directives, including a description of applicable State law. Section 416.50(a)(2)(iii) requires documentation in a prominent part of the patient's medical record that indicates whether or not the patient has executed an advance directive. The burden associated with these requirements is the time and effort necessary for disseminating the information to the patient and maintaining the necessary documentation in the medical record. ASCs mail information to their patients concerning documentation that must be completed prior to the surgical procedure. Dissemination of the advance directives information will result in the inclusion of one additional sheet of paper in the ASC's mailing packet. In addition, as a matter of both law and ethics, health care providers are generally expected to provide care that conforms to the wishes and priorities of the patient. Thus, information on advance directives should be communicated in a way that effectively notifies patients of their right to complete an advance directive before they agree to use the facility's services because the facility's policy could be important to a patient's choice of whether to use that facility. Providing advance directives information to patients prior to the patient's first visit to the ASC is typically done by ASCs even though it is not specifically federally mandated.

However, arguably, informing patients concerning advance directives is in keeping with the current requirement concerning documentation of properly executed informed patient consent found at § 416.47 and would be considered part of the ASC's standard operating costs. Thus, while these requirements are subject to the PRA, we believe they would constitute usual and customary business practices. Pursuant to 5 CFR 1320.3(b)(2), we will not include these activities in the PRA analysis.

Section 416.50(a)(3) imposes both recordkeeping and reporting requirements. Specifically, § 416.50((a)(3)(ii) states that an ASC must fully document all alleged violations relating, but not limited to, mistreatment, neglect, verbal, mental, sexual or physical abuse. In addition, at § 416.50(a)(3)(iii), an ASC must immediately report the allegations to a person in authority in the ASC. Under § 416.50(a)(3)(iv), the ASC must immediately report substantiated allegations to the State and local bodies having jurisdiction, and the State survey agency if warranted. In addition, § 416.50(a)(3)(v) requires an ASC to document how the grievance was addressed. The ASC must also provide the patient with a written notice of its decision.

The burden associated with this requirement is the time and effort necessary to fully document the alleged violation or complaint, disclose the written notice to each patient who filed a grievance, and report the alleged violations to the aforementioned entities. We estimate that, on average, it will take each ASC 15 minutes at a cost of $39.00 an hour to develop and disseminate 12 notices on an annual basis (3 hours per ASC), for a total ASC burden of 15,300 hours at a cost of $596,700.

Since ASCs began operating under Medicare in 1982, they have been required to provide information to patients about the procedures to be performed. This information is provided to patients by way of the informed patient consent in the current regulation. ASCs are also responsible for providing patients with information concerning expected outcomes. The final rule requires that ASCs continue this practice. Therefore, we do not anticipate that ASCs will incur significant costs associated with this requirement.

While these requirements are subject to the PRA, we believe they would constitute a usual and customary business practice. Pursuant to 5 CFR 1320.3(b)(2), we will not include these activities in the PRA analysis.

We did not receive any public comments on these information collection requirements.

4. Condition for Coverage—Patient Admission, Assessment, and Discharge (§ 416.52)

Section 416.52(a) requires each patient to have a comprehensive medical history and physical assessment no more than 30 days before the scheduled surgery date. The patient also must have a pre-surgical assessment which must occur upon admission. Section 416.52(b) requires that the patient's post-surgical condition must be assessed and documented in the medical record and that the patient's post-surgical needs must be addressed and included in the discharge notes. Section 416.52(c) requires that ASCs provide each patient written discharge instructions and ensure that each patient receives a discharge order signed by a physician or other qualified practitioner. ASCs also must ensure all patients are discharged in the company of a responsible adult.

The burden associated with these requirements is the time and effort necessary to perform the assessments and to document the information in the medical record. However, performing patient assessments and documenting medical records is normal and customary business practice for health care providers. Therefore, while these requirements are subject to the PRA, the associated burden is exempt as it meets the requirements set forth in 5 CFR 1320.3(b)(2).

We did not receive any public comments on these information collection requirements.

5. Revisions to the CfC on Infection Control in This Final Rule (§ 416.51)

In § 416.51 of the August 31, 2007 ASC CfCs proposed rule, we included a CfC on infection control, which specified that an ASC must (1) provide a functional and sanitary environment for the provision of surgical services by adhering to professionally acceptable standards of practice and (2) maintain an ongoing program designed to prevent, control, and investigate infections and communicable diseases. The program would be required to designate a qualified professional who has training in infection control, integrate the infection control program into the ASC's QAPI program, and be responsible for providing a plan of action for preventing, identifying, and managing infections and communicable diseases and for immediately implementing corrective and preventive measures that result in improvement.

As discussed in section XV.B.2.b.(5) of this preamble of this final rule, in response to public comments received, we are revising § 416.51(b) to specify that the infection control and prevention program must include documentation that the ASC has considered, selected, and implemented nationally recognized infection control guidelines.

The burden associated with this requirement is the time and effort necessary to document the consideration, selection, and implementation of the nationally recognized infection control guidelines information in the program. We believe that the time needed for the required documentation would be negligible. Therefore, while this requirement is subject to the PRA, the associated burden is exempt as it meets the requirements set forth in 5 CFR 1320.3(b)(2).

f. Effects of the Patient Admission, Assessment, and Discharge Provision (§ 416.52)

We are finalizing this new condition because it represents the current standard of practice and does not pose additional burden.

(1) Effects of the Admission and Pre-Surgical Assessment Provision

We are requiring the completion of a comprehensive medical history and physical assessment no more than 30 days before the day of the scheduled surgery. It is very unlikely that the comprehensive medical history will be completed at the ASC. Therefore, there is unlikely to be any ASC burden associated with this requirement.

We are requiring that a pre-surgical assessment be completed upon admission to the ASC. Existing regulations at § 416.42(a) require a physician to examine the patient immediately before surgery to evaluate the risks involved in administering anesthesia and performing the procedure. Physicians must determine that patients, including those at high risk, are able to undergo the surgery itself and be able to manage recovery. Pre-surgical assessments represent a current standard of community practice, are currently required under existing regulations, and, therefore, do not pose additional burden.

To ensure the ASC health care team has all patient information available when needed, the medical history and physical assessment must be placed in the patient's medical record before the surgical procedure is started. There is no burden associated with this requirement.

(2) Effects of the Post-Surgical Assessment Provision

The post-surgical assessment requires the ASC to ensure the patient's post-surgical condition is documented in the medical record by a physician or other qualified practitioner in accordance with State law and ASC policy, and the patient's post-surgical needs addressed and included in the discharge notes. Post-surgical assessments, located in the current regulation under surgical services, reflect ASC standard of practice, and therefore, do not pose additional burden.

(3) Effects of the Discharge Provision

The ASC is required to provide each patient with discharge instructions and ensure each patient has a signed discharge order, any needed overnight supplies and physician contact information for followup care or an appointment. Requiring the patient to have a signed discharge order, discharge instructions, any immediate overnight supplies that may be needed, and physician contact information when the patient leaves the ASC is standard practice. Therefore, we do not believe this is a new burden for ASCs.

Therefore, while these requirements are subject to the PRA, the associated burden is exempt as it meets the requirements set forth in 5 CFR 1320.3(b)(2).

C. Associated Information Collections Not Specified in Regulatory Text

This final rule with comment period does not impose any information collection requirements through regulatory text. However, this final rule with comment period makes reference to one associated information collection concerning the HOP QDRP that is not discussed in the regulatory text. The following is a discussion of this collection, for which we solicited public comment in the CY 2009 OPPS/ASC proposed rule (73 FR 41552).

Section 419.43(h) requires hospitals, in order to qualify for the full annual update, to submit quality data to CMS, as specified by CMS. In section XVI.C.1. of the CY 2009 OPPS/ASC proposed rule (73 FR 41541), we proposed the specific requirements related to the data that must be submitted for the update for CY 2010. The burden associated with this section is the time and effort associated with collecting and submitting the data, completing participating forms and submitting charts for chart audit validation. In the CY 2009 OPPS/ASC proposed rule (73 FR 41552), we estimated that there will be approximately 3,500 respondents per year.

For hospitals to collect and submit the information on the required measures, we estimated it will take 30 minutes per sampled case. In this final rule with comment period, we have reduced the burden associated with our proposed data submission requirements by making hospital submission of the aggregate numbers of outpatient episodes of care which are eligible for submission under the HOP QDRP voluntary, instead of requiring this submission as we proposed. Thus, although in the proposed rule based on an estimated 10 percent sample size and estimated populations of 2.5 to 5 million outpatient visits per measure, we estimated a total of 1,800,000 cases per year, the changes in this final rule with comment period will reduce this burden.

In addition, in the proposed rule we estimated that completing participation forms will require approximately 4 hours per hospital per year. (Hospitals that continue to participate in the HOP QDRP only have to complete the participation form in the first year that they participate.) We expected the burden for all of these hospitals to total 914,000 hours per year.

For CY 2010, we proposed that the proposed validation process would require a random sample of 800 participating hospitals to submit 50 charts on an annual basis. The burden associated with this requirement is the time and effort associated with collecting, copying, and submitting these charts. It would take approximately 20 hours per hospital to submit the 50 charts. There would be a total of approximately 40,000 charts (800 hospitals × 50 charts per hospital) submitted by the hospitals to CMS for a total burden of 16,000 hours. Therefore, the total burden for all hospitals would be 930,000 hours per year.

In this final rule with comment period we have revised the validation process. The validation process will be used a test to provide feedback to all participating hospitals, but will not affect CY 2010 payment determinations. We will still use a sample of 800 participating hospitals, but we will sample 50 or less cases per hospital. Thus, we believe that the burden for the validation process will be somewhat less than our original estimate, although we cannot determine how much less until we determine the final number of cases sampled.

We did not receive any public comments specifically regarding these burden estimates. We believe that our proposed estimates are still valid for this final rule with comment period, although we expect that the actual burden will be somewhat reduced by the changes from the proposed rule adopted in this final rule with comment period discussed above.

We are requesting OMB's emergency review and approval of the information collection requirements in §§ 416.41(c)(1) and (c)(3), 416.43, and 416.50. Emergency review and approval is necessary to ensure that these requirements are approved before the effective date of these provisions.

If you comment on these information collection and record keeping requirements, please mail copies directly to the following by the date listed in the ''DATES'' section of this final rule with comment period:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, *Attn.:* William Parham, CMS–1404–FC, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, *Attn:* CMS Desk Officer, CMS–1404–FC Fax (202) 395–6974.

XXI. Waiver of Proposed Rulemaking

A. Requirements for Waivers

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA). The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. However, this procedure can be waived if the Secretary finds, for good cause, that the notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the rule.

B. OPPS Regulations Update to 42 CFR 419.43(d)(1)(i)(B)

We are making a technical correction to § 419.43(d)(1)(i)(B) to appropriately reference § 419.66. The correcting amendment to § 419.43(d)(1)(i)(B) merely removes the phrase ''paragraph (e) of this section'' and adds in its place the correct cross-reference ''§ 419.66.'' As this correction does not make substantive changes to any underlying policy and is purely technical in nature, we find good cause to waive notice-and-comment procedures as unnecessary.

C. OPPS Regulations Update to 42 CFR 419.43(f)

We are making a technical conforming amendment to § 419.43(f) which sets forth our longstanding, consistent policy to exclude certain items and services from eligibility for outlier payments. Under our longstanding policy, drugs and biologicals, as well as items paid at charges adjusted to cost by application of a hospital-specific CCR are excluded from the payment adjustment in § 419.43(d). In the past, we updated the regulations at § 419.43(f) to specifically identify those items paid at charges adjusted to cost by a hospital-specific CCR that we exclude from this adjustment (for example, brachytherapy sources). We are now specifying in a general manner that items paid at charges adjusted to cost are not eligible for the adjustment in § 419.43(d) (rather than specifically listing all items that are paid at charges adjusted to cost and that are excluded from the payment adjustment in § 419.43(d)). This technical conforming amendment reflects our existing policy which has previously been subject to notice-and-comment procedures. Therefore, we find good cause to waive notice-and-comment procedures as unnecessary.

D. OPPS Regulations Update to 42 CFR 419.43(g)(4)

We are making a correcting amendment to § 419.43(g)(4) which sets forth our longstanding, consistent policy to exclude items paid at charges adjusted to cost by application of a hospital-specific CCR from the payment adjustment in § 419.43(g)(4). Instead of annually updating the regulations at § 419.43 to specifically identify those items paid at charges adjusted to cost, for administrative ease and convenience, § 419.43(g)(4) now specifies in a general manner that items and services paid at charges adjusted to cost by a hospital-specific CCR are not eligible for the adjustment in § 419.43(g)(2). This correcting amendment does not alter our longstanding, consistent policy regarding items paid at charges adjusted to cost by application of a hospital-specific CCR. As these changes reflect existing policy and the substantive policies have already undergone notice-and-comment procedures, we find good cause to waive notice-and-comment procedures as unnecessary.

E. OPPS Regulations Update to 42 CFR 419.70

We are revising § 419.70(d)(2), (d)(4), and (d)(5) of the regulations to make technical corrections and to incorporate nondiscretionary provisions of section 147 of Public Law 110–275 (as described in sections I.F.5. and II.E.1. of this final rule with comment period) with respect to the extension and expansion of the Medicare hold harmless provision under the OPPS for certain hospitals. We note that Public Law 110–275 was enacted on July 15, 2008, subsequent to issuance of the CY 2009 OPPS/ASC proposed rule. Because the rule makes conforming changes to the regulation in order to implement section 147 of Public Law 110–275, we find good cause to waive notice-and-comment procedures as unnecessary.

In the case of the correcting amendments to §§ 419.70(e), 419.70(g), and 419.70(i), we merely substitute the word ''paragraph'' with the word ''section'' in order to correct inaccurate cross-references. These corrections do not make substantive changes to any underlying policy and are purely technical in nature. Therefore, we find good cause to waive notice-and-comment procedures as unnecessary.''

In addition, as explained previously in this final rule with comment period, we are substituting the word ''paragraph'' with the word ''part'' in § 419.70(d)(2) in order to more precisely capture existing policy and to correct an inaccurate cross-reference. This change is technical in nature and does not change the substantive underlying policy. Therefore, we find good cause to waive notice-and-comment procedures as unnecessary.

XXII. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the ''**DATES** '' section of this final rule with comment period, and, when we proceed with a subsequent document(s), we will respond to those comments in the preamble to that document(s).

XXIII. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this final rule with comment period (CMS–1404–FC) and the two final rules (CMS–3887–F and CMS 3835–F–1) as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), as amended by Executive Order 13258, the Regulatory Flexibility Act (RFA) (September 19, 1980, Public Law 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism, and the Congressional Review Act (5 U.S.C. 804(2)).

1. Executive Order 12866

Executive Order 12866 (as amended by Executive Order 13258) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

We estimate that the effects of the OPPS provisions that will be implemented by this final rule with comment period will result in expenditures exceeding $100 million in any 1 year. We estimate the total increase (from changes in this final rule with comment period as well as enrollment, utilization, and case-mix changes) in expenditures under the OPPS for CY 2009 compared to CY 2008 to be approximately $1.6 billion.

We estimate that the effects of the changes to the ASC payment system provisions for CY 2009 (such as adding 14 procedures that were previously excluded to the CY 2009 ASC list of covered surgical procedures and designating 8 additional procedures as office-based) will have no net effect on Medicare expenditures in CY 2009 compared to the level of expenditures in CY 2008. A more detailed discussion of the effects of the changes to the ASC payment system for CY 2009 is provided in section XXIII.C. of this final rule with comment period.

This final rule with comment period is ''economically significant'' as measured by the $100 million threshold, and hence also a major rule under the Congressional Review Act. Accordingly, we have prepared a regulatory impact analysis that, to the best of our ability, presents the costs and benefits of the rulemaking. Table 53 and Table 54 of this final rule with comment period display the redistributional impact of the CY 2009 changes on ASC payment, grouped by specialty area and then by procedures with the greatest ASC expenditures, respectively.

We have determined that the final rule for the ASC CfCs is not a major rule because the overall economic impact for all the new CfCs is estimated to be $26.2 million annually.

We have determined that the final rule that contains clarification regarding the Secretary's ability to terminate Medicare providers and suppliers (that is, relating specifically to transplant centers) during an appeal of a determination that affects participation in the Medicare program will have no net effect on Medicare expenditures.

2. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Many hospitals, other providers, ASCs, and other suppliers are considered to be small entities, either by being nonprofit organizations or by meeting the Small Business Administration (SBA) definition of a small business (hospitals having revenues of $34.5 million or less in any 1 year; ambulatory surgical centers having revenues of $10 million or less in any 1 year). (For details on the latest standards for health care providers, we refer readers to the SBA's Web site at: *http://sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf* (refer to the 620000 series).)

For purposes of the RFA, we have determined that many hospitals and most ASCs would be considered small entities according to the SBA size standards. Individuals and States are not included in the definition of a small entity. Therefore, the Secretary has determined that this final rule with comment period will have a significant impact on a substantial number of small entities.

In relation to the final rule on the ASC CfCs, we estimate there are approximately 5,100 Medicare-participating ASCs (that includes both deemed and non-deemed facilities) with average admissions of approximately 1,240 patients per ASC (based on the number of patients seen in ASCs in 2008 divided by the number of ASCs in 2008). As stated earlier, most ASCs are considered to be small entities, either by nonprofit status or by having revenues of $7 million to $34.5 million in any 1 year. The cost of this final rule is less than 1 percent of the total ASC Medicare revenue per facility. According to the CMS national expenditure data, Medicare paid approximately $3 billion to ASCs in 2007.

3. Small Rural Hospitals

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we now define a small rural hospital as a hospital that is located outside of an urban area and has fewer than 100 beds. Section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21) designated hospitals in certain New England counties as belonging to the adjacent urban areas. Thus, for OPPS purposes, we continue to classify these hospitals as urban hospitals. We believe that the changes to the OPPS in this final rule with comment period will affect both a substantial number of rural hospitals as well as other classes of hospitals and that the effects on some may be significant. Therefore, the Secretary has determined that this final rule with comment period will have a significant impact on the operations of a substantial number of small rural hospitals.

In addition, the Secretary has determined that the final rule on the ASC CfCs will not have a significant impact on the operations of a substantial number of rural hospitals because ASCs are designed to only provide procedures on an outpatient basis, and, thus, are not competing with rural hospitals for inpatient procedures.

Also, the clarification of Medicare termination policy for providers and suppliers, specifically transplant centers, in this final rule will have no significant effect on small rural hospitals.

4. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $130 million. This final rule with comment period will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs. The final rule relating to revisions of the ASC CfCs and the final rule containing policy clarification of the policy on termination of Medicare providers and suppliers will not have an effect on the expenditures of State, local, or tribal government, and the impact on the private sector is estimated to be less than $120 million.

5. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct costs on State and local governments, preempts State law, or otherwise has Federalism implications.

We have examined the OPPS and ASC provisions included in this final rule with comment period in accordance with Executive Order 13132, Federalism, and have determined that they will not have a substantial direct effect on State, local or tribal governments, preempt State law, or otherwise have a Federalism implication. As reflected in Table 51 below, we estimate that OPPS payments to governmental hospitals (including State and local governmental hospitals) will increase by 4.4 percent under this final rule with comment period. The provisions related to payments to ASCs in CY 2009 will not affect payments to governmental hospitals.

In addition, this final rule on ASC CfCs has no Federalism implications and will not affect State and local governments. However, for purposes of burden estimates, we are unable to accurately determine the number of ASCs that are already compliant with these requirements. Therefore, we have decided to err on the high cost side and apply the derived cost estimates to the total number of ASCs participating in Medicare. In addition, we believe the increased quality initiatives outlined in the regulation should have little or no effect on the benefit cost of ASC services.

We also have examined the policy clarification relating to termination of Medicare providers and suppliers in this final rule in accordance with Executive Order 13132, Federalism, and have determined that it will not have a substantial direct effect on State, local or tribal governments, preempt State law, or otherwise have a Federalism implication.

B. Effects of OPPS Changes in This Final Rule With Comment Period

We are making several changes to the OPPS that are required by the statute. We are required under section 1833(t)(3)(C)(ii) of the Act to update annually the conversion factor used to determine the APC payment rates. We also are required under section 1833(t)(9)(A) of the Act to revise, not less often than annually, the wage index and other adjustments. In addition, we must review the clinical integrity of payment groups and weights at least annually. Accordingly, in this final rule with comment period, we are updating the conversion factor and the wage index adjustment for hospital outpatient services furnished beginning January 1, 2009, as we discuss in sections II.B. and II.C., respectively, of this final rule with comment period. We also are revising the relative APC payment weights using claims data from January 1, 2007, through December 31, 2007, and updated cost report information. We are continuing the payment adjustment for rural SCHs, including EACHs. We are removing two device categories, HCPCS code C1821 (Interspinous process distraction device (implantable)) and HCPCS code L8690 (Auditory osseointegrated device, includes all internal and external components), from pass-through payment status in CY 2009. Finally, we list the 15 drugs and biologicals in Table 23 of this final rule with comment period that we are removing from pass-through payment status for CY 2009.

Under this final rule with comment period, the update change to the conversion factor as provided by statute will increase total OPPS payments by 3.9 percent in CY 2009. The changes to the APC weights, the changes to the wage indices, and the continuation of a payment adjustment for rural SCHs, including EACHs, will not increase OPPS payments because these changes to the OPPS are budget neutral. However, these updates do change the distribution of payments within the budget neutral system as shown in Table 51 below and described in more detail in this section.

1. Alternatives Considered

Alternatives to the changes we are making and the reasons that we have chosen the options are discussed throughout this final rule with comment period. Some of the major issues discussed in this final rule with comment period and the options considered are discussed below.

a. Alternatives Considered for Payment of Multiple Imaging Procedures

We are revising our payment methodology for multiple imaging procedures performed during a single session using the same imaging modality by applying a composite APC payment methodology in CY 2009. We will provide one composite APC payment each time a hospital bills for second and subsequent procedures described by the HCPCS codes in one imaging family on a single date of

service. As discussed in detail in section II.A.2.e.(5) of this final rule with comment period, we are utilizing three imaging families of HCPCS codes based on imaging modality for purposes of this methodology (that is, Ultrasound, CT and CTA, and MRI and MRA). The composite APC methodology for multiple imaging services will result in the creation of the following five new APCs due to the statutory requirement that we differentiate payment for OPPS imaging services provided with and without contrast: APC 8004 (Ultrasound Composite); APC 8005 (CT and CTA without Contrast Composite); APC 8006 (CT and CTA with Contrast Composite); APC 8007 (MRI and MRA without Contrast Composite); and APC 8008 (MRI and MRA with Contrast Composite).

We considered three alternative CY 2009 payment options for imaging services under the OPPS. The first alternative we considered was to make no change to the existing payment policy of providing hospitals a full APC payment for each imaging service on a claim, regardless of how many procedures are performed during a single session using the same imaging modality or whether the procedures are performed on contiguous body areas. We did not choose this alternative because we believe that continuing the existing payment methodology would neither reflect nor promote the efficiencies hospitals can achieve when they perform multiple imaging procedures during a single session, as demonstrated in CY 2007 claims data and discussed in section II.A.2.e.(5) of this final rule with comment period.

The second alternative we considered was to utilize the 11 families of imaging HCPCS codes applicable under the MPFS multiple imaging discount policy, distinct groups of codes that are based on imaging modality and contiguous body area, in the development of the multiple imaging composite APCs. We did not choose this alternative because, as we discuss in section II.A.2.e.(5) of this final rule with comment period, we believe that the large number of smaller MPFS families are neither appropriate nor necessary for the OPPS. These groups do not correspond to the larger APC groups of services paid under the OPPS, in contrast to the service-specific payment under the MPFS, and would not reflect all efficiencies that may typically be gained in a single imaging session in the hospital outpatient setting of care.

The third alternative we considered and are adopting for CY 2009 is to develop the multiple imaging composite APCs by collapsing the 11 MPFS imaging families into 3 imaging families based solely on imaging modality. We chose this alternative because we believe that the contiguous body area concept that is central to the MPFS imaging families is not necessary to capture potential efficiencies in a hospital outpatient imaging session. As discussed in section II.A.2.e.(5) of this final rule with comment period, we do not expect second and subsequent imaging services of the same modality involving noncontiguous body areas to require certain duplicate facility services. We believe that collapsing the 11 MPFS imaging families into 3 groups for purposes of the OPPS multiple imaging composite payment methodology most accurately reflects how these services are provided in the hospital outpatient setting of care and will most effectively encourage hospital efficiencies that could be achieved when multiple imaging procedures are performed during a single session. We also believe that deriving the multiple imaging composite APCs from 3 collapsed imaging families, rather than the 11 MPFS imaging families, will enable us to maximize the use of multiple imaging claims for ratesetting.

b. Alternatives Considered for the HOP QDRP Requirements for the CY 2009 Payment Update

As discussed in section XVI.D.2. of this final rule with comment period, we are implementing the payment provisions of section 109(a) of the MIEA–TRHCA, which amended section 1833(t) of the Act by adding a new subsection (17). In summary, new section 1833(t)(17)(A) of the Act requires that certain hospitals that fail to meet the HOP QDRP reporting requirements incur a 2.0 percentage point reduction to their OPD fee schedule increase factor, that is, the market basket update. The application of a reduced OPD fee schedule increase factor results in reduced national unadjusted payment rates that will apply to certain outpatient items and services performed by hospitals that are required to report outpatient quality data and that fail to meet the HOP QDRP requirements.

As described in detail in section XVI.D.2. of this final rule with comment period, effective for services paid under the CY 2009 OPPS, we will calculate two conversion factors: A full market basket conversion factor (that is, the full CF) and a reduced market basket conversion factor (that is, the reduced CF). We will calculate a ''reporting ratio'' that will apply to payment for hospitals that fail to meet their reporting requirements, by dividing the reduced CF by the full CF.

Under the OPPS, we have two levels of Medicare beneficiary copayment for many separately paid services: The minimum unadjusted copayment and the national unadjusted copayment. The minimum unadjusted copayment is always 20 percent of the unadjusted national payment rate for each separately payable service. The national unadjusted copayment is determined based on the historic coinsurance rate for the services assigned to the APC. We considered two alternative policy options for the copayment calculation methodology for those hospitals that fail to meet the HOP QDRP requirements.

The first alternative we considered was to calculate the national unadjusted copayments and the minimum unadjusted copayments based on the reduced national unadjusted payment rates, using our standard copayment methodology. We found that, in many cases, the beneficiary copayment amount would remain the same as calculated based on the full national unadjusted payment rates, although the total reduced national unadjusted payment rate would decline because of the reduction to the conversion factor. Therefore, in these cases, the ratio of the copayment to the total payment (the coinsurance percentage) would increase rather than decrease if we were to calculate copayments based on the reduced national unadjusted payment rates. We did not choose this option because we believe that the increased coinsurance percentage that results from this methodology is contradictory to the intent of the statute that the coinsurance percentage should never increase and is also contradictory to our copayment rules that are intended to gradually reduce the percentage of the payment attributed to copayments until the copayment is equal to the minimum unadjusted copayment for all services.

The second alternative we considered and are adopting is to apply the reporting ratio noted above to both the national unadjusted copayment and the minimum unadjusted copayment that would apply to each APC for hospitals that receive the reduced CY 2009 OPPS payment update. Beneficiaries and secondary payers will therefore not pay a higher coinsurance rate and will share in the reduction of payments to these hospitals. We believe that this alternative will allow us to appropriately set the national unadjusted copayments for the reduced OPPS national unadjusted payment rates and is most consistent with the eventual establishment of 20 percent of the payment rate as the uniform

coinsurance percentage for all services under the OPPS.

c. Alternatives Considered Regarding OPPS Cost Estimation for Relative Payment Weights

Since the implementation of the OPPS, some commenters have raised concerns about potential bias in the OPPS cost-based weights due to ''charge compression,'' which is the practice of applying a lower charge markup to higher-cost services and a higher charge markup to lower-cost services. To explore this issue, in August 2006, we awarded a contract to RTI to study the effects of charge compression in calculating the IPPS relative weights, particularly with regard to the impact on inpatient DRG payments, and to consider methods to reduce the variation in the CCRs used to calculate costs for the IPPS relative weights across services within cost centers. Of specific note was analysis of a regression-based methodology estimating an average adjustment for CCRs by type of revenue code from an observed relationship between provider cost center CCRs and proportional billing of high and low cost services in the cost center.

In August 2007, we expanded the RTI contract to determine whether the findings of the report were also applicable to the payment weights established under the OPPS and to more systematically explore cost estimation issues specific to the OPPS, including the revenue code-to-cost center crosswalk. We refer readers to section II.A.1.c. of this final rule with comment period for discussion of the issues and the Web site at *http://www.rti.org* for the RTI findings and recommendations.

The final RTI report describing its research findings was made available at about the time of the issuance of the CY 2009 OPPS/ASC proposed rule. In this report, RTI made a number of recommendations for achieving more accurate estimates of cost for services paid under both the IPPS and the OPPS. This report also distinguished between two types of research findings and recommendations, that is, those pertaining to the accounting or cost report data itself and those related to statistical regression analysis. RTI made 11 recommendations to improve IPPS and OPPS cost estimation, including both short-term and long-term accounting changes, and short-term regression-based and other statistical adjustments. For a detailed discussion of the RTI recommendations from the July 2008 report, we refer readers to section II.A.1.c. of this final rule with comment period.

With respect to adopting the RTI recommendations, we considered three alternatives. The first alternative we considered and the one we adopted was to make no changes in response to the RTI findings and to accept none of the recommendations regarding cost estimation. While we agree with RTI's findings that there are likely misassigned costs in the cost reports that could adversely affect the OPPS relative weights and that charge compression influences the OPPS payment weights, we are adopting this alternative for CY 2009 OPPS for the reasons discussed in detail in the discussion of charge compression in sections II.A.1.c.(2) and V.B.3. of this final rule with comment period. However, as we discussed in the FY 2009 IPPS final rule with comment period (73 FR 48458 through 48467), we believe that creation of a new cost center to facilitate more accurate estimation of device costs is preferable to the regression-based adjustment of CCRs. Moreover, as we explain in section II.A.1.c.(2) of this final rule with comment period, prior to adopting any changes in the revenue code-to-cost center crosswalk used to adjust hospital charges to costs for OPPS ratesetting as recommended by RTI, we will provide a streamlined comparison of median costs that isolates changes attributable to the revenue code-to-cost center crosswalk to allow for informed analysis and additional public input regarding the RTI-recommended changes to the crosswalk.

The second alternative we considered was to accept all of the RTI recommendations. We did not choose this alternative because of the magnitude and scope of impact on APC relative weights that would result from adopting all accounting and statistical changes in cost estimation that were recommended. Further, the numerous and substantial changes that RTI recommended have significantly complex interactions with one another, and we believe that we should proceed cautiously in considering their adoption. In a budget neutral payment system, increases in payment for some services always result in reductions to payment for other services. We believe that any potential accounting and statistical changes in cost estimation are likely to result in significant shifts in payment among hospital departments and among hospitals and should be thoroughly assessed before we decide whether to propose changes in OPPS cost estimation.

The third alternative we considered was to break the single standard cost center 5600 on the Medicare cost report into two new standard cost centers, Drugs with High Overhead Cost Charged to Patients and Drugs with Low Overhead Cost Charged to Patients, to reduce the reallocation of pharmacy overhead cost from expensive to inexpensive drugs and biologicals when setting an equivalent average ASP-based payment amount in the future. As discussed in section V.B.3. of this final rule with comment period, we did not choose this alternative because hospitals indicated that it would be an extraordinary administrative burden to report the HCPCS codes for drugs administered to inpatients that are paid separately under the OPPS (but not paid separately under the IPPS) and to allocate the pharmacy overhead costs (for example, salaries, supplies, and equipment costs) between two new drug cost centers.

2. Limitations of Our Analysis

The distributional impacts presented here are the projected effects of the CY 2009 policy changes on various hospital groups. We post on our Web site our hospital-specific estimated payments for CY 2009 with the other supporting documentation for this final rule with comment period. To view the hospital-specific estimates, we refer readers to the CMS Web site at: *http://www.cms.hhs.gov/HospitalOutpatientPPS/*. Select ''regulations and notices'' from the left side of the page and then select ''CMS–1404–FC'' from the list of regulations and notices. The hospital-specific file layout and the hospital-specific file are listed with the other supporting documentation for this final rule with comment period. We show hospital-specific data only for hospitals whose claims were used for modeling the impacts shown in Table 51 below. We do not show hospital-specific impacts for hospitals whose claims we were unable to use. We refer readers to section II.A.2. of this final rule with comment period for a discussion of the hospitals whose claims we do not use for ratesetting and impact purposes.

We estimate the effects of the individual policy changes by estimating payments per service, while holding all other payment policies constant. We use the best data available, but do not attempt to predict behavioral responses to our policy changes. In addition, we do not make adjustments for future changes in variables such as service volume, service-mix, or number of encounters. As we have done in previous rules, we solicited public comment and information about the anticipated effect of our proposed

changes on hospitals and our methodology for estimating them.

We received several public comments on the form and content of the impact analysis.

Comment: Many commenters stated their concern that no Louisiana CMHCs (including small or rural CMHCs) were included in the impact table. The commenters believed that CMS is required by regulation to calculate the estimated impact of the OPPS/ASC proposed rule on all small and rural providers. Another commenter was concerned with CY 2009 proposed policy changes that the commenter believed would reduce OPPS payments to Michigan hospitals. The commenter estimated that Michigan hospitals would lose approximately $115 million annually when providing OPPS services to Medicare beneficiaries.

Response: We are including estimated impacts for all providers (including small, rural CMHCs located in Louisiana) in the first line of Table 51 in this final rule with comment period. We also are including estimated impacts for all CMHCs on the last line of the impact table. Furthermore, we post on the CMS Web site estimated impact for every hospital and CMHC whose claims were used in modeling the impacts of this final rule with comment period. As noted above, to view the hospital-specific estimates, we refer readers to the CMS Web site at: *http://www.cms.hhs.gov/HospitalOutpatientPPS/.* Select ''regulations and notices'' from the left side of the page and then select ''CMS–1404–FC'' from the list of regulations and notices. Hospitals and CMHCs whose claims were used in ratesetting and modeling the impact of this CY 2009 OPPS/ASC final rule with comment period can review the estimated impact that the policies adopted in this CY 2009 OPPS/ASC final rule with comment period may have on them by looking at our estimates on this table. There are estimated payments for more than 50 CMHCs from Louisiana in the file. With respect to Michigan hospitals, we estimate that 94 percent of the hospitals in Michigan would receive increased OPPS payments as a result of the CY 2009 OPPS.

In summary, we have made available on the CMS Web site the estimated amounts that we expect would be paid to each hospital and CMHC for which claims were used in ratesetting and modeling of impacts for the CY 2009 OPPS. These estimated amounts were used to generate the impacts identified in Table 51 below.

3. Estimated Effects of This Final Rule with Comment Period on Hospitals

Table 51 below shows the estimated impact of this final rule with comment period on hospitals. Historically, the first line of the impact table, which estimates the change in payments to all hospitals, has always included cancer and children's hospitals, which are held harmless to their pre-BBA payment to cost ratio. We also are including CMHCs in the first line that includes all providers because we included CMHCs in our weight scaler estimate. We typically do not report a separate impact for CMHCs because they are paid for only one service, PHP, under the OPPS, and each CMHC can typically easily estimate the impact of the changes by referencing payment for PHP services in Addendum A to this final rule with comment period. Because we are adopting a CY 2009 policy change to PHP payment that is more complicated than a simple change in the payment rate, this year we present separate impacts for CMHCs in Table 51 and discuss the impact on CMHCs in section XXIII.B.4. of this final rule with comment period.

The estimated increase in the total payments made under the OPPS is limited by the increase to the conversion factor set under the methodology in the statute. The distributional impacts presented do not include assumptions about changes in volume and service-mix. The enactment of Public Law 108–173 on December 8, 2003, provided for the additional payment outside of the budget neutrality requirement for wage indices for specific hospitals reclassified under section 508. The MMSEA extended section 508 reclassifications through September 30, 2008. Section 124 of Public Law 110–275 further extended section 508 reclassifications through September 30, 2009. The amounts attributable to this reclassification are incorporated into the CY 2008 estimates.

Table 51 shows the estimated redistribution of hospital and CMHC payments among providers as a result of APC reconfiguration and recalibration; wage indices; the combined impact of the APC recalibration, wage effects, and the market basket update to the conversion factor; and, finally, estimated redistribution considering all payments for CY 2009 relative to all payments for CY 2008, including the impact of changes in the outlier threshold and changes to the pass-through payment estimate. We did not model a budget neutrality adjustment for the rural adjustment for SCHs, including EACHs, because we are not making any changes to the policy for CY 2009. Because updates to the conversion factor, including the update of the market basket and the subtraction of additional money dedicated to pass-through payment for CY 2009, are applied uniformly across services, observed redistributions of payments in the impact table for hospitals largely depend on the mix of services furnished by a hospital (for example, how the APCs for the hospital's most frequently furnished services will change), and the impact of the wage index changes on the hospital. However, total payments made under this system and the extent to which this final rule with comment period will redistribute money during implementation also will depend on changes in volume, practice patterns, and the mix of services billed between CY 2008 and CY 2009, which CMS cannot forecast.

Overall, the final OPPS rates for CY 2009 will have a positive effect for providers paid under the OPPS, resulting in a 3.9 percent increase in Medicare payments. Removing cancer and children's hospitals because their payments are held harmless to the pre-BBA ratio between payment and cost, and CMHCs, suggests that these changes will result in a 4.1 percent increase in Medicare payments to all other hospitals, exclusive of transitional pass-through payments. The majority of the difference is attributable to the redistribution of 0.24 percent of total spending from CMHCs due to the changes in payment for partial hospitalization services. The remainder of the difference is attributable to changes in OPPS payment to cancer and children's hospitals, which are not adversely affected by this estimated reduction in OPPS payment because the law provides additional payment for them that is outside of OPPS budget neutrality.

To illustrate the impact of the final CY 2009 changes, our analysis begins with a baseline simulation model that uses the final CY 2008 weights, the FY 2008 final post-reclassification IPPS wage indices, and the final CY 2008 conversion factor. Column 2 in Table 51 shows the independent effect of changes resulting from the reclassification of services among APC groups and the recalibration of APC weights, based on 12 months of CY 2007 hospital OPPS claims data and more recent cost report data. We modeled the effect of APC recalibration changes for CY 2009 by varying only the weights (the final CY 2008 weights versus the CY 2009 weights calculated using the CY 2007 claims used for this final rule with

comment period) and calculating the percent difference in payments. Column 2 also reflects the effect of changes resulting from the APC reclassification and recalibration changes and any changes in multiple procedure discount patterns that occur as a result of the changes in the relative magnitude of payment weights.

Column 3 reflects the independent effects of updated wage indices, including application of budget neutrality for the rural floor policy on a statewide basis. While we have included changes to the rural adjustment in this column in the past, we did not model a budget neutrality adjustment for the rural adjustment for SCHs, including EACHs, because we are making no changes to the policy for CY 2009. We modeled the independent effect of updating the wage index and the rural adjustment by varying only the wage index, using the CY 2009 scaled weights and a CY 2008 conversion factor that included a budget neutrality adjustment for changes in wage effects and the rural adjustment between CY 2008 and CY 2009.

Column 4 demonstrates the combined ''budget neutral'' impact of APC recalibration (that is, Column 2), the wage index update (that is, Column 3), as well as the impact of updating the conversion factor with the market basket update. We modeled the independent effect of the budget neutrality adjustments and the market basket update by using the weights and wage indices for each year, and using a CY 2008 conversion factor that included the market basket update and budget neutrality adjustments for differences in wages.

Finally, Column 5 depicts the full impact of the CY 2009 policies on each hospital group by including the effect of all the changes for CY 2009 (including the APC reconfiguration and recalibration shown in Column 2) and comparing them to all estimated payments in CY 2008, including changes to the wage index under section 508 of Public Law 108–173 as extended by the MMSEA and further extended by Public Law 110–275. Column 5 shows the combined budget neutral effects of Columns 2 through 4, plus the impact of the change to the fixed outlier threshold from $1,575 to $1,800; the impact of the section 508 reclassification wage index extension; and the impact of increasing the estimate of the percentage of total OPPS payments dedicated to transitional pass-through payments. We estimate that these cumulative changes will increase payments to all providers by 3.9 percent for CY 2009. We modeled the independent effect of all changes in Column 5 using the final weights for CY 2008 and the final weights for CY 2009. We used the final conversion factor for CY 2008 of $63.694 and the CY 2009 conversion factor of $66.059. Column 5 also contains simulated outlier payments for each year. We used the charge inflation factor used in the FY 2009 IPPS final rule of 5.85 percent (1.0585) to increase individual costs on the CY 2007 claims to reflect CY 2008 dollars, and we used the most recent overall CCR in the July 2008 Outpatient Provider-Specific File. Using the CY 2007 claims and a 5.85 percent charge inflation factor, we currently estimate that outlier payments for CY 2008, using a multiple threshold of 1.75 and a fixed-dollar threshold of $1,575, will be approximately 0.73 percent of total payments. Outlier payments of 0.73 percent appear in the CY 2008 comparison in Column 5. We used the same set of claims and a charge inflation factor of 12.04 percent (1.1204) and the CCRs in the July 2008 Outpatient Provider-Specific File, with an adjustment of 0.9920 to reflect relative changes in cost and charge inflation between CY 2007 and CY 2009, to model the CY 2009 outliers at 1.0 percent of total payments using a multiple threshold of 1.75 and a fixed-dollar threshold of $1,800.

Column 1: Total Number of Hospitals

The first line in Column 1 in Table 51 shows the total number of providers (4,252), including cancer and children's hospitals and CMHCs for which we were able to use CY 2007 hospital outpatient claims to model CY 2008 and CY 2009 payments by classes of hospitals. We excluded all hospitals for which we could not accurately estimate CY 2008 or CY 2009 payment and entities that are not paid under the OPPS. The latter entities include CAHs, all-inclusive hospitals, and hospitals located in Guam, the U.S. Virgin Islands, Northern Mariana Islands, American Samoa, and the State of Maryland. This process is discussed in greater detail in section II.A. of this final rule with comment period. At this time, we are unable to calculate a disproportionate share (DSH) variable for hospitals not participating in the IPPS. Hospitals for which we do not have a DSH variable are grouped separately and generally include psychiatric hospitals, rehabilitation hospitals, and LTCHs. We show the total number (3,970) of OPPS hospitals, excluding the hold-harmless cancer and children's hospitals and CMHCs, on the second line of the table. We excluded cancer and children's hospitals because section 1833(t)(7)(D) of the Act permanently holds harmless cancer hospitals and children's hospitals to a proportion of their pre-BBA payment relative to their pre-BBA costs and, therefore, we removed them from our impact analyses. We show the isolated impact on 222 CMHCs in the last row of the impact table and discuss that impact separately below.

Column 2: APC Changes Due to Reassignment and Recalibration

This column shows the combined effects of reconfiguration, recalibration, and other policies (such as composite payment for multiple imaging procedures performed on the same day, payment for separately payable drugs at ASP+4 percent, and changes in payment for PHP services). In many cases, the redistribution of 0.24 percent of total OPPS spending created by the reduction in the PHP payment offsets other recalibration losses. Specifically, the reduction in PHP payment is redistributed to hospitals and reflected in the 0.3 percent increase for the 3,970 hospitals that remain after excluding hospitals held harmless and CMHCs. Overall, these changes will increase payments to urban hospitals by 0.3 percent. We estimate that large urban hospitals will see an increase of 0.3 percent and other urban hospitals will see a 0.4 percent increase in payments, all attributable to recalibration.

Overall, rural hospitals will show a 0.1 percent increase as a result of changes to the APC structure. With the money redistributed from PHP services, and other recalibration changes, rural hospitals of all bed sizes will experience no change or will experience changes ranging from −0.5 to 0.6 percent.

Among teaching hospitals, the largest observed impacts resulting from APC recalibration include an increase of 0.5 percent for major teaching hospitals and an increase of 0.4 percent for minor teaching hospitals.

Classifying hospitals by type of ownership suggests that proprietary hospitals will see an increase of 0.2 percent, governmental hospitals will see an increase of 0.2 percent, and voluntary hospitals will see an increase of 0.3 percent.

We note also that both low volume urban and rural hospitals with less than 5,000 lines and hospitals for which DSH payments are not available will experience decreases of 0.3 to 2.5 percent as a result of the decline in payment for PHP services and the change in payment policy for PHP services from one per diem rate in CY 2008 to two per diem rates in CY 2009, as well as other recalibration changes.

Column 3: New Wage Indices and the Effect of the Rural Adjustment

This column estimates the impact of applying the final FY 2009 IPPS wage indices for the CY 2009 OPPS. Overall, these changes will not change the payments to urban or rural hospitals.

Among teaching hospitals, the largest observed impact resulting from changes to the wage indices is a decrease of 0.1 percent for major teaching hospitals in contrast to no change for minor teaching hospitals. Classifying hospitals by type of ownership suggests that governmental hospitals will see an increase of 0.2 percent, and voluntary and proprietary hospitals will experience no change.

We estimate that the combination of updated wage data from FY 2005 cost reports and statewide application of rural floor budget neutrality redistributes payment among regions. Both rural and urban areas in New England and the Middle Atlantic states experience declines of up to 0.8 percent. The Central regions (excluding the East North Central regions) and the Pacific regions of the country experience increases up to 1.2 percent. Change in Puerto Rico's wage data contributes to the decrease of 0.9 percent.

Column 4: All Budget Neutrality Changes and Market Basket Update

The addition of the market basket update of 3.6 percent mitigates any negative impacts on payments for CY 2009 created by the budget neutrality adjustments made in Columns 2 and 3. In general, all hospitals will see an increase of 3.9 percent, attributable to the 3.6 percent market basket increase, the 0.24 percent increase in payment weight created by the reduction in payment for PHP services that is then redistributed to other services and the 0.04 percent redistribution from dedicated cancer and children's hospitals (which are not affected by the redistribution because the law holds them harmless). The 0.28 percent increase is rounded to 0.3 for purposes of Table 51.

Overall, these changes will increase payments to urban hospitals by 3.9 percent. We estimate that large urban hospitals will see an increase of 3.8 percent and other urban hospitals will see a 4.1 percent increase.

Overall, rural hospitals will experience a 3.7 percent increase as a result of the market basket update and other budget neutrality adjustments. Rural hospitals that bill less than 5,000 lines will experience a 3.8 percent increase. Increases in payment due to the wage index modestly offset the reduction in payment for PHP services in low volume rural hospitals. Rural hospitals that bill more than 5,000 lines will experience increases of 2.9 to 3.9 percent.

Among teaching hospitals, the observed impacts resulting from the market basket update and other budget neutrality adjustments include an increase of 4.0 percent for both major and minor teaching hospitals.

Classifying hospitals by type of ownership suggests that proprietary hospitals will increase 3.8 percent, governmental hospitals will increase 4.0 percent, and voluntary hospitals will experience an increase of 3.9 percent.

Column 5: All Changes for CY 2009

Column 5 compares all changes for CY 2009 to final payment for CY 2008 and includes the extended section 508 reclassification wage indices, the change in the outlier threshold, and the difference in pass-through estimates which are not included in the combined percentages shown in Column 4. Overall, we estimate that providers will experience an increase of 3.9 percent under this final rule with comment period in CY 2009 relative to total spending in CY 2008. The projected 3.9 percent increase for all providers in Column 5 reflects the 3.6 percent market basket increase, less 0.02 percent for the change in the pass-through estimate between CY 2008 and CY 2009, plus 0.27 percent for the difference in estimated outlier payments between CY 2008 (0.73 percent) and CY 2009 (1.0 percent), less 0.02 percent for the extended section 508 wage payments, and results in 3.87 percent that rounds to the 3.9 percent increase shown in Table 51. When we exclude cancer and children's hospitals (which are held harmless to their pre-OPPS costs) and CMHCs, the gain will be 4.1 percent.

The combined effect of all changes for CY 2009 will increase payments to urban hospitals by 4.2 percent. We estimate that large urban hospitals will see a 4.1 percent increase, while ''other'' urban hospitals will experience an increase of 4.3 percent. Urban hospitals that bill less than 5,000 lines will experience an increase of 1.4 percent.

Overall, rural hospitals will experience a 3.9 percent increase as a result of the combined effects of all changes for CY 2009. Rural hospitals that bill less than 5,000 lines will experience an increase of 4.6 percent, which is greater than the 3.8 percent increase in Column 4. All rural hospitals that bill greater than 5,000 lines will experience increases ranging from 3.1 percent to 4.1 percent.

Among teaching hospitals, the largest observed impacts resulting from the combined effects of all changes include an increase of 4.5 percent for major teaching hospitals and an increase of 4.2 percent for minor teaching hospitals.

Classifying hospitals by type of ownership suggests that proprietary hospitals will gain 3.9 percent, governmental hospitals will experience an increase of 4.4 percent, and voluntary hospitals will experience an increase of 4.1 percent.

4. Estimated Effects of This Final Rule With Comment Period on CMHCs

The last row of the impact analysis in Table 51 demonstrates the impact on CMHCs. We modeled this impact assuming that CMHCs will continue to provide the same number of days of PHP care, with each day having either three services or four or more services, as seen in the CY 2007 claims data. Using these assumptions, there will be a 22.8 percent decrease in payments to CMHCs due to these APC policy changes (shown in Column 2). Column 3 shows that the CY 2009 wage index updates account for a small decrease in payments to CMHCs (0.3 percent). We note that all providers paid under the OPPS, including CMHCs, receive a 3.6 percent market basket increase (shown in Column 4). Combining this market basket increase, along with changes in APC policy for CY 2009 and the CY 2009 wage index updates, the combined impact on CMHCs for CY 2009 is a 19.5 percent decrease.

We anticipate that CMHCs will change their behavior in response to the CY 2009 payment rates for PHP services, consistent with patient need. By providing one additional qualifying partial hospitalization service, CMHCs will qualify for payment of APC 0173 (Level II Partial Hospitalization payment (4 or more services)), whose payment rate is approximately $205, rather than APC 0172 (Level I Partial Hospitalization payment rate (3 services)), whose payment rate is approximately $161. This change in behavior will lessen the impact on CMHCs in CY 2009.

Using the CY 2007 CMHC claims data, there are a large number of days provided by CMHCs with only 3 services furnished in a given day (approximately 1 million days billed by CMHCs were for 3 units of service). If CMHCs were to provide 1 additional service on 50 percent of those 1 million days with 3 services, we estimate that the impact on CY 2009 payment to CMHCs will be a 15.8 percent decrease rather than a 22.8 percent decrease (which is the decrease due to APC

changes, while keeping the number of days with 3 services the same as reflected in CY 2007 claims data). Continuing to use the assumption that 50 percent of CMHC days with three services would qualify for the Level II PHP payment rate, we estimate that the combined impact including all changes (market basket increase, changes in APC policy for CY 2009, and CY 2009 wage index updates), on CMHCs for CY 2009 will be approximately a 12.1 percent decrease in payment.

We believe that CMHCs may provide additional services on days in excess of the 50 percent of current 3 service days assumed in the scenario described above, behavior which would further mitigate the estimated decrease in payments to CMHCs. Furthermore, we note that there are approximately 40,000 days billed by CMHCs in CY 2007 with only 1 or 2 PHP services. The impact analysis shown in Table 51 is modeled assuming that those days will not receive any payment, in accordance with our policy to deny payment for days with less than three services. However, we anticipate that CMHCs will also change their behavior in response to our policy to deny payment for days with less than three services, to the extent providing additional services is consistent with the plan of care established by each patient's physician. This change in behavior would mitigate modeled payment reductions to CMHCs because additional days with three or more services would qualify for new APC 0172 or new APC 0173.

TABLE 51—IMPACT OF CHANGES FOR CY 2009 HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM

	Number of hospitals	APC recalibration	New wage index and rural adjustment	Comb (cols 2, 3) with market basket update	All changes
	(1)	(2)	(3)	(4)	(5)
ALL PROVIDERS *	4,252	0.0	0.0	3.6	3.9
ALL HOSPITALS (excludes hospitals held harmless and CMHCs)	3,970	0.3	0.0	3.9	4.1
URBAN HOSPITALS	2,970	0.3	0.0	3.9	4.2
LARGE URBAN (GT 1 MILL.)	1,620	0.3	0.0	3.8	4.1
OTHER URBAN (LE 1 MILL.)	1,350	0.4	0.1	4.1	4.3
RURAL HOSPITALS	1,000	0.1	0.0	3.7	3.9
SOLE COMMUNITY * * *	405	0.1	−0.1	3.6	4.0
OTHER RURAL	595	0.0	0.0	3.7	3.8
BEDS (URBAN):					
0–99 BEDS * * *	1,003	0.4	0.0	4.0	4.2
100–199 BEDS	907	0.2	0.0	3.8	3.9
200–299 BEDS	469	0.4	0.2	4.2	4.3
300–499 BEDS	401	0.4	0.0	4.0	4.3
500 + BEDS	190	0.3	−0.2	3.7	4.2
BEDS (RURAL):					
0–49 BEDS * * *	356	−05	0.1	3.2	3.4
50–100 BEDS * * *	379	−0.1	−0.1	3.4	3.6
101–149 BEDS	159	0.0	0.2	3.8	3.9
150–199 BEDS	62	0.4	0.1	4.2	4.4
200 + BEDS	44	0.6	−0.2	4.0	4.4
VOLUME (URBAN):					
LT 5,000 Lines	608	−2.5	0.1	1.2	1.4
5,000–10,999 Lines	176	0.4	−0.1	3.9	4.0
11,000–20,999 Lines	280	0.5	0.2	4.3	4.5
21,000–42,999 Lines	514	0.1	0.1	3.8	3.9
GT 42,999 Lines	1,392	0.4	0.0	4.0	4.2
VOLUME (RURAL):					
LT 5,000 Lines	77	−0.3	0.5	3.8	4.6
5,000–10,999 Lines	100	−0.7	0.2	3.1	3.7
11,000–20,999 Lines	187	−0.7	0.0	2.9	3.1
21,000–42,999 Lines	318	−0.3	0.0	3.3	3.5
GT 42,999 Lines	318	0.3	0.0	3.9	4.1
REGION (URBAN):					
NEW ENGLAND	153	0.4	−0.1	3.9	4.1
MIDDLE ATLANTIC	380	0.4	−0.6	3.4	3.5
SOUTH ATLANTIC	457	0.3	−0.1	3.9	4.0
EAST NORTH CENT	471	0.4	−0.4	3.6	4.1
EAST SOUTH CENT	195	0.2	0.0	3.8	4.0
WEST NORTH CENT	189	0.6	0.5	4.7	4.8
WEST SOUTH CENT	486	0.1	0.1	3.8	4.2
MOUNTAIN	192	0.4	0.1	4.2	4.4
PACIFIC	399	0.1	1.2	4.9	5.0
PUERTO RICO	48	0.1	−0.9	2.8	3.2
REGION (RURAL):					
NEW ENGLAND	24	0.9	−0.8	3.7	3.9
MIDDLE ATLANTIC	68	0.3	−0.3	3.6	3.8
SOUTH ATLANTIC	168	−0.2	0.0	3.4	3.5
EAST NORTH CENT	127	0.2	−0.5	3.3	3.6
EAST SOUTH CENT	179	−0.1	0.3	3.7	3.8
WEST NORTH CENT	114	0.3	0.2	4.2	4.8
WEST SOUTH CENT	210	−0.2	0.4	3.9	4.0

TABLE 51—IMPACT OF CHANGES FOR CY 2009 HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM—Continued

	Number of hospitals	APC recalibration	New wage index and rural adjustment	Comb (cols 2, 3) with market basket update	All changes
	(1)	(2)	(3)	(4)	(5)
MOUNTAIN	76	−0.2	−0.2	3.2	3.4
PACIFIC	34	−0.1	1.1	4.6	4.8
TEACHING STATUS:					
NON-TEACHING	2,965	0.2	0.0	3.8	4.0
MINOR	725	0.4	0.0	4.0	4.2
MAJOR	280	0.5	−0.1	4.0	4.5
DSH PATIENT PERCENT:					
0	9	1.9	0.0	5.5	5.5
GT 0–0.10	400	0.5	−0.4	3.8	3.9
0.10–0.16	398	0.4	0.0	4.0	4.3
0.16–0.23	815	0.3	−0.1	3.8	4.0
0.23–0.35	985	0.3	0.2	4.1	4.3
GE 0.35	749	0.1	0.1	3.8	4.2
DSH NOT AVAILABLE * *	614	−2.2	0.2	1.5	1.6
URBAN TEACHING/DSH:					
TEACHING & DSH898	0.4	0.0	4.0	4.3	
TEACHING/NO DSH	0	0.0	0.0	0.0	0.0
NO TEACHING/DSH	1,482	0.3	0.0	3.9	4.0
NO TEACHING/NO DSH	7	1.7	−0.1	5.2	5.2
DSH NOT AVAILABLE * *	583	−2.2	0.2	1.5	1.6
TYPE OF OWNERSHIP:					
VOLUNTARY	2,113	0.3	0.0	3.9	4.1
PROPRIETARY	1,275	0.2	0.0	3.8	3.9
GOVERNMENT	582	0.2	0.2	4.0	4.4
CMHCs	222	−22.8	−0.3	−19.5	−19.5

Column (1) shows total hospitals.

Column (2) shows the impact of changes resulting from the reclassification of HCPCS codes among APC groups and the recalibration of APC weights based on CY 2007 hospital claims data.

Column (3) shows the budget neutral impact of updating the wage index by applying the FY 2009 hospital inpatient wage index. We did not make any changes to the rural adjustment.

Column (4) shows the impact of all budget neutrality adjustments and the addition of the market basket update.

Column (5) shows the additional adjustments to the conversion factor resulting from a change in the pass-through estimate and adds outlier payments. This column also shows the impact of the extended 508 wage reclassification, which ends September 30, 2009.

* These 4,252 providers include children and cancer hospitals, which are held harmless to pre-BBA payments, and CMHCs.

** Complete DSH numbers are not available for providers that are not paid under IPPS, including rehabilitation, psychiatric, and long-term care hospitals.

*** Section 1833(t)(7)(D) of the Act specifies that rural hospitals with 100 or fewer beds and SCHs with 100 or fewer beds (urban and rural) receive additional payment for covered hospital outpatient services furnished during CY 2009 for which the prospective payment amount is less than the pre-BBA amount. The amount of payment is increased by 85 percent of that difference for CY 2009.

5. Estimated Effect of This Final Rule With Comment Period on Beneficiaries

For services for which the beneficiary pays a copayment of 20 percent of the payment rate, the beneficiary share of payment will increase for services for which the OPPS payments will rise and will decrease for services for which the OPPS payments will fall. For example, for a service assigned to Level IV Needle Biopsy/Aspiration Except Bone Marrow (APC 0037) in the CY 2008 OPPS, the national unadjusted copayment was $228.76, and the minimum unadjusted copayment was $172.95. For CY 2009, the national unadjusted copayment for APC 0037 is $228.76, the same national unadjusted copayment in effect for CY 2008. The minimum unadjusted copayment for APC 0037 is $178.60 or 20 percent of the national unadjusted payment rate for APC 0037 of $892.96 for CY 2009. The minimum unadjusted copayment will rise because the payment rate for APC 0037 will rise for CY 2009. In all cases, the statute limits beneficiary liability for copayment for a service to the hospital inpatient deductible for the applicable year. The CY 2009 hospital inpatient deductible is $1,068.

In order to better understand the impact of changes in copayment on beneficiaries, we modeled the percent change in total copayment liability using CY 2007 claims. We estimate, using the claims of the 4,252 hospitals and CMHCs on which our modeling is based, that total beneficiary liability for copayments will decline by approximately $62 million or, as an overall percentage of total payments, from 24.8 percent in CY 2008 to 23.3 percent in CY 2009. This estimated decline in beneficiary liability is a consequence of the APC recalibration and reconfiguration we are adopting for CY 2009.

6. Conclusion

The changes in this final rule with comment period will affect all classes of hospitals and CMHCs. Some classes of hospitals will experience significant gains and others less significant gains, but all classes of hospitals will experience positive updates in OPPS payments in CY 2009. In general, CMHCs will experience an overall decline of 19.5 percent in payment due to the creation of two APCs for PHP and the recalibration of the payment rates. Table 51 demonstrates the estimated distributional impact of the OPPS budget neutrality requirements that results in a 3.9 percent increase in payments for CY 2009, after considering all changes to APC reconfiguration and recalibration, as well as the market basket increase, wage index changes, estimated payment for outliers, and changes to the pass-through payment estimate. The accompanying discussion,

in combination with the rest of this final rule with comment period, constitutes a regulatory impact analysis.

7. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 52, we have prepared an accounting statement showing the CY 2009 estimated hospital OPPS incurred benefit impact associated with the CY 2009 hospital outpatient market basket update shown in this final rule with comment period, based on the 2008 Trustees' Report baseline. All estimated impacts are classified as transfers.

TABLE 52—ACCOUNTING STATEMENT: CY 2009 ESTIMATED HOSPITAL OPPS INCURRED BENEFIT IMPACT ASSOCIATED WITH THE CY 2009 HOSPITAL OUTPATIENT MARKET BASKET UPDATE (IN BILLIONS)

Category	Transfers
Annualized Monetized Transfers	$0.8 billion.
From Whom to Whom	Federal Government to outpatient hospitals and other providers who received payment under the hospital OPPS.
Total	$0.8 billion.

C. Effects of ASC Payment System Changes in This Final Rule With Comment Period

On August 2, 2007, we published in the **Federal Register** the final rule for the revised ASC payment system, effective January 1, 2008 (72 FR 42470). In that final rule, we: Adopted the methodologies to set payment rates for covered ASC services to implement the revised payment system so that it would be designed to result in budget neutrality as required by section 626 of Public Law 108–173; established that the OPPS relative payment weights would be the basis for payment and that we would update the system annually as part of the OPPS rulemaking cycle; and provided that the revised ASC payment rates would be phased-in over 4 years. During the 4-year transition to full implementation of the revised ASC rates, payments for surgical procedures paid in ASCs in CY 2007 will be made using a blend of the CY 2007 ASC payment rate and the revised ASC payment rate for that calendar year. In CY 2009, we are paying ASCs using a 50/50 blend, in which payment would be calculated by adding 50 percent of the CY 2007 ASC rate for a surgical procedure on the CY 2007 ASC list of covered surgical procedures and 50 percent of the CY 2009 revised ASC rate for the same procedure. For CY 2010, we would transition the blend to a 25/75 blend of the CY 2007 ASC rate and the revised ASC payment rate. Beginning in CY 2011, we would pay ASCs for all covered surgical procedures, including those on the CY 2007 ASC list, at the full revised ASC payment rates. Payment for procedures that were not included on the ASC list of covered surgical procedures in CY 2007 is not subject to the transitional payment methodology.

ASC payment rates are calculated by multiplying the ASC conversion factor by the ASC relative payment weight. As discussed fully in section XV. of this final rule with comment period, we set the CY 2009 ASC relative payment weights by scaling unadjusted CY 2009 ASC relative payment weights by the ASC scaler of 0.9751. These weights take into consideration the 50/50 blend for the second year of transitional payment for certain services. If there were no transition, the scaler for CY 2009 fully implemented payment rates would be 0.9412. The estimated effects on payment rates during this transitional period are varied and are reflected in the estimated payments displayed in Tables 53 and 54 below.

The CY 2009 ASC conversion factor was calculated by adjusting the CY 2008 ASC conversion factor to account for changes in the pre-floor and pre-reclassified hospital wage indices between CY 2008 and CY 2009. Under section 1833(i)(2)(C)(iv) of the Act, there is no inflation update to the ASC conversion factor for CY 2009. The final CY 2009 ASC conversion factor is $41.393.

1. Alternatives Considered

Alternatives to the changes we are making and the reasons that we have chosen the options are discussed throughout this final rule with comment period.

a. Alternatives Considered for Office-Based Procedures

According to our final policy for the revised ASC payment system, we designate as office-based those procedures that are added to the ASC list of covered surgical procedures in CY 2008 or later years that we determine are usually performed in physicians' offices based on consideration of the most recent available volume and utilization data for each individual procedure code and/or, if appropriate, the clinical characteristics, utilization, and volume of related codes. We establish payment for procedures designated as office-based at the lesser of the MPFS nonfacility PE RVU amount or the ASC rate developed according to the standard methodology of the revised ASC payment system.

In developing this final rule with comment period, we reviewed the newly available CY 2007 utilization data for all surgical procedures added to the ASC list of covered surgical procedures in CY 2008 and for those procedures for which the office-based designation is temporary in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66840 through 66841). Based on that review, and as discussed in section XV.E. of this final rule with comment period, we are newly designating eight surgical procedures as office-based, with four of those designations as permanent. We considered two alternatives in developing this policy.

The first alternative we considered was to make no change to the procedure payment designations. This would mean that we would continue to pay for the eight procedures we are designating as office-based at an ASC payment rate developed according to the standard methodology of the revised ASC payment system. We did not select this alternative because our analysis of data for these services and related procedures indicated that the eight procedures we are designating as office-based could be considered to be usually performed in physicians' offices. Consistent with our final policy adopted in the August 2, 2007 revised ASC payment system final rule (72 FR 42509), we were concerned that if these services were not designated as office-based, their ASC payment could create financial incentives for the procedures to shift from physicians' offices to ASCs for reasons unrelated to clinical

decisions regarding the most appropriate setting for surgical care.

The second alternative we considered, and the alternative we selected, is to designate eight additional procedures as office-based for CY 2009. Three of the eight procedures are newly-created CPT codes that will become effective beginning January 1, 2009. We selected this alternative because our review of the most recent available volume and utilization data and/or, if appropriate, the clinical characteristics, utilization and volume of related codes indicated that these procedures could be considered to be usually performed in physicians' offices. We believe that designating these procedures as either temporarily or permanently office-based, which results in the ASC payment rate for these procedures potentially being capped at the physician's office rate (that is, the MPFS nonfacility PE RVU amount), if applicable, is an appropriate step to ensure that Medicare payment policy does not create financial incentives for such procedures to shift unnecessarily from physicians' offices to ASCs, consistent with our final policy adopted in the August 2, 2007 revised ASC payment system final rule.

b. Alternatives Considered for Covered Surgical Procedures

According to our final policy for the revised ASC payment system, we designate as covered surgical procedures all surgical procedures that we determine do not pose a significant risk to beneficiary safety and are not expected to require an overnight stay.

In developing this final rule with comment period, we reviewed the clinical characteristics and newly available CY 2007 utilization data, if applicable, for all procedures reported by Category III CPT codes implemented July 1, 2008, newly created Category I CPT and Level II HCPCS codes for CY 2009, and surgical procedures that were excluded from ASC payment for CY 2008. Based on that review, we identified 16 surgical procedures for which there are newly created Category I CPT codes for CY 2009 CPT and 14 procedures that had been excluded from the list in CY 2008 that meet the criteria for inclusion on the ASC list of covered surgical procedures and we are adding those procedures to the list for CY 2009 payment. We considered two alternatives in developing this policy.

The first alternative we considered was to make no change to the ASC list of covered surgical procedures. We did not select this alternative because our analysis of data for these services and related procedures indicated that the additional 30 procedures we are designating as covered surgical procedures for CY 2009 may be safely provided to beneficiaries in ASCs and are not expected to require an overnight stay. Consistent with our final policy, we were concerned that if these services were not designated as ASC covered surgical procedures, beneficiaries would lack access to these services in the most clinically appropriate setting.

The second alternative we considered, and the alternative we selected, is to designate 30 additional procedures as ASC covered surgical procedures for CY 2009. We selected this alternative because our review of the clinical characteristics and newly available CY 2007 utilization data, if applicable, for all of these procedures indicated that they do not pose a significant risk to beneficiary safety and are not expected to require an overnight stay, and thus they meet the criteria for inclusion on the list of ASC covered surgical procedures. We believe that adding these procedures to the list of covered surgical procedures is an appropriate step to ensure that beneficiary access to services is not limited unnecessarily.

2. Limitations of Our Analysis

Presented here are the projected effects of the changes for CY 2009 on Medicare payment to ASCs. A key limitation of our analysis is our inability to predict changes in ASC service-mix between CY 2007 and CY 2009 with precision. The aggregate impacts displayed in Tables 53 and 54 below are based upon a methodology that assumes no changes in service-mix with respect to the CY 2007 ASC data used for this final rule with comment period. In addition, data on services that are newly payable under the revised ASC payment system are not yet reflected in the available claims data. We believe that the net effect on Medicare expenditures resulting from the CY 2009 changes will be negligible in the aggregate. However, such changes may have differential effects across surgical specialty groups as ASCs adjust to payment rates. We are unable to accurately project such changes at a disaggregated level. Clearly, individual ASCs will experience changes in payment that differ from the aggregated estimated impacts presented below.

3. Estimated Effects of This Final Rule With Comment Period on Payments to ASCs

Some ASCs are multispecialty facilities that perform the gamut of surgical procedures, from excision of lesions to hernia repair to cataract extraction; others focus on a single specialty and perform only a limited range of surgical procedures, such as eye, digestive system, or orthopedic procedures. The combined effect on an individual ASC of the update to the CY 2009 payments will depend on a number of factors including, but not limited to, the mix of services the ASC provides, the volume of specific services provided by the ASC, the percentage of its patients who are Medicare beneficiaries, and the extent to which an ASC provides different services in the coming year. The following discussion presents tables that display estimates of the impact of the CY 2009 update to the revised ASC payment system on Medicare payments to ASCs, assuming the same mix of services as reflected in our CY 2007 claims data. Table 53 depicts the aggregate percent change in payment by surgical specialty group and Table 54 shows a comparison of payment for procedures that we estimate will receive the most Medicare payment in CY 2009.

Table 53 shows the effects on aggregate Medicare payments under the revised ASC payment system by surgical specialty group. We have aggregated the surgical HCPCS codes by specialty group and estimated the effect on aggregated payment for surgical specialty groups, considering separately the CY 2009 transitional rates and the fully implemented revised ASC payment rates that would apply in CY 2009 if there were no transition. The groups are sorted for display in descending order by estimated Medicare program payment to ASCs for CY 2008. The following is an explanation of the information presented in Table 53.

- Column 1—*Surgical Specialty Group* indicates the surgical specialties into which ASC procedures are grouped. We used the CPT code range definitions and Level II HCPCS codes and Category III CPT codes, as appropriate, to account for all surgical procedures to which the Medicare program payments are attributed.
- Column 2—*Estimated CY 2008 ASC Payments* were calculated using CY 2007 ASC utilization (the most recent full year of ASC utilization) and CY 2008 ASC payment rates. The surgical specialty groups are displayed in descending order based on estimated CY 2008 ASC payments.
- Column 3—*Estimated CY 2009 Percent Change with Transition (50/50 Blend)* is the aggregate percentage increase or decrease, compared to CY 2008, in Medicare program payment to ASCs for each surgical specialty group that is attributable to updates to the ASC payment rates for CY 2009 under the scaled, 50/50 blend of the CY 2007 ASC

payment rate and the CY 2009 ASC payment rate.

• Column 4—*Estimated CY 2009 Percent Change without Transition (Fully Implemented)* is the aggregate percentage increase or decrease in Medicare program payment to ASCs for each surgical specialty group that would be attributable to updates to ASC payment rates for CY 2009 compared to CY 2008 if there were no transition period to the fully implemented payment rates. The percentages appearing in Column 4 are presented only as comparisons to the percentage changes under the transition policy in column 3. We are not eliminating or modifying the policy for a 4-year transition that was finalized in the August 2, 2007 revised ASC payment system final rule (72 FR 42519).

As seen in Table 53, the update to ASC rates for CY 2009 is expected to result in small aggregate decreases in payment amounts for eye and ocular adnexa and nervous system procedures and somewhat greater decreases for digestive system procedures. As shown in column 4 in the table, those payment decreases would be expected to be greater in CY 2009 if there were no transitional payment for all three of those surgical specialty groups.

Generally, for the surgical specialty groups that account for less ASC utilization and spending, the expected payment effects of the CY 2009 update are positive. ASC payments for procedures in those surgical specialties will increase in CY 2009 with the 50/50 transitional payment rates and, in the absence of the transition, would increase even more. For instance, in the aggregate, payment for integumentary system procedures is expected to increase by 7 percent under the CY 2009 rates and by 19 percent if there were no transition. Similar effects are observed for genitourinary, cardiovascular, musculoskeletal, respiratory, and auditory system procedures as well. An estimated increase in aggregate payment for the specialty group does not mean that all procedures in the group will experience increased payment rates. For example, the estimated increased payments at the surgical specialty group level may be due to decreased payments for some of the most frequently provided procedures in the group and the moderating effect of the sometimes substantial payment increases for the less frequently performed procedures within the surgical specialty group.

TABLE 53—ESTIMATED CY 2009 IMPACT OF THE UPDATE TO THE ASC PAYMENT SYSTEM ON ESTIMATED AGGREGATE CY 2009 MEDICARE PROGRAM PAYMENTS UNDER THE 50/50 TRANSITION BLEND AND WITHOUT A TRANSITION, BY SURGICAL SPECIALTY GROUP

Surgical specialty group (1)	Estimated CY 2008 ASC payments (in millions) (2)	Estimated CY 2009 percent change with transition (50/50 blend) (3)	Estimated CY 2009 percent change without transition (fully implemented) (4)
Eye and ocular adnexa	$1,397	−1	−2
Digestive system	753	−6	−16
Nervous system	327	−3	−10
Musculoskeletal system	222	19	54
Integumentary system	89	7	19
Genitourinary system	88	11	28
Respiratory system	23	14	38
Cardiovascular system	15	16	46
Auditory system	6	25	52

Table 54 below shows the estimated impact of the updates to the revised ASC payment system on aggregate ASC payments for selected procedures during CY 2009 with and without the transitional blended rate. The table displays 30 of the procedures receiving the greatest estimated CY 2008 aggregate Medicare payments to ASCs. The HCPCS codes are sorted in descending order by estimated CY 2008 program payment.

• Column 1—*HCPCS code.*

• Column 2—*Short Descriptor* of the HCPCS code.

• Column 3—*Estimated CY 2008 ASC Payments* were calculated using CY 2007 ASC utilization (the most recent full year of ASC utilization) and the CY 2008 ASC payment rates. The estimated CY 2008 payments are expressed in millions of dollars.

• Column 4—*CY 2009 Percent Change with Transition (50/50 Blend)* reflects the percent differences between the estimated ASC payment for CY 2008 and the estimated payment for CY 2009 based on the update, incorporating a 50/50 blend of the CY 2007 ASC payment rate and the CY 2009 revised ASC payment rate.

• Column 5—*CY 2009 Percent Change without Transition (Fully Implemented)* reflects the percent differences between the estimated ASC payment for CY 2008 and the estimated payment for CY 2009 based on the update if there were no transition period to the fully implemented payment rates. The percentages appearing in Column 5 are presented as a comparison to the percentage changes under the transition policy in Column 4. We are not eliminating or modifying the policy for the 4-year transition that was finalized in the August 2, 2007, revised ASC payment system final rule (72 FR 42519).

As displayed in Table 54, 25 of the 30 procedures with the greatest estimated aggregate CY 2008 Medicare payment are included in the three surgical specialty groups that are estimated to account for the most Medicare payment in CY 2008, specifically eye and ocular adnexa, digestive system, and nervous system groups. Consistent with the estimated payment effects on the surgical specialty groups displayed in Table 53, the estimated effects of the CY 2009 update on ASC payment for individual procedures in year 2 of the transition shown in Table 54 are varied. Aggregate ASC payments for many of the most frequently furnished ASC procedures will decrease as the transition causes individual procedure payments to reflect relative ASC payment weights that are more closely

aligned with the relative payment weights under the OPPS.

The ASC procedure for which the most Medicare payment is estimated to be made in CY 2008 is the cataract removal procedure reported with CPT code 66984 (Extracapsular cataract removal with insertion of intraocular lens prosthesis (one stage procedure), manual or mechanical technique (e.g., irrigation and aspiration or phacoemulsification)). The update to the ASC rates will result in a 1 percent payment decrease for that procedure in CY 2009. The estimated payment effects on the four other high volume eye and ocular adnexa procedures included in Table 54 are slightly positive and negative, but for CPT code 66821 (Discission of secondary membranous cataract (opacified posterior lens capsule and/or anterior hyaloid); laser surgery (e.g., YAG laser) (one or more stages)), the expected CY 2009 payment decrease is 10 percent, significantly greater than the decreases expected for any of the other eye and ocular adnexa procedures shown.

The transitional payment rates for 8 of the 9 digestive system procedures included in Table 54 are expected to decrease by 6 to 9 percent in CY 2009. Those estimated decreases are consistent with the estimated 6 percent reduction shown in Table 53 for the digestive system surgical specialty group.

The 10 nervous system procedures for which the most Medicare payment is estimated to be made to ASCs in CY 2008 are included in Table 54. The CY 2009 update will result in 5 percent payment decreases for 4 of those procedures and result in even more substantial decreases, 19 percent and 22 percent respectively, for CPT code 64484 (Injection, anesthetic agent and/or steroid, transforaminal epidural; lumbar or sacral, each additional level) and CPT code 64476 (Injection, anesthetic agent and/or steroid, paravertebral facet joint or facet joint nerve; lumbar or sacral, each additional level). The other three nervous system procedures included in the table will realize payment increases, especially CPT codes 64622 (Destruction by neurolytic agent, paravertebral facet joint nerve; lumbar or sacral, single level) and 64721 (Neuroplasty and/or transposition; medial nerve at carpal tunnel) for which payment will increase by 13 percent in CY 2009.

The estimated payment effects for most of the remaining procedures listed in Table 54 are positive. For example, the CY 2009 transitional payment rate for CPT codes 29880 (Arthroscopy, knee, surgical; with meniscectomy (medial AND lateral, including any meniscal shaving)) and 29881 (Arthroscopy, knee, surgical; with meniscectomy (medial OR lateral, including any meniscal shaving)) are estimated to increase 17 percent over the CY 2008 transitional payment amount.

TABLE 54—ESTIMATED IMPACT OF UPDATE TO CY 2009 ASC PAYMENT SYSTEM ON AGGREGATE PAYMENTS FOR SELECTED PROCEDURES

HCPCS code (1)	Short descriptor (2)	Allowed charges (in mil) (3)	Estimated CY 2009 percent change (50/50 Blend) (4)	Estimated CY 2009 percent change without transition (fully implemented) (5)
66984	Cataract surg w/iol, 1 stage	1,087	−1	−3
43239	Upper gi endoscopy, biopsy	166	−7	−20
45378	Diagnostic colonoscopy	141	−6	−18
45380	Colonoscopy and biopsy	132	−6	−18
45385	Lesion removal colonoscopy	101	−6	−18
66821	After cataract laser surgery	84	−10	−29
62311	Inject spine l/s (cd)	76	−5	−13
64483	Inj foramen epidural l/s	53	−5	−13
66982	Cataract surgery, complex	51	−1	−3
45384	Lesion remove colonoscopy	38	−6	−18
G0121	Colon ca scrn not hi rsk ind	37	−9	−25
G0105	Colorectal scrn; hi risk ind	32	−9	−25
15823	Revision of upper eyelid	30	4	10
64475	Inj paravertebral l/s	27	−5	−13
43235	Uppr gi endoscopy, diagnosis	24	0	0
52000	Cystoscopy	23	−1	−10
64476	Inj paravertebral l/s add-on	22	−22	−65
29881	Knee arthroscopy/surgery	21	17	49
64721	Carpal tunnel surgery	19	13	38
63650	Implant neuroelectrodes	17	10	20
29880	Knee arthroscopy/surgery	16	17	49
62310	Inject spine c/t	15	−5	−13
67041	Vit for macular pucker	14	0	−3
67904	Repair eyelid defect	14	5	13
64484	Inj foramen epidural add-on	14	−19	−51
43248	Uppr gi endoscopy/guide wire	13	−7	−20
28285	Repair of hammertoe	13	15	41
63685	Insrt/redo spine n generator	12	3	7
64622	Destr paravertebrl nerve l/s	11	13	40
29848	Wrist endoscopy/surgery	11	−4	−12

Predictably, the previous ASC payment system served as an incentive to ASCs to focus on providing procedures for which they determined Medicare payments would support their continued operation. We note that,

historically, the ASC payment rates for many of the most frequently performed procedures in ASCs were similar to the OPPS payment rates for the same procedures. Conversely, procedures with ASC payment rates that were substantially lower than the OPPS rates have been performed least often in ASCs. We believe the revised ASC payment system represents a major stride toward encouraging greater efficiency in ASCs and promoting a significant increase in the breadth of surgical procedures performed in ASCs because it distributes payments across the entire spectrum of covered surgical procedures based on a coherent system of relative payment weights that are related to the clinical and facility resource requirement characteristics of those procedures.

4. Estimated Effects of This Final Rule With Comment Period on Beneficiaries

We estimate that the CY 2009 update to the ASC payment system will be generally positive for beneficiaries with respect to the procedures newly added to the ASC list of covered surgical procedures and for those designated as office-based for CY 2009. First, except for screening colonoscopy and flexible sigmoidoscopy procedures, the ASC coinsurance rate for all procedures is 20 percent. This contrasts with procedures performed in HOPDs, where the beneficiary is responsible for copayments that range from 20 percent to 40 percent of the procedure payment. Second, ASC payment rates under the revised payment system are lower than payment rates for the same procedures under the OPPS, so the beneficiary coinsurance amount under the ASC payment system almost always will be less than the OPPS copayment amount for the same services. (The only exceptions would be if the ASC coinsurance amount exceeds the inpatient deductible. The statute requires that copayment amounts under the OPPS not exceed the inpatient deductible.) For procedures newly added to the ASC list of covered surgical procedures in CY 2009 that migrate from the HOPD to the ASC, the beneficiary coinsurance amount will be less than the OPPS copayment amount. Furthermore, the additions to the list will provide beneficiaries access to more surgical procedures in ASCs. Beneficiary coinsurance for services migrating from physicians' offices to ASCs may decrease or increase under the revised ASC payment system, depending on the particular service and the relative payment amounts for that service in the physician's office compared to the ASC. However, for those procedures newly designated as office-based in CY 2009, the beneficiary coinsurance amount will be no greater than the beneficiary coinsurance in the physician's office.

In addition, as finalized in the August 2, 2007 revised ASC payment system final rule (72 FR 42520), in CY 2009, the second year of the 4-year transition to the ASC payment rates calculated according to the standard methodology of the revised ASC payment system, ASC payment rates for a number of commonly furnished ASC procedures will continue to be reduced, resulting in lower beneficiary coinsurance amounts for these ASC services in CY 2009. Continued migration of procedures currently on the list of ASC covered surgical procedures from the HOPD to the ASC will also reduce beneficiary liability for these services, for the two reasons described above with respect to the new ASC covered services.

5. Conclusion

The updates to the ASC payment system for CY 2009 will affect each of the approximately 5,300 ASCs currently approved for participation in the Medicare program. The effect on an individual ASC will depend on its mix of patients, the proportion of the ASC's patients that are Medicare beneficiaries, the degree to which the payments for the procedures offered by the ASC are changed under the revised payment system, and the extent to which the ASC provides a different set of procedures in the coming year.

The revised ASC payment system is designed to result in the same aggregate amount of Medicare expenditures in CY 2009 as was estimated to be made in CY 2008. We estimate that the update to the revised ASC payment system, including the addition of surgical procedures to the list of covered surgical procedures, that we are adopting for CY 2009 will have no net effect on Medicare expenditures compared to the estimated level of Medicare expenditures in CY 2008.

6. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehousegov/omb/circulars/a004/a-4.pdf*), in Table 55 below, we have prepared an accounting statement showing the classification of the expenditures associated with the statutorily required zero percent update to the CY 2009 revised ASC payment system, based on the provisions of this final rule with comment period. This table provides our best estimate of Medicare payments to providers and suppliers as a result of the update to the CY 2009 ASC payment system, as presented in this final rule with comment period. All expenditures are classified as transfers.

TABLE 55—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES FROM CY 2008 TO CY 2009 AS A RESULT OF THE CY 2009 UPDATE TO THE REVISED ASC PAYMENT SYSTEM

Category	Transfers
Annualized Monetized Transfers	$0 Million.
From Whom to Whom	Federal Government to Medicare Providers and Suppliers.
Annualized Monetized Transfer	$0 Million.
From Whom to Whom	Premium Payments from Beneficiaries to Federal Government.
Total	$0 Million.

D. Effects of Final Requirements for Hospital Reporting of Quality Data for Annual Hospital Payment Update

1. Hospital Reporting of Outpatient Quality Data Under the HOP QDRP

In section XVII. of the CY 2008 OPPS/ASC final rule with comment period (72 FR 66871), we finalized our measures and requirements for reporting of quality data to CMS for services furnished in hospital outpatient settings under the CY 2009 HOP QDRP. The initial data submission for April to June 2008 services is due to the OPPS Clinical Warehouse by November 1, 2008 (72 FR 66871). CMS and its contractors will provide assistance to all affected hospitals that wish to submit data. In section XVI. of this final rule with comment period, we discuss our measures and requirements for reporting of quality data to CMS for services furnished in hospital outpatient settings under the CY 2010 HOP QDRP.

We have no previous history under the HOP QDRP to indicate the percentage of hospitals that will submit quality data. However, for the initial data submission, in CY 2008, 98 percent of affected hospitals have pledged to participate. In addition, results from the RHQDAPU program indicate that over 98 percent of IPPS hospitals submitted quality data in the initial year of the program. We expect that affected hospitals will participate at approximately the same rate under the HOP QDRP. We have continued our efforts to ensure that our CMS contractors provide assistance to all affected hospitals that wish to submit data. Therefore, for purposes of this CY 2009 impact analysis, we have assumed that the 98 percent of affected hospitals that have pledged to participate will qualify for the full payment update factor for CY 2009.

2. Hospital Reporting of Inpatient Quality Data Under the RHQDAPU Program

In the FY 2009 IPPS proposed rule (73 FR 23651), we noted that, to the extent that the proposed quality measures for FY 2010 under the RHQDAPU program had not already been endorsed by a consensus building entity such as the NQF, we anticipated that they would be endorsed prior to the time that we issued the FY 2009 IPPS final rule. We stated that we intended to finalize the FY 2010 RHQDAPU program measure set for the FY 2010 payment determination in the FY 2009 IPPS final rule, contingent upon the endorsement status of the proposed measures. However, we stated that, if a measure had not received NQF endorsement by the time we issued the FY 2009 IPPS final rule, we intended to finalize that measure for the RHQDAPU program measure set in this CY 2009 OPPS/ASC final rule with comment period if the measure received endorsement prior to the time we issued this CY 2009 OPPS/ASC final rule with comment period (73 FR 23651). We requested public comment on these measures.

In the FY 2009 IPPS final rule (73 FR 48611), we set out, as listed below, two measures which had not yet received NQF endorsement, and that we intended to adopt for the FY 2010 RHQDAPU program measure set in this CY 2009 OPPS/ASC final rule with comment period if the measures receive endorsement from a national consensus-based entity such as NQF:

READMISSION MEASURES (MEDICARE PATIENTS)

- AMI 30-Day Risk Standardized Readmission Measure (Medicare patients).
- Pneumonia (PN) 30-Day Risk Standardized Readmission Measure (Medicare patients).

In section XVI.I. of this final rule with comment period, we finalized these measures because we expect them to receive NQF endorsement. We estimate that the two new RHQDAPU program readmission measures for Medicare patients adopted in this final rule with comment period will have no incremental impact on the percentage of hospitals that will qualify for the full IPPS payment update factor for FY 2010. These two measures are calculated using Medicare Part A inpatient claims already submitted by hospitals. Past experience from adding other RHQDAPU program claims-based measures indicates that no hospitals are expected to be impacted in their FY 2010 IPPS Medicare payment update.

E. Effects of ASC Conditions for Coverage Changes in This Final Rule

1. Effects on ASCs

As described in section XV.B. of the preamble of this document, the ASC CfCs final rule presents new provisions, as well as provisions that are carried over from the existing ASC CfC regulations. For purposes of this section, we have assessed only the impact of the new provisions. Other provisions have not been revised and, therefore, do not present a new burden to ASCs.

Table 56 contains data that are frequently used in this impact statement. The salary-related cost data are referenced from the Salarywizard.com Web site at *http://hrsalarycenter.salary.com.* Some of the requirements contained in the new CfC provisions are already standard medical or business practices. Therefore, these requirements do not present an additional burden to ASCs.

We recognize that, in describing what the effect of this rule will be on ASCs, burden estimates may not accurately reflect the experience of all ASCs. Facilities vary in the complexity of operations and processes, and. therefore, associated costs may differ.

TABLE 56—YEAR 2008 DATA USED THROUGH THIS IMPACT ANALYSIS

Number of Medicare-certified ASCs nationwide	5,100
Average number of patients per ASC	1,240
Hourly rate of administrator*	$49.00
Hourly rate of registered nurse*	$39.00

* Hourly salary rates include base salary, bonuses, Social Security, 401(k)/403(b), disability, health care, pension, and time off.

We are revising the following existing conditions: Governing body and management; Evaluation of quality; and Laboratory and radiologic services. We are finalizing the following new conditions: Patient rights, Infection control, and Patient admission, assessment and discharge.

a. Effects of the Governing Body and Management Provision (§ 416.41)

This ASC CfCs final rule expands the responsibility of the governing body to include the QAPI program and the creation and maintenance of a disaster preparedness plan. The governing body's specific responsibilities for QAPI are detailed in the new QAPI condition located at § 416.43(e). The assignment of burden for this requirement can be found under the description of the QAPI requirement.

The existing regulations require that ASCs meet certain safety requirements under § 416.44, ''Condition for coverage—Environment.'' In an effort to ensure ASCs are equipped to handle emergencies and disasters, we are requiring that ASCs develop a plan specific to disaster preparedness that would provide for the emergency care of patients, ASC staff, and patient family members who are in the ASC when/if unexpected events or circumstances occur at the ASC or in the immediate community that threaten the health of these individuals. The plan requires an ASC to coordinate with appropriate State and local agencies and, as available, to seek their advice on plan development. The plan also requires an annual review to test the plan's effectiveness.

In addition to an annual review, the rule also requires that the ASC staff be able to demonstrate, through annual drills and written evaluations, the ASCs ability to manage emergencies that are likely to occur within their geographic area.

We estimate that an administrator, earning $49.00 per hour, would be largely responsible for developing the plan and for managing the yearly drills and evaluations. We are estimating that the yearly cost for one ASC to develop and implement a disaster preparedness plan will be approximately 4 hours at $49.00 per hour, with a net cost of $196.00 per ASC. The total cost for all ASCs is estimated to be $99,600.

b. Effects of the QAPI Provision (§ 416.43)

In § 416.43, we are replacing the existing requirement, ''Evaluation of quality,'' with a revised requirement entitled, ''Quality assessment and performance improvement''. As part of our efforts to establish regulatory consistency where possible among providers and suppliers, we are adding a QAPI program that requires ASCs to continuously monitor quality improvement through focused projects, identify barriers to improvements, take efforts to measure improvements in patient health outcomes, and work to reduce medical errors. ASCs are also expected to measure, analyze and track quality indicators, including adverse patient events, infection control, and other aspects of performance, including processes of care and services furnished in the ASC.

Once an area of concern is identified, the ASC will develop a plan for improvement. The ASC determines the specifics of the plan, assesses its effectiveness, and monitors the results learned.

This condition includes five standards: program scope; program data; program activities; performance improvement projects; and governing body responsibilities. Because ASCs are already required in the current CfCs to evaluate the quality of care they provide on an ongoing basis, many providers are already using some version of a comprehensive quality assessment and performance improvement program. We estimate that it would take 12 hours for each ASC to develop its own quality assessment performance improvement program. We also estimate that each ASC would spend 18 hours a year collecting and analyzing the findings. In addition, we estimate that each ASC would spend 4 hours a year training its staff and 18 hours a year implementing performance improvement activities. Both the program development and implementation functions would most likely be managed by the ASC's administrator. Based on an hourly rate of $49.00, the total cost of the quality assessment and performance improvement condition for coverage is estimated to be $2,548 per ASC.

The hourly burden is based on estimates that are found in the ''Hospital Conditions of Participation: Quality Assessment and Performance Improvement'' final rule (68 FR 3435, January 24, 2003). We estimated that a hospital would spend 80 hours collecting and analyzing information on 12 identified measures. According to our 2002 statistics, 5,985 hospitals discharged 11.8 million patients in 2000. This means that the statistically average hospital discharged approximately 2,000 patients that year. Collecting and analyzing data for 2,000 patients, we estimate that the implementation burden would take 80 hours. Based on the estimate that the average ASC treats and discharges 1,240 patients per year, we reduced the burden for ASCs to 52 hours each. A new standard, Program scope, requires that the existing evaluation activities demonstrate measurable improvement in patient health outcomes. This rule also requires the use of quality indicator data in the QAPI program, but does not require any specific data collection or utilization, nor would it require ASCs to report the collected data. This would give the ASCs flexibility and minimize burden.

A new standard, Program activities, identifies priority areas that an ASC must consider in its program. ASCs would be expected to carry out assessment activities according to the scope and complexity of their programs.

This rule requires the governing body to become involved in all aspects of the QAPI program. We have estimated the burden based on management by an administrator. There should be direct and open communication between the program manager and the governing body. The analysis of a variety of reports, program prioritization, and allocation of resources are all standard business practices and, therefore, we have not assigned additional burden to these functions.

TABLE 57—SUMMARY OF QUALITY ASSESSMENT AND PERFORMANCE IMPROVEMENT BURDEN

Standard	Time per ASC (hours)	Total time (hours)	Cost per ASC	Total cost
Developing QAPI	12	61,200	$588	$2,998,800
Collecting/analyzing findings	18	91,800	882	4,498,200
Training staff	4	20,400	196	99,600
Implementing improvement activities	18	91,800	882	4,498,200
Annual total	52	265,200	2,548	12,994,800

The various ASC accreditation and professional health organizations (that is, The Joint Commission, the AAAASF, the AAAHC, and the AOA) support advances in patient care in a number of ways and actively encourage health care entities to expand and improve their existing programs. These organizations are familiar with quality improvement programs and are likely to have actual or referral information available to assist ASCs in setting up their QAPI programs.

In developing a QAPI program, ASCs are urged to take advantage of the variety of information that exists from the industry. ASCs may also find that QAPI programs for other entities, such as hospitals, can be adapted to fit certain needs.

Comment: One commenter disagreed with our estimated costs in the proposed rule of developing and implementing a QAPI program.

Response: In this final rule, we have not increased the burden estimate from the proposed rule because the commenter did not establish cause for a modification.

c. Effects of the Laboratory and Radiologic Services Provision (§ 416.49)

Final changes to this CfC are editorial. There is no additional burden assigned to this CfC.

d. Effects of the Patient Rights Provision (§ 416.50)

The existing regulations do not contain a condition-level patient rights requirement. The final rule recognizes that ASC patients are entitled to certain rights that must be protected and preserved, and that all patients must be free to exercise these rights. The final rule details basic information that ASCs are required to provide to patients: Notice of rights; exercise of patient rights and respect for property and person; privacy and safety; and confidentiality of clinical records. This condition also includes a requirement for advance directives, as specified at 42 CFR Part 489, Subpart I, and a requirement for the submission and investigation of grievances.

We have identified potential burden in the following areas.

(1) Effects of the Notice of Rights—Verbal and Written Notice Provision

An ASC is required to provide patients or, as appropriate, their representatives with verbal or written notice of the rights and responsibilities of the patient in advance of the patient coming under the care of the ASC. Because ASCs must notify patients either verbally or in writing in advance of the patient coming under the ASC's care, ASCs may choose to mail the patient rights notification to the patient along with the pre-surgical information, the physician's financial interests or ownership, and the advance directives. Generally, the most effective and efficient manner to furnish a notice of rights is to initially develop a general notice which can be subsequently discussed and/or distributed as needed. We expect that an ASC will use this simple and inexpensive approach in order to meet this requirement. In response to the needs of their specific patient populations, some ASCs might choose to have their patient rights notification written in the predominant language(s) of their patients. More than likely, this message would be written by a registered nurse or similar professional. A typical message might be in three parts: An introduction; the information section; and a section for followup questions and issues. We expect the effort to develop this one-time message would not exceed 1 hour at a cost of $39.00 for each ASC. We believe that this would be a one-time cost for ASCs and estimate that the total costs would be $198,900 for all ASCs. If an ASC chooses to mail the patient rights to the ASC patient, this form would accompany the other pre-surgical treatment forms that an ASC typically mails to the patient. It is likely that the patient's rights form would consist of a one page, brochure-type informational. We believe the cost associated with adding this informational brochure to the pre-surgical treatment package would be nominal. Therefore, we have not calculated a cost for this mailing.

In many cases, notifying patients verbally of their rights is already being done and some ASCs may already be employing interpreters to make certain that patients who do not understand English fully understand their rights and responsibilities. However, for purposes of this analysis, we will assume that all ASCs need to budget for this activity. The cost for language services can range from moderate hourly amounts to daily, full-time interpreters at $800 per day. Telephonic services are more reasonable and more accessible and can be purchased for $2.00 per minute. We are not able to determine the percentage of non-English speaking patients an ASC would care for in a year as that depends on a number of variables, including the ASC's geographic location. In addition, the availability of in-person language services would also vary from location to location and, while it may not be preferred, in some cases the use of family members may be necessary.

Given this discussion, we estimate that 3 percent of an average annual ASC caseload of 1,240 cases might require interpreter services and 15 minutes of time would be needed for an interpreter to provide a general description of the rights to which the patient is entitled. Because a percentage of an ASC's patients will speak Spanish or French, as these languages are commonly spoken in some parts of the country, we expect that friends and relatives of patients speaking these languages would be available to assist in understanding issues related to the patient's scheduled procedure. Therefore, the need for an ASC to hire an interpreter in these cases would be infrequent. (Other than English, Spanish is the language most commonly spoken in 42 States.) The ASC may have to take steps to arrange for an interpreter for some patients when other options are not available.

- Telephone interpretive services at $2.00/minute × 15 minutes = $30.00 per patient. The cost for telephone interpreter services is, for example, dependent upon the language, the consumed time, or frequency. Costs range from $75.00 an hour to $160.00 or more an hour. The figure of $2.00 per minute is an estimated average cost.
- 3 percent × 1,240 patient caseload = 37 patients per year per ASC requiring the services of an interpreter.
- $30.00 × 37 = $1,110.00 per ASC.
- $1,110 × 5,100 ASCs = $5,661,000 estimated cost total for all ASCs.

(2) Effects of the Advance Directives Provision

Each ASC is required to establish an advance directive policy, and provide the patient or representative with information concerning its policies on advance directives, including a description of applicable State laws and, if requested, official State advance directive forms. Each ASC is also required to explain these policies to their patients. This includes providing information on any conscience objections the physician(s) and/or the ASC might have to advance directives; documenting whether an individual has executed an advance directive; and educating staff on the importance of advance directives. We expect that many ASCs already communicate information about advance directives to their patients because advance directives are common in hospitals and a significant portion of Medicare patients have had some experience with hospitals. Many ASCs have already formulated some type of advance directives policy.

We estimate that the development of an advance directives document utilizing generic advance directives forms obtained from existing Web sites or from State agency Web sites, by a registered nurse or equivalent will take 1 hour at $39.00 per ASC. The estimated cost for all ASCs is $198,900. We randomly queried a small sample of State Web sites and found generic advance directives forms in English and Spanish that were posted and available for downloading.

We believe that these functions reflect standard industry practice and, therefore, would add no burden. While this requirement is subject to the PRA, we believe the burden associated with this requirement would constitute a usual and customary business practice. Pursuant to 5 CFR 1320.3(b)(2), we will not include the cost of this activity in the economic impact analysis.

Some ASCs will choose to mail advance directives to their patients along with the other pre-surgical treatment information. In instances when ASCs mail the advance directives, it would also be appropriate to mail the ASC's disclosures concerning any policies the ASC or the ASC's physicians might have regarding specific patient rights, for example, do not resuscitate orders, etc. We believe such information should be mailed with the package of information in an effort to afford patient the opportunity to seek

out another ASC in the event they are uncomfortable or in disagreement with the ASC's policies on advance directives.

Most advance directives consist of a one-page brochure. Because ASCs already mail a package of information to the patient, we again believe the cost of including a second additional page would be nominal and, therefore, assign no burden to this activity.

(3) Effects of the Submission and Investigation of Patient Complaints Provision

We estimate that an ASC may have to investigate complaints from approximately 1 percent (12 patients) of its caseload due to allegations of mistreatment, and neglect, for example. We are not aware of an existing repository of records that accurately identifies the number and exact nature of ASC complaints. Therefore, 1 percent is an estimate.

An investigation could average 1 hour and would be managed by an administrator. Twelve hours could be spent by each ASC in this activity.

- 12 hours × $49.00 (administrator's hourly salary) = $588 estimated cost for each ASC.
- $588 × 5,100 ASCs = $2,998,800 estimated cost for all ASCs.

In its resolution of the grievance, an ASC must investigate all allegations, document how the violation or grievance was addressed, and provide the patient with written notice of its decision containing the name of an ASC contact person, the steps taken to investigate the grievance, the results of the grievance process, and the date the grievance process was completed.

The burden associated with this requirement is the time and effort necessary to fully document the alleged violation or complaint and to disclose the written notice to each patient who filed a grievance. We estimate that, on average, it will take each ASC 15 minutes at a cost of $39.00 an hour to develop and disseminate 12 notices on an annual basis (3 hours per ASC), for a total ASC burden of 15,300 hours at a cost $596,700.

While this requirement is subject to the PRA, we believe it would constitute a usual and customary business practice. Pursuant to 5 CFR 1320.3(b)(2), we will not include this activity in the economic impact analysis.

(4) Effects of the Exercise of Rights and Respect for Property and Person Provision

Since ASCs began operating under Medicare in 1982, they have been required to provide information to patients about the procedures to be performed. This information is provided to patients by way of the informed patient consent in the current regulation. ASCs are also responsible for providing patients with information concerning expected outcomes. The final rule requires that ASCs continue this practice. Therefore, we do not anticipate that ASCs will incur significant costs associated with this requirement.

(5) Effects of the Privacy and Safety Provision

The current regulatory language requires that an ASC provide a safe and sanitary environment to protect the health and safety of patients. The final rule adds the requirement that the patient has the right to personal privacy. We are defining personal privacy in this case as providing the patient access to an area of the ASC which is shielded from view from others to prepare for the procedure to be performed. This would mean a place to disrobe, speak with ASC personnel about issues and concerns, and then get dressed following the procedure. While this requirement is subject to the PRA, we believe that it would constitute a usual and customary business practice. Pursuant to 5 CFR 1320.3(b)(2), we will not include this activity in the economic impact analysis.

(6) Effects of the Confidentiality of Clinical Records Provision

The existing regulation at § 416.47(a) requires that an ASC develop a system for the proper collection, storage, and use of patient records. This use includes such purposes as to provide appropriate health care, for payment information, for disease management, and for quality assessment. The changes in the final rule merely provide a formal clarification of the current requirement's approach the proper use of records. ASCs recognize the need for privacy regarding patient medical records and have already instituted policies based on the Federal HIPAA Privacy Rule, which requires appropriate safeguards to protect the privacy of individually identifiable health information and regulates the use and disclosure of such information. In addition, 48 States have medical privacy laws that are applicable to patients' health information. Some State laws are specific in prohibiting unlawful disclosure of patient information while, in other States, prohibitions are linked to laws governing specific medical entities. Most health care facilities have already instituted procedures to address this issue to conform to State laws. Therefore, we do not believe this final rule will impose any significant additional financial or resource burdens on ASCs.

e. Effects of the Infection Control Provision (§ 416.51)

As we proposed, we are elevating the level of importance of the infection control requirements, located at § 416.44(a)(3), to the condition level. The ASC is required to ensure that the infection control program minimizes infections and communicable diseases that could affect both patients and ASC staff. We are also requiring that a designated professional in the ASC be responsible for the program. We estimate the burden increase to be minimal, except for the ongoing training expense to make certain that the designated professional continues to be familiar with current infection control information.

ASCs are currently required to have a program that identifies and prevents infections, maintains a sanitary environment, and reports results to the appropriate authorities. The new condition requires the ASC to designate an individual (in most cases this would be a nurse or an environmental engineer) to be responsible for the ASC infection control program. The ASC can continue to designate the individual that currently oversees the infection control program. However, the ASC must also assure that the person who is designated is, through a combination of training, knowledge and experience, capable of performing this task. To ensure the individual continues his/her current knowledge of infection control methodologies and techniques, he/she would need to engage in continuing education in infection control on a frequent or at least an annual basis.

We estimate that an ASC would spend approximately $500 per calendar year on infection control training for the designated individual. This cost was based on the quantity of technical information that we believe is appropriate to be included in an infection control program. The cost also includes the time spent by the ASC infection control officer (the trainee), the cost for a qualified trainer and the training materials. We estimate that the course would run 4 hours. The total estimated cost for all ASCs would be $2,550,000. We do not expect that individuals would have to travel any significant distance to meet this training requirement.

Comment: One commenter suggested that CMS underestimated the burden of costs in the proposed rule with respect to the infection control program. The

commenter suggested that the cost estimate for training did not consider the cost associated with initial training.

Response: The existing ASC regulations at § 416.44(a)(3) already requires an ASC to have an infection control program that is capable of identifying and preventing infections. ASC clinicians such as nurses and pharmacists, in addition to physicians, are already involved in implementing infection control practices as part of the current requirement. These professionals already have a fundamental knowledge base from which to draw, and, therefore, we do not believe initial training cost is an issue here. Therefore, we are retaining the burden estimate as proposed.

The infection control condition also includes the requirement that the infection control program be part of the ASC's QAPI program. We have not prescribed specific areas to be monitored or a process that must be followed to meet the requirement. We have not assigned any burden to this requirement because, under the current rules, the ASC should already be evaluating quality activities and executing an infection control program. This requirement has been included as a formal way of ensuring it is an integral part of the ASC's QAPI process.

This CfC requires an ASC to continue to take specific and appropriate actions to address the prevention and control of infections. We do not believe this will add any regulatory burden because this condition reflects contemporary standard practice in ASC facilities and, again, should be part of the ASC obligation under the current rules.

f. Effects of the Patient Admission, Assessment, and Discharge Provision (§ 416.52)

The condition reflects a more patient-centered approach that we believe will result in an improved quality of care, and more emphasis on patient outcomes. Specifically, we are finalizing this new condition because it represents the current standard of practice and does not pose additional burden.

(1) Effects of the Admission and Pre-Surgical Assessment Provision

We are requiring the completion of a comprehensive medical history and physical assessment no more than 30 days before the day of the scheduled surgery. It is very unlikely that the comprehensive medical history will be completed at the ASC. Therefore, there is unlikely to be any ASC burden associated with this requirement.

We are requiring that a pre-surgical assessment be completed upon admission to the ASC. Existing regulations at § 416.42(a) require a physician to examine the patient immediately before surgery to evaluate the risks involved in administering anesthesia and performing the procedure. Physicians must determine that patients, including those at high risk, are able to undergo the surgery itself and be able to manage recovery. Pre-surgical assessments represent a current standard of community practice, are currently required under a different description, and, therefore, do not pose additional burden.

To ensure the ASC health care team has all patient information available when needed, the medical history and physical assessment must be placed in the patient's medical record before the surgical procedure is started. There is no burden associated with this requirement.

(2) Effects of the Post-Surgical Assessment Provision

The post-surgical assessment requires the ASC to ensure the patient's post-surgical condition is documented in the medical record by a physician or other qualified practitioner in accordance with State law and ASC policy, and the patient's post-surgical needs addressed and included in the discharge notes. Post-surgical assessments, located in the current regulation under surgical services, reflect ASC standard of practice, and therefore, do not pose additional burden.

(3) Effects of the Discharge Provision

The ASC is required to provide each patient with discharge instructions and ensure each patient has a signed discharge order, any needed overnight supplies and physician contact information for followup care or an appointment. Requiring the patient to have a signed discharge order, discharge instructions, any immediate overnight supplies that may be needed, and physician contact information when the patient leaves the ASC is standard practice. Therefore, we do not believe this is a new burden for ASCs.

The total compliance cost for ASCs is listed below by condition.

TOTAL COST TO ASCs TO IMPLEMENT REGULATION

Condition	Activity	Cost for all ASCs
§ 416.41	Governing Body (Disaster Preparedness)	$999,600
§ 416.43	QAPI	12,994,800
	Develop Program	($2,998,800)
	Collecting & Analyzing Findings	($4,498,200)
	Training Staff	($ 999,600)
	Implementing Improvement Activities	($4,498,200)
§ 416.50	Patient Rights	9,654,400
	Develop Patient Notice of Rights	($198,900)
	Telephone Interpreter	($5,661,000)
	Develop Advance Directive	($198,900)
	Investigating Patients' Complaints	($2,998,800)
	Develop/Disseminate Complaint Investigation Notice	($ 596,700)
§ 416.51	Annual Infection Control Training	2,550,000
Total Implementation Cost for All ASCs		26,198,800

2. Alternatives Considered

One alternative was to maintain the existing CfCs without revisions. However, we concluded this was not a reasonable option because our existing CfCs, in some cases, are not compatible with the current standards of practice. Revising the existing CfCs takes advantage of continuing advances in the health care delivery field. In addition, listed below are other alternatives.

a. Alternatives to the Governing Body and Management Provision (§ 416.41)

We considered not including the requirement for the disaster preparedness plan. However, as witnessed by the problems affecting health care facilities across the Gulf region in September 2005 as a result of Hurricane Katrina, we have finalized this requirement to ensure the safety of patients and staff members alike.

b. Alternatives to the QAPI Provision (§ 416.43)

We discussed eliminating any reference to the use of quality indicator data, including patient care data. However, in light of the existing and proposed hospital, home health and rural health clinic quality assessment and performance improvement requirements, we believe ASCs also must continue current efforts in quality improvement by building a foundation where quality indicator data can be used to identify activities that lead to poor patient outcomes.

c. Alternatives to the Patient Rights Provision (§ 416.50)

We considered not requiring a patient rights standard in ASCs because we are aware that ASCs currently participate in some patient rights' activities, for example, documenting patient's executed informed consent; safeguarding patient's privacy; and encouraging patients to participate in treatment decisions by discussing treatment options with them. However, to facilitate greater communication between patients and health care facilities and to ensure that patients receive considerate, respectful care in all health care settings, we have determined that ASC facilities should be required to provide patients or their representatives with a notice of the patient's rights in a language that the patient understands. We believe this requirement will protect and promote considerate and respectful treatment of ASC patients.

d. Alternatives to the Discharge Provision (§ 416.52)

We considered requiring that the ASC have a physician on its premises whenever a patient is in the facility. However, we determined this might be impractical considering there are circumstances when patients are present in the ASC facility before and after procedures that do not warrant the need for physician coverage. Therefore, we believe the requirement of a signed discharge order will provide more flexibility and continue to ensure proper physician or qualified provider coverage until the patient has completely recovered and physically leaves the ASC facility.

3. Conclusion

This is not a major rule, because the overall impact for all new conditions is estimated to be $26.2 million annually. Moreover, a detailed assessment of the associated costs and benefits, as outlined by section 202 of the Unfunded Mandates Reform Act, will not be performed because the impact of this regulation does not reach the $130 million threshold.

F. Executive Order 12866

In accordance with the provisions of Executive Order 12866, this OPPS/ASC final rule with comment period, the ASC CfCs final rule, and the final rule that clarifies Medicare policy regarding terminations of providers and suppliers were reviewed by the OMB.

List of Subjects

42 CFR Part 410

Health facilities, Health professions, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 416

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 419

Hospitals, Medicare, Reporting and recordkeeping requirements.

■ For reasons stated in the preamble of this document, the Centers for Medicare & Medicaid Services is amending 42 CFR Chapter IV as set forth below:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

■ 1. The authority citation for Part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Section 410.43 is amended by—

■ a. Removing the word ''and'' at the end of paragraph (a)(2).

■ b. Redesignating paragraph (a)(3) as paragraph (a)(4).

■ c. Adding a new paragraph (a)(3).

■ d. Adding a new paragraph (c).

The additions read as follows:

§ 410.43 Partial hospitalization services: Conditions and exclusions.

(a) * * *

(3) Are furnished in accordance with a physician certification and plan of care as specified under § 424.24(e) of this chapter; and

* * * * *

(c) Partial hospitalization programs are intended for patients who—

(1) Require a minimum of 20 hours per week of therapeutic services as evidenced in their plan of care;

(2) Are likely to benefit from a coordinated program of services and require more than isolated sessions of outpatient treatment;

(3) Do not require 24-hour care;

(4) Have an adequate support system while not actively engaged in the program;

(5) Have a mental health diagnosis;

(6) Are not judged to be dangerous to self or others; and

(7) Have the cognitive and emotional ability to participate in the active treatment process and can tolerate the intensity of the partial hospitalization program.

PART 416—AMBULATORY SURGICAL SERVICES

■ 3. The authority citation for Part 416 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 4. Section 416.2 is amended by revising the definition of ''Ambulatory surgical center or ASC'' to read as follows:

§ 416.2 Definitions.

* * * * *

Ambulatory surgical center or *ASC* means any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization and in which the expected duration of services would not exceed 24 hours following an admission. The entity must have an agreement with CMS to participate in Medicare as an ASC, and must meet the conditions set forth in subparts B and C of this part.

* * * * *

■ 5. Section 416.41 is revised to read as follows:

§ 416.41 Condition for coverage—Governing body and management.

The ASC must have a governing body that assumes full legal responsibility for determining, implementing, and monitoring policies governing the ASC's total operation. The governing body has oversight and accountability for the quality assessment and performance improvement program, ensures that facility policies and programs are administered so as to provide quality

health care in a safe environment, and develops and maintains a disaster preparedness plan.

(a) *Standard: Contract services.* When services are provided through a contract with an outside resource, the ASC must assure that these services are provided in a safe and effective manner.

(b) *Standard: Hospitalization.* (1) The ASC must have an effective procedure for the immediate transfer, to a hospital, of patients requiring emergency medical care beyond the capabilities of the ASC.

(2) This hospital must be a local, Medicare-participating hospital or a local, nonparticipating hospital that meets the requirements for payment for emergency services under § 482.2 of this chapter.

(3) The ASC must—

(i) Have a written transfer agreement with a hospital that meets the requirements of paragraph (b)(2) of this section; or

(ii) Ensure that all physicians performing surgery in the ASC have admitting privileges at a hospital that meets the requirements of paragraph (b)(2) of this section.

(c) *Standard: Disaster preparedness plan.* (1) The ASC must maintain a written disaster preparedness plan that provides for the emergency care of patients, staff and others in the facility in the event of fire, natural disaster, functional failure of equipment, or other unexpected events or circumstances that are likely to threaten the health and safety of those in the ASC.

(2) The ASC coordinates the plan with State and local authorities, as appropriate.

(3) The ASC conducts drills, at least annually, to test the plan's effectiveness. The ASC must complete a written evaluation of each drill and promptly implement any corrections to the plan.

■ 6. Section 416.42 is amended by—

■ a. Revising paragraph (a).

■ b. Removing paragraph (c).

■ c. Redesignating paragraph (d) as paragraph (c).

Revised paragraph (a) reads as follows:

§ 416.42 Condition for coverage—Surgical services.

(a) *Standard: Anesthetic risk and evaluation.* (1) A physician must examine the patient immediately before surgery to evaluate the risk of anesthesia and of the procedure to be performed.

(2) Before discharge from the ASC, each patient must be evaluated by a physician or by an anesthetist as defined at § 410.69(b) of this chapter, in accordance with applicable State health and safety laws, standards of practice, and ASC policy, for proper anesthesia recovery.

* * * * *

■ 7. Section 416.43 is revised to read as follows:

§ 416.43 Conditions for coverage—Quality assessment and performance improvement.

The ASC must develop, implement and maintain an ongoing, data-driven quality assessment and performance improvement (QAPI) program.

(a) *Standard: Program scope.* (1) The program must include, but not be limited to, an ongoing program that demonstrates measurable improvement in patient health outcomes, and improves patient safety by using quality indicators or performance measures associated with improved health outcomes and by the identification and reduction of medical errors.

(2) The ASC must measure, analyze, and track quality indicators, adverse patient events, infection control and other aspects of performance that includes care and services furnished in the ASC.

(b) *Standard: Program data.* (1) The program must incorporate quality indicator data, including patient care and other relevant data regarding services furnished in the ASC.

(2) The ASC must use the data collected to—

(i) Monitor the effectiveness and safety of its services, and quality of its care.

(ii) Identify opportunities that could lead to improvements and changes in its patient care.

(c) *Standard: Program activities.* (1) The ASC must set priorities for its performance improvement activities that—

(i) Focus on high risk, high volume, and problem-prone areas.

(ii) Consider incidence, prevalence, and severity of problems in those areas.

(iii) Affect health outcomes, patient safety, and quality of care.

(2) Performance improvement activities must track adverse patient events, examine their causes, implement improvements, and ensure that improvements are sustained over time.

(3) The ASC must implement preventive strategies throughout the facility targeting adverse patient events and ensure that all staff are familiar with these strategies.

(d) *Standard: Performance improvement projects.* (1) The number and scope of distinct improvement projects conducted annually must reflect the scope and complexity of the ASC's services and operations.

(2) The ASC must document the projects that are being conducted. The documentation, at a minimum, must include the reason(s) for implementing the project, and a description of the project's results.

(e) *Standard: Governing body responsibilities.* The governing body must ensure that the QAPI program—

(1) Is defined, implemented, and maintained by the ASC.

(2) Addresses the ASC's priorities and that all improvements are evaluated for effectiveness.

(3) Specifies data collection methods, frequency, and details.

(4) Clearly establishes its expectations for safety.

(5) Adequately allocates sufficient staff, time, information systems and training to implement the QAPI program.

■ 8. Section 416.49 is revised to read as follows:

§ 416.49 Condition for coverage—Laboratory and radiologic services.

(a) *Standard: Laboratory services.* If the ASC performs laboratory services, it must meet the requirements of Part 493 of this chapter. If the ASC does not provide its own laboratory services, it must have procedures for obtaining routine and emergency laboratory services from a certified laboratory in accordance with Part 493 of this chapter. The referral laboratory must be certified in the appropriate specialties and subspecialties of service to perform the referred tests in accordance with the requirements of Part 493 of this chapter.

(b) *Standard: Radiologic services.* (1) The ASC must have procedures for obtaining radiological services from a Medicare approved facility to meet the needs of patients.

(2) Radiologic services must meet the hospital conditions of participation for radiologic services specified in § 482.26 of this chapter.

■ 9. A new § 416.50 is added to read as follows:

§ 416.50 Condition for coverage—Patient rights.

The ASC must inform the patient or the patient's representative of the patient's rights, and must protect and promote the exercise of such rights.

(a) *Standard: Notice of rights.* (1) The ASC must provide the patient or the patient's representative with verbal and written notice of the patient's rights in advance of the date of the procedure, in a language and manner that the patient or the patient's representative understands. In addition, the ASC must—

(i) Post the written notice of patient rights in a place or places within the ASC likely to be noticed by patients (or

their representative, if applicable) waiting for treatment. The ASC's notice of rights must include the name, address, and telephone number of a representative in the State agency to whom patients can report complaints, as well as the Web site for the Office of the Medicare Beneficiary Ombudsman.

(ii) The ASC must also disclose, where applicable, physician financial interests or ownership in the ASC facility in accordance with the intent of Part 420 of this subchapter. Disclosure of information must be in writing and furnished to the patient in advance of the date of the procedure.

(2) *Standard: Advance directives.* The ASC must comply with the following requirements:

(i) Provide the patient or, as appropriate, the patient's representative in advance of the date of the procedure, with information concerning its policies on advance directives, including a description of applicable State health and safety laws and, if requested, official State advance directive forms.

(ii) Inform the patient or, as appropriate, the patient's representative of the patient's right to make informed decisions regarding the patient's care.

(iii) Document in a prominent part of the patient's current medical record, whether or not the individual has executed an advance directive.

(3) *Standard: Submission and investigation of grievances.* (i) The ASC must establish a grievance procedure for documenting the existence, submission, investigation, and disposition of a patient's written or verbal grievance to the ASC.

(ii) All alleged violations/grievances relating, but not limited to, mistreatment, neglect, verbal, mental, sexual, or physical abuse, must be fully documented.

(iii) All allegations must be immediately reported to a person in authority in the ASC.

(iv) Only substantiated allegations must be reported to the State authority or the local authority, or both.

(v) The grievance process must specify timeframes for review of the grievance and the provisions of a response.

(vi) The ASC, in responding to the grievance, must investigate all grievances made by a patient or the patient's representative regarding treatment or care that is (or fails to be) furnished.

(vii) The ASC must document how the grievance was addressed, as well as provide the patient with written notice of its decision. The decision must contain the name of an ASC contact person, the steps taken to investigate the grievance, the results of the grievance process, and the date the grievance process was completed.

(b) *Standard: Exercise of rights and respect for property and person.*

(1) The patient has the right to—

(i) Exercise his or her rights without being subjected to discrimination or reprisal.

(ii) Voice grievances regarding treatment or care that is (or fails to be) furnished.

(iii) Be fully informed about a treatment or procedure and the expected outcome before it is performed.

(2) If a patient is adjudged incompetent under applicable State health and safety laws by a court of proper jurisdiction, the rights of the patient are exercised by the person appointed under State law to act on the patient's behalf.

(3) If a State court has not adjudged a patient incompetent, any legal representative designated by the patient in accordance with State law may exercise the patient's rights to the extent allowed by State law.

(c) *Standard: Privacy and safety.* The patient has the right to—

(1) Personal privacy.

(2) Receive care in a safe setting.

(3) Be free from all forms of abuse or harassment.

(d) *Standard: Confidentiality of clinical records.* The ASC must comply with the Department's rules for the privacy and security of individually identifiable health information, as specified at 45 CFR parts 160 and 164.

■ 10. A new § 416.51 is added to read as follows:

§ 416.51 Conditions for coverage—Infection control.

The ASC must maintain an infection control program that seeks to minimize infections and communicable diseases.

(a) *Standard: Sanitary environment.* The ASC must provide a functional and sanitary environment for the provision of surgical services by adhering to professionally acceptable standards of practice.

(b) *Standard: Infection control program.* The ASC must maintain an ongoing program designed to prevent, control, and investigate infections and communicable diseases. In addition, the infection control and prevention program must include documentation that the ASC has considered, selected, and implemented nationally recognized infection control guidelines. The program is—

(1) Under the direction of a designated and qualified professional who has training in infection control;

(2) An integral part of the ASC's quality assessment and performance improvement program; and

(3) Responsible for providing a plan of action for preventing, identifying, and managing infections and communicable diseases and for immediately implementing corrective and preventive measures that result in improvement.

■ 11. A new § 416.52 is added to read as follows:

§ 416.52 Conditions for coverage—Patient admission, assessment and discharge.

The ASC must ensure each patient has the appropriate pre-surgical and post-surgical assessments completed and that all elements of the discharge requirements are completed.

(a) *Standard: Admission and pre-surgical assessment.* (1) Not more than 30 days before the date of the scheduled surgery, each patient must have a comprehensive medical history and physical assessment completed by a physician (as defined in section 1861(r) of the Act) or other qualified practitioner in accordance with applicable State health and safety laws, standards of practice, and ASC policy.

(2) Upon admission, each patient must have a pre-surgical assessment completed by a physician or other qualified practitioner in accordance with applicable State health and safety laws, standards of practice, and ASC policy that includes, at a minimum, an updated medical record entry documenting an examination for any changes in the patient's condition since completion of the most recently documented medical history and physical assessment, including documentation of any allergies to drugs and biologicals.

(3) The patient's medical history and physical assessment must be placed in the patient's medical record prior to the surgical procedure.

(b) *Standard: Post-surgical assessment.* (1) The patient's post-surgical condition must be assessed and documented in the medical record by a physician, other qualified practitioner, or a registered nurse with, at a minimum, post-operative care experience in accordance with applicable State health and safety laws, standards of practice, and ASC policy.

(2) Post-surgical needs must be addressed and included in the discharge notes.

(c) *Standard: Discharge.* The ASC must—

(1) Provide each patient with written discharge instructions and overnight supplies. When appropriate, make a followup appointment with the physician, and ensure that all patients

are informed, either in advance of their surgical procedure or prior to leaving the ASC, of their prescriptions, post-operative instructions and physician contact information for followup care.

(2) Ensure each patient has a discharge order, signed by the physician who performed the surgery or procedure in accordance with applicable State health and safety laws, standards of practice, and ASC policy.

(3) Ensure all patients are discharged in the company of a responsible adult, except those patients exempted by the attending physician.

PART 419—PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT DEPARTMENT SERVICES

■ 12. The authority citation for Part 419 continues to read as follows:

Authority: Secs. 1102, 1833(t), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395l(t), and 1395hh).

■ 13. Section 419.41 is amended by revising paragraph (c)(4)(iv) to read as follows:

§ 419.41 Calculation of national beneficiary copayment amounts and national Medicare program payment amounts.

* * * * *

(c) * * *

(4) * * *

(iv) The copayment amount is computed as if the adjustment under §§ 419.43(d) and (e) (and any adjustments made under § 419.43(f) in relation to these adjustments) and § 419.43(h) had not been paid.

* * * * *

■ 14. Section 419.42 is amended by revising paragraph (e) to read as follows:

§ 419.42 Hospital election to reduce coinsurance.

* * * * *

(e) In electing reduced coinsurance, a hospital may elect a copayment amount that is less than that year's wage-adjusted copayment amount for the group but not less than 20 percent of the APC payment rate as determined under § 419.32 or, in the case of payments calculated under § 419.43(h), not less than 20 percent of the APC payment rate as determined under § 419.43(h).

* * * * *

■ 15. Section 419.43 is amended by—

■ a. In paragraph (d)(1)(i)(B), removing the phrase ''paragraph (e) of this section'' and adding in its place the cross-reference ''§ 419.66''.

■ b. Adding new paragraphs (d)(5) and (d)(6).

■ c. Revising paragraph (f).

■ d. Revising paragraph (g)(4).

■ e. Adding a new paragraph (h)(4).

The additions and revisions read as follows:

§ 419.43 Adjustments to national program payment and beneficiary copayment amounts.

* * * * *

(d) * * *

(5) *Cost-to-charge ratios for calculating charges adjusted to cost.* For hospital outpatient services (or groups of services) as defined in paragraph (d)(1) of this section performed on or after January 1, 2009—

(i) CMS may specify an alternative to the overall ancillary cost-to-charge ratio otherwise applicable under paragraph (d)(5)(ii) of this section. A hospital may also request that its Medicare contractor use a different (higher or lower) cost-to-charge ratio based on substantial evidence presented by the hospital. Such a request must be approved by the CMS.

(ii) The overall ancillary cost-to-charge ratio applied at the time a claim is processed is based on either the most recent settled cost report or the most recent tentative settled cost report, whichever is from the latest cost reporting period.

(iii) The Medicare contractor may use a statewide average cost-to-charge ratio if it is unable to determine an accurate overall ancillary cost-to-charge ratio for a hospital in one of the following circumstances:

(A) A new hospital that has not yet submitted its first Medicare cost report. (For purposes of this paragraph, a new hospital is defined as an entity that has not accepted assignment of an existing hospital's provider agreement in accordance with § 489.18 of this chapter.)

(B) A hospital whose overall ancillary cost-to-charge ratio is in excess of 3 standard deviations above the corresponding national geometric mean. This mean is recalculated annually by CMS and published in the annual notice of prospective payment rates issued in accordance with § 419.50(a).

(C) Any other hospital for whom accurate data to calculate an overall ancillary cost-to-charge ratio are not available to the Medicare contractor.

(6) *Reconciliation.* For hospital outpatient services furnished during cost reporting periods beginning on or after January 1, 2009—

(i) Any reconciliation of outlier payments will be based on an overall ancillary cost-to-charge ratio calculated based on a ratio of costs to charges computed from the relevant cost report and charge data determined at the time the cost report coinciding with the service is settled.

(ii) At the time of any reconciliation under paragraph (d)(6)(i) of this section, outlier payments may be adjusted to account for the time value of any underpayments or overpayments. Any adjustment will be based on a widely available index to be established in advance by CMS, and will be applied from the midpoint of the cost reporting period to the date of reconciliation.

* * * * *

(f) *Excluded services and groups.* The following services or groups are excluded from qualification for the payment adjustment under paragraph (d)(1) of this section:

(1) Drugs and biologicals that are paid under a separate APC; and

(2) Items and services paid at charges adjusted to costs by application of a hospital-specific cost-to-charge ratio.

(g) * * *

(4) *Excluded services and groups.* The following services or groups are excluded from qualification for the payment adjustment in paragraph (g)(2) of this section:

(i) Drugs and biologicals that are paid under a separate APC;

(ii) Devices paid under 419.66; and

(iii) Items and services paid at charges adjusted to costs by application of a hospital-specific cost-to-charge ratio.

* * * * *

(h) * * *

(4) *Beneficiary copayment.* The beneficiary copayment for services to which the adjustment to the conversion factor specified under paragraph (h)(1) of this section applies is the product of the national beneficiary copayment amount calculated under § 419.41 and the ratio of the adjusted conversion factor calculated under paragraph (h)(1) of this section divided by the conversion factor specified under § 419.32(b)(1).

■ 16. Section 419.70 is amended by—

■ a. Revising the introductory text of paragraph (d)(2).

■ b. Revising the heading of paragraph (d)(4).

■ c. Adding a new paragraph (d)(5).

■ d. In paragraphs (e), (g), and (i), removing the term ''paragraph'' and adding it its place the term ''section.''

The revisions and additions read as follows:

§ 419.70 Transitional adjustments to limit decline in payments.

* * * * *

(d) * * *

(2) *Temporary treatment for small rural hospitals on or after January 1, 2006.* For covered hospital outpatient services furnished in a calendar year from January 1, 2006, through December

31, 2009, for which the prospective payment system amount is less than the pre-BBA amount, the amount of payment under this part is increased by 95 percent of that difference for services furnished during 2006, 90 percent of that difference for services furnished during 2007, and 85 percent of that difference for services furnished during 2008 and 2009 if the hospital—

* * * * *

(4) *Temporary treatment for sole community hospitals located in rural areas for covered hospital outpatient services furnished during cost reporting periods beginning on or after January 1, 2004 and before January 1, 2006.* * * *

(5) *Temporary treatment for sole community hospitals located in rural areas on or after January 1, 2009, and through December 31, 2009.* For covered hospital outpatient services furnished on or after January 1, 2009, and continuing through December 31, 2009, for which the prospective payment system amount is less than the pre-BBA amount, the amount of payment under this part is increased by 85 percent of that difference if the hospital—

(i) Is a sole community hospital as defined in § 412.92 of this chapter or is an essential access community hospital as described under § 412.109 of this chapter; and

(ii) Has 100 or fewer beds as defined in § 412.105(b) of this chapter.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: *October 23, 2008.*

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: *October 29, 2008.*

Michael O. Leavitt,

Secretary.

BILLING CODE 4120–01–P

Editorial Note: The following Addenda will not appear in the Code of Federal Regulations.

ADDENDUM A.--FINAL OPPS APCs FOR CY 2009

ADDENDUM A.--FINAL OPPS APCs FOR CY 2009						
APC	Group Title	SI	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
0001	Level I Photochemotherapy	S	0 5101	$33.70	$7.00	$6.74
0002	Fine Needle Biopsy/Aspiration	T	1 4324	$94.62		$18.93
0003	Bone Marrow Biopsy/Aspiration	T	3.1527	$208.26		$41.66
0004	Level I Needle Biopsy/ Aspiration Except Bone Marrow	T	4.4727	$295.46		$59.10
0005	Level II Needle Biopsy/Aspiration Except Bone Marrow	T	7.3879	$488.04		$97.61
0006	Level I Incision & Drainage	T	1.4128	$93.33		$18.67
0007	Level II Incision & Drainage	T	12.5953	$832.03		$166.41
0008	Level III Incision and Drainage	T	19.3873	$1,280.71		$256.15
0012	Level I Debridement & Destruction	T	0.4183	$27.63		$5.53
0013	Level II Debridement & Destruction	T	0.8281	$54.70		$10.94
0015	Level III Debridement & Destruction	T	1.5170	$100.21		$20.05
0016	Level IV Debridement & Destruction	T	2.7288	$180.26		$36.06
0017	Level VI Debridement & Destruction	T	20.2578	$1,338.21		$267.65
0019	Level I Excision/ Biopsy	T	4.4761	$295.69	$71.87	$59.14
0020	Level II Excision/ Biopsy	T	8.2566	$545.42		$109.09
0021	Level III Excision/ Biopsy	T	15.8974	$1,050.17	$219.48	$210.04
0022	Level IV Excision/ Biopsy	T	21.8429	$1,442.92	$354.45	$288.59
0028	Level I Breast Surgery	T	21.4851	$1,419.28	$303.74	$283.86
0029	Level II Breast Surgery	T	33.5744	$2,217.89	$581.52	$443.58
0030	Level III Breast Surgery	T	40.5281	$2,677.25	$747.07	$535.45
0031	Smoking Cessation Services	X	0.1729	$11.42		$2.29
0034	Mental Health Services Composite	S	3.1000	$204.78		$40.96
0035	Vascular Puncture and Minor Diagnostic Procedures	X	0.2186	$14.44		$2.89
0037	Level IV Needle Biopsy/Aspiration Except Bone Marrow	T	13.5176	$892.96	$228.76	$178.60
0039	Level I Implantation of Neurostimulator	S	189.9087	$12,545.18	.	$2,509.04
0040	Percutaneous Implantation of Neurostimulator Electrodes	S	63.6772	$4,206.45	.	$841.29
0041	Level I Arthroscopy	T	29.4149	$1,943.12	.	$388.63
0042	Level II Arthroscopy	T	49.2153	$3,251.11	$804.74	$650.23
0045	Bone/Joint Manipulation Under Anesthesia	T	15.5673	$1,028.36	$268.47	$205.68
0047	Arthroplasty without Prosthesis	T	37.8310	$2,499.08	$537.03	$499.82
0048	Level I Arthroplasty or Implantation with Prosthesis	T	53.1633	$3,511.91	.	$702.39
0049	Level I Musculoskeletal Procedures Except	T	21.7810	$1,438.83	.	$287.77

ADDENDUM A.--FINAL OPPS APCs FOR CY 2009						
APC	Group Title	SI	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
	Hand and Foot					
0050	Level II Musculoskeletal Procedures Except Hand and Foot	T	29.8816	$1,973.95	.	$394.79
0051	Level III Musculoskeletal Procedures Except Hand and Foot	T	45.3534	$2,996.00	.	$599.20
0052	Level IV Musculoskeletal Procedures Except Hand and Foot	T	86.5958	$5,720.43	.	$1,144.09
0053	Level I Hand Musculoskeletal Procedures	T	16.6121	$1,097.38	$253.49	$219.48
0054	Level II Hand Musculoskeletal Procedures	T	27.9994	$1,849.61	.	$369.93
0055	Level I Foot Musculoskeletal Procedures	T	21.6207	$1,428.24	$355.34	$285.65
0056	Level II Foot Musculoskeletal Procedures	T	47.2916	$3,124.04	.	$624.81
0057	Bunion Procedures	T	31.0633	$2,052.01	$475.91	$410.41
0058	Level I Strapping and Cast Application	S	1.0845	$71.64	.	$14.33
0060	Manipulation Therapy	S	0.4302	$28.42	.	$5.69
0061	Laminectomy, Laparoscopy, or Incision for Implantation of Neurostimulator Electr	S	82.9048	$5,476.61	.	$1,095.33
0062	Level I Treatment Fracture/Dislocation	T	25.4442	$1,680.82	$372.87	$336.17
0063	Level II Treatment Fracture/Dislocation	T	42.8656	$2,831.66	.	$566.34
0064	Level III Treatment Fracture/Dislocation	T	62.5691	$4,133.25	$835.79	$826.65
0065	Level I Stereotactic Radiosurgery, MRgFUS, and MEG	S	14.4171	$952.38	.	$190.48
0066	Level II Stereotactic Radiosurgery, MRgFUS, and MEG	S	39.0533	$2,579.82	.	$515.97
0067	Level III Stereotactic Radiosurgery, MRgFUS, and MEG	S	57.5732	$3,803.23	.	$760.65
0069	Thoracoscopy	T	33.5041	$2,213.25	$591.64	$442.65
0070	Thoracentesis/Lavage Procedures	T	5.3343	$352.38	.	$70.48
0071	Level I Endoscopy Upper Airway	T	0.8215	$54.27	$11.20	$10.86
0072	Level II Endoscopy Upper Airway	T	1.8079	$119.43	.	$23.89
0073	Level III Endoscopy Upper Airway	T	4.3850	$289.67	$69.15	$57.94
0074	Level IV Endoscopy Upper Airway	T	18.4160	$1,216.54	$292.25	$243.31
0075	Level V Endoscopy Upper Airway	T	23.4045	$1,546.08	$445.92	$309.22
0076	Level I Endoscopy Lower Airway	T	10.1993	$673.76	$189.82	$134.76
0077	Level I Pulmonary Treatment	S	0.4024	$26.58	$7.74	$5.32
0078	Level II Pulmonary Treatment	S	1.3903	$91.84	.	$18.37
0079	Ventilation Initiation and Management	S	2.9177	$192.74	.	$38.55
0080	Diagnostic Cardiac Catheterization	T	39.2661	$2,593.88	$838.92	$518.78
0082	Coronary or Non-Coronary Atherectomy	T	90.2562	$5,962.23	.	$1,192.45
0083	Coronary or Non-Coronary Angioplasty and Percutaneous Valvuloplasty	T	48.3584	$3,194.51	.	$638.91
0084	Level I Electrophysiologic Procedures	S	10.2559	$677.49	.	$135.50
0085	Level II Electrophysiologic Procedures	T	49.3497	$3,259.99	.	$652.00

ADDENDUM A.--FINAL OPPS APCs FOR CY 2009

APC	Group Title	SI	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
0086	Level III Electrophysiologic Procedures	T	100.1431	$6,615.35	.	$1,323.07
0088	Thrombectomy	T	40.3117	$2,662.95	$655.22	$532.59
0089	Insertion/Replacement of Permanent Pacemaker and Electrodes	T	117.7443	$7,778.07	$1,682.28	$1,555.62
0090	Insertion/Replacement of Pacemaker Pulse Generator	T	96.2978	$6,361.34	$1,597.43	$1,272.27
0091	Level II Vascular Ligation	T	43.7923	$2,892.88	.	$578.58
0092	Level I Vascular Ligation	T	27.3614	$1,807.47	.	$361.50
0093	Vascular Reconstruction/Fistula Repair without Device	T	29.0343	$1,917.98	.	$383.60
0094	Level I Resuscitation and Cardioversion	S	2.4181	$159.74	$46.29	$31.95
0095	Cardiac Rehabilitation	S	0.5712	$37.73	$13.86	$7.55
0096	Non-Invasive Vascular Studies	S	1.4327	$94.64	$37.42	$18.93
0097	Cardiac and Ambulatory Blood Pressure Monitoring	X	0.9946	$65.70	$23.79	$13.14
0099	Electrocardiograms	S	0.3949	$26.09	.	$5.22
0100	Cardiac Stress Tests	X	2.5884	$170.99	$41.44	$34.20
0101	Tilt Table Evaluation	S	4.2301	$279.44	$100.24	$55.89
0103	Miscellaneous Vascular Procedures	T	15.7264	$1,038.87	.	$207.78
0104	Transcatheter Placement of Intracoronary Stents	T	85.3503	$5,638.16	.	$1,127.64
0105	Repair/Revision/Removal of Pacemakers, AICDs, or Vascular Devices	T	22.1272	$1,461.70	.	$292.34
0106	Insertion/Replacement of Pacemaker Leads and/or Electrodes	T	50.4825	$3,334.82	.	$666.97
0107	Insertion of Cardioverter-Defibrillator	T	320.0151	$21,139.88	.	$4,227.98
0108	Insertion/Replacement/Repair of Cardioverter-Defibrillator Leads	T	427.6576	$28,250.63	.	$5,650.13
0110	Transfusion	S	3.3544	$221.59	.	$44.32
0111	Blood Product Exchange	S	11.5004	$759.70	$198.40	$151.94
0112	Apheresis and Stem Cell Procedures	S	30.7865	$2,033.73	$433.29	$406.75
0113	Excision Lymphatic System	T	23.6897	$1,564.92	.	$312.99
0114	Thyroid/Lymphadenectomy Procedures	T	47.2067	$3,118.43	.	$623.69
0115	Cannula/Access Device Procedures	T	32.9660	$2,177.70	.	$435.54
0121	Level I Tube or Catheter Changes or Repositioning	T	4.5958	$303.59	.	$60.72
0126	Level I Urinary and Anal Procedures	T	1.0435	$68.93	$16.21	$13.79
0127	Level IV Stereotactic Radiosurgery, MRgFUS, and MEG	S	115.6797	$7,641.69	.	$1,528.34
0128	Echocardiogram with Contrast	S	8.5705	$566.16	$216.29	$113.24
0129	Level I Closed Treatment Fracture Finger/Toe/Trunk	T	1.5977	$105.54	.	$21.11
0130	Level I Laparoscopy	T	37.8887	$2,502.89	$659.53	$500.58

ADDENDUM A.--FINAL OPPS APCs FOR CY 2009						
APC	Group Title	SI	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
0131	Level II Laparoscopy	T	46.3238	$3,060.10	$1,001.89	$612.02
0132	Level III Laparoscopy	T	69.9234	$4,619.07	$1,239.22	$923.82
0133	Level I Skin Repair	T	1.3124	$86.70	$25.67	$17.34
0134	Level II Skin Repair	T	3.4414	$227.34	.	$45.47
0135	Level III Skin Repair	T	4.4306	$292.68	.	$58.54
0136	Level IV Skin Repair	T	15.9750	$1,055.29	.	$211.06
0137	Level V Skin Repair	T	21.0656	$1,391.57	.	$278.32
0138	Level II Closed Treatment Fracture Finger/Toe/Trunk	T	6.1479	$406.12	.	$81.23
0139	Level III Closed Treatment Fracture Finger/Toe/Trunk	T	19.8724	$1,312.75	.	$262.55
0140	Esophageal Dilation without Endoscopy	T	6.5579	$433.21	$91.40	$86.65
0141	Level I Upper GI Procedures	T	8.6526	$571.58	$143.38	$114.32
0142	Small Intestine Endoscopy	T	9.5724	$632.34	$152.78	$126.47
0143	Lower GI Endoscopy	T	8.9884	$593.76	$186.06	$118.76
0146	Level I Sigmoidoscopy and Anoscopy	T	5.6133	$370.81	.	$74.17
0147	Level II Sigmoidoscopy and Anoscopy	T	9.1325	$603.28	.	$120.66
0148	Level I Anal/Rectal Procedures	T	5.8523	$386.60	.	$77.32
0149	Level III Anal/Rectal Procedures	T	23.1877	$1,531.76	.	$306.36
0150	Level IV Anal/Rectal Procedures	T	31.0398	$2,050.46	$437.12	$410.10
0151	Endoscopic Retrograde Cholangio-Pancreatography (ERCP)	T	21.9315	$1,448.77	.	$289.76
0152	Level I Percutaneous Abdominal and Biliary Procedures	T	30.4122	$2,009.00	.	$401.80
0153	Peritoneal and Abdominal Procedures	T	23.4113	$1,546.53	$376.05	$309.31
0154	Hernia/Hydrocele Procedures	T	31.6628	$2,091.61	$464.85	$418.33
0155	Level II Anal/Rectal Procedures	T	12.2139	$806.84	.	$161.37
0156	Level III Urinary and Anal Procedures	T	2.8838	$190.50	.	$38.10
0157	Colorectal Cancer Screening: Barium Enema	S	2.2661	$149.70	.	$29.94
0158	Colorectal Cancer Screening: Colonoscopy	T	7.9944	$528.10	.	$132.03
0159	Colorectal Cancer Screening: Flexible Sigmoidoscopy	S	5.0788	$335.50	.	$83.88
0160	Level I Cystourethroscopy and other Genitourinary Procedures	T	7.2104	$476.31	.	$95.27
0161	Level II Cystourethroscopy and other Genitourinary Procedures	T	18.7931	$1,241.45	.	$248.29
0162	Level III Cystourethroscopy and other Genitourinary Procedures	T	25.5871	$1,690.26	.	$338.06
0163	Level IV Cystourethroscopy and other Genitourinary Procedures	T	35.8662	$2,369.29	.	$473.86
0164	Level II Urinary and Anal Procedures	T	1.8697	$123.51	.	$24.71

ADDENDUM A.--FINAL OPPS APCs FOR CY 2009						
APC	Group Title	SI	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
0165	Level IV Urinary and Anal Procedures	T	20.0346	$1,323.47	.	$264.70
0166	Level I Urethral Procedures	T	19.8629	$1,312.12	.	$262.43
0168	Level II Urethral Procedures	T	30.6101	$2,022.07	.	$404.42
0169	Lithotripsy	T	41.8999	$2,767.87	$997.74	$553.58
0170	Dialysis	S	6.5599	$433.34	.	$86.67
0172	Level I Partial Hospitalization (3 services)	P	2.4380	$161.05	.	$32.21
0173	Level II Partial Hospitalization (4 or more services)	P	3.1000	$204.78	.	$40.96
0174	Level IV Laparoscopy	T	119.7237	$7,908.83	$2,208.75	$1,581.77
0181	Level II Male Genital Procedures	T	35.5639	$2,349.32	$621.82	$469.87
0183	Level I Male Genital Procedures	T	22.8376	$1,508.63	.	$301.73
0184	Prostate Biopsy	T	11.5477	$762.83	.	$152.57
0188	Level II Female Reproductive Proc	T	1.4229	$94.00	.	$18.80
0189	Level III Female Reproductive Proc	T	3.0012	$198.26	.	$39.66
0190	Level I Hysteroscopy	T	22.0226	$1,454.79	$424.28	$290.96
0191	Level I Female Reproductive Proc	T	0.1524	$10.07	$2.36	$2.02
0192	Level IV Female Reproductive Proc	T	6.1378	$405.46	.	$81.10
0193	Level V Female Reproductive Proc	T	19.7838	$1,306.90	.	$261.38
0195	Level VI Female Reproductive Procedures	T	33.6934	$2,225.75	$483.80	$445.15
0202	Level VII Female Reproductive Procedures	T	43.7195	$2,888.07	$981.50	$577.62
0203	Level IV Nerve Injections	T	14.3718	$949.39	$240.33	$189.88
0204	Level I Nerve Injections	T	2.4871	$164.30	$40.13	$32.86
0206	Level II Nerve Injections	T	3.6499	$241.11	$51.76	$48.23
0207	Level III Nerve Injections	T	7.1721	$473.78	.	$94.76
0208	Laminotomies and Laminectomies	T	48.6069	$3,210.92	.	$642.19
0209	Level II Extended EEG, Sleep, and Cardiovascular Studies	S	11.4202	$754.41	$268.73	$150.89
0213	Level I Extended EEG, Sleep, and Cardiovascular Studies	S	2.3168	$153.05	$53.58	$30.61
0215	Level I Nerve and Muscle Tests	S	0.5994	$39.60	.	$7.92
0216	Level III Nerve and Muscle Tests	S	2.6652	$176.06	.	$35.22
0218	Level II Nerve and Muscle Tests	S	1.1853	$78.30	.	$15.66
0220	Level I Nerve Procedures	T	18.5109	$1,222.81	.	$244.57
0221	Level II Nerve Procedures	T	35.9602	$2,375.49	.	$475.10
0222	Level II Implantation of Neurostimulator	S	235.6477	$15,566.65	.	$3,113.33
0224	Implantation of Catheter/Reservoir/Shunt	T	42.0410	$2,777.19	.	$555.44
0225	Implantation of Neurostimulator Electrodes, Cranial Nerve	S	109.5182	$7,234.66	.	$1,446.94
0227	Implantation of Drug Infusion Device	T	185.9307	$12,282.40	.	$2,456.48
0229	Transcatherter Placement of Intravascular Shunts	T	92.2507	$6,093.99	.	$1,218.80
0230	Level I Eye Tests & Treatments	S	0.6461	$42.68	.	$8.54

ADDENDUM A.–FINAL OPPS APCs FOR CY 2009						
APC	Group Title	SI	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
0231	Level III Eye Tests & Treatments	S	2.1549	$142.35	.	$28.47
0232	Level I Anterior Segment Eye Procedures	T	4.6708	$308.55	$77.30	$61.71
0233	Level II Anterior Segment Eye Procedures	T	16.7409	$1,105.89	$266.33	$221.18
0234	Level III Anterior Segment Eye Procedures	T	23.8963	$1,578.57	$511.31	$315.72
0235	Level I Posterior Segment Eye Procedures	T	5.8277	$384.97	.	$77.00
0237	Level II Posterior Segment Eye Procedures	T	22.3269	$1,474.89	.	$294.98
0238	Level I Repair and Plastic Eye Procedures	T	3.1524	$208.24	.	$41.65
0239	Level II Repair and Plastic Eye Procedures	T	7.6973	$508.48	.	$101.70
0240	Level III Repair and Plastic Eye Procedures	T	19.3139	$1,275.86	$309.52	$255.18
0241	Level IV Repair and Plastic Eye Procedures	T	26.0302	$1,719.53	$383.45	$343.91
0242	Level V Repair and Plastic Eye Procedures	T	38.5166	$2,544.37	$597.36	$508.88
0243	Strabismus/Muscle Procedures	T	24.6556	$1,628.72	$430.35	$325.75
0244	Corneal and Amniotic Membrane Transplant	T	37.9664	$2,508.02	$803.26	$501.61
0245	Level I Cataract Procedures without IOL Insert	T	14.1882	$937.26	$214.11	$187.46
0246	Cataract Procedures with IOL Insert	T	24.2955	$1,604.94	$495.96	$320.99
0247	Laser Eye Procedures	T	5.2647	$347.78	$104.31	$69.56
0249	Level II Cataract Procedures without IOL Insert	T	31.3304	$2,069.65	$524.67	$413.93
0250	Level I ENT Procedures	T	1.1110	$73.39	$25.10	$14.68
0251	Level II ENT Procedures	T	3.3069	$218.45	.	$43.69
0252	Level III ENT Procedures	T	7.5330	$497.62	$109.16	$99.53
0253	Level IV ENT Procedures	T	17.2402	$1,138.87	$282.29	$227.78
0254	Level V ENT Procedures	T	24.7557	$1,635.34	.	$327.07
0256	Level VI ENT Procedures	T	41.8741	$2,766.16	.	$553.24
0259	Level VII ENT Procedures	T	401.1259	$26,497.98	$8,543.66	$5,299.60
0260	Level I Plain Film Except Teeth	X	0.6767	$44.70	.	$8.94
0261	Level II Plain Film Except Teeth Including Bone Density Measurement	X	1.1269	$74.44	.	$14.89
0262	Plain Film of Teeth	X	0.4855	$32.07	.	$6.42
0263	Level I Miscellaneous Radiology Procedures	X	3.0202	$199.51	.	$39.91
0265	Level I Diagnostic and Screening Ultrasound	S	0.9461	$62.50	$22.35	$12.50
0266	Level II Diagnostic and Screening Ultrasound	S	1.4801	$97.77	$37.80	$19.56
0267	Level III Diagnostic and Screening Ultrasound	S	2.3186	$153.16	$60.50	$30.64

ADDENDUM A.--FINAL OPPS APCs FOR CY 2009						
APC	Group Title	SI	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
0269	Level II Echocardiogram Without Contrast Except Transesophageal	S	6.5300	$431.37	.	$86.28
0270	Transesophageal Echocardiogram Without Contrast	S	8.3489	$551.52	$141.32	$110.31
0272	Fluoroscopy	X	1.2597	$83.21	$31.15	$16.65
0274	Myelography	S	7.1945	$475.26	.	$95.06
0275	Arthrography	S	4.0175	$265.39	$69.09	$53.08
0276	Level I Digestive Radiology	S	1.3298	$87.85	$34.87	$17.57
0277	Level II Digestive Radiology	S	2.1621	$142.83	$54.52	$28.57
0278	Diagnostic Urography	S	2.6340	$174.00	$59.40	$34.80
0279	Level II Angiography and Venography	S	29.5853	$1,954.38	.	$390.88
0280	Level III Angiography and Venography	S	44.7368	$2,955.27	.	$591.06
0282	Miscellaneous Computed Axial Tomography	S	1.5897	$105.01	$37.81	$21.01
0283	Computed Tomography with Contrast	S	4.6595	$307.80	$100.37	$61.56
0284	Magnetic Resonance Imaging and Magnetic Resonance Angiography with Contrast	S	6.4701	$427.41	$148.40	$85.49
0288	Bone Density:Axial Skeleton	S	1.0887	$71.92	$28.66	$14.39
0293	Level V Anterior Segment Eye Procedures	T	104.7499	$6,919.67	.	$1,383.94
0299	Hyperthermia and Radiation Treatment Procedures	S	5.6497	$373.21	.	$74.65
0300	Level I Radiation Therapy	S	1.4211	$93.88	.	$18.78
0301	Level II Radiation Therapy	S	2.3018	$152.05	.	$30.41
0303	Treatment Device Construction	X	2.8484	$188.16	$66.95	$37.64
0304	Level I Therapeutic Radiation Treatment Preparation	X	1.7364	$114.70	$38.68	$22.94
0305	Level II Therapeutic Radiation Treatment Preparation	X	3.8706	$255.69	$91.38	$51.14
0307	Myocardial Positron Emission Tomography (PET) imaging	S	17.5127	$1,156.87	$241.53	$231.38
0308	Non-Myocardial Positron Emission Tomography (PET) imaging	S	15.6969	$1,036.92	.	$207.39
0310	Level III Therapeutic Radiation Treatment Preparation	X	13.5167	$892.90	$325.27	$178.58
0312	Radioelement Applications	S	6.5193	$430.66	.	$86.14
0313	Brachytherapy	S	11.1000	$733.25	$293.30	$146.65
0315	Level III Implantation of Neurostimulator	S	277.2288	$18,313.46	.	$3,662.70
0317	Level II Miscellaneous Radiology Procedures	X	5.1044	$337.19	.	$67.44
0320	Electroconvulsive Therapy	S	5.7528	$380.02	$80.06	$76.01
0322	Brief Individual Psychotherapy	S	1.3097	$86.52	.	$17.31
0323	Extended Individual Psychotherapy	S	1.6317	$107.79	.	$21.56

ADDENDUM A.--FINAL OPPS APCs FOR CY 2009						
APC	Group Title	SI	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
0324	Family Psychotherapy	S	2.4859	$164.22	.	$32.85
0325	Group Psychotherapy	S	0.9800	$64.74	$13.81	$12.95
0330	Dental Procedures	S	7.6534	$505.58	.	$101.12
0332	Computed Tomography without Contrast	S	2.9426	$194.39	$75.24	$38.88
0333	Computed Tomography without Contrast followed by Contrast)	S	5.1615	$340.96	$119.01	$68.20
0336	Magnetic Resonance Imaging and Magnetic Resonance Angiography without Contrast	S	5.2689	$348.06	$137.40	$69.62
0337	Magnetic Resonance Imaging and Magnetic Resonance Angiography without Contrast f	S	8.1548	$538.70	$199.53	$107.74
0340	Minor Ancillary Procedures	X	0.6462	$42.69	.	$8.54
0341	Skin Tests	X	0.0834	$5.51	$2.14	$1.11
0342	Level I Pathology	X	0.1523	$10.06	$2.02	$2.02
0343	Level III Pathology	X	0.5230	$34.55	$10.84	$6.91
0344	Level IV Pathology	X	0.8223	$54.32	$15.66	$10.87
0345	Level I Transfusion Laboratory Procedures	X	0.2194	$14.49	.	$2.90
0346	Level II Transfusion Laboratory Procedures	X	0.3807	$25.15	.	$5.03
0347	Level III Transfusion Laboratory Procedures	X	0.7337	$48.47	$9.94	$9.70
0350	Administration of flu and PPV vaccine	S	0.3768	$24.89	.	$0.00
0360	Level I Alimentary Tests	X	1.5113	$99.83	$33.88	$19.97
0361	Level II Alimentary Tests	X	3.9733	$262.47	$83.23	$52.50
0363	Level I Otorhinolaryngologic Function Tests	X	0.9042	$59.73	$17.10	$11.95
0364	Level I Audiometry	X	0.4730	$31.25	$7.06	$6.25
0365	Level II Audiometry	X	1.2779	$84.42	$18.52	$16.89
0366	Level III Audiometry	X	1.7097	$112.94	$25.79	$22.59
0367	Level I Pulmonary Test	X	0.5627	$37.17	$13.76	$7.44
0368	Level II Pulmonary Tests	X	0.8326	$55.00	$20.93	$11.00
0369	Level III Pulmonary Tests	X	2.7955	$184.67	$44.18	$36.94
0370	Allergy Tests	X	1.4677	$96.95	.	$19.39
0373	Level I Neuropsychological Testing	X	1.3408	$88.57	.	$17.72
0375	Ancillary Outpatient Services When Patient Expires	S	85.8765	$5,672.92	.	$1,134.59
0377	Level II Cardiac Imaging	S	11.7188	$774.13	$158.84	$154.83
0378	Level II Pulmonary Imaging	S	4.9163	$324.77	$125.33	$64.96
0379	Injection adenosine 6 MG	K	.	$9.25	.	$1.85
0381	Single Allergy Tests	X	0.3517	$23.23	.	$4.65
0382	Level II Neuropsychological Testing	X	2.4430	$161.38	.	$32.28
0383	Cardiac Computed Tomographic Imaging	S	4.2793	$282.69	$110.53	$56.54

ADDENDUM A.--FINAL OPPS APCs FOR CY 2009						
APC	Group Title	SI	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
0384	GI Procedures with Stents	T	25.7008	$1,697.77	.	$339.56
0385	Level I Prosthetic Urological Procedures	S	97.5997	$6,447.34	.	$1,289.47
0386	Level II Prosthetic Urological Procedures	S	152.9428	$10,103.25	.	$2,020.65
0387	Level II Hysteroscopy	T	36.6478	$2,420.92	$655.55	$484.19
0388	Discography	S	22.7705	$1,504.20	.	$300.84
0389	Level I Non-imaging Nuclear Medicine	S	1.7779	$117.45	$33.81	$23.49
0390	Level I Endocrine Imaging	S	2.0640	$136.35	$52.15	$27.27
0391	Level II Endocrine Imaging	S	3.3593	$221.91	$66.18	$44.39
0392	Level II Non-imaging Nuclear Medicine	S	2.4943	$164.77	$43.95	$32.96
0393	Hematologic Processing & Studies	S	6.0581	$400.19	$82.04	$80.04
0394	Hepatobiliary Imaging	S	4.1626	$274.98	$99.32	$55.00
0395	GI Tract Imaging	S	3.6804	$243.12	$89.73	$48.63
0396	Bone Imaging	S	3.7205	$245.77	$95.02	$49.16
0397	Vascular Imaging	S	2.8298	$186.93	$46.29	$37.39
0398	Level I Cardiac Imaging	S	4.7291	$312.40	$100.06	$62.48
0400	Hematopoietic Imaging	S	3.9752	$262.60	$93.22	$52.52
0401	Level I Pulmonary Imaging	S	3.2040	$211.65	$76.52	$42.33
0402	Level II Nervous System Imaging	S	8.3063	$548.71	$111.42	$109.75
0403	Level I Nervous System Imaging	S	2.8236	$186.52	$72.42	$37.31
0404	Renal and Genitourinary Studies	S	4.9803	$328.99	$84.11	$65.80
0406	Level I Tumor/Infection Imaging	S	4.5288	$299.17	$90.99	$59.84
0407	Level I Radionuclide Therapy	S	3.2584	$215.25	$78.13	$43.05
0408	Level III Tumor/Infection Imaging	S	15.1962	$1,003.85	.	$200.77
0409	Red Blood Cell Tests	X	0.1168	$7.72	$2.20	$1.55
0412	IMRT Treatment Delivery	S	6.2192	$410.83	.	$82.17
0413	Level II Radionuclide Therapy	S	5.4802	$362.02	.	$72.41
0414	Level II Tumor/Infection Imaging	S	8.5379	$564.01	$214.44	$112.81
0415	Level II Endoscopy Lower Airway	T	25.1663	$1,662.46	$459.92	$332.50
0418	Insertion of Left Ventricular Pacing Elect.	T	138.4242	$9,144.16	.	$1,828.84
0422	Level II Upper GI Procedures	T	25.3785	$1,676.48	$448.81	$335.30
0423	Level II Percutaneous Abdominal and Biliary Procedures	T	46.5013	$3,071.83	.	$614.37
0425	Level II Arthroplasty or Implantation with Prosthesis	T	121.7668	$8,043.79	.	$1,608.76
0426	Level II Strapping and Cast Application	S	2.4305	$160.56	.	$32.12
0427	Level II Tube or Catheter Changes or Repositioning	T	15.5994	$1,030.48	.	$206.10
0428	Level III Sigmoidoscopy and Anoscopy	T	23.6827	$1,564.46	.	$312.90
0429	Level V Cystourethroscopy and other Genitourinary Procedures	T	45.8088	$3,026.08	.	$605.22
0432	Health and Behavior Services	S	0.4065	$26.85	.	$5.37
0433	Level II Pathology	X	0.2498	$16.50	$5.17	$3.30

ADDENDUM A.--FINAL OPPS APCs FOR CY 2009

APC	Group Title	SI	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
0434	Cardiac Defect Repair	T	153.6340	$10,148.91	.	$2,029.79
0436	Level I Drug Administration	S	0.3768	$24.89	.	$4.98
0437	Level II Drug Administration	S	0.5469	$36.13	.	$7.23
0438	Level III Drug Administration	S	1.1152	$73.67	.	$14.74
0439	Level IV Drug Administration	S	1.9470	$128.62	.	$25.73
0440	Level V Drug Administration	S	2.8454	$187.96	.	$37.60
0442	Dosimetric Drug Administration	S	28.9015	$1,909.20	.	$381.84
0604	Level 1 Hospital Clinic Visits	V	0.8277	$54.68	.	$10.94
0605	Level 2 Hospital Clinic Visits	V	1.0439	$68.96	.	$13.80
0606	Level 3 Hospital Clinic Visits	V	1.3585	$89.74	.	$17.95
0607	Level 4 Hospital Clinic Visits	V	1.7192	$113.57	.	$22.72
0608	Level 5 Hospital Clinic Visits	V	2.4477	$161.69	.	$32.34
0609	Level 1 Type A Emergency Visits	V	0.7972	$52.66	$12.70	$10.54
0613	Level 2 Type A Emergency Visits	V	1.3040	$86.14	$21.06	$17.23
0614	Level 3 Type A Emergency Visits	V	2.0694	$136.70	$34.50	$27.34
0615	Level 4 Type A Emergency Visits	V	3.2987	$217.91	$48.49	$43.59
0616	Level 5 Emergency Visits	V	4.9032	$323.90	$72.86	$64.78
0617	Critical Care	S	7.3479	$485.39	$111.59	$97.08
0618	Trauma Response with Critical Care	S	14.1558	$935.12	.	$187.03
0621	Level I Vascular Access Procedures	T	11.0653	$730.96	.	$146.20
0622	Level II Vascular Access Procedures	T	24.9153	$1,645.88	.	$329.18
0623	Level III Vascular Access Procedures	T	29.7476	$1,965.10	.	$393.02
0624	Phlebotomy and Minor Vascular Access Device Procedures	X	0.6043	$39.92	$12.65	$7.99
0626	Level 1 Type B Emergency Visits	V	0.6840	$45.18	.	$9.04
0627	Level 2 Type B Emergency Visits	V	0.9302	$61.45	.	$12.29
0628	Level 3 Type B Emergency Visits	V	1.3418	$88.64	.	$17.73
0629	Level 4 Type B Emergency Visits	V	2.4093	$159.16	.	$31.84
0648	Level IV Breast Surgery	T	60.1165	$3,971.24	.	$794.25
0651	Complex Interstitial Radiation Source Application	S	13.1120	$866.17	.	$173.24
0652	Insertion of Intraperitoneal and Pleural Catheters	T	29.8670	$1,972.98	.	$394.60
0653	Vascular Reconstruction/Fistula Repair with Device	T	46.8513	$3,094.95	.	$618.99
0654	Insertion/Replacement of a permanent dual chamber pacemaker	T	108.9884	$7,199.66	.	$1,439.94
0655	Insertion/Replacement/Conversion of a permanent dual chamber pacemaker	T	143.9957	$9,512.21	.	$1,902.45
0656	Transcatheter Placement of Intracoronary Drug-Eluting Stents	T	116.0944	$7,669.08	.	$1,533.82
0659	Hyperbaric Oxygen	S	1.5677	$103.56	.	$20.72

ADDENDUM A.--FINAL OPPS APCs FOR CY 2009

APC	Group Title	SI	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
0660	Level II Otorhinolaryngologic Function Tests	X	1.5831	$104.58	$28.06	$20.92
0661	Level V Pathology	X	2.4143	$159.49	$57.69	$31.90
0662	CT Angiography	S	5.3264	$351.86	$118.88	$70.38
0664	Level I Proton Beam Radiation Therapy	S	10.6477	$703.38	.	$140.68
0665	Bone Density:AppendicularSkeleton	S	0.4798	$31.70	$12.67	$6.34
0667	Level II Proton Beam Radiation Therapy	S	12.7244	$840.56	.	$168.12
0668	Level I Angiography and Venography	S	10.3351	$682.73	.	$136.55
0672	Level III Posterior Segment Eye Procedures	T	38.1751	$2,521.81	.	$504.37
0673	Level IV Anterior Segment Eye Procedures	T	40.9535	$2,705.35	$649.56	$541.07
0674	Prostate Cryoablation	T	122.0254	$8,060.88	.	$1,612.18
0676	Thrombolysis and Thrombectomy	T	2.4525	$162.01	.	$32.41
0678	External Counterpulsation	T	1.5475	$102.23	.	$20.45
0679	Level II Resuscitation and Cardioversion	S	5.4782	$361.88	$95.30	$72.38
0680	Insertion of Patient Activated Event Recorders	S	72.8054	$4,809.45	.	$961.89
0681	Knee Arthroplasty	T	186.5341	$12,322.26	.	$2,464.46
0682	Level V Debridement & Destruction	T	7.2265	$477.38	$158.65	$95.48
0683	Level II Photochemotherapy	S	2.7022	$178.50	.	$35.70
0685	Level III Needle Biopsy/Aspiration Except Bone Marrow	T	9.5785	$632.75	.	$126.55
0687	Revision/Removal of Neurostimulator Electrodes	T	19.6378	$1,297.25	$397.37	$259.45
0688	Revision/Removal of Neurostimulator Pulse Generator Receiver	T	29.5464	$1,951.81	$778.69	$390.37
0689	Level II Electronic Analysis of Devices	S	0.5941	$39.25	.	$7.85
0690	Level I Electronic Analysis of Devices	S	0.3508	$23.17	$8.67	$4.64
0691	Level IV Electronic Analysis of Devices	S	2.4647	$162.82	$50.49	$32.57
0692	Level III Electronic Analysis of Devices	S	1.6537	$109.24	.	$21.85
0694	Mohs Surgery	T	4.5047	$297.58	$91.69	$59.52
0697	Level I Echocardiogram Without Contrast Except Transesophageal	S	3.8610	$255.05	.	$51.01
0698	Level II Eye Tests & Treatments	S	0.9338	$61.69	.	$12.34
0699	Level IV Eye Tests & Treatments	T	14.4782	$956.42	.	$191.29
0701	Sr89 strontium	H	.		.	.
0702	Sm 153 lexidronm	H	.		.	.
0726	Dexrazoxane HCl injection	K	.	$263.77	.	$52.76
0728	Filgrastim 300 mcg injection	K	.	$196.54	.	$39.31
0730	Pamidronate disodium	K	.	$28.68	.	$5.74
0731	Sargramostim injection	K	.	$25.76	.	$5.16
0732	Mesna injection	K	.	$6.83	.	$1.37

ADDENDUM A.--FINAL OPPS APCs FOR CY 2009

APC	Group Title	SI	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
0735	Ampho b cholesteryl sulfate	K	.	$11.78	.	$2.36
0736	Amphotericin b liposome inj	K	.	$15.82	.	$3.17
0738	Rasburicase	K	.	$152.34	.	$30.47
0747	Chlorothiazide sodium inj	K	.	$189.58	.	$37.92
0750	Dolasetron mesylate	K	.	$4.52	.	$0.91
0751	Mechlorethamine hcl inj	K	.	$141.96	.	$28.40
0752	Dactinomycin injection	K	.	$486.26	.	$97.26
0759	Naltrexone, depot form	K	.	$1.85	.	$0.37
0760	Anidulafungin injection	K	.	$1.34	.	$0.27
0763	Dolasetron mesylate oral	K	.	$56.00	.	$11.20
0764	Granisetron hcl injection	K	.	$4.25	.	$0.85
0765	Granisetron hcl 1 mg oral	K	.	$17.54	.	$3.51
0768	Ondansetron hcl injection	K	.	$0.19	.	$0.04
0769	Ondansetron hcl 8 mg oral	K	.	$3.86	.	$0.78
0800	Leuprolide acetate	K	.	$435.72	.	$87.15
0802	Etoposide oral	K	.	$28.79	.	$5.76
0804	Vivaglobin, inj	K	.	$6.94	.	$1.39
0807	Aldesleukin injection	K	.	$792.77	.	$158.56
0809	Bcg live intravesical vac	K	.	$112.33	.	$22.47
0810	Goserelin acetate implant	K	.	$185.87	.	$37.18
0812	Carmustine injection	K	.	$161.32	.	$32.27
0814	Asparaginase injection	K	.	$56.97	.	$11.40
0820	Daunorubicin injection	K	.	$16.58	.	$3.32
0821	Daunorubicin citrate inj	K	.	$55.04	.	$11.01
0823	Docetaxel injection	K	.	$328.32	.	$65.67
0825	Nelarabine injection	G	.	$96.09	.	$18.86
0827	Floxuridine injection	K	.	$49.58	.	$9.92
0828	Gemcitabine hcl injection	K	.	$132.54	.	$26.51
0830	Irinotecan injection	K	.	$36.30	.	$7.26
0831	Ifosfomide injection	K	.	$33.16	.	$6.64
0832	Idarubicin hcl injection	K	.	$230.09	.	$46.02
0834	Interferon alfa-2a inj	K	.	$39.76	.	$7.96
0835	Inj cosyntropin	K	.	$95.34	.	$19.07
0836	Interferon alfa-2b inj	K	.	$14.45	.	$2.89
0838	Interferon gamma 1-b inj	K	.	$345.15	.	$69.03
0840	Inj melphalan hydrochl	K	.	$1,593.94	.	$318.79
0842	Fludarabine phosphate inj	K	.	$217.03	.	$43.41
0843	Pegaspargase injection	K	.	$2,569.13	.	$513.83
0844	Pentostatin injection	K	.	$1,592.03	.	$318.41
0849	Rituximab injection	K	.	$524.58	.	$104.92
0850	Streptozocin injection	K	.	$193.00	.	$38.60

ADDENDUM A.--FINAL OPPS APCs FOR CY 2009

APC	Group Title	SI	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
0851	Thiotepa injection	K	.	$92.76	.	$18.56
0852	Topotecan injection	K	.	$913.11	.	$182.63
0855	Vinorelbine tartrate inj	K	.	$16.26	.	$3.26
0856	Porfimer sodium injection	K	.	$2,490.53	.	$498.11
0858	Inj cladribine	K	.	$28.79	.	$5.76
0861	Leuprolide acetate injeciton	K	.	$6.56	.	$1.32
0863	Paclitaxel injection	K	.	$10.83	.	$2.17
0864	Mitoxantrone hydrochl	K	.	$85.55	.	$17.11
0865	Interferon alfa-n3 inj	K	.	$17.89	.	$3.58
0868	Oral aprepitant	K	.	$5.24	.	$1.05
0873	Hyalgan/supartz inj per dose	K	.	$97.02	.	$19.41
0874	Synvisc inj per dose	K	.	$181.29	.	$36.26
0875	Euflexxa inj per dose	K	.	$107.54	.	$21.51
0877	Orthovisc inj per dose	K	.	$176.11	.	$35.23
0878	Gallium nitrate injection	K	.	$1.56	.	$0.32
0883	Fondaparinux sodium	K	.	$6.03	.	$1.21
0884	Rho d immune globulin inj	K	.	$82.95	.	$16.59
0887	Azathioprine parenteral	K	.	$89.27	.	$17.86
0888	Cyclosporine oral	K	.	$3.61	.	$0.73
0890	Lymphocyte immune globulin	K	.	$431.18	.	$86.24
0891	Tacrolimus oral	K	.	$3.82	.	$0.77
0898	Gamma globulin 2 CC inj	K	.	$23.72	.	$4.75
0899	Gamma globulin 3 CC inj	K	.	$35.58	.	$7.12
0900	Alglucerase injection	K	.	$39.63	.	$7.93
0901	Alpha 1 proteinase inhibitor	K	.	$3.62	.	$0.73
0902	Botulinum toxin a per unit	K	.	$5.30	.	$1.06
0903	Cytomegalovirus imm IV /vial	K	.	$862.24	.	$172.45
0904	Gamma globulin 4 CC inj	K	.	$47.44	.	$9.49
0906	RSV-ivig	K	.	$15.87	.	$3.18
0910	Interferon beta-1b / .25 MG	K	.	$107.92	.	$21.59
0913	Ganciclovir long act implant	K	.	$16,640.00	.	$3,328.00
0916	Injection imiglucerase /unit	K	.	$3.96	.	$0.80
0917	Adenosine injection	K	.	$69.44	.	$13.89
0919	Gamma globulin 5 CC inj	K	.	$59.31	.	$11.87
0920	Gamma globulin 6 CC inj	K	.	$71.18	.	$14.24
0921	Gamma globulin 7 CC inj	K	.	$82.99	.	$16.60
0922	Gamma globulin 8 CC inj	K	.	$94.89	.	$18.98
0923	Gamma globulin 9 CC inj	K	.	$106.78	.	$21.36
0924	Gamma globulin 10 CC inj	K	.	$118.61	.	$23.73
0925	Factor viii	K	.	$0.81	.	$0.17
0927	Factor viii recombinant	K	.	$1.06	.	$0.22

ADDENDUM A.--FINAL OPPS APCs FOR CY 2009

APC	Group Title	SI	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
0928	Factor ix complex	K	.	$0.80	.	$0.16
0929	Anti-inhibitor	K	.	$1.46	.	$0.30
0931	Factor IX non-recombinant	K	.	$0.88	.	$0.18
0932	Factor IX recombinant	K	.	$1.05	.	$0.21
0933	Gamma globulin > 10 CC inj	K	.	$118.61	.	$23.73
0934	Capecitabine, oral	K	.	$16.04	.	$3.21
0935	Clonidine hydrochloride	K	.	$63.41	.	$12.69
0943	Octagam injection	K	.	$35.18	.	$7.04
0944	Gammagard liquid injection	K	.	$34.35	.	$6.87
0945	Rhophylac injection	K	.	$5.15	.	$1.03
0946	Hepagam b im injection	G	.	$43.92	.	$8.62
0947	Flebogamma injection	K	.	$35.02	.	$7.01
0948	Gamunex injection	K	.	$34.14	.	$6.83
0949	Frozen plasma, pooled, sd	R	0.8906	$58.83	.	$11.77
0950	Whole blood for transfusion	R	3.4878	$230.40	.	$46.08
0951	Reclast injection	G	.	$216.61	.	$42.50
0952	Cryoprecipitate each unit	R	0.6428	$42.46	.	$8.50
0954	RBC leukocytes reduced	R	2.8598	$188.92	.	$37.79
0955	Plasma, frz between 8-24hour	R	1.1447	$75.62	.	$15.13
0956	Plasma protein fract,5%,50ml	R	0.2365	$15.62	.	$3.13
0957	Platelets, each unit	R	1.1088	$73.25	.	$14.65
0958	Plaelet rich plasma unit	R	5.9788	$394.95	.	$78.99
0959	Red blood cells unit	R	2.0712	$136.82	.	$27.37
0960	Washed red blood cells unit	R	3.9607	$261.64	.	$52.33
0961	Albumin (human),5%, 50ml	K		$19.12	.	$3.83
0963	Albumin (human), 5%, 250 ml	K		$70.02	.	$14.01
0964	Albumin (human), 25%, 20 ml	K		$24.67	.	$4.94
0965	Albumin (human), 25%, 50ml	K		$69.22	.	$13.85
0966	Plasmaprotein fract,5%,250ml	R	2.9712	$196.27	.	$39.26
0967	Blood split unit	R	0.4711	$31.12	.	$6.23
0968	Platelets leukoreduced irrad	R	1.9405	$128.19	.	$25.64
0969	RBC leukoreduced irradiated	R	3.8046	$251.33	.	$50.27
0999	Edetate calcium disodium inj	K	.	$49.29	.	$9.86
1009	Cryoprecipitatereducedplasma	R	1.2892	$85.16	.	$17.04
1010	Blood, l/r, cmv-neg	R	2.1819	$144.13	.	$28.83
1011	Platelets, hla-m, l/r, unit	R	10.7766	$711.89	.	$142.38
1013	Platelets leukocytes reduced	R	1.6904	$111.67	.	$22.34
1015	Injection glatiramer acetate	K	.	$63.46	.	$12.70
1016	Blood, l/r, froz/degly/wash	R	1.5392	$101.68	.	$20.34
1017	Plt, aph/pher, l/r, cmv-neg	R	7.2725	$480.41	.	$96.09
1018	Blood, l/r, irradiated	R	3.4259	$226.31	.	$45.27

ADDENDUM A.--FINAL OPPS APCs FOR CY 2009

APC	Group Title	SI	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
1019	Plate pheres leukoredu irrad	R	9.8927	$653.50	.	$130.70
1020	Plt, pher, l/r cmv-neg, irr	R	9.8282	$649.24	.	$129.85
1021	RBC, frz/deg/wsh, l/r, irrad	R	6.4286	$424.67	.	$84.94
1022	RBC, l/r, cmv-neg, irrad	R	4.5631	$301.43	.	$60.29
1023	Pralidoxime chloride inj	K	.	$83.55	.	$16.71
1052	Injection, voriconazole	K	.	$5.19	.	$1.04
1064	I131 iodide cap, rx	H	.		.	.
1083	Adalimumab injection	K	.	$338.53	.	$67.71
1084	Denileukin diftitox inj	K	.	$1,405.27	.	$281.06
1086	Temozolomide	K	.	$8.09	.	$1.62
1138	Hepagam b intravenous, inj	G	.	$43.92	.	$8.62
1139	Protein c concentrate	K	.	$11.96	.	$2.40
1142	Supprelin LA implant	G	.	$14,609.22	.	$2,866.71
1150	I131 iodide sol, rx	H	.		.	.
1166	Cytarabine liposome inj	K	.	$439.71	.	$87.95
1167	Inj, epirubicin hcl	K	.	$5.34	.	$1.07
1168	Inj, temsirolimus	G	.	$47.90	.	$9.40
1178	Busulfan injection	K	.	$11.93	.	$2.39
1186	Acetylcysteine injection	K	.	$2.15	.	$0.43
1189	Foscarnet sodium injection	K	.	$10.50	.	$2.10
1203	Verteporfin injection	K	.	$9.15	.	$1.83
1204	Cyclosporin parenteral	K	.	$19.01	.	$3.81
1206	Dimecaprol injection	K	.	$26.26	.	$5.26
1207	Octreotide injection, depot	K	.	$101.89	.	$20.38
1208	Factor VIII (porcine)	K		$0.98	.	$0.20
1209	Diethylstilbestrol injection	K		$78.08	.	$15.62
1211	Oxytetracycline injection	K		$165.50	.	$33.10
1212	Diphtheria antitoxin	K		$182.05	.	$36.41
1213	Antihemophilic viii/vwf comp	K	.	$0.81		$0.17
1214	Inj IVIG privigen 500 mg	G	.	$33.64	.	$6.60
1216	Lyme disease vaccine, im	K		$72.67	.	$14.54
1217	Penicillin g benzathine inj	K		$31.99	.	$6.40
1218	Triflupromazine hcl inj	K		$20.51	.	$4.11
1219	Dtap-ipv vacc 4-6 yr im	K	.	$49.92	.	$9.98
1220	Calcitonin salmon injection	K	.	$48.04	.	$9.61
1221	Dimethyl sulfoxide 50%	K	.	$64.31	.	$12.87
1222	Pentastarch 10% solution	K	.	$158.76	.	$31.76
1223	Pentobarbital sodium inj	K	.	$7.78	.	$1.56
1224	Sincalide injection	K	.	$60.01	.	$12.01
1225	Somatrem injection	K	.	$43.99	.	$8.80
1226	Inj streptokinase /250000 IU	K	.	$78.00	.	$15.60

ADDENDUM A.--FINAL OPPS APCs FOR CY 2009						
APC	Group Title	SI	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
1227	Urea injection	K	.	$73.95	.	$14.79
1228	Hyaluronidase recombinant	K	.	$0.48	.	$0.10
1230	Nabilone oral	K	.	$16.64	.	$3.33
1231	Plicamycin (mithramycin) inj	K	.	$77.49	.	$15.50
1232	Mitomycin 5 MG inj	K	.	$15.56	.	$3.12
1233	Mitomycin 20 MG inj	K	.	$62.25	.	$12.45
1234	Mitomycin 40 MG inj	K	.	$124.50	.	$24.90
1235	Valrubicin injection	K	.	$384.38	.	$76.88
1236	Levoleucovorin injection	K	.	$1.03	.	$0.21
1237	Inj iron dextran	K	.	$11.59	.	$2.32
1238	Topotecan oral	K	.	$68.58	.	$13.72
1239	Rotavirus vacc 2 dose oral	K	.	$106.60	.	$21.32
1240	Apligraf skin sub	K		$30.92		$6.18
1241	Oasis wound matrix skin sub	K		$4.00		$0.80
1242	Oasis burn matrix skin sub	K		$4.00		$0.80
1243	Integra BMWD skin sub	K		$11.13		$2.23
1244	Integra DRT skin sub	K		$11.13		$2.23
1245	Dermagraft skin sub	K		$37.76		$7.55
1246	Graftjacket skin sub	K		$86.03		$17.21
1247	Integra matrix skin sub	K		$16.83		$3.37
1248	Primatrix skin sub	K		$34.41		$6.88
1249	Cymetra allograft	K		$376.03		$75.21
1250	Graftjacket express allograft	K		$376.03		$75.21
1251	Integra flowable wound matri	G		$875.21		$171.74
1280	Corticotropin injection	K	.	$2,310.04	.	$462.01
1436	Etidronate disodium inj	K	.	$70.06	.	$14.02
1491	New Technology - Level IA ($0-$10)	S	.	$5.00	.	$1.00
1492	New Technology - Level IB ($10-$20)	S	.	$15.00	.	$3.00
1493	New Technology - Level IC ($20-$30)	S	.	$25.00	.	$5.00
1494	New Technology - Level ID ($30-$40)	S	.	$35.00	.	$7.00
1495	New Technology - Level IE ($40-$50)	S	.	$45.00	.	$9.00
1496	New Technology - Level IA ($0-$10)	T	.	$5.00	.	$1.00
1497	New Technology - Level IB($10-$20)	T	.	$15.00	.	$3.00
1498	New Technology - Level IC ($20-$30)	T	.	$25.00	.	$5.00
1499	New Technology - Level ID($30-$40)	T	.	$35.00	.	$7.00
1500	New Technology - Level IE ($40-$50)	T	.	$45.00	.	$9.00
1502	New Technology - Level II ($50 - $100)	S	.	$75.00	.	$15.00
1503	New Technology - Level III ($100 - $200)	S	.	$150.00	.	$30.00
1504	New Technology - Level IV ($200 - $300)	S	.	$250.00	.	$50.00
1505	New Technology - Level V ($300 - $400)	S	.	$350.00	.	$70.00
1506	New Technology - Level VI ($400 - $500)	S	.	$450.00	.	$90.00

ADDENDUM A.--FINAL OPPS APCs FOR CY 2009						
APC	Group Title	SI	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
1507	New Technology - Level VII ($500 - $600)	S	.	$550.00	.	$110.00
1508	New Technology - Level VIII ($600 - $700)	S	.	$650.00	.	$130.00
1509	New Technology - Level IX ($700 - $800)	S	.	$750.00	.	$150.00
1510	New Technology - Level X ($800 - $900)	S	.	$850.00	.	$170.00
1511	New Technology - Level XI ($900 - $1000)	S	.	$950.00	.	$190.00
1512	New Technology - Level XII ($1000 - $1100)	S	.	$1,050.00	.	$210.00
1513	New Technology - Level XIII ($1100 - $1200)	S	.	$1,150.00	.	$230.00
1514	New Technology - Level XIV ($1200- $1300)	S	.	$1,250.00	.	$250.00
1515	New Technology - Level XV ($1300 - $1400)	S	.	$1,350.00	.	$270.00
1516	New Technology - Level XVI ($1400 - $1500)	S	.	$1,450.00	.	$290.00
1517	New Technology - Level XVII ($1500- $1600)	S	.	$1,550.00	.	$310.00
1518	New Technology - Level XVIII ($1600- $1700)	S	.	$1,650.00	.	$330.00
1519	New Technology - Level IXX ($1700- $1800)	S	.	$1,750.00	.	$350.00
1520	New Technology - Level XX ($1800- $1900)	S	.	$1,850.00	.	$370.00
1521	New Technology - Level XXI ($1900- $2000)	S	.	$1,950.00	.	$390.00
1522	New Technology - Level XXII ($2000- $2500)	S	.	$2,250.00	.	$450.00
1523	New Technology - Level XXIII ($2500- $3000)	S	.	$2,750.00	.	$550.00
1524	New Technology - Level XXIV ($3000- $3500)	S	.	$3,250.00	.	$650.00
1525	New Technology - Level XXV ($3500- $4000)	S	.	$3,750.00	.	$750.00
1526	New Technology - Level XXVI ($4000- $4500)	S	.	$4,250.00	.	$850.00
1527	New Technology - Level XXVII ($4500- $5000)	S	.	$4,750.00	.	$950.00
1528	New Technology - Level XXVIII ($5000- $5500)	S	.	$5,250.00	.	$1,050.00
1529	New Technology - Level XXIX ($5500- $6000)	S	.	$5,750.00	.	$1,150.00
1530	New Technology - Level XXX ($6000- $6500)	S	.	$6,250.00	.	$1,250.00
1531	New Technology - Level XXXI ($6500-	S	.	$6,750.00	.	$1,350.00

ADDENDUM A.--FINAL OPPS APCs FOR CY 2009						
APC	Group Title	SI	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
	$7000)					
1532	New Technology - Level XXXII ($7000-$7500)	S	.	$7,250.00	.	$1,450.00
1533	New Technology - Level XXXIII ($7500-$8000)	S	.	$7,750.00	.	$1,550.00
1534	New Technology - Level XXXIV ($8000-$8500)	S	.	$8,250.00	.	$1,650.00
1535	New Technology - Level XXXV ($8500-$9000)	S	.	$8,750.00	.	$1,750.00
1536	New Technology - Level XXXVI ($9000-$9500)	S	.	$9,250.00	.	$1,850.00
1537	New Technology - Level XXXVII ($9500-$10000)	S	.	$9,750.00	.	$1,950.00
1539	New Technology - Level II ($50 - $100)	T	.	$75.00	.	$15.00
1540	New Technology - Level III ($100 - $200)	T	.	$150.00	.	$30.00
1541	New Technology - Level IV ($200 - $300)	T	.	$250.00	.	$50.00
1542	New Technology - Level V ($300 - $400)	T	.	$350.00	.	$70.00
1543	New Technology - Level VI ($400 - $500)	T	.	$450.00	.	$90.00
1544	New Technology - Level VII ($500 - $600)	T	.	$550.00	.	$110.00
1545	New Technology - Level VIII ($600 - $700)	T	.	$650.00	.	$130.00
1546	New Technology - Level IX ($700 - $800)	T	.	$750.00	.	$150.00
1547	New Technology - Level X ($800 - $900)	T	.	$850.00	.	$170.00
1548	New Technology - Level XI ($900 - $1000)	T	.	$950.00	.	$190.00
1549	New Technology - Level XII ($1000 - $1100)	T	.	$1,050.00	.	$210.00
1550	New Technology - Level XIII ($1100 - $1200)	T	.	$1,150.00	.	$230.00
1551	New Technology - Level XIV ($1200-$1300)	T	.	$1,250.00	.	$250.00
1552	New Technology - Level XV ($1300 - $1400)	T	.	$1,350.00	.	$270.00
1553	New Technology - Level XVI ($1400 - $1500)	T	.	$1,450.00	.	$290.00
1554	New Technology - Level XVII ($1500-$1600)	T	.	$1,550.00	.	$310.00
1555	New Technology - Level XVIII ($1600-$1700)	T	.	$1,650.00	.	$330.00
1556	New Technology - Level XIX ($1700-$1800)	T	.	$1,750.00	.	$350.00
1557	New Technology - Level XX ($1800-$1900)	T	.	$1,850.00	.	$370.00
1558	New Technology - Level XXI ($1900-$2000)	T	.	$1,950.00	.	$390.00
1559	New Technology - Level XXII ($2000-	T	.	$2,250.00	.	$450.00

ADDENDUM A.--FINAL OPPS APCs FOR CY 2009						
APC	Group Title	SI	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
	$2500)					
1560	New Technology - Level XXIII ($2500-$3000)	T	.	$2,750.00	.	$550.00
1561	New Technology - Level XXIV ($3000-$3500)	T	.	$3,250.00	.	$650.00
1562	New Technology - Level XXV ($3500-$4000)	T	.	$3,750.00	.	$750.00
1563	New Technology - Level XXVI ($4000-$4500)	T	.	$4,250.00	.	$850.00
1564	New Technology - Level XXVII ($4500-$5000)	T	.	$4,750.00	.	$950.00
1565	New Technology - Level XXVIII ($5000-$5500)	T	.	$5,250.00	.	$1,050.00
1566	New Technology - Level XXIX ($5500-$6000)	T	.	$5,750.00	.	$1,150.00
1567	New Technology - Level XXX ($6000-$6500)	T	.	$6,250.00	.	$1,250.00
1568	New Technology - Level XXXI ($6500-$7000)	T	.	$6,750.00	.	$1,350.00
1569	New Technology - Level XXXII ($7000-$7500)	T	.	$7,250.00	.	$1,450.00
1570	New Technology - Level XXXIII ($7500-$8000)	T	.	$7,750.00	.	$1,550.00
1571	New Technology - Level XXXIV ($8000-$8500)	T	.	$8,250.00	.	$1,650.00
1572	New Technology - Level XXXV ($8500-$9000)	T	.	$8,750.00	.	$1,750.00
1573	New Technology - Level XXXVI ($9000-$9500)	T	.	$9,250.00	.	$1,850.00
1574	New Technology - Level XXXVII ($9500-$10000)	T	.	$9,750.00	.	$1,950.00
1605	Abciximab injection	K	.	$433.69	.	$86.74
1607	Eptifibatide injection	K	.	$17.55	.	$3.51
1608	Etanercept injection	K	.	$170.59	.	$34.12
1609	Rho(D) immune globulin h, sd	K	.	$16.49	.	$3.30
1612	Daclizumab, parenteral	K	.	$338.05	.	$67.61
1613	Trastuzumab injection	K	.	$60.33	.	$12.07
1630	Hep b ig, im	K	.	$121.53	.	$24.31
1631	Baclofen intrathecal trial	K	.	$68.14	.	$13.63
1633	Alefacept	K	.	$27.81	.	$5.57
1643	Y90 ibritumomab, rx	H	.		.	.
1645	I131 tositumomab, rx	H	.		.	.
1670	Tetanus immune globulin inj	K	.	$134.95	.	$26.99
1675	P32 Na phosphate	H	.		.	.

ADDENDUM A.--FINAL OPPS APCs FOR CY 2009						
APC	Group Title	SI	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
1676	P32 chromic phosphate	H	.		.	.
1682	Aprotonin, 10,000 kiu	K	.	$2.60	.	$0.52
1683	Basiliximab	K	.	$1,565.52	.	$313.11
1684	Corticorelin ovine triflutal	K	.	$4.31	.	$0.87
1685	Darbepoetin alfa, non-esrd	K	.	$2.91	.	$0.59
1686	Epoetin alfa, non-esrd	K	.	$8.92	.	$1.79
1687	Digoxin immune fab (ovine)	K	.	$484.63	.	$96.93
1688	Ethanolamine oleate	K	.	$147.14	.	$29.43
1689	Fomepizole	K	.	$11.63	.	$2.33
1690	Hemin	K	.	$7.45	.	$1.49
1693	Lepirudin	K	.	$173.32	.	$34.67
1694	Ziconotide injection	K	.	$6.37	.	$1.28
1695	Nesiritide injection	K	.	$33.91	.	$6.79
1696	Palifermin injection	K	.	$11.18	.	$2.24
1697	Pegaptanib sodium injection	K	.	$1,002.76	.	$200.56
1700	Inj secretin synthetic human	K	.	$19.93	.	$3.99
1701	Treprostinil injection	K	.	$55.95	.	$11.19
1703	Ovine, 1000 USP units	K	.	$130.62	.	$26.13
1704	Humate-P, inj	K	.	$0.86	.	$0.18
1705	Factor viia	K	.	$1.21	.	$0.25
1709	Azacitidine injection	K	.	$4.50	.	$0.90
1710	Clofarabine injection	K	.	$113.61	.	$22.73
1711	Vantas implant	G	.	$1,430.40	.	$280.68
1712	Paclitaxel protein bound	K	.	$8.63	.	$1.73
1716	Brachytx, non-str, Gold-198	U	.			
1717	Brachytx, non-str, HDR Ir-192	U	.			
1719	Brachytx, NS, Non-HDRIr-192	U	.			
1738	Oxaliplatin	K	.	$9.38	.	$1.88
1739	Pegademase bovine, 25 iu	K	.	$221.87	.	$44.38
1740	Diazoxide injection	K	.	$112.16	.	$22.44
1741	Urofollitropin, 75 iu	K	.	$50.03	.	$10.01
2210	Methyldopate hcl injection	K	.	$12.39	.	$2.48
2616	Brachytx, non-str,Yttrium-90	U	.			
2632	Iodine I-125 sodium iodide	U	.			
2634	Brachytx, non-str, HA, I-125	U	.			
2635	Brachytx, non-str, HA, P-103	U	.			
2636	Brachy linear, non-str,P-103	U	.			
2638	Brachytx, stranded, I-125	U	.			
2639	Brachytx, non-stranded,I-125	U	.			
2640	Brachytx, stranded, P-103	U	.			
2641	Brachytx, non-stranded,P-103	U	.			

ADDENDUM A.--FINAL OPPS APCs FOR CY 2009

APC	Group Title	SI	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
2642	Brachytx, stranded, C-131	U	.			
2643	Brachytx, non-stranded,C-131	U	.			
2698	Brachytx, stranded, NOS	U	.			
2699	Brachytx, non-stranded, NOS	U	.			
2731	Immune globulin, powder	K	.	$28.68	.	$5.74
2770	Quinupristin/dalfopristin	K	.	$137.14	.	$27.43
3030	Sumatriptan succinate	K	.	$71.21	.	$14.25
3041	Bivalirudin	K	.	$2.30	.	$0.46
3043	Gamma globulin 1 CC inj	K	.	$11.87	.	$2.38
3050	Sermorelin acetate injection	K	.	$1.71	.	$0.35
7000	Amifostine	K	.	$416.03	.	$83.21
7005	Gonadorelin hydroch	K	.	$176.89	.	$35.38
7011	Oprelvekin injection	K	.	$242.00	.	$48.40
7015	Oral busulfan	K	.	$2.74	.	$0.55
7034	Somatropin injection	K	.	$49.82	.	$9.97
7035	Teniposide	K	.	$297.01	.	$59.41
7036	Urokinase 250,000 IU inj	K	.	$449.09	.	$89.82
7038	Monoclonal antibodies	K	.	$1,083.34	.	$216.67
7041	Tirofiban HCl	K	.	$7.18	.	$1.44
7042	Capecitabine, oral	K	.	$4.82	.	$0.97
7043	Infliximab injection	K	.	$56.00	.	$11.20
7045	Inj trimetrexate glucoronate	K	.	$146.89	.	$29.38
7046	Doxorubicin hcl liposome inj	K	.	$421.41	.	$84.29
7048	Alteplase recombinant	K	.	$32.26	.	$6.46
7049	Filgrastim 480 mcg injection	K	.	$301.43	.	$60.29
7051	Leuprolide acetate implant	K	.	$1,661.45	.	$332.29
7308	Aminolevulinic acid hcl top	K	.	$115.29	.	$23.06
8000	Cardiac Electrophysiologic Evaluation and Ablation Composite	T	142.5732	$9,418.24	.	$1,883.65
8001	LDR Prostate Brachytherapy Composite	T	45.9446	$3,035.05	.	$607.01
8002	Level I Extended Assessment & Management Composite	V	5.6874	$375.70	.	$75.14
8003	Level II Extended Assessment & Management Composite	V	10.2140	$674.73	.	$134.95
8004	Ultrasound Composite	S	2.9170	$192.69	.	$38.54
8005	CT and CTA without Contrast Composite	S	6.2937	$415.76	.	$83.16
8006	CT and CTA with Contrast Composite	S	9.6142	$635.10	.	$127.02
8007	MRI and MRA without Contrast Composite	S	10.7639	$711.05	.	$142.21
8008	MRI and MRA with Contrast Composite	S	14.9915	$990.32	.	$198.07
9001	Linezolid injection	K	.	$28.18	.	$5.64
9002	Tenecteplase injection	K	.	$1,929.45	.	$385.89

ADDENDUM A.--FINAL OPPS APCs FOR CY 2009						
APC	Group Title	SI	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
9003	Palivizumab	K	.	$882.44	.	$176.49
9004	Gemtuzumab ozogamicin inj	K	.	$2,448.21	.	$489.65
9005	Reteplase injection	K	.	$828.27	.	$165.66
9006	Tacrolimus injection	K	.	$136.97	.	$27.40
9012	Arsenic trioxide injection	K	.	$33.88	.	$6.78
9015	Mycophenolate mofetil oral	K	.	$3.09	.	$0.62
9018	Botulinum toxin type B	K	.	$8.94	.	$1.79
9019	Caspofungin acetate	K	.	$14.47	.	$2.90
9020	Sirolimus, oral	K	.	$8.24	.	$1.65
9022	IM inj interferon beta 1-a	K	.	$143.90	.	$28.78
9023	Rho d immune globulin	K	.	$26.36	.	$5.28
9024	Amphotericin b lipid complex	K	.	$10.05	.	$2.01
9032	Baclofen 10 MG injection	K	.	$184.28	.	$36.86
9033	Cidofovir injection	K	.	$747.70	.	$149.54
9038	Inj estrogen conjugate	K	.	$74.17	.	$14.84
9042	Glucagon hydrochloride	K	.	$71.40	.	$14.28
9044	Ibutilide fumarate injection	K	.	$364.11	.	$72.83
9046	Iron sucrose injection	K	.	$0.36	.	$0.08
9047	Itraconazole injection	K	.	$36.84	.	$7.37
9104	Antithymocyte globuln rabbit	K	.	$365.31	.	$73.07
9108	Thyrotropin injection	K	.	$961.31	.	$192.27
9110	Alemtuzumab injection	K	.	$540.84	.	$108.17
9115	Zoledronic acid	K	.	$210.02	.	$42.01
9119	Injection, pegfilgrastim 6mg	K	.	$2,155.11	.	$431.03
9120	Injection, Fulvestrant	K	.	$79.70	.	$15.94
9121	Injection, argatroban	K	.	$19.87	.	$3.98
9122	Triptorelin pamoate	K	.	$149.61	.	$29.93
9124	Daptomycin injection	K	.	$0.37	.	$0.08
9125	Risperidone, long acting	K	.	$4.86	.	$0.98
9126	Natalizumab injection	K	.	$7.44	.	$1.49
9133	Rabies ig, im/sc	K	.	$89.18	.	$17.84
9134	Rabies ig, heat treated	K	.	$96.22	.	$19.25
9135	Varicella-zoster ig, im	K	.	$109.88	.	$21.98
9137	Bcg vaccine, percut	K	.	$115.88	.	$23.18
9139	Rabies vaccine, im	K	.	$144.11	.	$28.83
9140	Rabies vaccine, id	K		$112.29	.	$22.46
9143	Meningococcal vaccine, sc	K	.	$92.09	.	$18.42
9145	Meningococcal vaccine, im	K	.	$80.46	.	$16.10
9207	Bortezomib injection	K	.	$34.68	.	$6.94
9208	Agalsidase beta injection	K	.	$128.54	.	$25.71
9209	Laronidase injection	K	.	$24.14	.	$4.83

ADDENDUM A.--FINAL OPPS APCs FOR CY 2009						
APC	Group Title	SI	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
9210	Palonosetron hcl	K	.	$16.13	.	$3.23
9213	Pemetrexed injection	K	.	$46.40	.	$9.28
9214	Bevacizumab injection	K	.	$56.29	.	$11.26
9215	Cetuximab injection	K	.	$48.82	.	$9.77
9216	Abarelix injection	K	.	$67.32	.	$13.47
9217	Leuprolide acetate suspnsion	K	.	$169.68	.	$33.94
9219	Mycophenolic acid	K	.	$2.56	.	$0.52
9224	Galsulfase injection	K	.	$325.95	.	$65.19
9225	Fluocinolone acetonide implt	K	.	$18,980.00	.	$3,796.00
9227	Micafungin sodium injection	K	.	$1.24	.	$0.25
9228	Tigecycline injection	K	.	$1.09	.	$0.22
9229	Ibandronate sodium injection	K	.	$137.65	.	$27.53
9230	Abatacept injection	K	.	$18.51	.	$3.71
9231	Decitabine injection	K	.	$26.23	.	$5.25
9232	Idursulfase injection	K	.	$450.71	.	$90.15
9233	Ranibizumab injection	K	.	$402.31	.	$80.47
9234	Alglucosidase alfa injection	K	.	$124.80	.	$24.96
9235	Panitumumab injection	K	.	$80.93	.	$16.19
9236	Eculizumab injection	G	.	$176.38	.	$34.61
9237	Inj, lanreotide acetate	K	.	$26.21	.	$5.25
9238	Inj, levetiracetam	G	.	$0.41	.	$0.08
9240	Injection, ixabepilone	G	.	$65.15	.	$12.78
9241	Injection, doripenem	G	.	$0.65	.	$0.13
9242	Injection, fosaprepitant	G	.	$1.57	.	$0.31
9243	Bendamustine injection	G	.	$18.70	.	$3.67
9244	Regadenoson injection	G	.	$214.49	.	$42.09
9245	Injection, romiplostim	G	.	$45.05	.	$8.84
9246	Inj, gadoxetate disodium	G	.	$13.78	.	$2.70
9248	Inj, clevidipine butyrate	G	.	$6.15	.	$1.21
9300	Omalizumab injection	K	.	$17.79	.	$3.56
9354	Veritas collagen matrix, cm2	G	.	$11.18	.	$2.19
9355	Neuromatrix nerve cuff, cm	G	.	$212.46	.	$41.69
9356	TenoGlide tendon prot, cm2	G	.	$28.32	.	$5.56
9358	SurgiMend, 0.5cm2	G	.	$10.55	.	$2.07
9359	Implant, bone void filler	G	.	$56.71	.	$11.13
9500	Platelets, irradiated	R	2.4890	$164.42	.	$32.89
9501	Platelet pheres leukoreduced	R	7.7934	$514.82	.	$102.97
9502	Platelet pheresis irradiated	R	7.1078	$469.53	.	$93.91
9503	Fr frz plasma donor retested	R	0.9726	$64.25	.	$12.85
9504	RBC deglycerolized	R	5.1685	$341.43	.	$68.29
9505	RBC irradiated	R	3.7950	$250.69	.	$50.14

ADDENDUM A.--FINAL OPPS APCs FOR CY 2009						
APC	Group Title	SI	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
9506	Granulocytes, pheresis unit	R	25.2803	$1,669.99	.	$334.00
9507	Platelets, pheresis	R	7.0946	$468.66	.	$93.74
9508	Plasma 1 donor frz w/in 8 hr	R	1.1615	$76.73	.	$15.35

ADDENDUM AA.--FINAL ASC COVERED SURGICAL PROCEDURES FOR CY 2009 (INCLUDING SURGICAL PROCEDURES FOR WHICH PAYMENT IS PACKAGED)

ADDENDUM AA.--FINAL ASC COVERED SURGICAL PROCEDURES FOR CY 2009 (INCLUDING SURGICAL PROCEDURES FOR WHICH PAYMENT IS PACKAGED)

HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
0016T	Thermotx choroid vasc lesion	Y		R2	5.6826	$235.22
0017T	Photocoagulat macular drusen	Y		R2	5.6826	$235.22
0027T	Endoscopic epidural lysis	N	CH	D5		
0031T	Speculoscopy	N	CH	D5		
0032T	Speculoscopy w/direct sample	N	CH	D5		
0046T	Cath lavage, mammary duct(s)	N	CH	D5		
0047T	Cath lavage, mammary duct(s)	N	CH	D5		
0084T*	Temp prostate urethral stent	Y	CH	R2	1.8231	$75.46
0088T	Rf tongue base vol reduxn	N	CH	D5		
0099T*	Implant corneal ring	Y		R2	16.3241	$675.70
0100T	Prosth retina receive&gen	Y		G2	37.2245	$1,540.83
0101T	Extracorp shockwv tx,hi enrg	Y		G2	29.1375	$1,206.09
0102T	Extracorp shockwv tx,anesth	Y		G2	29.1375	$1,206.09
0123T	Scleral fistulization	Y		G2	23.3013	$964.51
0124T*	Conjunctival drug placement	Y		R2	4.5545	$188.52
0137T	Prostate saturation sampling	N	CH	D5		
0170T	Anorectal fistula plug rpr	Y		G2	30.2669	$1,252.84
0176T	Aqu canal dilat w/o retent	Y		A2	35.7384	$1,479.32
0177T	Aqu canal dilat w retent	Y		A2	35.7384	$1,479.32
0186T	Suprachoroidal drug delivery	Y		G2	21.771	$901.17
0190T	Place intraoc radiation src	Y		G2	21.771	$901.17
0191T	Insert ant segment drain int	Y		G2	23.3013	$964.51
0192T	Insert ant segment drain ext	Y		G2	39.9338	$1,652.98
10021	Fna w/o image	Y		P2	1.3967	$57.81
10022	Fna w/image	Y		G2	4.3613	$180.53
10040	Acne surgery	Y		P2	0.8075	$33.42
10060	Drainage of skin abscess	Y		P3	1.2285	$50.85
10061	Drainage of skin abscess	Y		P2	1.3776	$57.02
10080	Drainage of pilonidal cyst	Y		P2	1.3776	$57.02
10081	Drainage of pilonidal cyst	Y		P3	3.1716	$131.28
10120	Remove foreign body	Y	CH	P3	1.7252	$71.41
10121	Remove foreign body	Y		A2	13.0039	$538.27
10140	Drainage of hematoma/fluid	Y		P3	1.8298	$75.74
10160	Puncture drainage of lesion	Y		P2	1.3776	$57.02

NOTE: The Medicare program payment is 80 percent of the total payment amount and beneficiary coinsurance is 20 percent of the total payment amount, except for screening flexible sigmoidoscopies and screening colonoscopies for which the program payment is 75 percent and the beneficiary coinsurance is 25 percent.

*Refers to codes designated as "office-based," whose designation as office-based is temporary because we have insufficient claims data. We will reconsider this designation when new claims data become available.

ADDENDUM AA.--FINAL ASC COVERED SURGICAL PROCEDURES FOR CY 2009 (INCLUDING SURGICAL PROCEDURES FOR WHICH PAYMENT IS PACKAGED)						
HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
10180	Complex drainage, wound	Y		A2	14.7056	$608.71
11000	Debride infected skin	Y		P3	0.5926	$24.53
11001	Debride infected skin add-on	Y		P3	0.2005	$8.30
11010	Debride skin, fx	Y		A2	5.1448	$212.96
11011	Debride skin/muscle, fx	Y		A2	5.1448	$212.96
11012	Debride skin/muscle/bone, fx	Y		A2	5.1448	$212.96
11040	Debride skin, partial	Y		P3	0.5402	$22.36
11041	Debride skin, full	Y		P3	0.6013	$24.89
11042	Debride skin/tissue	Y		A2	3.267	$135.23
11043	Debride tissue/muscle	Y		A2	3.267	$135.23
11044	Debride tissue/muscle/bone	Y		A2	8.5068	$352.12
11055	Trim skin lesion	Y		P3	0.6361	$26.33
11056	Trim skin lesions, 2 to 4	Y		P3	0.697	$28.85
11057	Trim skin lesions, over 4	Y	CH	P2	0.8075	$33.42
11100	Biopsy, skin lesion	Y		P2	1.4792	$61.23
11101	Biopsy, skin add-on	Y		P3	0.3486	$14.43
11200	Removal of skin tags	Y		P2	0.8075	$33.42
11201	Remove skin tags add-on	Y		P3	0.1394	$5.77
11300	Shave skin lesion	Y		P2	0.8075	$33.42
11301	Shave skin lesion	Y		P2	0.8075	$33.42
11302	Shave skin lesion	Y		P2	0.8075	$33.42
11303	Shave skin lesion	Y		P2	1.4792	$61.23
11305	Shave skin lesion	Y		P2	0.8075	$33.42
11306	Shave skin lesion	Y		P2	0.8075	$33.42
11307	Shave skin lesion	Y		P2	0.8075	$33.42
11308	Shave skin lesion	Y		P2	0.8075	$33.42
11310	Shave skin lesion	Y		P2	0.8075	$33.42
11311	Shave skin lesion	Y		P2	0.8075	$33.42
11312	Shave skin lesion	Y		P2	0.8075	$33.42
11313	Shave skin lesion	Y		P2	0.8075	$33.42
11400	Exc tr-ext b9+marg 0.5 < cm	Y		P3	1.6643	$68.89
11401	Exc tr-ext b9+marg 0.6-1 cm	Y		P3	1.8733	$77.54
11402	Exc tr-ext b9+marg 1.1-2 cm	Y		P3	2.0564	$85.12
11403	Exc tr-ext b9+marg 2.1-3 cm	Y		P3	2.1958	$90.89
11404	Exc tr-ext b9+marg 3.1-4 cm	Y		A2	11.673	$483.18
11406	Exc tr-ext b9+marg > 4.0 cm	Y		A2	13.0039	$538.27
11420	Exc h-f-nk-sp b9+marg 0.5 <	Y		P3	1.5597	$64.56
11421	Exc h-f-nk-sp b9+marg 0.6-1	Y		P3	1.8907	$78.26

NOTE: The Medicare program payment is 80 percent of the total payment amount and beneficiary coinsurance is 20 percent of the total payment amount, except for screening flexible sigmoidoscopies and screening colonoscopies for which the program payment is 75 percent and the beneficiary coinsurance is 25 percent.

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ADDENDUM AA.--FINAL ASC COVERED SURGICAL PROCEDURES FOR CY 2009 (INCLUDING SURGICAL PROCEDURES FOR WHICH PAYMENT IS PACKAGED)

HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
11422	Exc h-f-nk-sp b9+marg 1.1-2	Y		P3	2.0651	$85.48
11423	Exc h-f-nk-sp b9+marg 2.1-3	Y		P3	2.3004	$95.22
11424	Exc h-f-nk-sp b9+marg 3.1-4	Y		A2	13.0039	$538.27
11426	Exc h-f-nk-sp b9+marg > 4 cm	Y		A2	15.9027	$658.26
11440	Exc face-mm b9+marg 0.5 < cm	Y		P3	1.7863	$73.94
11441	Exc face-mm b9+marg 0.6-1 cm	Y		P3	2.0651	$85.48
11442	Exc face-mm b9+marg 1.1-2 cm	Y		P3	2.2741	$94.13
11443	Exc face-mm b9+marg 2.1-3 cm	Y		P3	2.5181	$104.23
11444	Exc face-mm b9+marg 3.1-4 cm	Y		A2	7.9477	$328.98
11446	Exc face-mm b9+marg > 4 cm	Y		A2	15.9027	$658.26
11450	Removal, sweat gland lesion	Y		A2	15.9027	$658.26
11451	Removal, sweat gland lesion	Y		A2	15.9027	$658.26
11462	Removal, sweat gland lesion	Y		A2	15.9027	$658.26
11463	Removal, sweat gland lesion	Y		A2	15.9027	$658.26
11470	Removal, sweat gland lesion	Y		A2	15.9027	$658.26
11471	Removal, sweat gland lesion	Y		A2	15.9027	$658.26
11600	Exc tr-ext mlg+marg 0.5 < cm	Y		P3	2.3439	$97.02
11601	Exc tr-ext mlg+marg 0.6-1 cm	Y		P3	2.8406	$117.58
11602	Exc tr-ext mlg+marg 1.1-2 cm	Y		P3	3.1281	$129.48
11603	Exc tr-ext mlg+marg 2.1-3 cm	Y		P3	3.3196	$137.41
11604	Exc tr-ext mlg+marg 3.1-4 cm	Y		A2	8.9547	$370.66
11606	Exc tr-ext mlg+marg > 4 cm	Y		A2	13.0039	$538.27
11620	Exc h-f-nk-sp mlg+marg 0.5 <	Y		P3	2.4224	$100.27
11621	Exc h-f-nk-sp mlg+marg 0.6-1	Y		P3	2.8754	$119.02
11622	Exc h-f-nk-sp mlg+marg 1.1-2	Y		P3	3.1976	$132.36
11623	Exc h-f-nk-sp mlg+marg 2.1-3	Y		P3	3.4416	$142.46
11624	Exc h-f-nk-sp mlg+marg 3.1-4	Y		A2	13.0039	$538.27
11626	Exc h-f-nk-sp mlg+mar > 4 cm	Y		A2	15.9027	$658.26
11640	Exc face-mm malig+marg 0.5 <	Y		P3	2.5618	$106.04
11641	Exc face-mm malig+marg 0.6-1	Y		P3	3.0235	$125.15
11642	Exc face-mm malig+marg 1.1-2	Y		P3	3.3721	$139.58
11643	Exc face-mm malig+marg 2.1-3	Y		P3	3.6335	$150.40
11644	Exc face-mm malig+marg 3.1-4	Y		A2	13.0039	$538.27
11646	Exc face-mm mlg+marg > 4 cm	Y		A2	15.9027	$658.26
11719	Trim nail(s)	Y		P3	0.2962	$12.26
11720	Debride nail, 1-5	Y		P3	0.366	$15.15
11721	Debride nail, 6 or more	Y		P3	0.4443	$18.39
11730	Removal of nail plate	Y		P2	0.8075	$33.42

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HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
11732	Remove nail plate, add-on	Y		P3	0.4443	$18.39
11740	Drain blood from under nail	Y		P2	0.4079	$16.88
11750	Removal of nail bed	Y		P3	2.3526	$97.38
11752	Remove nail bed/finger tip	Y		P3	3.2675	$135.25
11755	Biopsy, nail unit	Y		P3	1.6293	$67.44
11760	Repair of nail bed	Y		G2	3.3557	$138.90
11762	Reconstruction of nail bed	Y		P3	2.9974	$124.07
11765	Excision of nail fold, toe	Y		P2	0.8075	$33.42
11770	Removal of pilonidal lesion	Y		A2	16.6567	$689.47
11771	Removal of pilonidal lesion	Y		A2	16.6567	$689.47
11772	Removal of pilonidal lesion	Y		A2	16.6567	$689.47
11900	Injection into skin lesions	Y		P3	0.7407	$30.66
11901	Added skin lesions injection	Y	CH	P2	0.8075	$33.42
11920	Correct skin color defects	Y	CH	P3	2.3439	$97.02
11921	Correct skin color defects	Y	CH	P3	2.5792	$106.76
11922	Correct skin color defects	Y		P3	0.8364	$34.62
11950	Therapy for contour defects	Y		P3	0.854	$35.35
11951	Therapy for contour defects	Y		P3	1.063	$44.00
11952	Therapy for contour defects	Y		P2	1.2797	$52.97
11954	Therapy for contour defects	Y		P2	1.2797	$52.97
11960	Insert tissue expander(s)	Y		A2	15.5239	$642.58
11970	Replace tissue expander	Y		A2	28.119	$1,163.93
11971	Remove tissue expander(s)	Y		A2	14.5718	$603.17
11976	Removal of contraceptive cap	Y		P3	1.5597	$64.56
11980	Implant hormone pellet(s)	N		P2	0.6301	$26.08
11981	Insert drug implant device	N		P2	0.6301	$26.08
11982	Remove drug implant device	N		P2	0.6301	$26.08
11983	Remove/insert drug implant	N		P2	0.6301	$26.08
12001	Repair superficial wound(s)	Y		P2	1.2797	$52.97
12002	Repair superficial wound(s)	Y		P2	1.2797	$52.97
12004	Repair superficial wound(s)	Y		P2	1.2797	$52.97
12005	Repair superficial wound(s)	Y		A2	1.7145	$70.97
12006	Repair superficial wound(s)	Y		A2	1.7145	$70.97
12007	Repair superficial wound(s)	Y		A2	1.7145	$70.97
12011	Repair superficial wound(s)	Y		P2	1.2797	$52.97
12013	Repair superficial wound(s)	Y		P2	1.2797	$52.97
12014	Repair superficial wound(s)	Y		P2	1.2797	$52.97
12015	Repair superficial wound(s)	Y		G2	1.2797	$52.97

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12016	Repair superficial wound(s)	Y		A2	1.7145	$70.97
12017	Repair superficial wound(s)	Y		A2	1.7145	$70.97
12018	Repair superficial wound(s)	Y		A2	1.7145	$70.97
12020	Closure of split wound	Y		A2	3.2348	$133.90
12021	Closure of split wound	Y		A2	2.7524	$113.93
12031	Intmd wnd repair s/tr/ext	Y		P2	1.2797	$52.97
12032	Intmd wnd repair s/tr/ext	Y		P2	3.3557	$138.90
12034	Intmd wnd repair s/tr/ext	Y		A2	1.7145	$70.97
12035	Intmd wnd repair s/tr/ext	Y		A2	1.7145	$70.97
12036	Intmd wnd repair s/tr/ext	Y		A2	2.7524	$113.93
12037	Intmd wnd repair s/tr/ext	Y		A2	5.4857	$227.07
12041	Intmd wnd repair n-hf/genit	Y		P2	1.2797	$52.97
12042	Intmd wnd repair n-hg/genit	Y		P2	1.2797	$52.97
12044	Intmd wnd repair n-hg/genit	Y		A2	1.7145	$70.97
12045	Intmd wnd repair n-hg/genit	Y		A2	2.7524	$113.93
12046	Intmd wnd repair n-hg/genit	Y		A2	2.7524	$113.93
12047	Intmd wnd repair n-hg/genit	Y		A2	5.4857	$227.07
12051	Intmd wnd repair face/mm	Y		P2	1.2797	$52.97
12052	Intmd wnd repair face/mm	Y		P2	1.2797	$52.97
12053	Intmd wnd repair face/mm	Y		P2	1.2797	$52.97
12054	Intmd wnd repair, face/mm	Y		A2	1.7145	$70.97
12055	Intmd wnd repair face/mm	Y		A2	2.7524	$113.93
12056	Intmd wnd repair face/mm	Y		A2	2.7524	$113.93
12057	Intmd wnd repair face/mm	Y		A2	5.4857	$227.07
13100	Repair of wound or lesion	Y		A2	5.9679	$247.03
13101	Repair of wound or lesion	Y		A2	5.9679	$247.03
13102	Repair wound/lesion add-on	Y		A2	3.2348	$133.90
13120	Repair of wound or lesion	Y		A2	2.7524	$113.93
13121	Repair of wound or lesion	Y		A2	2.7524	$113.93
13122	Repair wound/lesion add-on	Y		A2	2.7524	$113.93
13131	Repair of wound or lesion	Y		A2	2.7524	$113.93
13132	Repair of wound or lesion	Y		A2	2.7524	$113.93
13133	Repair wound/lesion add-on	Y		A2	2.7524	$113.93
13150	Repair of wound or lesion	Y		A2	5.9679	$247.03
13151	Repair of wound or lesion	Y		A2	5.9679	$247.03
13152	Repair of wound or lesion	Y		A2	5.9679	$247.03
13153	Repair wound/lesion add-on	Y		A2	2.7524	$113.93
13160	Late closure of wound	Y		A2	15.5239	$642.58

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14000	Skin tissue rearrangement	Y		A2	13.0418	$539.84
14001	Skin tissue rearrangement	Y		A2	13.7956	$571.04
14020	Skin tissue rearrangement	Y		A2	13.7956	$571.04
14021	Skin tissue rearrangement	Y		A2	13.7956	$571.04
14040	Skin tissue rearrangement	Y		A2	13.0418	$539.84
14041	Skin tissue rearrangement	Y		A2	13.7956	$571.04
14060	Skin tissue rearrangement	Y		A2	13.7956	$571.04
14061	Skin tissue rearrangement	Y		A2	13.7956	$571.04
14300	Skin tissue rearrangement	Y		A2	17.6912	$732.29
14350	Skin tissue rearrangement	Y		A2	16.2776	$673.78
15002	Wound prep, trk/arm/leg	Y		A2	5.9679	$247.03
15003	Wound prep, addl 100 cm	Y		A2	5.9679	$247.03
15004	Wound prep, f/n/hf/g	Y		A2	5.9679	$247.03
15005	Wnd prep, f/n/hf/g, addl cm	Y		A2	5.9679	$247.03
15040	Harvest cultured skin graft	Y		A2	2.7524	$113.93
15050	Skin pinch graft	Y		A2	5.9679	$247.03
15100	Skin splt grft, trnk/arm/leg	Y		A2	15.5239	$642.58
15101	Skin splt grft t/a/l, add-on	Y		A2	16.2776	$673.78
15110	Epidrm autogrft trnk/arm/leg	Y		A2	7.4133	$306.86
15111	Epidrm autogrft t/a/l add-on	Y		A2	6.0824	$251.77
15115	Epidrm a-grft face/nck/hf/g	Y		A2	7.4133	$306.86
15116	Epidrm a-grft f/n/hf/g addl	Y		A2	6.0824	$251.77
15120	Skn splt a-grft fac/nck/hf/g	Y		A2	15.5239	$642.58
15121	Skn splt a-grft f/n/hf/g add	Y		A2	16.2776	$673.78
15130	Derm autograft, trnk/arm/leg	Y		A2	13.0418	$539.84
15131	Derm autograft t/a/l add-on	Y		A2	11.7107	$484.74
15135	Derm autograft face/nck/hf/g	Y		A2	13.0418	$539.84
15136	Derm autograft, f/n/hf/g add	Y		A2	11.7107	$484.74
15150	Cult epiderm grft t/arm/leg	Y		A2	7.4133	$306.86
15151	Cult epiderm grft t/a/l addl	Y		A2	6.0824	$251.77
15152	Cult epiderm graft t/a/l +%	Y		A2	6.0824	$251.77
15155	Cult epiderm graft, f/n/hf/g	Y		A2	7.4133	$306.86
15156	Cult epidrm grft f/n/hfg add	Y		A2	6.0824	$251.77
15157	Cult epiderm grft f/n/hfg +%	Y		A2	6.0824	$251.77
15170	Acell graft trunk/arms/legs	Y	CH	G2	3.3557	$138.90
15171	Acell graft t/arm/leg add-on	Y	CH	G2	3.3557	$138.90
15175	Acellular graft, f/n/hf/g	Y	CH	G2	4.3203	$178.83
15176	Acell graft, f/n/hf/g add-on	Y	CH	G2	4.3203	$178.83

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HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
15200	Skin full graft, trunk	Y		A2	13.7956	$571.04
15201	Skin full graft trunk add-on	Y		A2	11.5964	$480.01
15220	Skin full graft sclp/arm/leg	Y		A2	13.0418	$539.84
15221	Skin full graft add-on	Y		A2	5.9679	$247.03
15240	Skin full grft face/genit/hf	Y		A2	13.7956	$571.04
15241	Skin full graft add-on	Y		A2	5.9679	$247.03
15260	Skin full graft een & lips	Y		A2	13.0418	$539.84
15261	Skin full graft add-on	Y		A2	11.5964	$480.01
15300	Apply skinallogrft, t/arm/lg	Y		A2	5.9679	$247.03
15301	Apply sknallogrft t/a/l addl	Y		A2	5.9679	$247.03
15320	Apply skin allogrft f/n/hf/g	Y		A2	5.9679	$247.03
15321	Aply sknallogrft f/n/hfg add	Y		A2	5.9679	$247.03
15330	Aply acell alogrft t/arm/leg	Y		A2	5.9679	$247.03
15331	Aply acell grft t/a/l add-on	Y		A2	5.9679	$247.03
15335	Apply acell graft, f/n/hf/g	Y		A2	5.9679	$247.03
15336	Aply acell grft f/n/hf/g add	Y		A2	5.9679	$247.03
15340	Apply cult skin substitute	Y		G2	3.3557	$138.90
15341	Apply cult skin sub add-on	Y		G2	3.3557	$138.90
15360	Apply cult derm sub, t/a/l	Y		G2	3.3557	$138.90
15361	Aply cult derm sub t/a/l add	Y		G2	3.3557	$138.90
15365	Apply cult derm sub f/n/hf/g	Y		G2	3.3557	$138.90
15366	Apply cult derm f/hf/g add	Y		G2	3.3557	$138.90
15400	Apply skin xenograft, t/a/l	Y		A2	5.9679	$247.03
15401	Apply skn xenogrft t/a/l add	Y		A2	5.9679	$247.03
15420	Apply skin xgraft, f/n/hf/g	Y		A2	5.9679	$247.03
15421	Apply skn xgrft f/n/hf/g add	Y		A2	5.9679	$247.03
15430	Apply acellular xenograft	Y		A2	5.9679	$247.03
15431	Apply acellular xgraft add	Y		A2	5.9679	$247.03
15570	Form skin pedicle flap	Y		A2	16.2776	$673.78
15572	Form skin pedicle flap	Y		A2	16.2776	$673.78
15574	Form skin pedicle flap	Y		A2	16.2776	$673.78
15576	Form skin pedicle flap	Y		A2	16.2776	$673.78
15600	Skin graft	Y		A2	16.2776	$673.78
15610	Skin graft	Y		A2	16.2776	$673.78
15620	Skin graft	Y		A2	17.6912	$732.29
15630	Skin graft	Y		A2	16.2776	$673.78
15650	Transfer skin pedicle flap	Y		A2	18.7157	$774.70
15731	Forehead flap w/vasc pedicle	Y		A2	16.2776	$673.78

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15732	Muscle-skin graft, head/neck	Y		A2	16.2776	$673.78
15734	Muscle-skin graft, trunk	Y		A2	16.2776	$673.78
15736	Muscle-skin graft, arm	Y		A2	16.2776	$673.78
15738	Muscle-skin graft, leg	Y		A2	16.2776	$673.78
15740	Island pedicle flap graft	Y		A2	13.0418	$539.84
15750	Neurovascular pedicle graft	Y		A2	15.5239	$642.58
15760	Composite skin graft	Y		A2	15.5239	$642.58
15770	Derma-fat-fascia graft	Y		A2	16.2776	$673.78
15775	Hair transplant punch grafts	Y		A2	4.4476	$184.10
15776	Hair transplant punch grafts	Y		A2	4.4476	$184.10
15780	Abrasion treatment of skin	Y		P3	9.9157	$410.44
15781	Abrasion treatment of skin	Y		P2	4.3646	$180.66
15782	Abrasion treatment of skin	Y		P2	4.3646	$180.66
15783	Abrasion treatment of skin	Y		P2	2.6609	$110.14
15786	Abrasion, lesion, single	Y		P2	0.8075	$33.42
15787	Abrasion, lesions, add-on	Y	CH	P3	0.732	$30.30
15788	Chemical peel, face, epiderm	Y		P2	0.8075	$33.42
15789	Chemical peel, face, dermal	Y		P2	1.4792	$61.23
15792	Chemical peel, nonfacial	Y		P2	1.4792	$61.23
15793	Chemical peel, nonfacial	Y		P2	0.8075	$33.42
15819	Plastic surgery, neck	Y		G2	3.3557	$138.90
15820	Revision of lower eyelid	Y		A2	16.2776	$673.78
15821	Revision of lower eyelid	Y		A2	16.2776	$673.78
15822	Revision of upper eyelid	Y		A2	16.2776	$673.78
15823	Revision of upper eyelid	Y		A2	18.7157	$774.70
15824	Removal of forehead wrinkles	Y		A2	16.2776	$673.78
15825	Removal of neck wrinkles	Y		A2	16.2776	$673.78
15826	Removal of brow wrinkles	Y		A2	16.2776	$673.78
15828	Removal of face wrinkles	Y		A2	16.2776	$673.78
15829	Removal of skin wrinkles	Y		A2	18.7157	$774.70
15830	Exc skin abd	Y		A2	16.6567	$689.47
15832	Excise excessive skin tissue	Y		A2	16.6567	$689.47
15833	Excise excessive skin tissue	Y		A2	16.6567	$689.47
15834	Excise excessive skin tissue	Y		A2	16.6567	$689.47
15835	Excise excessive skin tissue	Y		A2	14.4573	$598.43
15836	Excise excessive skin tissue	Y		A2	13.7579	$569.48
15837	Excise excessive skin tissue	Y		G2	15.5016	$641.66
15838	Excise excessive skin tissue	Y		G2	15.5016	$641.66

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15839	Excise excessive skin tissue	Y		A2	13.7579	$569.48
15840	Graft for face nerve palsy	Y		A2	17.6912	$732.29
15841	Graft for face nerve palsy	Y		A2	17.6912	$732.29
15842	Flap for face nerve palsy	Y		G2	20.5411	$850.26
15845	Skin and muscle repair, face	Y		A2	17.6912	$732.29
15847	Exc skin abd add-on	Y		A2	16.6567	$689.47
15850	Removal of sutures	Y		G2	2.6609	$110.14
15851	Removal of sutures	Y		P3	1.2111	$50.13
15852	Dressing change not for burn	N		G2	0.6301	$26.08
15860	Test for blood flow in graft	N		G2	0.6301	$26.08
15876	Suction assisted lipectomy	Y		A2	16.2776	$673.78
15877	Suction assisted lipectomy	Y		A2	16.2776	$673.78
15878	Suction assisted lipectomy	Y		A2	16.2776	$673.78
15879	Suction assisted lipectomy	Y		A2	16.2776	$673.78
15920	Removal of tail bone ulcer	Y		A2	5.1448	$212.96
15922	Removal of tail bone ulcer	Y		A2	17.6912	$732.29
15931	Remove sacrum pressure sore	Y		A2	16.6567	$689.47
15933	Remove sacrum pressure sore	Y		A2	16.6567	$689.47
15934	Remove sacrum pressure sore	Y		A2	16.2776	$673.78
15935	Remove sacrum pressure sore	Y		A2	17.6912	$732.29
15936	Remove sacrum pressure sore	Y		A2	15.2091	$629.55
15937	Remove sacrum pressure sore	Y		A2	17.6912	$732.29
15940	Remove hip pressure sore	Y		A2	16.6567	$689.47
15941	Remove hip pressure sore	Y		A2	16.6567	$689.47
15944	Remove hip pressure sore	Y		A2	16.2776	$673.78
15945	Remove hip pressure sore	Y		A2	17.6912	$732.29
15946	Remove hip pressure sore	Y		A2	17.6912	$732.29
15950	Remove thigh pressure sore	Y		A2	16.6567	$689.47
15951	Remove thigh pressure sore	Y		A2	18.07	$747.97
15952	Remove thigh pressure sore	Y		A2	13.7956	$571.04
15953	Remove thigh pressure sore	Y		A2	15.2091	$629.55
15956	Remove thigh pressure sore	Y		A2	13.7956	$571.04
15958	Remove thigh pressure sore	Y		A2	15.2091	$629.55
16000	Initial treatment of burn(s)	Y		P3	0.6535	$27.05
16020	Dress/debrid p-thick burn, s	Y		P3	0.9934	$41.12
16025	Dress/debrid p-thick burn, m	Y		A2	1.53	$63.33
16030	Dress/debrid p-thick burn, l	Y		A2	1.9155	$79.29
16035	Incision of burn scab, initi	Y		G2	1.4792	$61.23

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HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
17000	Destruct premalg lesion	Y		P2	0.8075	$33.42
17003	Destruct premalg les, 2-14	Y		P3	0.0959	$3.97
17004	Destroy premlg lesions 15+	Y		P3	2.1086	$87.28
17106	Destruction of skin lesions	Y		P2	2.6609	$110.14
17107	Destruction of skin lesions	Y		P2	2.6609	$110.14
17108	Destruction of skin lesions	Y		P2	2.6609	$110.14
17110	Destruct b9 lesion, 1-14	Y		P2	0.8075	$33.42
17111	Destruct lesion, 15 or more	Y		P2	1.4792	$61.23
17250	Chemical cautery, tissue	Y		P3	1.1154	$46.17
17260	Destruction of skin lesions	Y		P3	1.1937	$49.41
17261	Destruction of skin lesions	Y		P2	1.4792	$61.23
17262	Destruction of skin lesions	Y		P2	1.4792	$61.23
17263	Destruction of skin lesions	Y		P2	1.4792	$61.23
17264	Destruction of skin lesions	Y		P2	1.4792	$61.23
17266	Destruction of skin lesions	Y		P2	2.6609	$110.14
17270	Destruction of skin lesions	Y		P2	1.4792	$61.23
17271	Destruction of skin lesions	Y		P2	1.4792	$61.23
17272	Destruction of skin lesions	Y		P2	1.4792	$61.23
17273	Destruction of skin lesions	Y	CH	P2	2.6609	$110.14
17274	Destruction of skin lesions	Y		P2	2.6609	$110.14
17276	Destruction of skin lesions	Y		P2	2.6609	$110.14
17280	Destruction of skin lesions	Y		P2	1.4792	$61.23
17281	Destruction of skin lesions	Y		P3	2.2045	$91.25
17282	Destruction of skin lesions	Y		P3	2.5181	$104.23
17283	Destruction of skin lesions	Y		P2	2.6609	$110.14
17284	Destruction of skin lesions	Y		P2	2.6609	$110.14
17286	Destruction of skin lesions	Y		P2	2.6609	$110.14
17311	Mohs, 1 stage, h/n/hf/g	Y		P2	4.3925	$181.82
17312	Mohs addl stage	Y		P2	4.3925	$181.82
17313	Mohs, 1 stage, t/a/l	Y		P2	4.3925	$181.82
17314	Mohs, addl stage, t/a/l	Y		P2	4.3925	$181.82
17315	Mohs surg, addl block	Y		P3	0.9934	$41.12
17340	Cryotherapy of skin	Y		P3	0.3573	$14.79
17360	Skin peel therapy	Y		P2	0.8075	$33.42
17380	Hair removal by electrolysis	Y		R2	0.8075	$33.42
19000	Drainage of breast lesion	Y		P3	1.6817	$69.61
19001	Drain breast lesion add-on	Y		P3	0.2266	$9.38
19020	Incision of breast lesion	Y		A2	14.7056	$608.71

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19030	Injection for breast x-ray	N		N1		
19100	Bx breast percut w/o image	Y		A2	5.0076	$207.28
19101	Biopsy of breast, open	Y		A2	15.7283	$651.04
19102	Bx breast percut w/image	Y		A2	6.4289	$266.11
19103	Bx breast percut w/device	Y		A2	11.2521	$465.76
19105	Cryosurg ablate fa, each	Y		G2	32.7384	$1,355.14
19110	Nipple exploration	Y		A2	15.7283	$651.04
19112	Excise breast duct fistula	Y		A2	16.4823	$682.25
19120	Removal of breast lesion	Y		A2	16.4823	$682.25
19125	Excision, breast lesion	Y		A2	16.4823	$682.25
19126	Excision, addl breast lesion	Y		A2	16.4823	$682.25
19290	Place needle wire, breast	N		N1		
19291	Place needle wire, breast	N		N1		
19295	Place breast clip, percut	N		N1		
19296	Place po breast cath for rad	Y		A2	45.0813	$1,866.05
19297	Place breast cath for rad	Y		A2	45.0813	$1,866.05
19298	Place breast rad tube/caths	Y		A2	45.0813	$1,866.05
19300	Removal of breast tissue	Y		A2	17.8955	$740.75
19301	Partical mastectomy	Y		A2	16.4823	$682.25
19302	P-mastectomy w/ln removal	Y		A2	31.4792	$1,303.02
19303	Mast, simple, complete	Y		A2	23.7898	$984.73
19304	Mast, subq	Y		A2	23.7898	$984.73
19316	Suspension of breast	Y		A2	23.7898	$984.73
19318	Reduction of large breast	Y		A2	27.18	$1,125.06
19324	Enlarge breast	Y		A2	27.18	$1,125.06
19325	Enlarge breast with implant	Y		A2	45.0813	$1,866.05
19328	Removal of breast implant	Y		A2	20.2916	$839.93
19330	Removal of implant material	Y		A2	20.2916	$839.93
19340	Immediate breast prosthesis	Y		A2	25.0127	$1,035.35
19342	Delayed breast prosthesis	Y		A2	35.3168	$1,461.87
19350	Breast reconstruction	Y		A2	17.8955	$740.75
19355	Correct inverted nipple(s)	Y		A2	23.7898	$984.73
19357	Breast reconstruction	Y		A2	37.7549	$1,562.79
19366	Breast reconstruction	Y		A2	24.8146	$1,027.15
19370	Surgery of breast capsule	Y		A2	23.7898	$984.73
19371	Removal of breast capsule	Y		A2	23.7898	$984.73
19380	Revise breast reconstruction	Y		A2	28.2048	$1,167.48
19396	Design custom breast implant	Y		G2	32.7384	$1,355.14

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20000	Incision of abscess	Y		P2	1.3776	$57.02
20005	Incision of deep abscess	Y		A2	15.8725	$657.01
20103	Explore wound, extremity	Y		G2	15.5772	$644.79
20150	Excise epiphyseal bar	Y		G2	44.2241	$1,830.57
20200	Muscle biopsy	Y		A2	13.0039	$538.27
20205	Deep muscle biopsy	Y		A2	13.7579	$569.48
20206	Needle biopsy, muscle	Y		A2	6.4289	$266.11
20220	Bone biopsy, trocar/needle	Y		A2	6.9881	$289.26
20225	Bone biopsy, trocar/needle	Y		A2	12.6799	$524.86
20240	Bone biopsy, excisional	Y		A2	15.9027	$658.26
20245	Bone biopsy, excisional	Y		A2	16.6567	$689.47
20250	Open bone biopsy	Y		A2	16.6265	$688.22
20251	Open bone biopsy	Y		A2	16.6265	$688.22
20500	Injection of sinus tract	Y		P3	1.3768	$56.99
20501	Inject sinus tract for x-ray	N		N1		
20520	Removal of foreign body	Y		P3	2.3178	$95.94
20525	Removal of foreign body	Y		A2	16.6567	$689.47
20526	Ther injection, carp tunnel	Y		P3	0.7494	$31.02
20550	Inj tendon sheath/ligament	Y		P3	0.5663	$23.44
20551	Inj tendon origin/insertion	Y		P3	0.5576	$23.08
20552	Inj trigger point, 1/2 muscl	Y		P3	0.5402	$22.36
20553	Inject trigger points, =/> 3	Y		P3	0.6013	$24.89
20555	Place ndl musc/tis for rt	Y		G2	29.1375	$1,206.09
20600	Drain/inject, joint/bursa	Y		P3	0.575	$23.80
20605	Drain/inject, joint/bursa	Y		P3	0.6448	$26.69
20610	Drain/inject, joint/bursa	Y		P3	0.9062	$37.51
20612	Aspirate/inj ganglion cyst	Y		P3	0.61	$25.25
20615	Treatment of bone cyst	Y		P3	2.5531	$105.68
20650	Insert and remove bone pin	Y		A2	16.6265	$688.22
20662	Application of pelvis brace	Y		R2	21.2387	$879.13
20663	Application of thigh brace	Y		R2	21.2387	$879.13
20665	Removal of fixation device	N		G2	0.6301	$26.08
20670	Removal of support implant	Y		A2	11.673	$483.18
20680	Removal of support implant	Y		A2	16.6567	$689.47
20690	Apply bone fixation device	Y		A2	19.822	$820.49
20692	Apply bone fixation device	Y		A2	20.5759	$851.70
20693	Adjust bone fixation device	Y		A2	16.6265	$688.22
20694	Remove bone fixation device	Y		A2	14.5416	$601.92

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20696	Comp multiplane ext fixation	Y	NI	G2	29.1375	$1,206.09
20697	Comp ext fixate strut change	Y	NI	G2	19.3776	$802.10
20822	Replantation digit, complete	Y		G2	27.3022	$1,130.12
20900	Removal of bone for graft	Y		A2	20.5759	$851.70
20902	Removal of bone for graft	Y		A2	21.9892	$910.20
20910	Remove cartilage for graft	Y		A2	16.2776	$673.78
20912	Remove cartilage for graft	Y		A2	16.2776	$673.78
20920	Removal of fascia for graft	Y		A2	15.2091	$629.55
20922	Removal of fascia for graft	Y		A2	13.7956	$571.04
20924	Removal of tendon for graft	Y		A2	21.9892	$910.20
20926	Removal of tissue for graft	Y		A2	9.5806	$396.57
20950	Fluid pressure, muscle	Y		G2	1.3776	$57.02
20972	Bone/skin graft, metatarsal	Y		G2	46.114	$1,908.80
20973	Bone/skin graft, great toe	Y		R2	46.114	$1,908.80
20975	Electrical bone stimulation	N		N1		
20979	Us bone stimulation	N	CH	P3	0.5663	$23.44
20982	Ablate, bone tumor(s) perq	Y		G2	44.2241	$1,830.57
20985	Cptr-asst dir ms px	N		N1		
20986	Cptr-asst dir ms px io img	N	CH	D5		
20987	Cptr-asst dir ms px pre img	N	CH	D5		
21010	Incision of jaw joint	Y		A2	17.3227	$717.04
21015	Resection of facial tumor	Y		A2	14.4126	$596.58
21025	Excision of bone, lower jaw	Y		A2	25.6688	$1,062.51
21026	Excision of facial bone(s)	Y		A2	25.6688	$1,062.51
21029	Contour of face bone lesion	Y		A2	25.6688	$1,062.51
21030	Excise max/zygoma b9 tumor	Y		P3	6.0556	$250.66
21031	Remove exostosis, mandible	Y		P3	5.01	$207.38
21032	Remove exostosis, maxilla	Y		P3	5.1059	$211.35
21034	Excise max/zygoma mlg tumor	Y		A2	26.4228	$1,093.72
21040	Excise mandible lesion	Y		A2	17.3227	$717.04
21044	Removal of jaw bone lesion	Y		A2	25.6688	$1,062.51
21046	Remove mandible cyst complex	Y		A2	25.6688	$1,062.51
21047	Excise lwr jaw cyst w/repair	Y		A2	25.6688	$1,062.51
21048	Remove maxilla cyst complex	Y		R2	40.8314	$1,690.13
21050	Removal of jaw joint	Y		A2	26.4228	$1,093.72
21060	Remove jaw joint cartilage	Y		A2	25.6688	$1,062.51
21070	Remove coronoid process	Y		A2	26.4228	$1,093.72
21073*	Mnpj of tmj w/anesth	Y		P3	4.7051	$194.76

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21076	Prepare face/oral prosthesis	Y		P3	8.1642	$337.94
21077	Prepare face/oral prosthesis	Y		P3	19.7355	$816.91
21079	Prepare face/oral prosthesis	Y		P3	14.1328	$585.00
21080	Prepare face/oral prosthesis	Y		P3	16.2066	$670.84
21081	Prepare face/oral prosthesis	Y		P3	14.9344	$618.18
21082	Prepare face/oral prosthesis	Y		P3	14.2113	$588.25
21083	Prepare face/oral prosthesis	Y		P3	14.0021	$579.59
21084	Prepare face/oral prosthesis	Y		P3	16.1107	$666.87
21085	Prepare face/oral prosthesis	Y		P3	6.3955	$264.73
21086	Prepare face/oral prosthesis	Y		P3	13.9236	$576.34
21087	Prepare face/oral prosthesis	Y		P3	13.9412	$577.07
21088	Prepare face/oral prosthesis	Y		R2	40.8314	$1,690.13
21100	Maxillofacial fixation	Y		A2	25.6688	$1,062.51
21110	Interdental fixation	Y		P2	7.3454	$304.05
21116	Injection, jaw joint x-ray	N		N1		
21120	Reconstruction of chin	Y		A2	23.7893	$984.71
21121	Reconstruction of chin	Y		A2	23.7893	$984.71
21122	Reconstruction of chin	Y		A2	23.7893	$984.71
21123	Reconstruction of chin	Y		A2	23.7893	$984.71
21125	Augmentation, lower jaw bone	Y		A2	23.7893	$984.71
21127	Augmentation, lower jaw bone	Y		A2	36.187	$1,497.89
21137	Reduction of forehead	Y		G2	24.1393	$999.20
21138	Reduction of forehead	Y		G2	40.8314	$1,690.13
21139	Reduction of forehead	Y		G2	40.8314	$1,690.13
21150	Reconstruct midface, lefort	Y		G2	40.8314	$1,690.13
21181	Contour cranial bone lesion	Y		A2	23.7893	$984.71
21198	Reconstr lwr jaw segment	Y		G2	40.8314	$1,690.13
21199	Reconstr lwr jaw w/advance	Y		G2	40.8314	$1,690.13
21206	Reconstruct upper jaw bone	Y		A2	28.8609	$1,194.64
21208	Augmentation of facial bones	Y		A2	32.1354	$1,330.18
21209	Reduction of facial bones	Y		A2	28.8609	$1,194.64
21210	Face bone graft	Y		A2	32.1354	$1,330.18
21215	Lower jaw bone graft	Y		A2	32.1354	$1,330.18
21230	Rib cartilage graft	Y		A2	32.1354	$1,330.18
21235	Ear cartilage graft	Y		A2	23.7893	$984.71
21240	Reconstruction of jaw joint	Y		A2	27.8361	$1,152.22
21242	Reconstruction of jaw joint	Y		A2	28.8609	$1,194.64
21243	Reconstruction of jaw joint	Y		A2	28.8609	$1,194.64

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HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
21244	Reconstruction of lower jaw	Y		A2	32.1354	$1,330.18
21245	Reconstruction of jaw	Y		A2	32.1354	$1,330.18
21246	Reconstruction of jaw	Y		A2	32.1354	$1,330.18
21248	Reconstruction of jaw	Y		A2	32.1354	$1,330.18
21249	Reconstruction of jaw	Y		A2	32.1354	$1,330.18
21260	Revise eye sockets	Y		G2	40.8314	$1,690.13
21267	Revise eye sockets	Y		A2	32.1354	$1,330.18
21270	Augmentation, cheek bone	Y		A2	28.8609	$1,194.64
21275	Revision, orbitofacial bones	Y		A2	32.1354	$1,330.18
21280	Revision of eyelid	Y		A2	28.8609	$1,194.64
21282	Revision of eyelid	Y		A2	16.8507	$697.50
21295	Revision of jaw muscle/bone	Y		A2	7.595	$314.38
21296	Revision of jaw muscle/bone	Y		A2	15.9918	$661.95
21310	Treatment of nose fracture	Y		A2	2.3168	$95.90
21315	Treatment of nose fracture	Y		A2	10.1807	$421.41
21320	Treatment of nose fracture	Y		A2	13.6586	$565.37
21325	Treatment of nose fracture	Y		A2	19.49	$806.75
21330	Treatment of nose fracture	Y		A2	20.5148	$849.17
21335	Treatment of nose fracture	Y		A2	23.7893	$984.71
21336	Treat nasal septal fracture	Y		A2	19.8258	$820.65
21337	Treat nasal septal fracture	Y		A2	13.6586	$565.37
21338	Treat nasoethmoid fracture	Y		A2	19.49	$806.75
21339	Treat nasoethmoid fracture	Y		A2	20.5148	$849.17
21340	Treatment of nose fracture	Y		A2	27.8361	$1,152.22
21345	Treat nose/jaw fracture	Y		A2	23.7893	$984.71
21355	Treat cheek bone fracture	Y		A2	26.4228	$1,093.72
21356	Treat cheek bone fracture	Y		A2	18.0767	$748.25
21360	Treat cheek bone fracture	Y		G2	24.1393	$999.20
21390	Treat eye socket fracture	Y		G2	40.8314	$1,690.13
21400	Treat eye socket fracture	Y		A2	8.9259	$369.47
21401	Treat eye socket fracture	Y		A2	14.4126	$596.58
21406	Treat eye socket fracture	Y		G2	40.8314	$1,690.13
21407	Treat eye socket fracture	Y		G2	40.8314	$1,690.13
21421	Treat mouth roof fracture	Y		A2	19.49	$806.75
21440	Treat dental ridge fracture	Y		P3	8.2079	$339.75
21445	Treat dental ridge fracture	Y		A2	19.49	$806.75
21450	Treat lower jaw fracture	Y		A2	3.3875	$140.22
21451	Treat lower jaw fracture	Y		A2	9.1397	$378.32

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21452	Treat lower jaw fracture	Y		A2	13.6586	$565.37
21453	Treat lower jaw fracture	Y		A2	26.4228	$1,093.72
21454	Treat lower jaw fracture	Y		A2	20.5148	$849.17
21461	Treat lower jaw fracture	Y		A2	27.8361	$1,152.22
21462	Treat lower jaw fracture	Y		A2	28.8609	$1,194.64
21465	Treat lower jaw fracture	Y		A2	27.8361	$1,152.22
21480	Reset dislocated jaw	Y		A2	2.3168	$95.90
21485	Reset dislocated jaw	Y		A2	13.6586	$565.37
21490	Repair dislocated jaw	Y		A2	26.4228	$1,093.72
21495	Treat hyoid bone fracture	Y		G2	16.8109	$695.85
21497	Interdental wiring	Y		A2	13.6586	$565.37
21501	Drain neck/chest lesion	Y		A2	14.7056	$608.71
21502	Drain chest lesion	Y		A2	15.8725	$657.01
21550	Biopsy of neck/chest	Y		G2	15.5016	$641.66
21555	Remove lesion, neck/chest	Y		A2	15.9027	$658.26
21556	Remove lesion, neck/chest	Y		A2	15.9027	$658.26
21557	Remove tumor, neck/chest	Y		G2	21.299	$881.63
21600	Partial removal of rib	Y		A2	19.822	$820.49
21610	Partial removal of rib	Y		A2	19.822	$820.49
21685	Hyoid myotomy & suspension	Y		G2	7.3454	$304.05
21700	Revision of neck muscle	Y		A2	15.8725	$657.01
21720	Revision of neck muscle	Y		A2	16.6265	$688.22
21725	Revision of neck muscle	Y		A2	1.7307	$71.64
21800	Treatment of rib fracture	Y		A2	1.9994	$82.76
21805	Treatment of rib fracture	Y		A2	17.6585	$730.94
21820	Treat sternum fracture	Y		A2	1.9994	$82.76
21920	Biopsy soft tissue of back	Y		P3	3.5549	$147.15
21925	Biopsy soft tissue of back	Y		A2	15.9027	$658.26
21930	Remove lesion, back or flank	Y		A2	15.9027	$658.26
21935	Remove tumor, back	Y		A2	16.6567	$689.47
22102	Remove part, lumbar vertebra	Y		G2	47.3966	$1,961.89
22103	Remove extra spine segment	Y		G2	47.3966	$1,961.89
22305	Treat spine process fracture	Y		A2	1.9994	$82.76
22310	Treat spine fracture	Y		A2	4.2179	$174.59
22315	Treat spine fracture	Y		A2	10.9093	$451.57
22505	Manipulation of spine	Y		A2	12.843	$531.61
22520	Percut vertebroplasty thor	Y		A2	30.3402	$1,255.87
22521	Percut vertebroplasty lumb	Y		A2	30.3402	$1,255.87

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HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
22522	Percut vertebroplasty add'l	Y		A2	30.3402	$1,255.87
22523	Percut kyphoplasty, thor	Y		G2	84.4396	$3,495.21
22524	Percut kyphoplasty, lumbar	Y		G2	84.4396	$3,495.21
22525	Percut kyphoplasty, add-on	Y		G2	84.4396	$3,495.21
22900	Remove abdominal wall lesion	Y		A2	18.07	$747.97
23000	Removal of calcium deposits	Y		A2	13.0039	$538.27
23020	Release shoulder joint	Y		A2	27.3653	$1,132.73
23030	Drain shoulder lesion	Y		A2	13.3745	$553.61
23031	Drain shoulder bursa	Y		A2	15.4594	$639.91
23035	Drain shoulder bone lesion	Y		A2	16.6265	$688.22
23040	Exploratory shoulder surgery	Y		A2	20.5759	$851.70
23044	Exploratory shoulder surgery	Y		A2	21.9892	$910.20
23065	Biopsy shoulder tissues	Y		P3	2.4572	$101.71
23066	Biopsy shoulder tissues	Y		A2	15.9027	$658.26
23075	Removal of shoulder lesion	Y		A2	13.0039	$538.27
23076	Removal of shoulder lesion	Y		A2	15.9027	$658.26
23077	Remove tumor of shoulder	Y		A2	16.6567	$689.47
23100	Biopsy of shoulder joint	Y		A2	15.8725	$657.01
23101	Shoulder joint surgery	Y		A2	26.2885	$1,088.16
23105	Remove shoulder joint lining	Y		A2	21.9892	$910.20
23106	Incision of collarbone joint	Y		A2	21.9892	$910.20
23107	Explore treat shoulder joint	Y		A2	21.9892	$910.20
23120	Partial removal, collar bone	Y		A2	23.014	$952.62
23125	Removal of collar bone	Y		A2	23.014	$952.62
23130	Remove shoulder bone, part	Y		A2	30.5571	$1,264.85
23140	Removal of bone lesion	Y		A2	18.0398	$746.72
23145	Removal of bone lesion	Y		A2	23.014	$952.62
23146	Removal of bone lesion	Y		A2	23.014	$952.62
23150	Removal of humerus lesion	Y		A2	21.9892	$910.20
23155	Removal of humerus lesion	Y		A2	23.014	$952.62
23156	Removal of humerus lesion	Y		A2	23.014	$952.62
23170	Remove collar bone lesion	Y		A2	19.822	$820.49
23172	Remove shoulder blade lesion	Y		A2	19.822	$820.49
23174	Remove humerus lesion	Y		A2	19.822	$820.49
23180	Remove collar bone lesion	Y		A2	21.9892	$910.20
23182	Remove shoulder blade lesion	Y		A2	21.9892	$910.20
23184	Remove humerus lesion	Y		A2	21.9892	$910.20
23190	Partial removal of scapula	Y		A2	21.9892	$910.20

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23195	Removal of head of humerus	Y		A2	23.014	$952.62
23330	Remove shoulder foreign body	Y		A2	7.9477	$328.98
23331	Remove shoulder foreign body	Y		A2	14.5718	$603.17
23350	Injection for shoulder x-ray	N		N1		
23395	Muscle transfer,shoulder/arm	Y		A2	30.5571	$1,264.85
23397	Muscle transfers	Y		A2	53.9396	$2,232.72
23400	Fixation of shoulder blade	Y		A2	26.2885	$1,088.16
23405	Incision of tendon & muscle	Y		A2	19.822	$820.49
23406	Incise tendon(s) & muscle(s)	Y		A2	19.822	$820.49
23410	Repair rotator cuff, acute	Y		A2	30.5571	$1,264.85
23412	Repair rotator cuff, chronic	Y		A2	33.8316	$1,400.39
23415	Release of shoulder ligament	Y		A2	30.5571	$1,264.85
23420	Repair of shoulder	Y		A2	33.8316	$1,400.39
23430	Repair biceps tendon	Y		A2	29.5325	$1,222.44
23440	Remove/transplant tendon	Y		A2	29.5325	$1,222.44
23450	Repair shoulder capsule	Y		A2	50.6651	$2,097.18
23455	Repair shoulder capsule	Y		A2	53.9396	$2,232.72
23460	Repair shoulder capsule	Y		A2	50.6651	$2,097.18
23462	Repair shoulder capsule	Y		A2	33.8316	$1,400.39
23465	Repair shoulder capsule	Y		A2	50.6651	$2,097.18
23466	Repair shoulder capsule	Y		A2	33.8316	$1,400.39
23480	Revision of collar bone	Y		A2	29.5325	$1,222.44
23485	Revision of collar bone	Y		A2	53.9396	$2,232.72
23490	Reinforce clavicle	Y		A2	28.119	$1,163.93
23491	Reinforce shoulder bones	Y		A2	48.227	$1,996.26
23500	Treat clavicle fracture	Y		A2	1.9994	$82.76
23505	Treat clavicle fracture	Y		A2	10.9093	$451.57
23515	Treat clavicle fracture	Y		A2	36.5127	$1,511.37
23520	Treat clavicle dislocation	Y		A2	4.2179	$174.59
23525	Treat clavicle dislocation	Y		A2	4.2179	$174.59
23530	Treat clavicle dislocation	Y		A2	26.9062	$1,113.73
23532	Treat clavicle dislocation	Y		A2	19.8258	$820.65
23540	Treat clavicle dislocation	Y		A2	1.9994	$82.76
23545	Treat clavicle dislocation	Y		A2	4.2179	$174.59
23550	Treat clavicle dislocation	Y		A2	26.9062	$1,113.73
23552	Treat clavicle dislocation	Y		A2	28.3198	$1,172.24
23570	Treat shoulder blade fx	Y		A2	1.9994	$82.76
23575	Treat shoulder blade fx	Y		A2	4.2179	$174.59

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23585	Treat scapula fracture	Y		A2	36.5127	$1,511.37
23600	Treat humerus fracture	Y		P2	1.5579	$64.49
23605	Treat humerus fracture	Y		A2	10.9093	$451.57
23615	Treat humerus fracture	Y		A2	37.926	$1,569.87
23616	Treat humerus fracture	Y		A2	37.926	$1,569.87
23620	Treat humerus fracture	Y		P2	1.5579	$64.49
23625	Treat humerus fracture	Y		A2	10.9093	$451.57
23630	Treat humerus fracture	Y		A2	38.9508	$1,612.29
23650	Treat shoulder dislocation	Y		A2	1.9994	$82.76
23655	Treat shoulder dislocation	Y		A2	11.5121	$476.52
23660	Treat shoulder dislocation	Y		A2	26.9062	$1,113.73
23665	Treat dislocation/fracture	Y		A2	4.2179	$174.59
23670	Treat dislocation/fracture	Y		A2	36.5127	$1,511.37
23675	Treat dislocation/fracture	Y		A2	1.9994	$82.76
23680	Treat dislocation/fracture	Y		A2	26.9062	$1,113.73
23700	Fixation of shoulder	Y		A2	11.5121	$476.52
23800	Fusion of shoulder joint	Y		A2	49.6403	$2,054.76
23802	Fusion of shoulder joint	Y		A2	33.8316	$1,400.39
23921	Amputation follow-up surgery	Y		A2	11.5964	$480.01
23930	Drainage of arm lesion	Y		A2	13.3745	$553.61
23931	Drainage of arm bursa	Y		A2	14.7056	$608.71
23935	Drain arm/elbow bone lesion	Y		A2	15.8725	$657.01
24000	Exploratory elbow surgery	Y		A2	21.9892	$910.20
24006	Release elbow joint	Y		A2	21.9892	$910.20
24065	Biopsy arm/elbow soft tissue	Y		P3	3.4069	$141.02
24066	Biopsy arm/elbow soft tissue	Y		A2	13.0039	$538.27
24075	Remove arm/elbow lesion	Y		A2	13.0039	$538.27
24076	Remove arm/elbow lesion	Y		A2	15.9027	$658.26
24077	Remove tumor of arm/elbow	Y		A2	16.6567	$689.47
24100	Biopsy elbow joint lining	Y		A2	14.5416	$601.92
24101	Explore/treat elbow joint	Y		A2	21.9892	$910.20
24102	Remove elbow joint lining	Y		A2	21.9892	$910.20
24105	Removal of elbow bursa	Y		A2	16.6265	$688.22
24110	Remove humerus lesion	Y		A2	15.8725	$657.01
24115	Remove/graft bone lesion	Y		A2	20.5759	$851.70
24116	Remove/graft bone lesion	Y		A2	20.5759	$851.70
24120	Remove elbow lesion	Y		A2	16.6265	$688.22
24125	Remove/graft bone lesion	Y		A2	20.5759	$851.70

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24126	Remove/graft bone lesion	Y		A2	20.5759	$851.70
24130	Removal of head of radius	Y		A2	20.5759	$851.70
24134	Removal of arm bone lesion	Y		A2	19.822	$820.49
24136	Remove radius bone lesion	Y		A2	19.822	$820.49
24138	Remove elbow bone lesion	Y		A2	19.822	$820.49
24140	Partial removal of arm bone	Y		A2	20.5759	$851.70
24145	Partial removal of radius	Y		A2	20.5759	$851.70
24147	Partial removal of elbow	Y		A2	19.822	$820.49
24149	Radical resection of elbow	Y		G2	29.1375	$1,206.09
24152	Extensive radius surgery	Y		G2	44.2241	$1,830.57
24153	Extensive radius surgery	Y		G2	84.4396	$3,495.21
24155	Removal of elbow joint	Y		A2	28.119	$1,163.93
24160	Remove elbow joint implant	Y		A2	19.822	$820.49
24164	Remove radius head implant	Y		A2	20.5759	$851.70
24200	Removal of arm foreign body	Y		P3	2.492	$103.15
24201	Removal of arm foreign body	Y		A2	13.0039	$538.27
24220	Injection for elbow x-ray	N		N1		
24300	Manipulate elbow w/anesth	Y		G2	15.1797	$628.33
24301	Muscle/tendon transfer	Y		A2	21.9892	$910.20
24305	Arm tendon lengthening	Y		A2	21.9892	$910.20
24310	Revision of arm tendon	Y		A2	16.6265	$688.22
24320	Repair of arm tendon	Y		A2	28.119	$1,163.93
24330	Revision of arm muscles	Y		A2	48.227	$1,996.26
24331	Revision of arm muscles	Y		A2	28.119	$1,163.93
24332	Tenolysis, triceps	Y		G2	21.2387	$879.13
24340	Repair of biceps tendon	Y		A2	28.119	$1,163.93
24341	Repair arm tendon/muscle	Y		A2	28.119	$1,163.93
24342	Repair of ruptured tendon	Y		A2	28.119	$1,163.93
24343	Repr elbow lat ligmnt w/tiss	Y		G2	29.1375	$1,206.09
24344	Reconstruct elbow lat ligmnt	Y		G2	84.4396	$3,495.21
24345	Repr elbw med ligmnt w/tissu	Y		A2	19.822	$820.49
24346	Reconstruct elbow med ligmnt	Y		G2	44.2241	$1,830.57
24357	Repair elbow, perc	Y		G2	29.1375	$1,206.09
24358	Repair elbow w/deb, open	Y		G2	29.1375	$1,206.09
24359	Repair elbow deb/attch open	Y		G2	29.1375	$1,206.09
24360	Reconstruct elbow joint	Y		A2	26.8898	$1,113.05
24361	Reconstruct elbow joint	Y	CH	H8	147.0205	$6,085.62
24362	Reconstruct elbow joint	Y		A2	34.365	$1,422.47

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24363	Replace elbow joint	Y	CH	H8	150.295	$6,221.16
24365	Reconstruct head of radius	Y		A2	26.8898	$1,113.05
24366	Reconstruct head of radius	Y	CH	H8	147.0205	$6,085.62
24400	Revision of humerus	Y		A2	21.9892	$910.20
24410	Revision of humerus	Y		A2	21.9892	$910.20
24420	Revision of humerus	Y		A2	28.119	$1,163.93
24430	Repair of humerus	Y		A2	48.227	$1,996.26
24435	Repair humerus with graft	Y		A2	49.6403	$2,054.76
24470	Revision of elbow joint	Y		A2	28.119	$1,163.93
24495	Decompression of forearm	Y		A2	19.822	$820.49
24498	Reinforce humerus	Y		A2	48.227	$1,996.26
24500	Treat humerus fracture	Y		A2	1.9994	$82.76
24505	Treat humerus fracture	Y		A2	1.9994	$82.76
24515	Treat humerus fracture	Y		A2	37.926	$1,569.87
24516	Treat humerus fracture	Y		A2	37.926	$1,569.87
24530	Treat humerus fracture	Y		A2	1.9994	$82.76
24535	Treat humerus fracture	Y		A2	4.2179	$174.59
24538	Treat humerus fracture	Y		A2	17.6585	$730.94
24545	Treat humerus fracture	Y		A2	37.926	$1,569.87
24546	Treat humerus fracture	Y		A2	38.9508	$1,612.29
24560	Treat humerus fracture	Y		A2	1.9994	$82.76
24565	Treat humerus fracture	Y		A2	1.9994	$82.76
24566	Treat humerus fracture	Y		A2	17.6585	$730.94
24575	Treat humerus fracture	Y		A2	36.5127	$1,511.37
24576	Treat humerus fracture	Y		A2	1.9994	$82.76
24577	Treat humerus fracture	Y		A2	4.2179	$174.59
24579	Treat humerus fracture	Y		A2	36.5127	$1,511.37
24582	Treat humerus fracture	Y		A2	17.6585	$730.94
24586	Treat elbow fracture	Y		A2	37.926	$1,569.87
24587	Treat elbow fracture	Y		A2	38.9508	$1,612.29
24600	Treat elbow dislocation	Y		A2	1.9994	$82.76
24605	Treat elbow dislocation	Y		A2	12.843	$531.61
24615	Treat elbow dislocation	Y		A2	36.5127	$1,511.37
24620	Treat elbow fracture	Y		A2	10.9093	$451.57
24635	Treat elbow fracture	Y		A2	36.5127	$1,511.37
24640	Treat elbow dislocation	Y		P3	1.3505	$55.90
24650	Treat radius fracture	Y		P2	1.5579	$64.49
24655	Treat radius fracture	Y		A2	4.2179	$174.59

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24665	Treat radius fracture	Y		A2	28.3198	$1,172.24
24666	Treat radius fracture	Y		A2	37.926	$1,569.87
24670	Treat ulnar fracture	Y		A2	1.9994	$82.76
24675	Treat ulnar fracture	Y		A2	1.9994	$82.76
24685	Treat ulnar fracture	Y		A2	26.9062	$1,113.73
24800	Fusion of elbow joint	Y		A2	29.5325	$1,222.44
24802	Fusion/graft of elbow joint	Y		A2	30.5571	$1,264.85
24925	Amputation follow-up surgery	Y		A2	16.6265	$688.22
25000	Incision of tendon sheath	Y		A2	16.6265	$688.22
25001	Incise flexor carpi radialis	Y		G2	21.2387	$879.13
25020	Decompress forearm 1 space	Y		A2	16.6265	$688.22
25023	Decompress forearm 1 space	Y		A2	20.5759	$851.70
25024	Decompress forearm 2 spaces	Y		A2	20.5759	$851.70
25025	Decompress forearm 2 spaces	Y		A2	20.5759	$851.70
25028	Drainage of forearm lesion	Y		A2	14.5416	$601.92
25031	Drainage of forearm bursa	Y		A2	15.8725	$657.01
25035	Treat forearm bone lesion	Y		A2	15.8725	$657.01
25040	Explore/treat wrist joint	Y		A2	23.014	$952.62
25065	Biopsy forearm soft tissues	Y		P3	3.459	$143.18
25066	Biopsy forearm soft tissues	Y		A2	15.9027	$658.26
25075	Removal forearm lesion subcu	Y		A2	13.0039	$538.27
25076	Removal forearm lesion deep	Y		A2	16.6567	$689.47
25077	Remove tumor, forearm/wrist	Y		A2	16.6567	$689.47
25085	Incision of wrist capsule	Y		A2	16.6265	$688.22
25100	Biopsy of wrist joint	Y		A2	15.8725	$657.01
25101	Explore/treat wrist joint	Y		A2	20.5759	$851.70
25105	Remove wrist joint lining	Y		A2	21.9892	$910.20
25107	Remove wrist joint cartilage	Y		A2	20.5759	$851.70
25109	Excise tendon forearm/wrist	Y		G2	21.2387	$879.13
25110	Remove wrist tendon lesion	Y		A2	16.6265	$688.22
25111	Remove wrist tendon lesion	Y		A2	16.6265	$688.22
25112	Reremove wrist tendon lesion	Y		A2	18.0398	$746.72
25115	Remove wrist/forearm lesion	Y		A2	18.0398	$746.72
25116	Remove wrist/forearm lesion	Y		A2	18.0398	$746.72
25118	Excise wrist tendon sheath	Y		A2	19.822	$820.49
25119	Partial removal of ulna	Y		A2	20.5759	$851.70
25120	Removal of forearm lesion	Y		A2	20.5759	$851.70
25125	Remove/graft forearm lesion	Y		A2	20.5759	$851.70

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ADDENDUM AA.--FINAL ASC COVERED SURGICAL PROCEDURES FOR CY 2009 (INCLUDING SURGICAL PROCEDURES FOR WHICH PAYMENT IS PACKAGED)						
HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
25126	Remove/graft forearm lesion	Y		A2	20.5759	$851.70
25130	Removal of wrist lesion	Y		A2	20.5759	$851.70
25135	Remove & graft wrist lesion	Y		A2	20.5759	$851.70
25136	Remove & graft wrist lesion	Y		A2	20.5759	$851.70
25145	Remove forearm bone lesion	Y		A2	19.822	$820.49
25150	Partial removal of ulna	Y		A2	19.822	$820.49
25151	Partial removal of radius	Y		A2	19.822	$820.49
25210	Removal of wrist bone	Y		A2	20.5759	$851.70
25215	Removal of wrist bones	Y		A2	21.9892	$910.20
25230	Partial removal of radius	Y		A2	21.9892	$910.20
25240	Partial removal of ulna	Y		A2	21.9892	$910.20
25246	Injection for wrist x-ray	N		N1		
25248	Remove forearm foreign body	Y		A2	15.8725	$657.01
25250	Removal of wrist prosthesis	Y		A2	18.491	$765.40
25251	Removal of wrist prosthesis	Y		A2	18.491	$765.40
25259	Manipulate wrist w/anesthes	Y		G2	19.3776	$802.10
25260	Repair forearm tendon/muscle	Y		A2	21.9892	$910.20
25263	Repair forearm tendon/muscle	Y		A2	19.822	$820.49
25265	Repair forearm tendon/muscle	Y		A2	20.5759	$851.70
25270	Repair forearm tendon/muscle	Y		A2	21.9892	$910.20
25272	Repair forearm tendon/muscle	Y		A2	20.5759	$851.70
25274	Repair forearm tendon/muscle	Y		A2	21.9892	$910.20
25275	Repair forearm tendon sheath	Y		A2	21.9892	$910.20
25280	Revise wrist/forearm tendon	Y		A2	21.9892	$910.20
25290	Incise wrist/forearm tendon	Y		A2	20.5759	$851.70
25295	Release wrist/forearm tendon	Y		A2	16.6265	$688.22
25300	Fusion of tendons at wrist	Y		A2	20.5759	$851.70
25301	Fusion of tendons at wrist	Y		A2	20.5759	$851.70
25310	Transplant forearm tendon	Y		A2	28.119	$1,163.93
25312	Transplant forearm tendon	Y		A2	29.5325	$1,222.44
25315	Revise palsy hand tendon(s)	Y		A2	28.119	$1,163.93
25316	Revise palsy hand tendon(s)	Y		A2	48.227	$1,996.26
25320	Repair/revise wrist joint	Y		A2	28.119	$1,163.93
25332	Revise wrist joint	Y		A2	26.8898	$1,113.05
25335	Realignment of hand	Y		A2	28.119	$1,163.93
25337	Reconstruct ulna/radioulnar	Y		A2	30.5571	$1,264.85
25350	Revision of radius	Y		A2	48.227	$1,996.26
25355	Revision of radius	Y		A2	28.119	$1,163.93

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25360	Revision of ulna	Y		A2	20.5759	$851.70
25365	Revise radius & ulna	Y		A2	20.5759	$851.70
25370	Revise radius or ulna	Y		A2	28.119	$1,163.93
25375	Revise radius & ulna	Y		A2	29.5325	$1,222.44
25390	Shorten radius or ulna	Y		A2	20.5759	$851.70
25391	Lengthen radius or ulna	Y		A2	29.5325	$1,222.44
25392	Shorten radius & ulna	Y		A2	20.5759	$851.70
25393	Lengthen radius & ulna	Y		A2	29.5325	$1,222.44
25394	Repair carpal bone, shorten	Y		G2	44.2241	$1,830.57
25400	Repair radius or ulna	Y		A2	28.119	$1,163.93
25405	Repair/graft radius or ulna	Y		A2	49.6403	$2,054.76
25415	Repair radius & ulna	Y		A2	48.227	$1,996.26
25420	Repair/graft radius & ulna	Y		A2	49.6403	$2,054.76
25425	Repair/graft radius or ulna	Y		A2	28.119	$1,163.93
25426	Repair/graft radius & ulna	Y		A2	29.5325	$1,222.44
25430	Vasc graft into carpal bone	Y		G2	44.2241	$1,830.57
25431	Repair nonunion carpal bone	Y		G2	44.2241	$1,830.57
25440	Repair/graft wrist bone	Y		A2	49.6403	$2,054.76
25441	Reconstruct wrist joint	Y	CH	H8	147.0205	$6,085.62
25442	Reconstruct wrist joint	Y	CH	H8	147.0205	$6,085.62
25443	Reconstruct wrist joint	Y		A2	34.365	$1,422.47
25444	Reconstruct wrist joint	Y		A2	34.365	$1,422.47
25445	Reconstruct wrist joint	Y		A2	34.365	$1,422.47
25446	Wrist replacement	Y	CH	H8	150.295	$6,221.16
25447	Repair wrist joint(s)	Y		A2	26.8898	$1,113.05
25449	Remove wrist joint implant	Y		A2	26.8898	$1,113.05
25450	Revision of wrist joint	Y		A2	28.119	$1,163.93
25455	Revision of wrist joint	Y		A2	28.119	$1,163.93
25490	Reinforce radius	Y		A2	28.119	$1,163.93
25491	Reinforce ulna	Y		A2	28.119	$1,163.93
25492	Reinforce radius and ulna	Y		A2	28.119	$1,163.93
25500	Treat fracture of radius	Y		P2	1.5579	$64.49
25505	Treat fracture of radius	Y		A2	4.2179	$174.59
25515	Treat fracture of radius	Y		A2	26.9062	$1,113.73
25520	Treat fracture of radius	Y		A2	4.2179	$174.59
25525	Treat fracture of radius	Y		A2	28.3198	$1,172.24
25526	Treat fracture of radius	Y		A2	29.3443	$1,214.65
25530	Treat fracture of ulna	Y		P2	1.5579	$64.49

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25535	Treat fracture of ulna	Y		A2	1.9994	$82.76
25545	Treat fracture of ulna	Y		A2	26.9062	$1,113.73
25560	Treat fracture radius & ulna	Y		P2	1.5579	$64.49
25565	Treat fracture radius & ulna	Y		A2	4.2179	$174.59
25574	Treat fracture radius & ulna	Y		A2	36.5127	$1,511.37
25575	Treat fracture radius/ulna	Y		A2	36.5127	$1,511.37
25600	Treat fracture radius/ulna	Y		P2	1.5579	$64.49
25605	Treat fracture radius/ulna	Y		A2	4.2179	$174.59
25606	Treat fx distal radial	Y		A2	18.4125	$762.15
25607	Treat fx rad extra-articul	Y		A2	38.9508	$1,612.29
25608	Treat fx rad intra-articul	Y		A2	38.9508	$1,612.29
25609	Treat fx radial 3+ frag	Y		A2	38.9508	$1,612.29
25622	Treat wrist bone fracture	Y		P2	1.5579	$64.49
25624	Treat wrist bone fracture	Y		A2	4.2179	$174.59
25628	Treat wrist bone fracture	Y		A2	26.9062	$1,113.73
25630	Treat wrist bone fracture	Y		P2	1.5579	$64.49
25635	Treat wrist bone fracture	Y		A2	4.2179	$174.59
25645	Treat wrist bone fracture	Y		A2	26.9062	$1,113.73
25650	Treat wrist bone fracture	Y		P2	1.5579	$64.49
25651	Pin ulnar styloid fracture	Y		G2	24.8106	$1,026.99
25652	Treat fracture ulnar styloid	Y		G2	41.7982	$1,730.15
25660	Treat wrist dislocation	Y		A2	1.9994	$82.76
25670	Treat wrist dislocation	Y		A2	18.4125	$762.15
25671	Pin radioulnar dislocation	Y		A2	16.3276	$675.85
25675	Treat wrist dislocation	Y		A2	1.9994	$82.76
25676	Treat wrist dislocation	Y		A2	17.6585	$730.94
25680	Treat wrist fracture	Y		A2	1.9994	$82.76
25685	Treat wrist fracture	Y		A2	18.4125	$762.15
25690	Treat wrist dislocation	Y		A2	10.9093	$451.57
25695	Treat wrist dislocation	Y		A2	17.6585	$730.94
25800	Fusion of wrist joint	Y		A2	49.6403	$2,054.76
25805	Fusion/graft of wrist joint	Y		A2	30.5571	$1,264.85
25810	Fusion/graft of wrist joint	Y		A2	50.6651	$2,097.18
25820	Fusion of hand bones	Y		A2	29.5325	$1,222.44
25825	Fuse hand bones with graft	Y		A2	50.6651	$2,097.18
25830	Fusion, radioulnar jnt/ulna	Y		A2	50.6651	$2,097.18
25907	Amputation follow-up surgery	Y		A2	16.6265	$688.22
25922	Amputate hand at wrist	Y		A2	16.6265	$688.22

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25929	Amputation follow-up surgery	Y		A2	13.7956	$571.04
25931	Amputation follow-up surgery	Y		G2	21.2387	$879.13
26010	Drainage of finger abscess	Y		P2	1.3776	$57.02
26011	Drainage of finger abscess	Y		A2	10.0631	$416.54
26020	Drain hand tendon sheath	Y		A2	13.3525	$552.70
26025	Drainage of palm bursa	Y		A2	12.0214	$497.60
26030	Drainage of palm bursa(s)	Y		A2	13.3525	$552.70
26034	Treat hand bone lesion	Y		A2	13.3525	$552.70
26035	Decompress fingers/hand	Y		G2	16.1985	$670.50
26040	Release palm contracture	Y		A2	21.0717	$872.22
26045	Release palm contracture	Y		A2	19.6582	$813.71
26055	Incise finger tendon sheath	Y		A2	13.3525	$552.70
26060	Incision of finger tendon	Y		A2	13.3525	$552.70
26070	Explore/treat hand joint	Y		A2	13.3525	$552.70
26075	Explore/treat finger joint	Y		A2	15.5198	$642.41
26080	Explore/treat finger joint	Y		A2	15.5198	$642.41
26100	Biopsy hand joint lining	Y		A2	13.3525	$552.70
26105	Biopsy finger joint lining	Y		A2	12.0214	$497.60
26110	Biopsy finger joint lining	Y		A2	12.0214	$497.60
26115	Removal hand lesion subcut	Y		A2	15.9027	$658.26
26116	Removal hand lesion, deep	Y		A2	15.9027	$658.26
26117	Remove tumor, hand/finger	Y		A2	16.6567	$689.47
26121	Release palm contracture	Y		A2	21.0717	$872.22
26123	Release palm contracture	Y		A2	21.0717	$872.22
26125	Release palm contracture	Y		A2	15.5198	$642.41
26130	Remove wrist joint lining	Y		A2	14.1062	$583.90
26135	Revise finger joint, each	Y		A2	21.0717	$872.22
26140	Revise finger joint, each	Y		A2	13.3525	$552.70
26145	Tendon excision, palm/finger	Y		A2	14.1062	$583.90
26160	Remove tendon sheath lesion	Y		A2	14.1062	$583.90
26170	Removal of palm tendon, each	Y		A2	14.1062	$583.90
26180	Removal of finger tendon	Y		A2	14.1062	$583.90
26185	Remove finger bone	Y		A2	15.5198	$642.41
26200	Remove hand bone lesion	Y		A2	13.3525	$552.70
26205	Remove/graft bone lesion	Y		A2	19.6582	$813.71
26210	Removal of finger lesion	Y		A2	13.3525	$552.70
26215	Remove/graft finger lesion	Y		A2	14.1062	$583.90
26230	Partial removal of hand bone	Y		A2	19.7947	$819.36

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26235	Partial removal, finger bone	Y		A2	14.1062	$583.90
26236	Partial removal, finger bone	Y		A2	14.1062	$583.90
26250	Extensive hand surgery	Y		A2	14.1062	$583.90
26255	Extensive hand surgery	Y		A2	19.6582	$813.71
26260	Extensive finger surgery	Y		A2	14.1062	$583.90
26261	Extensive finger surgery	Y		A2	14.1062	$583.90
26262	Partial removal of finger	Y		A2	13.3525	$552.70
26320	Removal of implant from hand	Y		A2	13.0039	$538.27
26340	Manipulate finger w/anesth	Y		G2	5.9948	$248.14
26350	Repair finger/hand tendon	Y		A2	17.5733	$727.41
26352	Repair/graft hand tendon	Y		A2	21.0717	$872.22
26356	Repair finger/hand tendon	Y		A2	21.0717	$872.22
26357	Repair finger/hand tendon	Y		A2	21.0717	$872.22
26358	Repair/graft hand tendon	Y		A2	21.0717	$872.22
26370	Repair finger/hand tendon	Y		A2	21.0717	$872.22
26372	Repair/graft hand tendon	Y		A2	21.0717	$872.22
26373	Repair finger/hand tendon	Y		A2	19.6582	$813.71
26390	Revise hand/finger tendon	Y		A2	21.0717	$872.22
26392	Repair/graft hand tendon	Y		A2	19.6582	$813.71
26410	Repair hand tendon	Y		A2	14.1062	$583.90
26412	Repair/graft hand tendon	Y		A2	19.6582	$813.71
26415	Excision, hand/finger tendon	Y		A2	21.0717	$872.22
26416	Graft hand or finger tendon	Y		A2	19.6582	$813.71
26418	Repair finger tendon	Y		A2	15.5198	$642.41
26420	Repair/graft finger tendon	Y		A2	21.0717	$872.22
26426	Repair finger/hand tendon	Y		A2	19.6582	$813.71
26428	Repair/graft finger tendon	Y		A2	19.6582	$813.71
26432	Repair finger tendon	Y		A2	14.1062	$583.90
26433	Repair finger tendon	Y		A2	14.1062	$583.90
26434	Repair/graft finger tendon	Y		A2	19.6582	$813.71
26437	Realignment of tendons	Y		A2	14.1062	$583.90
26440	Release palm/finger tendon	Y		A2	14.1062	$583.90
26442	Release palm & finger tendon	Y		A2	19.6582	$813.71
26445	Release hand/finger tendon	Y		A2	14.1062	$583.90
26449	Release forearm/hand tendon	Y		A2	19.6582	$813.71
26450	Incision of palm tendon	Y		A2	14.1062	$583.90
26455	Incision of finger tendon	Y		A2	14.1062	$583.90
26460	Incise hand/finger tendon	Y		A2	14.1062	$583.90

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26471	Fusion of finger tendons	Y		A2	13.3525	$552.70
26474	Fusion of finger tendons	Y		A2	13.3525	$552.70
26476	Tendon lengthening	Y		A2	12.0214	$497.60
26477	Tendon shortening	Y		A2	12.0214	$497.60
26478	Lengthening of hand tendon	Y		A2	12.0214	$497.60
26479	Shortening of hand tendon	Y		A2	12.0214	$497.60
26480	Transplant hand tendon	Y		A2	19.6582	$813.71
26483	Transplant/graft hand tendon	Y		A2	19.6582	$813.71
26485	Transplant palm tendon	Y		A2	18.9044	$782.51
26489	Transplant/graft palm tendon	Y		A2	19.6582	$813.71
26490	Revise thumb tendon	Y		A2	19.6582	$813.71
26492	Tendon transfer with graft	Y		A2	19.6582	$813.71
26494	Hand tendon/muscle transfer	Y		A2	19.6582	$813.71
26496	Revise thumb tendon	Y		A2	19.6582	$813.71
26497	Finger tendon transfer	Y		A2	19.6582	$813.71
26498	Finger tendon transfer	Y		A2	21.0717	$872.22
26499	Revision of finger	Y		A2	19.6582	$813.71
26500	Hand tendon reconstruction	Y		A2	15.5198	$642.41
26502	Hand tendon reconstruction	Y		A2	21.0717	$872.22
26508	Release thumb contracture	Y		A2	14.1062	$583.90
26510	Thumb tendon transfer	Y		A2	19.6582	$813.71
26516	Fusion of knuckle joint	Y		A2	17.5733	$727.41
26517	Fusion of knuckle joints	Y		A2	19.6582	$813.71
26518	Fusion of knuckle joints	Y		A2	19.6582	$813.71
26520	Release knuckle contracture	Y		A2	14.1062	$583.90
26525	Release finger contracture	Y		A2	14.1062	$583.90
26530	Revise knuckle joint	Y		A2	24.4517	$1,012.13
26531	Revise knuckle with implant	Y		A2	37.6395	$1,558.01
26535	Revise finger joint	Y		A2	26.8898	$1,113.05
26536	Revise/implant finger joint	Y		A2	34.365	$1,422.47
26540	Repair hand joint	Y		A2	15.5198	$642.41
26541	Repair hand joint with graft	Y		A2	25.3707	$1,050.17
26542	Repair hand joint with graft	Y		A2	15.5198	$642.41
26545	Reconstruct finger joint	Y		A2	21.0717	$872.22
26546	Repair nonunion hand	Y		A2	21.0717	$872.22
26548	Reconstruct finger joint	Y		A2	21.0717	$872.22
26550	Construct thumb replacement	Y		A2	18.9044	$782.51
26555	Positional change of finger	Y		A2	19.6582	$813.71

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26560	Repair of web finger	Y		A2	13.3525	$552.70
26561	Repair of web finger	Y		A2	19.6582	$813.71
26562	Repair of web finger	Y		A2	21.0717	$872.22
26565	Correct metacarpal flaw	Y		A2	22.0962	$914.63
26567	Correct finger deformity	Y		A2	22.0962	$914.63
26568	Lengthen metacarpal/finger	Y		A2	19.6582	$813.71
26580	Repair hand deformity	Y		A2	16.5443	$684.82
26587	Reconstruct extra finger	Y		A2	16.5443	$684.82
26590	Repair finger deformity	Y		A2	16.5443	$684.82
26591	Repair muscles of hand	Y		A2	19.6582	$813.71
26593	Release muscles of hand	Y		A2	14.1062	$583.90
26596	Excision constricting tissue	Y		A2	13.3525	$552.70
26600	Treat metacarpal fracture	Y		P2	1.5579	$64.49
26605	Treat metacarpal fracture	Y		A2	1.9994	$82.76
26607	Treat metacarpal fracture	Y		A2	10.9093	$451.57
26608	Treat metacarpal fracture	Y		A2	19.8258	$820.65
26615	Treat metacarpal fracture	Y		A2	28.3198	$1,172.24
26641	Treat thumb dislocation	Y		P2	1.5579	$64.49
26645	Treat thumb fracture	Y		A2	4.2179	$174.59
26650	Treat thumb fracture	Y		A2	17.6585	$730.94
26665	Treat thumb fracture	Y		A2	28.3198	$1,172.24
26670	Treat hand dislocation	Y		P2	1.5579	$64.49
26675	Treat hand dislocation	Y		A2	4.2179	$174.59
26676	Pin hand dislocation	Y		A2	17.6585	$730.94
26685	Treat hand dislocation	Y		A2	18.4125	$762.15
26686	Treat hand dislocation	Y		A2	36.5127	$1,511.37
26700	Treat knuckle dislocation	Y		P2	1.5579	$64.49
26705	Treat knuckle dislocation	Y		A2	1.9994	$82.76
26706	Pin knuckle dislocation	Y		A2	10.9093	$451.57
26715	Treat knuckle dislocation	Y		A2	19.8258	$820.65
26720	Treat finger fracture, each	Y		P2	1.5579	$64.49
26725	Treat finger fracture, each	Y		P2	1.5579	$64.49
26727	Treat finger fracture, each	Y		A2	24.1251	$998.61
26735	Treat finger fracture, each	Y		A2	19.8258	$820.65
26740	Treat finger fracture, each	Y		P2	1.5579	$64.49
26742	Treat finger fracture, each	Y		A2	1.9994	$82.76
26746	Treat finger fracture, each	Y		A2	20.8506	$863.07
26750	Treat finger fracture, each	Y		P2	1.5579	$64.49

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ADDENDUM AA.--FINAL ASC COVERED SURGICAL PROCEDURES FOR CY 2009 (INCLUDING SURGICAL PROCEDURES FOR WHICH PAYMENT IS PACKAGED)						
HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
26755	Treat finger fracture, each	Y		G2	1.5579	$64.49
26756	Pin finger fracture, each	Y		A2	17.6585	$730.94
26765	Treat finger fracture, each	Y		A2	19.8258	$820.65
26770	Treat finger dislocation	Y		G2	1.5579	$64.49
26775	Treat finger dislocation	Y		P3	4.165	$172.40
26776	Pin finger dislocation	Y		A2	17.6585	$730.94
26785	Treat finger dislocation	Y		A2	17.6585	$730.94
26820	Thumb fusion with graft	Y		A2	22.0962	$914.63
26841	Fusion of thumb	Y		A2	21.0717	$872.22
26842	Thumb fusion with graft	Y		A2	21.0717	$872.22
26843	Fusion of hand joint	Y		A2	19.6582	$813.71
26844	Fusion/graft of hand joint	Y		A2	19.6582	$813.71
26850	Fusion of knuckle	Y		A2	21.0717	$872.22
26852	Fusion of knuckle with graft	Y		A2	21.0717	$872.22
26860	Fusion of finger joint	Y		A2	19.6582	$813.71
26861	Fusion of finger jnt, add-on	Y		A2	18.9044	$782.51
26862	Fusion/graft of finger joint	Y		A2	21.0717	$872.22
26863	Fuse/graft added joint	Y		A2	19.6582	$813.71
26910	Amputate metacarpal bone	Y		A2	19.6582	$813.71
26951	Amputation of finger/thumb	Y		A2	13.3525	$552.70
26952	Amputation of finger/thumb	Y		A2	15.5198	$642.41
26990	Drainage of pelvis lesion	Y		A2	14.5416	$601.92
26991	Drainage of pelvis bursa	Y		A2	14.5416	$601.92
27000	Incision of hip tendon	Y		A2	15.8725	$657.01
27001	Incision of hip tendon	Y		A2	20.5759	$851.70
27003	Incision of hip tendon	Y		A2	20.5759	$851.70
27033	Exploration of hip joint	Y		A2	28.119	$1,163.93
27035	Denervation of hip joint	Y		A2	29.5325	$1,222.44
27040	Biopsy of soft tissues	Y		A2	7.9477	$328.98
27041	Biopsy of soft tissues	Y		A2	8.9547	$370.66
27047	Remove hip/pelvis lesion	Y		A2	15.9027	$658.26
27048	Remove hip/pelvis lesion	Y		A2	16.6567	$689.47
27049	Remove tumor, hip/pelvis	Y		A2	16.6567	$689.47
27050	Biopsy of sacroiliac joint	Y		A2	16.6265	$688.22
27052	Biopsy of hip joint	Y		A2	16.6265	$688.22
27060	Removal of ischial bursa	Y		A2	19.0646	$789.14
27062	Remove femur lesion/bursa	Y		A2	19.0646	$789.14
27065	Removal of hip bone lesion	Y		A2	19.0646	$789.14

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HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
27066	Removal of hip bone lesion	Y		A2	23.014	$952.62
27067	Remove/graft hip bone lesion	Y		A2	23.014	$952.62
27080	Removal of tail bone	Y		A2	19.822	$820.49
27086	Remove hip foreign body	Y		A2	7.9477	$328.98
27087	Remove hip foreign body	Y		A2	16.6265	$688.22
27093	Injection for hip x-ray	N		N1		
27095	Injection for hip x-ray	N		N1		
27097	Revision of hip tendon	Y		A2	20.5759	$851.70
27098	Transfer tendon to pelvis	Y		A2	20.5759	$851.70
27100	Transfer of abdominal muscle	Y		A2	29.5325	$1,222.44
27105	Transfer of spinal muscle	Y		A2	29.5325	$1,222.44
27110	Transfer of iliopsoas muscle	Y		A2	29.5325	$1,222.44
27111	Transfer of iliopsoas muscle	Y		A2	29.5325	$1,222.44
27193	Treat pelvic ring fracture	Y		A2	1.9994	$82.76
27194	Treat pelvic ring fracture	Y		A2	12.843	$531.61
27200	Treat tail bone fracture	Y		P2	1.5579	$64.49
27202	Treat tail bone fracture	Y		A2	26.1525	$1,082.53
27220	Treat hip socket fracture	Y		G2	1.5579	$64.49
27230	Treat thigh fracture	Y		A2	1.9994	$82.76
27238	Treat thigh fracture	Y		A2	4.2179	$174.59
27246	Treat thigh fracture	Y		A2	4.2179	$174.59
27250	Treat hip dislocation	Y		A2	1.9994	$82.76
27252	Treat hip dislocation	Y		A2	12.843	$531.61
27256	Treat hip dislocation	Y		G2	1.5579	$64.49
27257	Treat hip dislocation	Y		A2	13.597	$562.82
27265	Treat hip dislocation	Y		A2	1.9994	$82.76
27266	Treat hip dislocation	Y		A2	12.843	$531.61
27267	Cltx thigh fx	Y		G2	1.5579	$64.49
27275	Manipulation of hip joint	Y		A2	12.843	$531.61
27301	Drain thigh/knee lesion	Y		A2	15.4594	$639.91
27305	Incise thigh tendon & fascia	Y		A2	15.8725	$657.01
27306	Incision of thigh tendon	Y		A2	16.6265	$688.22
27307	Incision of thigh tendons	Y		A2	16.6265	$688.22
27310	Exploration of knee joint	Y		A2	21.9892	$910.20
27323	Biopsy, thigh soft tissues	Y		A2	7.9477	$328.98
27324	Biopsy, thigh soft tissues	Y		A2	14.5718	$603.17
27325	Neurectomy, hamstring	Y		A2	14.2783	$591.02
27326	Neurectomy, popliteal	Y		A2	14.2783	$591.02

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HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
27327	Removal of thigh lesion	Y		A2	15.9027	$658.26
27328	Removal of thigh lesion	Y		A2	16.6567	$689.47
27329	Remove tumor, thigh/knee	Y		A2	18.07	$747.97
27330	Biopsy, knee joint lining	Y		A2	21.9892	$910.20
27331	Explore/treat knee joint	Y		A2	21.9892	$910.20
27332	Removal of knee cartilage	Y		A2	21.9892	$910.20
27333	Removal of knee cartilage	Y		A2	21.9892	$910.20
27334	Remove knee joint lining	Y		A2	21.9892	$910.20
27335	Remove knee joint lining	Y		A2	21.9892	$910.20
27340	Removal of kneecap bursa	Y		A2	16.6265	$688.22
27345	Removal of knee cyst	Y		A2	18.0398	$746.72
27347	Remove knee cyst	Y		A2	18.0398	$746.72
27350	Removal of kneecap	Y		A2	21.9892	$910.20
27355	Remove femur lesion	Y		A2	20.5759	$851.70
27356	Remove femur lesion/graft	Y		A2	21.9892	$910.20
27357	Remove femur lesion/graft	Y		A2	23.014	$952.62
27358	Remove femur lesion/fixation	Y		A2	23.014	$952.62
27360	Partial removal, leg bone(s)	Y		A2	23.014	$952.62
27370	Injection for knee x-ray	N		N1		
27372	Removal of foreign body	Y		A2	22.3692	$925.93
27380	Repair of kneecap tendon	Y		A2	14.5416	$601.92
27381	Repair/graft kneecap tendon	Y		A2	16.6265	$688.22
27385	Repair of thigh muscle	Y		A2	16.6265	$688.22
27386	Repair/graft of thigh muscle	Y		A2	16.6265	$688.22
27390	Incision of thigh tendon	Y		A2	14.5416	$601.92
27391	Incision of thigh tendons	Y		A2	15.8725	$657.01
27392	Incision of thigh tendons	Y		A2	16.6265	$688.22
27393	Lengthening of thigh tendon	Y		A2	19.822	$820.49
27394	Lengthening of thigh tendons	Y		A2	20.5759	$851.70
27395	Lengthening of thigh tendons	Y		A2	28.119	$1,163.93
27396	Transplant of thigh tendon	Y		A2	20.5759	$851.70
27397	Transplants of thigh tendons	Y		A2	28.119	$1,163.93
27400	Revise thigh muscles/tendons	Y		A2	28.119	$1,163.93
27403	Repair of knee cartilage	Y		A2	21.9892	$910.20
27405	Repair of knee ligament	Y		A2	29.5325	$1,222.44
27407	Repair of knee ligament	Y		A2	49.6403	$2,054.76
27409	Repair of knee ligaments	Y		A2	29.5325	$1,222.44
27416	Osteochondral knee autograft	Y		G2	44.2241	$1,830.57

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27418	Repair degenerated kneecap	Y		A2	28.119	$1,163.93
27420	Revision of unstable kneecap	Y		A2	28.119	$1,163.93
27422	Revision of unstable kneecap	Y		A2	33.8316	$1,400.39
27424	Revision/removal of kneecap	Y		A2	28.119	$1,163.93
27425	Lat retinacular release open	Y		A2	26.2885	$1,088.16
27427	Reconstruction, knee	Y		A2	28.119	$1,163.93
27428	Reconstruction, knee	Y		A2	49.6403	$2,054.76
27429	Reconstruction, knee	Y		A2	49.6403	$2,054.76
27430	Revision of thigh muscles	Y		A2	29.5325	$1,222.44
27435	Incision of knee joint	Y		A2	29.5325	$1,222.44
27437	Revise kneecap	Y		A2	25.865	$1,070.63
27438	Revise kneecap with implant	Y		A2	34.365	$1,422.47
27440	Revision of knee joint	Y		G2	36.889	$1,526.95
27441	Revision of knee joint	Y		A2	26.8898	$1,113.05
27442	Revision of knee joint	Y		A2	26.8898	$1,113.05
27443	Revision of knee joint	Y		A2	26.8898	$1,113.05
27446	Revision of knee joint	Y	CH	J8	263.841	$10,921.17
27496	Decompression of thigh/knee	Y		A2	19.0646	$789.14
27497	Decompression of thigh/knee	Y		A2	16.6265	$688.22
27498	Decompression of thigh/knee	Y		A2	16.6265	$688.22
27499	Decompression of thigh/knee	Y		A2	16.6265	$688.22
27500	Treatment of thigh fracture	Y		A2	4.2179	$174.59
27501	Treatment of thigh fracture	Y		A2	1.9994	$82.76
27502	Treatment of thigh fracture	Y		A2	10.9093	$451.57
27503	Treatment of thigh fracture	Y		A2	1.9994	$82.76
27508	Treatment of thigh fracture	Y		A2	1.9994	$82.76
27509	Treatment of thigh fracture	Y		A2	18.4125	$762.15
27510	Treatment of thigh fracture	Y		A2	4.2179	$174.59
27516	Treat thigh fx growth plate	Y		A2	1.9994	$82.76
27517	Treat thigh fx growth plate	Y		A2	1.9994	$82.76
27520	Treat kneecap fracture	Y		A2	1.9994	$82.76
27530	Treat knee fracture	Y		A2	1.9994	$82.76
27532	Treat knee fracture	Y		A2	10.9093	$451.57
27538	Treat knee fracture(s)	Y		A2	1.9994	$82.76
27550	Treat knee dislocation	Y		A2	1.9994	$82.76
27552	Treat knee dislocation	Y		A2	11.5121	$476.52
27560	Treat kneecap dislocation	Y		A2	1.9994	$82.76
27562	Treat kneecap dislocation	Y		A2	11.5121	$476.52

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27566	Treat kneecap dislocation	Y		A2	26.1525	$1,082.53
27570	Fixation of knee joint	Y		A2	11.5121	$476.52
27594	Amputation follow-up surgery	Y		A2	16.6265	$688.22
27600	Decompression of lower leg	Y		A2	16.6265	$688.22
27601	Decompression of lower leg	Y		A2	16.6265	$688.22
27602	Decompression of lower leg	Y		A2	16.6265	$688.22
27603	Drain lower leg lesion	Y		A2	14.7056	$608.71
27604	Drain lower leg bursa	Y		A2	15.8725	$657.01
27605	Incision of achilles tendon	Y		A2	14.4636	$598.69
27606	Incision of achilles tendon	Y		A2	14.5416	$601.92
27607	Treat lower leg bone lesion	Y		A2	15.8725	$657.01
27610	Explore/treat ankle joint	Y		A2	19.822	$820.49
27612	Exploration of ankle joint	Y		A2	20.5759	$851.70
27613	Biopsy lower leg soft tissue	Y		P3	3.2675	$135.25
27614	Biopsy lower leg soft tissue	Y		A2	15.9027	$658.26
27615	Remove tumor, lower leg	Y		A2	20.5759	$851.70
27618	Remove lower leg lesion	Y		A2	13.0039	$538.27
27619	Remove lower leg lesion	Y		A2	16.6567	$689.47
27620	Explore/treat ankle joint	Y		A2	21.9892	$910.20
27625	Remove ankle joint lining	Y		A2	21.9892	$910.20
27626	Remove ankle joint lining	Y		A2	21.9892	$910.20
27630	Removal of tendon lesion	Y		A2	16.6265	$688.22
27635	Remove lower leg bone lesion	Y		A2	20.5759	$851.70
27637	Remove/graft leg bone lesion	Y		A2	20.5759	$851.70
27638	Remove/graft leg bone lesion	Y		A2	20.5759	$851.70
27640	Partial removal of tibia	Y		A2	27.3653	$1,132.73
27641	Partial removal of fibula	Y		A2	19.822	$820.49
27647	Extensive ankle/heel surgery	Y		A2	28.119	$1,163.93
27648	Injection for ankle x-ray	N		N1		
27650	Repair achilles tendon	Y		A2	28.119	$1,163.93
27652	Repair/graft achilles tendon	Y		A2	48.227	$1,996.26
27654	Repair of achilles tendon	Y		A2	28.119	$1,163.93
27656	Repair leg fascia defect	Y		A2	15.8725	$657.01
27658	Repair of leg tendon, each	Y		A2	14.5416	$601.92
27659	Repair of leg tendon, each	Y		A2	15.8725	$657.01
27664	Repair of leg tendon, each	Y		A2	15.8725	$657.01
27665	Repair of leg tendon, each	Y		A2	19.822	$820.49
27675	Repair lower leg tendons	Y		A2	15.8725	$657.01

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27676	Repair lower leg tendons	Y		A2	20.5759	$851.70
27680	Release of lower leg tendon	Y		A2	20.5759	$851.70
27681	Release of lower leg tendons	Y		A2	19.822	$820.49
27685	Revision of lower leg tendon	Y		A2	20.5759	$851.70
27686	Revise lower leg tendons	Y		A2	20.5759	$851.70
27687	Revision of calf tendon	Y		A2	20.5759	$851.70
27690	Revise lower leg tendon	Y		A2	29.5325	$1,222.44
27691	Revise lower leg tendon	Y		A2	29.5325	$1,222.44
27692	Revise additional leg tendon	Y		A2	28.119	$1,163.93
27695	Repair of ankle ligament	Y		A2	19.822	$820.49
27696	Repair of ankle ligaments	Y		A2	19.822	$820.49
27698	Repair of ankle ligament	Y		A2	19.822	$820.49
27700	Revision of ankle joint	Y		A2	26.8898	$1,113.05
27704	Removal of ankle implant	Y		A2	15.8725	$657.01
27705	Incision of tibia	Y		A2	27.3653	$1,132.73
27707	Incision of fibula	Y		A2	15.8725	$657.01
27709	Incision of tibia & fibula	Y		A2	19.822	$820.49
27726	Repair fibula nonunion	Y		G2	24.8106	$1,026.99
27730	Repair of tibia epiphysis	Y		A2	19.822	$820.49
27732	Repair of fibula epiphysis	Y		A2	19.822	$820.49
27734	Repair lower leg epiphyses	Y		A2	19.822	$820.49
27740	Repair of leg epiphyses	Y		A2	19.822	$820.49
27742	Repair of leg epiphyses	Y		A2	27.3653	$1,132.73
27745	Reinforce tibia	Y		A2	48.227	$1,996.26
27750	Treatment of tibia fracture	Y		A2	1.9994	$82.76
27752	Treatment of tibia fracture	Y		A2	10.9093	$451.57
27756	Treatment of tibia fracture	Y		A2	18.4125	$762.15
27758	Treatment of tibia fracture	Y		A2	28.3198	$1,172.24
27759	Treatment of tibia fracture	Y		A2	37.926	$1,569.87
27760	Cltx medial ankle fx	Y		A2	1.9994	$82.76
27762	Cltx med ankle fx w/mnpj	Y		A2	10.9093	$451.57
27766	Optx medial ankle fx	Y		A2	26.9062	$1,113.73
27767	Cltx post ankle fx	Y		G2	1.5579	$64.49
27768	Cltx post ankle fx w/mnpj	Y		G2	1.5579	$64.49
27769	Optx post ankle fx	Y		G2	41.7982	$1,730.15
27780	Treatment of fibula fracture	Y		A2	1.9994	$82.76
27781	Treatment of fibula fracture	Y		A2	10.9093	$451.57
27784	Treatment of fibula fracture	Y		A2	26.9062	$1,113.73

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27786	Treatment of ankle fracture	Y		A2	1.9994	$82.76
27788	Treatment of ankle fracture	Y		A2	1.9994	$82.76
27792	Treatment of ankle fracture	Y		A2	26.9062	$1,113.73
27808	Treatment of ankle fracture	Y		A2	1.9994	$82.76
27810	Treatment of ankle fracture	Y		A2	4.2179	$174.59
27814	Treatment of ankle fracture	Y		A2	26.9062	$1,113.73
27816	Treatment of ankle fracture	Y		A2	1.9994	$82.76
27818	Treatment of ankle fracture	Y		A2	4.2179	$174.59
27822	Treatment of ankle fracture	Y		A2	26.9062	$1,113.73
27823	Treatment of ankle fracture	Y		A2	36.5127	$1,511.37
27824	Treat lower leg fracture	Y		A2	1.9994	$82.76
27825	Treat lower leg fracture	Y		A2	10.9093	$451.57
27826	Treat lower leg fracture	Y		A2	26.9062	$1,113.73
27827	Treat lower leg fracture	Y		A2	36.5127	$1,511.37
27828	Treat lower leg fracture	Y		A2	37.926	$1,569.87
27829	Treat lower leg joint	Y		A2	26.1525	$1,082.53
27830	Treat lower leg dislocation	Y		A2	1.9994	$82.76
27831	Treat lower leg dislocation	Y		A2	10.9093	$451.57
27832	Treat lower leg dislocation	Y		A2	26.1525	$1,082.53
27840	Treat ankle dislocation	Y		A2	4.2179	$174.59
27842	Treat ankle dislocation	Y		A2	11.5121	$476.52
27846	Treat ankle dislocation	Y		A2	26.9062	$1,113.73
27848	Treat ankle dislocation	Y		A2	26.9062	$1,113.73
27860	Fixation of ankle joint	Y		A2	11.5121	$476.52
27870	Fusion of ankle joint, open	Y		A2	49.6403	$2,054.76
27871	Fusion of tibiofibular joint	Y		A2	49.6403	$2,054.76
27884	Amputation follow-up surgery	Y		A2	16.6265	$688.22
27889	Amputation of foot at ankle	Y		A2	20.5759	$851.70
27892	Decompression of leg	Y		A2	16.6265	$688.22
27893	Decompression of leg	Y		A2	16.6265	$688.22
27894	Decompression of leg	Y		A2	16.6265	$688.22
28001	Drainage of bursa of foot	Y		P3	3.1889	$132.00
28002	Treatment of foot infection	Y		A2	16.6265	$688.22
28003	Treatment of foot infection	Y		A2	16.6265	$688.22
28005	Treat foot bone lesion	Y		A2	16.5485	$684.99
28008	Incision of foot fascia	Y		A2	16.5485	$684.99
28010	Incision of toe tendon	Y		P3	2.3439	$97.02
28011	Incision of toe tendons	Y		A2	16.5485	$684.99

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HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
28020	Exploration of foot joint	Y		A2	15.7945	$653.78
28022	Exploration of foot joint	Y		A2	15.7945	$653.78
28024	Exploration of toe joint	Y		A2	15.7945	$653.78
28035	Decompression of tibia nerve	Y		A2	16.4455	$680.73
28043	Excision of foot lesion	Y		A2	15.9027	$658.26
28045	Excision of foot lesion	Y		A2	16.5485	$684.99
28046	Resection of tumor, foot	Y		A2	16.5485	$684.99
28050	Biopsy of foot joint lining	Y		A2	15.7945	$653.78
28052	Biopsy of foot joint lining	Y		A2	15.7945	$653.78
28054	Biopsy of toe joint lining	Y		A2	15.7945	$653.78
28055	Neurectomy, foot	Y		A2	16.4455	$680.73
28060	Partial removal, foot fascia	Y		A2	15.7945	$653.78
28062	Removal of foot fascia	Y		A2	16.5485	$684.99
28070	Removal of foot joint lining	Y		A2	16.5485	$684.99
28072	Removal of foot joint lining	Y		A2	16.5485	$684.99
28080	Removal of foot lesion	Y		A2	16.5485	$684.99
28086	Excise foot tendon sheath	Y		A2	15.7945	$653.78
28088	Excise foot tendon sheath	Y		A2	15.7945	$653.78
28090	Removal of foot lesion	Y		A2	16.5485	$684.99
28092	Removal of toe lesions	Y		A2	16.5485	$684.99
28100	Removal of ankle/heel lesion	Y		A2	15.7945	$653.78
28102	Remove/graft foot lesion	Y		A2	29.0641	$1,203.05
28103	Remove/graft foot lesion	Y		A2	29.0641	$1,203.05
28104	Removal of foot lesion	Y		A2	15.7945	$653.78
28106	Remove/graft foot lesion	Y		A2	29.0641	$1,203.05
28107	Remove/graft foot lesion	Y		A2	29.0641	$1,203.05
28108	Removal of toe lesions	Y		A2	15.7945	$653.78
28110	Part removal of metatarsal	Y		A2	16.5485	$684.99
28111	Part removal of metatarsal	Y		A2	16.5485	$684.99
28112	Part removal of metatarsal	Y		A2	16.5485	$684.99
28113	Part removal of metatarsal	Y		A2	16.5485	$684.99
28114	Removal of metatarsal heads	Y		A2	16.5485	$684.99
28116	Revision of foot	Y		A2	16.5485	$684.99
28118	Removal of heel bone	Y		A2	17.9617	$743.49
28119	Removal of heel spur	Y		A2	17.9617	$743.49
28120	Part removal of ankle/heel	Y		A2	22.261	$921.45
28122	Partial removal of foot bone	Y		A2	16.5485	$684.99
28124	Partial removal of toe	Y		P3	5.3934	$223.25

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28126	Partial removal of toe	Y		A2	16.5485	$684.99
28130	Removal of ankle bone	Y		A2	16.5485	$684.99
28140	Removal of metatarsal	Y		A2	16.5485	$684.99
28150	Removal of toe	Y		A2	16.5485	$684.99
28153	Partial removal of toe	Y		A2	16.5485	$684.99
28160	Partial removal of toe	Y		A2	16.5485	$684.99
28171	Extensive foot surgery	Y		A2	16.5485	$684.99
28173	Extensive foot surgery	Y		A2	16.5485	$684.99
28175	Extensive foot surgery	Y		A2	16.5485	$684.99
28190	Removal of foot foreign body	Y		P3	3.2936	$136.33
28192	Removal of foot foreign body	Y		A2	13.0039	$538.27
28193	Removal of foot foreign body	Y		A2	8.9547	$370.66
28200	Repair of foot tendon	Y		A2	16.5485	$684.99
28202	Repair/graft of foot tendon	Y		A2	16.5485	$684.99
28208	Repair of foot tendon	Y		A2	16.5485	$684.99
28210	Repair/graft of foot tendon	Y		A2	29.0641	$1,203.05
28220	Release of foot tendon	Y		P3	5.0798	$210.27
28222	Release of foot tendons	Y		A2	14.4636	$598.69
28225	Release of foot tendon	Y		A2	14.4636	$598.69
28226	Release of foot tendons	Y		A2	14.4636	$598.69
28230	Incision of foot tendon(s)	Y		P3	4.9839	$206.30
28232	Incision of toe tendon	Y		P3	4.766	$197.28
28234	Incision of foot tendon	Y		A2	15.7945	$653.78
28238	Revision of foot tendon	Y		A2	29.0641	$1,203.05
28240	Release of big toe	Y		A2	15.7945	$653.78
28250	Revision of foot fascia	Y		A2	16.5485	$684.99
28260	Release of midfoot joint	Y		A2	16.5485	$684.99
28261	Revision of foot tendon	Y		A2	16.5485	$684.99
28262	Revision of foot and ankle	Y		A2	17.9617	$743.49
28264	Release of midfoot joint	Y		A2	26.9792	$1,116.75
28270	Release of foot contracture	Y		A2	16.5485	$684.99
28272	Release of toe joint, each	Y		P3	4.6005	$190.43
28280	Fusion of toes	Y		A2	15.7945	$653.78
28285	Repair of hammertoe	Y		A2	16.5485	$684.99
28286	Repair of hammertoe	Y		A2	17.9617	$743.49
28288	Partial removal of foot bone	Y		A2	16.5485	$684.99
28289	Repair hallux rigidus	Y		A2	16.5485	$684.99
28290	Correction of bunion	Y		A2	20.3981	$844.34

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28292	Correction of bunion	Y		A2	20.3981	$844.34
28293	Correction of bunion	Y		A2	21.1519	$875.54
28294	Correction of bunion	Y		A2	21.1519	$875.54
28296	Correction of bunion	Y		A2	21.1519	$875.54
28297	Correction of bunion	Y		A2	21.1519	$875.54
28298	Correction of bunion	Y		A2	21.1519	$875.54
28299	Correction of bunion	Y		A2	23.59	$976.46
28300	Incision of heel bone	Y		A2	28.3103	$1,171.85
28302	Incision of ankle bone	Y		A2	15.7945	$653.78
28304	Incision of midfoot bones	Y		A2	28.3103	$1,171.85
28305	Incise/graft midfoot bones	Y		A2	29.0641	$1,203.05
28306	Incision of metatarsal	Y		A2	17.9617	$743.49
28307	Incision of metatarsal	Y		A2	17.9617	$743.49
28308	Incision of metatarsal	Y		A2	15.7945	$653.78
28309	Incision of metatarsals	Y		A2	30.4776	$1,261.56
28310	Revision of big toe	Y		A2	16.5485	$684.99
28312	Revision of toe	Y		A2	16.5485	$684.99
28313	Repair deformity of toe	Y		A2	15.7945	$653.78
28315	Removal of sesamoid bone	Y		A2	17.9617	$743.49
28320	Repair of foot bones	Y		A2	30.4776	$1,261.56
28322	Repair of metatarsals	Y		A2	30.4776	$1,261.56
28340	Resect enlarged toe tissue	Y		A2	17.9617	$743.49
28341	Resect enlarged toe	Y		A2	17.9617	$743.49
28344	Repair extra toe(s)	Y		A2	17.9617	$743.49
28345	Repair webbed toe(s)	Y		A2	17.9617	$743.49
28400	Treatment of heel fracture	Y		A2	1.9994	$82.76
28405	Treatment of heel fracture	Y		A2	10.9093	$451.57
28406	Treatment of heel fracture	Y		A2	17.6585	$730.94
28415	Treat heel fracture	Y		A2	36.5127	$1,511.37
28420	Treat/graft heel fracture	Y		A2	28.3198	$1,172.24
28430	Treatment of ankle fracture	Y		P2	1.5579	$64.49
28435	Treatment of ankle fracture	Y		A2	1.9994	$82.76
28436	Treatment of ankle fracture	Y		A2	17.6585	$730.94
28445	Treat ankle fracture	Y		A2	26.9062	$1,113.73
28446	Osteochondral talus autogrft	Y		G2	46.114	$1,908.80
28450	Treat midfoot fracture, each	Y		P2	1.5579	$64.49
28455	Treat midfoot fracture, each	Y		P2	1.5579	$64.49
28456	Treat midfoot fracture	Y		A2	17.6585	$730.94

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28465	Treat midfoot fracture, each	Y		A2	26.9062	$1,113.73
28470	Treat metatarsal fracture	Y		P2	1.5579	$64.49
28475	Treat metatarsal fracture	Y		P2	1.5579	$64.49
28476	Treat metatarsal fracture	Y		A2	17.6585	$730.94
28485	Treat metatarsal fracture	Y		A2	28.3198	$1,172.24
28490	Treat big toe fracture	Y		P2	1.5579	$64.49
28495	Treat big toe fracture	Y		P2	1.5579	$64.49
28496	Treat big toe fracture	Y		A2	17.6585	$730.94
28505	Treat big toe fracture	Y		A2	18.4125	$762.15
28510	Treatment of toe fracture	Y		P3	1.4029	$58.07
28515	Treatment of toe fracture	Y		P2	1.5579	$64.49
28525	Treat toe fracture	Y		A2	18.4125	$762.15
28530	Treat sesamoid bone fracture	Y		P3	1.3505	$55.90
28531	Treat sesamoid bone fracture	Y		A2	18.4125	$762.15
28540	Treat foot dislocation	Y		P2	1.5579	$64.49
28545	Treat foot dislocation	Y		A2	16.3276	$675.85
28546	Treat foot dislocation	Y		A2	17.6585	$730.94
28555	Repair foot dislocation	Y		A2	26.1525	$1,082.53
28570	Treat foot dislocation	Y	CH	P3	2.0214	$83.67
28575	Treat foot dislocation	Y		A2	10.9093	$451.57
28576	Treat foot dislocation	Y		A2	18.4125	$762.15
28585	Repair foot dislocation	Y		A2	18.4125	$762.15
28600	Treat foot dislocation	Y		P2	1.5579	$64.49
28605	Treat foot dislocation	Y		A2	1.9994	$82.76
28606	Treat foot dislocation	Y		A2	17.6585	$730.94
28615	Repair foot dislocation	Y		A2	26.9062	$1,113.73
28630	Treat toe dislocation	Y	CH	P2	1.5579	$64.49
28635	Treat toe dislocation	Y		A2	11.5121	$476.52
28636	Treat toe dislocation	Y		A2	18.4125	$762.15
28645	Repair toe dislocation	Y		A2	18.4125	$762.15
28660	Treat toe dislocation	Y		P3	1.1154	$46.17
28665	Treat toe dislocation	Y		A2	11.5121	$476.52
28666	Treat toe dislocation	Y		A2	18.4125	$762.15
28675	Repair of toe dislocation	Y		A2	18.4125	$762.15
28705	Fusion of foot bones	Y		A2	30.4776	$1,261.56
28715	Fusion of foot bones	Y		A2	49.6403	$2,054.76
28725	Fusion of foot bones	Y		A2	30.4776	$1,261.56
28730	Fusion of foot bones	Y		A2	30.4776	$1,261.56

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28735	Fusion of foot bones	Y		A2	30.4776	$1,261.56
28737	Revision of foot bones	Y		A2	31.5022	$1,303.97
28740	Fusion of foot bones	Y		A2	30.4776	$1,261.56
28750	Fusion of big toe joint	Y		A2	30.4776	$1,261.56
28755	Fusion of big toe joint	Y		A2	17.9617	$743.49
28760	Fusion of big toe joint	Y		A2	30.4776	$1,261.56
28810	Amputation toe & metatarsal	Y		A2	15.7945	$653.78
28820	Amputation of toe	Y		A2	15.7945	$653.78
28825	Partial amputation of toe	Y		A2	15.7945	$653.78
28890	High energy eswt, plantar f	Y		P3	4.1737	$172.76
29000	Application of body cast	N		G2	1.0575	$43.77
29010	Application of body cast	N		P2	2.37	$98.10
29015	Application of body cast	N		P2	2.37	$98.10
29020	Application of body cast	N		G2	1.0575	$43.77
29025	Application of body cast	N		P2	1.0575	$43.77
29035	Application of body cast	N		P2	2.37	$98.10
29040	Application of body cast	N		G2	1.0575	$43.77
29044	Application of body cast	N		P2	2.37	$98.10
29046	Application of body cast	N		G2	2.37	$98.10
29049	Application of figure eight	N	CH	P3	0.9584	$39.67
29055	Application of shoulder cast	N		P2	2.37	$98.10
29058	Application of shoulder cast	N		P2	1.0575	$43.77
29065	Application of long arm cast	N		P3	1.1241	$46.53
29075	Application of forearm cast	N		P3	1.0804	$44.72
29085	Apply hand/wrist cast	N		P2	1.0575	$43.77
29086	Apply finger cast	N		P3	0.9062	$37.51
29105	Apply long arm splint	N		P3	0.9758	$40.39
29125	Apply forearm splint	N		P3	0.8451	$34.98
29126	Apply forearm splint	N		P3	0.8975	$37.15
29130	Application of finger splint	N		P3	0.3834	$15.87
29131	Application of finger splint	N		P3	0.5576	$23.08
29200	Strapping of chest	N		P3	0.5402	$22.36
29220	Strapping of low back	N		P3	0.5837	$24.16
29240	Strapping of shoulder	N		P3	0.61	$25.25
29260	Strapping of elbow or wrist	N		P3	0.5837	$24.16
29280	Strapping of hand or finger	N		P3	0.5926	$24.53
29305	Application of hip cast	N		P2	2.37	$98.10
29325	Application of hip casts	N		P2	2.37	$98.10

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29345	Application of long leg cast	N		P3	1.4725	$60.95
29355	Application of long leg cast	N		P3	1.4464	$59.87
29358	Apply long leg cast brace	N		P3	1.795	$74.30
29365	Application of long leg cast	N		P3	1.3942	$57.71
29405	Apply short leg cast	N		P3	1.0369	$42.92
29425	Apply short leg cast	N		P3	1.0543	$43.64
29435	Apply short leg cast	N		P3	1.3331	$55.18
29440	Addition of walker to cast	N		P3	0.5663	$23.44
29445	Apply rigid leg cast	N		P3	1.4029	$58.07
29450	Application of leg cast	N		P2	1.0575	$43.77
29505	Application, long leg splint	N		P3	0.941	$38.95
29515	Application lower leg splint	N		P3	0.8016	$33.18
29520	Strapping of hip	N		P3	0.575	$23.80
29530	Strapping of knee	N		P3	0.5837	$24.16
29540	Strapping of ankle and/or ft	N		P3	0.4356	$18.03
29550	Strapping of toes	N		P3	0.4443	$18.39
29580	Application of paste boot	N		P3	0.6013	$24.89
29590	Application of foot splint	N		P3	0.488	$20.20
29700	Removal/revision of cast	N		P3	0.8103	$33.54
29705	Removal/revision of cast	N		P3	0.6883	$28.49
29710	Removal/revision of cast	N		P3	1.2111	$50.13
29715	Removal/revision of cast	N		P2	1.0575	$43.77
29720	Repair of body cast	N		P3	1.0108	$41.84
29730	Windowing of cast	N		P3	0.6622	$27.41
29740	Wedging of cast	N		P3	0.9062	$37.51
29750	Wedging of clubfoot cast	N		P3	0.9497	$39.31
29800	Jaw arthroscopy/surgery	Y		A2	20.3484	$842.28
29804	Jaw arthroscopy/surgery	Y		A2	20.3484	$842.28
29805	Shoulder arthroscopy, dx	Y		A2	20.3484	$842.28
29806	Shoulder arthroscopy/surgery	Y		A2	30.0019	$1,241.87
29807	Shoulder arthroscopy/surgery	Y		A2	30.0019	$1,241.87
29819	Shoulder arthroscopy/surgery	Y		A2	30.0019	$1,241.87
29820	Shoulder arthroscopy/surgery	Y		A2	30.0019	$1,241.87
29821	Shoulder arthroscopy/surgery	Y		A2	30.0019	$1,241.87
29822	Shoulder arthroscopy/surgery	Y		A2	20.3484	$842.28
29823	Shoulder arthroscopy/surgery	Y		A2	30.0019	$1,241.87
29824	Shoulder arthroscopy/surgery	Y		A2	22.7865	$943.20
29825	Shoulder arthroscopy/surgery	Y		A2	30.0019	$1,241.87

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29826	Shoulder arthroscopy/surgery	Y		A2	30.0019	$1,241.87
29827	Arthroscop rotator cuff repr	Y		A2	32.44	$1,342.79
29828	Arthroscopy biceps tenodesis	Y		G2	47.9898	$1,986.44
29830	Elbow arthroscopy	Y		A2	20.3484	$842.28
29834	Elbow arthroscopy/surgery	Y		A2	20.3484	$842.28
29835	Elbow arthroscopy/surgery	Y		A2	20.3484	$842.28
29836	Elbow arthroscopy/surgery	Y		A2	20.3484	$842.28
29837	Elbow arthroscopy/surgery	Y		A2	20.3484	$842.28
29838	Elbow arthroscopy/surgery	Y		A2	20.3484	$842.28
29840	Wrist arthroscopy	Y		A2	20.3484	$842.28
29843	Wrist arthroscopy/surgery	Y		A2	20.3484	$842.28
29844	Wrist arthroscopy/surgery	Y		A2	20.3484	$842.28
29845	Wrist arthroscopy/surgery	Y		A2	20.3484	$842.28
29846	Wrist arthroscopy/surgery	Y		A2	20.3484	$842.28
29847	Wrist arthroscopy/surgery	Y		A2	30.0019	$1,241.87
29848	Wrist endoscopy/surgery	Y		A2	30.1126	$1,246.45
29850	Knee arthroscopy/surgery	Y		A2	21.7617	$900.78
29851	Knee arthroscopy/surgery	Y		A2	31.4155	$1,300.38
29855	Tibial arthroscopy/surgery	Y		A2	31.4155	$1,300.38
29856	Tibial arthroscopy/surgery	Y		A2	31.4155	$1,300.38
29860	Hip arthroscopy, dx	Y		A2	31.4155	$1,300.38
29861	Hip arthroscopy/surgery	Y		A2	31.4155	$1,300.38
29862	Hip arthroscopy/surgery	Y		A2	39.7664	$1,646.05
29863	Hip arthroscopy/surgery	Y		A2	31.4155	$1,300.38
29866	Autgrft implnt, knee w/scope	Y		G2	47.9898	$1,986.44
29870	Knee arthroscopy, dx	Y		A2	20.3484	$842.28
29871	Knee arthroscopy/drainage	Y		A2	20.3484	$842.28
29873	Knee arthroscopy/surgery	Y		A2	20.3484	$842.28
29874	Knee arthroscopy/surgery	Y		A2	20.3484	$842.28
29875	Knee arthroscopy/surgery	Y		A2	21.7617	$900.78
29876	Knee arthroscopy/surgery	Y		A2	21.7617	$900.78
29877	Knee arthroscopy/surgery	Y		A2	21.7617	$900.78
29879	Knee arthroscopy/surgery	Y		A2	20.3484	$842.28
29880	Knee arthroscopy/surgery	Y		A2	21.7617	$900.78
29881	Knee arthroscopy/surgery	Y		A2	21.7617	$900.78
29882	Knee arthroscopy/surgery	Y		A2	20.3484	$842.28
29883	Knee arthroscopy/surgery	Y		A2	20.3484	$842.28
29884	Knee arthroscopy/surgery	Y		A2	20.3484	$842.28

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HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
29885	Knee arthroscopy/surgery	Y		A2	30.0019	$1,241.87
29886	Knee arthroscopy/surgery	Y		A2	20.3484	$842.28
29887	Knee arthroscopy/surgery	Y		A2	20.3484	$842.28
29888	Knee arthroscopy/surgery	Y		A2	30.0019	$1,241.87
29889	Knee arthroscopy/surgery	Y		A2	30.0019	$1,241.87
29891	Ankle arthroscopy/surgery	Y		A2	30.0019	$1,241.87
29892	Ankle arthroscopy/surgery	Y		A2	30.0019	$1,241.87
29893	Scope, plantar fasciotomy	Y		A2	25.3299	$1,048.48
29894	Ankle arthroscopy/surgery	Y		A2	20.3484	$842.28
29895	Ankle arthroscopy/surgery	Y		A2	20.3484	$842.28
29897	Ankle arthroscopy/surgery	Y		A2	20.3484	$842.28
29898	Ankle arthroscopy/surgery	Y		A2	20.3484	$842.28
29899	Ankle arthroscopy/surgery	Y		A2	30.0019	$1,241.87
29900	Mcp joint arthroscopy, dx	Y		A2	20.3484	$842.28
29901	Mcp joint arthroscopy, surg	Y		A2	20.3484	$842.28
29902	Mcp joint arthroscopy, surg	Y		A2	20.3484	$842.28
29904	Subtalar arthro w/fb rmvl	Y		G2	28.6825	$1,187.25
29905	Subtalar arthro w/exc	Y		G2	28.6825	$1,187.25
29906	Subtalar arthro w/deb	Y		G2	28.6825	$1,187.25
29907	Subtalar arthro w/fusion	Y		G2	47.9898	$1,986.44
30000	Drainage of nose lesion	Y		P2	3.2246	$133.48
30020	Drainage of nose lesion	Y		P2	3.2246	$133.48
30100	Intranasal biopsy	Y		P3	2.0912	$86.56
30110	Removal of nose polyp(s)	Y		P3	3.2327	$133.81
30115	Removal of nose polyp(s)	Y		A2	13.6586	$565.37
30117	Removal of intranasal lesion	Y		A2	14.4126	$596.58
30118	Removal of intranasal lesion	Y		A2	18.0767	$748.25
30120	Revision of nose	Y		A2	12.3277	$510.28
30124	Removal of nose lesion	Y		R2	7.3454	$304.05
30125	Removal of nose lesion	Y		A2	25.6688	$1,062.51
30130	Excise inferior turbinate	Y		A2	14.4126	$596.58
30140	Resect inferior turbinate	Y		A2	17.3227	$717.04
30150	Partial removal of nose	Y		A2	26.4228	$1,093.72
30160	Removal of nose	Y		A2	27.8361	$1,152.22
30200	Injection treatment of nose	Y		P3	1.6469	$68.17
30210	Nasal sinus therapy	Y		P3	2.0912	$86.56
30220	Insert nasal septal button	Y		A2	9.1397	$378.32
30300	Remove nasal foreign body	N		P2	0.6301	$26.08

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30310	Remove nasal foreign body	Y		A2	12.3277	$510.28
30320	Remove nasal foreign body	Y		A2	13.6586	$565.37
30400	Reconstruction of nose	Y		A2	27.8361	$1,152.22
30410	Reconstruction of nose	Y		A2	28.8609	$1,194.64
30420	Reconstruction of nose	Y		A2	28.8609	$1,194.64
30430	Revision of nose	Y		A2	18.0767	$748.25
30435	Revision of nose	Y		A2	28.8609	$1,194.64
30450	Revision of nose	Y		A2	32.1354	$1,330.18
30460	Revision of nose	Y		A2	32.1354	$1,330.18
30462	Revision of nose	Y		A2	36.187	$1,497.89
30465	Repair nasal stenosis	Y		A2	36.187	$1,497.89
30520	Repair of nasal septum	Y		A2	19.49	$806.75
30540	Repair nasal defect	Y		A2	28.8609	$1,194.64
30545	Repair nasal defect	Y		A2	28.8609	$1,194.64
30560	Release of nasal adhesions	Y		A2	3.3875	$140.22
30580	Repair upper jaw fistula	Y		A2	27.8361	$1,152.22
30600	Repair mouth/nose fistula	Y		A2	27.8361	$1,152.22
30620	Intranasal reconstruction	Y		A2	32.1354	$1,330.18
30630	Repair nasal septum defect	Y		A2	23.7893	$984.71
30801	Ablate inf turbinate, superf	Y		A2	7.595	$314.38
30802	Cauterization, inner nose	Y		A2	7.595	$314.38
30901	Control of nosebleed	Y		P2	1.0833	$44.84
30903	Control of nosebleed	Y		A2	1.3954	$57.76
30905	Control of nosebleed	Y		A2	1.3954	$57.76
30906	Repeat control of nosebleed	Y		A2	1.3954	$57.76
30915	Ligation, nasal sinus artery	Y		A2	18.5932	$769.63
30920	Ligation, upper jaw artery	Y		A2	19.3472	$800.84
30930	Ther fx, nasal inf turbinate	Y		A2	15.8259	$655.08
31000	Irrigation, maxillary sinus	Y	CH	P3	2.6925	$111.45
31002	Irrigation, sphenoid sinus	Y		R2	7.3454	$304.05
31020	Exploration, maxillary sinus	Y		A2	17.3227	$717.04
31030	Exploration, maxillary sinus	Y		A2	26.4228	$1,093.72
31032	Explore sinus, remove polyps	Y		A2	27.8361	$1,152.22
31040	Exploration behind upper jaw	Y		R2	24.1393	$999.20
31050	Exploration, sphenoid sinus	Y		A2	25.6688	$1,062.51
31051	Sphenoid sinus surgery	Y		A2	27.8361	$1,152.22
31070	Exploration of frontal sinus	Y		A2	17.3227	$717.04
31075	Exploration of frontal sinus	Y		A2	27.8361	$1,152.22

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31080	Removal of frontal sinus	Y		A2	27.8361	$1,152.22
31081	Removal of frontal sinus	Y		A2	27.8361	$1,152.22
31084	Removal of frontal sinus	Y		A2	27.8361	$1,152.22
31085	Removal of frontal sinus	Y		A2	27.8361	$1,152.22
31086	Removal of frontal sinus	Y		A2	27.8361	$1,152.22
31087	Removal of frontal sinus	Y		A2	27.8361	$1,152.22
31090	Exploration of sinuses	Y		A2	28.8609	$1,194.64
31200	Removal of ethmoid sinus	Y		A2	25.6688	$1,062.51
31201	Removal of ethmoid sinus	Y		A2	28.8609	$1,194.64
31205	Removal of ethmoid sinus	Y		A2	26.4228	$1,093.72
31231	Nasal endoscopy, dx	Y		P2	1.7629	$72.97
31233	Nasal/sinus endoscopy, dx	Y		A2	1.8989	$78.60
31235	Nasal/sinus endoscopy, dx	Y		A2	12.901	$534.01
31237	Nasal/sinus endoscopy, surg	Y		A2	14.2319	$589.10
31238	Nasal/sinus endoscopy, surg	Y		A2	12.901	$534.01
31239	Nasal/sinus endoscopy, surg	Y		A2	18.8314	$779.49
31240	Nasal/sinus endoscopy, surg	Y		A2	14.2319	$589.10
31254	Revision of ethmoid sinus	Y		A2	17.4179	$720.98
31255	Removal of ethmoid sinus	Y		A2	19.856	$821.90
31256	Exploration maxillary sinus	Y		A2	17.4179	$720.98
31267	Endoscopy, maxillary sinus	Y		A2	17.4179	$720.98
31276	Sinus endoscopy, surgical	Y		A2	17.4179	$720.98
31287	Nasal/sinus endoscopy, surg	Y		A2	17.4179	$720.98
31288	Nasal/sinus endoscopy, surg	Y		A2	17.4179	$720.98
31300	Removal of larynx lesion	Y		A2	20.5148	$849.17
31320	Diagnostic incision, larynx	Y		A2	25.6688	$1,062.51
31400	Revision of larynx	Y		A2	25.6688	$1,062.51
31420	Removal of epiglottis	Y		A2	25.6688	$1,062.51
31500	Insert emergency airway	N		G2	2.3579	$97.60
31502	Change of windpipe airway	N		G2	1.3557	$56.12
31505	Diagnostic laryngoscopy	Y		P2	0.801	$33.16
31510	Laryngoscopy with biopsy	Y		A2	14.2319	$589.10
31511	Remove foreign body, larynx	Y		A2	1.8989	$78.60
31512	Removal of larynx lesion	Y		A2	14.2319	$589.10
31513	Injection into vocal cord	Y		A2	1.8989	$78.60
31515	Laryngoscopy for aspiration	Y		A2	12.901	$534.01
31520	Dx laryngoscopy, newborn	Y		G2	1.7629	$72.97
31525	Dx laryngoscopy excl nb	Y		A2	12.901	$534.01

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31526	Dx laryngoscopy w/oper scope	Y		A2	16.6642	$689.78
31527	Laryngoscopy for treatment	Y		A2	15.333	$634.68
31528	Laryngoscopy and dilation	Y		A2	14.2319	$589.10
31529	Laryngoscopy and dilation	Y		A2	14.2319	$589.10
31530	Laryngoscopy w/fb removal	Y		A2	16.6642	$689.78
31531	Laryngoscopy w/fb & op scope	Y		A2	17.4179	$720.98
31535	Laryngoscopy w/biopsy	Y		A2	16.6642	$689.78
31536	Laryngoscopy w/bx & op scope	Y		A2	17.4179	$720.98
31540	Laryngoscopy w/exc of tumor	Y		A2	17.4179	$720.98
31541	Larynscop w/tumr exc + scope	Y		A2	18.8314	$779.49
31545	Remove vc lesion w/scope	Y		A2	18.8314	$779.49
31546	Remove vc lesion scope/graft	Y		A2	18.8314	$779.49
31560	Laryngoscop w/arytenoidectom	Y		A2	19.856	$821.90
31561	Larynscop, remve cart + scop	Y		A2	19.856	$821.90
31570	Laryngoscope w/vc inj	Y		A2	14.2319	$589.10
31571	Laryngoscop w/vc inj + scope	Y		A2	16.6642	$689.78
31575	Diagnostic laryngoscopy	Y	CH	P3	1.5162	$62.76
31576	Laryngoscopy with biopsy	Y		A2	16.6642	$689.78
31577	Remove foreign body, larynx	Y		A2	4.9226	$203.76
31578	Removal of larynx lesion	Y		A2	16.6642	$689.78
31579	Diagnostic laryngoscopy	Y		P3	2.7012	$111.81
31580	Revision of larynx	Y		A2	28.8609	$1,194.64
31582	Revision of larynx	Y		A2	28.8609	$1,194.64
31588	Revision of larynx	Y		A2	28.8609	$1,194.64
31590	Reinnervate larynx	Y		A2	28.8609	$1,194.64
31595	Larynx nerve surgery	Y		A2	25.6688	$1,062.51
31603	Incision of windpipe	Y		A2	7.595	$314.38
31605	Incision of windpipe	Y		G2	7.3454	$304.05
31611	Surgery/speech prosthesis	Y		A2	18.0767	$748.25
31612	Puncture/clear windpipe	Y		A2	15.9918	$661.95
31613	Repair windpipe opening	Y		A2	17.3227	$717.04
31614	Repair windpipe opening	Y		A2	25.6688	$1,062.51
31615	Visualization of windpipe	Y		A2	7.595	$314.38
31620	Endobronchial us add-on	N		N1		
31622	Dx bronchoscope/wash	Y		A2	8.895	$368.19
31623	Dx bronchoscope/brush	Y		A2	10.2259	$423.28
31624	Dx bronchoscope/lavage	Y		A2	10.2259	$423.28
31625	Bronchoscopy w/biopsy(s)	Y		A2	10.2259	$423.28

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31628	Bronchoscopy/lung bx, each	Y		A2	10.2259	$423.28
31629	Bronchoscopy/needle bx, each	Y		A2	10.2259	$423.28
31630	Bronchoscopy dilate/fx repr	Y		A2	17.523	$725.33
31631	Bronchoscopy, dilate w/stent	Y		A2	17.523	$725.33
31632	Bronchoscopy/lung bx, add'l	Y		G2	9.9453	$411.67
31633	Bronchoscopy/needle bx add'l	Y		G2	9.9453	$411.67
31635	Bronchoscopy w/fb removal	Y		A2	10.2259	$423.28
31636	Bronchoscopy, bronch stents	Y		A2	17.523	$725.33
31637	Bronchoscopy, stent add-on	Y		A2	8.895	$368.19
31638	Bronchoscopy, revise stent	Y		A2	17.523	$725.33
31640	Bronchoscopy w/tumor excise	Y		A2	17.523	$725.33
31641	Bronchoscopy, treat blockage	Y		A2	17.523	$725.33
31643	Diag bronchoscope/catheter	Y		A2	10.2259	$423.28
31645	Bronchoscopy, clear airways	Y		A2	8.895	$368.19
31646	Bronchoscopy, reclear airway	Y		A2	8.895	$368.19
31656	Bronchoscopy, inj for x-ray	Y		A2	8.895	$368.19
31715	Injection for bronchus x-ray	N		N1		
31717	Bronchial brush biopsy	Y		A2	4.9226	$203.76
31720	Clearance of airways	N		A2	0.7538	$31.20
31730	Intro, windpipe wire/tube	Y		A2	4.9226	$203.76
31750	Repair of windpipe	Y		A2	28.8609	$1,194.64
31755	Repair of windpipe	Y		A2	25.6688	$1,062.51
31820	Closure of windpipe lesion	Y		A2	12.3277	$510.28
31825	Repair of windpipe defect	Y		A2	17.3227	$717.04
31830	Revise windpipe scar	Y		A2	17.3227	$717.04
32400	Needle biopsy chest lining	Y		A2	8.5923	$355.66
32405	Biopsy, lung or mediastinum	Y		A2	8.5923	$355.66
32420	Puncture/clear lung	Y		A2	5.2248	$216.27
32421	Thoracentesis for aspiration	Y		A2	5.2248	$216.27
32422	Thoracentesis w/tube insert	Y		G2	5.2015	$215.31
32550	Insert pleural cath	Y		G2	29.1233	$1,205.50
32960	Therapeutic pneumothorax	Y		G2	5.2015	$215.31
32998	Perq rf ablate tx, pul tumor	Y		G2	45.3434	$1,876.90
33010	Drainage of heart sac	Y		A2	5.2248	$216.27
33011	Repeat drainage of heart sac	Y		A2	5.2248	$216.27
33206	Insertion of heart pacemaker	Y		J8	167.6312	$6,938.76
33207	Insertion of heart pacemaker	Y		J8	167.6312	$6,938.76
33208	Insertion of heart pacemaker	Y		J8	207.9103	$8,606.03

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33210	Insertion of heart electrode	Y	CH	G2	49.2255	$2,037.59
33211	Insertion of heart electrode	Y	CH	G2	49.2255	$2,037.59
33212	Insertion of pulse generator	Y		H8	131.6503	$5,449.40
33213	Insertion of pulse generator	Y		H8	151.9527	$6,289.78
33214	Upgrade of pacemaker system	Y		J8	207.9103	$8,606.03
33215	Reposition pacing-defib lead	Y		G2	21.5762	$893.10
33216	Insert lead pace-defib, one	Y	CH	G2	49.2255	$2,037.59
33217	Insert lead pace-defib, dual	Y	CH	G2	49.2255	$2,037.59
33218	Repair lead pace-defib, one	Y		G2	21.5762	$893.10
33220	Repair lead pace-defib, dual	Y		G2	21.5762	$893.10
33222	Revise pocket, pacemaker	Y		A2	13.0418	$539.84
33223	Revise pocket, pacing-defib	Y		A2	13.0418	$539.84
33224	Insert pacing lead & connect	Y		J8	196.2479	$8,123.29
33225	L ventric pacing lead add-on	Y		J8	196.2479	$8,123.29
33226	Reposition l ventric lead	Y		G2	21.5762	$893.10
33233	Removal of pacemaker system	Y		A2	16.0414	$664.00
33234	Removal of pacemaker system	Y		G2	21.5762	$893.10
33235	Removal pacemaker electrode	Y		G2	21.5762	$893.10
33240	Insert pulse generator	Y		J8	489.196	$20,249.29
33241	Remove pulse generator	Y		G2	21.5762	$893.10
33249	Eltrd/insert pace-defib	Y		J8	652.8693	$27,024.22
33282	Implant pat-active ht record	N		J8	103.2228	$4,272.70
33284	Remove pat-active ht record	Y		G2	8.051	$333.26
33508	Endoscopic vein harvest	N		N1		
34490	Removal of vein clot	Y	CH	G2	39.3079	$1,627.07
35188	Repair blood vessel lesion	Y		A2	27.0744	$1,120.69
35207	Repair blood vessel lesion	Y		A2	27.0744	$1,120.69
35473	Repair arterial blockage	Y		G2	47.1543	$1,951.86
35476	Repair venous blockage	Y		G2	47.1543	$1,951.86
35492	Atherectomy, percutaneous	Y		G2	88.0088	$3,642.95
35572	Harvest femoropopliteal vein	N		N1		
35761	Exploration of artery/vein	Y		G2	28.3113	$1,171.89
35875	Removal of clot in graft	Y		A2	35.4253	$1,466.36
35876	Removal of clot in graft	Y		A2	35.4253	$1,466.36
36000	Place needle in vein	N		N1		
36002	Pseudoaneurysm injection trt	N		G2	2.2609	$93.59
36005	Injection ext venography	N		N1		
36010	Place catheter in vein	N		N1		

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HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
36011	Place catheter in vein	N		N1		
36012	Place catheter in vein	N		N1		
36013	Place catheter in artery	N		N1		
36014	Place catheter in artery	N		N1		
36015	Place catheter in artery	N		N1		
36100	Establish access to artery	N		N1		
36120	Establish access to artery	N		N1		
36140	Establish access to artery	N		N1		
36145	Artery to vein shunt	N		N1		
36160	Establish access to aorta	N		N1		
36200	Place catheter in aorta	N		N1		
36215	Place catheter in artery	N		N1		
36216	Place catheter in artery	N		N1		
36217	Place catheter in artery	N		N1		
36218	Place catheter in artery	N		N1		
36245	Place catheter in artery	N		N1		
36246	Place catheter in artery	N		N1		
36247	Place catheter in artery	N		N1		
36248	Place catheter in artery	N		N1		
36260	Insertion of infusion pump	Y		A2	20.5105	$848.99
36261	Revision of infusion pump	Y		A2	16.0414	$664.00
36262	Removal of infusion pump	Y		A2	14.7102	$608.90
36400	Bl draw < 3 yrs fem/jugular	N		N1		
36405	Bl draw < 3 yrs scalp vein	N		N1		
36406	Bl draw < 3 yrs other vein	N		N1		
36410	Non-routine bl draw > 3 yrs	N		N1		
36416	Capillary blood draw	N		N1		
36420	Vein access cutdown < 1 yr	N		G2	0.2132	$8.82
36425	Vein access cutdown > 1 yr	N		R2	0.2132	$8.82
36430	Blood transfusion service	N		P3	0.819	$33.90
36440	Bl push transfuse, 2 yr or <	N		R2	3.2709	$135.39
36450	Bl exchange/transfuse, nb	N		R2	3.2709	$135.39
36455	Bl exchange/transfuse non-nb	N	CH	G2	3.2709	$135.39
36468	Injection(s), spider veins	Y		R2	0.8075	$33.42
36469	Injection(s), spider veins	Y		R2	0.8075	$33.42
36470	Injection therapy of vein	Y		P2	0.8075	$33.42
36471	Injection therapy of veins	Y		P2	0.8075	$33.42
36475	Endovenous rf, 1st vein	Y		A2	37.1222	$1,536.60

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36476	Endovenous rf, vein add-on	Y		A2	29.1114	$1,205.01
36478	Endovenous laser, 1st vein	Y		A2	29.1114	$1,205.01
36479	Endovenous laser vein addon	Y		A2	29.1114	$1,205.01
36481	Insertion of catheter, vein	N		N1		
36500	Insertion of catheter, vein	N		N1		
36510	Insertion of catheter, vein	N		N1		
36511	Apheresis wbc	N		G2	11.214	$464.18
36512	Apheresis rbc	N		G2	11.214	$464.18
36513	Apheresis platelets	N		G2	11.214	$464.18
36514	Apheresis plasma	N		G2	11.214	$464.18
36515	Apheresis, adsorp/reinfuse	N	CH	P2	30.0199	$1,242.61
36516	Apheresis, selective	N	CH	P2	30.0199	$1,242.61
36522	Photopheresis	N		G2	30.0199	$1,242.61
36555	Insert non-tunnel cv cath	Y		A2	9.3173	$385.67
36556	Insert non-tunnel cv cath	Y		A2	9.3173	$385.67
36557	Insert tunneled cv cath	Y		A2	17.4008	$720.27
36558	Insert tunneled cv cath	Y		A2	17.4008	$720.27
36560	Insert tunneled cv cath	Y		A2	20.5105	$848.99
36561	Insert tunneled cv cath	Y		A2	20.5105	$848.99
36563	Insert tunneled cv cath	Y		A2	20.5105	$848.99
36565	Insert tunneled cv cath	Y		A2	20.5105	$848.99
36566	Insert tunneled cv cath	Y	CH	A2	20.5105	$848.99
36568	Insert picc cath	Y		A2	9.3173	$385.67
36569	Insert picc cath	Y		A2	9.3173	$385.67
36570	Insert picvad cath	Y		A2	18.1545	$751.47
36571	Insert picvad cath	Y		A2	18.1545	$751.47
36575	Repair tunneled cv cath	Y		A2	7.4938	$310.19
36576	Repair tunneled cv cath	Y		A2	10.6482	$440.76
36578	Replace tunneled cv cath	Y		A2	17.4008	$720.27
36580	Replace cvad cath	Y		A2	9.3173	$385.67
36581	Replace tunneled cv cath	Y		A2	17.4008	$720.27
36582	Replace tunneled cv cath	Y		A2	20.5105	$848.99
36583	Replace tunneled cv cath	Y		A2	20.5105	$848.99
36584	Replace picc cath	Y		A2	9.3173	$385.67
36585	Replace picvad cath	Y		A2	18.1545	$751.47
36589	Removal tunneled cv cath	Y		A2	6.1629	$255.10
36590	Removal tunneled cv cath	Y		A2	9.3173	$385.67
36591	Draw blood off venous device	N		N1		

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36592	Collect blood from picc	N		N1		
36593	Declot vascular device	Y		P3	0.6187	$25.61
36595	Mech remov tunneled cv cath	Y		G2	24.2949	$1,005.64
36596	Mech remov tunneled cv cath	Y		G2	10.7898	$446.62
36597	Reposition venous catheter	Y		G2	10.7898	$446.62
36598	Inj w/fluor, eval cv device	Y		P3	1.9953	$82.59
36600	Withdrawal of arterial blood	N		N1		
36620	Insertion catheter, artery	N		N1		
36625	Insertion catheter, artery	N		N1		
36640	Insertion catheter, artery	Y		A2	18.4256	$762.69
36680	Insert needle, bone cavity	Y		G2	1.3967	$57.81
36800	Insertion of cannula	Y		A2	22.0796	$913.94
36810	Insertion of cannula	Y		A2	22.0796	$913.94
36815	Insertion of cannula	Y		A2	22.0796	$913.94
36818	Av fuse, uppr arm, cephalic	Y		A2	25.6611	$1,062.19
36819	Av fuse, uppr arm, basilic	Y		A2	25.6611	$1,062.19
36820	Av fusion/forearm vein	Y		A2	25.6611	$1,062.19
36821	Av fusion direct any site	Y		A2	25.6611	$1,062.19
36825	Artery-vein autograft	Y		A2	27.0744	$1,120.69
36830	Artery-vein nonautograft	Y		A2	27.0744	$1,120.69
36831	Open thrombect av fistula	Y		A2	35.4253	$1,466.36
36832	Av fistula revision, open	Y		A2	27.0744	$1,120.69
36833	Av fistula revision	Y		A2	27.0744	$1,120.69
36834	Repair a-v aneurysm	Y		A2	25.6611	$1,062.19
36835	Artery to vein shunt	Y		A2	23.4931	$972.45
36860	External cannula declotting	Y		A2	2.6963	$111.61
36861	Cannula declotting	Y		A2	22.0796	$913.94
36870	Percut thrombect av fistula	Y		A2	38.6138	$1,598.34
37184	Prim art mech thrombectomy	Y		G2	39.3079	$1,627.07
37185	Prim art m-thrombect add-on	Y		G2	39.3079	$1,627.07
37186	Sec art m-thrombect add-on	Y		G2	39.3079	$1,627.07
37187	Venous mech thrombectomy	Y		G2	39.3079	$1,627.07
37188	Venous m-thrombectomy add-on	Y		G2	39.3079	$1,627.07
37200	Transcatheter biopsy	Y		G2	29.0069	$1,200.68
37203	Transcatheter retrieval	Y		G2	29.0069	$1,200.68
37250	Iv us first vessel add-on	N		N1		
37251	Iv us each add vessel add-on	N		N1		
37500	Endoscopy ligate perf veins	Y		A2	27.358	$1,132.43

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37607	Ligation of a-v fistula	Y		A2	19.3472	$800.84
37609	Temporal artery procedure	Y		A2	13.0039	$538.27
37650	Revision of major vein	Y		A2	18.5932	$769.63
37700	Revise leg vein	Y		A2	18.5932	$769.63
37718	Ligate/strip short leg vein	Y		A2	19.3472	$800.84
37722	Ligate/strip long leg vein	Y		A2	27.358	$1,132.43
37735	Removal of leg veins/lesion	Y		A2	27.358	$1,132.43
37760	Ligation, leg veins, open	Y		A2	19.3472	$800.84
37765	Phleb veins - extrem - to 20	Y		R2	26.6801	$1,104.37
37766	Phleb veins - extrem 20+	Y		R2	26.6801	$1,104.37
37780	Revision of leg vein	Y		A2	19.3472	$800.84
37785	Ligate/divide/excise vein	Y		A2	19.3472	$800.84
37790	Penile venous occlusion	Y		A2	23.3462	$966.37
38200	Injection for spleen x-ray	N		N1		
38204	BI donor search management	N		N1		
38205	Harvest allogenic stem cells	N		G2	11.214	$464.18
38206	Harvest auto stem cells	N		G2	11.214	$464.18
38220	Bone marrow aspiration	Y		P3	2.5705	$106.40
38221	Bone marrow biopsy	Y		P3	2.6925	$111.45
38230	Bone marrow collection	N		G2	30.0199	$1,242.61
38241	Bone marrow/stem transplant	N		G2	30.0199	$1,242.61
38242	Lymphocyte infuse transplant	N		R2	11.214	$464.18
38300	Drainage, lymph node lesion	Y		A2	10.0631	$416.54
38305	Drainage, lymph node lesion	Y		A2	14.7056	$608.71
38308	Incision of lymph channels	Y		A2	16.8031	$695.53
38500	Biopsy/removal, lymph nodes	Y		A2	16.8031	$695.53
38505	Needle biopsy, lymph nodes	Y		A2	6.4289	$266.11
38510	Biopsy/removal, lymph nodes	Y		A2	16.8031	$695.53
38520	Biopsy/removal, lymph nodes	Y		A2	16.8031	$695.53
38525	Biopsy/removal, lymph nodes	Y		A2	16.8031	$695.53
38530	Biopsy/removal, lymph nodes	Y		A2	16.8031	$695.53
38542	Explore deep node(s), neck	Y		A2	28.2688	$1,170.13
38550	Removal, neck/armpit lesion	Y		A2	17.5571	$726.74
38555	Removal, neck/armpit lesion	Y		A2	18.9704	$785.24
38570	Laparoscopy, lymph node biop	Y		A2	38.3565	$1,587.69
38571	Laparoscopy, lymphadenectomy	Y		A2	49.8625	$2,063.96
38572	Laparoscopy, lymphadenectomy	Y		A2	38.3565	$1,587.69
38700	Removal of lymph nodes, neck	Y		G2	23.0998	$956.17

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38740	Remove armpit lymph nodes	Y		A2	28.2688	$1,170.13
38745	Remove armpit lymph nodes	Y		A2	30.4361	$1,259.84
38760	Remove groin lymph nodes	Y		A2	16.8031	$695.53
38790	Inject for lymphatic x-ray	N		N1		
38792	Identify sentinel node	N		N1		
38794	Access thoracic lymph duct	N		N1		
40490	Biopsy of lip	Y		P3	1.7165	$71.05
40500	Partial excision of lip	Y		A2	13.6586	$565.37
40510	Partial excision of lip	Y		A2	17.3227	$717.04
40520	Partial excision of lip	Y		A2	13.6586	$565.37
40525	Reconstruct lip with flap	Y		A2	17.3227	$717.04
40527	Reconstruct lip with flap	Y		A2	17.3227	$717.04
40530	Partial removal of lip	Y		A2	17.3227	$717.04
40650	Repair lip	Y		A2	9.1397	$378.32
40652	Repair lip	Y		A2	9.1397	$378.32
40654	Repair lip	Y		A2	9.1397	$378.32
40700	Repair cleft lip/nasal	Y		A2	32.1354	$1,330.18
40701	Repair cleft lip/nasal	Y		A2	32.1354	$1,330.18
40702	Repair cleft lip/nasal	Y		R2	40.8314	$1,690.13
40720	Repair cleft lip/nasal	Y		A2	32.1354	$1,330.18
40761	Repair cleft lip/nasal	Y		A2	26.4228	$1,093.72
40800	Drainage of mouth lesion	Y		P2	1.3776	$57.02
40801	Drainage of mouth lesion	Y		A2	8.9259	$369.47
40804	Removal, foreign body, mouth	N		P2	0.6301	$26.08
40805	Removal, foreign body, mouth	Y		P3	4.2609	$176.37
40806	Incision of lip fold	Y		P3	1.9605	$81.15
40808	Biopsy of mouth lesion	Y	CH	P3	2.9102	$120.46
40810	Excision of mouth lesion	Y		P3	3.0148	$124.79
40812	Excise/repair mouth lesion	Y		P3	3.7816	$156.53
40814	Excise/repair mouth lesion	Y		A2	13.6586	$565.37
40816	Excision of mouth lesion	Y		A2	17.3227	$717.04
40818	Excise oral mucosa for graft	Y		A2	3.3875	$140.22
40819	Excise lip or cheek fold	Y		A2	7.595	$314.38
40820	Treatment of mouth lesion	Y		P3	4.3478	$179.97
40830	Repair mouth laceration	Y		G2	3.2246	$133.48
40831	Repair mouth laceration	Y		A2	7.595	$314.38
40840	Reconstruction of mouth	Y		A2	17.3227	$717.04
40842	Reconstruction of mouth	Y		A2	18.0767	$748.25

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40843	Reconstruction of mouth	Y		A2	18.0767	$748.25
40844	Reconstruction of mouth	Y		A2	28.8609	$1,194.64
40845	Reconstruction of mouth	Y		A2	28.8609	$1,194.64
41000	Drainage of mouth lesion	Y		P3	2.161	$89.45
41005	Drainage of mouth lesion	Y		A2	3.3875	$140.22
41006	Drainage of mouth lesion	Y		A2	15.9918	$661.95
41007	Drainage of mouth lesion	Y		A2	12.3277	$510.28
41008	Drainage of mouth lesion	Y		A2	12.3277	$510.28
41009	Drainage of mouth lesion	Y		A2	3.3875	$140.22
41010	Incision of tongue fold	Y		A2	7.595	$314.38
41015	Drainage of mouth lesion	Y		A2	3.3875	$140.22
41016	Drainage of mouth lesion	Y		A2	7.595	$314.38
41017	Drainage of mouth lesion	Y		A2	7.595	$314.38
41018	Drainage of mouth lesion	Y		A2	7.595	$314.38
41019	Place needles h&n for rt	Y		G2	24.1393	$999.20
41100	Biopsy of tongue	Y		P3	2.2741	$94.13
41105	Biopsy of tongue	Y		P3	2.248	$93.05
41108	Biopsy of floor of mouth	Y		P3	2.0825	$86.20
41110	Excision of tongue lesion	Y		P3	3.0148	$124.79
41112	Excision of tongue lesion	Y		A2	13.6586	$565.37
41113	Excision of tongue lesion	Y		A2	13.6586	$565.37
41114	Excision of tongue lesion	Y		A2	17.3227	$717.04
41115	Excision of tongue fold	Y		P3	3.5115	$145.35
41116	Excision of mouth lesion	Y		A2	12.3277	$510.28
41120	Partial removal of tongue	Y		A2	20.5148	$849.17
41250	Repair tongue laceration	Y		A2	2.3168	$95.90
41251	Repair tongue laceration	Y		A2	3.3875	$140.22
41252	Repair tongue laceration	Y		A2	8.9259	$369.47
41500	Fixation of tongue	Y		A2	15.9918	$661.95
41510	Tongue to lip surgery	Y		A2	12.3277	$510.28
41520	Reconstruction, tongue fold	Y		A2	8.9259	$369.47
41530	Tongue base vol reduction	Y	NI	G2	16.8109	$695.85
41800	Drainage of gum lesion	Y		A2	1.7307	$71.64
41805	Removal foreign body, gum	Y		P3	3.7468	$155.09
41806	Removal foreign body,jawbone	Y		P3	4.6179	$191.15
41820	Excision, gum, each quadrant	Y		R2	7.3454	$304.05
41821	Excision of gum flap	Y		G2	7.3454	$304.05
41822	Excision of gum lesion	Y		P3	3.825	$158.33

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41823	Excision of gum lesion	Y		P3	5.5765	$230.83
41825	Excision of gum lesion	Y		P3	3.0669	$126.95
41826	Excision of gum lesion	Y		P3	3.8601	$159.78
41827	Excision of gum lesion	Y		A2	17.3227	$717.04
41828	Excision of gum lesion	Y		P3	3.4854	$144.27
41830	Removal of gum tissue	Y		P3	4.9491	$204.86
41850	Treatment of gum lesion	Y		R2	16.8109	$695.85
41870	Gum graft	Y		G2	24.1393	$999.20
41872	Repair gum	Y		P3	4.9491	$204.86
41874	Repair tooth socket	Y		P3	4.7747	$197.64
42000	Drainage mouth roof lesion	Y		A2	3.3875	$140.22
42100	Biopsy roof of mouth	Y		P3	1.9344	$80.07
42104	Excision lesion, mouth roof	Y		P3	2.8754	$119.02
42106	Excision lesion, mouth roof	Y		P3	3.6074	$149.32
42107	Excision lesion, mouth roof	Y		A2	17.3227	$717.04
42120	Remove palate/lesion	Y		A2	27.8361	$1,152.22
42140	Excision of uvula	Y		A2	8.9259	$369.47
42145	Repair palate, pharynx/uvula	Y		A2	20.5148	$849.17
42160	Treatment mouth roof lesion	Y		P3	3.4156	$141.38
42180	Repair palate	Y		A2	3.3875	$140.22
42182	Repair palate	Y		A2	25.6688	$1,062.51
42200	Reconstruct cleft palate	Y		A2	28.8609	$1,194.64
42205	Reconstruct cleft palate	Y		A2	28.8609	$1,194.64
42210	Reconstruct cleft palate	Y		A2	28.8609	$1,194.64
42215	Reconstruct cleft palate	Y		A2	32.1354	$1,330.18
42220	Reconstruct cleft palate	Y		A2	28.8609	$1,194.64
42226	Lengthening of palate	Y		A2	28.8609	$1,194.64
42235	Repair palate	Y		A2	16.8507	$697.50
42260	Repair nose to lip fistula	Y		A2	19.49	$806.75
42280	Preparation, palate mold	Y		P3	1.882	$77.90
42281	Insertion, palate prosthesis	Y		G2	16.8109	$695.85
42300	Drainage of salivary gland	Y		A2	12.3277	$510.28
42305	Drainage of salivary gland	Y		A2	13.6586	$565.37
42310	Drainage of salivary gland	Y		A2	3.3875	$140.22
42320	Drainage of salivary gland	Y		A2	3.3875	$140.22
42330	Removal of salivary stone	Y		P3	2.9102	$120.46
42335	Removal of salivary stone	Y		P3	4.8271	$199.81
42340	Removal of salivary stone	Y		A2	13.6586	$565.37

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HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
42400	Biopsy of salivary gland	Y		P3	1.6382	$67.81
42405	Biopsy of salivary gland	Y		A2	13.6586	$565.37
42408	Excision of salivary cyst	Y		A2	14.4126	$596.58
42409	Drainage of salivary cyst	Y		A2	14.4126	$596.58
42410	Excise parotid gland/lesion	Y		A2	26.4228	$1,093.72
42415	Excise parotid gland/lesion	Y		A2	32.1354	$1,330.18
42420	Excise parotid gland/lesion	Y		A2	32.1354	$1,330.18
42425	Excise parotid gland/lesion	Y		A2	32.1354	$1,330.18
42440	Excise submaxillary gland	Y		A2	26.4228	$1,093.72
42450	Excise sublingual gland	Y		A2	17.3227	$717.04
42500	Repair salivary duct	Y		A2	18.0767	$748.25
42505	Repair salivary duct	Y		A2	27.8361	$1,152.22
42507	Parotid duct diversion	Y		A2	26.4228	$1,093.72
42508	Parotid duct diversion	Y		A2	27.8361	$1,152.22
42509	Parotid duct diversion	Y		A2	27.8361	$1,152.22
42510	Parotid duct diversion	Y		A2	27.8361	$1,152.22
42550	Injection for salivary x-ray	N		N1		
42600	Closure of salivary fistula	Y		A2	12.3277	$510.28
42650	Dilation of salivary duct	Y		P3	1.0717	$44.36
42660	Dilation of salivary duct	Y		P3	1.2548	$51.94
42665	Ligation of salivary duct	Y		A2	23.7893	$984.71
42700	Drainage of tonsil abscess	Y		A2	3.3875	$140.22
42720	Drainage of throat abscess	Y		A2	12.3277	$510.28
42725	Drainage of throat abscess	Y		A2	25.6688	$1,062.51
42800	Biopsy of throat	Y		P3	2.0738	$85.84
42802	Biopsy of throat	Y		A2	12.3277	$510.28
42804	Biopsy of upper nose/throat	Y		A2	12.3277	$510.28
42806	Biopsy of upper nose/throat	Y		A2	17.3227	$717.04
42808	Excise pharynx lesion	Y		A2	13.6586	$565.37
42809	Remove pharynx foreign body	N		G2	0.6301	$26.08
42810	Excision of neck cyst	Y		A2	18.0767	$748.25
42815	Excision of neck cyst	Y		A2	28.8609	$1,194.64
42820	Remove tonsils and adenoids	Y		A2	18.0767	$748.25
42821	Remove tonsils and adenoids	Y		A2	20.5148	$849.17
42825	Removal of tonsils	Y		A2	19.49	$806.75
42826	Removal of tonsils	Y		A2	19.49	$806.75
42830	Removal of adenoids	Y		A2	19.49	$806.75
42831	Removal of adenoids	Y		A2	19.49	$806.75

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42835	Removal of adenoids	Y		A2	19.49	$806.75
42836	Removal of adenoids	Y		A2	19.49	$806.75
42860	Excision of tonsil tags	Y		A2	18.0767	$748.25
42870	Excision of lingual tonsil	Y		A2	18.0767	$748.25
42890	Partial removal of pharynx	Y		A2	32.1354	$1,330.18
42892	Revision of pharyngeal walls	Y		A2	32.1354	$1,330.18
42900	Repair throat wound	Y		A2	7.595	$314.38
42950	Reconstruction of throat	Y		A2	17.3227	$717.04
42955	Surgical opening of throat	Y		A2	17.3227	$717.04
42960	Control throat bleeding	Y		A2	1.3954	$57.76
42962	Control throat bleeding	Y		A2	25.6688	$1,062.51
42970	Control nose/throat bleeding	Y		R2	1.0833	$44.84
42972	Control nose/throat bleeding	Y		A2	14.4126	$596.58
43030	Throat muscle surgery	Y		G2	16.8109	$695.85
43200	Esophagus endoscopy	Y		A2	8.1407	$336.97
43201	Esoph scope w/submucous inj	Y		A2	8.1407	$336.97
43202	Esophagus endoscopy, biopsy	Y		A2	8.1407	$336.97
43204	Esoph scope w/sclerosis inj	Y		A2	8.1407	$336.97
43205	Esophagus endoscopy/ligation	Y		A2	8.1407	$336.97
43215	Esophagus endoscopy	Y		A2	8.1407	$336.97
43216	Esophagus endoscopy/lesion	Y		A2	8.1407	$336.97
43217	Esophagus endoscopy	Y		A2	8.1407	$336.97
43219	Esophagus endoscopy	Y		A2	16.4525	$681.02
43220	Esoph endoscopy, dilation	Y		A2	8.1407	$336.97
43226	Esoph endoscopy, dilation	Y		A2	8.1407	$336.97
43227	Esoph endoscopy, repair	Y		A2	9.4719	$392.07
43228	Esoph endoscopy, ablation	Y		A2	17.6264	$729.61
43231	Esoph endoscopy w/us exam	Y		A2	9.4719	$392.07
43232	Esoph endoscopy w/us fn bx	Y		A2	9.4719	$392.07
43234	Upper gi endoscopy, exam	Y		A2	8.1407	$336.97
43235	Uppr gi endoscopy, diagnosis	Y		A2	8.1407	$336.97
43236	Uppr gi scope w/submuc inj	Y		A2	9.4719	$392.07
43237	Endoscopic us exam, esoph	Y		A2	9.4719	$392.07
43238	Uppr gi endoscopy w/us fn bx	Y		A2	9.4719	$392.07
43239	Upper gi endoscopy, biopsy	Y		A2	9.4719	$392.07
43240	Esoph endoscope w/drain cyst	Y		A2	9.4719	$392.07
43241	Upper gi endoscopy with tube	Y		A2	9.4719	$392.07
43242	Uppr gi endoscopy w/us fn bx	Y		A2	9.4719	$392.07

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43243	Upper gi endoscopy & inject	Y		A2	9.4719	$392.07
43244	Upper gi endoscopy/ligation	Y		A2	9.4719	$392.07
43245	Uppr gi scope dilate strictr	Y		A2	9.4719	$392.07
43246	Place gastrostomy tube	Y		A2	9.4719	$392.07
43247	Operative upper gi endoscopy	Y		A2	9.4719	$392.07
43248	Uppr gi endoscopy/guide wire	Y		A2	9.4719	$392.07
43249	Esoph endoscopy, dilation	Y		A2	9.4719	$392.07
43250	Upper gi endoscopy/tumor	Y		A2	9.4719	$392.07
43251	Operative upper gi endoscopy	Y		A2	9.4719	$392.07
43255	Operative upper gi endoscopy	Y		A2	9.4719	$392.07
43256	Uppr gi endoscopy w/stent	Y		A2	18.5374	$767.32
43257	Uppr gi scope w/thrml txmnt	Y		A2	18.3804	$760.82
43258	Operative upper gi endoscopy	Y		A2	10.2256	$423.27
43259	Endoscopic ultrasound exam	Y		A2	10.2256	$423.27
43260	Endo cholangiopancreatograph	Y		A2	15.9459	$660.05
43261	Endo cholangiopancreatograph	Y		A2	15.9459	$660.05
43262	Endo cholangiopancreatograph	Y		A2	15.9459	$660.05
43263	Endo cholangiopancreatograph	Y		A2	15.9459	$660.05
43264	Endo cholangiopancreatograph	Y		A2	15.9459	$660.05
43265	Endo cholangiopancreatograph	Y		A2	15.9459	$660.05
43267	Endo cholangiopancreatograph	Y		A2	15.9459	$660.05
43268	Endo cholangiopancreatograph	Y		A2	17.7837	$736.12
43269	Endo cholangiopancreatograph	Y		A2	17.7837	$736.12
43271	Endo cholangiopancreatograph	Y		A2	15.9459	$660.05
43272	Endo cholangiopancreatograph	Y		A2	15.9459	$660.05
43273	Endoscopic pancreatoscopy	Y	NI	G2	21.3854	$885.21
43450	Dilate esophagus	Y		A2	7.1196	$294.70
43453	Dilate esophagus	Y		A2	7.1196	$294.70
43456	Dilate esophagus	Y		A2	7.1478	$295.87
43458	Dilate esophagus	Y		A2	8.1693	$338.15
43600	Biopsy of stomach	Y		A2	8.1407	$336.97
43653	Laparoscopy, gastrostomy	Y		A2	38.3565	$1,587.69
43760	Change gastrostomy tube	Y		A2	3.9483	$163.43
43761	Reposition gastrostomy tube	Y		A2	8.1407	$336.97
43870	Repair stomach opening	Y		A2	8.1407	$336.97
43886	Revise gastric port, open	Y		G2	20.5411	$850.26
43887	Remove gastric port, open	Y		G2	4.3203	$178.83
43888	Change gastric port, open	Y		G2	20.5411	$850.26

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44100	Biopsy of bowel	Y		A2	8.1407	$336.97
44312	Revision of ileostomy	Y		A2	14.1927	$587.48
44340	Revision of colostomy	Y		A2	16.2776	$673.78
44360	Small bowel endoscopy	Y		A2	9.9203	$410.63
44361	Small bowel endoscopy/biopsy	Y		A2	9.9203	$410.63
44363	Small bowel endoscopy	Y		A2	9.9203	$410.63
44364	Small bowel endoscopy	Y		A2	9.9203	$410.63
44365	Small bowel endoscopy	Y		A2	9.9203	$410.63
44366	Small bowel endoscopy	Y		A2	9.9203	$410.63
44369	Small bowel endoscopy	Y		A2	9.9203	$410.63
44370	Small bowel endoscopy/stent	Y		A2	28.3019	$1,171.50
44372	Small bowel endoscopy	Y		A2	9.9203	$410.63
44373	Small bowel endoscopy	Y		A2	9.9203	$410.63
44376	Small bowel endoscopy	Y		A2	9.9203	$410.63
44377	Small bowel endoscopy/biopsy	Y		A2	9.9203	$410.63
44378	Small bowel endoscopy	Y		A2	9.9203	$410.63
44379	S bowel endoscope w/stent	Y		A2	28.3019	$1,171.50
44380	Small bowel endoscopy	Y		A2	8.5891	$355.53
44382	Small bowel endoscopy	Y		A2	8.5891	$355.53
44383	Ileoscopy w/stent	Y		A2	28.3019	$1,171.50
44385	Endoscopy of bowel pouch	Y		A2	8.3045	$343.75
44386	Endoscopy, bowel pouch/biop	Y		A2	8.3045	$343.75
44388	Colonoscopy	Y		A2	8.3045	$343.75
44389	Colonoscopy with biopsy	Y		A2	8.3045	$343.75
44390	Colonoscopy for foreign body	Y		A2	8.3045	$343.75
44391	Colonoscopy for bleeding	Y		A2	8.3045	$343.75
44392	Colonoscopy & polypectomy	Y		A2	8.3045	$343.75
44393	Colonoscopy, lesion removal	Y		A2	8.3045	$343.75
44394	Colonoscopy w/snare	Y		A2	8.3045	$343.75
44397	Colonoscopy w/stent	Y		A2	16.4525	$681.02
44500	Intro, gastrointestinal tube	Y		G2	4.4814	$185.50
44701	Intraop colon lavage add-on	N		N1		
45000	Drainage of pelvic abscess	Y		A2	9.6306	$398.64
45005	Drainage of rectal abscess	Y		A2	11.2082	$463.94
45020	Drainage of rectal abscess	Y		A2	11.2082	$463.94
45100	Biopsy of rectum	Y		A2	15.2275	$630.31
45108	Removal of anorectal lesion	Y		A2	16.5584	$685.40
45150	Excision of rectal stricture	Y		A2	16.5584	$685.40

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45160	Excision of rectal lesion	Y		A2	16.5584	$685.40
45170	Excision of rectal lesion	Y		A2	16.5584	$685.40
45190	Destruction, rectal tumor	Y		A2	27.0766	$1,120.78
45300	Proctosigmoidoscopy dx	Y		P3	1.6032	$66.36
45303	Proctosigmoidoscopy dilate	Y		P2	8.9051	$368.61
45305	Proctosigmoidoscopy w/bx	Y		A2	8.3748	$346.66
45307	Proctosigmoidoscopy fb	Y		A2	15.4688	$640.30
45308	Proctosigmoidoscopy removal	Y		A2	8.3748	$346.66
45309	Proctosigmoidoscopy removal	Y		A2	8.3748	$346.66
45315	Proctosigmoidoscopy removal	Y		A2	8.3748	$346.66
45317	Proctosigmoidoscopy bleed	Y		A2	8.3748	$346.66
45320	Proctosigmoidoscopy ablate	Y		A2	15.4688	$640.30
45321	Proctosigmoidoscopy volvul	Y		A2	15.4688	$640.30
45327	Proctosigmoidoscopy w/stent	Y		A2	16.4525	$681.02
45330	Diagnostic sigmoidoscopy	Y		P3	2.1173	$87.64
45331	Sigmoidoscopy and biopsy	Y		A2	6.2612	$259.17
45332	Sigmoidoscopy w/fb removal	Y		A2	6.2612	$259.17
45333	Sigmoidoscopy & polypectomy	Y		A2	8.3748	$346.66
45334	Sigmoidoscopy for bleeding	Y		A2	8.3748	$346.66
45335	Sigmoidoscopy w/submuc inj	Y		A2	6.2612	$259.17
45337	Sigmoidoscopy & decompress	Y		A2	6.2612	$259.17
45338	Sigmoidoscopy w/tumr remove	Y		A2	8.3748	$346.66
45339	Sigmoidoscopy w/ablate tumr	Y		A2	8.3748	$346.66
45340	Sig w/balloon dilation	Y		A2	8.3748	$346.66
45341	Sigmoidoscopy w/ultrasound	Y		A2	8.3748	$346.66
45342	Sigmoidoscopy w/us guide bx	Y		A2	8.3748	$346.66
45345	Sigmoidoscopy w/stent	Y		A2	16.4525	$681.02
45355	Surgical colonoscopy	Y		A2	8.3045	$343.75
45378	Diagnostic colonoscopy	Y		A2	9.6357	$398.85
45379	Colonoscopy w/fb removal	Y		A2	9.6357	$398.85
45380	Colonoscopy and biopsy	Y		A2	9.6357	$398.85
45381	Colonoscopy, submucous inj	Y		A2	9.6357	$398.85
45382	Colonoscopy/control bleeding	Y		A2	9.6357	$398.85
45383	Lesion removal colonoscopy	Y		A2	9.6357	$398.85
45384	Lesion remove colonoscopy	Y		A2	9.6357	$398.85
45385	Lesion removal colonoscopy	Y		A2	9.6357	$398.85
45386	Colonoscopy dilate stricture	Y		A2	9.6357	$398.85
45387	Colonoscopy w/stent	Y		A2	16.4525	$681.02

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45391	Colonoscopy w/endoscope us	Y		A2	9.6357	$398.85
45392	Colonoscopy w/endoscopic fnb	Y		A2	9.6357	$398.85
45500	Repair of rectum	Y		A2	16.5584	$685.40
45505	Repair of rectum	Y		A2	20.3868	$843.87
45520	Treatment of rectal prolapse	Y		P2	0.8075	$33.42
45560	Repair of rectocele	Y		A2	20.3868	$843.87
45900	Reduction of rectal prolapse	Y		A2	6.5289	$270.25
45905	Dilation of anal sphincter	Y		A2	15.2275	$630.31
45910	Dilation of rectal narrowing	Y		A2	15.2275	$630.31
45915	Remove rectal obstruction	Y		A2	9.6306	$398.64
45990	Surg dx exam, anorectal	Y		A2	14.9808	$620.10
46020	Placement of seton	Y		A2	17.3123	$716.61
46030	Removal of rectal marker	Y		A2	6.5289	$270.25
46040	Incision of rectal abscess	Y		A2	17.3123	$716.61
46045	Incision of rectal abscess	Y		A2	16.5584	$685.40
46050	Incision of anal abscess	Y		A2	9.6306	$398.64
46060	Incision of rectal abscess	Y		A2	16.5584	$685.40
46070	Incision of anal septum	Y		G2	11.9098	$492.98
46080	Incision of anal sphincter	Y		A2	17.3123	$716.61
46083	Incise external hemorrhoid	Y		P2	1.8231	$75.46
46200	Removal of anal fissure	Y		A2	16.5584	$685.40
46210	Removal of anal crypt	Y		A2	16.5584	$685.40
46211	Removal of anal crypts	Y		A2	16.5584	$685.40
46220	Removal of anal tag	Y		A2	15.2275	$630.31
46221	Ligation of hemorrhoid(s)	Y		P3	2.9974	$124.07
46230	Removal of anal tags	Y		A2	15.2275	$630.31
46250	Hemorrhoidectomy	Y		A2	17.3123	$716.61
46255	Hemorrhoidectomy	Y		A2	17.3123	$716.61
46257	Remove hemorrhoids & fissure	Y		A2	17.3123	$716.61
46258	Remove hemorrhoids & fistula	Y		A2	17.3123	$716.61
46260	Hemorrhoidectomy	Y		A2	17.3123	$716.61
46261	Remove hemorrhoids & fissure	Y		A2	18.7256	$775.11
46262	Remove hemorrhoids & fistula	Y		A2	18.7256	$775.11
46270	Removal of anal fistula	Y		A2	17.3123	$716.61
46275	Removal of anal fistula	Y		A2	17.3123	$716.61
46280	Removal of anal fistula	Y		A2	18.7256	$775.11
46285	Removal of anal fistula	Y		A2	15.2275	$630.31
46288	Repair anal fistula	Y		A2	18.7256	$775.11

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46320	Removal of hemorrhoid clot	Y		P3	2.0303	$84.04
46500	Injection into hemorrhoid(s)	Y		P3	2.7968	$115.77
46505	Chemodenervation anal musc	Y		G2	11.9098	$492.98
46600	Diagnostic anoscopy	N		P2	0.6301	$26.08
46604	Anoscopy and dilation	Y		P2	8.9051	$368.61
46606	Anoscopy and biopsy	Y		P3	3.346	$138.50
46608	Anoscopy, remove for body	Y		A2	8.3748	$346.66
46610	Anoscopy, remove lesion	Y		A2	15.4688	$640.30
46611	Anoscopy	Y		A2	8.3748	$346.66
46612	Anoscopy, remove lesions	Y		A2	15.4688	$640.30
46614	Anoscopy, control bleeding	Y		P3	1.76	$72.85
46615	Anoscopy	Y		A2	16.7997	$695.39
46700	Repair of anal stricture	Y		A2	17.3123	$716.61
46706	Repr of anal fistula w/glue	Y		A2	19.0556	$788.77
46750	Repair of anal sphincter	Y		A2	21.1405	$875.07
46753	Reconstruction of anus	Y		A2	17.3123	$716.61
46754	Removal of suture from anus	Y		A2	16.5584	$685.40
46760	Repair of anal sphincter	Y		A2	20.3868	$843.87
46761	Repair of anal sphincter	Y		A2	21.1405	$875.07
46762	Implant artificial sphincter	Y		A2	26.8531	$1,111.53
46900	Destruction, anal lesion(s)	Y		P2	2.6609	$110.14
46910	Destruction, anal lesion(s)	Y		P3	3.1802	$131.64
46916	Cryosurgery, anal lesion(s)	Y		P2	1.4792	$61.23
46917	Laser surgery, anal lesions	Y		A2	13.799	$571.18
46922	Excision of anal lesion(s)	Y		A2	13.799	$571.18
46924	Destruction, anal lesion(s)	Y		A2	13.799	$571.18
46930*	Destroy internal hemorrhoids	Y	NI	P3	3.0846	$127.68
46934	Destruction of hemorrhoids	N	CH	D5		
46935	Destruction of hemorrhoids	N	CH	D5		
46936	Destruction of hemorrhoids	N	CH	D5		
46937	Cryotherapy of rectal lesion	Y		A2	16.5584	$685.40
46938	Cryotherapy of rectal lesion	Y		A2	20.3868	$843.87
46940	Treatment of anal fissure	Y		P3	2.2828	$94.49
46942	Treatment of anal fissure	Y		P3	2.2219	$91.97
46945	Ligation of hemorrhoids	Y		P3	3.7816	$156.53
46946	Ligation of hemorrhoids	Y		A2	9.877	$408.84
46947	Hemorrhoidopexy by stapling	Y		A2	26.8531	$1,111.53
47000	Needle biopsy of liver	Y		A2	8.5923	$355.66

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HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
47001	Needle biopsy, liver add-on	N		N1		
47382	Percut ablate liver rf	Y		G2	45.3434	$1,876.90
47500	Injection for liver x-rays	N		N1		
47505	Injection for liver x-rays	N		N1		
47510	Insert catheter, bile duct	Y		A2	20.0807	$831.20
47511	Insert bile duct drain	Y		A2	29.5016	$1,221.16
47525	Change bile duct catheter	Y		A2	11.5278	$477.17
47530	Revise/reinsert bile tube	Y		A2	11.5278	$477.17
47552	Biliary endoscopy thru skin	Y		A2	20.0807	$831.20
47553	Biliary endoscopy thru skin	Y		A2	20.8344	$862.40
47554	Biliary endoscopy thru skin	Y		A2	20.8344	$862.40
47555	Biliary endoscopy thru skin	Y		A2	20.8344	$862.40
47556	Biliary endoscopy thru skin	Y		A2	29.5016	$1,221.16
47560	Laparoscopy w/cholangio	Y		A2	24.4797	$1,013.29
47561	Laparo w/cholangio/biopsy	Y		A2	24.4797	$1,013.29
47562	Laparoscopic cholecystectomy	Y		G2	45.1703	$1,869.73
47563	Laparo cholecystectomy/graph	Y		G2	45.1703	$1,869.73
47564	Laparo cholecystectomy/explr	Y		G2	45.1703	$1,869.73
47630	Remove bile duct stone	Y		A2	20.8344	$862.40
48102	Needle biopsy, pancreas	Y		A2	8.5923	$355.66
49080	Puncture, peritoneal cavity	Y		A2	5.2248	$216.27
49081	Removal of abdominal fluid	Y		A2	5.2248	$216.27
49180	Biopsy, abdominal mass	Y		A2	8.5923	$355.66
49250	Excision of umbilicus	Y		A2	18.8346	$779.62
49320	Diag laparo separate proc	Y		A2	24.4797	$1,013.29
49321	Laparoscopy, biopsy	Y		A2	25.8933	$1,071.80
49322	Laparoscopy, aspiration	Y		A2	25.8933	$1,071.80
49324	Lap insertion perm ip cath	Y	CH	G2	36.9453	$1,529.28
49325	Lap revision perm ip cath	Y	CH	G2	36.9453	$1,529.28
49326	Lap w/omentopexy add-on	Y	CH	G2	36.9453	$1,529.28
49400	Air injection into abdomen	N		N1		
49402	Remove foreign body, adbomen	Y		A2	16.6673	$689.91
49419	Insrt abdom cath for chemotx	Y		A2	19.9947	$827.64
49420	Insert abdom drain, temp	Y		A2	18.4838	$765.10
49421	Insert abdom drain, perm	Y		A2	18.4838	$765.10
49422	Remove perm cannula/catheter	Y		A2	14.7102	$608.90
49423	Exchange drainage catheter	Y		G2	15.211	$629.63
49424	Assess cyst, contrast inject	N		N1		

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49426	Revise abdomen-venous shunt	Y		A2	16.6673	$689.91
49427	Injection, abdominal shunt	N		N1		
49429	Removal of shunt	Y		G2	21.5762	$893.10
49440	Place gastrostomy tube perc	Y		G2	8.4372	$349.24
49441	Place duod/jej tube perc	Y		G2	8.4372	$349.24
49446	Change g-tube to g-j perc	Y		G2	8.4372	$349.24
49450	Replace g/c tube perc	Y		G2	4.4814	$185.50
49451	Replace duod/jej tube perc	Y		G2	4.4814	$185.50
49452	Replace g-j tube perc	Y		G2	4.4814	$185.50
49460	Fix g/colon tube w/device	Y		G2	4.4814	$185.50
49465	Fluoro exam of g/colon tube	N		N1		
49495	Rpr ing hernia baby, reduc	Y		A2	22.8577	$946.15
49496	Rpr ing hernia baby, blocked	Y		A2	22.8577	$946.15
49500	Rpr ing hernia, init, reduce	Y		A2	22.8577	$946.15
49501	Rpr ing hernia, init blocked	Y		A2	31.2087	$1,291.82
49505	Prp i/hern init reduc >5 yr	Y		A2	22.8577	$946.15
49507	Prp i/hern init block >5 yr	Y		A2	31.2087	$1,291.82
49520	Rerepair ing hernia, reduce	Y		A2	27.157	$1,124.11
49521	Rerepair ing hernia, blocked	Y		A2	31.2087	$1,291.82
49525	Repair ing hernia, sliding	Y		A2	22.8577	$946.15
49540	Repair lumbar hernia	Y		A2	20.6905	$856.44
49550	Rpr rem hernia, init, reduce	Y		A2	23.8825	$988.57
49553	Rpr fem hernia, init blocked	Y		A2	31.2087	$1,291.82
49555	Rerepair fem hernia, reduce	Y		A2	23.8825	$988.57
49557	Rerepair fem hernia, blocked	Y		A2	31.2087	$1,291.82
49560	Rpr ventral hern init, reduc	Y		A2	22.8577	$946.15
49561	Rpr ventral hern init, block	Y		A2	31.2087	$1,291.82
49565	Rerepair ventrl hern, reduce	Y		A2	22.8577	$946.15
49566	Rerepair ventrl hern, block	Y		A2	31.2087	$1,291.82
49568	Hernia repair w/mesh	Y		A2	27.157	$1,124.11
49570	Rpr epigastric hern, reduce	Y		A2	22.8577	$946.15
49572	Rpr epigastric hern, blocked	Y		A2	31.2087	$1,291.82
49580	Rpr umbil hern, reduc < 5 yr	Y		A2	22.8577	$946.15
49582	Rpr umbil hern, block < 5 yr	Y		A2	31.2087	$1,291.82
49585	Rpr umbil hern, reduc > 5 yr	Y		A2	22.8577	$946.15
49587	Rpr umbil hern, block > 5 yr	Y		A2	31.2087	$1,291.82
49590	Repair spigelian hernia	Y		A2	21.4444	$887.65
49600	Repair umbilical lesion	Y		A2	22.8577	$946.15

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HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
49650	Lap ing hernia repair init	Y		A2	30.0056	$1,242.02
49651	Lap ing hernia repair recur	Y		A2	34.3048	$1,419.98
49652	Lap vent/abd hernia repair	Y	NI	G2	36.9453	$1,529.28
49653	Lap vent/abd hern proc comp	Y	NI	G2	36.9453	$1,529.28
49654	Lap inc hernia repair	Y	NI	G2	36.9453	$1,529.28
49655	Lap inc hern repair comp	Y	NI	G2	36.9453	$1,529.28
49656	Lap inc hernia repair recur	Y	NI	G2	36.9453	$1,529.28
49657	Lap inc hern recur comp	Y	NI	G2	36.9453	$1,529.28
50200	Biopsy of kidney	Y		A2	8.5923	$355.66
50382	Change ureter stent, percut	Y		G2	24.95	$1,032.76
50384	Remove ureter stent, percut	Y		G2	18.3252	$758.54
50385	Change stent via transureth	Y		G2	18.3252	$758.54
50386	Remove stent via transureth	Y		G2	7.0309	$291.03
50387	Change ext/int ureter stent	Y		G2	15.211	$629.63
50389	Remove renal tube w/fluoro	Y		G2	7.0309	$291.03
50390	Drainage of kidney lesion	Y		A2	8.5923	$355.66
50391	Instll rx agnt into rnal tub	Y		P2	1.0175	$42.12
50392	Insert kidney drain	Y		A2	13.0848	$541.62
50393	Insert ureteral tube	Y		A2	16.3972	$678.73
50394	Injection for kidney x-ray	N		N1		
50395	Create passage to kidney	Y		A2	13.0848	$541.62
50396	Measure kidney pressure	Y		A2	2.4603	$101.84
50398	Change kidney tube	Y		A2	11.5278	$477.17
50551	Kidney endoscopy	Y		A2	7.4377	$307.87
50553	Kidney endoscopy	Y		A2	16.3972	$678.73
50555	Kidney endoscopy & biopsy	Y		A2	7.4377	$307.87
50557	Kidney endoscopy & treatment	Y		A2	16.3972	$678.73
50561	Kidney endoscopy & treatment	Y		A2	16.3972	$678.73
50562	Renal scope w/tumor resect	Y		G2	7.0309	$291.03
50570	Kidney endoscopy	Y		G2	7.0309	$291.03
50572	Kidney endoscopy	Y		G2	7.0309	$291.03
50574	Kidney endoscopy & biopsy	Y		G2	7.0309	$291.03
50575	Kidney endoscopy	Y		G2	34.9731	$1,447.64
50576	Kidney endoscopy & treatment	Y		G2	18.3252	$758.54
50580	Kidney endoscopy & treatment	Y		G2	18.3252	$758.54
50590	Fragmenting of kidney stone	Y		G2	40.8566	$1,691.18
50592	Perc rf ablate renal tumor	Y		G2	45.3434	$1,876.90
50684	Injection for ureter x-ray	N		N1		

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50686	Measure ureter pressure	Y	CH	R2	1.0175	$42.12
50688	Change of ureter tube/stent	Y		A2	11.5278	$477.17
50690	Injection for ureter x-ray	N		N1		
50947	Laparo new ureter/bladder	Y		A2	38.3565	$1,587.69
50948	Laparo new ureter/bladder	Y		A2	38.3565	$1,587.69
50951	Endoscopy of ureter	Y		A2	7.4377	$307.87
50953	Endoscopy of ureter	Y		A2	7.4377	$307.87
50955	Ureter endoscopy & biopsy	Y		A2	16.3972	$678.73
50957	Ureter endoscopy & treatment	Y		A2	16.3972	$678.73
50961	Ureter endoscopy & treatment	Y		A2	16.3972	$678.73
50970	Ureter endoscopy	Y		A2	7.4377	$307.87
50972	Ureter endoscopy & catheter	Y		A2	7.4377	$307.87
50974	Ureter endoscopy & biopsy	Y		A2	13.0848	$541.62
50976	Ureter endoscopy & treatment	Y		A2	13.0848	$541.62
50980	Ureter endoscopy & treatment	Y		A2	16.3972	$678.73
51020	Incise & treat bladder	Y		A2	19.8956	$823.54
51030	Incise & treat bladder	Y		A2	19.8956	$823.54
51040	Incise & drain bladder	Y		A2	19.8956	$823.54
51045	Incise bladder/drain ureter	Y		A2	8.2178	$340.16
51050	Removal of bladder stone	Y		A2	19.8956	$823.54
51065	Remove ureter calculus	Y		A2	19.8956	$823.54
51080	Drainage of bladder abscess	Y		A2	13.3745	$553.61
51100	Drain bladder by needle	Y		P3	0.7755	$32.10
51101	Drain bladder by trocar/cath	Y		P2	1.0175	$42.12
51102	Drain bl w/cath insertion	Y		A2	13.69	$566.67
51500	Removal of bladder cyst	Y		A2	22.8577	$946.15
51520	Removal of bladder lesion	Y		A2	19.8956	$823.54
51600	Injection for bladder x-ray	N		N1		
51605	Preparation for bladder xray	N		N1		
51610	Injection for bladder x-ray	N		N1		
51700	Irrigation of bladder	Y		P3	1.3244	$54.82
51701	Insert bladder catheter	N		P2	0.6301	$26.08
51702	Insert temp bladder cath	N		P2	0.6301	$26.08
51703	Insert bladder cath, complex	Y		P2	1.0175	$42.12
51705	Change of bladder tube	Y	CH	P2	1.8231	$75.46
51710	Change of bladder tube	Y		A2	11.5278	$477.17
51715	Endoscopic injection/implant	Y		A2	20.9311	$866.40
51720	Treatment of bladder lesion	Y		P3	1.4638	$60.59

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HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
51725	Simple cystometrogram	Y		P2	2.812	$116.40
51726	Complex cystometrogram	Y		A2	3.8734	$160.33
51736	Urine flow measurement	Y		P3	0.5315	$22.00
51741	Electro-uroflowmetry, first	Y		P3	0.6187	$25.61
51772	Urethra pressure profile	Y		A2	2.4603	$101.84
51784	Anal/urinary muscle study	Y		P2	1.0175	$42.12
51785	Anal/urinary muscle study	Y		A2	1.6998	$70.36
51792	Urinary reflex study	Y		P2	1.0175	$42.12
51795	Urine voiding pressure study	Y		P2	1.8231	$75.46
51797	Intraabdominal pressure test	Y		P2	1.8231	$75.46
51798	Us urine capacity measure	N		P3	0.453	$18.75
51880	Repair of bladder opening	Y		A2	16.3972	$678.73
51992	Laparo sling operation	Y		A2	31.0304	$1,284.44
52000	Cystoscopy	Y		A2	7.4377	$307.87
52001	Cystoscopy, removal of clots	Y		A2	13.8649	$573.91
52005	Cystoscopy & ureter catheter	Y		A2	14.4157	$596.71
52007	Cystoscopy and biopsy	Y		A2	17.7284	$733.83
52010	Cystoscopy & duct catheter	Y		A2	8.2178	$340.16
52204	Cystoscopy w/biopsy(s)	Y		A2	14.4157	$596.71
52214	Cystoscopy and treatment	Y		A2	17.7284	$733.83
52224	Cystoscopy and treatment	Y		A2	17.7284	$733.83
52234	Cystoscopy and treatment	Y		A2	17.7284	$733.83
52235	Cystoscopy and treatment	Y		A2	18.4821	$765.03
52240	Cystoscopy and treatment	Y		A2	18.4821	$765.03
52250	Cystoscopy and radiotracer	Y		A2	19.8956	$823.54
52260	Cystoscopy and treatment	Y		A2	14.4157	$596.71
52265	Cystoscopy and treatment	Y		P2	7.0309	$291.03
52270	Cystoscopy & revise urethra	Y		A2	14.4157	$596.71
52275	Cystoscopy & revise urethra	Y		A2	17.7284	$733.83
52276	Cystoscopy and treatment	Y		A2	18.4821	$765.03
52277	Cystoscopy and treatment	Y		A2	17.7284	$733.83
52281	Cystoscopy and treatment	Y		A2	14.4157	$596.71
52282	Cystoscopy, implant stent	Y		A2	33.258	$1,376.65
52283	Cystoscopy and treatment	Y		A2	17.7284	$733.83
52285	Cystoscopy and treatment	Y		A2	14.4157	$596.71
52290	Cystoscopy and treatment	Y		A2	14.4157	$596.71
52300	Cystoscopy and treatment	Y		A2	17.7284	$733.83
52301	Cystoscopy and treatment	Y		A2	18.4821	$765.03

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52305	Cystoscopy and treatment	Y		A2	17.7284	$733.83
52310	Cystoscopy and treatment	Y		A2	13.8649	$573.91
52315	Cystoscopy and treatment	Y		A2	17.7284	$733.83
52317	Remove bladder stone	Y		A2	16.3972	$678.73
52318	Remove bladder stone	Y		A2	17.7284	$733.83
52320	Cystoscopy and treatment	Y		A2	20.9202	$865.95
52325	Cystoscopy, stone removal	Y		A2	19.8956	$823.54
52327	Cystoscopy, inject material	Y		A2	22.7398	$941.27
52330	Cystoscopy and treatment	Y		A2	17.7284	$733.83
52332	Cystoscopy and treatment	Y		A2	17.7284	$733.83
52334	Create passage to kidney	Y		A2	18.4821	$765.03
52341	Cysto w/ureter stricture tx	Y		A2	18.4821	$765.03
52342	Cysto w/up stricture tx	Y		A2	18.4821	$765.03
52343	Cysto w/renal stricture tx	Y		A2	18.4821	$765.03
52344	Cysto/uretero, stricture tx	Y		A2	18.4821	$765.03
52345	Cysto/uretero w/up stricture	Y		A2	18.4821	$765.03
52346	Cystouretero w/renal strict	Y		A2	18.4821	$765.03
52351	Cystouretero & or pyeloscope	Y		A2	18.4821	$765.03
52352	Cystouretero w/stone remove	Y		A2	19.8956	$823.54
52353	Cystouretero w/lithotripsy	Y		A2	24.9071	$1,030.98
52354	Cystouretero w/biopsy	Y		A2	19.8956	$823.54
52355	Cystouretero w/excise tumor	Y		A2	19.8956	$823.54
52400	Cystouretero w/congen repr	Y		A2	18.4821	$765.03
52402	Cystourethro cut ejacul duct	Y		A2	18.4821	$765.03
52450	Incision of prostate	Y		A2	18.4821	$765.03
52500	Revision of bladder neck	Y		A2	18.4821	$765.03
52601	Prostatectomy (turp)	Y		A2	24.9071	$1,030.98
52606	Control postop bleeding	N	CH	D5		
52612	Prostatectomy, first stage	N	CH	D5		
52614	Prostatectomy, second stage	N	CH	D5		
52620	Remove residual prostate	N	CH	D5		
52630	Remove prostate regrowth	Y		A2	22.7398	$941.27
52640	Relieve bladder contracture	Y		A2	17.7284	$733.83
52647	Laser surgery of prostate	Y		A2	38.1055	$1,577.30
52648	Laser surgery of prostate	Y		A2	38.1055	$1,577.30
52700	Drainage of prostate abscess	Y		A2	17.7284	$733.83
53000	Incision of urethra	Y		A2	13.6064	$563.21
53010	Incision of urethra	Y		A2	13.6064	$563.21

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HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
53020	Incision of urethra	Y		A2	13.6064	$563.21
53025	Incision of urethra	Y		R2	19.3683	$801.71
53040	Drainage of urethra abscess	Y		A2	14.9375	$618.31
53060	Drainage of urethra abscess	Y		P3	1.7689	$73.22
53080	Drainage of urinary leakage	Y		A2	15.6913	$649.51
53085	Drainage of urinary leakage	Y		G2	19.3683	$801.71
53200	Biopsy of urethra	Y		A2	13.6064	$563.21
53210	Removal of urethra	Y		A2	23.3692	$967.32
53215	Removal of urethra	Y		A2	18.1294	$750.43
53220	Treatment of urethra lesion	Y		A2	20.1771	$835.19
53230	Removal of urethra lesion	Y		A2	20.1771	$835.19
53235	Removal of urethra lesion	Y		A2	15.6913	$649.51
53240	Surgery for urethra pouch	Y		A2	20.1771	$835.19
53250	Removal of urethra gland	Y		A2	14.9375	$618.31
53260	Treatment of urethra lesion	Y		A2	14.9375	$618.31
53265	Treatment of urethra lesion	Y		A2	14.9375	$618.31
53270	Removal of urethra gland	Y		A2	14.9375	$618.31
53275	Repair of urethra defect	Y		A2	14.9375	$618.31
53400	Revise urethra, stage 1	Y		A2	20.9311	$866.40
53405	Revise urethra, stage 2	Y		A2	20.1771	$835.19
53410	Reconstruction of urethra	Y		A2	20.1771	$835.19
53420	Reconstruct urethra, stage 1	Y		A2	20.9311	$866.40
53425	Reconstruct urethra, stage 2	Y		A2	20.1771	$835.19
53430	Reconstruction of urethra	Y		A2	20.1771	$835.19
53431	Reconstruct urethra/bladder	Y		A2	20.1771	$835.19
53440	Male sling procedure	N		H8	116.2281	$4,811.03
53442	Remove/revise male sling	Y		A2	18.8462	$780.10
53444	Insert tandem cuff	N		H8	116.2281	$4,811.03
53445	Insert uro/ves nck sphincter	N		H8	195.2337	$8,081.31
53446	Remove uro sphincter	Y		A2	18.8462	$780.10
53447	Remove/replace ur sphincter	N		H8	195.2337	$8,081.31
53449	Repair uro sphincter	Y		A2	18.8462	$780.10
53450	Revision of urethra	Y		A2	18.8462	$780.10
53460	Revision of urethra	Y		A2	13.6064	$563.21
53502	Repair of urethra injury	Y		A2	14.9375	$618.31
53505	Repair of urethra injury	Y		A2	20.1771	$835.19
53510	Repair of urethra injury	Y		A2	14.9375	$618.31
53515	Repair of urethra injury	Y		A2	20.1771	$835.19

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53520	Repair of urethra defect	Y		A2	20.1771	$835.19
53600	Dilate urethra stricture	Y		P3	1.0195	$42.20
53601	Dilate urethra stricture	Y		P2	1.0175	$42.12
53605	Dilate urethra stricture	Y		A2	14.4157	$596.71
53620	Dilate urethra stricture	Y		P3	1.5684	$64.92
53621	Dilate urethra stricture	Y		P3	1.6469	$68.17
53660	Dilation of urethra	Y		P2	1.0175	$42.12
53661	Dilation of urethra	Y		P2	1.0175	$42.12
53665	Dilation of urethra	Y		A2	13.6064	$563.21
53850	Prostatic microwave thermotx	Y		P2	44.6682	$1,848.95
53852	Prostatic rf thermotx	Y		P2	44.6682	$1,848.95
53853	Prostatic water thermother	N	CH	D5		
54000	Slitting of prepuce	Y		A2	14.9375	$618.31
54001	Slitting of prepuce	Y		A2	14.9375	$618.31
54015	Drain penis lesion	Y		A2	16.8729	$698.42
54050	Destruction, penis lesion(s)	Y		P2	0.8075	$33.42
54055	Destruction, penis lesion(s)	Y		P3	1.6469	$68.17
54056	Cryosurgery, penis lesion(s)	Y		P2	0.8075	$33.42
54057	Laser surg, penis lesion(s)	Y		A2	13.799	$571.18
54060	Excision of penis lesion(s)	Y		A2	13.799	$571.18
54065	Destruction, penis lesion(s)	Y		A2	13.799	$571.18
54100	Biopsy of penis	Y		A2	11.673	$483.18
54105	Biopsy of penis	Y		A2	14.5718	$603.17
54110	Treatment of penis lesion	Y		A2	22.5925	$935.17
54111	Treat penis lesion, graft	Y		A2	22.5925	$935.17
54112	Treat penis lesion, graft	Y		A2	22.5925	$935.17
54115	Treatment of penis lesion	Y		A2	13.3745	$553.61
54120	Partial removal of penis	Y		A2	22.5925	$935.17
54150	Circumcision w/regionl block	Y		A2	15.0567	$623.24
54160	Circumcision, neonate	Y		A2	16.3878	$678.34
54161	Circum 28 days or older	Y		A2	16.3878	$678.34
54162	Lysis penil circumic lesion	Y		A2	16.3878	$678.34
54163	Repair of circumcision	Y		A2	16.3878	$678.34
54164	Frenulotomy of penis	Y		A2	16.3878	$678.34
54200	Treatment of penis lesion	Y		P3	1.7165	$71.05
54205	Treatment of penis lesion	Y		A2	24.7597	$1,024.88
54220	Treatment of penis lesion	Y		A2	2.4603	$101.84
54230	Prepare penis study	N		N1		

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54231	Dynamic cavernosometry	Y		P3	1.6119	$66.72
54235	Penile injection	Y		P3	1.1415	$47.25
54240	Penis study	Y		P3	0.8103	$33.54
54250	Penis study	Y		P3	0.2875	$11.90
54300	Revision of penis	Y		A2	23.3462	$966.37
54304	Revision of penis	Y		A2	23.3462	$966.37
54308	Reconstruction of urethra	Y		A2	23.3462	$966.37
54312	Reconstruction of urethra	Y		A2	23.3462	$966.37
54316	Reconstruction of urethra	Y		A2	23.3462	$966.37
54318	Reconstruction of urethra	Y		A2	23.3462	$966.37
54322	Reconstruction of urethra	Y		A2	23.3462	$966.37
54324	Reconstruction of urethra	Y		A2	23.3462	$966.37
54326	Reconstruction of urethra	Y		A2	23.3462	$966.37
54328	Revise penis/urethra	Y		A2	23.3462	$966.37
54340	Secondary urethral surgery	Y		A2	23.3462	$966.37
54344	Secondary urethral surgery	Y		A2	23.3462	$966.37
54348	Secondary urethral surgery	Y		A2	23.3462	$966.37
54352	Reconstruct urethra/penis	Y		A2	23.3462	$966.37
54360	Penis plastic surgery	Y		A2	23.3462	$966.37
54380	Repair penis	Y		A2	23.3462	$966.37
54385	Repair penis	Y		A2	23.3462	$966.37
54400	Insert semi-rigid prosthesis	N		H8	116.9821	$4,842.24
54401	Insert self-contd prosthesis	N		H8	197.3186	$8,167.61
54405	Insert multi-comp penis pros	N		H8	197.3186	$8,167.61
54406	Remove muti-comp penis pros	Y		A2	23.3462	$966.37
54408	Repair multi-comp penis pros	Y		A2	23.3462	$966.37
54410	Remove/replace penis prosth	N		H8	197.3186	$8,167.61
54415	Remove self-contd penis pros	Y		A2	23.3462	$966.37
54416	Remv/repl penis contain pros	N		H8	197.3186	$8,167.61
54420	Revision of penis	Y		A2	24.7597	$1,024.88
54435	Revision of penis	Y		A2	24.7597	$1,024.88
54440	Repair of penis	Y		A2	24.7597	$1,024.88
54450	Preputial stretching	Y		A2	3.8734	$160.33
54500	Biopsy of testis	Y		A2	10.5126	$435.15
54505	Biopsy of testis	Y		A2	15.0567	$623.24
54512	Excise lesion testis	Y		A2	16.3878	$678.34
54520	Removal of testis	Y		A2	17.1415	$709.54
54522	Orchiectomy, partial	Y		A2	17.1415	$709.54

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54530	Removal of testis	Y		A2	22.8577	$946.15
54550	Exploration for testis	Y		A2	22.8577	$946.15
54560	Exploration for testis	Y		G2	22.2689	$921.78
54600	Reduce testis torsion	Y		A2	18.5551	$768.05
54620	Suspension of testis	Y		A2	17.1415	$709.54
54640	Suspension of testis	Y		A2	22.8577	$946.15
54660	Revision of testis	Y		A2	16.3878	$678.34
54670	Repair testis injury	Y		A2	17.1415	$709.54
54680	Relocation of testis(es)	Y		A2	17.1415	$709.54
54690	Laparoscopy, orchiectomy	Y		A2	38.3565	$1,587.69
54692	Laparoscopy, orchiopexy	Y		G2	68.1823	$2,822.27
54700	Drainage of scrotum	Y		A2	16.3878	$678.34
54800	Biopsy of epididymis	Y		A2	3.6784	$152.26
54830	Remove epididymis lesion	Y		A2	17.1415	$709.54
54840	Remove epididymis lesion	Y		A2	18.5551	$768.05
54860	Removal of epididymis	Y		A2	17.1415	$709.54
54861	Removal of epididymis	Y		A2	18.5551	$768.05
54865	Explore epididymis	Y		A2	15.0567	$623.24
54900	Fusion of spermatic ducts	Y		A2	18.5551	$768.05
54901	Fusion of spermatic ducts	Y		A2	18.5551	$768.05
55000	Drainage of hydrocele	Y		P3	1.673	$69.25
55040	Removal of hydrocele	Y		A2	21.4444	$887.65
55041	Removal of hydroceles	Y		A2	23.8825	$988.57
55060	Repair of hydrocele	Y		A2	18.5551	$768.05
55100	Drainage of scrotum abscess	Y		A2	10.0631	$416.54
55110	Explore scrotum	Y		A2	16.3878	$678.34
55120	Removal of scrotum lesion	Y		A2	16.3878	$678.34
55150	Removal of scrotum	Y		A2	15.0567	$623.24
55175	Revision of scrotum	Y		A2	15.0567	$623.24
55180	Revision of scrotum	Y		A2	16.3878	$678.34
55200	Incision of sperm duct	Y		A2	16.3878	$678.34
55250	Removal of sperm duct(s)	Y		A2	16.3878	$678.34
55300	Prepare, sperm duct x-ray	N		N1		
55400	Repair of sperm duct	Y		A2	15.0567	$623.24
55450	Ligation of sperm duct	Y		P3	5.3847	$222.89
55500	Removal of hydrocele	Y		A2	17.1415	$709.54
55520	Removal of sperm cord lesion	Y		A2	18.5551	$768.05
55530	Revise spermatic cord veins	Y		A2	18.5551	$768.05

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55535	Revise spermatic cord veins	Y		A2	22.8577	$946.15
55540	Revise hernia & sperm veins	Y		A2	23.8825	$988.57
55550	Laparo ligate spermatic vein	Y		A2	38.3565	$1,587.69
55600	Incise sperm duct pouch	Y		R2	22.2689	$921.78
55680	Remove sperm pouch lesion	Y		A2	15.0567	$623.24
55700	Biopsy of prostate	Y		A2	9.7033	$401.65
55705	Biopsy of prostate	Y		A2	9.7033	$401.65
55706	Prostate saturation sampling	Y	NI	G2	11.2602	$466.09
55720	Drainage of prostate abscess	Y		A2	16.3972	$678.73
55725	Drainage of prostate abscess	Y		A2	17.7284	$733.83
55860	Surgical exposure, prostate	Y		G2	19.5357	$808.64
55870	Electroejaculation	Y		P3	1.9866	$82.23
55873	Cryoablate prostate	Y		H8	154.5737	$6,398.27
55875	Transperi needle place, pros	N		A2	33.258	$1,376.65
55876*	Place rt device/marker, pros	N		P3	1.8211	$75.38
55920	Place needles pelvic for rt	Y		G2	22.8284	$944.94
56405	I & d of vulva/perineum	Y		P3	1.063	$44.00
56420	Drainage of gland abscess	Y		P2	1.3875	$57.43
56440	Surgery for vulva lesion	Y		A2	14.8989	$616.71
56441	Lysis of labial lesion(s)	Y		A2	13.5678	$561.61
56442	Hymenotomy	Y		A2	13.5678	$561.61
56501	Destroy, vulva lesions, sim	Y		P3	1.4638	$60.59
56515	Destroy vulva lesion/s compl	Y		A2	15.8838	$657.48
56605	Biopsy of vulva/perineum	Y		P3	0.8451	$34.98
56606	Biopsy of vulva/perineum	Y		P3	0.3486	$14.43
56620	Partial removal of vulva	Y		A2	18.0907	$748.83
56625	Complete removal of vulva	Y		A2	21.3652	$884.37
56700	Partial removal of hymen	Y		A2	13.5678	$561.61
56740	Remove vagina gland lesion	Y		A2	15.6526	$647.91
56800	Repair of vagina	Y		A2	15.6526	$647.91
56805	Repair clitoris	Y		G2	19.2912	$798.52
56810	Repair of perineum	Y		A2	18.0907	$748.83
56820	Exam of vulva w/scope	Y		P3	1.0804	$44.72
56821	Exam/biopsy of vulva w/scope	Y		P2	1.3875	$57.43
57000	Exploration of vagina	Y		A2	13.5678	$561.61
57010	Drainage of pelvic abscess	Y		A2	14.8989	$616.71
57020	Drainage of pelvic fluid	Y		A2	7.8136	$323.43
57022	I & d vaginal hematoma, pp	Y		G2	12.2817	$508.38

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57023	I & d vag hematoma, non-ob	Y		A2	13.3745	$553.61
57061	Destroy vag lesions, simple	Y		P3	1.3505	$55.90
57065	Destroy vag lesions, complex	Y		A2	13.5678	$561.61
57100	Biopsy of vagina	Y		P3	0.8627	$35.71
57105	Biopsy of vagina	Y		A2	14.8989	$616.71
57130	Remove vagina lesion	Y		A2	14.8989	$616.71
57135	Remove vagina lesion	Y		A2	14.8989	$616.71
57150	Treat vagina infection	Y		P3	0.6274	$25.97
57155	Insert uteri tandems/ovoids	Y		A2	7.8136	$323.43
57160	Insert pessary/other device	Y		P3	0.9062	$37.51
57170	Fitting of diaphragm/cap	Y		P2	0.1486	$6.15
57180	Treat vaginal bleeding	Y		A2	2.7908	$115.52
57200	Repair of vagina	Y		A2	13.5678	$561.61
57210	Repair vagina/perineum	Y		A2	14.8989	$616.71
57220	Revision of urethra	Y		A2	27.3225	$1,130.96
57230	Repair of urethral lesion	Y		A2	22.4342	$928.62
57240	Repair bladder & vagina	Y		A2	24.8723	$1,029.54
57250	Repair rectum & vagina	Y		A2	24.8723	$1,029.54
57260	Repair of vagina	Y		A2	24.8723	$1,029.54
57265	Extensive repair of vagina	Y		A2	33.0351	$1,367.42
57267	Insert mesh/pelvic flr addon	Y		A2	28.1468	$1,165.08
57268	Repair of bowel bulge	Y		A2	22.4342	$928.62
57287	Revise/remove sling repair	Y		G2	32.8544	$1,359.94
57288	Repair bladder defect	Y		A2	29.7606	$1,231.88
57289	Repair bladder & vagina	Y		A2	24.8723	$1,029.54
57291	Construction of vagina	Y		A2	24.8723	$1,029.54
57300	Repair rectum-vagina fistula	Y		A2	22.4342	$928.62
57320	Repair bladder-vagina lesion	Y		G2	32.8544	$1,359.94
57400	Dilation of vagina	Y		A2	14.8989	$616.71
57410	Pelvic examination	Y		A2	14.8989	$616.71
57415	Remove vaginal foreign body	Y		A2	14.8989	$616.71
57420	Exam of vagina w/scope	Y		P3	1.1154	$46.17
57421	Exam/biopsy of vag w/scope	Y		P3	1.4551	$60.23
57452	Exam of cervix w/scope	Y		P3	1.0543	$43.64
57454	Bx/curett of cervix w/scope	Y		P3	1.2896	$53.38
57455	Biopsy of cervix w/scope	Y		P3	1.3679	$56.62
57456	Endocerv curettage w/scope	Y		P3	1.3244	$54.82
57460	Bx of cervix w/scope, leep	Y		P3	4.069	$168.43

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57461	Conz of cervix w/scope, leep	Y		P3	4.3217	$178.89
57500	Biopsy of cervix	Y		P3	1.8646	$77.18
57505	Endocervical curettage	Y		P3	1.185	$49.05
57510	Cauterization of cervix	Y		P3	1.2024	$49.77
57511	Cryocautery of cervix	Y		P2	1.3875	$57.43
57513	Laser surgery of cervix	Y		A2	14.8989	$616.71
57520	Conization of cervix	Y		A2	14.8989	$616.71
57522	Conization of cervix	Y		A2	14.8989	$616.71
57530	Removal of cervix	Y		A2	22.4342	$928.62
57550	Removal of residual cervix	Y		A2	22.4342	$928.62
57556	Remove cervix, repair bowel	Y		A2	29.7606	$1,231.88
57558	D&c of cervical stump	Y		A2	15.6526	$647.91
57700	Revision of cervix	Y		A2	13.5678	$561.61
57720	Revision of cervix	Y		A2	15.6526	$647.91
57800	Dilation of cervical canal	Y		P3	0.6361	$26.33
58100	Biopsy of uterus lining	Y		P3	1.0456	$43.28
58110	Bx done w/colposcopy add-on	N		N1		
58120	Dilation and curettage	Y		A2	14.8989	$616.71
58145	Myomectomy vag method	Y		A2	24.8723	$1,029.54
58301	Remove intrauterine device	Y		P3	0.9758	$40.39
58321	Artificial insemination	Y		P3	0.9149	$37.87
58322	Artificial insemination	Y		P3	0.941	$38.95
58323	Sperm washing	Y		P3	0.2179	$9.02
58340	Catheter for hysterography	N		N1		
58345	Reopen fallopian tube	Y		R2	19.2912	$798.52
58346	Insert heyman uteri capsule	Y		A2	14.8989	$616.71
58350	Reopen fallopian tube	Y		A2	22.4342	$928.62
58353	Endometr ablate, thermal	Y		A2	28.1468	$1,165.08
58356	Endometrial cryoablation	Y		P2	42.6309	$1,764.62
58545	Laparoscopic myomectomy	Y		A2	34.2442	$1,417.47
58546	Laparo-myomectomy, complex	Y		A2	38.3565	$1,587.69
58550	Laparo-asst vag hysterectomy	Y		A2	49.8625	$2,063.96
58552	Laparo-vag hyst incl t/o	Y		G2	45.1703	$1,869.73
58555	Hysteroscopy, dx, sep proc	Y		A2	14.6592	$606.79
58558	Hysteroscopy, biopsy	Y		A2	16.7441	$693.09
58559	Hysteroscopy, lysis	Y		A2	15.9904	$661.89
58560	Hysteroscopy, resect septum	Y		A2	23.8748	$988.25
58561	Hysteroscopy, remove myoma	Y		A2	23.8748	$988.25

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HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
58562	Hysteroscopy, remove fb	Y		A2	16.7441	$693.09
58563	Hysteroscopy, ablation	Y		A2	33.639	$1,392.42
58565	Hysteroscopy, sterilization	Y		A2	37.0869	$1,535.14
58600	Division of fallopian tube	Y		G2	32.8544	$1,359.94
58615	Occlude fallopian tube(s)	Y		G2	19.2912	$798.52
58660	Laparoscopy, lysis	Y		A2	31.0304	$1,284.44
58661	Laparoscopy, remove adnexa	Y		A2	31.0304	$1,284.44
58662	Laparoscopy, excise lesions	Y		A2	31.0304	$1,284.44
58670	Laparoscopy, tubal cautery	Y		A2	28.5923	$1,183.52
58671	Laparoscopy, tubal block	Y		A2	28.5923	$1,183.52
58672	Laparoscopy, fimbrioplasty	Y		A2	31.0304	$1,284.44
58673	Laparoscopy, salpingostomy	Y		A2	31.0304	$1,284.44
58800	Drainage of ovarian cyst(s)	Y		A2	15.6526	$647.91
58805	Drainage of ovarian cyst(s)	Y		G2	32.8544	$1,359.94
58820	Drain ovary abscess, open	Y		A2	22.4342	$928.62
58900	Biopsy of ovary(s)	Y		A2	15.6526	$647.91
58970	Retrieval of oocyte	Y		A2	4.3599	$180.47
58974	Transfer of embryo	Y		A2	4.3599	$180.47
58976	Transfer of embryo	Y		A2	4.3599	$180.47
59000	Amniocentesis, diagnostic	Y		P3	1.5945	$66.00
59001	Amniocentesis, therapeutic	Y		R2	5.985	$247.74
59012	Fetal cord puncture,prenatal	Y		G2	2.9265	$121.14
59015	Chorion biopsy	Y		P3	1.2896	$53.38
59020	Fetal contract stress test	Y		P3	0.6796	$28.13
59025	Fetal non-stress test	Y		P3	0.3573	$14.79
59070	Transabdom amnioinfus w/us	Y		G2	2.9265	$121.14
59072	Umbilical cord occlud w/us	Y		G2	2.9265	$121.14
59076	Fetal shunt placement, w/us	Y		G2	2.9265	$121.14
59100	Remove uterus lesion	Y		R2	32.8544	$1,359.94
59150	Treat ectopic pregnancy	Y		G2	45.1703	$1,869.73
59151	Treat ectopic pregnancy	Y		G2	45.1703	$1,869.73
59160	D & c after delivery	Y		A2	15.6526	$647.91
59200	Insert cervical dilator	Y		P3	0.8714	$36.07
59300	Episiotomy or vaginal repair	Y		P3	1.882	$77.90
59320	Revision of cervix	Y		A2	13.5678	$561.61
59412	Antepartum manipulation	Y		G2	19.2912	$798.52
59414	Deliver placenta	Y		G2	19.2912	$798.52
59812	Treatment of miscarriage	Y		A2	18.0907	$748.83

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59820	Care of miscarriage	Y		A2	18.0907	$748.83
59821	Treatment of miscarriage	Y		A2	18.0907	$748.83
59840	Abortion	Y		A2	18.0907	$748.83
59841	Abortion	Y		A2	18.0907	$748.83
59866	Abortion (mpr)	Y		G2	2.9265	$121.14
59870	Evacuate mole of uterus	Y		A2	18.0907	$748.83
59871	Remove cerclage suture	Y		A2	18.0907	$748.83
60000	Drain thyroid/tongue cyst	Y		A2	7.595	$314.38
60100	Biopsy of thyroid	Y		P3	1.1937	$49.41
60200	Remove thyroid lesion	Y		A2	28.2688	$1,170.13
60280	Remove thyroid duct lesion	Y		A2	30.4361	$1,259.84
60281	Remove thyroid duct lesion	Y		A2	30.4361	$1,259.84
60300	Aspir/inj thyroid cyst	Y		P3	1.5684	$64.92
61000	Remove cranial cavity fluid	Y		R2	6.9935	$289.48
61001	Remove cranial cavity fluid	Y		R2	6.9935	$289.48
61020	Remove brain cavity fluid	Y		A2	5.6621	$234.37
61026	Injection into brain canal	Y		A2	5.6621	$234.37
61050	Remove brain canal fluid	Y		A2	5.6621	$234.37
61055	Injection into brain canal	Y		A2	5.6621	$234.37
61070	Brain canal shunt procedure	Y		A2	4.4058	$182.37
61215	Insert brain-fluid device	Y		A2	26.5042	$1,097.09
61330	Decompress eye socket	Y		G2	40.8314	$1,690.13
61334	Explore orbit/remove object	Y		G2	40.8314	$1,690.13
61790	Treat trigeminal nerve	Y		A2	15.032	$622.22
61791	Treat trigeminal tract	Y		A2	11.1521	$461.62
61795	Brain surgery using computer	N		N1		
61880	Revise/remove neuroelectrode	Y		G2	19.1488	$792.63
61885	Insrt/redo neurostim 1 array	N		H8	275.5558	$11,406.08
61886	Implant neurostim arrays	N		H8	411.472	$17,032.06
61888	Revise/remove neuroreceiver	Y		A2	18.3275	$758.63
62194	Replace/irrigate catheter	Y		A2	7.4189	$307.09
62225	Replace/irrigate catheter	Y		A2	11.5278	$477.17
62230	Replace/revise brain shunt	Y		A2	25.7502	$1,065.88
62252	Csf shunt reprogram	N		P3	1.1676	$48.33
62263	Epidural lysis mult sessions	Y		A2	7.4189	$307.09
62264	Epidural lysis on single day	Y		A2	10.9291	$452.39
62267	Interdiscal perq aspir, dx	Y	NI	G2	4.3613	$180.53
62268	Drain spinal cord cyst	Y		A2	5.6621	$234.37

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62269	Needle biopsy, spinal cord	Y		A2	8.5923	$355.66
62270	Spinal fluid tap, diagnostic	Y		A2	3.4168	$141.43
62272	Drain cerebro spinal fluid	Y		A2	3.4168	$141.43
62273	Inject epidural patch	Y		A2	5.7017	$236.01
62280	Treat spinal cord lesion	Y		A2	7.4189	$307.09
62281	Treat spinal cord lesion	Y		A2	7.4189	$307.09
62282	Treat spinal canal lesion	Y		A2	7.4189	$307.09
62284	Injection for myelogram	N		N1		
62287	Percutaneous diskectomy	Y		A2	33.3039	$1,378.55
62290	Inject for spine disk x-ray	N		N1		
62291	Inject for spine disk x-ray	N		N1		
62292	Injection into disk lesion	Y		R2	6.9935	$289.48
62294	Injection into spinal artery	Y		A2	5.6621	$234.37
62310	Inject spine c/t	Y		A2	7.4189	$307.09
62311	Inject spine l/s (cd)	Y		A2	7.4189	$307.09
62318	Inject spine w/cath, c/t	Y		A2	7.4189	$307.09
62319	Inject spine w/cath l/s (cd)	Y		A2	7.4189	$307.09
62350	Implant spinal canal cath	Y		A2	25.7502	$1,065.88
62355	Remove spinal canal catheter	Y		A2	12.2603	$507.49
62360	Insert spine infusion device	Y		A2	25.7502	$1,065.88
62361	Implant spine infusion pump	Y		H8	264.3297	$10,941.40
62362	Implant spine infusion pump	Y		H8	264.3297	$10,941.40
62365	Remove spine infusion device	Y		A2	22.7857	$943.17
62367	Analyze spine infusion pump	N		P3	0.4182	$17.31
62368	Analyze spine infusion pump	N		P3	0.5315	$22.00
63600	Remove spinal cord lesion	Y		A2	14.2783	$591.02
63610	Stimulation of spinal cord	Y		A2	12.9471	$535.92
63615	Remove lesion of spinal cord	Y		R2	18.05	$747.14
63650	Implant neuroelectrodes	N		H8	76.8524	$3,181.15
63655	Implant neuroelectrodes	N		J8	112.57	$4,659.61
63660	Revise/remove neuroelectrode	Y		A2	13.4967	$558.67
63685	Insrt/redo spine n generator	N		H8	341.6759	$14,142.99
63688	Revise/remove neuroreceiver	Y		A2	18.3275	$758.63
63744	Revision of spinal shunt	Y		A2	26.5042	$1,097.09
63746	Removal of spinal shunt	Y		A2	12.2603	$507.49
64400	N block inj, trigeminal	Y		P3	1.3418	$55.54
64402	N block inj, facial	Y		P3	1.2635	$52.30
64405	N block inj, occipital	Y		P3	1.0717	$44.36

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HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
64408	N block inj, vagus	Y		P3	1.3331	$55.18
64410	N block inj, phrenic	Y		A2	7.4189	$307.09
64412	N block inj, spinal accessor	Y		P3	1.9605	$81.15
64413	N block inj, cervical plexus	Y		P3	1.2548	$51.94
64415	N block inj, brachial plexus	Y		A2	3.4168	$141.43
64416	N block cont infuse, b plex	Y		G2	6.9935	$289.48
64417	N block inj, axillary	Y		A2	3.4168	$141.43
64418	N block inj, suprascapular	Y		P3	1.76	$72.85
64420	N block inj, intercost, sng	Y		A2	3.4168	$141.43
64421	N block inj, intercost, mlt	Y		A2	7.4189	$307.09
64425	N block inj, ilio-ing/hypogi	Y		P3	1.2198	$50.49
64430	N block inj, pudendal	Y		A2	5.134	$212.51
64435	N block inj, paracervical	Y		P3	1.8385	$76.10
64445	N block inj, sciatic, sng	Y		P3	1.6293	$67.44
64446	N blk inj, sciatic, cont inf	Y		G2	14.0139	$580.08
64447	N block inj fem, single	Y		R2	3.559	$147.32
64448	N block inj fem, cont inf	Y	CH	G2	3.559	$147.32
64449	N block inj, lumbar plexus	Y	CH	G2	6.9935	$289.48
64450	N block, other peripheral	Y		P3	1.0891	$45.08
64455*	N block inj, plantar digit	Y	NI	P3	0.453	$18.75
64470	Inj paravertebral c/t	Y		A2	7.4189	$307.09
64472	Inj paravertebral c/t add-on	Y		A2	5.7017	$236.01
64475	Inj paravertebral l/s	Y		A2	7.4189	$307.09
64476	Inj paravertebral l/s add-on	Y		A2	5.1349	$212.55
64479	Inj foramen epidural c/t	Y		A2	7.4189	$307.09
64480	Inj foramen epidural add-on	Y		A2	5.7017	$236.01
64483	Inj foramen epidural l/s	Y		A2	7.4189	$307.09
64484	Inj foramen epidural add-on	Y		A2	5.7017	$236.01
64505	N block, spenopalatine gangl	Y		P3	0.9934	$41.12
64508	N block, carotid sinus s/p	Y	CH	P3	2.1086	$87.28
64510	N block, stellate ganglion	Y		A2	7.4189	$307.09
64517	N block inj, hypogas plxs	Y		A2	5.134	$212.51
64520	N block, lumbar/thoracic	Y		A2	7.4189	$307.09
64530	N block inj, celiac pelus	Y		A2	7.4189	$307.09
64553	Implant neuroelectrodes	N		H8	75.5212	$3,126.05
64555	Implant neuroelectrodes	N		J8	84.8059	$3,510.37
64560	Implant neuroelectrodes	N		J8	84.8059	$3,510.37
64561	Implant neuroelectrodes	N		H8	77.6061	$3,212.35

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64565	Implant neuroelectrodes	N		J8	84.8059	$3,510.37
64573	Implant neuroelectrodes	N		H8	132.1149	$5,468.63
64575	Implant neuroelectrodes	N		H8	100.991	$4,180.32
64577	Implant neuroelectrodes	N		H8	100.991	$4,180.32
64580	Implant neuroelectrodes	N		H8	100.991	$4,180.32
64581	Implant neuroelectrodes	N		H8	103.0759	$4,266.62
64585	Revise/remove neuroelectrode	Y		A2	13.4967	$558.67
64590	Insrt/redo pn/gastr stimul	N		H8	275.5558	$11,406.08
64595	Revise/rmv pn/gastr stimul	Y		A2	18.3275	$758.63
64600	Injection treatment of nerve	Y		A2	10.9291	$452.39
64605	Injection treatment of nerve	Y		A2	10.9291	$452.39
64610	Injection treatment of nerve	Y		A2	10.9291	$452.39
64612	Destroy nerve, face muscle	Y		P3	1.5945	$66.00
64613	Destroy nerve, neck muscle	Y		P3	1.5423	$63.84
64614	Destroy nerve, extrem musc	Y		P3	1.76	$72.85
64620	Injection treatment of nerve	Y		A2	7.4189	$307.09
64622	Destr paravertebrl nerve l/s	Y		A2	10.9291	$452.39
64623	Destr paravertebral n add-on	Y		A2	7.4189	$307.09
64626	Destr paravertebrl nerve c/t	Y		A2	10.9291	$452.39
64627	Destr paravertebral n add-on	Y		A2	5.1349	$212.55
64630	Injection treatment of nerve	Y		A2	7.6419	$316.32
64632*	N block inj, common digit	Y	NI	P3	0.8277	$34.26
64640	Injection treatment of nerve	Y		P3	2.4659	$102.07
64650	Chemodenerv eccrine glands	Y		P3	0.8277	$34.26
64653	Chemodenerv eccrine glands	Y		P3	0.8975	$37.15
64680	Injection treatment of nerve	Y		A2	11.6119	$480.65
64681	Injection treatment of nerve	Y		A2	12.2603	$507.49
64702	Revise finger/toe nerve	Y		A2	12.9471	$535.92
64704	Revise hand/foot nerve	Y		A2	12.9471	$535.92
64708	Revise arm/leg nerve	Y		A2	14.2783	$591.02
64712	Revision of sciatic nerve	Y		A2	14.2783	$591.02
64713	Revision of arm nerve(s)	Y		A2	14.2783	$591.02
64714	Revise low back nerve(s)	Y		A2	14.2783	$591.02
64716	Revision of cranial nerve	Y		A2	15.032	$622.22
64718	Revise ulnar nerve at elbow	Y		A2	14.2783	$591.02
64719	Revise ulnar nerve at wrist	Y		A2	14.2783	$591.02
64721	Carpal tunnel surgery	Y		A2	14.2783	$591.02
64722	Relieve pressure on nerve(s)	Y		A2	12.9471	$535.92

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Part II—Continued

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 410, 416, and 419

Medicare Program: Changes to the Hospital Outpatient Prospective Payment System and CY 2009 Payment Rates; Changes to the Ambulatory Surgical Center Payment System and CY 2009 Payment Rates; Hospital Conditions of Participation: Requirements for Approval and Re-Approval of Transplant Centers To Perform Organ Transplants—Clarification of Provider and Supplier Termination Policy Medicare and Medicaid Programs: Changes to the Ambulatory Surgical Center Conditions for Coverage; Final Rule

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64726	Release foot/toe nerve	Y		A2	12.9471	$535.92
64727	Internal nerve revision	Y		A2	12.9471	$535.92
64732	Incision of brow nerve	Y		A2	14.2783	$591.02
64734	Incision of cheek nerve	Y		A2	14.2783	$591.02
64736	Incision of chin nerve	Y		A2	14.2783	$591.02
64738	Incision of jaw nerve	Y		A2	14.2783	$591.02
64740	Incision of tongue nerve	Y		A2	14.2783	$591.02
64742	Incision of facial nerve	Y		A2	14.2783	$591.02
64744	Incise nerve, back of head	Y		A2	14.2783	$591.02
64746	Incise diaphragm nerve	Y		A2	14.2783	$591.02
64761	Incision of pelvis nerve	Y		G2	18.05	$747.14
64763	Incise hip/thigh nerve	Y		G2	18.05	$747.14
64766	Incise hip/thigh nerve	Y		G2	35.0648	$1,451.44
64771	Sever cranial nerve	Y		A2	14.2783	$591.02
64772	Incision of spinal nerve	Y		A2	14.2783	$591.02
64774	Remove skin nerve lesion	Y		A2	14.2783	$591.02
64776	Remove digit nerve lesion	Y		A2	15.032	$622.22
64778	Digit nerve surgery add-on	Y		A2	14.2783	$591.02
64782	Remove limb nerve lesion	Y		A2	15.032	$622.22
64783	Limb nerve surgery add-on	Y		A2	14.2783	$591.02
64784	Remove nerve lesion	Y		A2	15.032	$622.22
64786	Remove sciatic nerve lesion	Y		A2	23.5395	$974.37
64787	Implant nerve end	Y		A2	14.2783	$591.02
64788	Remove skin nerve lesion	Y		A2	15.032	$622.22
64790	Removal of nerve lesion	Y		A2	15.032	$622.22
64792	Removal of nerve lesion	Y		A2	23.5395	$974.37
64795	Biopsy of nerve	Y		A2	14.2783	$591.02
64802	Remove sympathetic nerves	Y		A2	14.2783	$591.02
64820	Remove sympathetic nerves	Y		G2	18.05	$747.14
64821	Remove sympathetic nerves	Y		A2	21.0717	$872.22
64822	Remove sympathetic nerves	Y		G2	27.3022	$1,130.12
64823	Remove sympathetic nerves	Y		G2	27.3022	$1,130.12
64831	Repair of digit nerve	Y		A2	24.953	$1,032.88
64832	Repair nerve add-on	Y		A2	21.4546	$888.07
64834	Repair of hand or foot nerve	Y		A2	22.7857	$943.17
64835	Repair of hand or foot nerve	Y		A2	23.5395	$974.37
64836	Repair of hand or foot nerve	Y		A2	23.5395	$974.37
64837	Repair nerve add-on	Y		A2	21.4546	$888.07

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HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
64840	Repair of leg nerve	Y		A2	22.7857	$943.17
64856	Repair/transpose nerve	Y		A2	22.7857	$943.17
64857	Repair arm/leg nerve	Y		A2	22.7857	$943.17
64858	Repair sciatic nerve	Y		A2	22.7857	$943.17
64859	Nerve surgery	Y		A2	21.4546	$888.07
64861	Repair of arm nerves	Y		A2	23.5395	$974.37
64862	Repair of low back nerves	Y		A2	23.5395	$974.37
64864	Repair of facial nerve	Y		A2	23.5395	$974.37
64865	Repair of facial nerve	Y		A2	24.953	$1,032.88
64870	Fusion of facial/other nerve	Y		A2	24.953	$1,032.88
64872	Subsequent repair of nerve	Y		A2	22.7857	$943.17
64874	Repair & revise nerve add-on	Y		A2	23.5395	$974.37
64876	Repair nerve/shorten bone	Y		A2	23.5395	$974.37
64885	Nerve graft, head or neck	Y		A2	22.7857	$943.17
64886	Nerve graft, head or neck	Y		A2	22.7857	$943.17
64890	Nerve graft, hand or foot	Y		A2	22.7857	$943.17
64891	Nerve graft, hand or foot	Y		A2	22.7857	$943.17
64892	Nerve graft, arm or leg	Y		A2	22.7857	$943.17
64893	Nerve graft, arm or leg	Y		A2	22.7857	$943.17
64895	Nerve graft, hand or foot	Y		A2	23.5395	$974.37
64896	Nerve graft, hand or foot	Y		A2	23.5395	$974.37
64897	Nerve graft, arm or leg	Y		A2	23.5395	$974.37
64898	Nerve graft, arm or leg	Y		A2	23.5395	$974.37
64901	Nerve graft add-on	Y		A2	22.7857	$943.17
64902	Nerve graft add-on	Y		A2	22.7857	$943.17
64905	Nerve pedicle transfer	Y		A2	22.7857	$943.17
64907	Nerve pedicle transfer	Y		A2	21.4546	$888.07
64910	Nerve repair w/allograft	Y		G2	35.0648	$1,451.44
65091	Revise eye	Y		A2	24.7858	$1,025.96
65093	Revise eye with implant	Y		A2	24.7858	$1,025.96
65101	Removal of eye	Y		A2	24.7858	$1,025.96
65103	Remove eye/insert implant	Y		A2	24.7858	$1,025.96
65105	Remove eye/attach implant	Y		A2	26.1994	$1,084.47
65110	Removal of eye	Y		A2	27.2239	$1,126.88
65112	Remove eye/revise socket	Y		A2	30.4984	$1,262.42
65114	Remove eye/revise socket	Y		A2	30.4984	$1,262.42
65125	Revise ocular implant	Y		G2	25.382	$1,050.64
65130	Insert ocular implant	Y		A2	18.6981	$773.97

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HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
65135	Insert ocular implant	Y		A2	17.9443	$742.77
65140	Attach ocular implant	Y		A2	24.7858	$1,025.96
65150	Revise ocular implant	Y		A2	17.9443	$742.77
65155	Reinsert ocular implant	Y		A2	24.7858	$1,025.96
65175	Removal of ocular implant	Y		A2	13.3387	$552.13
65205	Remove foreign body from eye	N		P3	0.5141	$21.28
65210	Remove foreign body from eye	N		P3	0.6535	$27.05
65220	Remove foreign body from eye	N		G2	0.9105	$37.69
65222	Remove foreign body from eye	N		P3	0.7144	$29.57
65235	Remove foreign body from eye	Y		A2	13.4153	$555.30
65260	Remove foreign body from eye	Y		A2	8.8484	$366.26
65265	Remove foreign body from eye	Y		A2	18.306	$757.74
65270	Repair of eye wound	Y		A2	14.6696	$607.22
65272	Repair of eye wound	Y		A2	16.9038	$699.70
65275	Repair of eye wound	Y		A2	19.0711	$789.41
65280	Repair of eye wound	Y		A2	18.306	$757.74
65285	Repair of eye wound	Y		A2	26.0327	$1,077.57
65286	Repair of eye wound	Y		P2	4.5545	$188.52
65290	Repair of eye socket wound	Y		A2	18.0279	$746.23
65400	Removal of eye lesion	Y		A2	12.0844	$500.21
65410	Biopsy of cornea	Y		A2	13.4153	$555.30
65420	Removal of eye lesion	Y		A2	13.4153	$555.30
65426	Removal of eye lesion	Y		A2	20.0959	$831.83
65430	Corneal smear	N		P2	0.9105	$37.69
65435	Curette/treat cornea	Y		P3	0.7929	$32.82
65436	Curette/treat cornea	Y	CH	P3	3.4416	$142.46
65450	Treatment of corneal lesion	N		G2	2.1012	$86.97
65600	Revision of cornea	Y		P3	4.0603	$168.07
65710	Corneal transplant	Y		A2	30.2302	$1,251.32
65730	Corneal transplant	Y		A2	30.2302	$1,251.32
65750	Corneal transplant	Y		A2	30.2302	$1,251.32
65755	Corneal transplant	Y		A2	30.2302	$1,251.32
65756	Corneal trnspl, endothelial	Y	NI	G2	37.021	$1,532.41
65770	Revise cornea with implant	Y	CH	H8	138.522	$5,733.84
65772	Correction of astigmatism	Y		A2	15.5826	$645.01
65775	Correction of astigmatism	Y		A2	15.5826	$645.01
65780	Ocular reconst, transplant	Y		A2	26.9558	$1,115.78
65781	Ocular reconst, transplant	Y		A2	26.9558	$1,115.78

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65782	Ocular reconst, transplant	Y		A2	26.9558	$1,115.78
65800	Drainage of eye	Y		A2	12.0844	$500.21
65805	Drainage of eye	Y		A2	12.0844	$500.21
65810	Drainage of eye	Y		A2	17.6578	$730.91
65815	Drainage of eye	Y		A2	16.9038	$699.70
65820	Relieve inner eye pressure	Y		A2	6.1996	$256.62
65850	Incision of eye	Y		A2	19.0711	$789.41
65855	Laser surgery of eye	Y		P3	3.2936	$136.33
65860	Incise inner eye adhesions	Y		P3	3.0759	$127.32
65865	Incise inner eye adhesions	Y		A2	12.0844	$500.21
65870	Incise inner eye adhesions	Y		A2	19.0711	$789.41
65875	Incise inner eye adhesions	Y		A2	19.0711	$789.41
65880	Incise inner eye adhesions	Y		A2	15.5826	$645.01
65900	Remove eye lesion	Y		A2	16.6074	$687.43
65920	Remove implant of eye	Y		A2	23.3704	$967.37
65930	Remove blood clot from eye	Y		A2	20.0959	$831.83
66020	Injection treatment of eye	Y		A2	12.0844	$500.21
66030	Injection treatment of eye	Y		A2	6.1996	$256.62
66130	Remove eye lesion	Y		A2	23.3704	$967.37
66150	Glaucoma surgery	Y		A2	19.0711	$789.41
66155	Glaucoma surgery	Y		A2	19.0711	$789.41
66160	Glaucoma surgery	Y		A2	16.9038	$699.70
66165	Glaucoma surgery	Y		A2	19.0711	$789.41
66170	Glaucoma surgery	Y		A2	19.0711	$789.41
66172	Incision of eye	Y		A2	19.0711	$789.41
66180	Implant eye shunt	Y		A2	28.4121	$1,176.06
66185	Revise eye shunt	Y		A2	25.2202	$1,043.94
66220	Repair eye lesion	Y		A2	24.6194	$1,019.07
66225	Repair/graft eye lesion	Y		A2	27.3875	$1,133.65
66250	Follow-up surgery of eye	Y		A2	13.4153	$555.30
66500	Incision of iris	Y		A2	6.1996	$256.62
66505	Incision of iris	Y		A2	6.1996	$256.62
66600	Remove iris and lesion	Y		A2	17.6578	$730.91
66605	Removal of iris	Y		A2	17.6578	$730.91
66625	Removal of iris	Y		A2	12.5548	$519.68
66630	Removal of iris	Y		A2	17.6578	$730.91
66635	Removal of iris	Y		A2	17.6578	$730.91
66680	Repair iris & ciliary body	Y		A2	17.6578	$730.91

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66682	Repair iris & ciliary body	Y		A2	16.9038	$699.70
66700	Destruction, ciliary body	Y		A2	13.4153	$555.30
66710	Ciliary transsleral therapy	Y		A2	13.4153	$555.30
66711	Ciliary endoscopic ablation	Y		A2	13.4153	$555.30
66720	Destruction, ciliary body	Y		A2	13.4153	$555.30
66740	Destruction, ciliary body	Y		A2	16.9038	$699.70
66761	Revision of iris	Y		P3	4.5831	$189.71
66762	Revision of iris	Y		P3	4.6617	$192.96
66770	Removal of inner eye lesion	Y		P2	5.1336	$212.50
66820	Incision, secondary cataract	Y		G2	4.5545	$188.52
66821	After cataract laser surgery	Y		A2	6.2474	$258.60
66825	Reposition intraocular lens	Y		A2	19.0711	$789.41
66830	Removal of lens lesion	Y		A2	6.67	$276.09
66840	Removal of lens material	Y		A2	14.3379	$593.49
66850	Removal of lens material	Y		A2	26.9949	$1,117.40
66852	Removal of lens material	Y		A2	22.6956	$939.44
66920	Extraction of lens	Y		A2	22.6956	$939.44
66930	Extraction of lens	Y		A2	23.7204	$981.86
66940	Extraction of lens	Y		A2	15.3627	$635.91
66982	Cataract surgery, complex	Y		A2	23.3059	$964.70
66983	Cataract surg w/iol, 1 stage	Y		A2	23.3059	$964.70
66984	Cataract surg w/iol, 1 stage	Y		A2	23.3059	$964.70
66985	Insert lens prosthesis	Y		A2	21.5744	$893.03
66986	Exchange lens prosthesis	Y		A2	21.5744	$893.03
66990	Ophthalmic endoscope add-on	N		N1		
67005	Partial removal of eye fluid	Y		A2	18.306	$757.74
67010	Partial removal of eye fluid	Y		A2	18.306	$757.74
67015	Release of eye fluid	Y		A2	22.5345	$932.77
67025	Replace eye fluid	Y		A2	14.8078	$612.94
67027	Implant eye drug system	Y		A2	26.0327	$1,077.57
67028	Injection eye drug	Y	CH	P3	2.0477	$84.76
67030	Incise inner eye strands	Y		A2	14.8078	$612.94
67031	Laser surgery, eye strands	Y		A2	6.2474	$258.60
67036	Removal of inner eye fluid	Y		A2	26.0327	$1,077.57
67039	Laser treatment of retina	Y		A2	30.3319	$1,255.53
67040	Laser treatment of retina	Y		A2	30.3319	$1,255.53
67041	Vit for macular pucker	Y		G2	37.2245	$1,540.83
67042	Vit for macular hole	Y		G2	37.2245	$1,540.83

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HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
67043	Vit for membrane dissect	Y		G2	37.2245	$1,540.83
67101	Repair detached retina	Y	CH	P2	5.6826	$235.22
67105	Repair detached retina	Y		P2	5.1336	$212.50
67107	Repair detached retina	Y		A2	27.0575	$1,119.99
67108	Repair detached retina	Y		A2	30.3319	$1,255.53
67110	Repair detached retina	Y		P3	8.2601	$341.91
67112	Rerepair detached retina	Y		A2	30.3319	$1,255.53
67113	Repair retinal detach, cplx	Y		G2	37.2245	$1,540.83
67115	Release encircling material	Y		A2	16.1387	$668.03
67120	Remove eye implant material	Y		A2	16.1387	$668.03
67121	Remove eye implant material	Y		A2	16.1387	$668.03
67141	Treatment of retina	Y		A2	5.6889	$235.48
67145	Treatment of retina	Y		P3	4.8532	$200.89
67208	Treatment of retinal lesion	Y		P3	5.1758	$214.24
67210	Treatment of retinal lesion	Y		P2	5.1336	$212.50
67218	Treatment of retinal lesion	Y		A2	19.3308	$800.16
67220	Treatment of choroid lesion	Y		P2	5.6826	$235.22
67221	Ocular photodynamic ther	Y		P3	2.9189	$120.82
67225	Eye photodynamic ther add-on	Y		P3	0.2005	$8.30
67227	Treatment of retinal lesion	Y		A2	14.8078	$612.94
67228	Treatment of retinal lesion	Y		P2	5.1336	$212.50
67229*	Tr retinal les preterm inf	Y		R2	5.1336	$212.50
67250	Reinforce eye wall	Y		A2	15.4236	$638.43
67255	Reinforce/graft eye wall	Y		A2	16.8927	$699.24
67311	Revise eye muscle	Y		A2	18.0279	$746.23
67312	Revise two eye muscles	Y		A2	19.4415	$804.74
67314	Revise eye muscle	Y		A2	19.4415	$804.74
67316	Revise two eye muscles	Y		A2	19.4415	$804.74
67318	Revise eye muscle(s)	Y		A2	19.4415	$804.74
67320	Revise eye muscle(s) add-on	Y		A2	19.4415	$804.74
67331	Eye surgery follow-up add-on	Y		A2	19.4415	$804.74
67332	Rerevise eye muscles add-on	Y		A2	19.4415	$804.74
67334	Revise eye muscle w/suture	Y		A2	19.4415	$804.74
67335	Eye suture during surgery	Y		A2	19.4415	$804.74
67340	Revise eye muscle add-on	Y		A2	19.4415	$804.74
67343	Release eye tissue	Y		A2	23.7405	$982.69
67345	Destroy nerve of eye muscle	Y		P3	2.0303	$84.04
67346	Biopsy, eye muscle	Y		A2	10.9811	$454.54

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HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
67400	Explore/biopsy eye socket	Y		A2	15.4236	$638.43
67405	Explore/drain eye socket	Y		A2	20.1116	$832.48
67412	Explore/treat eye socket	Y		A2	17.8617	$739.35
67413	Explore/treat eye socket	Y		A2	21.1362	$874.89
67414	Explr/decompress eye socket	Y		G2	37.5575	$1,554.62
67415	Aspiration, orbital contents	Y		A2	13.3387	$552.13
67420	Explore/treat eye socket	Y		A2	27.2239	$1,126.88
67430	Explore/treat eye socket	Y		A2	27.2239	$1,126.88
67440	Explore/drain eye socket	Y		A2	27.2239	$1,126.88
67445	Explr/decompress eye socket	Y		A2	27.2239	$1,126.88
67450	Explore/biopsy eye socket	Y		A2	27.2239	$1,126.88
67500	Inject/treat eye socket	N		G2	2.1012	$86.97
67505	Inject/treat eye socket	Y	CH	P3	0.6535	$27.05
67515	Inject/treat eye socket	Y		P3	0.6622	$27.41
67550	Insert eye socket implant	Y		A2	26.1994	$1,084.47
67560	Revise eye socket implant	Y		A2	17.9443	$742.77
67570	Decompress optic nerve	Y		A2	26.1994	$1,084.47
67700	Drainage of eyelid abscess	Y		P2	3.0739	$127.24
67710	Incision of eyelid	Y		P3	3.5897	$148.59
67715	Incision of eyelid fold	Y		A2	13.3387	$552.13
67800	Remove eyelid lesion	Y		P3	1.2896	$53.38
67801	Remove eyelid lesions	Y		P3	1.5597	$64.56
67805	Remove eyelid lesions	Y		P3	2.0214	$83.67
67808	Remove eyelid lesion(s)	Y		A2	14.6696	$607.22
67810	Biopsy of eyelid	Y		P2	3.0739	$127.24
67820	Revise eyelashes	N		P3	0.4269	$17.67
67825	Revise eyelashes	Y		P3	1.3157	$54.46
67830	Revise eyelashes	Y		A2	9.0061	$372.79
67835	Revise eyelashes	Y		A2	14.6696	$607.22
67840	Remove eyelid lesion	Y		P3	3.7642	$155.81
67850	Treat eyelid lesion	Y		P3	2.9887	$123.71
67875	Closure of eyelid by suture	Y		G2	7.5056	$310.68
67880	Revision of eyelid	Y		A2	14.1693	$586.51
67882	Revision of eyelid	Y		A2	15.4236	$638.43
67900	Repair brow defect	Y		A2	20.1116	$832.48
67901	Repair eyelid defect	Y		A2	17.8617	$739.35
67902	Repair eyelid defect	Y		A2	21.1362	$874.89
67903	Repair eyelid defect	Y		A2	16.8369	$696.93

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67904	Repair eyelid defect	Y		A2	16.8369	$696.93
67906	Repair eyelid defect	Y		A2	17.8617	$739.35
67908	Repair eyelid defect	Y		A2	16.8369	$696.93
67909	Revise eyelid defect	Y		A2	16.8369	$696.93
67911	Revise eyelid defect	Y		A2	15.4236	$638.43
67912	Correction eyelid w/implant	Y		A2	15.4236	$638.43
67914	Repair eyelid defect	Y		A2	15.4236	$638.43
67915	Repair eyelid defect	Y		P3	4.165	$172.40
67916	Repair eyelid defect	Y		A2	16.8369	$696.93
67917	Repair eyelid defect	Y		A2	16.8369	$696.93
67921	Repair eyelid defect	Y		A2	15.4236	$638.43
67922	Repair eyelid defect	Y		P3	4.0517	$167.71
67923	Repair eyelid defect	Y		A2	16.8369	$696.93
67924	Repair eyelid defect	Y		A2	16.8369	$696.93
67930	Repair eyelid wound	Y		P3	4.165	$172.40
67935	Repair eyelid wound	Y		A2	14.6696	$607.22
67938	Remove eyelid foreign body	N		P2	2.1012	$86.97
67950	Revision of eyelid	Y		A2	14.6696	$607.22
67961	Revision of eyelid	Y		A2	15.4236	$638.43
67966	Revision of eyelid	Y		A2	15.4236	$638.43
67971	Reconstruction of eyelid	Y		A2	15.4236	$638.43
67973	Reconstruction of eyelid	Y		A2	18.6981	$773.97
67974	Reconstruction of eyelid	Y		A2	15.4236	$638.43
67975	Reconstruction of eyelid	Y		A2	15.4236	$638.43
68020	Incise/drain eyelid lining	Y		P3	1.1415	$47.25
68040	Treatment of eyelid lesions	N		P3	0.5663	$23.44
68100	Biopsy of eyelid lining	Y		P3	2.2654	$93.77
68110	Remove eyelid lining lesion	Y		P3	2.9189	$120.82
68115	Remove eyelid lining lesion	Y		A2	14.6696	$607.22
68130	Remove eyelid lining lesion	Y		A2	13.4153	$555.30
68135	Remove eyelid lining lesion	Y		P3	1.4638	$60.59
68200	Treat eyelid by injection	N		P3	0.4182	$17.31
68320	Revise/graft eyelid lining	Y		A2	20.1116	$832.48
68325	Revise/graft eyelid lining	Y		A2	20.1116	$832.48
68326	Revise/graft eyelid lining	Y		A2	16.8369	$696.93
68328	Revise/graft eyelid lining	Y		A2	20.1116	$832.48
68330	Revise eyelid lining	Y		A2	19.0711	$789.41
68335	Revise/graft eyelid lining	Y		A2	20.1116	$832.48

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HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
68340	Separate eyelid adhesions	Y		A2	16.8369	$696.93
68360	Revise eyelid lining	Y		A2	16.9038	$699.70
68362	Revise eyelid lining	Y		A2	16.9038	$699.70
68371	Harvest eye tissue, alograft	Y		A2	13.4153	$555.30
68400	Incise/drain tear gland	Y		P2	3.0739	$127.24
68420	Incise/drain tear sac	Y		P3	4.3739	$181.05
68440	Incise tear duct opening	Y		P3	1.2809	$53.02
68500	Removal of tear gland	Y		A2	18.6981	$773.97
68505	Partial removal, tear gland	Y		A2	18.6981	$773.97
68510	Biopsy of tear gland	Y		A2	13.3387	$552.13
68520	Removal of tear sac	Y		A2	18.6981	$773.97
68525	Biopsy of tear sac	Y		A2	13.3387	$552.13
68530	Clearance of tear duct	Y	CH	P2	3.0739	$127.24
68540	Remove tear gland lesion	Y		A2	15.4236	$638.43
68550	Remove tear gland lesion	Y		A2	18.6981	$773.97
68700	Repair tear ducts	Y		A2	14.6696	$607.22
68705	Revise tear duct opening	Y	CH	P3	2.9189	$120.82
68720	Create tear sac drain	Y		A2	20.1116	$832.48
68745	Create tear duct drain	Y		A2	20.1116	$832.48
68750	Create tear duct drain	Y		A2	20.1116	$832.48
68760	Close tear duct opening	Y	CH	P3	2.4833	$102.79
68761	Close tear duct opening	Y		P3	1.7165	$71.05
68770	Close tear system fistula	Y		A2	20.1116	$832.48
68801	Dilate tear duct opening	N		P2	0.9105	$37.69
68810	Probe nasolacrimal duct	N		A2	2.6038	$107.78
68811	Probe nasolacrimal duct	Y		A2	14.6696	$607.22
68815	Probe nasolacrimal duct	Y		A2	14.6696	$607.22
68816	Probe nl duct w/balloon	Y	CH	G2	18.833	$779.55
68840	Explore/irrigate tear ducts	N		P3	1.3505	$55.90
68850	Injection for tear sac x-ray	N		N1		
69000	Drain external ear lesion	Y		P2	1.3776	$57.02
69005	Drain external ear lesion	Y		P3	2.6053	$107.84
69020	Drain outer ear canal lesion	Y		P2	1.3776	$57.02
69100	Biopsy of external ear	Y		P3	1.5684	$64.92
69105	Biopsy of external ear canal	Y		P3	2.2219	$91.97
69110	Remove external ear, partial	Y		A2	11.673	$483.18
69120	Removal of external ear	Y		A2	17.3227	$717.04
69140	Remove ear canal lesion(s)	Y		A2	17.3227	$717.04

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HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
69145	Remove ear canal lesion(s)	Y		A2	13.0039	$538.27
69150	Extensive ear canal surgery	Y		A2	9.1397	$378.32
69200	Clear outer ear canal	N		P2	0.6301	$26.08
69205	Clear outer ear canal	Y		A2	14.5718	$603.17
69210	Remove impacted ear wax	N		P3	0.5141	$21.28
69220	Clean out mastoid cavity	Y		P2	0.8075	$33.42
69222	Clean out mastoid cavity	Y		P3	3.3982	$140.66
69300	Revise external ear	Y		A2	18.0767	$748.25
69310	Rebuild outer ear canal	Y		A2	26.4228	$1,093.72
69320	Rebuild outer ear canal	Y		A2	32.1354	$1,330.18
69400	Inflate middle ear canal	Y		P3	2.2828	$94.49
69401	Inflate middle ear canal	Y		P3	1.2024	$49.77
69405	Catheterize middle ear canal	Y		P3	3.1542	$130.56
69420	Incision of eardrum	Y	CH	P3	2.8319	$117.22
69421	Incision of eardrum	Y		A2	14.4126	$596.58
69424	Remove ventilating tube	Y		P3	1.9866	$82.23
69433	Create eardrum opening	Y		P3	2.8232	$116.86
69436	Create eardrum opening	Y		A2	14.4126	$596.58
69440	Exploration of middle ear	Y		A2	18.0767	$748.25
69450	Eardrum revision	Y		A2	24.3379	$1,007.42
69501	Mastoidectomy	Y		A2	32.1354	$1,330.18
69502	Mastoidectomy	Y		A2	23.7893	$984.71
69505	Remove mastoid structures	Y		A2	32.1354	$1,330.18
69511	Extensive mastoid surgery	Y		A2	32.1354	$1,330.18
69530	Extensive mastoid surgery	Y		A2	32.1354	$1,330.18
69540	Remove ear lesion	Y		P3	3.3196	$137.41
69550	Remove ear lesion	Y		A2	28.8609	$1,194.64
69552	Remove ear lesion	Y		A2	32.1354	$1,330.18
69601	Mastoid surgery revision	Y		A2	32.1354	$1,330.18
69602	Mastoid surgery revision	Y		A2	32.1354	$1,330.18
69603	Mastoid surgery revision	Y		A2	32.1354	$1,330.18
69604	Mastoid surgery revision	Y		A2	32.1354	$1,330.18
69605	Mastoid surgery revision	Y		A2	32.1354	$1,330.18
69610	Repair of eardrum	Y		P3	4.4437	$183.94
69620	Repair of eardrum	Y		A2	17.3227	$717.04
69631	Repair eardrum structures	Y		A2	28.8609	$1,194.64
69632	Rebuild eardrum structures	Y		A2	28.8609	$1,194.64
69633	Rebuild eardrum structures	Y		A2	28.8609	$1,194.64

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69635	Repair eardrum structures	Y		A2	32.1354	$1,330.18
69636	Rebuild eardrum structures	Y		A2	32.1354	$1,330.18
69637	Rebuild eardrum structures	Y		A2	32.1354	$1,330.18
69641	Revise middle ear & mastoid	Y		A2	32.1354	$1,330.18
69642	Revise middle ear & mastoid	Y		A2	32.1354	$1,330.18
69643	Revise middle ear & mastoid	Y		A2	32.1354	$1,330.18
69644	Revise middle ear & mastoid	Y		A2	32.1354	$1,330.18
69645	Revise middle ear & mastoid	Y		A2	32.1354	$1,330.18
69646	Revise middle ear & mastoid	Y		A2	32.1354	$1,330.18
69650	Release middle ear bone	Y		A2	23.7893	$984.71
69660	Revise middle ear bone	Y		A2	28.8609	$1,194.64
69661	Revise middle ear bone	Y		A2	28.8609	$1,194.64
69662	Revise middle ear bone	Y		A2	28.8609	$1,194.64
69666	Repair middle ear structures	Y		A2	27.8361	$1,152.22
69667	Repair middle ear structures	Y		A2	27.8361	$1,152.22
69670	Remove mastoid air cells	Y		A2	26.4228	$1,093.72
69676	Remove middle ear nerve	Y		A2	26.4228	$1,093.72
69700	Close mastoid fistula	Y		A2	26.4228	$1,093.72
69711	Remove/repair hearing aid	Y		A2	24.3379	$1,007.42
69714	Implant temple bone w/stimul	Y	CH	H8	154.3469	$6,388.88
69715	Temple bne implnt w/stimulat	Y	CH	H8	154.3469	$6,388.88
69717	Temple bone implant revision	Y	CH	H8	154.3469	$6,388.88
69718	Revise temple bone implant	Y	CH	H8	154.3469	$6,388.88
69720	Release facial nerve	Y		A2	28.8609	$1,194.64
69740	Repair facial nerve	Y		A2	28.8609	$1,194.64
69745	Repair facial nerve	Y		A2	28.8609	$1,194.64
69801	Incise inner ear	Y		A2	28.8609	$1,194.64
69802	Incise inner ear	Y		A2	32.1354	$1,330.18
69805	Explore inner ear	Y		A2	32.1354	$1,330.18
69806	Explore inner ear	Y		A2	32.1354	$1,330.18
69820	Establish inner ear window	Y		A2	28.8609	$1,194.64
69840	Revise inner ear window	Y		A2	28.8609	$1,194.64
69905	Remove inner ear	Y		A2	32.1354	$1,330.18
69910	Remove inner ear & mastoid	Y		A2	32.1354	$1,330.18
69915	Incise inner ear nerve	Y		A2	32.1354	$1,330.18
69930	Implant cochlear device	Y		H8	580.9639	$24,047.84
69990	Microsurgery add-on	N		N1		
C9716	Radiofrequency energy to anu	Y		G2	30.2669	$1,252.84

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HCPCS Code	Short Descriptor	Subject to Multiple Procedure Discounting	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
C9724	EPS gast cardia plic	Y		G2	24.7466	$1,024.34
C9725	Place endorectal app	Y		G2	5.7066	$236.21
C9726	Rxt breast appl place/remov	Y		G2	20.9501	$867.19
C9727	Insert palate implants	Y		G2	7.3454	$304.05
C9728*	Place device/marker, non pro	N		R2	13.1801	$545.56
G0104	CA screen;flexi sigmoidscope	N		P3	2.1173	$87.64
G0105	Colorectal scrn; hi risk ind	Y		A2	9.1508	$378.78
G0121	Colon ca scrn not hi rsk ind	Y		A2	9.1508	$378.78
G0127	Trim nail(s)	Y		P3	0.2962	$12.26
G0186	Dstry eye lesn,fdr vssl tech	Y		R2	5.6826	$235.22
G0247	Routine footcare pt w lops	Y		P3	0.5402	$22.36
G0259	Inject for sacroiliac joint	N		N1		
G0260	Inj for sacroiliac jt anesth	Y		A2	7.4189	$307.09
G0268	Removal of impacted wax md	N		N1		
G0269	Occlusive device in vein art	N		N1		
G0289	Arthro, loose body + chondro	N		N1		
G0364	Bone marrow aspirate &biopsy	N		P3	0.1394	$5.77
G0392	AV fistula or graft arterial	Y		A2	39.3487	$1,628.76
G0393	AV fistula or graft venous	Y		A2	39.3487	$1,628.76

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ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
0001F	Heart failure composite		M					
0005F	Osteoarthritis composite		M					
00100	Anesth, salivary gland		N					
00102	Anesth, repair of cleft lip		N					
00103	Anesth, blepharoplasty		N					
00104	Anesth, electroshock		N					
00120	Anesth, ear surgery		N					
00124	Anesth, ear exam		N					
00126	Anesth, tympanotomy		N					
0012F	Cap bacterial assess		M					
00140	Anesth, procedures on eye		N					
00142	Anesth, lens surgery		N					
00144	Anesth, corneal transplant		N					
00145	Anesth, vitreoretinal surg		N					
00147	Anesth, iridectomy		N					
00148	Anesth, eye exam		N					
0014F	Comp preop assess cat surg		M					
0015F	Melan follow-up complete		M					
00160	Anesth, nose/sinus surgery		N					
00162	Anesth, nose/sinus surgery		N					
00164	Anesth, biopsy of nose		N					
0016T	Thermotx choroid vasc lesion		T	0235	5.8277	$384.97		$77.00
00170	Anesth, procedure on mouth		N					
00172	Anesth, cleft palate repair		N					
00174	Anesth, pharyngeal surgery		N					
00176	Anesth, pharyngeal surgery		C					
0017T	Photocoagulat macular drusen		T	0235	5.8277	$384.97		$77.00
00190	Anesth, face/skull bone surg		N					
00192	Anesth, facial bone surgery		C					
0019T	Extracorp shock wv tx,ms nos		A					
00210	Anesth, cranial surg nos		N					
00211	Anesth, cran surg, hemotoma	NI	C					
00212	Anesth, skull drainage		N					
00214	Anesth, skull drainage		C					
00215	Anesth, skull repair/fract		C					
00216	Anesth, head vessel surgery		N					
00218	Anesth, special head surgery		N					
00220	Anesth, intrcrn nerve		N					
00222	Anesth, head nerve surgery		N					
0026T	Measure remnant lipoproteins	CH	D					

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
0027T	Endoscopic epidural lysis	CH	D					
0028T	Dexa body composition study	CH	D					
0029T	Magnetic tx for incontinence	CH	D					
00300	Anesth, head/neck/ptrunk		N					
0030T	Antiprothrombin antibody		A					
0031T	Speculoscopy	CH	D					
00320	Anesth, neck organ, 1 & over		N					
00322	Anesth, biopsy of thyroid		N					
00326	Anesth, larynx/trach, < 1 yr		N					
0032T	Speculoscopy w/direct sample	CH	D					
00350	Anesth, neck vessel surgery		N					
00352	Anesth, neck vessel surgery		N					
00400	Anesth, skin, ext/per/atrunk		N					
00402	Anesth, surgery of breast		N					
00404	Anesth, surgery of breast		N					
00406	Anesth, surgery of breast		N					
00410	Anesth, correct heart rhythm		N					
0041T	Detect ur infect agnt w/cpas	CH	D					
0042T	Ct perfusion w/contrast, cbf		N					
0043T	Co expired gas analysis	CH	D					
00450	Anesth, surgery of shoulder		N					
00452	Anesth, surgery of shoulder		C					
00454	Anesth, collar bone biopsy		N					
0046T	Cath lavage, mammary duct(s)	CH	D					
00470	Anesth, removal of rib		N					
00472	Anesth, chest wall repair		N					
00474	Anesth, surgery of rib(s)		C					
0047T	Cath lavage, mammary duct(s)	CH	D					
0048T	Implant ventricular device		C					
0049T	External circulation assist	CH	D					
00500	Anesth, esophageal surgery		N					
0050T	Removal circulation assist		C					
0051T	Implant total heart system		C					
00520	Anesth, chest procedure		N					
00522	Anesth, chest lining biopsy		N					
00524	Anesth, chest drainage		C					
00528	Anesth, chest partition view		N					
00529	Anesth, chest partition view		N					
0052T	Replace component heart syst		C					
00530	Anesth, pacemaker insertion		N					
00532	Anesth, vascular access		N					
00534	Anesth, cardioverter/defib		N					

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
00537	Anesth, cardiac electrophys		N					
00539	Anesth, trach-bronch reconst		N					
0053T	Replace component heart syst		C					
00540	Anesth, chest surgery		C					
00541	Anesth, one lung ventilation		N					
00542	Anesth, release of lung		C					
00546	Anesth, lung,chest wall surg		C					
00548	Anesth, trachea,bronchi surg		N					
0054T	Bone surgery using computer	CH	N					
00550	Anesth, sternal debridement		N					
0055T	Bone surgery using computer	CH	N					
00560	Anesth, heart surg w/o pump		C					
00561	Anesth, heart surg < age 1		C					
00562	Anesth hrt surg w/pmp age 1+		C					
00563	Anesth, heart surg w/arrest		N					
00566	Anesth, cabg w/o pump		N					
00567	Anesth, cabg w/pump	NI	C					
00580	Anesth, heart/lung transplnt		C					
0058T	Cryopreservation, ovary tiss	CH	D					
0059T	Cryopreservation, oocyte	CH	D					
00600	Anesth, spine, cord surgery		N					
00604	Anesth, sitting procedure		C					
0060T	Electrical impedance scan	CH	D					
0061T	Destruction of tumor, breast	CH	D					
00620	Anesth, spine, cord surgery		N					
00622	Anesth, removal of nerves		C					
00625	Anes spine tranthor w/o vent		N					
00626	Anes, spine transthor w/vent		N					
0062T	Rep intradisc annulus;1 lev	CH	E					
00630	Anesth, spine, cord surgery		N					
00632	Anesth, removal of nerves		C					
00634	Anesth for chemonucleolysis		N					
00635	Anesth, lumbar puncture		N					
0063T	Rep intradisc annulus;>1lev	CH	E					
00640	Anesth, spine manipulation		N					
0064T	Spectroscop eval expired gas		X	0367	0.5627	$37.17	$13.76	$7.44
0066T	Ct colonography;screen		E					
00670	Anesth, spine, cord surgery		C					
0067T	Ct colonography;dx	CH	Q3	0332	2.9426	$194.39	$75.24	$38.88
0068T	Interp/rept heart sound		B					
0069T	Analysis only heart sound		N					
00700	Anesth, abdominal wall surg		N					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
00702	Anesth, for liver biopsy		N					
0070T	Interp only heart sound		B					
0071T	U/s leiomyomata ablate <200		S	0067	57.5732	$3,803.23		$760.65
0072T	U/s leiomyomata ablate >200		S	0067	57.5732	$3,803.23		$760.65
00730	Anesth, abdominal wall surg		N					
0073T	Delivery, comp imrt		S	0412	6.2192	$410.83		$82.17
00740	Anesth, upper gi visualize		N					
00750	Anesth, repair of hernia		N					
00752	Anesth, repair of hernia		N					
00754	Anesth, repair of hernia		N					
00756	Anesth, repair of hernia		N					
0075T	Perq stent/chest vert art		C					
0076T	S&i stent/chest vert art		C					
00770	Anesth, blood vessel repair		N					
0077T	Cereb therm perfusion probe		C					
0078T	Endovasc aort repr w/device		C					
00790	Anesth, surg upper abdomen		N					
00792	Anesth, hemorr/excise liver		C					
00794	Anesth, pancreas removal		C					
00796	Anesth, for liver transplant		C					
00797	Anesth, surgery for obesity		N					
0079T	Endovasc visc extnsn repr		C					
00800	Anesth, abdominal wall surg		N					
00802	Anesth, fat layer removal		C					
0080T	Endovasc aort repr rad s&i		C					
00810	Anesth, low intestine scope		N					
0081T	Endovasc visc extnsn s&i		C					
00820	Anesth, abdominal wall surg		N					
00830	Anesth, repair of hernia		N					
00832	Anesth, repair of hernia		N					
00834	Anesth, hernia repair< 1 yr		N					
00836	Anesth hernia repair preemie		N					
00840	Anesth, surg lower abdomen		N					
00842	Anesth, amniocentesis		N					
00844	Anesth, pelvis surgery		C					
00846	Anesth, hysterectomy		C					
00848	Anesth, pelvic organ surg		C					
0084T	Temp prostate urethral stent		T	0164	1.8697	$123.51		$24.71
00851	Anesth, tubal ligation		N					
0085T	Breath test heart reject		X	0340	0.6462	$42.69		$8.54
00860	Anesth, surgery of abdomen		N					
00862	Anesth, kidney/ureter surg		N					

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
00864	Anesth, removal of bladder		C					
00865	Anesth, removal of prostate		C					
00866	Anesth, removal of adrenal		C					
00868	Anesth, kidney transplant		C					
0086T	L ventricle fill pressure		N					
00870	Anesth, bladder stone surg		N					
00872	Anesth kidney stone destruct		N					
00873	Anesth kidney stone destruct		N					
0087T	Sperm eval hyaluronan		X	0344	0.8223	$54.32	$15.66	$10.87
00880	Anesth, abdomen vessel surg		N					
00882	Anesth, major vein ligation		C					
0088T	Rf tongue base vol reduxn	CH	D					
0089T	Actigraphy testing, 3-day	CH	D					
00902	Anesth, anorectal surgery		N					
00904	Anesth, perineal surgery		C					
00906	Anesth, removal of vulva		N					
00908	Anesth, removal of prostate		C					
0090T	Cervical artific disc	CH	D					
00910	Anesth, bladder surgery		N					
00912	Anesth, bladder tumor surg		N					
00914	Anesth, removal of prostate		N					
00916	Anesth, bleeding control		N					
00918	Anesth, stone removal		N					
00920	Anesth, genitalia surgery		N					
00921	Anesth, vasectomy		N					
00922	Anesth, sperm duct surgery		N					
00924	Anesth, testis exploration		N					
00926	Anesth, removal of testis		N					
00928	Anesth, removal of testis		N					
0092T	Artific disc addl		C					
00930	Anesth, testis suspension		N					
00932	Anesth, amputation of penis		C					
00934	Anesth, penis, nodes removal		C					
00936	Anesth, penis, nodes removal		C					
00938	Anesth, insert penis device		N					
0093T	Cervical artific diskectomy	CH	D					
00940	Anesth, vaginal procedures		N					
00942	Anesth, surg on vag/urethral		N					
00944	Anesth, vaginal hysterectomy		C					
00948	Anesth, repair of cervix		N					
00950	Anesth, vaginal endoscopy		N					
00952	Anesth, hysteroscope/graph		N					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
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0095T	Artific diskectomy addl		C					
0096T	Rev cervical artific disc	CH	D					
0098T	Rev artific disc addl		C					
0099T	Implant corneal ring		T	0233	16.7409	$1,105.89	$266.33	$221.18
0100T	Prosth retina receive&gen		T	0672	38.1751	$2,521.81		$504.37
0101T	Extracorp shockwv tx,hi enrg		T	0050	29.8816	$1,973.95		$394.79
0102T	Extracorp shockwv tx,anesth		T	0050	29.8816	$1,973.95		$394.79
0103T	Holotranscobalamin		A					
0104T	At rest cardio gas rebreathe		A					
0105T	Exerc cardio gas rebreathe		A					
0106T	Touch quant sensory test		X	0341	0.0834	$5.51	$2.14	$1.11
0107T	Vibrate quant sensory test		X	0341	0.0834	$5.51	$2.14	$1.11
0108T	Cool quant sensory test		X	0341	0.0834	$5.51	$2.14	$1.11
0109T	Heat quant sensory test		X	0341	0.0834	$5.51	$2.14	$1.11
0110T	Nos quant sensory test		X	0341	0.0834	$5.51	$2.14	$1.11
01112	Anesth, bone aspirate/bx		N					
0111T	Rbc membranes fatty acids		A					
01120	Anesth, pelvis surgery		N					
01130	Anesth, body cast procedure		N					
01140	Anesth, amputation at pelvis		C					
01150	Anesth, pelvic tumor surgery		C					
01160	Anesth, pelvis procedure		N					
01170	Anesth, pelvis surgery		N					
01173	Anesth, fx repair, pelvis		N					
01180	Anesth, pelvis nerve removal		N					
01190	Anesth, pelvis nerve removal		N					
01200	Anesth, hip joint procedure		N					
01202	Anesth, arthroscopy of hip		N					
01210	Anesth, hip joint surgery		N					
01212	Anesth, hip disarticulation		C					
01214	Anesth, hip arthroplasty		C					
01215	Anesth, revise hip repair		N					
01220	Anesth, procedure on femur		N					
01230	Anesth, surgery of femur		N					
01232	Anesth, amputation of femur		C					
01234	Anesth, radical femur surg		C					
0123T	Scleral fistulization		T	0234	23.8963	$1,578.57	$511.31	$315.72
0124T	Conjunctival drug placement		T	0232	4.6708	$308.55	$77.30	$61.71
01250	Anesth, upper leg surgery		N					
01260	Anesth, upper leg veins surg		N					
0126T	Chd risk imt study		Q1	0340	0.6462	$42.69		$8.54
01270	Anesth, thigh arteries surg		N					

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
01272	Anesth, femoral artery surg		C					
01274	Anesth, femoral embolectomy		C					
0130T	Chron care drug investigatn		B					
01320	Anesth, knee area surgery		N					
01340	Anesth, knee area procedure		N					
01360	Anesth, knee area surgery		N					
0137T	Prostate saturation sampling	CH	D					
01380	Anesth, knee joint procedure		N					
01382	Anesth, dx knee arthroscopy		N					
01390	Anesth, knee area procedure		N					
01392	Anesth, knee area surgery		N					
01400	Anesth, knee joint surgery		N					
01402	Anesth, knee arthroplasty		C					
01404	Anesth, amputation at knee		C					
0140T	Exhaled breath condensate ph		A					
0141T	Perq islet transplant		E					
01420	Anesth, knee joint casting		N					
0142T	Open islet transplant		E					
01430	Anesth, knee veins surgery		N					
01432	Anesth, knee vessel surg		N					
0143T	Laparoscopic islet transplnt		E					
01440	Anesth, knee arteries surg		N					
01442	Anesth, knee artery surg		C					
01444	Anesth, knee artery repair		C					
0144T	CT heart wo dye; qual calc		S	0282	1.5897	$105.01	$37.81	$21.01
0145T	CT heart w/wo dye funct		S	0383	4.2793	$282.69	$110.53	$56.54
01462	Anesth, lower leg procedure		N					
01464	Anesth, ankle/ft arthroscopy		N					
0146T	CCTA w/wo dye		S	0383	4.2793	$282.69	$110.53	$56.54
01470	Anesth, lower leg surgery		N					
01472	Anesth, achilles tendon surg		N					
01474	Anesth, lower leg surgery		N					
0147T	CCTA w/wo, quan calcium		S	0383	4.2793	$282.69	$110.53	$56.54
01480	Anesth, lower leg bone surg		N					
01482	Anesth, radical leg surgery		N					
01484	Anesth, lower leg revision		N					
01486	Anesth, ankle replacement		C					
0148T	CCTA w/wo, strxr		S	0383	4.2793	$282.69	$110.53	$56.54
01490	Anesth, lower leg casting		N					
0149T	CCTA w/wo, strxr quan calc		S	0383	4.2793	$282.69	$110.53	$56.54
01500	Anesth, leg arteries surg		N					
01502	Anesth, lwr leg embolectomy		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
0150T	CCTA w/wo, disease strxr		S	0383	4.2793	$282.69	$110.53	$56.54
0151T	CT heart funct add-on		S	0282	1.5897	$105.01	$37.81	$21.01
01520	Anesth, lower leg vein surg		N					
01522	Anesth, lower leg vein surg		N					
0155T	Lap impl gast curve electrd		T	0130	37.8887	$2,502.89	$659.53	$500.58
0156T	Lap remv gast curve electrd		T	0130	37.8887	$2,502.89	$659.53	$500.58
0157T	Open impl gast curve electrd		C					
0158T	Open remv gast curve electrd		C					
0159T	Cad breast mri		N					
0160T	Tcranial magn stim tx plan		S	0216	2.6652	$176.06		$35.22
01610	Anesth, surgery of shoulder		N					
0161T	Tcranial magn stim tx deliv		S	0216	2.6652	$176.06		$35.22
01620	Anesth, shoulder procedure		N					
01622	Anes dx shoulder arthroscopy		N					
0162T	Anal program gast neurostim	CH	D					
01630	Anesth, surgery of shoulder		N					
01632	Anesth, surgery of shoulder		C					
01634	Anesth, shoulder joint amput		C					
01636	Anesth, forequarter amput		C					
01638	Anesth, shoulder replacement		C					
0163T	Lumb artif diskectomy addl		C					
0164T	Remove lumb artif disc addl		C					
01650	Anesth, shoulder artery surg		N					
01652	Anesth, shoulder vessel surg		C					
01654	Anesth, shoulder vessel surg		C					
01656	Anesth, arm-leg vessel surg		C					
0165T	Revise lumb artif disc addl		C					
0166T	Tcath vsd close w/o bypass		C					
01670	Anesth, shoulder vein surg		N					
0167T	Tcath vsd close w bypass		C					
01680	Anesth, shoulder casting		N					
01682	Anesth, airplane cast		N					
0168T	Rhinophototx light app bilat		T	0251	3.3069	$218.45		$43.69
0169T	Place stereo cath brain		C					
0170T	Anorectal fistula plug rpr		T	0150	31.0398	$2,050.46	$437.12	$410.10
01710	Anesth, elbow area surgery		N					
01712	Anesth, uppr arm tendon surg		N					
01714	Anesth, uppr arm tendon surg		N					
01716	Anesth, biceps tendon repair		N					
0171T	Lumbar spine proces distract	CH	T	0052	86.5958	$5,720.43		$1,144.09
0172T	Lumbar spine process addl	CH	T	0052	86.5958	$5,720.43		$1,144.09
01730	Anesth, uppr arm procedure		N					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
01732	Anesth, dx elbow arthroscopy		N					
0173T	Iop monit io pressure		N					
01740	Anesth, upper arm surgery		N					
01742	Anesth, humerus surgery		N					
01744	Anesth, humerus repair		N					
0174T	Cad cxr with interp		N					
01756	Anesth, radical humerus surg		C					
01758	Anesth, humeral lesion surg		N					
0175T	Cad cxr remote		N					
01760	Anesth, elbow replacement		N					
0176T	Aqu canal dilat w/o retent		T	0673	40.9535	$2,705.35	$649.56	$541.07
01770	Anesth, uppr arm artery surg		N					
01772	Anesth, uppr arm embolectomy		N					
0177T	Aqu canal dilat w retent		T	0673	40.9535	$2,705.35	$649.56	$541.07
01780	Anesth, upper arm vein surg		N					
01782	Anesth, uppr arm vein repair		N					
0178T	64 lead ecg w i&r		B					
0179T	64 lead ecg w tracing		X	0100	2.5884	$170.99	$41.44	$34.20
0180T	64 lead ecg w i&r only		B					
01810	Anesth, lower arm surgery		N					
0181T	Corneal hysteresis		S	0230	0.6461	$42.68		$8.54
01820	Anesth, lower arm procedure		N					
01829	Anesth, dx wrist arthroscopy		N					
0182T	Hdr elect brachytherapy		S	1519		$1,750.00		$350.00
01830	Anesth, lower arm surgery		N					
01832	Anesth, wrist replacement		N					
0183T	Wound ultrasound		T	0015	1.5170	$100.21		$20.05
01840	Anesth, lwr arm artery surg		N					
01842	Anesth, lwr arm embolectomy		N					
01844	Anesth, vascular shunt surg		N					
0184T	Exc rectal tumor endoscopic		C					
01850	Anesth, lower arm vein surg		N					
01852	Anesth, lwr arm vein repair		N					
0185T	Comptr probability analysis		N					
01860	Anesth, lower arm casting		N					
0186T	Suprachoroidal drug delivery	CH	T	0237	22.3269	$1,474.89		$294.98
0187T	Ophthalmic dx image anterior		S	0230	0.6461	$42.68		$8.54
0188T	Videoconf crit care 74 min		M					
0189T	Videoconf crit care addl 30		M					
0190T	Place intraoc radiation src		T	0237	22.3269	$1,474.89		$294.98
01916	Anesth, dx arteriography		N					
0191T	Insert ant segment drain int		T	0234	23.8963	$1,578.57	$511.31	$315.72

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
01920	Anesth, catheterize heart		N					
01922	Anesth, cat or MRI scan		N					
01924	Anes, ther interven rad, art		N					
01925	Anes, ther interven rad, car		N					
01926	Anes, tx interv rad hrt/cran		N					
0192T	Insert ant segment drain ext	CH	T	0673	40.9535	$2,705.35	$649.56	$541.07
01930	Anes, ther interven rad, vei		N					
01931	Anes, ther interven rad, tip		N					
01932	Anes, tx interv rad, th vein		N					
01933	Anes, tx interv rad, cran v		N					
01935	Anesth, perc img dx sp proc		N					
01936	Anesth, perc img tx sp proc		N					
0193T	Rf bladder neck microremodel	NI	T	0165	20.0346	$1,323.47		$264.70
0194T	Procalcitonin (pct)	NI	A					
01951	Anesth, burn, less 4 percent		N					
01952	Anesth, burn, 4-9 percent		N					
01953	Anesth, burn, each 9 percent		N					
01958	Anesth, antepartum manipul		N					
0195T	Arthrod presac interbody	NI	C					
01960	Anesth, vaginal delivery		N					
01961	Anesth, cs delivery		N					
01962	Anesth, emer hysterectomy		N					
01963	Anesth, cs hysterectomy		N					
01965	Anesth, inc/missed ab proc		N					
01966	Anesth, induced ab procedure		N					
01967	Anesth/analg, vag delivery		N					
01968	Anes/analg cs deliver add-on		N					
01969	Anesth/analg cs hyst add-on		N					
0196T	Arthrod presac interbody eac	NI	C					
0197T	Intrafraction track motion	NI	N					
0198T	Ocular blood flow measure	NI	S	0230	0.6461	$42.68		$8.54
01990	Support for organ donor		C					
01991	Anesth, nerve block/inj		N					
01992	Anesth, n block/inj, prone		N					
01996	Hosp manage cont drug admin		N					
01999	Unlisted anesth procedure		N					
0500F	Initial prenatal care visit		M					
0501F	Prenatal flow sheet		M					
0502F	Subsequent prenatal care		M					
0503F	Postpartum care visit		M					
0505F	Hemodialysis plan docd		M					
0507F	Periton dialysis plan docd		M					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
0509F	Urine incon plan docd		M					
0513F	Elev bp plan of care docd		M					
0514F	Care plan hgb docd esa pt		M					
0516F	Anemia plan of care docd		M					
0517F	Glaucoma plan of care docd		M					
0518F	Fall plan of care docd		M					
0519F	Pland chemo docd b/4 txmnt		M					
0520F	Rad dos limts b/4 3d rad		M					
0521F	Plan of care 4 pain docd		M					
0525F	Initial visit for episode		M					
0526F	Subs visit for episode		M					
0528F	Rcmnd flw-up 10 yrs docd	NI	E					
0529F	Intrvl 3+yrs pts clnscp docd	NI	E					
0535F	Dyspnea mngmnt plan docd	NI	E					
0540F	Gluco Mngmnt Plan Docd	NI	E					
0575F	HIV rna plan care docd	NI	M					
1000F	Tobacco use assessed		M					
10021	Fna w/o image		T	0002	1.4324	$94.62		$18.93
10022	Fna w/image		T	0004	4.4727	$295.46		$59.10
1002F	Assess anginal symptom/level		M					
1003F	Level of activity assess		M					
10040	Acne surgery		T	0013	0.8281	$54.70		$10.94
1004F	Clin symp vol ovrld assess		M					
1005F	Asthma symptoms evaluate		M					
10060	Drainage of skin abscess		T	0006	1.4128	$93.33		$18.67
10061	Drainage of skin abscess		T	0006	1.4128	$93.33		$18.67
1006F	Osteoarthritis assess		M					
1007F	Anti-inflm/anlgsc otc assess		M					
10080	Drainage of pilonidal cyst		T	0006	1.4128	$93.33		$18.67
10081	Drainage of pilonidal cyst		T	0007	12.5953	$832.03		$166.41
1008F	Gi/renal risk assess		M					
10120	Remove foreign body	CH	T	0016	2.7288	$180.26		$36.06
10121	Remove foreign body		T	0021	15.8974	$1,050.17	$219.48	$210.04
10140	Drainage of hematoma/fluid		T	0007	12.5953	$832.03		$166.41
1015F	Copd symptoms assess		M					
10160	Puncture drainage of lesion		T	0006	1.4128	$93.33		$18.67
10180	Complex drainage, wound		T	0008	19.3873	$1,280.71		$256.15
1018F	Assess dyspnea not present		M					
1019F	Assess dyspnea present		M					
1022F	Pneumo imm status assess		M					
1026F	Co-morbid condition assess		M					
1030F	Influenza imm status assess		M					

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1034F	Current tobacco smoker		M					
1035F	Smokeless tobacco user		M					
1036F	Tobacco non-user		M					
1038F	Persistent asthma		M					
1039F	Intermittent asthma		M					
1040F	Dsm-iv™ info mdd doc'd		M					
1050F	History of mole changes		M					
1055F	Visual funct status assess		M					
1060F	Doc perm/cont/parox atr. fib		M					
1061F	Doc lack perm+cont+parox fib		M					
1065F	Ischm stroke symp lt3 hrsb/4		M					
1066F	Ischm stroke symp ge3 hrsb/4		M					
1070F	Alarm symp assessed-absent		M					
1071F	Alarm symp assessed-1+ prsnt		M					
1090F	Pres/absn urine incon assess		M					
1091F	Urine incon characterized		M					
11000	Debride infected skin	CH	T	0015	1.5170	$100.21		$20.05
11001	Debride infected skin add-on		T	0013	0.8281	$54.70		$10.94
11004	Debride genitalia & perineum		C					
11005	Debride abdom wall		C					
11006	Debride genit/per/abdom wall		C					
11008	Remove mesh from abd wall		C					
1100F	Ptfalls assess-doc'd ge2+/yr		M					
11010	Debride skin, fx		T	0019	4.4761	$295.69	$71.87	$59.14
11011	Debride skin/muscle, fx		T	0019	4.4761	$295.69	$71.87	$59.14
11012	Debride skin/muscle/bone, fx		T	0019	4.4761	$295.69	$71.87	$59.14
1101F	Pt falls assess-doc'd le1/yr		M					
11040	Debride skin, partial		T	0015	1.5170	$100.21		$20.05
11041	Debride skin, full		T	0015	1.5170	$100.21		$20.05
11042	Debride skin/tissue		T	0016	2.7288	$180.26		$36.06
11043	Debride tissue/muscle		T	0016	2.7288	$180.26		$36.06
11044	Debride tissue/muscle/bone		T	0682	7.2265	$477.38	$158.65	$95.48
11055	Trim skin lesion		T	0013	0.8281	$54.70		$10.94
11056	Trim skin lesions, 2 to 4		T	0013	0.8281	$54.70		$10.94
11057	Trim skin lesions, over 4	CH	T	0013	0.8281	$54.70		$10.94
11100	Biopsy, skin lesion	CH	T	0015	1.5170	$100.21		$20.05
11101	Biopsy, skin add-on		T	0013	0.8281	$54.70		$10.94
1110F	Pt lft inpt fac w/in 60 days		M					
1111F	Dschrg med/current med merge		M					
1116F	Auric/peri pain assessed		M					
1118F	GERD symps assessed 12 month		M					
1119F	Init eval for condition		M					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
11200	Removal of skin tags		T	0013	0.8281	$54.70		$10.94
11201	Remove skin tags add-on	CH	T	0013	0.8281	$54.70		$10.94
1121F	Subs eval for condition		M					
1123F	Acp discuss/dscn mkr docd		M					
1124F	Acp discuss-no dscnmkr docd		M					
1125F	Amnt pain noted pain prsnt		M					
1126F	Amnt pain noted none prsnt		M					
1127F	New episode for condition		M					
1128F	Subs episode for condition		M					
11300	Shave skin lesion		T	0013	0.8281	$54.70		$10.94
11301	Shave skin lesion		T	0013	0.8281	$54.70		$10.94
11302	Shave skin lesion		T	0013	0.8281	$54.70		$10.94
11303	Shave skin lesion		T	0015	1.5170	$100.21		$20.05
11305	Shave skin lesion		T	0013	0.8281	$54.70		$10.94
11306	Shave skin lesion		T	0013	0.8281	$54.70		$10.94
11307	Shave skin lesion		T	0013	0.8281	$54.70		$10.94
11308	Shave skin lesion		T	0013	0.8281	$54.70		$10.94
1130F	Bk pain + fxn assessed		M					
11310	Shave skin lesion		T	0013	0.8281	$54.70		$10.94
11311	Shave skin lesion		T	0013	0.8281	$54.70		$10.94
11312	Shave skin lesion		T	0013	0.8281	$54.70		$10.94
11313	Shave skin lesion		T	0013	0.8281	$54.70		$10.94
1134F	Epsd bk pain for =< 6 wks		M					
1135F	Epsd bk pain for > 6 wks		M					
1136F	Epsd bk pain for <= 12 wks		M					
1137F	Epsd bk pain for > 12 wks		M					
11400	Exc tr-ext b9+marg 0.5 < cm		T	0019	4.4761	$295.69	$71.87	$59.14
11401	Exc tr-ext b9+marg 0.6-1 cm		T	0019	4.4761	$295.69	$71.87	$59.14
11402	Exc tr-ext b9+marg 1.1-2 cm		T	0019	4.4761	$295.69	$71.87	$59.14
11403	Exc tr-ext b9+marg 2.1-3 cm		T	0020	8.2566	$545.42		$109.09
11404	Exc tr-ext b9+marg 3.1-4 cm		T	0021	15.8974	$1,050.17	$219.48	$210.04
11406	Exc tr-ext b9+marg > 4.0 cm		T	0021	15.8974	$1,050.17	$219.48	$210.04
11420	Exc h-f-nk-sp b9+marg 0.5 <		T	0020	8.2566	$545.42		$109.09
11421	Exc h-f-nk-sp b9+marg 0.6-1		T	0020	8.2566	$545.42		$109.09
11422	Exc h-f-nk-sp b9+marg 1.1-2		T	0020	8.2566	$545.42		$109.09
11423	Exc h-f-nk-sp b9+marg 2.1-3		T	0021	15.8974	$1,050.17	$219.48	$210.04
11424	Exc h-f-nk-sp b9+marg 3.1-4		T	0021	15.8974	$1,050.17	$219.48	$210.04
11426	Exc h-f-nk-sp b9+marg > 4 cm		T	0022	21.8429	$1,442.92	$354.45	$288.59
11440	Exc face-mm b9+marg 0.5 < cm		T	0019	4.4761	$295.69	$71.87	$59.14
11441	Exc face-mm b9+marg 0.6-1 cm		T	0019	4.4761	$295.69	$71.87	$59.14
11442	Exc face-mm b9+marg 1.1-2 cm		T	0020	8.2566	$545.42		$109.09
11443	Exc face-mm b9+marg 2.1-3 cm		T	0020	8.2566	$545.42		$109.09

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
11444	Exc face-mm b9+marg 3.1-4 cm		T	0020	8.2566	$545.42		$109.09
11446	Exc face-mm b9+marg > 4 cm		T	0022	21.8429	$1,442.92	$354.45	$288.59
11450	Removal, sweat gland lesion		T	0022	21.8429	$1,442.92	$354.45	$288.59
11451	Removal, sweat gland lesion		T	0022	21.8429	$1,442.92	$354.45	$288.59
11462	Removal, sweat gland lesion		T	0022	21.8429	$1,442.92	$354.45	$288.59
11463	Removal, sweat gland lesion		T	0022	21.8429	$1,442.92	$354.45	$288.59
11470	Removal, sweat gland lesion		T	0022	21.8429	$1,442.92	$354.45	$288.59
11471	Removal, sweat gland lesion		T	0022	21.8429	$1,442.92	$354.45	$288.59
1150F	Doc pt rsk death w/in 1yr	NI	E					
1151F	Doc no pt rsk death w/in 1yr	NI	E					
1152F	Doc advncd dis comfort 1st	NI	E					
1153F	Doc advncd dis cmfrt not 1st	NI	E					
1157F	Advnc care plan in rcrd	NI	E					
1158F	Advnc care plan tlk docd	NI	M					
1159F	Med list docd in rcrd	NI	E					
11600	Exc tr-ext mlg+marg 0.5 < cm		T	0019	4.4761	$295.69	$71.87	$59.14
11601	Exc tr-ext mlg+marg 0.6-1 cm		T	0019	4.4761	$295.69	$71.87	$59.14
11602	Exc tr-ext mlg+marg 1.1-2 cm		T	0019	4.4761	$295.69	$71.87	$59.14
11603	Exc tr-ext mlg+marg 2.1-3 cm		T	0020	8.2566	$545.42		$109.09
11604	Exc tr-ext mlg+marg 3.1-4 cm		T	0020	8.2566	$545.42		$109.09
11606	Exc tr-ext mlg+marg > 4 cm		T	0021	15.8974	$1,050.17	$219.48	$210.04
1160F	Rvw meds by Rx/Dr in rcrd	NI	E					
11620	Exc h-f-nk-sp mlg+marg 0.5 <		T	0020	8.2566	$545.42		$109.09
11621	Exc h-f-nk-sp mlg+marg 0.6-1		T	0019	4.4761	$295.69	$71.87	$59.14
11622	Exc h-f-nk-sp mlg+marg 1.1-2		T	0020	8.2566	$545.42		$109.09
11623	Exc h-f-nk-sp mlg+marg 2.1-3	CH	T	0021	15.8974	$1,050.17	$219.48	$210.04
11624	Exc h-f-nk-sp mlg+marg 3.1-4		T	0021	15.8974	$1,050.17	$219.48	$210.04
11626	Exc h-f-nk-sp mlg+mar > 4 cm		T	0022	21.8429	$1,442.92	$354.45	$288.59
11640	Exc face-mm malig+marg 0.5 <	CH	T	0020	8.2566	$545.42		$109.09
11641	Exc face-mm malig+marg 0.6-1	CH	T	0020	8.2566	$545.42		$109.09
11642	Exc face-mm malig+marg 1.1-2		T	0020	8.2566	$545.42		$109.09
11643	Exc face-mm malig+marg 2.1-3		T	0020	8.2566	$545.42		$109.09
11644	Exc face-mm malig+marg 3.1-4		T	0021	15.8974	$1,050.17	$219.48	$210.04
11646	Exc face-mm mlg+marg > 4 cm		T	0022	21.8429	$1,442.92	$354.45	$288.59
1170F	Fxnl status assessed	NI	E					
11719	Trim nail(s)		T	0013	0.8281	$54.70		$10.94
11720	Debride nail, 1-5		T	0013	0.8281	$54.70		$10.94
11721	Debride nail, 6 or more		T	0013	0.8281	$54.70		$10.94
11730	Removal of nail plate		T	0013	0.8281	$54.70		$10.94
11732	Remove nail plate, add-on		T	0013	0.8281	$54.70		$10.94
11740	Drain blood from under nail		T	0012	0.4183	$27.63		$5.53
11750	Removal of nail bed		T	0019	4.4761	$295.69	$71.87	$59.14

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
11752	Remove nail bed/finger tip		T	0022	21.8429	$1,442.92	$354.45	$288.59
11755	Biopsy, nail unit		T	0019	4.4761	$295.69	$71.87	$59.14
11760	Repair of nail bed		T	0134	3.4414	$227.34		$45.47
11762	Reconstruction of nail bed		T	0136	15.9750	$1,055.29		$211.06
11765	Excision of nail fold, toe	CH	T	0013	0.8281	$54.70		$10.94
11770	Removal of pilonidal lesion		T	0022	21.8429	$1,442.92	$354.45	$288.59
11771	Removal of pilonidal lesion		T	0022	21.8429	$1,442.92	$354.45	$288.59
11772	Removal of pilonidal lesion		T	0022	21.8429	$1,442.92	$354.45	$288.59
1180F	Thromboemb risk assessed	NI	E					
11900	Injection into skin lesions		T	0013	0.8281	$54.70		$10.94
11901	Added skin lesions injection		T	0013	0.8281	$54.70		$10.94
11920	Correct skin color defects		T	0134	3.4414	$227.34		$45.47
11921	Correct skin color defects		T	0134	3.4414	$227.34		$45.47
11922	Correct skin color defects		T	0134	3.4414	$227.34		$45.47
11950	Therapy for contour defects		T	0133	1.3124	$86.70	$25.67	$17.34
11951	Therapy for contour defects		T	0133	1.3124	$86.70	$25.67	$17.34
11952	Therapy for contour defects		T	0133	1.3124	$86.70	$25.67	$17.34
11954	Therapy for contour defects		T	0133	1.3124	$86.70	$25.67	$17.34
11960	Insert tissue expander(s)		T	0137	21.0656	$1,391.57		$278.32
11970	Replace tissue expander		T	0051	45.3534	$2,996.00		$599.20
11971	Remove tissue expander(s)		T	0022	21.8429	$1,442.92	$354.45	$288.59
11975	Insert contraceptive cap		E					
11976	Removal of contraceptive cap		T	0019	4.4761	$295.69	$71.87	$59.14
11977	Removal/reinsert contra cap		E					
11980	Implant hormone pellet(s)		X	0340	0.6462	$42.69		$8.54
11981	Insert drug implant device		X	0340	0.6462	$42.69		$8.54
11982	Remove drug implant device		X	0340	0.6462	$42.69		$8.54
11983	Remove/insert drug implant		X	0340	0.6462	$42.69		$8.54
12001	Repair superficial wound(s)		T	0133	1.3124	$86.70	$25.67	$17.34
12002	Repair superficial wound(s)		T	0133	1.3124	$86.70	$25.67	$17.34
12004	Repair superficial wound(s)		T	0133	1.3124	$86.70	$25.67	$17.34
12005	Repair superficial wound(s)		T	0133	1.3124	$86.70	$25.67	$17.34
12006	Repair superficial wound(s)		T	0133	1.3124	$86.70	$25.67	$17.34
12007	Repair superficial wound(s)		T	0133	1.3124	$86.70	$25.67	$17.34
12011	Repair superficial wound(s)		T	0133	1.3124	$86.70	$25.67	$17.34
12013	Repair superficial wound(s)		T	0133	1.3124	$86.70	$25.67	$17.34
12014	Repair superficial wound(s)		T	0133	1.3124	$86.70	$25.67	$17.34
12015	Repair superficial wound(s)		T	0133	1.3124	$86.70	$25.67	$17.34
12016	Repair superficial wound(s)		T	0133	1.3124	$86.70	$25.67	$17.34
12017	Repair superficial wound(s)		T	0133	1.3124	$86.70	$25.67	$17.34
12018	Repair superficial wound(s)		T	0133	1.3124	$86.70	$25.67	$17.34
12020	Closure of split wound		T	0135	4.4306	$292.68		$58.54

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
12021	Closure of split wound	CH	T	0134	3.4414	$227.34		$45.47
12031	Intmd wnd repair s/tr/ext	CH	T	0133	1.3124	$86.70	$25.67	$17.34
12032	Intmd wnd repair s/tr/ext	CH	T	0134	3.4414	$227.34		$45.47
12034	Intmd wnd repair s/tr/ext	CH	T	0133	1.3124	$86.70	$25.67	$17.34
12035	Intmd wnd repair s/tr/ext	CH	T	0133	1.3124	$86.70	$25.67	$17.34
12036	Intmd wnd repair s/tr/ext		T	0134	3.4414	$227.34		$45.47
12037	Intmd wnd repair s/tr/ext		T	0134	3.4414	$227.34		$45.47
12041	Intmd wnd repair n-hf/genit	CH	T	0133	1.3124	$86.70	$25.67	$17.34
12042	Intmd wnd repair n-hg/genit	CH	T	0133	1.3124	$86.70	$25.67	$17.34
12044	Intmd wnd repair n-hg/genit	CH	T	0133	1.3124	$86.70	$25.67	$17.34
12045	Intmd wnd repair n-hg/genit		T	0134	3.4414	$227.34		$45.47
12046	Intmd wnd repair n-hg/genit		T	0134	3.4414	$227.34		$45.47
12047	Intmd wnd repair n-hg/genit		T	0134	3.4414	$227.34		$45.47
12051	Intmd wnd repair face/mm	CH	T	0133	1.3124	$86.70	$25.67	$17.34
12052	Intmd wnd repair face/mm	CH	T	0133	1.3124	$86.70	$25.67	$17.34
12053	Intmd wnd repair face/mm	CH	T	0133	1.3124	$86.70	$25.67	$17.34
12054	Intmd wnd repair, face/mm	CH	T	0133	1.3124	$86.70	$25.67	$17.34
12055	Intmd wnd repair face/mm		T	0134	3.4414	$227.34		$45.47
12056	Intmd wnd repair face/mm		T	0134	3.4414	$227.34		$45.47
12057	Intmd wnd repair face/mm		T	0134	3.4414	$227.34		$45.47
1220F	Pt screened for depression	NI	M					
13100	Repair of wound or lesion		T	0135	4.4306	$292.68		$58.54
13101	Repair of wound or lesion		T	0135	4.4306	$292.68		$58.54
13102	Repair wound/lesion add-on		T	0135	4.4306	$292.68		$58.54
13120	Repair of wound or lesion		T	0134	3.4414	$227.34		$45.47
13121	Repair of wound or lesion	CH	T	0134	3.4414	$227.34		$45.47
13122	Repair wound/lesion add-on		T	0134	3.4414	$227.34		$45.47
13131	Repair of wound or lesion	CH	T	0134	3.4414	$227.34		$45.47
13132	Repair of wound or lesion	CH	T	0134	3.4414	$227.34		$45.47
13133	Repair wound/lesion add-on	CH	T	0134	3.4414	$227.34		$45.47
13150	Repair of wound or lesion		T	0135	4.4306	$292.68		$58.54
13151	Repair of wound or lesion		T	0135	4.4306	$292.68		$58.54
13152	Repair of wound or lesion		T	0135	4.4306	$292.68		$58.54
13153	Repair wound/lesion add-on		T	0134	3.4414	$227.34		$45.47
13160	Late closure of wound		T	0137	21.0656	$1,391.57		$278.32
14000	Skin tissue rearrangement		T	0136	15.9750	$1,055.29		$211.06
14001	Skin tissue rearrangement		T	0136	15.9750	$1,055.29		$211.06
14020	Skin tissue rearrangement		T	0136	15.9750	$1,055.29		$211.06
14021	Skin tissue rearrangement		T	0136	15.9750	$1,055.29		$211.06
14040	Skin tissue rearrangement		T	0136	15.9750	$1,055.29		$211.06
14041	Skin tissue rearrangement		T	0136	15.9750	$1,055.29		$211.06
14060	Skin tissue rearrangement		T	0136	15.9750	$1,055.29		$211.06

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
14061	Skin tissue rearrangement		T	0136	15.9750	$1,055.29		$211.06
14300	Skin tissue rearrangement		T	0137	21.0656	$1,391.57		$278.32
14350	Skin tissue rearrangement		T	0137	21.0656	$1,391.57		$278.32
15002	Wound prep, trk/arm/leg		T	0135	4.4306	$292.68		$58.54
15003	Wound prep, addl 100 cm		T	0135	4.4306	$292.68		$58.54
15004	Wound prep, f/n/hf/g		T	0135	4.4306	$292.68		$58.54
15005	Wnd prep, f/n/hf/g, addl cm		T	0135	4.4306	$292.68		$58.54
15040	Harvest cultured skin graft		T	0134	3.4414	$227.34		$45.47
15050	Skin pinch graft		T	0135	4.4306	$292.68		$58.54
15100	Skin splt grft, trnk/arm/leg		T	0137	21.0656	$1,391.57		$278.32
15101	Skin splt grft t/a/l, add-on		T	0137	21.0656	$1,391.57		$278.32
15110	Epidrm autogrft trnk/arm/leg		T	0135	4.4306	$292.68		$58.54
15111	Epidrm autogrft t/a/l add-on		T	0135	4.4306	$292.68		$58.54
15115	Epidrm a-grft face/nck/hf/g		T	0135	4.4306	$292.68		$58.54
15116	Epidrm a-grft f/n/hf/g addl		T	0135	4.4306	$292.68		$58.54
15120	Skn splt a-grft fac/nck/hf/g		T	0137	21.0656	$1,391.57		$278.32
15121	Skn splt a-grft f/n/hf/g add		T	0137	21.0656	$1,391.57		$278.32
15130	Derm autograft, trnk/arm/leg		T	0136	15.9750	$1,055.29		$211.06
15131	Derm autograft t/a/l add-on		T	0136	15.9750	$1,055.29		$211.06
15135	Derm autograft face/nck/hf/g		T	0136	15.9750	$1,055.29		$211.06
15136	Derm autograft, f/n/hf/g add		T	0136	15.9750	$1,055.29		$211.06
15150	Cult epiderm grft t/arm/leg		T	0135	4.4306	$292.68		$58.54
15151	Cult epiderm grft t/a/l addl		T	0135	4.4306	$292.68		$58.54
15152	Cult epiderm graft t/a/l +%		T	0135	4.4306	$292.68		$58.54
15155	Cult epiderm graft, f/n/hf/g		T	0135	4.4306	$292.68		$58.54
15156	Cult epidrm grft f/n/hfg add		T	0135	4.4306	$292.68		$58.54
15157	Cult epiderm grft f/n/hfg +%		T	0135	4.4306	$292.68		$58.54
15170	Acell graft trunk/arms/legs		T	0134	3.4414	$227.34		$45.47
15171	Acell graft t/arm/leg add-on		T	0134	3.4414	$227.34		$45.47
15175	Acellular graft, f/n/hf/g		T	0135	4.4306	$292.68		$58.54
15176	Acell graft, f/n/hf/g add-on		T	0135	4.4306	$292.68		$58.54
15200	Skin full graft, trunk		T	0136	15.9750	$1,055.29		$211.06
15201	Skin full graft trunk add-on		T	0136	15.9750	$1,055.29		$211.06
15220	Skin full graft sclp/arm/leg		T	0136	15.9750	$1,055.29		$211.06
15221	Skin full graft add-on		T	0135	4.4306	$292.68		$58.54
15240	Skin full grft face/genit/hf		T	0136	15.9750	$1,055.29		$211.06
15241	Skin full graft add-on		T	0135	4.4306	$292.68		$58.54
15260	Skin full graft een & lips		T	0136	15.9750	$1,055.29		$211.06
15261	Skin full graft add-on		T	0136	15.9750	$1,055.29		$211.06
15300	Apply skinallogrft, t/arm/lg		T	0135	4.4306	$292.68		$58.54
15301	Apply sknallogrft t/a/l addl		T	0135	4.4306	$292.68		$58.54
15320	Apply skin allogrft f/n/hf/g		T	0135	4.4306	$292.68		$58.54

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
15321	Aply sknallogrft f/n/hfg add		T	0135	4.4306	$292.68		$58.54
15330	Aply acell alogrft t/arm/leg		T	0135	4.4306	$292.68		$58.54
15331	Aply acell grft t/a/l add-on		T	0135	4.4306	$292.68		$58.54
15335	Apply acell graft, f/n/hf/g		T	0135	4.4306	$292.68		$58.54
15336	Aply acell grft f/n/hf/g add		T	0135	4.4306	$292.68		$58.54
15340	Apply cult skin substitute		T	0134	3.4414	$227.34		$45.47
15341	Apply cult skin sub add-on		T	0134	3.4414	$227.34		$45.47
15360	Apply cult derm sub, t/a/l		T	0134	3.4414	$227.34		$45.47
15361	Aply cult derm sub t/a/l add		T	0134	3.4414	$227.34		$45.47
15365	Apply cult derm sub f/n/hf/g		T	0134	3.4414	$227.34		$45.47
15366	Apply cult derm f/hf/g add		T	0134	3.4414	$227.34		$45.47
15400	Apply skin xenograft, t/a/l		T	0135	4.4306	$292.68		$58.54
15401	Apply skn xenogrft t/a/l add		T	0135	4.4306	$292.68		$58.54
15420	Apply skin xgraft, f/n/hf/g		T	0135	4.4306	$292.68		$58.54
15421	Apply skn xgrft f/n/hf/g add		T	0135	4.4306	$292.68		$58.54
15430	Apply acellular xenograft		T	0135	4.4306	$292.68		$58.54
15431	Apply acellular xgraft add		T	0135	4.4306	$292.68		$58.54
15570	Form skin pedicle flap		T	0137	21.0656	$1,391.57		$278.32
15572	Form skin pedicle flap		T	0137	21.0656	$1,391.57		$278.32
15574	Form skin pedicle flap		T	0137	21.0656	$1,391.57		$278.32
15576	Form skin pedicle flap		T	0137	21.0656	$1,391.57		$278.32
15600	Skin graft		T	0137	21.0656	$1,391.57		$278.32
15610	Skin graft		T	0137	21.0656	$1,391.57		$278.32
15620	Skin graft		T	0137	21.0656	$1,391.57		$278.32
15630	Skin graft		T	0137	21.0656	$1,391.57		$278.32
15650	Transfer skin pedicle flap		T	0137	21.0656	$1,391.57		$278.32
15731	Forehead flap w/vasc pedicle		T	0137	21.0656	$1,391.57		$278.32
15732	Muscle-skin graft, head/neck		T	0137	21.0656	$1,391.57		$278.32
15734	Muscle-skin graft, trunk		T	0137	21.0656	$1,391.57		$278.32
15736	Muscle-skin graft, arm		T	0137	21.0656	$1,391.57		$278.32
15738	Muscle-skin graft, leg		T	0137	21.0656	$1,391.57		$278.32
15740	Island pedicle flap graft		T	0136	15.9750	$1,055.29		$211.06
15750	Neurovascular pedicle graft		T	0137	21.0656	$1,391.57		$278.32
15756	Free myo/skin flap microvasc		C					
15757	Free skin flap, microvasc		C					
15758	Free fascial flap, microvasc		C					
15760	Composite skin graft		T	0137	21.0656	$1,391.57		$278.32
15770	Derma-fat-fascia graft		T	0137	21.0656	$1,391.57		$278.32
15775	Hair transplant punch grafts		T	0133	1.3124	$86.70	$25.67	$17.34
15776	Hair transplant punch grafts		T	0133	1.3124	$86.70	$25.67	$17.34
15780	Abrasion treatment of skin		T	0022	21.8429	$1,442.92	$354.45	$288.59
15781	Abrasion treatment of skin		T	0019	4.4761	$295.69	$71.87	$59.14

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
15782	Abrasion treatment of skin		T	0019	4.4761	$295.69	$71.87	$59.14
15783	Abrasion treatment of skin		T	0016	2.7288	$180.26		$36.06
15786	Abrasion, lesion, single		T	0013	0.8281	$54.70		$10.94
15787	Abrasion, lesions, add-on		T	0013	0.8281	$54.70		$10.94
15788	Chemical peel, face, epiderm		T	0013	0.8281	$54.70		$10.94
15789	Chemical peel, face, dermal		T	0015	1.5170	$100.21		$20.05
15792	Chemical peel, nonfacial		T	0015	1.5170	$100.21		$20.05
15793	Chemical peel, nonfacial		T	0013	0.8281	$54.70		$10.94
15819	Plastic surgery, neck		T	0134	3.4414	$227.34		$45.47
15820	Revision of lower eyelid		T	0137	21.0656	$1,391.57		$278.32
15821	Revision of lower eyelid		T	0137	21.0656	$1,391.57		$278.32
15822	Revision of upper eyelid		T	0137	21.0656	$1,391.57		$278.32
15823	Revision of upper eyelid		T	0137	21.0656	$1,391.57		$278.32
15824	Removal of forehead wrinkles		T	0137	21.0656	$1,391.57		$278.32
15825	Removal of neck wrinkles		T	0137	21.0656	$1,391.57		$278.32
15826	Removal of brow wrinkles		T	0137	21.0656	$1,391.57		$278.32
15828	Removal of face wrinkles		T	0137	21.0656	$1,391.57		$278.32
15829	Removal of skin wrinkles		T	0137	21.0656	$1,391.57		$278.32
15830	Exc skin abd		T	0022	21.8429	$1,442.92	$354.45	$288.59
15832	Excise excessive skin tissue		T	0022	21.8429	$1,442.92	$354.45	$288.59
15833	Excise excessive skin tissue		T	0022	21.8429	$1,442.92	$354.45	$288.59
15834	Excise excessive skin tissue		T	0022	21.8429	$1,442.92	$354.45	$288.59
15835	Excise excessive skin tissue		T	0022	21.8429	$1,442.92	$354.45	$288.59
15836	Excise excessive skin tissue		T	0021	15.8974	$1,050.17	$219.48	$210.04
15837	Excise excessive skin tissue		T	0021	15.8974	$1,050.17	$219.48	$210.04
15838	Excise excessive skin tissue		T	0021	15.8974	$1,050.17	$219.48	$210.04
15839	Excise excessive skin tissue		T	0021	15.8974	$1,050.17	$219.48	$210.04
15840	Graft for face nerve palsy		T	0137	21.0656	$1,391.57		$278.32
15841	Graft for face nerve palsy		T	0137	21.0656	$1,391.57		$278.32
15842	Flap for face nerve palsy		T	0137	21.0656	$1,391.57		$278.32
15845	Skin and muscle repair, face		T	0137	21.0656	$1,391.57		$278.32
15847	Exc skin abd add-on		T	0022	21.8429	$1,442.92	$354.45	$288.59
15850	Removal of sutures		T	0016	2.7288	$180.26		$36.06
15851	Removal of sutures		T	0016	2.7288	$180.26		$36.06
15852	Dressing change not for burn		X	0340	0.6462	$42.69		$8.54
15860	Test for blood flow in graft		X	0340	0.6462	$42.69		$8.54
15876	Suction assisted lipectomy		T	0137	21.0656	$1,391.57		$278.32
15877	Suction assisted lipectomy		T	0137	21.0656	$1,391.57		$278.32
15878	Suction assisted lipectomy		T	0137	21.0656	$1,391.57		$278.32
15879	Suction assisted lipectomy		T	0137	21.0656	$1,391.57		$278.32
15920	Removal of tail bone ulcer		T	0019	4.4761	$295.69	$71.87	$59.14
15922	Removal of tail bone ulcer		T	0137	21.0656	$1,391.57		$278.32

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
15931	Remove sacrum pressure sore		T	0022	21.8429	$1,442.92	$354.45	$288.59
15933	Remove sacrum pressure sore		T	0022	21.8429	$1,442.92	$354.45	$288.59
15934	Remove sacrum pressure sore		T	0137	21.0656	$1,391.57		$278.32
15935	Remove sacrum pressure sore		T	0137	21.0656	$1,391.57		$278.32
15936	Remove sacrum pressure sore		T	0136	15.9750	$1,055.29		$211.06
15937	Remove sacrum pressure sore		T	0137	21.0656	$1,391.57		$278.32
15940	Remove hip pressure sore		T	0022	21.8429	$1,442.92	$354.45	$288.59
15941	Remove hip pressure sore		T	0022	21.8429	$1,442.92	$354.45	$288.59
15944	Remove hip pressure sore		T	0137	21.0656	$1,391.57		$278.32
15945	Remove hip pressure sore		T	0137	21.0656	$1,391.57		$278.32
15946	Remove hip pressure sore		T	0137	21.0656	$1,391.57		$278.32
15950	Remove thigh pressure sore		T	0022	21.8429	$1,442.92	$354.45	$288.59
15951	Remove thigh pressure sore		T	0022	21.8429	$1,442.92	$354.45	$288.59
15952	Remove thigh pressure sore		T	0136	15.9750	$1,055.29		$211.06
15953	Remove thigh pressure sore		T	0136	15.9750	$1,055.29		$211.06
15956	Remove thigh pressure sore		T	0136	15.9750	$1,055.29		$211.06
15958	Remove thigh pressure sore		T	0136	15.9750	$1,055.29		$211.06
15999	Removal of pressure sore		T	0019	4.4761	$295.69	$71.87	$59.14
16000	Initial treatment of burn(s)		T	0013	0.8281	$54.70		$10.94
16020	Dress/debrid p-thick burn, s		T	0015	1.5170	$100.21		$20.05
16025	Dress/debrid p-thick burn, m	CH	T	0015	1.5170	$100.21		$20.05
16030	Dress/debrid p-thick burn, l	CH	T	0015	1.5170	$100.21		$20.05
16035	Incision of burn scab, initi	CH	T	0015	1.5170	$100.21		$20.05
16036	Escharotomy; add'l incision		C					
17000	Destruct premalg lesion		T	0013	0.8281	$54.70		$10.94
17003	Destruct premalg les, 2-14		T	0012	0.4183	$27.63		$5.53
17004	Destroy premlg lesions 15+		T	0016	2.7288	$180.26		$36.06
17106	Destruction of skin lesions		T	0016	2.7288	$180.26		$36.06
17107	Destruction of skin lesions		T	0016	2.7288	$180.26		$36.06
17108	Destruction of skin lesions		T	0016	2.7288	$180.26		$36.06
17110	Destruct b9 lesion, 1-14		T	0013	0.8281	$54.70		$10.94
17111	Destruct lesion, 15 or more		T	0015	1.5170	$100.21		$20.05
17250	Chemical cautery, tissue		T	0015	1.5170	$100.21		$20.05
17260	Destruction of skin lesions		T	0015	1.5170	$100.21		$20.05
17261	Destruction of skin lesions		T	0015	1.5170	$100.21		$20.05
17262	Destruction of skin lesions		T	0015	1.5170	$100.21		$20.05
17263	Destruction of skin lesions		T	0015	1.5170	$100.21		$20.05
17264	Destruction of skin lesions		T	0015	1.5170	$100.21		$20.05
17266	Destruction of skin lesions		T	0016	2.7288	$180.26		$36.06
17270	Destruction of skin lesions		T	0015	1.5170	$100.21		$20.05
17271	Destruction of skin lesions		T	0015	1.5170	$100.21		$20.05
17272	Destruction of skin lesions		T	0015	1.5170	$100.21		$20.05

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
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17273	Destruction of skin lesions		T	0016	2.7288	$180.26		$36.06
17274	Destruction of skin lesions		T	0016	2.7288	$180.26		$36.06
17276	Destruction of skin lesions		T	0016	2.7288	$180.26		$36.06
17280	Destruction of skin lesions		T	0015	1.5170	$100.21		$20.05
17281	Destruction of skin lesions		T	0016	2.7288	$180.26		$36.06
17282	Destruction of skin lesions		T	0016	2.7288	$180.26		$36.06
17283	Destruction of skin lesions		T	0016	2.7288	$180.26		$36.06
17284	Destruction of skin lesions		T	0016	2.7288	$180.26		$36.06
17286	Destruction of skin lesions		T	0016	2.7288	$180.26		$36.06
17311	Mohs, 1 stage, h/n/hf/g		T	0694	4.5047	$297.58	$91.69	$59.52
17312	Mohs addl stage		T	0694	4.5047	$297.58	$91.69	$59.52
17313	Mohs, 1 stage, t/a/l		T	0694	4.5047	$297.58	$91.69	$59.52
17314	Mohs, addl stage, t/a/l		T	0694	4.5047	$297.58	$91.69	$59.52
17315	Mohs surg, addl block		T	0694	4.5047	$297.58	$91.69	$59.52
17340	Cryotherapy of skin		T	0013	0.8281	$54.70		$10.94
17360	Skin peel therapy		T	0013	0.8281	$54.70		$10.94
17380	Hair removal by electrolysis		T	0013	0.8281	$54.70		$10.94
17999	Skin tissue procedure		T	0012	0.4183	$27.63		$5.53
19000	Drainage of breast lesion		T	0004	4.4727	$295.46		$59.10
19001	Drain breast lesion add-on		T	0002	1.4324	$94.62		$18.93
19020	Incision of breast lesion		T	0008	19.3873	$1,280.71		$256.15
19030	Injection for breast x-ray		N					
19100	Bx breast percut w/o image		T	0004	4.4727	$295.46		$59.10
19101	Biopsy of breast, open		T	0028	21.4851	$1,419.28	$303.74	$283.86
19102	Bx breast percut w/image		T	0005	7.3879	$488.04		$97.61
19103	Bx breast percut w/device		T	0037	13.5176	$892.96	$228.76	$178.60
19105	Cryosurg ablate fa, each		T	0029	33.5744	$2,217.89	$581.52	$443.58
19110	Nipple exploration		T	0028	21.4851	$1,419.28	$303.74	$283.86
19112	Excise breast duct fistula		T	0028	21.4851	$1,419.28	$303.74	$283.86
19120	Removal of breast lesion		T	0028	21.4851	$1,419.28	$303.74	$283.86
19125	Excision, breast lesion		T	0028	21.4851	$1,419.28	$303.74	$283.86
19126	Excision, addl breast lesion		T	0028	21.4851	$1,419.28	$303.74	$283.86
19260	Removal of chest wall lesion		T	0021	15.8974	$1,050.17	$219.48	$210.04
19271	Revision of chest wall		C					
19272	Extensive chest wall surgery		C					
19290	Place needle wire, breast		N					
19291	Place needle wire, breast		N					
19295	Place breast clip, percut		N					
19296	Place po breast cath for rad		T	0648	60.1165	$3,971.24		$794.25
19297	Place breast cath for rad		T	0648	60.1165	$3,971.24		$794.25
19298	Place breast rad tube/caths		T	0648	60.1165	$3,971.24		$794.25
19300	Removal of breast tissue		T	0028	21.4851	$1,419.28	$303.74	$283.86

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
19301	Partical mastectomy		T	0028	21.4851	$1,419.28	$303.74	$283.86
19302	P-mastectomy w/ln removal		T	0030	40.5281	$2,677.25	$747.07	$535.45
19303	Mast, simple, complete		T	0029	33.5744	$2,217.89	$581.52	$443.58
19304	Mast, subq		T	0029	33.5744	$2,217.89	$581.52	$443.58
19305	Mast, radical		C					
19306	Mast, rad, urban type		C					
19307	Mast, mod rad		T	0030	40.5281	$2,677.25	$747.07	$535.45
19316	Suspension of breast		T	0029	33.5744	$2,217.89	$581.52	$443.58
19318	Reduction of large breast		T	0030	40.5281	$2,677.25	$747.07	$535.45
19324	Enlarge breast		T	0030	40.5281	$2,677.25	$747.07	$535.45
19325	Enlarge breast with implant		T	0648	60.1165	$3,971.24		$794.25
19328	Removal of breast implant		T	0029	33.5744	$2,217.89	$581.52	$443.58
19330	Removal of implant material		T	0029	33.5744	$2,217.89	$581.52	$443.58
19340	Immediate breast prosthesis		T	0030	40.5281	$2,677.25	$747.07	$535.45
19342	Delayed breast prosthesis		T	0648	60.1165	$3,971.24		$794.25
19350	Breast reconstruction		T	0028	21.4851	$1,419.28	$303.74	$283.86
19355	Correct inverted nipple(s)		T	0029	33.5744	$2,217.89	$581.52	$443.58
19357	Breast reconstruction		T	0648	60.1165	$3,971.24		$794.25
19361	Breast reconstr w/lat flap		C					
19364	Breast reconstruction		C					
19366	Breast reconstruction		T	0029	33.5744	$2,217.89	$581.52	$443.58
19367	Breast reconstruction		C					
19368	Breast reconstruction		C					
19369	Breast reconstruction		C					
19370	Surgery of breast capsule		T	0029	33.5744	$2,217.89	$581.52	$443.58
19371	Removal of breast capsule		T	0029	33.5744	$2,217.89	$581.52	$443.58
19380	Revise breast reconstruction		T	0030	40.5281	$2,677.25	$747.07	$535.45
19396	Design custom breast implant		T	0029	33.5744	$2,217.89	$581.52	$443.58
19499	Breast surgery procedure		T	0028	21.4851	$1,419.28	$303.74	$283.86
20000	Incision of abscess		T	0006	1.4128	$93.33		$18.67
20005	Incision of deep abscess		T	0049	21.7810	$1,438.83		$287.77
2000F	Blood pressure measure		M					
2001F	Weight record		M					
2002F	Clin sign vol ovrld assess		M					
2004F	Initial exam involved joints		M					
20100	Explore wound, neck	CH	T	0252	7.5330	$497.62	$109.16	$99.53
20101	Explore wound, chest		T	0137	21.0656	$1,391.57		$278.32
20102	Explore wound, abdomen		T	0137	21.0656	$1,391.57		$278.32
20103	Explore wound, extremity	CH	T	0136	15.9750	$1,055.29		$211.06
2010F	Vital signs recorded		M					
2014F	Mental status assess		M					
20150	Excise epiphyseal bar		T	0051	45.3534	$2,996.00		$599.20

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
2018F	Hydration status assess		M					
2019F	Dilated macul exam done		M					
20200	Muscle biopsy		T	0021	15.8974	$1,050.17	$219.48	$210.04
20205	Deep muscle biopsy		T	0021	15.8974	$1,050.17	$219.48	$210.04
20206	Needle biopsy, muscle		T	0005	7.3879	$488.04		$97.61
2020F	Dilated fundus eval done		M					
2021F	Dilat macul+ exam done		M					
20220	Bone biopsy, trocar/needle		T	0020	8.2566	$545.42		$109.09
20225	Bone biopsy, trocar/needle	CH	T	0021	15.8974	$1,050.17	$219.48	$210.04
2022F	Dil retina exam interp rev		M					
20240	Bone biopsy, excisional		T	0022	21.8429	$1,442.92	$354.45	$288.59
20245	Bone biopsy, excisional		T	0022	21.8429	$1,442.92	$354.45	$288.59
2024F	7 field photo interp doc rev		M					
20250	Open bone biopsy		T	0049	21.7810	$1,438.83		$287.77
20251	Open bone biopsy		T	0049	21.7810	$1,438.83		$287.77
2026F	Eye image valid to dx rev		M					
2027F	Optic nerve head eval done		M					
2028F	Foot exam performed		M					
2029F	Complete phys skin exam done		M					
2030F	H2O stat doc'd, normal		M					
2031F	H2O stat doc'd, dehydrated		M					
2035F	Tymp memb motion examd		M					
2040F	Bk pn xm on init visit date		M					
2044F	Doc mntl tst b/4 bk trxmnt		M					
20500	Injection of sinus tract	CH	T	0252	7.5330	$497.62	$109.16	$99.53
20501	Inject sinus tract for x-ray		N					
2050F	Wound char size etc docd	NI	E					
20520	Removal of foreign body		T	0019	4.4761	$295.69	$71.87	$59.14
20525	Removal of foreign body		T	0022	21.8429	$1,442.92	$354.45	$288.59
20526	Ther injection, carp tunnel		T	0204	2.4871	$164.30	$40.13	$32.86
20550	Inj tendon sheath/ligament		T	0204	2.4871	$164.30	$40.13	$32.86
20551	Inj tendon origin/insertion		T	0204	2.4871	$164.30	$40.13	$32.86
20552	Inj trigger point, 1/2 muscl		T	0204	2.4871	$164.30	$40.13	$32.86
20553	Inject trigger points, =/> 3		T	0204	2.4871	$164.30	$40.13	$32.86
20555	Place ndl musc/tis for rt		T	0050	29.8816	$1,973.95		$394.79
20600	Drain/inject, joint/bursa		T	0204	2.4871	$164.30	$40.13	$32.86
20605	Drain/inject, joint/bursa		T	0204	2.4871	$164.30	$40.13	$32.86
20610	Drain/inject, joint/bursa		T	0204	2.4871	$164.30	$40.13	$32.86
20612	Aspirate/inj ganglion cyst		T	0204	2.4871	$164.30	$40.13	$32.86
20615	Treatment of bone cyst		T	0004	4.4727	$295.46		$59.10
20650	Insert and remove bone pin		T	0049	21.7810	$1,438.83		$287.77
20660	Apply, rem fixation device	CH	T	0138	6.1479	$406.12		$81.23

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
20661	Application of head brace		C					
20662	Application of pelvis brace		T	0049	21.7810	$1,438.83		$287.77
20663	Application of thigh brace		T	0049	21.7810	$1,438.83		$287.77
20664	Halo brace application		C					
20665	Removal of fixation device		X	0340	0.6462	$42.69		$8.54
20670	Removal of support implant		T	0021	15.8974	$1,050.17	$219.48	$210.04
20680	Removal of support implant		T	0022	21.8429	$1,442.92	$354.45	$288.59
20690	Apply bone fixation device		T	0050	29.8816	$1,973.95		$394.79
20692	Apply bone fixation device		T	0050	29.8816	$1,973.95		$394.79
20693	Adjust bone fixation device		T	0049	21.7810	$1,438.83		$287.77
20694	Remove bone fixation device		T	0049	21.7810	$1,438.83		$287.77
20696	Comp multiplane ext fixation	NI	T	0050	29.8816	$1,973.95		$394.79
20697	Comp ext fixate strut change	NI	T	0139	19.8724	$1,312.75		$262.55
20802	Replantation, arm, complete		C					
20805	Replant forearm, complete		C					
20808	Replantation hand, complete		C					
20816	Replantation digit, complete		C					
20822	Replantation digit, complete		T	0054	27.9994	$1,849.61		$369.93
20824	Replantation thumb, complete		C					
20827	Replantation thumb, complete		C					
20838	Replantation foot, complete		C					
20900	Removal of bone for graft		T	0050	29.8816	$1,973.95		$394.79
20902	Removal of bone for graft		T	0050	29.8816	$1,973.95		$394.79
20910	Remove cartilage for graft		T	0137	21.0656	$1,391.57		$278.32
20912	Remove cartilage for graft		T	0137	21.0656	$1,391.57		$278.32
20920	Removal of fascia for graft		T	0136	15.9750	$1,055.29		$211.06
20922	Removal of fascia for graft		T	0136	15.9750	$1,055.29		$211.06
20924	Removal of tendon for graft		T	0050	29.8816	$1,973.95		$394.79
20926	Removal of tissue for graft		T	0135	4.4306	$292.68		$58.54
20930	Sp bone algrft morsel add-on		C					
20931	Sp bone algrft struct add-on		C					
20936	Sp bone agrft local add-on		C					
20937	Sp bone agrft morsel add-on		C					
20938	Sp bone agrft struct add-on		C					
20950	Fluid pressure, muscle		T	0006	1.4128	$93.33		$18.67
20955	Fibula bone graft, microvasc		C					
20956	Iliac bone graft, microvasc		C					
20957	Mt bone graft, microvasc		C					
20962	Other bone graft, microvasc		C					
20969	Bone/skin graft, microvasc		C					
20970	Bone/skin graft, iliac crest		C					
20972	Bone/skin graft, metatarsal		T	0056	47.2916	$3,124.04		$624.81

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
20973	Bone/skin graft, great toe		T	0056	47.2916	$3,124.04		$624.81
20974	Electrical bone stimulation		A					
20975	Electrical bone stimulation		N					
20979	Us bone stimulation		X	0340	0.6462	$42.69		$8.54
20982	Ablate, bone tumor(s) perq		T	0051	45.3534	$2,996.00		$599.20
20985	Cptr-asst dir ms px		N					
20986	Cptr-asst dir ms px io img	CH	D					
20987	Cptr-asst dir ms px pre img	CH	D					
20999	Musculoskeletal surgery		T	0049	21.7810	$1,438.83		$287.77
21010	Incision of jaw joint		T	0254	24.7557	$1,635.34		$327.07
21015	Resection of facial tumor		T	0253	17.2402	$1,138.87	$282.29	$227.78
21025	Excision of bone, lower jaw		T	0256	41.8741	$2,766.16		$553.24
21026	Excision of facial bone(s)		T	0256	41.8741	$2,766.16		$553.24
21029	Contour of face bone lesion		T	0256	41.8741	$2,766.16		$553.24
21030	Excise max/zygoma b9 tumor		T	0254	24.7557	$1,635.34		$327.07
21031	Remove exostosis, mandible		T	0254	24.7557	$1,635.34		$327.07
21032	Remove exostosis, maxilla		T	0254	24.7557	$1,635.34		$327.07
21034	Excise max/zygoma mlg tumor		T	0256	41.8741	$2,766.16		$553.24
21040	Excise mandible lesion		T	0254	24.7557	$1,635.34		$327.07
21044	Removal of jaw bone lesion		T	0256	41.8741	$2,766.16		$553.24
21045	Extensive jaw surgery		C					
21046	Remove mandible cyst complex		T	0256	41.8741	$2,766.16		$553.24
21047	Excise lwr jaw cyst w/repair		T	0256	41.8741	$2,766.16		$553.24
21048	Remove maxilla cyst complex		T	0256	41.8741	$2,766.16		$553.24
21049	Excis uppr jaw cyst w/repair		T	0256	41.8741	$2,766.16		$553.24
21050	Removal of jaw joint		T	0256	41.8741	$2,766.16		$553.24
21060	Remove jaw joint cartilage		T	0256	41.8741	$2,766.16		$553.24
21070	Remove coronoid process		T	0256	41.8741	$2,766.16		$553.24
21073	Mnpj of tmj w/anesth		T	0252	7.5330	$497.62	$109.16	$99.53
21076	Prepare face/oral prosthesis		T	0254	24.7557	$1,635.34		$327.07
21077	Prepare face/oral prosthesis		T	0256	41.8741	$2,766.16		$553.24
21079	Prepare face/oral prosthesis		T	0256	41.8741	$2,766.16		$553.24
21080	Prepare face/oral prosthesis		T	0256	41.8741	$2,766.16		$553.24
21081	Prepare face/oral prosthesis		T	0256	41.8741	$2,766.16		$553.24
21082	Prepare face/oral prosthesis		T	0256	41.8741	$2,766.16		$553.24
21083	Prepare face/oral prosthesis		T	0256	41.8741	$2,766.16		$553.24
21084	Prepare face/oral prosthesis		T	0256	41.8741	$2,766.16		$553.24
21085	Prepare face/oral prosthesis		T	0253	17.2402	$1,138.87	$282.29	$227.78
21086	Prepare face/oral prosthesis		T	0256	41.8741	$2,766.16		$553.24
21087	Prepare face/oral prosthesis		T	0256	41.8741	$2,766.16		$553.24
21088	Prepare face/oral prosthesis		T	0256	41.8741	$2,766.16		$553.24
21089	Prepare face/oral prosthesis	CH	T	0250	1.1110	$73.39	$25.10	$14.68

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
21100	Maxillofacial fixation		T	0256	41.8741	$2,766.16		$553.24
21110	Interdental fixation		T	0252	7.5330	$497.62	$109.16	$99.53
21116	Injection, jaw joint x-ray		N					
21120	Reconstruction of chin		T	0254	24.7557	$1,635.34		$327.07
21121	Reconstruction of chin		T	0254	24.7557	$1,635.34		$327.07
21122	Reconstruction of chin		T	0254	24.7557	$1,635.34		$327.07
21123	Reconstruction of chin		T	0254	24.7557	$1,635.34		$327.07
21125	Augmentation, lower jaw bone		T	0254	24.7557	$1,635.34		$327.07
21127	Augmentation, lower jaw bone		T	0256	41.8741	$2,766.16		$553.24
21137	Reduction of forehead		T	0254	24.7557	$1,635.34		$327.07
21138	Reduction of forehead		T	0256	41.8741	$2,766.16		$553.24
21139	Reduction of forehead		T	0256	41.8741	$2,766.16		$553.24
21141	Reconstruct midface, lefort		C					
21142	Reconstruct midface, lefort		C					
21143	Reconstruct midface, lefort		C					
21145	Reconstruct midface, lefort		C					
21146	Reconstruct midface, lefort		C					
21147	Reconstruct midface, lefort		C					
21150	Reconstruct midface, lefort		T	0256	41.8741	$2,766.16		$553.24
21151	Reconstruct midface, lefort		C					
21154	Reconstruct midface, lefort		C					
21155	Reconstruct midface, lefort		C					
21159	Reconstruct midface, lefort		C					
21160	Reconstruct midface, lefort		C					
21172	Reconstruct orbit/forehead	CH	T	0256	41.8741	$2,766.16		$553.24
21175	Reconstruct orbit/forehead		T	0256	41.8741	$2,766.16		$553.24
21179	Reconstruct entire forehead		C					
21180	Reconstruct entire forehead		C					
21181	Contour cranial bone lesion		T	0254	24.7557	$1,635.34		$327.07
21182	Reconstruct cranial bone		C					
21183	Reconstruct cranial bone		C					
21184	Reconstruct cranial bone		C					
21188	Reconstruction of midface		C					
21193	Reconst lwr jaw w/o graft		C					
21194	Reconst lwr jaw w/graft		C					
21195	Reconst lwr jaw w/o fixation		T	0256	41.8741	$2,766.16		$553.24
21196	Reconst lwr jaw w/fixation		C					
21198	Reconstr lwr jaw segment		T	0256	41.8741	$2,766.16		$553.24
21199	Reconstr lwr jaw w/advance		T	0256	41.8741	$2,766.16		$553.24
21206	Reconstruct upper jaw bone		T	0256	41.8741	$2,766.16		$553.24
21208	Augmentation of facial bones		T	0256	41.8741	$2,766.16		$553.24
21209	Reduction of facial bones		T	0256	41.8741	$2,766.16		$553.24

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
21210	Face bone graft		T	0256	41.8741	$2,766.16		$553.24
21215	Lower jaw bone graft		T	0256	41.8741	$2,766.16		$553.24
21230	Rib cartilage graft		T	0256	41.8741	$2,766.16		$553.24
21235	Ear cartilage graft		T	0254	24.7557	$1,635.34		$327.07
21240	Reconstruction of jaw joint		T	0256	41.8741	$2,766.16		$553.24
21242	Reconstruction of jaw joint		T	0256	41.8741	$2,766.16		$553.24
21243	Reconstruction of jaw joint		T	0256	41.8741	$2,766.16		$553.24
21244	Reconstruction of lower jaw		T	0256	41.8741	$2,766.16		$553.24
21245	Reconstruction of jaw		T	0256	41.8741	$2,766.16		$553.24
21246	Reconstruction of jaw		T	0256	41.8741	$2,766.16		$553.24
21247	Reconstruct lower jaw bone		C					
21248	Reconstruction of jaw		T	0256	41.8741	$2,766.16		$553.24
21249	Reconstruction of jaw		T	0256	41.8741	$2,766.16		$553.24
21255	Reconstruct lower jaw bone		C					
21256	Reconstruction of orbit		C					
21260	Revise eye sockets		T	0256	41.8741	$2,766.16		$553.24
21261	Revise eye sockets		T	0256	41.8741	$2,766.16		$553.24
21263	Revise eye sockets		T	0256	41.8741	$2,766.16		$553.24
21267	Revise eye sockets		T	0256	41.8741	$2,766.16		$553.24
21268	Revise eye sockets		C					
21270	Augmentation, cheek bone		T	0256	41.8741	$2,766.16		$553.24
21275	Revision, orbitofacial bones		T	0256	41.8741	$2,766.16		$553.24
21280	Revision of eyelid		T	0256	41.8741	$2,766.16		$553.24
21282	Revision of eyelid		T	0253	17.2402	$1,138.87	$282.29	$227.78
21295	Revision of jaw muscle/bone		T	0252	7.5330	$497.62	$109.16	$99.53
21296	Revision of jaw muscle/bone		T	0254	24.7557	$1,635.34		$327.07
21299	Cranio/maxillofacial surgery	CH	T	0250	1.1110	$73.39	$25.10	$14.68
21310	Treatment of nose fracture	CH	T	0250	1.1110	$73.39	$25.10	$14.68
21315	Treatment of nose fracture	CH	T	0253	17.2402	$1,138.87	$282.29	$227.78
21320	Treatment of nose fracture		T	0253	17.2402	$1,138.87	$282.29	$227.78
21325	Treatment of nose fracture		T	0254	24.7557	$1,635.34		$327.07
21330	Treatment of nose fracture		T	0254	24.7557	$1,635.34		$327.07
21335	Treatment of nose fracture		T	0254	24.7557	$1,635.34		$327.07
21336	Treat nasal septal fracture		T	0062	25.4442	$1,680.82	$372.87	$336.17
21337	Treat nasal septal fracture		T	0253	17.2402	$1,138.87	$282.29	$227.78
21338	Treat nasoethmoid fracture		T	0254	24.7557	$1,635.34		$327.07
21339	Treat nasoethmoid fracture		T	0254	24.7557	$1,635.34		$327.07
21340	Treatment of nose fracture		T	0256	41.8741	$2,766.16		$553.24
21343	Treatment of sinus fracture		C					
21344	Treatment of sinus fracture		C					
21345	Treat nose/jaw fracture		T	0254	24.7557	$1,635.34		$327.07
21346	Treat nose/jaw fracture		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
21347	Treat nose/jaw fracture		C					
21348	Treat nose/jaw fracture		C					
21355	Treat cheek bone fracture		T	0256	41.8741	$2,766.16		$553.24
21356	Treat cheek bone fracture		T	0254	24.7557	$1,635.34		$327.07
21360	Treat cheek bone fracture		T	0254	24.7557	$1,635.34		$327.07
21365	Treat cheek bone fracture		T	0256	41.8741	$2,766.16		$553.24
21366	Treat cheek bone fracture		C					
21385	Treat eye socket fracture		T	0256	41.8741	$2,766.16		$553.24
21386	Treat eye socket fracture	CH	T	0256	41.8741	$2,766.16		$553.24
21387	Treat eye socket fracture	CH	T	0256	41.8741	$2,766.16		$553.24
21390	Treat eye socket fracture		T	0256	41.8741	$2,766.16		$553.24
21395	Treat eye socket fracture		C					
21400	Treat eye socket fracture		T	0252	7.5330	$497.62	$109.16	$99.53
21401	Treat eye socket fracture		T	0253	17.2402	$1,138.87	$282.29	$227.78
21406	Treat eye socket fracture		T	0256	41.8741	$2,766.16		$553.24
21407	Treat eye socket fracture		T	0256	41.8741	$2,766.16		$553.24
21408	Treat eye socket fracture		T	0256	41.8741	$2,766.16		$553.24
21421	Treat mouth roof fracture		T	0254	24.7557	$1,635.34		$327.07
21422	Treat mouth roof fracture		C					
21423	Treat mouth roof fracture		C					
21431	Treat craniofacial fracture		C					
21432	Treat craniofacial fracture		C					
21433	Treat craniofacial fracture		C					
21435	Treat craniofacial fracture		C					
21436	Treat craniofacial fracture		C					
21440	Treat dental ridge fracture		T	0254	24.7557	$1,635.34		$327.07
21445	Treat dental ridge fracture		T	0254	24.7557	$1,635.34		$327.07
21450	Treat lower jaw fracture		T	0251	3.3069	$218.45		$43.69
21451	Treat lower jaw fracture		T	0252	7.5330	$497.62	$109.16	$99.53
21452	Treat lower jaw fracture		T	0253	17.2402	$1,138.87	$282.29	$227.78
21453	Treat lower jaw fracture		T	0256	41.8741	$2,766.16		$553.24
21454	Treat lower jaw fracture		T	0254	24.7557	$1,635.34		$327.07
21461	Treat lower jaw fracture		T	0256	41.8741	$2,766.16		$553.24
21462	Treat lower jaw fracture		T	0256	41.8741	$2,766.16		$553.24
21465	Treat lower jaw fracture		T	0256	41.8741	$2,766.16		$553.24
21470	Treat lower jaw fracture		T	0256	41.8741	$2,766.16		$553.24
21480	Reset dislocated jaw	CH	T	0250	1.1110	$73.39	$25.10	$14.68
21485	Reset dislocated jaw		T	0253	17.2402	$1,138.87	$282.29	$227.78
21490	Repair dislocated jaw		T	0256	41.8741	$2,766.16		$553.24
21495	Treat hyoid bone fracture		T	0253	17.2402	$1,138.87	$282.29	$227.78
21497	Interdental wiring		T	0253	17.2402	$1,138.87	$282.29	$227.78
21499	Head surgery procedure	CH	T	0250	1.1110	$73.39	$25.10	$14.68

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
21501	Drain neck/chest lesion		T	0008	19.3873	$1,280.71		$256.15
21502	Drain chest lesion		T	0049	21.7810	$1,438.83		$287.77
21510	Drainage of bone lesion		C					
21550	Biopsy of neck/chest	CH	T	0021	15.8974	$1,050.17	$219.48	$210.04
21555	Remove lesion, neck/chest		T	0022	21.8429	$1,442.92	$354.45	$288.59
21556	Remove lesion, neck/chest		T	0022	21.8429	$1,442.92	$354.45	$288.59
21557	Remove tumor, neck/chest		T	0022	21.8429	$1,442.92	$354.45	$288.59
21600	Partial removal of rib		T	0050	29.8816	$1,973.95		$394.79
21610	Partial removal of rib		T	0050	29.8816	$1,973.95		$394.79
21615	Removal of rib		C					
21616	Removal of rib and nerves		C					
21620	Partial removal of sternum		C					
21627	Sternal debridement		C					
21630	Extensive sternum surgery		C					
21632	Extensive sternum surgery		C					
21685	Hyoid myotomy & suspension		T	0252	7.5330	$497.62	$109.16	$99.53
21700	Revision of neck muscle		T	0049	21.7810	$1,438.83		$287.77
21705	Revision of neck muscle/rib		C					
21720	Revision of neck muscle		T	0049	21.7810	$1,438.83		$287.77
21725	Revision of neck muscle		T	0006	1.4128	$93.33		$18.67
21740	Reconstruction of sternum		C					
21742	Repair stern/nuss w/o scope		T	0051	45.3534	$2,996.00		$599.20
21743	Repair sternum/nuss w/scope		T	0051	45.3534	$2,996.00		$599.20
21750	Repair of sternum separation		C					
21800	Treatment of rib fracture	CH	T	0129	1.5977	$105.54		$21.11
21805	Treatment of rib fracture		T	0062	25.4442	$1,680.82	$372.87	$336.17
21810	Treatment of rib fracture(s)		C					
21820	Treat sternum fracture	CH	T	0129	1.5977	$105.54		$21.11
21825	Treat sternum fracture		C					
21899	Neck/chest surgery procedure	CH	T	0250	1.1110	$73.39	$25.10	$14.68
21920	Biopsy soft tissue of back		T	0020	8.2566	$545.42		$109.09
21925	Biopsy soft tissue of back		T	0022	21.8429	$1,442.92	$354.45	$288.59
21930	Remove lesion, back or flank		T	0022	21.8429	$1,442.92	$354.45	$288.59
21935	Remove tumor, back		T	0022	21.8429	$1,442.92	$354.45	$288.59
22010	I&d, p-spine, c/t/cerv-thor		C					
22015	I&d, p-spine, l/s/ls		C					
22100	Remove part of neck vertebra		T	0208	48.6069	$3,210.92		$642.19
22101	Remove part, thorax vertebra		T	0208	48.6069	$3,210.92		$642.19
22102	Remove part, lumbar vertebra		T	0208	48.6069	$3,210.92		$642.19
22103	Remove extra spine segment		T	0208	48.6069	$3,210.92		$642.19
22110	Remove part of neck vertebra		C					
22112	Remove part, thorax vertebra		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
22114	Remove part, lumbar vertebra		C					
22116	Remove extra spine segment		C					
22206	Cut spine 3 col, thor		C					
22207	Cut spine 3 col, lumb		C					
22208	Cut spine 3 col, addl seg		C					
22210	Revision of neck spine		C					
22212	Revision of thorax spine		C					
22214	Revision of lumbar spine		C					
22216	Revise, extra spine segment		C					
22220	Revision of neck spine		C					
22222	Revision of thorax spine		T	0208	48.6069	$3,210.92		$642.19
22224	Revision of lumbar spine		C					
22226	Revise, extra spine segment		C					
22305	Treat spine process fracture	CH	T	0129	1.5977	$105.54		$21.11
22310	Treat spine fracture	CH	T	0138	6.1479	$406.12		$81.23
22315	Treat spine fracture	CH	T	0139	19.8724	$1,312.75		$262.55
22318	Treat odontoid fx w/o graft		C					
22319	Treat odontoid fx w/graft		C					
22325	Treat spine fracture		C					
22326	Treat neck spine fracture		C					
22327	Treat thorax spine fracture		C					
22328	Treat each add spine fx		C					
22505	Manipulation of spine		T	0045	15.5673	$1,028.36	$268.47	$205.68
22520	Percut vertebroplasty thor		T	0050	29.8816	$1,973.95		$394.79
22521	Percut vertebroplasty lumb		T	0050	29.8816	$1,973.95		$394.79
22522	Percut vertebroplasty add'l		T	0050	29.8816	$1,973.95		$394.79
22523	Percut kyphoplasty, thor		T	0052	86.5958	$5,720.43		$1,144.09
22524	Percut kyphoplasty, lumbar		T	0052	86.5958	$5,720.43		$1,144.09
22525	Percut kyphoplasty, add-on		T	0052	86.5958	$5,720.43		$1,144.09
22526	Idet, single level	CH	E					
22527	Idet, 1 or more levels	CH	E					
22532	Lat thorax spine fusion		C					
22533	Lat lumbar spine fusion		C					
22534	Lat thor/lumb, add'l seg		C					
22548	Neck spine fusion		C					
22554	Neck spine fusion		C					
22556	Thorax spine fusion		C					
22558	Lumbar spine fusion		C					
22585	Additional spinal fusion		C					
22590	Spine & skull spinal fusion		C					
22595	Neck spinal fusion		C					
22600	Neck spine fusion		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
22610	Thorax spine fusion		C					
22612	Lumbar spine fusion		T	0208	48.6069	$3,210.92		$642.19
22614	Spine fusion, extra segment		T	0208	48.6069	$3,210.92		$642.19
22630	Lumbar spine fusion		C					
22632	Spine fusion, extra segment		C					
22800	Fusion of spine		C					
22802	Fusion of spine		C					
22804	Fusion of spine		C					
22808	Fusion of spine		C					
22810	Fusion of spine		C					
22812	Fusion of spine		C					
22818	Kyphectomy, 1-2 segments		C					
22819	Kyphectomy, 3 or more		C					
22830	Exploration of spinal fusion		C					
22840	Insert spine fixation device		C					
22841	Insert spine fixation device		C					
22842	Insert spine fixation device		C					
22843	Insert spine fixation device		C					
22844	Insert spine fixation device		C					
22845	Insert spine fixation device		C					
22846	Insert spine fixation device		C					
22847	Insert spine fixation device		C					
22848	Insert pelv fixation device		C					
22849	Reinsert spinal fixation		C					
22850	Remove spine fixation device		C					
22851	Apply spine prosth device		T	0049	21.7810	$1,438.83		$287.77
22852	Remove spine fixation device		C					
22855	Remove spine fixation device		C					
22856	Cerv artific diskectomy	NI	C					
22857	Lumbar artif diskectomy		C					
22861	Revise cerv artific disc	NI	C					
22862	Revise lumbar artif disc		C					
22864	Remove cerv artif disc	NI	C					
22865	Remove lumb artif disc		C					
22899	Spine surgery procedure		T	0049	21.7810	$1,438.83		$287.77
22900	Remove abdominal wall lesion		T	0022	21.8429	$1,442.92	$354.45	$288.59
22999	Abdomen surgery procedure		T	0049	21.7810	$1,438.83		$287.77
23000	Removal of calcium deposits		T	0021	15.8974	$1,050.17	$219.48	$210.04
23020	Release shoulder joint		T	0051	45.3534	$2,996.00		$599.20
23030	Drain shoulder lesion		T	0008	19.3873	$1,280.71		$256.15
23031	Drain shoulder bursa		T	0008	19.3873	$1,280.71		$256.15
23035	Drain shoulder bone lesion		T	0049	21.7810	$1,438.83		$287.77

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
23040	Exploratory shoulder surgery		T	0050	29.8816	$1,973.95		$394.79
23044	Exploratory shoulder surgery		T	0050	29.8816	$1,973.95		$394.79
23065	Biopsy shoulder tissues		T	0020	8.2566	$545.42		$109.09
23066	Biopsy shoulder tissues		T	0022	21.8429	$1,442.92	$354.45	$288.59
23075	Removal of shoulder lesion		T	0021	15.8974	$1,050.17	$219.48	$210.04
23076	Removal of shoulder lesion		T	0022	21.8429	$1,442.92	$354.45	$288.59
23077	Remove tumor of shoulder		T	0022	21.8429	$1,442.92	$354.45	$288.59
23100	Biopsy of shoulder joint		T	0049	21.7810	$1,438.83		$287.77
23101	Shoulder joint surgery		T	0050	29.8816	$1,973.95		$394.79
23105	Remove shoulder joint lining		T	0050	29.8816	$1,973.95		$394.79
23106	Incision of collarbone joint		T	0050	29.8816	$1,973.95		$394.79
23107	Explore treat shoulder joint		T	0050	29.8816	$1,973.95		$394.79
23120	Partial removal, collar bone		T	0050	29.8816	$1,973.95		$394.79
23125	Removal of collar bone		T	0050	29.8816	$1,973.95		$394.79
23130	Remove shoulder bone, part		T	0051	45.3534	$2,996.00		$599.20
23140	Removal of bone lesion		T	0049	21.7810	$1,438.83		$287.77
23145	Removal of bone lesion		T	0050	29.8816	$1,973.95		$394.79
23146	Removal of bone lesion		T	0050	29.8816	$1,973.95		$394.79
23150	Removal of humerus lesion		T	0050	29.8816	$1,973.95		$394.79
23155	Removal of humerus lesion		T	0050	29.8816	$1,973.95		$394.79
23156	Removal of humerus lesion		T	0050	29.8816	$1,973.95		$394.79
23170	Remove collar bone lesion		T	0050	29.8816	$1,973.95		$394.79
23172	Remove shoulder blade lesion		T	0050	29.8816	$1,973.95		$394.79
23174	Remove humerus lesion		T	0050	29.8816	$1,973.95		$394.79
23180	Remove collar bone lesion		T	0050	29.8816	$1,973.95		$394.79
23182	Remove shoulder blade lesion		T	0050	29.8816	$1,973.95		$394.79
23184	Remove humerus lesion		T	0050	29.8816	$1,973.95		$394.79
23190	Partial removal of scapula		T	0050	29.8816	$1,973.95		$394.79
23195	Removal of head of humerus		T	0050	29.8816	$1,973.95		$394.79
23200	Removal of collar bone		C					
23210	Removal of shoulder blade		C					
23220	Partial removal of humerus		C					
23221	Partial removal of humerus		C					
23222	Partial removal of humerus		C					
23330	Remove shoulder foreign body		T	0020	8.2566	$545.42		$109.09
23331	Remove shoulder foreign body		T	0022	21.8429	$1,442.92	$354.45	$288.59
23332	Remove shoulder foreign body		C					
23350	Injection for shoulder x-ray		N					
23395	Muscle transfer,shoulder/arm		T	0051	45.3534	$2,996.00		$599.20
23397	Muscle transfers		T	0052	86.5958	$5,720.43		$1,144.09
23400	Fixation of shoulder blade		T	0050	29.8816	$1,973.95		$394.79
23405	Incision of tendon & muscle		T	0050	29.8816	$1,973.95		$394.79

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
23406	Incise tendon(s) & muscle(s)		T	0050	29.8816	$1,973.95		$394.79
23410	Repair rotator cuff, acute		T	0051	45.3534	$2,996.00		$599.20
23412	Repair rotator cuff, chronic		T	0051	45.3534	$2,996.00		$599.20
23415	Release of shoulder ligament		T	0051	45.3534	$2,996.00		$599.20
23420	Repair of shoulder		T	0051	45.3534	$2,996.00		$599.20
23430	Repair biceps tendon		T	0051	45.3534	$2,996.00		$599.20
23440	Remove/transplant tendon		T	0051	45.3534	$2,996.00		$599.20
23450	Repair shoulder capsule		T	0052	86.5958	$5,720.43		$1,144.09
23455	Repair shoulder capsule		T	0052	86.5958	$5,720.43		$1,144.09
23460	Repair shoulder capsule		T	0052	86.5958	$5,720.43		$1,144.09
23462	Repair shoulder capsule		T	0051	45.3534	$2,996.00		$599.20
23465	Repair shoulder capsule		T	0052	86.5958	$5,720.43		$1,144.09
23466	Repair shoulder capsule		T	0051	45.3534	$2,996.00		$599.20
23470	Reconstruct shoulder joint		T	0425	121.7668	$8,043.79		$1,608.76
23472	Reconstruct shoulder joint		C					
23480	Revision of collar bone		T	0051	45.3534	$2,996.00		$599.20
23485	Revision of collar bone		T	0052	86.5958	$5,720.43		$1,144.09
23490	Reinforce clavicle		T	0051	45.3534	$2,996.00		$599.20
23491	Reinforce shoulder bones		T	0052	86.5958	$5,720.43		$1,144.09
23500	Treat clavicle fracture	CH	T	0129	1.5977	$105.54		$21.11
23505	Treat clavicle fracture	CH	T	0139	19.8724	$1,312.75		$262.55
23515	Treat clavicle fracture		T	0064	62.5691	$4,133.25	$835.79	$826.65
23520	Treat clavicle dislocation	CH	T	0138	6.1479	$406.12		$81.23
23525	Treat clavicle dislocation	CH	T	0138	6.1479	$406.12		$81.23
23530	Treat clavicle dislocation		T	0063	42.8656	$2,831.66		$566.34
23532	Treat clavicle dislocation		T	0062	25.4442	$1,680.82	$372.87	$336.17
23540	Treat clavicle dislocation	CH	T	0129	1.5977	$105.54		$21.11
23545	Treat clavicle dislocation	CH	T	0138	6.1479	$406.12		$81.23
23550	Treat clavicle dislocation		T	0063	42.8656	$2,831.66		$566.34
23552	Treat clavicle dislocation		T	0063	42.8656	$2,831.66		$566.34
23570	Treat shoulder blade fx	CH	T	0129	1.5977	$105.54		$21.11
23575	Treat shoulder blade fx	CH	T	0138	6.1479	$406.12		$81.23
23585	Treat scapula fracture		T	0064	62.5691	$4,133.25	$835.79	$826.65
23600	Treat humerus fracture	CH	T	0129	1.5977	$105.54		$21.11
23605	Treat humerus fracture	CH	T	0139	19.8724	$1,312.75		$262.55
23615	Treat humerus fracture		T	0064	62.5691	$4,133.25	$835.79	$826.65
23616	Treat humerus fracture		T	0064	62.5691	$4,133.25	$835.79	$826.65
23620	Treat humerus fracture	CH	T	0129	1.5977	$105.54		$21.11
23625	Treat humerus fracture	CH	T	0139	19.8724	$1,312.75		$262.55
23630	Treat humerus fracture		T	0064	62.5691	$4,133.25	$835.79	$826.65
23650	Treat shoulder dislocation	CH	T	0129	1.5977	$105.54		$21.11
23655	Treat shoulder dislocation		T	0045	15.5673	$1,028.36	$268.47	$205.68

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
23660	Treat shoulder dislocation		T	0063	42.8656	$2,831.66		$566.34
23665	Treat dislocation/fracture	CH	T	0138	6.1479	$406.12		$81.23
23670	Treat dislocation/fracture		T	0064	62.5691	$4,133.25	$835.79	$826.65
23675	Treat dislocation/fracture	CH	T	0129	1.5977	$105.54		$21.11
23680	Treat dislocation/fracture		T	0063	42.8656	$2,831.66		$566.34
23700	Fixation of shoulder		T	0045	15.5673	$1,028.36	$268.47	$205.68
23800	Fusion of shoulder joint		T	0052	86.5958	$5,720.43		$1,144.09
23802	Fusion of shoulder joint		T	0051	45.3534	$2,996.00		$599.20
23900	Amputation of arm & girdle		C					
23920	Amputation at shoulder joint		C					
23921	Amputation follow-up surgery		T	0136	15.9750	$1,055.29		$211.06
23929	Shoulder surgery procedure	CH	T	0129	1.5977	$105.54		$21.11
23930	Drainage of arm lesion		T	0008	19.3873	$1,280.71		$256.15
23931	Drainage of arm bursa		T	0008	19.3873	$1,280.71		$256.15
23935	Drain arm/elbow bone lesion		T	0049	21.7810	$1,438.83		$287.77
24000	Exploratory elbow surgery		T	0050	29.8816	$1,973.95		$394.79
24006	Release elbow joint		T	0050	29.8816	$1,973.95		$394.79
24065	Biopsy arm/elbow soft tissue		T	0021	15.8974	$1,050.17	$219.48	$210.04
24066	Biopsy arm/elbow soft tissue		T	0021	15.8974	$1,050.17	$219.48	$210.04
24075	Remove arm/elbow lesion		T	0021	15.8974	$1,050.17	$219.48	$210.04
24076	Remove arm/elbow lesion		T	0022	21.8429	$1,442.92	$354.45	$288.59
24077	Remove tumor of arm/elbow		T	0022	21.8429	$1,442.92	$354.45	$288.59
24100	Biopsy elbow joint lining		T	0049	21.7810	$1,438.83		$287.77
24101	Explore/treat elbow joint		T	0050	29.8816	$1,973.95		$394.79
24102	Remove elbow joint lining		T	0050	29.8816	$1,973.95		$394.79
24105	Removal of elbow bursa		T	0049	21.7810	$1,438.83		$287.77
24110	Remove humerus lesion		T	0049	21.7810	$1,438.83		$287.77
24115	Remove/graft bone lesion		T	0050	29.8816	$1,973.95		$394.79
24116	Remove/graft bone lesion		T	0050	29.8816	$1,973.95		$394.79
24120	Remove elbow lesion		T	0049	21.7810	$1,438.83		$287.77
24125	Remove/graft bone lesion		T	0050	29.8816	$1,973.95		$394.79
24126	Remove/graft bone lesion		T	0050	29.8816	$1,973.95		$394.79
24130	Removal of head of radius		T	0050	29.8816	$1,973.95		$394.79
24134	Removal of arm bone lesion		T	0050	29.8816	$1,973.95		$394.79
24136	Remove radius bone lesion		T	0050	29.8816	$1,973.95		$394.79
24138	Remove elbow bone lesion		T	0050	29.8816	$1,973.95		$394.79
24140	Partial removal of arm bone		T	0050	29.8816	$1,973.95		$394.79
24145	Partial removal of radius		T	0050	29.8816	$1,973.95		$394.79
24147	Partial removal of elbow		T	0050	29.8816	$1,973.95		$394.79
24149	Radical resection of elbow		T	0050	29.8816	$1,973.95		$394.79
24150	Extensive humerus surgery		T	0051	45.3534	$2,996.00		$599.20
24151	Extensive humerus surgery		T	0052	86.5958	$5,720.43		$1,144.09

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
24152	Extensive radius surgery		T	0051	45.3534	$2,996.00		$599.20
24153	Extensive radius surgery		T	0052	86.5958	$5,720.43		$1,144.09
24155	Removal of elbow joint		T	0051	45.3534	$2,996.00		$599.20
24160	Remove elbow joint implant		T	0050	29.8816	$1,973.95		$394.79
24164	Remove radius head implant		T	0050	29.8816	$1,973.95		$394.79
24200	Removal of arm foreign body		T	0019	4.4761	$295.69	$71.87	$59.14
24201	Removal of arm foreign body		T	0021	15.8974	$1,050.17	$219.48	$210.04
24220	Injection for elbow x-ray		N					
24300	Manipulate elbow w/anesth		T	0045	15.5673	$1,028.36	$268.47	$205.68
24301	Muscle/tendon transfer		T	0050	29.8816	$1,973.95		$394.79
24305	Arm tendon lengthening		T	0050	29.8816	$1,973.95		$394.79
24310	Revision of arm tendon		T	0049	21.7810	$1,438.83		$287.77
24320	Repair of arm tendon		T	0051	45.3534	$2,996.00		$599.20
24330	Revision of arm muscles		T	0052	86.5958	$5,720.43		$1,144.09
24331	Revision of arm muscles		T	0051	45.3534	$2,996.00		$599.20
24332	Tenolysis, triceps		T	0049	21.7810	$1,438.83		$287.77
24340	Repair of biceps tendon		T	0051	45.3534	$2,996.00		$599.20
24341	Repair arm tendon/muscle		T	0051	45.3534	$2,996.00		$599.20
24342	Repair of ruptured tendon		T	0051	45.3534	$2,996.00		$599.20
24343	Repr elbow lat ligmnt w/tiss		T	0050	29.8816	$1,973.95		$394.79
24344	Reconstruct elbow lat ligmnt		T	0052	86.5958	$5,720.43		$1,144.09
24345	Repr elbw med ligmnt w/tissu		T	0050	29.8816	$1,973.95		$394.79
24346	Reconstruct elbow med ligmnt		T	0051	45.3534	$2,996.00		$599.20
24357	Repair elbow, perc		T	0050	29.8816	$1,973.95		$394.79
24358	Repair elbow w/deb, open		T	0050	29.8816	$1,973.95		$394.79
24359	Repair elbow deb/attch open		T	0050	29.8816	$1,973.95		$394.79
24360	Reconstruct elbow joint		T	0047	37.8310	$2,499.08	$537.03	$499.82
24361	Reconstruct elbow joint		T	0425	121.7668	$8,043.79		$1,608.76
24362	Reconstruct elbow joint		T	0048	53.1633	$3,511.91		$702.39
24363	Replace elbow joint		T	0425	121.7668	$8,043.79		$1,608.76
24365	Reconstruct head of radius		T	0047	37.8310	$2,499.08	$537.03	$499.82
24366	Reconstruct head of radius		T	0425	121.7668	$8,043.79		$1,608.76
24400	Revision of humerus		T	0050	29.8816	$1,973.95		$394.79
24410	Revision of humerus		T	0050	29.8816	$1,973.95		$394.79
24420	Revision of humerus		T	0051	45.3534	$2,996.00		$599.20
24430	Repair of humerus		T	0052	86.5958	$5,720.43		$1,144.09
24435	Repair humerus with graft		T	0052	86.5958	$5,720.43		$1,144.09
24470	Revision of elbow joint		T	0051	45.3534	$2,996.00		$599.20
24495	Decompression of forearm		T	0050	29.8816	$1,973.95		$394.79
24498	Reinforce humerus		T	0052	86.5958	$5,720.43		$1,144.09
24500	Treat humerus fracture	CH	T	0129	1.5977	$105.54		$21.11
24505	Treat humerus fracture	CH	T	0129	1.5977	$105.54		$21.11

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
24515	Treat humerus fracture		T	0064	62.5691	$4,133.25	$835.79	$826.65
24516	Treat humerus fracture		T	0064	62.5691	$4,133.25	$835.79	$826.65
24530	Treat humerus fracture	CH	T	0129	1.5977	$105.54		$21.11
24535	Treat humerus fracture	CH	T	0138	6.1479	$406.12		$81.23
24538	Treat humerus fracture		T	0062	25.4442	$1,680.82	$372.87	$336.17
24545	Treat humerus fracture		T	0064	62.5691	$4,133.25	$835.79	$826.65
24546	Treat humerus fracture		T	0064	62.5691	$4,133.25	$835.79	$826.65
24560	Treat humerus fracture	CH	T	0129	1.5977	$105.54		$21.11
24565	Treat humerus fracture	CH	T	0129	1.5977	$105.54		$21.11
24566	Treat humerus fracture		T	0062	25.4442	$1,680.82	$372.87	$336.17
24575	Treat humerus fracture		T	0064	62.5691	$4,133.25	$835.79	$826.65
24576	Treat humerus fracture	CH	T	0129	1.5977	$105.54		$21.11
24577	Treat humerus fracture	CH	T	0138	6.1479	$406.12		$81.23
24579	Treat humerus fracture		T	0064	62.5691	$4,133.25	$835.79	$826.65
24582	Treat humerus fracture		T	0062	25.4442	$1,680.82	$372.87	$336.17
24586	Treat elbow fracture		T	0064	62.5691	$4,133.25	$835.79	$826.65
24587	Treat elbow fracture		T	0064	62.5691	$4,133.25	$835.79	$826.65
24600	Treat elbow dislocation	CH	T	0129	1.5977	$105.54		$21.11
24605	Treat elbow dislocation		T	0045	15.5673	$1,028.36	$268.47	$205.68
24615	Treat elbow dislocation		T	0064	62.5691	$4,133.25	$835.79	$826.65
24620	Treat elbow fracture	CH	T	0139	19.8724	$1,312.75		$262.55
24635	Treat elbow fracture		T	0064	62.5691	$4,133.25	$835.79	$826.65
24640	Treat elbow dislocation	CH	T	0129	1.5977	$105.54		$21.11
24650	Treat radius fracture	CH	T	0129	1.5977	$105.54		$21.11
24655	Treat radius fracture	CH	T	0138	6.1479	$406.12		$81.23
24665	Treat radius fracture		T	0063	42.8656	$2,831.66		$566.34
24666	Treat radius fracture		T	0064	62.5691	$4,133.25	$835.79	$826.65
24670	Treat ulnar fracture	CH	T	0129	1.5977	$105.54		$21.11
24675	Treat ulnar fracture	CH	T	0129	1.5977	$105.54		$21.11
24685	Treat ulnar fracture		T	0063	42.8656	$2,831.66		$566.34
24800	Fusion of elbow joint		T	0051	45.3534	$2,996.00		$599.20
24802	Fusion/graft of elbow joint		T	0051	45.3534	$2,996.00		$599.20
24900	Amputation of upper arm		C					
24920	Amputation of upper arm		C					
24925	Amputation follow-up surgery		T	0049	21.7810	$1,438.83		$287.77
24930	Amputation follow-up surgery		C					
24931	Amputate upper arm & implant		C					
24935	Revision of amputation		T	0052	86.5958	$5,720.43		$1,144.09
24940	Revision of upper arm		C					
24999	Upper arm/elbow surgery	CH	T	0129	1.5977	$105.54		$21.11
25000	Incision of tendon sheath		T	0049	21.7810	$1,438.83		$287.77
25001	Incise flexor carpi radialis		T	0049	21.7810	$1,438.83		$287.77

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
25020	Decompress forearm 1 space		T	0049	21.7810	$1,438.83		$287.77
25023	Decompress forearm 1 space		T	0050	29.8816	$1,973.95		$394.79
25024	Decompress forearm 2 spaces		T	0050	29.8816	$1,973.95		$394.79
25025	Decompress forearm 2 spaces		T	0050	29.8816	$1,973.95		$394.79
25028	Drainage of forearm lesion		T	0049	21.7810	$1,438.83		$287.77
25031	Drainage of forearm bursa		T	0049	21.7810	$1,438.83		$287.77
25035	Treat forearm bone lesion		T	0049	21.7810	$1,438.83		$287.77
25040	Explore/treat wrist joint		T	0050	29.8816	$1,973.95		$394.79
25065	Biopsy forearm soft tissues		T	0020	8.2566	$545.42		$109.09
25066	Biopsy forearm soft tissues		T	0022	21.8429	$1,442.92	$354.45	$288.59
25075	Removal forearm lesion subcu		T	0021	15.8974	$1,050.17	$219.48	$210.04
25076	Removal forearm lesion deep		T	0022	21.8429	$1,442.92	$354.45	$288.59
25077	Remove tumor, forearm/wrist		T	0022	21.8429	$1,442.92	$354.45	$288.59
25085	Incision of wrist capsule		T	0049	21.7810	$1,438.83		$287.77
25100	Biopsy of wrist joint		T	0049	21.7810	$1,438.83		$287.77
25101	Explore/treat wrist joint		T	0050	29.8816	$1,973.95		$394.79
25105	Remove wrist joint lining		T	0050	29.8816	$1,973.95		$394.79
25107	Remove wrist joint cartilage		T	0050	29.8816	$1,973.95		$394.79
25109	Excise tendon forearm/wrist		T	0049	21.7810	$1,438.83		$287.77
25110	Remove wrist tendon lesion		T	0049	21.7810	$1,438.83		$287.77
25111	Remove wrist tendon lesion	CH	T	0049	21.7810	$1,438.83		$287.77
25112	Reremove wrist tendon lesion	CH	T	0049	21.7810	$1,438.83		$287.77
25115	Remove wrist/forearm lesion		T	0049	21.7810	$1,438.83		$287.77
25116	Remove wrist/forearm lesion		T	0049	21.7810	$1,438.83		$287.77
25118	Excise wrist tendon sheath		T	0050	29.8816	$1,973.95		$394.79
25119	Partial removal of ulna		T	0050	29.8816	$1,973.95		$394.79
25120	Removal of forearm lesion		T	0050	29.8816	$1,973.95		$394.79
25125	Remove/graft forearm lesion		T	0050	29.8816	$1,973.95		$394.79
25126	Remove/graft forearm lesion		T	0050	29.8816	$1,973.95		$394.79
25130	Removal of wrist lesion		T	0050	29.8816	$1,973.95		$394.79
25135	Remove & graft wrist lesion		T	0050	29.8816	$1,973.95		$394.79
25136	Remove & graft wrist lesion		T	0050	29.8816	$1,973.95		$394.79
25145	Remove forearm bone lesion		T	0050	29.8816	$1,973.95		$394.79
25150	Partial removal of ulna		T	0050	29.8816	$1,973.95		$394.79
25151	Partial removal of radius		T	0050	29.8816	$1,973.95		$394.79
25170	Extensive forearm surgery		T	0051	45.3534	$2,996.00		$599.20
25210	Removal of wrist bone	CH	T	0050	29.8816	$1,973.95		$394.79
25215	Removal of wrist bones	CH	T	0050	29.8816	$1,973.95		$394.79
25230	Partial removal of radius		T	0050	29.8816	$1,973.95		$394.79
25240	Partial removal of ulna		T	0050	29.8816	$1,973.95		$394.79
25246	Injection for wrist x-ray		N					
25248	Remove forearm foreign body		T	0049	21.7810	$1,438.83		$287.77

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
25250	Removal of wrist prosthesis		T	0050	29.8816	$1,973.95		$394.79
25251	Removal of wrist prosthesis		T	0050	29.8816	$1,973.95		$394.79
25259	Manipulate wrist w/anesthes	CH	T	0139	19.8724	$1,312.75		$262.55
25260	Repair forearm tendon/muscle		T	0050	29.8816	$1,973.95		$394.79
25263	Repair forearm tendon/muscle		T	0050	29.8816	$1,973.95		$394.79
25265	Repair forearm tendon/muscle		T	0050	29.8816	$1,973.95		$394.79
25270	Repair forearm tendon/muscle		T	0050	29.8816	$1,973.95		$394.79
25272	Repair forearm tendon/muscle		T	0050	29.8816	$1,973.95		$394.79
25274	Repair forearm tendon/muscle		T	0050	29.8816	$1,973.95		$394.79
25275	Repair forearm tendon sheath		T	0050	29.8816	$1,973.95		$394.79
25280	Revise wrist/forearm tendon		T	0050	29.8816	$1,973.95		$394.79
25290	Incise wrist/forearm tendon		T	0050	29.8816	$1,973.95		$394.79
25295	Release wrist/forearm tendon		T	0049	21.7810	$1,438.83		$287.77
25300	Fusion of tendons at wrist		T	0050	29.8816	$1,973.95		$394.79
25301	Fusion of tendons at wrist		T	0050	29.8816	$1,973.95		$394.79
25310	Transplant forearm tendon		T	0051	45.3534	$2,996.00		$599.20
25312	Transplant forearm tendon		T	0051	45.3534	$2,996.00		$599.20
25315	Revise palsy hand tendon(s)		T	0051	45.3534	$2,996.00		$599.20
25316	Revise palsy hand tendon(s)		T	0052	86.5958	$5,720.43		$1,144.09
25320	Repair/revise wrist joint		T	0051	45.3534	$2,996.00		$599.20
25332	Revise wrist joint		T	0047	37.8310	$2,499.08	$537.03	$499.82
25335	Realignment of hand		T	0051	45.3534	$2,996.00		$599.20
25337	Reconstruct ulna/radioulnar		T	0051	45.3534	$2,996.00		$599.20
25350	Revision of radius		T	0052	86.5958	$5,720.43		$1,144.09
25355	Revision of radius		T	0051	45.3534	$2,996.00		$599.20
25360	Revision of ulna		T	0050	29.8816	$1,973.95		$394.79
25365	Revise radius & ulna		T	0050	29.8816	$1,973.95		$394.79
25370	Revise radius or ulna		T	0051	45.3534	$2,996.00		$599.20
25375	Revise radius & ulna		T	0051	45.3534	$2,996.00		$599.20
25390	Shorten radius or ulna		T	0050	29.8816	$1,973.95		$394.79
25391	Lengthen radius or ulna		T	0051	45.3534	$2,996.00		$599.20
25392	Shorten radius & ulna		T	0050	29.8816	$1,973.95		$394.79
25393	Lengthen radius & ulna		T	0051	45.3534	$2,996.00		$599.20
25394	Repair carpal bone, shorten	CH	T	0051	45.3534	$2,996.00		$599.20
25400	Repair radius or ulna	CH	T	0051	45.3534	$2,996.00		$599.20
25405	Repair/graft radius or ulna		T	0052	86.5958	$5,720.43		$1,144.09
25415	Repair radius & ulna		T	0052	86.5958	$5,720.43		$1,144.09
25420	Repair/graft radius & ulna		T	0052	86.5958	$5,720.43		$1,144.09
25425	Repair/graft radius or ulna		T	0051	45.3534	$2,996.00		$599.20
25426	Repair/graft radius & ulna		T	0051	45.3534	$2,996.00		$599.20
25430	Vasc graft into carpal bone	CH	T	0051	45.3534	$2,996.00		$599.20
25431	Repair nonunion carpal bone	CH	T	0051	45.3534	$2,996.00		$599.20

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
25440	Repair/graft wrist bone		T	0052	86.5958	$5,720.43		$1,144.09
25441	Reconstruct wrist joint		T	0425	121.7668	$8,043.79		$1,608.76
25442	Reconstruct wrist joint		T	0425	121.7668	$8,043.79		$1,608.76
25443	Reconstruct wrist joint		T	0048	53.1633	$3,511.91		$702.39
25444	Reconstruct wrist joint		T	0048	53.1633	$3,511.91		$702.39
25445	Reconstruct wrist joint		T	0048	53.1633	$3,511.91		$702.39
25446	Wrist replacement		T	0425	121.7668	$8,043.79		$1,608.76
25447	Repair wrist joint(s)		T	0047	37.8310	$2,499.08	$537.03	$499.82
25449	Remove wrist joint implant		T	0047	37.8310	$2,499.08	$537.03	$499.82
25450	Revision of wrist joint		T	0051	45.3534	$2,996.00		$599.20
25455	Revision of wrist joint		T	0051	45.3534	$2,996.00		$599.20
25490	Reinforce radius		T	0051	45.3534	$2,996.00		$599.20
25491	Reinforce ulna		T	0051	45.3534	$2,996.00		$599.20
25492	Reinforce radius and ulna		T	0051	45.3534	$2,996.00		$599.20
25500	Treat fracture of radius	CH	T	0129	1.5977	$105.54		$21.11
25505	Treat fracture of radius	CH	T	0138	6.1479	$406.12		$81.23
25515	Treat fracture of radius		T	0063	42.8656	$2,831.66		$566.34
25520	Treat fracture of radius	CH	T	0138	6.1479	$406.12		$81.23
25525	Treat fracture of radius		T	0063	42.8656	$2,831.66		$566.34
25526	Treat fracture of radius		T	0063	42.8656	$2,831.66		$566.34
25530	Treat fracture of ulna	CH	T	0129	1.5977	$105.54		$21.11
25535	Treat fracture of ulna	CH	T	0129	1.5977	$105.54		$21.11
25545	Treat fracture of ulna		T	0063	42.8656	$2,831.66		$566.34
25560	Treat fracture radius & ulna	CH	T	0129	1.5977	$105.54		$21.11
25565	Treat fracture radius & ulna	CH	T	0138	6.1479	$406.12		$81.23
25574	Treat fracture radius & ulna		T	0064	62.5691	$4,133.25	$835.79	$826.65
25575	Treat fracture radius/ulna		T	0064	62.5691	$4,133.25	$835.79	$826.65
25600	Treat fracture radius/ulna	CH	T	0129	1.5977	$105.54		$21.11
25605	Treat fracture radius/ulna	CH	T	0138	6.1479	$406.12		$81.23
25606	Treat fx distal radial		T	0062	25.4442	$1,680.82	$372.87	$336.17
25607	Treat fx rad extra-articul		T	0064	62.5691	$4,133.25	$835.79	$826.65
25608	Treat fx rad intra-articul		T	0064	62.5691	$4,133.25	$835.79	$826.65
25609	Treat fx radial 3+ frag		T	0064	62.5691	$4,133.25	$835.79	$826.65
25622	Treat wrist bone fracture	CH	T	0129	1.5977	$105.54		$21.11
25624	Treat wrist bone fracture	CH	T	0138	6.1479	$406.12		$81.23
25628	Treat wrist bone fracture		T	0063	42.8656	$2,831.66		$566.34
25630	Treat wrist bone fracture	CH	T	0129	1.5977	$105.54		$21.11
25635	Treat wrist bone fracture	CH	T	0138	6.1479	$406.12		$81.23
25645	Treat wrist bone fracture		T	0063	42.8656	$2,831.66		$566.34
25650	Treat wrist bone fracture	CH	T	0129	1.5977	$105.54		$21.11
25651	Pin ulnar styloid fracture		T	0062	25.4442	$1,680.82	$372.87	$336.17
25652	Treat fracture ulnar styloid		T	0063	42.8656	$2,831.66		$566.34

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
25660	Treat wrist dislocation	CH	T	0129	1.5977	$105.54		$21.11
25670	Treat wrist dislocation		T	0062	25.4442	$1,680.82	$372.87	$336.17
25671	Pin radioulnar dislocation		T	0062	25.4442	$1,680.82	$372.87	$336.17
25675	Treat wrist dislocation	CH	T	0129	1.5977	$105.54		$21.11
25676	Treat wrist dislocation		T	0062	25.4442	$1,680.82	$372.87	$336.17
25680	Treat wrist fracture	CH	T	0129	1.5977	$105.54		$21.11
25685	Treat wrist fracture		T	0062	25.4442	$1,680.82	$372.87	$336.17
25690	Treat wrist dislocation	CH	T	0139	19.8724	$1,312.75		$262.55
25695	Treat wrist dislocation		T	0062	25.4442	$1,680.82	$372.87	$336.17
25800	Fusion of wrist joint		T	0052	86.5958	$5,720.43		$1,144.09
25805	Fusion/graft of wrist joint		T	0051	45.3534	$2,996.00		$599.20
25810	Fusion/graft of wrist joint		T	0052	86.5958	$5,720.43		$1,144.09
25820	Fusion of hand bones	CH	T	0051	45.3534	$2,996.00		$599.20
25825	Fuse hand bones with graft		T	0052	86.5958	$5,720.43		$1,144.09
25830	Fusion, radioulnar jnt/ulna		T	0052	86.5958	$5,720.43		$1,144.09
25900	Amputation of forearm		C					
25905	Amputation of forearm		C					
25907	Amputation follow-up surgery		T	0049	21.7810	$1,438.83		$287.77
25909	Amputation follow-up surgery		C					
25915	Amputation of forearm		C					
25920	Amputate hand at wrist		C					
25922	Amputate hand at wrist		T	0049	21.7810	$1,438.83		$287.77
25924	Amputation follow-up surgery		C					
25927	Amputation of hand		C					
25929	Amputation follow-up surgery		T	0136	15.9750	$1,055.29		$211.06
25931	Amputation follow-up surgery		T	0049	21.7810	$1,438.83		$287.77
25999	Forearm or wrist surgery	CH	T	0129	1.5977	$105.54		$21.11
26010	Drainage of finger abscess		T	0006	1.4128	$93.33		$18.67
26011	Drainage of finger abscess		T	0007	12.5953	$832.03		$166.41
26020	Drain hand tendon sheath		T	0053	16.6121	$1,097.38	$253.49	$219.48
26025	Drainage of palm bursa		T	0053	16.6121	$1,097.38	$253.49	$219.48
26030	Drainage of palm bursa(s)		T	0053	16.6121	$1,097.38	$253.49	$219.48
26034	Treat hand bone lesion		T	0053	16.6121	$1,097.38	$253.49	$219.48
26035	Decompress fingers/hand		T	0053	16.6121	$1,097.38	$253.49	$219.48
26037	Decompress fingers/hand		T	0053	16.6121	$1,097.38	$253.49	$219.48
26040	Release palm contracture		T	0054	27.9994	$1,849.61		$369.93
26045	Release palm contracture		T	0054	27.9994	$1,849.61		$369.93
26055	Incise finger tendon sheath		T	0053	16.6121	$1,097.38	$253.49	$219.48
26060	Incision of finger tendon		T	0053	16.6121	$1,097.38	$253.49	$219.48
26070	Explore/treat hand joint		T	0053	16.6121	$1,097.38	$253.49	$219.48
26075	Explore/treat finger joint		T	0053	16.6121	$1,097.38	$253.49	$219.48
26080	Explore/treat finger joint		T	0053	16.6121	$1,097.38	$253.49	$219.48

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
26100	Biopsy hand joint lining		T	0053	16.6121	$1,097.38	$253.49	$219.48
26105	Biopsy finger joint lining		T	0053	16.6121	$1,097.38	$253.49	$219.48
26110	Biopsy finger joint lining		T	0053	16.6121	$1,097.38	$253.49	$219.48
26115	Removal hand lesion subcut		T	0022	21.8429	$1,442.92	$354.45	$288.59
26116	Removal hand lesion, deep		T	0022	21.8429	$1,442.92	$354.45	$288.59
26117	Remove tumor, hand/finger		T	0022	21.8429	$1,442.92	$354.45	$288.59
26121	Release palm contracture		T	0054	27.9994	$1,849.61		$369.93
26123	Release palm contracture		T	0054	27.9994	$1,849.61		$369.93
26125	Release palm contracture		T	0053	16.6121	$1,097.38	$253.49	$219.48
26130	Remove wrist joint lining		T	0053	16.6121	$1,097.38	$253.49	$219.48
26135	Revise finger joint, each		T	0054	27.9994	$1,849.61		$369.93
26140	Revise finger joint, each		T	0053	16.6121	$1,097.38	$253.49	$219.48
26145	Tendon excision, palm/finger		T	0053	16.6121	$1,097.38	$253.49	$219.48
26160	Remove tendon sheath lesion		T	0053	16.6121	$1,097.38	$253.49	$219.48
26170	Removal of palm tendon, each		T	0053	16.6121	$1,097.38	$253.49	$219.48
26180	Removal of finger tendon		T	0053	16.6121	$1,097.38	$253.49	$219.48
26185	Remove finger bone		T	0053	16.6121	$1,097.38	$253.49	$219.48
26200	Remove hand bone lesion		T	0053	16.6121	$1,097.38	$253.49	$219.48
26205	Remove/graft bone lesion		T	0054	27.9994	$1,849.61		$369.93
26210	Removal of finger lesion		T	0053	16.6121	$1,097.38	$253.49	$219.48
26215	Remove/graft finger lesion		T	0053	16.6121	$1,097.38	$253.49	$219.48
26230	Partial removal of hand bone		T	0053	16.6121	$1,097.38	$253.49	$219.48
26235	Partial removal, finger bone		T	0053	16.6121	$1,097.38	$253.49	$219.48
26236	Partial removal, finger bone		T	0053	16.6121	$1,097.38	$253.49	$219.48
26250	Extensive hand surgery		T	0053	16.6121	$1,097.38	$253.49	$219.48
26255	Extensive hand surgery		T	0054	27.9994	$1,849.61		$369.93
26260	Extensive finger surgery		T	0053	16.6121	$1,097.38	$253.49	$219.48
26261	Extensive finger surgery		T	0053	16.6121	$1,097.38	$253.49	$219.48
26262	Partial removal of finger		T	0053	16.6121	$1,097.38	$253.49	$219.48
26320	Removal of implant from hand		T	0021	15.8974	$1,050.17	$219.48	$210.04
26340	Manipulate finger w/anesth	CH	T	0138	6.1479	$406.12		$81.23
26350	Repair finger/hand tendon		T	0054	27.9994	$1,849.61		$369.93
26352	Repair/graft hand tendon		T	0054	27.9994	$1,849.61		$369.93
26356	Repair finger/hand tendon		T	0054	27.9994	$1,849.61		$369.93
26357	Repair finger/hand tendon		T	0054	27.9994	$1,849.61		$369.93
26358	Repair/graft hand tendon		T	0054	27.9994	$1,849.61		$369.93
26370	Repair finger/hand tendon		T	0054	27.9994	$1,849.61		$369.93
26372	Repair/graft hand tendon		T	0054	27.9994	$1,849.61		$369.93
26373	Repair finger/hand tendon		T	0054	27.9994	$1,849.61		$369.93
26390	Revise hand/finger tendon		T	0054	27.9994	$1,849.61		$369.93
26392	Repair/graft hand tendon		T	0054	27.9994	$1,849.61		$369.93
26410	Repair hand tendon		T	0053	16.6121	$1,097.38	$253.49	$219.48

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
26412	Repair/graft hand tendon		T	0054	27.9994	$1,849.61		$369.93
26415	Excision, hand/finger tendon		T	0054	27.9994	$1,849.61		$369.93
26416	Graft hand or finger tendon		T	0054	27.9994	$1,849.61		$369.93
26418	Repair finger tendon		T	0053	16.6121	$1,097.38	$253.49	$219.48
26420	Repair/graft finger tendon		T	0054	27.9994	$1,849.61		$369.93
26426	Repair finger/hand tendon		T	0054	27.9994	$1,849.61		$369.93
26428	Repair/graft finger tendon		T	0054	27.9994	$1,849.61		$369.93
26432	Repair finger tendon		T	0053	16.6121	$1,097.38	$253.49	$219.48
26433	Repair finger tendon		T	0053	16.6121	$1,097.38	$253.49	$219.48
26434	Repair/graft finger tendon		T	0054	27.9994	$1,849.61		$369.93
26437	Realignment of tendons		T	0053	16.6121	$1,097.38	$253.49	$219.48
26440	Release palm/finger tendon		T	0053	16.6121	$1,097.38	$253.49	$219.48
26442	Release palm & finger tendon		T	0054	27.9994	$1,849.61		$369.93
26445	Release hand/finger tendon		T	0053	16.6121	$1,097.38	$253.49	$219.48
26449	Release forearm/hand tendon		T	0054	27.9994	$1,849.61		$369.93
26450	Incision of palm tendon		T	0053	16.6121	$1,097.38	$253.49	$219.48
26455	Incision of finger tendon		T	0053	16.6121	$1,097.38	$253.49	$219.48
26460	Incise hand/finger tendon		T	0053	16.6121	$1,097.38	$253.49	$219.48
26471	Fusion of finger tendons		T	0053	16.6121	$1,097.38	$253.49	$219.48
26474	Fusion of finger tendons		T	0053	16.6121	$1,097.38	$253.49	$219.48
26476	Tendon lengthening		T	0053	16.6121	$1,097.38	$253.49	$219.48
26477	Tendon shortening		T	0053	16.6121	$1,097.38	$253.49	$219.48
26478	Lengthening of hand tendon		T	0053	16.6121	$1,097.38	$253.49	$219.48
26479	Shortening of hand tendon		T	0053	16.6121	$1,097.38	$253.49	$219.48
26480	Transplant hand tendon		T	0054	27.9994	$1,849.61		$369.93
26483	Transplant/graft hand tendon		T	0054	27.9994	$1,849.61		$369.93
26485	Transplant palm tendon		T	0054	27.9994	$1,849.61		$369.93
26489	Transplant/graft palm tendon		T	0054	27.9994	$1,849.61		$369.93
26490	Revise thumb tendon		T	0054	27.9994	$1,849.61		$369.93
26492	Tendon transfer with graft		T	0054	27.9994	$1,849.61		$369.93
26494	Hand tendon/muscle transfer		T	0054	27.9994	$1,849.61		$369.93
26496	Revise thumb tendon		T	0054	27.9994	$1,849.61		$369.93
26497	Finger tendon transfer		T	0054	27.9994	$1,849.61		$369.93
26498	Finger tendon transfer		T	0054	27.9994	$1,849.61		$369.93
26499	Revision of finger		T	0054	27.9994	$1,849.61		$369.93
26500	Hand tendon reconstruction		T	0053	16.6121	$1,097.38	$253.49	$219.48
26502	Hand tendon reconstruction		T	0054	27.9994	$1,849.61		$369.93
26508	Release thumb contracture		T	0053	16.6121	$1,097.38	$253.49	$219.48
26510	Thumb tendon transfer		T	0054	27.9994	$1,849.61		$369.93
26516	Fusion of knuckle joint		T	0054	27.9994	$1,849.61		$369.93
26517	Fusion of knuckle joints		T	0054	27.9994	$1,849.61		$369.93
26518	Fusion of knuckle joints		T	0054	27.9994	$1,849.61		$369.93

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
26520	Release knuckle contracture		T	0053	16.6121	$1,097.38	$253.49	$219.48
26525	Release finger contracture		T	0053	16.6121	$1,097.38	$253.49	$219.48
26530	Revise knuckle joint		T	0047	37.8310	$2,499.08	$537.03	$499.82
26531	Revise knuckle with implant		T	0048	53.1633	$3,511.91		$702.39
26535	Revise finger joint		T	0047	37.8310	$2,499.08	$537.03	$499.82
26536	Revise/implant finger joint		T	0048	53.1633	$3,511.91		$702.39
26540	Repair hand joint		T	0053	16.6121	$1,097.38	$253.49	$219.48
26541	Repair hand joint with graft		T	0054	27.9994	$1,849.61		$369.93
26542	Repair hand joint with graft		T	0053	16.6121	$1,097.38	$253.49	$219.48
26545	Reconstruct finger joint		T	0054	27.9994	$1,849.61		$369.93
26546	Repair nonunion hand		T	0054	27.9994	$1,849.61		$369.93
26548	Reconstruct finger joint		T	0054	27.9994	$1,849.61		$369.93
26550	Construct thumb replacement		T	0054	27.9994	$1,849.61		$369.93
26551	Great toe-hand transfer		C					
26553	Single transfer, toe-hand		C					
26554	Double transfer, toe-hand		C					
26555	Positional change of finger		T	0054	27.9994	$1,849.61		$369.93
26556	Toe joint transfer		C					
26560	Repair of web finger		T	0053	16.6121	$1,097.38	$253.49	$219.48
26561	Repair of web finger		T	0054	27.9994	$1,849.61		$369.93
26562	Repair of web finger		T	0054	27.9994	$1,849.61		$369.93
26565	Correct metacarpal flaw		T	0054	27.9994	$1,849.61		$369.93
26567	Correct finger deformity		T	0054	27.9994	$1,849.61		$369.93
26568	Lengthen metacarpal/finger		T	0054	27.9994	$1,849.61		$369.93
26580	Repair hand deformity		T	0053	16.6121	$1,097.38	$253.49	$219.48
26587	Reconstruct extra finger		T	0053	16.6121	$1,097.38	$253.49	$219.48
26590	Repair finger deformity		T	0053	16.6121	$1,097.38	$253.49	$219.48
26591	Repair muscles of hand		T	0054	27.9994	$1,849.61		$369.93
26593	Release muscles of hand		T	0053	16.6121	$1,097.38	$253.49	$219.48
26596	Excision constricting tissue		T	0053	16.6121	$1,097.38	$253.49	$219.48
26600	Treat metacarpal fracture	CH	T	0129	1.5977	$105.54		$21.11
26605	Treat metacarpal fracture	CH	T	0129	1.5977	$105.54		$21.11
26607	Treat metacarpal fracture	CH	T	0139	19.8724	$1,312.75		$262.55
26608	Treat metacarpal fracture		T	0062	25.4442	$1,680.82	$372.87	$336.17
26615	Treat metacarpal fracture		T	0063	42.8656	$2,831.66		$566.34
26641	Treat thumb dislocation	CH	T	0129	1.5977	$105.54		$21.11
26645	Treat thumb fracture	CH	T	0138	6.1479	$406.12		$81.23
26650	Treat thumb fracture		T	0062	25.4442	$1,680.82	$372.87	$336.17
26665	Treat thumb fracture		T	0063	42.8656	$2,831.66		$566.34
26670	Treat hand dislocation	CH	T	0129	1.5977	$105.54		$21.11
26675	Treat hand dislocation	CH	T	0138	6.1479	$406.12		$81.23
26676	Pin hand dislocation		T	0062	25.4442	$1,680.82	$372.87	$336.17

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
26685	Treat hand dislocation		T	0062	25.4442	$1,680.82	$372.87	$336.17
26686	Treat hand dislocation		T	0064	62.5691	$4,133.25	$835.79	$826.65
26700	Treat knuckle dislocation	CH	T	0129	1.5977	$105.54		$21.11
26705	Treat knuckle dislocation	CH	T	0129	1.5977	$105.54		$21.11
26706	Pin knuckle dislocation	CH	T	0139	19.8724	$1,312.75		$262.55
26715	Treat knuckle dislocation		T	0062	25.4442	$1,680.82	$372.87	$336.17
26720	Treat finger fracture, each	CH	T	0129	1.5977	$105.54		$21.11
26725	Treat finger fracture, each	CH	T	0129	1.5977	$105.54		$21.11
26727	Treat finger fracture, each		T	0062	25.4442	$1,680.82	$372.87	$336.17
26735	Treat finger fracture, each		T	0062	25.4442	$1,680.82	$372.87	$336.17
26740	Treat finger fracture, each	CH	T	0129	1.5977	$105.54		$21.11
26742	Treat finger fracture, each	CH	T	0129	1.5977	$105.54		$21.11
26746	Treat finger fracture, each		T	0062	25.4442	$1,680.82	$372.87	$336.17
26750	Treat finger fracture, each	CH	T	0129	1.5977	$105.54		$21.11
26755	Treat finger fracture, each	CH	T	0129	1.5977	$105.54		$21.11
26756	Pin finger fracture, each		T	0062	25.4442	$1,680.82	$372.87	$336.17
26765	Treat finger fracture, each		T	0062	25.4442	$1,680.82	$372.87	$336.17
26770	Treat finger dislocation	CH	T	0129	1.5977	$105.54		$21.11
26775	Treat finger dislocation		T	0045	15.5673	$1,028.36	$268.47	$205.68
26776	Pin finger dislocation		T	0062	25.4442	$1,680.82	$372.87	$336.17
26785	Treat finger dislocation		T	0062	25.4442	$1,680.82	$372.87	$336.17
26820	Thumb fusion with graft		T	0054	27.9994	$1,849.61		$369.93
26841	Fusion of thumb		T	0054	27.9994	$1,849.61		$369.93
26842	Thumb fusion with graft		T	0054	27.9994	$1,849.61		$369.93
26843	Fusion of hand joint		T	0054	27.9994	$1,849.61		$369.93
26844	Fusion/graft of hand joint		T	0054	27.9994	$1,849.61		$369.93
26850	Fusion of knuckle		T	0054	27.9994	$1,849.61		$369.93
26852	Fusion of knuckle with graft		T	0054	27.9994	$1,849.61		$369.93
26860	Fusion of finger joint		T	0054	27.9994	$1,849.61		$369.93
26861	Fusion of finger jnt, add-on		T	0054	27.9994	$1,849.61		$369.93
26862	Fusion/graft of finger joint		T	0054	27.9994	$1,849.61		$369.93
26863	Fuse/graft added joint		T	0054	27.9994	$1,849.61		$369.93
26910	Amputate metacarpal bone		T	0054	27.9994	$1,849.61		$369.93
26951	Amputation of finger/thumb		T	0053	16.6121	$1,097.38	$253.49	$219.48
26952	Amputation of finger/thumb		T	0053	16.6121	$1,097.38	$253.49	$219.48
26989	Hand/finger surgery	CH	T	0129	1.5977	$105.54		$21.11
26990	Drainage of pelvis lesion		T	0049	21.7810	$1,438.83		$287.77
26991	Drainage of pelvis bursa		T	0049	21.7810	$1,438.83		$287.77
26992	Drainage of bone lesion		C					
27000	Incision of hip tendon		T	0049	21.7810	$1,438.83		$287.77
27001	Incision of hip tendon		T	0050	29.8816	$1,973.95		$394.79
27003	Incision of hip tendon		T	0050	29.8816	$1,973.95		$394.79

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
27005	Incision of hip tendon		C					
27006	Incision of hip tendons		T	0050	29.8816	$1,973.95		$394.79
27025	Incision of hip/thigh fascia		C					
27027	Buttock fasciotomy	NI	T	0049	21.7810	$1,438.83		$287.77
27030	Drainage of hip joint		C					
27033	Exploration of hip joint		T	0051	45.3534	$2,996.00		$599.20
27035	Denervation of hip joint		T	0051	45.3534	$2,996.00		$599.20
27036	Excision of hip joint/muscle		C					
27040	Biopsy of soft tissues		T	0020	8.2566	$545.42		$109.09
27041	Biopsy of soft tissues		T	0020	8.2566	$545.42		$109.09
27047	Remove hip/pelvis lesion		T	0022	21.8429	$1,442.92	$354.45	$288.59
27048	Remove hip/pelvis lesion		T	0022	21.8429	$1,442.92	$354.45	$288.59
27049	Remove tumor, hip/pelvis		T	0022	21.8429	$1,442.92	$354.45	$288.59
27050	Biopsy of sacroiliac joint		T	0049	21.7810	$1,438.83		$287.77
27052	Biopsy of hip joint		T	0049	21.7810	$1,438.83		$287.77
27054	Removal of hip joint lining		C					
27057	Buttock fasciotomy w/dbrdmt	NI	T	0049	21.7810	$1,438.83		$287.77
27060	Removal of ischial bursa		T	0049	21.7810	$1,438.83		$287.77
27062	Remove femur lesion/bursa		T	0049	21.7810	$1,438.83		$287.77
27065	Removal of hip bone lesion		T	0049	21.7810	$1,438.83		$287.77
27066	Removal of hip bone lesion		T	0050	29.8816	$1,973.95		$394.79
27067	Remove/graft hip bone lesion		T	0050	29.8816	$1,973.95		$394.79
27070	Partial removal of hip bone		C					
27071	Partial removal of hip bone		C					
27075	Extensive hip surgery		C					
27076	Extensive hip surgery		C					
27077	Extensive hip surgery		C					
27078	Extensive hip surgery		C					
27079	Extensive hip surgery		C					
27080	Removal of tail bone		T	0050	29.8816	$1,973.95		$394.79
27086	Remove hip foreign body		T	0020	8.2566	$545.42		$109.09
27087	Remove hip foreign body		T	0049	21.7810	$1,438.83		$287.77
27090	Removal of hip prosthesis		C					
27091	Removal of hip prosthesis		C					
27093	Injection for hip x-ray		N					
27095	Injection for hip x-ray		N					
27096	Inject sacroiliac joint		B					
27097	Revision of hip tendon		T	0050	29.8816	$1,973.95		$394.79
27098	Transfer tendon to pelvis		T	0050	29.8816	$1,973.95		$394.79
27100	Transfer of abdominal muscle		T	0051	45.3534	$2,996.00		$599.20
27105	Transfer of spinal muscle		T	0051	45.3534	$2,996.00		$599.20
27110	Transfer of iliopsoas muscle		T	0051	45.3534	$2,996.00		$599.20

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
27111	Transfer of iliopsoas muscle		T	0051	45.3534	$2,996.00		$599.20
27120	Reconstruction of hip socket		C					
27122	Reconstruction of hip socket		C					
27125	Partial hip replacement		C					
27130	Total hip arthroplasty		C					
27132	Total hip arthroplasty		C					
27134	Revise hip joint replacement		C					
27137	Revise hip joint replacement		C					
27138	Revise hip joint replacement		C					
27140	Transplant femur ridge		C					
27146	Incision of hip bone		C					
27147	Revision of hip bone		C					
27151	Incision of hip bones		C					
27156	Revision of hip bones		C					
27158	Revision of pelvis		C					
27161	Incision of neck of femur		C					
27165	Incision/fixation of femur		C					
27170	Repair/graft femur head/neck		C					
27175	Treat slipped epiphysis		C					
27176	Treat slipped epiphysis		C					
27177	Treat slipped epiphysis		C					
27178	Treat slipped epiphysis		C					
27179	Revise head/neck of femur		C					
27181	Treat slipped epiphysis		C					
27185	Revision of femur epiphysis		C					
27187	Reinforce hip bones		C					
27193	Treat pelvic ring fracture	CH	T	0129	1.5977	$105.54		$21.11
27194	Treat pelvic ring fracture		T	0045	15.5673	$1,028.36	$268.47	$205.68
27200	Treat tail bone fracture	CH	T	0129	1.5977	$105.54		$21.11
27202	Treat tail bone fracture		T	0063	42.8656	$2,831.66		$566.34
27215	Treat pelvic fracture(s)	CH	E					
27216	Treat pelvic ring fracture	CH	E					
27217	Treat pelvic ring fracture	CH	E					
27218	Treat pelvic ring fracture	CH	E					
27220	Treat hip socket fracture	CH	T	0129	1.5977	$105.54		$21.11
27222	Treat hip socket fracture		C					
27226	Treat hip wall fracture		C					
27227	Treat hip fracture(s)		C					
27228	Treat hip fracture(s)		C					
27230	Treat thigh fracture	CH	T	0129	1.5977	$105.54		$21.11
27232	Treat thigh fracture		C					
27235	Treat thigh fracture		T	0050	29.8816	$1,973.95		$394.79

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
27236	Treat thigh fracture		C					
27238	Treat thigh fracture	CH	T	0138	6.1479	$406.12		$81.23
27240	Treat thigh fracture		C					
27244	Treat thigh fracture		C					
27245	Treat thigh fracture		C					
27246	Treat thigh fracture	CH	T	0138	6.1479	$406.12		$81.23
27248	Treat thigh fracture		C					
27250	Treat hip dislocation	CH	T	0129	1.5977	$105.54		$21.11
27252	Treat hip dislocation		T	0045	15.5673	$1,028.36	$268.47	$205.68
27253	Treat hip dislocation		C					
27254	Treat hip dislocation		C					
27256	Treat hip dislocation	CH	T	0129	1.5977	$105.54		$21.11
27257	Treat hip dislocation		T	0045	15.5673	$1,028.36	$268.47	$205.68
27258	Treat hip dislocation		C					
27259	Treat hip dislocation		C					
27265	Treat hip dislocation	CH	T	0129	1.5977	$105.54		$21.11
27266	Treat hip dislocation		T	0045	15.5673	$1,028.36	$268.47	$205.68
27267	Cltx thigh fx	CH	T	0129	1.5977	$105.54		$21.11
27268	Cltx thigh fx w/mnpj		C					
27269	Optx thigh fx		C					
27275	Manipulation of hip joint		T	0045	15.5673	$1,028.36	$268.47	$205.68
27280	Fusion of sacroiliac joint		C					
27282	Fusion of pubic bones		C					
27284	Fusion of hip joint		C					
27286	Fusion of hip joint		C					
27290	Amputation of leg at hip		C					
27295	Amputation of leg at hip		C					
27299	Pelvis/hip joint surgery	CH	T	0129	1.5977	$105.54		$21.11
27301	Drain thigh/knee lesion		T	0008	19.3873	$1,280.71		$256.15
27303	Drainage of bone lesion		C					
27305	Incise thigh tendon & fascia		T	0049	21.7810	$1,438.83		$287.77
27306	Incision of thigh tendon		T	0049	21.7810	$1,438.83		$287.77
27307	Incision of thigh tendons		T	0049	21.7810	$1,438.83		$287.77
27310	Exploration of knee joint		T	0050	29.8816	$1,973.95		$394.79
27323	Biopsy, thigh soft tissues		T	0020	8.2566	$545.42		$109.09
27324	Biopsy, thigh soft tissues		T	0022	21.8429	$1,442.92	$354.45	$288.59
27325	Neurectomy, hamstring		T	0220	18.5109	$1,222.81		$244.57
27326	Neurectomy, popliteal		T	0220	18.5109	$1,222.81		$244.57
27327	Removal of thigh lesion		T	0022	21.8429	$1,442.92	$354.45	$288.59
27328	Removal of thigh lesion		T	0022	21.8429	$1,442.92	$354.45	$288.59
27329	Remove tumor, thigh/knee		T	0022	21.8429	$1,442.92	$354.45	$288.59
27330	Biopsy, knee joint lining		T	0050	29.8816	$1,973.95		$394.79

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
27331	Explore/treat knee joint		T	0050	29.8816	$1,973.95		$394.79
27332	Removal of knee cartilage		T	0050	29.8816	$1,973.95		$394.79
27333	Removal of knee cartilage		T	0050	29.8816	$1,973.95		$394.79
27334	Remove knee joint lining		T	0050	29.8816	$1,973.95		$394.79
27335	Remove knee joint lining		T	0050	29.8816	$1,973.95		$394.79
27340	Removal of kneecap bursa		T	0049	21.7810	$1,438.83		$287.77
27345	Removal of knee cyst		T	0049	21.7810	$1,438.83		$287.77
27347	Remove knee cyst		T	0049	21.7810	$1,438.83		$287.77
27350	Removal of kneecap		T	0050	29.8816	$1,973.95		$394.79
27355	Remove femur lesion		T	0050	29.8816	$1,973.95		$394.79
27356	Remove femur lesion/graft		T	0050	29.8816	$1,973.95		$394.79
27357	Remove femur lesion/graft		T	0050	29.8816	$1,973.95		$394.79
27358	Remove femur lesion/fixation		T	0050	29.8816	$1,973.95		$394.79
27360	Partial removal, leg bone(s)		T	0050	29.8816	$1,973.95		$394.79
27365	Extensive leg surgery		C					
27370	Injection for knee x-ray		N					
27372	Removal of foreign body		T	0022	21.8429	$1,442.92	$354.45	$288.59
27380	Repair of kneecap tendon		T	0049	21.7810	$1,438.83		$287.77
27381	Repair/graft kneecap tendon		T	0049	21.7810	$1,438.83		$287.77
27385	Repair of thigh muscle		T	0049	21.7810	$1,438.83		$287.77
27386	Repair/graft of thigh muscle		T	0049	21.7810	$1,438.83		$287.77
27390	Incision of thigh tendon		T	0049	21.7810	$1,438.83		$287.77
27391	Incision of thigh tendons		T	0049	21.7810	$1,438.83		$287.77
27392	Incision of thigh tendons		T	0049	21.7810	$1,438.83		$287.77
27393	Lengthening of thigh tendon		T	0050	29.8816	$1,973.95		$394.79
27394	Lengthening of thigh tendons		T	0050	29.8816	$1,973.95		$394.79
27395	Lengthening of thigh tendons		T	0051	45.3534	$2,996.00		$599.20
27396	Transplant of thigh tendon		T	0050	29.8816	$1,973.95		$394.79
27397	Transplants of thigh tendons		T	0051	45.3534	$2,996.00		$599.20
27400	Revise thigh muscles/tendons		T	0051	45.3534	$2,996.00		$599.20
27403	Repair of knee cartilage		T	0050	29.8816	$1,973.95		$394.79
27405	Repair of knee ligament		T	0051	45.3534	$2,996.00		$599.20
27407	Repair of knee ligament		T	0052	86.5958	$5,720.43		$1,144.09
27409	Repair of knee ligaments		T	0051	45.3534	$2,996.00		$599.20
27412	Autochondrocyte implant knee	CH	T	0052	86.5958	$5,720.43		$1,144.09
27415	Osteochondral knee allograft	CH	T	0052	86.5958	$5,720.43		$1,144.09
27416	Osteochondral knee autograft		T	0051	45.3534	$2,996.00		$599.20
27418	Repair degenerated kneecap		T	0051	45.3534	$2,996.00		$599.20
27420	Revision of unstable kneecap		T	0051	45.3534	$2,996.00		$599.20
27422	Revision of unstable kneecap		T	0051	45.3534	$2,996.00		$599.20
27424	Revision/removal of kneecap		T	0051	45.3534	$2,996.00		$599.20
27425	Lat retinacular release open		T	0050	29.8816	$1,973.95		$394.79

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
27427	Reconstruction, knee		T	0051	45.3534	$2,996.00		$599.20
27428	Reconstruction, knee		T	0052	86.5958	$5,720.43		$1,144.09
27429	Reconstruction, knee		T	0052	86.5958	$5,720.43		$1,144.09
27430	Revision of thigh muscles		T	0051	45.3534	$2,996.00		$599.20
27435	Incision of knee joint		T	0051	45.3534	$2,996.00		$599.20
27437	Revise kneecap		T	0047	37.8310	$2,499.08	$537.03	$499.82
27438	Revise kneecap with implant		T	0048	53.1633	$3,511.91		$702.39
27440	Revision of knee joint		T	0047	37.8310	$2,499.08	$537.03	$499.82
27441	Revision of knee joint		T	0047	37.8310	$2,499.08	$537.03	$499.82
27442	Revision of knee joint		T	0047	37.8310	$2,499.08	$537.03	$499.82
27443	Revision of knee joint		T	0047	37.8310	$2,499.08	$537.03	$499.82
27445	Revision of knee joint		C					
27446	Revision of knee joint		T	0681	186.5341	$12,322.26		$2,464.46
27447	Total knee arthroplasty		C					
27448	Incision of thigh		C					
27450	Incision of thigh		C					
27454	Realignment of thigh bone		C					
27455	Realignment of knee		C					
27457	Realignment of knee		C					
27465	Shortening of thigh bone		C					
27466	Lengthening of thigh bone		C					
27468	Shorten/lengthen thighs		C					
27470	Repair of thigh		C					
27472	Repair/graft of thigh		C					
27475	Surgery to stop leg growth		T	0050	29.8816	$1,973.95		$394.79
27477	Surgery to stop leg growth		C					
27479	Surgery to stop leg growth	CH	T	0050	29.8816	$1,973.95		$394.79
27485	Surgery to stop leg growth		C					
27486	Revise/replace knee joint		C					
27487	Revise/replace knee joint		C					
27488	Removal of knee prosthesis		C					
27495	Reinforce thigh		C					
27496	Decompression of thigh/knee		T	0049	21.7810	$1,438.83		$287.77
27497	Decompression of thigh/knee		T	0049	21.7810	$1,438.83		$287.77
27498	Decompression of thigh/knee		T	0049	21.7810	$1,438.83		$287.77
27499	Decompression of thigh/knee		T	0049	21.7810	$1,438.83		$287.77
27500	Treatment of thigh fracture	CH	T	0138	6.1479	$406.12		$81.23
27501	Treatment of thigh fracture	CH	T	0129	1.5977	$105.54		$21.11
27502	Treatment of thigh fracture	CH	T	0139	19.8724	$1,312.75		$262.55
27503	Treatment of thigh fracture	CH	T	0129	1.5977	$105.54		$21.11
27506	Treatment of thigh fracture		C					
27507	Treatment of thigh fracture		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
27508	Treatment of thigh fracture	CH	T	0129	1.5977	$105.54		$21.11
27509	Treatment of thigh fracture		T	0062	25.4442	$1,680.82	$372.87	$336.17
27510	Treatment of thigh fracture	CH	T	0138	6.1479	$406.12		$81.23
27511	Treatment of thigh fracture		C					
27513	Treatment of thigh fracture		C					
27514	Treatment of thigh fracture		C					
27516	Treat thigh fx growth plate	CH	T	0129	1.5977	$105.54		$21.11
27517	Treat thigh fx growth plate	CH	T	0129	1.5977	$105.54		$21.11
27519	Treat thigh fx growth plate		C					
27520	Treat kneecap fracture	CH	T	0129	1.5977	$105.54		$21.11
27524	Treat kneecap fracture		T	0063	42.8656	$2,831.66		$566.34
27530	Treat knee fracture	CH	T	0129	1.5977	$105.54		$21.11
27532	Treat knee fracture	CH	T	0139	19.8724	$1,312.75		$262.55
27535	Treat knee fracture		C					
27536	Treat knee fracture		C					
27538	Treat knee fracture(s)	CH	T	0129	1.5977	$105.54		$21.11
27540	Treat knee fracture		C					
27550	Treat knee dislocation	CH	T	0129	1.5977	$105.54		$21.11
27552	Treat knee dislocation		T	0045	15.5673	$1,028.36	$268.47	$205.68
27556	Treat knee dislocation		C					
27557	Treat knee dislocation		C					
27558	Treat knee dislocation		C					
27560	Treat kneecap dislocation	CH	T	0129	1.5977	$105.54		$21.11
27562	Treat kneecap dislocation		T	0045	15.5673	$1,028.36	$268.47	$205.68
27566	Treat kneecap dislocation		T	0063	42.8656	$2,831.66		$566.34
27570	Fixation of knee joint		T	0045	15.5673	$1,028.36	$268.47	$205.68
27580	Fusion of knee		C					
27590	Amputate leg at thigh		C					
27591	Amputate leg at thigh		C					
27592	Amputate leg at thigh		C					
27594	Amputation follow-up surgery		T	0049	21.7810	$1,438.83		$287.77
27596	Amputation follow-up surgery		C					
27598	Amputate lower leg at knee		C					
27599	Leg surgery procedure	CH	T	0129	1.5977	$105.54		$21.11
27600	Decompression of lower leg		T	0049	21.7810	$1,438.83		$287.77
27601	Decompression of lower leg		T	0049	21.7810	$1,438.83		$287.77
27602	Decompression of lower leg		T	0049	21.7810	$1,438.83		$287.77
27603	Drain lower leg lesion		T	0008	19.3873	$1,280.71		$256.15
27604	Drain lower leg bursa		T	0049	21.7810	$1,438.83		$287.77
27605	Incision of achilles tendon		T	0055	21.6207	$1,428.24	$355.34	$285.65
27606	Incision of achilles tendon		T	0049	21.7810	$1,438.83		$287.77
27607	Treat lower leg bone lesion		T	0049	21.7810	$1,438.83		$287.77

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
27610	Explore/treat ankle joint		T	0050	29.8816	$1,973.95		$394.79
27612	Exploration of ankle joint		T	0050	29.8816	$1,973.95		$394.79
27613	Biopsy lower leg soft tissue		T	0020	8.2566	$545.42		$109.09
27614	Biopsy lower leg soft tissue		T	0022	21.8429	$1,442.92	$354.45	$288.59
27615	Remove tumor, lower leg		T	0050	29.8816	$1,973.95		$394.79
27618	Remove lower leg lesion		T	0021	15.8974	$1,050.17	$219.48	$210.04
27619	Remove lower leg lesion		T	0022	21.8429	$1,442.92	$354.45	$288.59
27620	Explore/treat ankle joint		T	0050	29.8816	$1,973.95		$394.79
27625	Remove ankle joint lining		T	0050	29.8816	$1,973.95		$394.79
27626	Remove ankle joint lining		T	0050	29.8816	$1,973.95		$394.79
27630	Removal of tendon lesion		T	0049	21.7810	$1,438.83		$287.77
27635	Remove lower leg bone lesion		T	0050	29.8816	$1,973.95		$394.79
27637	Remove/graft leg bone lesion		T	0050	29.8816	$1,973.95		$394.79
27638	Remove/graft leg bone lesion		T	0050	29.8816	$1,973.95		$394.79
27640	Partial removal of tibia		T	0051	45.3534	$2,996.00		$599.20
27641	Partial removal of fibula		T	0050	29.8816	$1,973.95		$394.79
27645	Extensive lower leg surgery		C					
27646	Extensive lower leg surgery		C					
27647	Extensive ankle/heel surgery		T	0051	45.3534	$2,996.00		$599.20
27648	Injection for ankle x-ray		N					
27650	Repair achilles tendon		T	0051	45.3534	$2,996.00		$599.20
27652	Repair/graft achilles tendon		T	0052	86.5958	$5,720.43		$1,144.09
27654	Repair of achilles tendon		T	0051	45.3534	$2,996.00		$599.20
27656	Repair leg fascia defect		T	0049	21.7810	$1,438.83		$287.77
27658	Repair of leg tendon, each		T	0049	21.7810	$1,438.83		$287.77
27659	Repair of leg tendon, each		T	0049	21.7810	$1,438.83		$287.77
27664	Repair of leg tendon, each		T	0049	21.7810	$1,438.83		$287.77
27665	Repair of leg tendon, each		T	0050	29.8816	$1,973.95		$394.79
27675	Repair lower leg tendons		T	0049	21.7810	$1,438.83		$287.77
27676	Repair lower leg tendons		T	0050	29.8816	$1,973.95		$394.79
27680	Release of lower leg tendon		T	0050	29.8816	$1,973.95		$394.79
27681	Release of lower leg tendons		T	0050	29.8816	$1,973.95		$394.79
27685	Revision of lower leg tendon		T	0050	29.8816	$1,973.95		$394.79
27686	Revise lower leg tendons		T	0050	29.8816	$1,973.95		$394.79
27687	Revision of calf tendon		T	0050	29.8816	$1,973.95		$394.79
27690	Revise lower leg tendon		T	0051	45.3534	$2,996.00		$599.20
27691	Revise lower leg tendon		T	0051	45.3534	$2,996.00		$599.20
27692	Revise additional leg tendon		T	0051	45.3534	$2,996.00		$599.20
27695	Repair of ankle ligament		T	0050	29.8816	$1,973.95		$394.79
27696	Repair of ankle ligaments		T	0050	29.8816	$1,973.95		$394.79
27698	Repair of ankle ligament		T	0050	29.8816	$1,973.95		$394.79
27700	Revision of ankle joint		T	0047	37.8310	$2,499.08	$537.03	$499.82

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
27702	Reconstruct ankle joint		C					
27703	Reconstruction, ankle joint		C					
27704	Removal of ankle implant		T	0049	21.7810	$1,438.83		$287.77
27705	Incision of tibia		T	0051	45.3534	$2,996.00		$599.20
27707	Incision of fibula		T	0049	21.7810	$1,438.83		$287.77
27709	Incision of tibia & fibula		T	0050	29.8816	$1,973.95		$394.79
27712	Realignment of lower leg		C					
27715	Revision of lower leg		C					
27720	Repair of tibia		T	0063	42.8656	$2,831.66		$566.34
27722	Repair/graft of tibia		T	0064	62.5691	$4,133.25	$835.79	$826.65
27724	Repair/graft of tibia		C					
27725	Repair of lower leg		C					
27726	Repair fibula nonunion		T	0062	25.4442	$1,680.82	$372.87	$336.17
27727	Repair of lower leg		C					
27730	Repair of tibia epiphysis		T	0050	29.8816	$1,973.95		$394.79
27732	Repair of fibula epiphysis		T	0050	29.8816	$1,973.95		$394.79
27734	Repair lower leg epiphyses		T	0050	29.8816	$1,973.95		$394.79
27740	Repair of leg epiphyses		T	0050	29.8816	$1,973.95		$394.79
27742	Repair of leg epiphyses		T	0051	45.3534	$2,996.00		$599.20
27745	Reinforce tibia		T	0052	86.5958	$5,720.43		$1,144.09
27750	Treatment of tibia fracture	CH	T	0129	1.5977	$105.54		$21.11
27752	Treatment of tibia fracture	CH	T	0139	19.8724	$1,312.75		$262.55
27756	Treatment of tibia fracture		T	0062	25.4442	$1,680.82	$372.87	$336.17
27758	Treatment of tibia fracture		T	0063	42.8656	$2,831.66		$566.34
27759	Treatment of tibia fracture		T	0064	62.5691	$4,133.25	$835.79	$826.65
27760	Cltx medial ankle fx	CH	T	0129	1.5977	$105.54		$21.11
27762	Cltx med ankle fx w/mnpj	CH	T	0139	19.8724	$1,312.75		$262.55
27766	Optx medial ankle fx		T	0063	42.8656	$2,831.66		$566.34
27767	Cltx post ankle fx	CH	T	0129	1.5977	$105.54		$21.11
27768	Cltx post ankle fx w/mnpj	CH	T	0129	1.5977	$105.54		$21.11
27769	Optx post ankle fx		T	0063	42.8656	$2,831.66		$566.34
27780	Treatment of fibula fracture	CH	T	0129	1.5977	$105.54		$21.11
27781	Treatment of fibula fracture	CH	T	0139	19.8724	$1,312.75		$262.55
27784	Treatment of fibula fracture		T	0063	42.8656	$2,831.66		$566.34
27786	Treatment of ankle fracture	CH	T	0129	1.5977	$105.54		$21.11
27788	Treatment of ankle fracture	CH	T	0129	1.5977	$105.54		$21.11
27792	Treatment of ankle fracture		T	0063	42.8656	$2,831.66		$566.34
27808	Treatment of ankle fracture	CH	T	0129	1.5977	$105.54		$21.11
27810	Treatment of ankle fracture	CH	T	0138	6.1479	$406.12		$81.23
27814	Treatment of ankle fracture		T	0063	42.8656	$2,831.66		$566.34
27816	Treatment of ankle fracture	CH	T	0129	1.5977	$105.54		$21.11
27818	Treatment of ankle fracture	CH	T	0138	6.1479	$406.12		$81.23

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
27822	Treatment of ankle fracture		T	0063	42.8656	$2,831.66		$566.34
27823	Treatment of ankle fracture		T	0064	62.5691	$4,133.25	$835.79	$826.65
27824	Treat lower leg fracture	CH	T	0129	1.5977	$105.54		$21.11
27825	Treat lower leg fracture	CH	T	0139	19.8724	$1,312.75		$262.55
27826	Treat lower leg fracture		T	0063	42.8656	$2,831.66		$566.34
27827	Treat lower leg fracture		T	0064	62.5691	$4,133.25	$835.79	$826.65
27828	Treat lower leg fracture		T	0064	62.5691	$4,133.25	$835.79	$826.65
27829	Treat lower leg joint		T	0063	42.8656	$2,831.66		$566.34
27830	Treat lower leg dislocation	CH	T	0129	1.5977	$105.54		$21.11
27831	Treat lower leg dislocation	CH	T	0139	19.8724	$1,312.75		$262.55
27832	Treat lower leg dislocation		T	0063	42.8656	$2,831.66		$566.34
27840	Treat ankle dislocation	CH	T	0138	6.1479	$406.12		$81.23
27842	Treat ankle dislocation		T	0045	15.5673	$1,028.36	$268.47	$205.68
27846	Treat ankle dislocation		T	0063	42.8656	$2,831.66		$566.34
27848	Treat ankle dislocation		T	0063	42.8656	$2,831.66		$566.34
27860	Fixation of ankle joint		T	0045	15.5673	$1,028.36	$268.47	$205.68
27870	Fusion of ankle joint, open		T	0052	86.5958	$5,720.43		$1,144.09
27871	Fusion of tibiofibular joint		T	0052	86.5958	$5,720.43		$1,144.09
27880	Amputation of lower leg		C					
27881	Amputation of lower leg		C					
27882	Amputation of lower leg		C					
27884	Amputation follow-up surgery		T	0049	21.7810	$1,438.83		$287.77
27886	Amputation follow-up surgery		C					
27888	Amputation of foot at ankle		C					
27889	Amputation of foot at ankle		T	0050	29.8816	$1,973.95		$394.79
27892	Decompression of leg		T	0049	21.7810	$1,438.83		$287.77
27893	Decompression of leg		T	0049	21.7810	$1,438.83		$287.77
27894	Decompression of leg		T	0049	21.7810	$1,438.83		$287.77
27899	Leg/ankle surgery procedure	CH	T	0129	1.5977	$105.54		$21.11
28001	Drainage of bursa of foot		T	0007	12.5953	$832.03		$166.41
28002	Treatment of foot infection		T	0049	21.7810	$1,438.83		$287.77
28003	Treatment of foot infection		T	0049	21.7810	$1,438.83		$287.77
28005	Treat foot bone lesion		T	0055	21.6207	$1,428.24	$355.34	$285.65
28008	Incision of foot fascia		T	0055	21.6207	$1,428.24	$355.34	$285.65
28010	Incision of toe tendon		T	0055	21.6207	$1,428.24	$355.34	$285.65
28011	Incision of toe tendons		T	0055	21.6207	$1,428.24	$355.34	$285.65
28020	Exploration of foot joint		T	0055	21.6207	$1,428.24	$355.34	$285.65
28022	Exploration of foot joint		T	0055	21.6207	$1,428.24	$355.34	$285.65
28024	Exploration of toe joint		T	0055	21.6207	$1,428.24	$355.34	$285.65
28035	Decompression of tibia nerve		T	0220	18.5109	$1,222.81		$244.57
28043	Excision of foot lesion		T	0022	21.8429	$1,442.92	$354.45	$288.59
28045	Excision of foot lesion		T	0055	21.6207	$1,428.24	$355.34	$285.65

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
28046	Resection of tumor, foot		T	0055	21.6207	$1,428.24	$355.34	$285.65
28050	Biopsy of foot joint lining		T	0055	21.6207	$1,428.24	$355.34	$285.65
28052	Biopsy of foot joint lining		T	0055	21.6207	$1,428.24	$355.34	$285.65
28054	Biopsy of toe joint lining		T	0055	21.6207	$1,428.24	$355.34	$285.65
28055	Neurectomy, foot		T	0220	18.5109	$1,222.81		$244.57
28060	Partial removal, foot fascia		T	0055	21.6207	$1,428.24	$355.34	$285.65
28062	Removal of foot fascia		T	0055	21.6207	$1,428.24	$355.34	$285.65
28070	Removal of foot joint lining		T	0055	21.6207	$1,428.24	$355.34	$285.65
28072	Removal of foot joint lining		T	0055	21.6207	$1,428.24	$355.34	$285.65
28080	Removal of foot lesion		T	0055	21.6207	$1,428.24	$355.34	$285.65
28086	Excise foot tendon sheath		T	0055	21.6207	$1,428.24	$355.34	$285.65
28088	Excise foot tendon sheath		T	0055	21.6207	$1,428.24	$355.34	$285.65
28090	Removal of foot lesion		T	0055	21.6207	$1,428.24	$355.34	$285.65
28092	Removal of toe lesions		T	0055	21.6207	$1,428.24	$355.34	$285.65
28100	Removal of ankle/heel lesion		T	0055	21.6207	$1,428.24	$355.34	$285.65
28102	Remove/graft foot lesion		T	0056	47.2916	$3,124.04		$624.81
28103	Remove/graft foot lesion		T	0056	47.2916	$3,124.04		$624.81
28104	Removal of foot lesion		T	0055	21.6207	$1,428.24	$355.34	$285.65
28106	Remove/graft foot lesion		T	0056	47.2916	$3,124.04		$624.81
28107	Remove/graft foot lesion		T	0056	47.2916	$3,124.04		$624.81
28108	Removal of toe lesions		T	0055	21.6207	$1,428.24	$355.34	$285.65
28110	Part removal of metatarsal		T	0055	21.6207	$1,428.24	$355.34	$285.65
28111	Part removal of metatarsal		T	0055	21.6207	$1,428.24	$355.34	$285.65
28112	Part removal of metatarsal		T	0055	21.6207	$1,428.24	$355.34	$285.65
28113	Part removal of metatarsal		T	0055	21.6207	$1,428.24	$355.34	$285.65
28114	Removal of metatarsal heads		T	0055	21.6207	$1,428.24	$355.34	$285.65
28116	Revision of foot		T	0055	21.6207	$1,428.24	$355.34	$285.65
28118	Removal of heel bone		T	0055	21.6207	$1,428.24	$355.34	$285.65
28119	Removal of heel spur		T	0055	21.6207	$1,428.24	$355.34	$285.65
28120	Part removal of ankle/heel		T	0055	21.6207	$1,428.24	$355.34	$285.65
28122	Partial removal of foot bone		T	0055	21.6207	$1,428.24	$355.34	$285.65
28124	Partial removal of toe		T	0055	21.6207	$1,428.24	$355.34	$285.65
28126	Partial removal of toe		T	0055	21.6207	$1,428.24	$355.34	$285.65
28130	Removal of ankle bone		T	0055	21.6207	$1,428.24	$355.34	$285.65
28140	Removal of metatarsal		T	0055	21.6207	$1,428.24	$355.34	$285.65
28150	Removal of toe		T	0055	21.6207	$1,428.24	$355.34	$285.65
28153	Partial removal of toe		T	0055	21.6207	$1,428.24	$355.34	$285.65
28160	Partial removal of toe		T	0055	21.6207	$1,428.24	$355.34	$285.65
28171	Extensive foot surgery		T	0055	21.6207	$1,428.24	$355.34	$285.65
28173	Extensive foot surgery		T	0055	21.6207	$1,428.24	$355.34	$285.65
28175	Extensive foot surgery		T	0055	21.6207	$1,428.24	$355.34	$285.65
28190	Removal of foot foreign body	CH	T	0020	8.2566	$545.42		$109.09

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
28192	Removal of foot foreign body		T	0021	15.8974	$1,050.17	$219.48	$210.04
28193	Removal of foot foreign body		T	0020	8.2566	$545.42		$109.09
28200	Repair of foot tendon		T	0055	21.6207	$1,428.24	$355.34	$285.65
28202	Repair/graft of foot tendon		T	0055	21.6207	$1,428.24	$355.34	$285.65
28208	Repair of foot tendon		T	0055	21.6207	$1,428.24	$355.34	$285.65
28210	Repair/graft of foot tendon		T	0056	47.2916	$3,124.04		$624.81
28220	Release of foot tendon		T	0055	21.6207	$1,428.24	$355.34	$285.65
28222	Release of foot tendons		T	0055	21.6207	$1,428.24	$355.34	$285.65
28225	Release of foot tendon		T	0055	21.6207	$1,428.24	$355.34	$285.65
28226	Release of foot tendons		T	0055	21.6207	$1,428.24	$355.34	$285.65
28230	Incision of foot tendon(s)		T	0055	21.6207	$1,428.24	$355.34	$285.65
28232	Incision of toe tendon		T	0055	21.6207	$1,428.24	$355.34	$285.65
28234	Incision of foot tendon		T	0055	21.6207	$1,428.24	$355.34	$285.65
28238	Revision of foot tendon		T	0056	47.2916	$3,124.04		$624.81
28240	Release of big toe		T	0055	21.6207	$1,428.24	$355.34	$285.65
28250	Revision of foot fascia		T	0055	21.6207	$1,428.24	$355.34	$285.65
28260	Release of midfoot joint		T	0055	21.6207	$1,428.24	$355.34	$285.65
28261	Revision of foot tendon		T	0055	21.6207	$1,428.24	$355.34	$285.65
28262	Revision of foot and ankle		T	0055	21.6207	$1,428.24	$355.34	$285.65
28264	Release of midfoot joint		T	0056	47.2916	$3,124.04		$624.81
28270	Release of foot contracture		T	0055	21.6207	$1,428.24	$355.34	$285.65
28272	Release of toe joint, each		T	0055	21.6207	$1,428.24	$355.34	$285.65
28280	Fusion of toes		T	0055	21.6207	$1,428.24	$355.34	$285.65
28285	Repair of hammertoe		T	0055	21.6207	$1,428.24	$355.34	$285.65
28286	Repair of hammertoe		T	0055	21.6207	$1,428.24	$355.34	$285.65
28288	Partial removal of foot bone		T	0055	21.6207	$1,428.24	$355.34	$285.65
28289	Repair hallux rigidus		T	0055	21.6207	$1,428.24	$355.34	$285.65
28290	Correction of bunion		T	0057	31.0633	$2,052.01	$475.91	$410.41
28292	Correction of bunion		T	0057	31.0633	$2,052.01	$475.91	$410.41
28293	Correction of bunion		T	0057	31.0633	$2,052.01	$475.91	$410.41
28294	Correction of bunion		T	0057	31.0633	$2,052.01	$475.91	$410.41
28296	Correction of bunion		T	0057	31.0633	$2,052.01	$475.91	$410.41
28297	Correction of bunion		T	0057	31.0633	$2,052.01	$475.91	$410.41
28298	Correction of bunion		T	0057	31.0633	$2,052.01	$475.91	$410.41
28299	Correction of bunion		T	0057	31.0633	$2,052.01	$475.91	$410.41
28300	Incision of heel bone		T	0056	47.2916	$3,124.04		$624.81
28302	Incision of ankle bone		T	0055	21.6207	$1,428.24	$355.34	$285.65
28304	Incision of midfoot bones		T	0056	47.2916	$3,124.04		$624.81
28305	Incise/graft midfoot bones		T	0056	47.2916	$3,124.04		$624.81
28306	Incision of metatarsal		T	0055	21.6207	$1,428.24	$355.34	$285.65
28307	Incision of metatarsal		T	0055	21.6207	$1,428.24	$355.34	$285.65
28308	Incision of metatarsal		T	0055	21.6207	$1,428.24	$355.34	$285.65

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
28309	Incision of metatarsals		T	0056	47.2916	$3,124.04		$624.81
28310	Revision of big toe		T	0055	21.6207	$1,428.24	$355.34	$285.65
28312	Revision of toe		T	0055	21.6207	$1,428.24	$355.34	$285.65
28313	Repair deformity of toe		T	0055	21.6207	$1,428.24	$355.34	$285.65
28315	Removal of sesamoid bone		T	0055	21.6207	$1,428.24	$355.34	$285.65
28320	Repair of foot bones		T	0056	47.2916	$3,124.04		$624.81
28322	Repair of metatarsals		T	0056	47.2916	$3,124.04		$624.81
28340	Resect enlarged toe tissue		T	0055	21.6207	$1,428.24	$355.34	$285.65
28341	Resect enlarged toe		T	0055	21.6207	$1,428.24	$355.34	$285.65
28344	Repair extra toe(s)		T	0055	21.6207	$1,428.24	$355.34	$285.65
28345	Repair webbed toe(s)		T	0055	21.6207	$1,428.24	$355.34	$285.65
28360	Reconstruct cleft foot		T	0056	47.2916	$3,124.04		$624.81
28400	Treatment of heel fracture	CH	T	0129	1.5977	$105.54		$21.11
28405	Treatment of heel fracture	CH	T	0139	19.8724	$1,312.75		$262.55
28406	Treatment of heel fracture		T	0062	25.4442	$1,680.82	$372.87	$336.17
28415	Treat heel fracture		T	0064	62.5691	$4,133.25	$835.79	$826.65
28420	Treat/graft heel fracture		T	0063	42.8656	$2,831.66		$566.34
28430	Treatment of ankle fracture	CH	T	0129	1.5977	$105.54		$21.11
28435	Treatment of ankle fracture	CH	T	0129	1.5977	$105.54		$21.11
28436	Treatment of ankle fracture		T	0062	25.4442	$1,680.82	$372.87	$336.17
28445	Treat ankle fracture		T	0063	42.8656	$2,831.66		$566.34
28446	Osteochondral talus autogrft		T	0056	47.2916	$3,124.04		$624.81
28450	Treat midfoot fracture, each	CH	T	0129	1.5977	$105.54		$21.11
28455	Treat midfoot fracture, each	CH	T	0129	1.5977	$105.54		$21.11
28456	Treat midfoot fracture		T	0062	25.4442	$1,680.82	$372.87	$336.17
28465	Treat midfoot fracture, each		T	0063	42.8656	$2,831.66		$566.34
28470	Treat metatarsal fracture	CH	T	0129	1.5977	$105.54		$21.11
28475	Treat metatarsal fracture	CH	T	0129	1.5977	$105.54		$21.11
28476	Treat metatarsal fracture		T	0062	25.4442	$1,680.82	$372.87	$336.17
28485	Treat metatarsal fracture		T	0063	42.8656	$2,831.66		$566.34
28490	Treat big toe fracture	CH	T	0129	1.5977	$105.54		$21.11
28495	Treat big toe fracture	CH	T	0129	1.5977	$105.54		$21.11
28496	Treat big toe fracture		T	0062	25.4442	$1,680.82	$372.87	$336.17
28505	Treat big toe fracture		T	0062	25.4442	$1,680.82	$372.87	$336.17
28510	Treatment of toe fracture	CH	T	0129	1.5977	$105.54		$21.11
28515	Treatment of toe fracture	CH	T	0129	1.5977	$105.54		$21.11
28525	Treat toe fracture		T	0062	25.4442	$1,680.82	$372.87	$336.17
28530	Treat sesamoid bone fracture	CH	T	0129	1.5977	$105.54		$21.11
28531	Treat sesamoid bone fracture		T	0062	25.4442	$1,680.82	$372.87	$336.17
28540	Treat foot dislocation	CH	T	0129	1.5977	$105.54		$21.11
28545	Treat foot dislocation		T	0062	25.4442	$1,680.82	$372.87	$336.17
28546	Treat foot dislocation		T	0062	25.4442	$1,680.82	$372.87	$336.17

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
28555	Repair foot dislocation		T	0063	42.8656	$2,831.66		$566.34
28570	Treat foot dislocation	CH	T	0138	6.1479	$406.12		$81.23
28575	Treat foot dislocation	CH	T	0139	19.8724	$1,312.75		$262.55
28576	Treat foot dislocation		T	0062	25.4442	$1,680.82	$372.87	$336.17
28585	Repair foot dislocation		T	0062	25.4442	$1,680.82	$372.87	$336.17
28600	Treat foot dislocation	CH	T	0129	1.5977	$105.54		$21.11
28605	Treat foot dislocation	CH	T	0129	1.5977	$105.54		$21.11
28606	Treat foot dislocation		T	0062	25.4442	$1,680.82	$372.87	$336.17
28615	Repair foot dislocation		T	0063	42.8656	$2,831.66		$566.34
28630	Treat toe dislocation	CH	T	0129	1.5977	$105.54		$21.11
28635	Treat toe dislocation		T	0045	15.5673	$1,028.36	$268.47	$205.68
28636	Treat toe dislocation		T	0062	25.4442	$1,680.82	$372.87	$336.17
28645	Repair toe dislocation		T	0062	25.4442	$1,680.82	$372.87	$336.17
28660	Treat toe dislocation	CH	T	0129	1.5977	$105.54		$21.11
28665	Treat toe dislocation		T	0045	15.5673	$1,028.36	$268.47	$205.68
28666	Treat toe dislocation		T	0062	25.4442	$1,680.82	$372.87	$336.17
28675	Repair of toe dislocation		T	0062	25.4442	$1,680.82	$372.87	$336.17
28705	Fusion of foot bones		T	0056	47.2916	$3,124.04		$624.81
28715	Fusion of foot bones		T	0052	86.5958	$5,720.43		$1,144.09
28725	Fusion of foot bones		T	0056	47.2916	$3,124.04		$624.81
28730	Fusion of foot bones		T	0056	47.2916	$3,124.04		$624.81
28735	Fusion of foot bones		T	0056	47.2916	$3,124.04		$624.81
28737	Revision of foot bones		T	0056	47.2916	$3,124.04		$624.81
28740	Fusion of foot bones		T	0056	47.2916	$3,124.04		$624.81
28750	Fusion of big toe joint		T	0056	47.2916	$3,124.04		$624.81
28755	Fusion of big toe joint		T	0055	21.6207	$1,428.24	$355.34	$285.65
28760	Fusion of big toe joint		T	0056	47.2916	$3,124.04		$624.81
28800	Amputation of midfoot		C					
28805	Amputation thru metatarsal		C					
28810	Amputation toe & metatarsal		T	0055	21.6207	$1,428.24	$355.34	$285.65
28820	Amputation of toe		T	0055	21.6207	$1,428.24	$355.34	$285.65
28825	Partial amputation of toe		T	0055	21.6207	$1,428.24	$355.34	$285.65
28890	High energy eswt, plantar f		T	0050	29.8816	$1,973.95		$394.79
28899	Foot/toes surgery procedure	CH	T	0129	1.5977	$105.54		$21.11
29000	Application of body cast		S	0058	1.0845	$71.64		$14.33
29010	Application of body cast		S	0426	2.4305	$160.56		$32.12
29015	Application of body cast		S	0426	2.4305	$160.56		$32.12
29020	Application of body cast		S	0058	1.0845	$71.64		$14.33
29025	Application of body cast		S	0058	1.0845	$71.64		$14.33
29035	Application of body cast		S	0426	2.4305	$160.56		$32.12
29040	Application of body cast		S	0058	1.0845	$71.64		$14.33
29044	Application of body cast		S	0426	2.4305	$160.56		$32.12

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
29046	Application of body cast		S	0426	2.4305	$160.56		$32.12
29049	Application of figure eight		S	0058	1.0845	$71.64		$14.33
29055	Application of shoulder cast		S	0426	2.4305	$160.56		$32.12
29058	Application of shoulder cast		S	0058	1.0845	$71.64		$14.33
29065	Application of long arm cast		S	0426	2.4305	$160.56		$32.12
29075	Application of forearm cast		S	0426	2.4305	$160.56		$32.12
29085	Apply hand/wrist cast		S	0058	1.0845	$71.64		$14.33
29086	Apply finger cast		S	0058	1.0845	$71.64		$14.33
29105	Apply long arm splint		S	0058	1.0845	$71.64		$14.33
29125	Apply forearm splint		S	0058	1.0845	$71.64		$14.33
29126	Apply forearm splint		S	0058	1.0845	$71.64		$14.33
29130	Application of finger splint		S	0058	1.0845	$71.64		$14.33
29131	Application of finger splint		S	0058	1.0845	$71.64		$14.33
29200	Strapping of chest		S	0058	1.0845	$71.64		$14.33
29220	Strapping of low back		S	0058	1.0845	$71.64		$14.33
29240	Strapping of shoulder		S	0058	1.0845	$71.64		$14.33
29260	Strapping of elbow or wrist		S	0058	1.0845	$71.64		$14.33
29280	Strapping of hand or finger		S	0058	1.0845	$71.64		$14.33
29305	Application of hip cast		S	0426	2.4305	$160.56		$32.12
29325	Application of hip casts		S	0426	2.4305	$160.56		$32.12
29345	Application of long leg cast		S	0426	2.4305	$160.56		$32.12
29355	Application of long leg cast		S	0426	2.4305	$160.56		$32.12
29358	Apply long leg cast brace		S	0426	2.4305	$160.56		$32.12
29365	Application of long leg cast		S	0426	2.4305	$160.56		$32.12
29405	Apply short leg cast		S	0426	2.4305	$160.56		$32.12
29425	Apply short leg cast		S	0426	2.4305	$160.56		$32.12
29435	Apply short leg cast		S	0426	2.4305	$160.56		$32.12
29440	Addition of walker to cast		S	0058	1.0845	$71.64		$14.33
29445	Apply rigid leg cast		S	0426	2.4305	$160.56		$32.12
29450	Application of leg cast		S	0058	1.0845	$71.64		$14.33
29505	Application, long leg splint		S	0058	1.0845	$71.64		$14.33
29515	Application lower leg splint		S	0058	1.0845	$71.64		$14.33
29520	Strapping of hip		S	0058	1.0845	$71.64		$14.33
29530	Strapping of knee		S	0058	1.0845	$71.64		$14.33
29540	Strapping of ankle and/or ft		S	0058	1.0845	$71.64		$14.33
29550	Strapping of toes		S	0058	1.0845	$71.64		$14.33
29580	Application of paste boot		S	0058	1.0845	$71.64		$14.33
29590	Application of foot splint		S	0058	1.0845	$71.64		$14.33
29700	Removal/revision of cast		S	0058	1.0845	$71.64		$14.33
29705	Removal/revision of cast		S	0058	1.0845	$71.64		$14.33
29710	Removal/revision of cast		S	0426	2.4305	$160.56		$32.12
29715	Removal/revision of cast		S	0058	1.0845	$71.64		$14.33

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
29720	Repair of body cast		S	0058	1.0845	$71.64		$14.33
29730	Windowing of cast		S	0058	1.0845	$71.64		$14.33
29740	Wedging of cast		S	0058	1.0845	$71.64		$14.33
29750	Wedging of clubfoot cast		S	0058	1.0845	$71.64		$14.33
29799	Casting/strapping procedure		S	0058	1.0845	$71.64		$14.33
29800	Jaw arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29804	Jaw arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29805	Shoulder arthroscopy, dx		T	0041	29.4149	$1,943.12		$388.63
29806	Shoulder arthroscopy/surgery		T	0042	49.2153	$3,251.11	$804.74	$650.23
29807	Shoulder arthroscopy/surgery		T	0042	49.2153	$3,251.11	$804.74	$650.23
29819	Shoulder arthroscopy/surgery		T	0042	49.2153	$3,251.11	$804.74	$650.23
29820	Shoulder arthroscopy/surgery		T	0042	49.2153	$3,251.11	$804.74	$650.23
29821	Shoulder arthroscopy/surgery		T	0042	49.2153	$3,251.11	$804.74	$650.23
29822	Shoulder arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29823	Shoulder arthroscopy/surgery		T	0042	49.2153	$3,251.11	$804.74	$650.23
29824	Shoulder arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29825	Shoulder arthroscopy/surgery		T	0042	49.2153	$3,251.11	$804.74	$650.23
29826	Shoulder arthroscopy/surgery		T	0042	49.2153	$3,251.11	$804.74	$650.23
29827	Arthroscop rotator cuff repr		T	0042	49.2153	$3,251.11	$804.74	$650.23
29828	Arthroscopy biceps tenodesis		T	0042	49.2153	$3,251.11	$804.74	$650.23
29830	Elbow arthroscopy		T	0041	29.4149	$1,943.12		$388.63
29834	Elbow arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29835	Elbow arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29836	Elbow arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29837	Elbow arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29838	Elbow arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29840	Wrist arthroscopy		T	0041	29.4149	$1,943.12		$388.63
29843	Wrist arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29844	Wrist arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29845	Wrist arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29846	Wrist arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29847	Wrist arthroscopy/surgery		T	0042	49.2153	$3,251.11	$804.74	$650.23
29848	Wrist endoscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29850	Knee arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29851	Knee arthroscopy/surgery		T	0042	49.2153	$3,251.11	$804.74	$650.23
29855	Tibial arthroscopy/surgery		T	0042	49.2153	$3,251.11	$804.74	$650.23
29856	Tibial arthroscopy/surgery		T	0042	49.2153	$3,251.11	$804.74	$650.23
29860	Hip arthroscopy, dx		T	0042	49.2153	$3,251.11	$804.74	$650.23
29861	Hip arthroscopy/surgery		T	0042	49.2153	$3,251.11	$804.74	$650.23
29862	Hip arthroscopy/surgery		T	0042	49.2153	$3,251.11	$804.74	$650.23
29863	Hip arthroscopy/surgery		T	0042	49.2153	$3,251.11	$804.74	$650.23
29866	Autgrft implnt, knee w/scope		T	0042	49.2153	$3,251.11	$804.74	$650.23

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
29867	Allgrft implnt, knee w/scope		T	0042	49.2153	$3,251.11	$804.74	$650.23
29868	Meniscal trnspl, knee w/scpe		T	0042	49.2153	$3,251.11	$804.74	$650.23
29870	Knee arthroscopy, dx		T	0041	29.4149	$1,943.12		$388.63
29871	Knee arthroscopy/drainage		T	0041	29.4149	$1,943.12		$388.63
29873	Knee arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29874	Knee arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29875	Knee arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29876	Knee arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29877	Knee arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29879	Knee arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29880	Knee arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29881	Knee arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29882	Knee arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29883	Knee arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29884	Knee arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29885	Knee arthroscopy/surgery		T	0042	49.2153	$3,251.11	$804.74	$650.23
29886	Knee arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29887	Knee arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29888	Knee arthroscopy/surgery		T	0042	49.2153	$3,251.11	$804.74	$650.23
29889	Knee arthroscopy/surgery		T	0042	49.2153	$3,251.11	$804.74	$650.23
29891	Ankle arthroscopy/surgery		T	0042	49.2153	$3,251.11	$804.74	$650.23
29892	Ankle arthroscopy/surgery		T	0042	49.2153	$3,251.11	$804.74	$650.23
29893	Scope, plantar fasciotomy		T	0055	21.6207	$1,428.24	$355.34	$285.65
29894	Ankle arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29895	Ankle arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29897	Ankle arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29898	Ankle arthroscopy/surgery		T	0041	29.4149	$1,943.12		$388.63
29899	Ankle arthroscopy/surgery		T	0042	49.2153	$3,251.11	$804.74	$650.23
29900	Mcp joint arthroscopy, dx		T	0041	29.4149	$1,943.12		$388.63
29901	Mcp joint arthroscopy, surg		T	0041	29.4149	$1,943.12		$388.63
29902	Mcp joint arthroscopy, surg		T	0041	29.4149	$1,943.12		$388.63
29904	Subtalar arthro w/fb rmvl		T	0041	29.4149	$1,943.12		$388.63
29905	Subtalar arthro w/exc		T	0041	29.4149	$1,943.12		$388.63
29906	Subtalar arthro w/deb		T	0041	29.4149	$1,943.12		$388.63
29907	Subtalar arthro w/fusion		T	0042	49.2153	$3,251.11	$804.74	$650.23
29999	Arthroscopy of joint		T	0041	29.4149	$1,943.12		$388.63
30000	Drainage of nose lesion		T	0251	3.3069	$218.45		$43.69
30020	Drainage of nose lesion		T	0251	3.3069	$218.45		$43.69
3006F	Cxr doc rev		M					
30100	Intranasal biopsy		T	0252	7.5330	$497.62	$109.16	$99.53
30110	Removal of nose polyp(s)		T	0253	17.2402	$1,138.87	$282.29	$227.78
30115	Removal of nose polyp(s)		T	0253	17.2402	$1,138.87	$282.29	$227.78

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
30117	Removal of intranasal lesion		T	0253	17.2402	$1,138.87	$282.29	$227.78
30118	Removal of intranasal lesion		T	0254	24.7557	$1,635.34		$327.07
3011F	Lipid panel doc rev		M					
30120	Revision of nose		T	0253	17.2402	$1,138.87	$282.29	$227.78
30124	Removal of nose lesion		T	0252	7.5330	$497.62	$109.16	$99.53
30125	Removal of nose lesion		T	0256	41.8741	$2,766.16		$553.24
30130	Excise inferior turbinate		T	0253	17.2402	$1,138.87	$282.29	$227.78
30140	Resect inferior turbinate		T	0254	24.7557	$1,635.34		$327.07
3014F	Screen mammo doc rev		M					
30150	Partial removal of nose		T	0256	41.8741	$2,766.16		$553.24
30160	Removal of nose		T	0256	41.8741	$2,766.16		$553.24
3016F	Pt scrnd unhlthy OH use	NI	E					
3017F	Colorectal ca screen doc rev		M					
3018F	Pre-prxd rsk et al docd	NI	E					
30200	Injection treatment of nose		T	0252	7.5330	$497.62	$109.16	$99.53
3020F	Lvf assess		M					
30210	Nasal sinus therapy		T	0252	7.5330	$497.62	$109.16	$99.53
3021F	Lvef mod/sever deprs syst		M					
30220	Insert nasal septal button		T	0252	7.5330	$497.62	$109.16	$99.53
3022F	Lvef =40% systolic		M					
3023F	Spirom doc rev		M					
3025F	Spirom fev/fvc<70% w copd		M					
3027F	Spirom fev/fvc=70%/ w/o copd		M					
3028F	O2 saturation doc rev		M					
30300	Remove nasal foreign body		X	0340	0.6462	$42.69		$8.54
30310	Remove nasal foreign body		T	0253	17.2402	$1,138.87	$282.29	$227.78
30320	Remove nasal foreign body		T	0253	17.2402	$1,138.87	$282.29	$227.78
3035F	O2 saturation =88% /pa0 =55		M					
3037F	O2 saturation> 88% /pao>55		M					
30400	Reconstruction of nose		T	0256	41.8741	$2,766.16		$553.24
3040F	Fev<40% predicted value		M					
30410	Reconstruction of nose		T	0256	41.8741	$2,766.16		$553.24
30420	Reconstruction of nose		T	0256	41.8741	$2,766.16		$553.24
3042F	Fev= 40% predicted value		M					
30430	Revision of nose		T	0254	24.7557	$1,635.34		$327.07
30435	Revision of nose		T	0256	41.8741	$2,766.16		$553.24
3044F	Hg a1c level lt 7.0%		M					
30450	Revision of nose		T	0256	41.8741	$2,766.16		$553.24
3045F	Hg a1c level 7.0–9.0%		M					
30460	Revision of nose		T	0256	41.8741	$2,766.16		$553.24
30462	Revision of nose		T	0256	41.8741	$2,766.16		$553.24
30465	Repair nasal stenosis		T	0256	41.8741	$2,766.16		$553.24

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
3046F	Hemoglobin a1c level > 9.0%		M					
3048F	Ldl-c <100 mg/dl		M					
3049F	Ldl-c 100-129 mg/dl		M					
3050F	Ldl-c = 130 mg/dl		M					
30520	Repair of nasal septum		T	0254	24.7557	$1,635.34		$327.07
30540	Repair nasal defect		T	0256	41.8741	$2,766.16		$553.24
30545	Repair nasal defect		T	0256	41.8741	$2,766.16		$553.24
30560	Release of nasal adhesions		T	0251	3.3069	$218.45		$43.69
30580	Repair upper jaw fistula		T	0256	41.8741	$2,766.16		$553.24
30600	Repair mouth/nose fistula		T	0256	41.8741	$2,766.16		$553.24
3060F	Pos microalbuminuria rev		M					
3061F	Neg microalbuminuria rev		M					
30620	Intranasal reconstruction		T	0256	41.8741	$2,766.16		$553.24
3062F	Pos macroalbuminuria rev		M					
30630	Repair nasal septum defect		T	0254	24.7557	$1,635.34		$327.07
3066F	Nephropathy doc tx		M					
3072F	Low risk for retinopathy		M					
3073F	Pre-surg eye measures doc'd		M					
3074F	Syst bp lt 130 mm hg		M					
3075F	Syst bp ge 130 - 139mm hg		M					
3077F	Syst bp = 140 mm hg6 it		M					
3078F	Diast bp < 80 mm hg		M					
3079F	Diast bp 80-89 mm hg		M					
30801	Ablate inf turbinate, superf		T	0252	7.5330	$497.62	$109.16	$99.53
30802	Cauterization, inner nose		T	0252	7.5330	$497.62	$109.16	$99.53
3080F	Diast bp = 90 mm hg		M					
3082F	Kt/v lt1.2		M					
3083F	Kt/v ge 1.2 and <1.7		M					
3084F	Kt/v ge 1.7		M					
3085F	Suicide risk assessed		M					
3088F	MDD, mild		M					
3089F	MDD, moderate		M					
30901	Control of nosebleed		T	0250	1.1110	$73.39	$25.10	$14.68
30903	Control of nosebleed		T	0250	1.1110	$73.39	$25.10	$14.68
30905	Control of nosebleed		T	0250	1.1110	$73.39	$25.10	$14.68
30906	Repeat control of nosebleed		T	0250	1.1110	$73.39	$25.10	$14.68
3090F	MDD, severe; w/o psych		M					
30915	Ligation, nasal sinus artery		T	0092	27.3614	$1,807.47		$361.50
3091F	Mdd, severe; w/ psych		M					
30920	Ligation, upper jaw artery		T	0092	27.3614	$1,807.47		$361.50
3092F	MDD, in remission		M					
30930	Ther fx, nasal inf turbinate		T	0253	17.2402	$1,138.87	$282.29	$227.78

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
3093F	Doc new diag 1st/addl. mdd		M					
3095F	Central dexa results doc'd		M					
3096F	Central dexa ordered		M					
30999	Nasal surgery procedure	CH	T	0250	1.1110	$73.39	$25.10	$14.68
31000	Irrigation, maxillary sinus		T	0251	3.3069	$218.45		$43.69
31002	Irrigation, sphenoid sinus		T	0252	7.5330	$497.62	$109.16	$99.53
3100F	Image test ref carot diam		M					
31020	Exploration, maxillary sinus		T	0254	24.7557	$1,635.34		$327.07
31030	Exploration, maxillary sinus		T	0256	41.8741	$2,766.16		$553.24
31032	Explore sinus, remove polyps		T	0256	41.8741	$2,766.16		$553.24
31040	Exploration behind upper jaw		T	0254	24.7557	$1,635.34		$327.07
31050	Exploration, sphenoid sinus		T	0256	41.8741	$2,766.16		$553.24
31051	Sphenoid sinus surgery		T	0256	41.8741	$2,766.16		$553.24
31070	Exploration of frontal sinus		T	0254	24.7557	$1,635.34		$327.07
31075	Exploration of frontal sinus		T	0256	41.8741	$2,766.16		$553.24
31080	Removal of frontal sinus		T	0256	41.8741	$2,766.16		$553.24
31081	Removal of frontal sinus		T	0256	41.8741	$2,766.16		$553.24
31084	Removal of frontal sinus		T	0256	41.8741	$2,766.16		$553.24
31085	Removal of frontal sinus		T	0256	41.8741	$2,766.16		$553.24
31086	Removal of frontal sinus		T	0256	41.8741	$2,766.16		$553.24
31087	Removal of frontal sinus		T	0256	41.8741	$2,766.16		$553.24
31090	Exploration of sinuses		T	0256	41.8741	$2,766.16		$553.24
3110F	Pres/absn hmrhg/lesion doc'd		M					
3111F	Ct/mri brain done w/in 24hrs		M					
3112F	Ct/mri brain done gt24 hrs		M					
31200	Removal of ethmoid sinus		T	0256	41.8741	$2,766.16		$553.24
31201	Removal of ethmoid sinus		T	0256	41.8741	$2,766.16		$553.24
31205	Removal of ethmoid sinus		T	0256	41.8741	$2,766.16		$553.24
3120F	12-lead ecg performed		M					
31225	Removal of upper jaw		C					
31230	Removal of upper jaw		C					
31231	Nasal endoscopy, dx		T	0072	1.8079	$119.43		$23.89
31233	Nasal/sinus endoscopy, dx		T	0072	1.8079	$119.43		$23.89
31235	Nasal/sinus endoscopy, dx		T	0074	18.4160	$1,216.54	$292.25	$243.31
31237	Nasal/sinus endoscopy, surg		T	0074	18.4160	$1,216.54	$292.25	$243.31
31238	Nasal/sinus endoscopy, surg		T	0074	18.4160	$1,216.54	$292.25	$243.31
31239	Nasal/sinus endoscopy, surg		T	0075	23.4045	$1,546.08	$445.92	$309.22
31240	Nasal/sinus endoscopy, surg		T	0074	18.4160	$1,216.54	$292.25	$243.31
31254	Revision of ethmoid sinus		T	0075	23.4045	$1,546.08	$445.92	$309.22
31255	Removal of ethmoid sinus		T	0075	23.4045	$1,546.08	$445.92	$309.22
31256	Exploration maxillary sinus		T	0075	23.4045	$1,546.08	$445.92	$309.22
31267	Endoscopy, maxillary sinus		T	0075	23.4045	$1,546.08	$445.92	$309.22

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
31276	Sinus endoscopy, surgical		T	0075	23.4045	$1,546.08	$445.92	$309.22
31287	Nasal/sinus endoscopy, surg		T	0075	23.4045	$1,546.08	$445.92	$309.22
31288	Nasal/sinus endoscopy, surg		T	0075	23.4045	$1,546.08	$445.92	$309.22
31290	Nasal/sinus endoscopy, surg		C					
31291	Nasal/sinus endoscopy, surg		C					
31292	Nasal/sinus endoscopy, surg		T	0075	23.4045	$1,546.08	$445.92	$309.22
31293	Nasal/sinus endoscopy, surg		T	0075	23.4045	$1,546.08	$445.92	$309.22
31294	Nasal/sinus endoscopy, surg		T	0075	23.4045	$1,546.08	$445.92	$309.22
31299	Sinus surgery procedure	CH	T	0250	1.1110	$73.39	$25.10	$14.68
31300	Removal of larynx lesion		T	0254	24.7557	$1,635.34		$327.07
3130F	Upper gi endoscopy performed		M					
31320	Diagnostic incision, larynx		T	0256	41.8741	$2,766.16		$553.24
3132F	Doc ref. upper gi endoscopy		M					
31360	Removal of larynx		C					
31365	Removal of larynx		C					
31367	Partial removal of larynx		C					
31368	Partial removal of larynx		C					
31370	Partial removal of larynx		C					
31375	Partial removal of larynx		C					
31380	Partial removal of larynx		C					
31382	Partial removal of larynx		C					
31390	Removal of larynx & pharynx		C					
31395	Reconstruct larynx & pharynx		C					
31400	Revision of larynx		T	0256	41.8741	$2,766.16		$553.24
3140F	Upper gi endo shows barrtt's		M					
3141F	Upper gi endo not barrtt's		M					
31420	Removal of epiglottis		T	0256	41.8741	$2,766.16		$553.24
3142F	Barium swallow test ordered		M					
31500	Insert emergency airway		S	0094	2.4181	$159.74	$46.29	$31.95
31502	Change of windpipe airway		S	0078	1.3903	$91.84		$18.37
31505	Diagnostic laryngoscopy		T	0071	0.8215	$54.27	$11.20	$10.86
3150F	Forceps esoph biopsy done		M					
31510	Laryngoscopy with biopsy		T	0074	18.4160	$1,216.54	$292.25	$243.31
31511	Remove foreign body, larynx		T	0072	1.8079	$119.43		$23.89
31512	Removal of larynx lesion		T	0074	18.4160	$1,216.54	$292.25	$243.31
31513	Injection into vocal cord		T	0072	1.8079	$119.43		$23.89
31515	Laryngoscopy for aspiration		T	0074	18.4160	$1,216.54	$292.25	$243.31
31520	Dx laryngoscopy, newborn		T	0072	1.8079	$119.43		$23.89
31525	Dx laryngoscopy excl nb		T	0074	18.4160	$1,216.54	$292.25	$243.31
31526	Dx laryngoscopy w/oper scope		T	0075	23.4045	$1,546.08	$445.92	$309.22
31527	Laryngoscopy for treatment		T	0075	23.4045	$1,546.08	$445.92	$309.22
31528	Laryngoscopy and dilation		T	0074	18.4160	$1,216.54	$292.25	$243.31

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
31529	Laryngoscopy and dilation		T	0074	18.4160	$1,216.54	$292.25	$243.31
31530	Laryngoscopy w/fb removal		T	0075	23.4045	$1,546.08	$445.92	$309.22
31531	Laryngoscopy w/fb & op scope		T	0075	23.4045	$1,546.08	$445.92	$309.22
31535	Laryngoscopy w/biopsy		T	0075	23.4045	$1,546.08	$445.92	$309.22
31536	Laryngoscopy w/bx & op scope		T	0075	23.4045	$1,546.08	$445.92	$309.22
31540	Laryngoscopy w/exc of tumor		T	0075	23.4045	$1,546.08	$445.92	$309.22
31541	Larynscop w/tumr exc + scope		T	0075	23.4045	$1,546.08	$445.92	$309.22
31545	Remove vc lesion w/scope		T	0075	23.4045	$1,546.08	$445.92	$309.22
31546	Remove vc lesion scope/graft		T	0075	23.4045	$1,546.08	$445.92	$309.22
3155F	Cytogen test marrow b/4 tx		M					
31560	Laryngoscop w/arytenoidectom		T	0075	23.4045	$1,546.08	$445.92	$309.22
31561	Larynscop, remve cart + scop		T	0075	23.4045	$1,546.08	$445.92	$309.22
31570	Laryngoscope w/vc inj		T	0074	18.4160	$1,216.54	$292.25	$243.31
31571	Laryngoscop w/vc inj + scope		T	0075	23.4045	$1,546.08	$445.92	$309.22
31575	Diagnostic laryngoscopy		T	0072	1.8079	$119.43		$23.89
31576	Laryngoscopy with biopsy		T	0075	23.4045	$1,546.08	$445.92	$309.22
31577	Remove foreign body, larynx		T	0073	4.3850	$289.67	$69.15	$57.94
31578	Removal of larynx lesion		T	0075	23.4045	$1,546.08	$445.92	$309.22
31579	Diagnostic laryngoscopy		T	0073	4.3850	$289.67	$69.15	$57.94
31580	Revision of larynx		T	0256	41.8741	$2,766.16		$553.24
31582	Revision of larynx		T	0256	41.8741	$2,766.16		$553.24
31584	Treat larynx fracture		C					
31587	Revision of larynx		C					
31588	Revision of larynx		T	0256	41.8741	$2,766.16		$553.24
31590	Reinnervate larynx		T	0256	41.8741	$2,766.16		$553.24
31595	Larynx nerve surgery		T	0256	41.8741	$2,766.16		$553.24
31599	Larynx surgery procedure	CH	T	0250	1.1110	$73.39	$25.10	$14.68
31600	Incision of windpipe		T	0254	24.7557	$1,635.34		$327.07
31601	Incision of windpipe		T	0254	24.7557	$1,635.34		$327.07
31603	Incision of windpipe		T	0252	7.5330	$497.62	$109.16	$99.53
31605	Incision of windpipe		T	0252	7.5330	$497.62	$109.16	$99.53
3160F	Doc fe+ stores b/4 epo thx		M					
31610	Incision of windpipe		T	0254	24.7557	$1,635.34		$327.07
31611	Surgery/speech prosthesis		T	0254	24.7557	$1,635.34		$327.07
31612	Puncture/clear windpipe		T	0254	24.7557	$1,635.34		$327.07
31613	Repair windpipe opening		T	0254	24.7557	$1,635.34		$327.07
31614	Repair windpipe opening		T	0256	41.8741	$2,766.16		$553.24
31615	Visualization of windpipe	CH	T	0252	7.5330	$497.62	$109.16	$99.53
31620	Endobronchial us add-on		N					
31622	Dx bronchoscope/wash		T	0076	10.1993	$673.76	$189.82	$134.76
31623	Dx bronchoscope/brush		T	0076	10.1993	$673.76	$189.82	$134.76
31624	Dx bronchoscope/lavage		T	0076	10.1993	$673.76	$189.82	$134.76

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
31625	Bronchoscopy w/biopsy(s)		T	0076	10.1993	$673.76	$189.82	$134.76
31628	Bronchoscopy/lung bx, each		T	0076	10.1993	$673.76	$189.82	$134.76
31629	Bronchoscopy/needle bx, each		T	0076	10.1993	$673.76	$189.82	$134.76
31630	Bronchoscopy dilate/fx repr		T	0415	25.1663	$1,662.46	$459.92	$332.50
31631	Bronchoscopy, dilate w/stent		T	0415	25.1663	$1,662.46	$459.92	$332.50
31632	Bronchoscopy/lung bx, add'l		T	0076	10.1993	$673.76	$189.82	$134.76
31633	Bronchoscopy/needle bx add'l		T	0076	10.1993	$673.76	$189.82	$134.76
31635	Bronchoscopy w/fb removal		T	0076	10.1993	$673.76	$189.82	$134.76
31636	Bronchoscopy, bronch stents		T	0415	25.1663	$1,662.46	$459.92	$332.50
31637	Bronchoscopy, stent add-on		T	0076	10.1993	$673.76	$189.82	$134.76
31638	Bronchoscopy, revise stent		T	0415	25.1663	$1,662.46	$459.92	$332.50
31640	Bronchoscopy w/tumor excise		T	0415	25.1663	$1,662.46	$459.92	$332.50
31641	Bronchoscopy, treat blockage		T	0415	25.1663	$1,662.46	$459.92	$332.50
31643	Diag bronchoscope/catheter		T	0076	10.1993	$673.76	$189.82	$134.76
31645	Bronchoscopy, clear airways		T	0076	10.1993	$673.76	$189.82	$134.76
31646	Bronchoscopy, reclear airway		T	0076	10.1993	$673.76	$189.82	$134.76
31656	Bronchoscopy, inj for x-ray		T	0076	10.1993	$673.76	$189.82	$134.76
3170F	Flow cyto done b/4 tx		M					
31715	Injection for bronchus x-ray		N					
31717	Bronchial brush biopsy		T	0073	4.3850	$289.67	$69.15	$57.94
31720	Clearance of airways		S	0077	0.4024	$26.58	$7.74	$5.32
31725	Clearance of airways		C					
31730	Intro, windpipe wire/tube		T	0073	4.3850	$289.67	$69.15	$57.94
31750	Repair of windpipe		T	0256	41.8741	$2,766.16		$553.24
31755	Repair of windpipe		T	0256	41.8741	$2,766.16		$553.24
31760	Repair of windpipe		C					
31766	Reconstruction of windpipe		C					
31770	Repair/graft of bronchus		C					
31775	Reconstruct bronchus		C					
31780	Reconstruct windpipe		C					
31781	Reconstruct windpipe		C					
31785	Remove windpipe lesion		T	0254	24.7557	$1,635.34		$327.07
31786	Remove windpipe lesion		C					
31800	Repair of windpipe injury		C					
31805	Repair of windpipe injury		C					
31820	Closure of windpipe lesion		T	0253	17.2402	$1,138.87	$282.29	$227.78
31825	Repair of windpipe defect		T	0254	24.7557	$1,635.34		$327.07
31830	Revise windpipe scar		T	0254	24.7557	$1,635.34		$327.07
31899	Airways surgical procedure		T	0076	10.1993	$673.76	$189.82	$134.76
3200F	Barium swallow test not req		M					
32035	Exploration of chest		C					
32036	Exploration of chest		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
32095	Biopsy through chest wall		C					
32100	Exploration/biopsy of chest		C					
3210F	Grp a strep test performed		M					
32110	Explore/repair chest		C					
32120	Re-exploration of chest		C					
32124	Explore chest free adhesions		C					
32140	Removal of lung lesion(s)		C					
32141	Remove/treat lung lesions		C					
32150	Removal of lung lesion(s)		C					
32151	Remove lung foreign body		C					
3215F	Pt immunity to hep a docd		M					
32160	Open chest heart massage		C					
3216F	Pt immunity to hep b docd		M					
3218F	RNA tstng hep C doc'd-done		M					
32200	Drain, open, lung lesion		C					
32201	Drain, percut, lung lesion		T	0070	5.3343	$352.38		$70.48
3220F	Hep c quant rna tstng docd		M					
32215	Treat chest lining		C					
32220	Release of lung		C					
32225	Partial release of lung		C					
3230F	Note hring tst w/in 6 mon		M					
32310	Removal of chest lining		C					
32320	Free/remove chest lining		C					
32400	Needle biopsy chest lining		T	0685	9.5785	$632.75		$126.55
32402	Open biopsy chest lining		C					
32405	Biopsy, lung or mediastinum		T	0685	9.5785	$632.75		$126.55
32420	Puncture/clear lung		T	0070	5.3343	$352.38		$70.48
32421	Thoracentesis for aspiration		T	0070	5.3343	$352.38		$70.48
32422	Thoracentesis w/tube insert		T	0070	5.3343	$352.38		$70.48
32440	Removal of lung		C					
32442	Sleeve pneumonectomy		C					
32445	Removal of lung		C					
32480	Partial removal of lung		C					
32482	Bilobectomy		C					
32484	Segmentectomy		C					
32486	Sleeve lobectomy		C					
32488	Completion pneumonectomy		C					
32491	Lung volume reduction		C					
32500	Partial removal of lung		C					
32501	Repair bronchus add-on		C					
32503	Resect apical lung tumor		C					
32504	Resect apical lung tum/chest		C					

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
3250F	Nonprim loc anat bx site tum	NI	M					
32540	Removal of lung lesion		C					
32550	Insert pleural cath		T	0652	29.8670	$1,972.98		$394.60
32551	Insertion of chest tube		T	0070	5.3343	$352.38		$70.48
32560	Treat lung lining chemically		T	0070	5.3343	$352.38		$70.48
32601	Thoracoscopy, diagnostic		T	0069	33.5041	$2,213.25	$591.64	$442.65
32602	Thoracoscopy, diagnostic		T	0069	33.5041	$2,213.25	$591.64	$442.65
32603	Thoracoscopy, diagnostic		T	0069	33.5041	$2,213.25	$591.64	$442.65
32604	Thoracoscopy, diagnostic		T	0069	33.5041	$2,213.25	$591.64	$442.65
32605	Thoracoscopy, diagnostic		T	0069	33.5041	$2,213.25	$591.64	$442.65
32606	Thoracoscopy, diagnostic		T	0069	33.5041	$2,213.25	$591.64	$442.65
3260F	Pt cat/pn cat/hist grd docd		M					
32650	Thoracoscopy, surgical		C					
32651	Thoracoscopy, surgical		C					
32652	Thoracoscopy, surgical		C					
32653	Thoracoscopy, surgical		C					
32654	Thoracoscopy, surgical		C					
32655	Thoracoscopy, surgical		C					
32656	Thoracoscopy, surgical		C					
32657	Thoracoscopy, surgical		C					
32658	Thoracoscopy, surgical		C					
32659	Thoracoscopy, surgical		C					
3265F	Rna tstng hepc vir ord/docd		M					
32660	Thoracoscopy, surgical		C					
32661	Thoracoscopy, surgical		C					
32662	Thoracoscopy, surgical		C					
32663	Thoracoscopy, surgical		C					
32664	Thoracoscopy, surgical		C					
32665	Thoracoscopy, surgical		C					
3266F	Hepc gn tstng docd b/4txmnt		M					
3268F	Psa/t/glsc docd b/4 txmnt		M					
3269F	Bone scn b/4 txmnt/aftr Dx		M					
3270F	No bone scn b/4 txmnt/aftrDx		M					
3271F	Low risk prostate cancer		M					
3272F	Med risk prostate cancer		M					
3273F	High risk prostate cancer		M					
3274F	Prost Cncr rsk not lw/md/hgh		M					
3278F	Serum lvls CA/iPTH/lpd ord		M					
3279F	Hgb lvl >/= 13 g/dl		M					
32800	Repair lung hernia		C					
3280F	Hgb lvl 11-12.9 g/dL		M					
32810	Close chest after drainage		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
32815	Close bronchial fistula		C					
3281F	Hgb lvl <11 g/dl		M					
32820	Reconstruct injured chest		C					
3284F	IOP down >15% of pre-svc lvl		M					
32850	Donor pneumonectomy		C					
32851	Lung transplant, single		C					
32852	Lung transplant with bypass		C					
32853	Lung transplant, double		C					
32854	Lung transplant with bypass		C					
32855	Prepare donor lung, single		C					
32856	Prepare donor lung, double		C					
3285F	IOP down <15% of pre-svc lvl		M					
3288F	Fall risk assessment doc'd		M					
32900	Removal of rib(s)		C					
32905	Revise & repair chest wall		C					
32906	Revise & repair chest wall		C					
3290F	Pt=D(Rh)- and unsensitized		M					
3291F	Pt=d(rh)+ or sensitized		M					
3292F	Hiv tstng asked/docd/revwd		M					
32940	Revision of lung		C					
32960	Therapeutic pneumothorax		T	0070	5.3343	$352.38		$70.48
32997	Total lung lavage		C					
32998	Perq rf ablate tx, pul tumor		T	0423	46.5013	$3,071.83		$614.37
32999	Chest surgery procedure		T	0070	5.3343	$352.38		$70.48
3300F	AJCC stage docd b/4 thxpy		M					
33010	Drainage of heart sac		T	0070	5.3343	$352.38		$70.48
33011	Repeat drainage of heart sac		T	0070	5.3343	$352.38		$70.48
33015	Incision of heart sac		C					
3301F	Cancer stage docd metast		M					
33020	Incision of heart sac		C					
33025	Incision of heart sac		C					
3302F	AJCC stage 0 doc'd	CH	D					
33030	Partial removal of heart sac		C					
33031	Partial removal of heart sac		C					
3303F	Ajcc stage ia docd	CH	D					
3304F	Ajcc stage ib docd	CH	D					
33050	Removal of heart sac lesion		C					
3305F	Ajcc stage ic docd	CH	D					
3306F	Ajcc stage iia docd	CH	D					
3307F	Ajcc stage iib docd	CH	D					
3308F	Ajcc stage iic docd	CH	D					
3309F	Ajcc stage iiia docd	CH	D					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
3310F	Ajcc stage iiib docd	CH	D					
3311F	Ajcc stage iiic docd	CH	D					
33120	Removal of heart lesion		C					
3312F	Ajcc stage iva docd	CH	D					
33130	Removal of heart lesion		C					
3313F	AJCC stage IVB doc'd	CH	D					
33140	Heart revascularize (tmr)		C					
33141	Heart tmr w/other procedure		C					
3314F	AJCC stage IVC doc'd	CH	D					
3315F	Er+ or pr+ breast cancer		M					
3316F	ER- or PR- breast cancer		M					
3317F	Path rpt malig cancer docd		M					
3318F	Path rpt malig cancer docd		M					
3319F	X-ray/ct/ultrsnd et al ord		M					
33202	Insert epicard eltrd, open		C					
33203	Insert epicard eltrd, endo		C					
33206	Insertion of heart pacemaker		T	0089	117.7443	$7,778.07	$1,682.28	$1,555.62
33207	Insertion of heart pacemaker		T	0089	117.7443	$7,778.07	$1,682.28	$1,555.62
33208	Insertion of heart pacemaker		T	0655	143.9957	$9,512.21		$1,902.45
3320F	No xray/ct/ et al ordd		M					
33210	Insertion of heart electrode		T	0106	50.4825	$3,334.82		$666.97
33211	Insertion of heart electrode		T	0106	50.4825	$3,334.82		$666.97
33212	Insertion of pulse generator		T	0090	96.2978	$6,361.34	$1,597.43	$1,272.27
33213	Insertion of pulse generator		T	0654	108.9884	$7,199.66		$1,439.94
33214	Upgrade of pacemaker system		T	0655	143.9957	$9,512.21		$1,902.45
33215	Reposition pacing-defib lead		T	0105	22.1272	$1,461.70		$292.34
33216	Insert lead pace-defib, one		T	0106	50.4825	$3,334.82		$666.97
33217	Insert lead pace-defib, dual		T	0106	50.4825	$3,334.82		$666.97
33218	Repair lead pace-defib, one		T	0105	22.1272	$1,461.70		$292.34
3321F	AJCC cncr 0/IA melan docd	NI	E					
33220	Repair lead pace-defib, dual		T	0105	22.1272	$1,461.70		$292.34
33222	Revise pocket, pacemaker		T	0136	15.9750	$1,055.29		$211.06
33223	Revise pocket, pacing-defib		T	0136	15.9750	$1,055.29		$211.06
33224	Insert pacing lead & connect		T	0418	138.4242	$9,144.16		$1,828.84
33225	L ventric pacing lead add-on		T	0418	138.4242	$9,144.16		$1,828.84
33226	Reposition l ventric lead		T	0105	22.1272	$1,461.70		$292.34
3322F	Melan >AJCC stage 0 or IA	NI	E					
33233	Removal of pacemaker system		T	0105	22.1272	$1,461.70		$292.34
33234	Removal of pacemaker system		T	0105	22.1272	$1,461.70		$292.34
33235	Removal pacemaker electrode		T	0105	22.1272	$1,461.70		$292.34
33236	Remove electrode/thoracotomy		C					
33237	Remove electrode/thoracotomy		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
33238	Remove electrode/thoracotomy		C					
33240	Insert pulse generator		T	0107	320.0151	$21,139.88		$4,227.98
33241	Remove pulse generator		T	0105	22.1272	$1,461.70		$292.34
33243	Remove eltrd/thoracotomy		C					
33244	Remove eltrd, transven		T	0105	22.1272	$1,461.70		$292.34
33249	Eltrd/insert pace-defib		T	0108	427.6576	$28,250.63		$5,650.13
33250	Ablate heart dysrhythm focus		C					
33251	Ablate heart dysrhythm focus		C					
33254	Ablate atria, lmtd		C					
33255	Ablate atria w/o bypass, ext		C					
33256	Ablate atria w/bypass, exten		C					
33257	Ablate atria, lmtd, add-on		C					
33258	Ablate atria, x10sv, add-on		C					
33259	Ablate atria w/bypass add-on		C					
3325F	Preop asses 4 cataract surg		M					
33261	Ablate heart dysrhythm focus		C					
33265	Ablate atria, lmtd, endo		C					
33266	Ablate atria, x10sv, endo		C					
33282	Implant pat-active ht record		S	0680	72.8054	$4,809.45		$961.89
33284	Remove pat-active ht record		T	0020	8.2566	$545.42		$109.09
33300	Repair of heart wound		C					
33305	Repair of heart wound		C					
3330F	Imaging study ordered (bkp)		M					
33310	Exploratory heart surgery		C					
33315	Exploratory heart surgery		C					
3331F	Bk imaging tst not ordered		M					
33320	Repair major blood vessel(s)		C					
33321	Repair major vessel		C					
33322	Repair major blood vessel(s)		C					
33330	Insert major vessel graft		C					
33332	Insert major vessel graft		C					
33335	Insert major vessel graft		C					
33400	Repair of aortic valve		C					
33401	Valvuloplasty, open		C					
33403	Valvuloplasty, w/cp bypass		C					
33404	Prepare heart-aorta conduit		C					
33405	Replacement of aortic valve		C					
33406	Replacement of aortic valve		C					
3340F	Mammo assess inc xray docd		M					
33410	Replacement of aortic valve		C					
33411	Replacement of aortic valve		C					
33412	Replacement of aortic valve		C					

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
33413	Replacement of aortic valve		C					
33414	Repair of aortic valve		C					
33415	Revision, subvalvular tissue		C					
33416	Revise ventricle muscle		C					
33417	Repair of aortic valve		C					
3341F	Mammo assess negative docd		M					
33420	Revision of mitral valve		C					
33422	Revision of mitral valve		C					
33425	Repair of mitral valve		C					
33426	Repair of mitral valve		C					
33427	Repair of mitral valve		C					
3342F	Mammo assess bengn docd		M					
33430	Replacement of mitral valve		C					
3343F	Mammo probably bengn docd		M					
3344F	Mammo assess susp, docd		M					
3345F	Mammo assess hghlymalig doc		M					
33460	Revision of tricuspid valve		C					
33463	Valvuloplasty, tricuspid		C					
33464	Valvuloplasty, tricuspid		C					
33465	Replace tricuspid valve		C					
33468	Revision of tricuspid valve		C					
33470	Revision of pulmonary valve		C					
33471	Valvotomy, pulmonary valve		C					
33472	Revision of pulmonary valve		C					
33474	Revision of pulmonary valve		C					
33475	Replacement, pulmonary valve		C					
33476	Revision of heart chamber		C					
33478	Revision of heart chamber		C					
33496	Repair, prosth valve clot		C					
33500	Repair heart vessel fistula		C					
33501	Repair heart vessel fistula		C					
33502	Coronary artery correction		C					
33503	Coronary artery graft		C					
33504	Coronary artery graft		C					
33505	Repair artery w/tunnel		C					
33506	Repair artery, translocation		C					
33507	Repair art, intramural		C					
33508	Endoscopic vein harvest		N					
3350F	Mammo bx proven malig docd		M					
33510	CABG, vein, single		C					
33511	CABG, vein, two		C					
33512	CABG, vein, three		C					

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
33513	CABG, vein, four		C					
33514	CABG, vein, five		C					
33516	Cabg, vein, six or more		C					
33517	CABG, artery-vein, single		C					
33518	CABG, artery-vein, two		C					
33519	CABG, artery-vein, three		C					
3351F	Neg scrn dep symp by deptool		E					
33521	CABG, artery-vein, four		C					
33522	CABG, artery-vein, five		C					
33523	Cabg, art-vein, six or more		C					
3352F	No sig dep symp by dep tool		E					
33530	Coronary artery, bypass/reop		C					
33533	CABG, arterial, single		C					
33534	CABG, arterial, two		C					
33535	CABG, arterial, three		C					
33536	Cabg, arterial, four or more		C					
3353F	Mild-mod dep symp by deptool		E					
33542	Removal of heart lesion		C					
33545	Repair of heart damage		C					
33548	Restore/remodel, ventricle		C					
3354F	Clin sig dep sym by dep tool		E					
33572	Open coronary endarterectomy		C					
33600	Closure of valve		C					
33602	Closure of valve		C					
33606	Anastomosis/artery-aorta		C					
33608	Repair anomaly w/conduit		C					
33610	Repair by enlargement		C					
33611	Repair double ventricle		C					
33612	Repair double ventricle		C					
33615	Repair, modified fontan		C					
33617	Repair single ventricle		C					
33619	Repair single ventricle		C					
33641	Repair heart septum defect		C					
33645	Revision of heart veins		C					
33647	Repair heart septum defects		C					
33660	Repair of heart defects		C					
33665	Repair of heart defects		C					
33670	Repair of heart chambers		C					
33675	Close mult vsd		C					
33676	Close mult vsd w/resection		C					
33677	Cl mult vsd w/rem pul band		C					
33681	Repair heart septum defect		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
33684	Repair heart septum defect		C					
33688	Repair heart septum defect		C					
33690	Reinforce pulmonary artery		C					
33692	Repair of heart defects		C					
33694	Repair of heart defects		C					
33697	Repair of heart defects		C					
33702	Repair of heart defects		C					
3370F	AJCC brst cncr stage 0 docd	NI	M					
33710	Repair of heart defects		C					
33720	Repair of heart defect		C					
33722	Repair of heart defect		C					
33724	Repair venous anomaly		C					
33726	Repair pul venous stenosis		C					
3372F	AJCC brst cncr stage 1 +docd	NI	M					
33730	Repair heart-vein defect(s)		C					
33732	Repair heart-vein defect		C					
33735	Revision of heart chamber		C					
33736	Revision of heart chamber		C					
33737	Revision of heart chamber		C					
3374F	AJCC brst cncr stage 1 +docd	NI	M					
33750	Major vessel shunt		C					
33755	Major vessel shunt		C					
33762	Major vessel shunt		C					
33764	Major vessel shunt & graft		C					
33766	Major vessel shunt		C					
33767	Major vessel shunt		C					
33768	Cavopulmonary shunting		C					
3376F	AJCC brstcncr stage 2 docd	NI	M					
33770	Repair great vessels defect		C					
33771	Repair great vessels defect		C					
33774	Repair great vessels defect		C					
33775	Repair great vessels defect		C					
33776	Repair great vessels defect		C					
33777	Repair great vessels defect		C					
33778	Repair great vessels defect		C					
33779	Repair great vessels defect		C					
33780	Repair great vessels defect		C					
33781	Repair great vessels defect		C					
33786	Repair arterial trunk		C					
33788	Revision of pulmonary artery		C					
3378F	AJCC brstcncr stage 3 docd	NI	M					
33800	Aortic suspension		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
33802	Repair vessel defect		C					
33803	Repair vessel defect		C					
3380F	AJCC brstcncr stage 4 docd	NI	M					
33813	Repair septal defect		C					
33814	Repair septal defect		C					
33820	Revise major vessel		C					
33822	Revise major vessel		C					
33824	Revise major vessel		C					
3382F	AJCC cln cncr stage 0 docd	NI	M					
33840	Remove aorta constriction		C					
33845	Remove aorta constriction		C					
3384F	AJCC cln cncr stage 1 docd	NI	M					
33851	Remove aorta constriction		C					
33852	Repair septal defect		C					
33853	Repair septal defect		C					
33860	Ascending aortic graft		C					
33861	Ascending aortic graft		C					
33863	Ascending aortic graft		C					
33864	Ascending aortic graft		C					
3386F	AJCC cln cncr stage 2 docd	NI	M					
33870	Transverse aortic arch graft		C					
33875	Thoracic aortic graft		C					
33877	Thoracoabdominal graft		C					
33880	Endovasc taa repr incl subcl		C					
33881	Endovasc taa repr w/o subcl		C					
33883	Insert endovasc prosth, taa		C					
33884	Endovasc prosth, taa, add-on		C					
33886	Endovasc prosth, delayed		C					
33889	Artery transpose/endovas taa		C					
3388F	AJCC cln cncr stage 3 docd	NI	M					
33891	Car-car bp grft/endovas taa		C					
3390F	AJCC cln cncr stage 4 docd	NI	M					
33910	Remove lung artery emboli		C					
33915	Remove lung artery emboli		C					
33916	Surgery of great vessel		C					
33917	Repair pulmonary artery		C					
33920	Repair pulmonary atresia		C					
33922	Transect pulmonary artery		C					
33924	Remove pulmonary shunt		C					
33925	Rpr pul art unifocal w/o cpb		C					
33926	Repr pul art, unifocal w/cpb		C					
33930	Removal of donor heart/lung		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
33933	Prepare donor heart/lung		C					
33935	Transplantation, heart/lung		C					
33940	Removal of donor heart		C					
33944	Prepare donor heart		C					
33945	Transplantation of heart		C					
33960	External circulation assist		C					
33961	External circulation assist		C					
33967	Insert ia percut device		C					
33968	Remove aortic assist device		C					
33970	Aortic circulation assist		C					
33971	Aortic circulation assist		C					
33973	Insert balloon device		C					
33974	Remove intra-aortic balloon		C					
33975	Implant ventricular device		C					
33976	Implant ventricular device		C					
33977	Remove ventricular device		C					
33978	Remove ventricular device		C					
33979	Insert intracorporeal device		C					
33980	Remove intracorporeal device		C					
33999	Cardiac surgery procedure		T	0070	5.3343	$352.38		$70.48
34001	Removal of artery clot		C					
34051	Removal of artery clot		C					
34101	Removal of artery clot		T	0088	40.3117	$2,662.95	$655.22	$532.59
34111	Removal of arm artery clot		T	0088	40.3117	$2,662.95	$655.22	$532.59
34151	Removal of artery clot		C					
34201	Removal of artery clot		T	0088	40.3117	$2,662.95	$655.22	$532.59
34203	Removal of leg artery clot		T	0088	40.3117	$2,662.95	$655.22	$532.59
34401	Removal of vein clot		C					
34421	Removal of vein clot		T	0088	40.3117	$2,662.95	$655.22	$532.59
34451	Removal of vein clot		C					
34471	Removal of vein clot		T	0088	40.3117	$2,662.95	$655.22	$532.59
34490	Removal of vein clot		T	0088	40.3117	$2,662.95	$655.22	$532.59
34501	Repair valve, femoral vein		T	0088	40.3117	$2,662.95	$655.22	$532.59
34502	Reconstruct vena cava		C					
3450F	Dyspnea scrnd, no-mild dysp	NI	E					
34510	Transposition of vein valve		T	0088	40.3117	$2,662.95	$655.22	$532.59
3451F	Dyspnea scrnd mod-high dysp	NI	E					
34520	Cross-over vein graft		T	0088	40.3117	$2,662.95	$655.22	$532.59
3452F	Dyspnea not screened	NI	E					
34530	Leg vein fusion		T	0088	40.3117	$2,662.95	$655.22	$532.59
3455F	TB scrng done-interpd 6mon	NI	E					
3470F	RA disease activity, low	NI	E					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
3471F	RA disease activity, mod	NI	E					
3472F	RA disease activity, high	NI	E					
3475F	Disease progn RA poor docd	NI	E					
3476F	Disease progn RA good docd	NI	E					
34800	Endovas aaa repr w/sm tube		C					
34802	Endovas aaa repr w/2-p part		C					
34803	Endovas aaa repr w/3-p part		C					
34804	Endovas aaa repr w/1-p part		C					
34805	Endovas aaa repr w/long tube		C					
34806	Aneurysm press sensor add-on		C					
34808	Endovas iliac a device addon		C					
34812	Xpose for endoprosth, femorl		C					
34813	Femoral endovas graft add-on		C					
34820	Xpose for endoprosth, iliac		C					
34825	Endovasc extend prosth, init		C					
34826	Endovasc exten prosth, add'l		C					
34830	Open aortic tube prosth repr		C					
34831	Open aortoiliac prosth repr		C					
34832	Open aortofemor prosth repr		C					
34833	Xpose for endoprosth, iliac		C					
34834	Xpose, endoprosth, brachial		C					
34900	Endovasc iliac repr w/graft		C					
3490F	History - AIDS-defining cond	NI	M					
3491F	HIV unsure baby of HIV+moms	NI	E					
3492F	History CD4+ cell count <350	NI	M					
3493F	No hist CD4+cell cnt<350	NI	M					
3494F	CD4+cell count <200cells/mm3	NI	M					
3495F	CD4+cell cnt 200-499 cells	NI	M					
3496F	CD4+ cell count >=500 cells	NI	M					
3497F	CD4+ cell percentage <15%	NI	E					
3498F	CD4+ cell percentage >=15%	NI	E					
35001	Repair defect of artery		C					
35002	Repair artery rupture, neck		C					
35005	Repair defect of artery		C					
3500F	CD4 +cell cnt/% docd as done	NI	M					
35011	Repair defect of artery		T	0653	46.8513	$3,094.95		$618.99
35013	Repair artery rupture, arm		C					
35021	Repair defect of artery		C					
35022	Repair artery rupture, chest		C					
3502F	HIV rna vrl ld <lmts quantif	NI	M					
3503F	HIV rna vrl ldnot<lmts quntf	NI	M					
35045	Repair defect of arm artery		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
35081	Repair defect of artery		C					
35082	Repair artery rupture, aorta		C					
35091	Repair defect of artery		C					
35092	Repair artery rupture, aorta		C					
35102	Repair defect of artery		C					
35103	Repair artery rupture, groin		C					
3510F	Doc tb scrng-rslts interpd	NI	E					
35111	Repair defect of artery		C					
35112	Repair artery rupture,spleen		C					
3511F	Chlmyd/gonrh tsts docd done	NI	E					
35121	Repair defect of artery		C					
35122	Repair artery rupture, belly		C					
3512F	Syph scrng docd as done	NI	E					
35131	Repair defect of artery		C					
35132	Repair artery rupture, groin		C					
3513F	Hep B scrng docd as done	NI	E					
35141	Repair defect of artery		C					
35142	Repair artery rupture, thigh		C					
3514F	Hep C scrng docd as done	NI	E					
35151	Repair defect of artery		C					
35152	Repair artery rupture, knee		C					
3515F	Pt has docd immun to hep C	NI	E					
35180	Repair blood vessel lesion		T	0093	29.0343	$1,917.98		$383.60
35182	Repair blood vessel lesion		C					
35184	Repair blood vessel lesion		T	0093	29.0343	$1,917.98		$383.60
35188	Repair blood vessel lesion		T	0088	40.3117	$2,662.95	$655.22	$532.59
35189	Repair blood vessel lesion		C					
35190	Repair blood vessel lesion		T	0093	29.0343	$1,917.98		$383.60
35201	Repair blood vessel lesion		T	0093	29.0343	$1,917.98		$383.60
35206	Repair blood vessel lesion		T	0093	29.0343	$1,917.98		$383.60
35207	Repair blood vessel lesion		T	0088	40.3117	$2,662.95	$655.22	$532.59
35211	Repair blood vessel lesion		C					
35216	Repair blood vessel lesion		C					
35221	Repair blood vessel lesion		C					
35226	Repair blood vessel lesion		T	0093	29.0343	$1,917.98		$383.60
35231	Repair blood vessel lesion		T	0093	29.0343	$1,917.98		$383.60
35236	Repair blood vessel lesion		T	0093	29.0343	$1,917.98		$383.60
35241	Repair blood vessel lesion		C					
35246	Repair blood vessel lesion		C					
35251	Repair blood vessel lesion		C					
35256	Repair blood vessel lesion		T	0093	29.0343	$1,917.98		$383.60
35261	Repair blood vessel lesion		T	0653	46.8513	$3,094.95		$618.99

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
35266	Repair blood vessel lesion		T	0653	46.8513	$3,094.95		$618.99
35271	Repair blood vessel lesion		C					
35276	Repair blood vessel lesion		C					
35281	Repair blood vessel lesion		C					
35286	Repair blood vessel lesion		T	0653	46.8513	$3,094.95		$618.99
35301	Rechanneling of artery		C					
35302	Rechanneling of artery		C					
35303	Rechanneling of artery		C					
35304	Rechanneling of artery		C					
35305	Rechanneling of artery		C					
35306	Rechanneling of artery		C					
35311	Rechanneling of artery		C					
35321	Rechanneling of artery		T	0093	29.0343	$1,917.98		$383.60
35331	Rechanneling of artery		C					
35341	Rechanneling of artery		C					
35351	Rechanneling of artery		C					
35355	Rechanneling of artery		C					
35361	Rechanneling of artery		C					
35363	Rechanneling of artery		C					
35371	Rechanneling of artery		C					
35372	Rechanneling of artery		C					
35390	Reoperation, carotid add-on		C					
35400	Angioscopy		C					
35450	Repair arterial blockage		C					
35452	Repair arterial blockage		C					
35454	Repair arterial blockage		C					
35456	Repair arterial blockage		C					
35458	Repair arterial blockage		T	0083	48.3584	$3,194.51		$638.91
35459	Repair arterial blockage		T	0083	48.3584	$3,194.51		$638.91
35460	Repair venous blockage		T	0083	48.3584	$3,194.51		$638.91
35470	Repair arterial blockage		T	0083	48.3584	$3,194.51		$638.91
35471	Repair arterial blockage		T	0083	48.3584	$3,194.51		$638.91
35472	Repair arterial blockage		T	0083	48.3584	$3,194.51		$638.91
35473	Repair arterial blockage		T	0083	48.3584	$3,194.51		$638.91
35474	Repair arterial blockage		T	0083	48.3584	$3,194.51		$638.91
35475	Repair arterial blockage		T	0083	48.3584	$3,194.51		$638.91
35476	Repair venous blockage		T	0083	48.3584	$3,194.51		$638.91
35480	Atherectomy, open		C					
35481	Atherectomy, open		C					
35482	Atherectomy, open		C					
35483	Atherectomy, open		C					
35484	Atherectomy, open		T	0082	90.2562	$5,962.23		$1,192.45

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
35485	Atherectomy, open		T	0082	90.2562	$5,962.23		$1,192.45
35490	Atherectomy, percutaneous		T	0082	90.2562	$5,962.23		$1,192.45
35491	Atherectomy, percutaneous		T	0082	90.2562	$5,962.23		$1,192.45
35492	Atherectomy, percutaneous		T	0082	90.2562	$5,962.23		$1,192.45
35493	Atherectomy, percutaneous		T	0082	90.2562	$5,962.23		$1,192.45
35494	Atherectomy, percutaneous		T	0082	90.2562	$5,962.23		$1,192.45
35495	Atherectomy, percutaneous		T	0082	90.2562	$5,962.23		$1,192.45
35500	Harvest vein for bypass		T	0103	15.7264	$1,038.87		$207.78
35501	Artery bypass graft		C					
35506	Artery bypass graft		C					
35508	Artery bypass graft		C					
35509	Artery bypass graft		C					
3550F	Low rsk thromboembolism	NI	E					
35510	Artery bypass graft		C					
35511	Artery bypass graft		C					
35512	Artery bypass graft		C					
35515	Artery bypass graft		C					
35516	Artery bypass graft		C					
35518	Artery bypass graft		C					
3551F	Intrmed rsk thromboembolism	NI	E					
35521	Artery bypass graft		C					
35522	Artery bypass graft		C					
35523	Artery bypass graft		C					
35525	Artery bypass graft		C					
35526	Artery bypass graft		C					
3552F	Hgh risk for thromboembolism	NI	E					
35531	Artery bypass graft		C					
35533	Artery bypass graft		C					
35535	Artery bypass graft	NI	C					
35536	Artery bypass graft		C					
35537	Artery bypass graft		C					
35538	Artery bypass graft		C					
35539	Artery bypass graft		C					
35540	Artery bypass graft		C					
35548	Artery bypass graft		C					
35549	Artery bypass graft		C					
35551	Artery bypass graft		C					
35556	Artery bypass graft		C					
35558	Artery bypass graft		C					
3555F	Pt inr measurement performed	NI	E					
35560	Artery bypass graft		C					
35563	Artery bypass graft		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
35565	Artery bypass graft		C					
35566	Artery bypass graft		C					
35570	Artery bypass graft	NI	C					
35571	Artery bypass graft		C					
35572	Harvest femoropopliteal vein		N					
35583	Vein bypass graft		C					
35585	Vein bypass graft		C					
35587	Vein bypass graft		C					
35600	Harvest art for cabg add-on		C					
35601	Artery bypass graft		C					
35606	Artery bypass graft		C					
35612	Artery bypass graft		C					
35616	Artery bypass graft		C					
35621	Artery bypass graft		C					
35623	Bypass graft, not vein		C					
35626	Artery bypass graft		C					
35631	Artery bypass graft		C					
35632	Artery bypass graft	NI	C					
35633	Artery bypass graft	NI	C					
35634	Artery bypass graft	NI	C					
35636	Artery bypass graft		C					
35637	Artery bypass graft		C					
35638	Artery bypass graft		C					
35642	Artery bypass graft		C					
35645	Artery bypass graft		C					
35646	Artery bypass graft		C					
35647	Artery bypass graft		C					
35650	Artery bypass graft		C					
35651	Artery bypass graft		C					
35654	Artery bypass graft		C					
35656	Artery bypass graft		C					
35661	Artery bypass graft		C					
35663	Artery bypass graft		C					
35665	Artery bypass graft		C					
35666	Artery bypass graft		C					
35671	Artery bypass graft		C					
35681	Composite bypass graft		C					
35682	Composite bypass graft		C					
35683	Composite bypass graft		C					
35685	Bypass graft patency/patch		T	0093	29.0343	$1,917.98		$383.60
35686	Bypass graft/av fist patency		T	0093	29.0343	$1,917.98		$383.60
35691	Arterial transposition		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
35693	Arterial transposition		C					
35694	Arterial transposition		C					
35695	Arterial transposition		C					
35697	Reimplant artery each		C					
35700	Reoperation, bypass graft		C					
35701	Exploration, carotid artery		C					
3570F	Rprt bone scint x-refw/x-ray	NI	E					
35721	Exploration, femoral artery		C					
3572F	Pt consid poss risk fx	NI	E					
3573F	Pt not consid poss risk fx	NI	E					
35741	Exploration popliteal artery		C					
35761	Exploration of artery/vein	CH	T	0093	29.0343	$1,917.98		$383.60
35800	Explore neck vessels		C					
35820	Explore chest vessels		C					
35840	Explore abdominal vessels		C					
35860	Explore limb vessels		T	0093	29.0343	$1,917.98		$383.60
35870	Repair vessel graft defect		C					
35875	Removal of clot in graft		T	0088	40.3117	$2,662.95	$655.22	$532.59
35876	Removal of clot in graft		T	0088	40.3117	$2,662.95	$655.22	$532.59
35879	Revise graft w/vein		T	0088	40.3117	$2,662.95	$655.22	$532.59
35881	Revise graft w/vein		T	0088	40.3117	$2,662.95	$655.22	$532.59
35883	Revise graft w/nonauto graft		T	0088	40.3117	$2,662.95	$655.22	$532.59
35884	Revise graft w/vein		T	0088	40.3117	$2,662.95	$655.22	$532.59
35901	Excision, graft, neck		C					
35903	Excision, graft, extremity	CH	T	0093	29.0343	$1,917.98		$383.60
35905	Excision, graft, thorax		C					
35907	Excision, graft, abdomen		C					
36000	Place needle in vein		N					
36002	Pseudoaneurysm injection trt		S	0267	2.3186	$153.16	$60.50	$30.64
36005	Injection ext venography		N					
36010	Place catheter in vein		N					
36011	Place catheter in vein		N					
36012	Place catheter in vein		N					
36013	Place catheter in artery		N					
36014	Place catheter in artery		N					
36015	Place catheter in artery		N					
36100	Establish access to artery		N					
36120	Establish access to artery		N					
36140	Establish access to artery		N					
36145	Artery to vein shunt		N					
36160	Establish access to aorta		N					
36200	Place catheter in aorta		N					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
36215	Place catheter in artery		N					
36216	Place catheter in artery		N					
36217	Place catheter in artery		N					
36218	Place catheter in artery		N					
36245	Place catheter in artery		N					
36246	Place catheter in artery		N					
36247	Place catheter in artery		N					
36248	Place catheter in artery		N					
36260	Insertion of infusion pump		T	0623	29.7476	$1,965.10		$393.02
36261	Revision of infusion pump		T	0105	22.1272	$1,461.70		$292.34
36262	Removal of infusion pump		T	0105	22.1272	$1,461.70		$292.34
36299	Vessel injection procedure		N					
36400	Bl draw < 3 yrs fem/jugular		N					
36405	Bl draw < 3 yrs scalp vein		N					
36406	Bl draw < 3 yrs other vein		N					
36410	Non-routine bl draw > 3 yrs		N					
36415	Routine venipuncture		A					
36416	Capillary blood draw		N					
36420	Vein access cutdown < 1 yr	CH	X	0035	0.2186	$14.44		$2.89
36425	Vein access cutdown > 1 yr	CH	X	0035	0.2186	$14.44		$2.89
36430	Blood transfusion service		S	0110	3.3544	$221.59		$44.32
36440	Bl push transfuse, 2 yr or <		S	0110	3.3544	$221.59		$44.32
36450	Bl exchange/transfuse, nb		S	0110	3.3544	$221.59		$44.32
36455	Bl exchange/transfuse non-nb		S	0110	3.3544	$221.59		$44.32
36460	Transfusion service, fetal		S	0110	3.3544	$221.59		$44.32
36468	Injection(s), spider veins		T	0013	0.8281	$54.70		$10.94
36469	Injection(s), spider veins		T	0013	0.8281	$54.70		$10.94
36470	Injection therapy of vein		T	0013	0.8281	$54.70		$10.94
36471	Injection therapy of veins		T	0013	0.8281	$54.70		$10.94
36475	Endovenous rf, 1st vein		T	0091	43.7923	$2,892.88		$578.58
36476	Endovenous rf, vein add-on		T	0092	27.3614	$1,807.47		$361.50
36478	Endovenous laser, 1st vein		T	0092	27.3614	$1,807.47		$361.50
36479	Endovenous laser vein addon		T	0092	27.3614	$1,807.47		$361.50
36481	Insertion of catheter, vein		N					
36500	Insertion of catheter, vein		N					
36510	Insertion of catheter, vein		N					
36511	Apheresis wbc		S	0111	11.5004	$759.70	$198.40	$151.94
36512	Apheresis rbc		S	0111	11.5004	$759.70	$198.40	$151.94
36513	Apheresis platelets		S	0111	11.5004	$759.70	$198.40	$151.94
36514	Apheresis plasma		S	0111	11.5004	$759.70	$198.40	$151.94
36515	Apheresis, adsorp/reinfuse		S	0112	30.7865	$2,033.73	$433.29	$406.75
36516	Apheresis, selective		S	0112	30.7865	$2,033.73	$433.29	$406.75

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
36522	Photopheresis		S	0112	30.7865	$2,033.73	$433.29	$406.75
36555	Insert non-tunnel cv cath		T	0621	11.0653	$730.96		$146.20
36556	Insert non-tunnel cv cath		T	0621	11.0653	$730.96		$146.20
36557	Insert tunneled cv cath		T	0622	24.9153	$1,645.88		$329.18
36558	Insert tunneled cv cath		T	0622	24.9153	$1,645.88		$329.18
36560	Insert tunneled cv cath		T	0623	29.7476	$1,965.10		$393.02
36561	Insert tunneled cv cath		T	0623	29.7476	$1,965.10		$393.02
36563	Insert tunneled cv cath		T	0623	29.7476	$1,965.10		$393.02
36565	Insert tunneled cv cath		T	0623	29.7476	$1,965.10		$393.02
36566	Insert tunneled cv cath	CH	T	0623	29.7476	$1,965.10		$393.02
36568	Insert picc cath		T	0621	11.0653	$730.96		$146.20
36569	Insert picc cath		T	0621	11.0653	$730.96		$146.20
36570	Insert picvad cath		T	0622	24.9153	$1,645.88		$329.18
36571	Insert picvad cath		T	0622	24.9153	$1,645.88		$329.18
36575	Repair tunneled cv cath	CH	T	0121	4.5958	$303.59		$60.72
36576	Repair tunneled cv cath		T	0621	11.0653	$730.96		$146.20
36578	Replace tunneled cv cath		T	0622	24.9153	$1,645.88		$329.18
36580	Replace cvad cath		T	0621	11.0653	$730.96		$146.20
36581	Replace tunneled cv cath		T	0622	24.9153	$1,645.88		$329.18
36582	Replace tunneled cv cath		T	0623	29.7476	$1,965.10		$393.02
36583	Replace tunneled cv cath		T	0623	29.7476	$1,965.10		$393.02
36584	Replace picc cath		T	0621	11.0653	$730.96		$146.20
36585	Replace picvad cath		T	0622	24.9153	$1,645.88		$329.18
36589	Removal tunneled cv cath	CH	T	0121	4.5958	$303.59		$60.72
36590	Removal tunneled cv cath		T	0621	11.0653	$730.96		$146.20
36591	Draw blood off venous device		Q1	0624	0.6043	$39.92	$12.65	$7.99
36592	Collect blood from picc	CH	Q1	0624	0.6043	$39.92	$12.65	$7.99
36593	Declot vascular device		T	0676	2.4525	$162.01		$32.41
36595	Mech remov tunneled cv cath		T	0622	24.9153	$1,645.88		$329.18
36596	Mech remov tunneled cv cath		T	0621	11.0653	$730.96		$146.20
36597	Reposition venous catheter		T	0621	11.0653	$730.96		$146.20
36598	Inj w/fluor, eval cv device		T	0676	2.4525	$162.01		$32.41
36600	Withdrawal of arterial blood		Q1	0035	0.2186	$14.44		$2.89
36620	Insertion catheter, artery		N					
36625	Insertion catheter, artery		N					
36640	Insertion catheter, artery		T	0623	29.7476	$1,965.10		$393.02
36660	Insertion catheter, artery		C					
36680	Insert needle, bone cavity		T	0002	1.4324	$94.62		$18.93
36800	Insertion of cannula		T	0115	32.9660	$2,177.70		$435.54
36810	Insertion of cannula		T	0115	32.9660	$2,177.70		$435.54
36815	Insertion of cannula		T	0115	32.9660	$2,177.70		$435.54
36818	Av fuse, uppr arm, cephalic		T	0088	40.3117	$2,662.95	$655.22	$532.59

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
36819	Av fuse, uppr arm, basilic		T	0088	40.3117	$2,662.95	$655.22	$532.59
36820	Av fusion/forearm vein		T	0088	40.3117	$2,662.95	$655.22	$532.59
36821	Av fusion direct any site		T	0088	40.3117	$2,662.95	$655.22	$532.59
36822	Insertion of cannula(s)		C					
36823	Insertion of cannula(s)		C					
36825	Artery-vein autograft		T	0088	40.3117	$2,662.95	$655.22	$532.59
36830	Artery-vein nonautograft		T	0088	40.3117	$2,662.95	$655.22	$532.59
36831	Open thrombect av fistula		T	0088	40.3117	$2,662.95	$655.22	$532.59
36832	Av fistula revision, open		T	0088	40.3117	$2,662.95	$655.22	$532.59
36833	Av fistula revision		T	0088	40.3117	$2,662.95	$655.22	$532.59
36834	Repair A-V aneurysm		T	0088	40.3117	$2,662.95	$655.22	$532.59
36835	Artery to vein shunt		T	0115	32.9660	$2,177.70		$435.54
36838	Dist revas ligation, hemo		T	0088	40.3117	$2,662.95	$655.22	$532.59
36860	External cannula declotting		T	0676	2.4525	$162.01		$32.41
36861	Cannula declotting		T	0115	32.9660	$2,177.70		$435.54
36870	Percut thrombect av fistula		T	0653	46.8513	$3,094.95		$618.99
37140	Revision of circulation		C					
37145	Revision of circulation		C					
37160	Revision of circulation		C					
37180	Revision of circulation		C					
37181	Splice spleen/kidney veins		C					
37182	Insert hepatic shunt (tips)		C					
37183	Remove hepatic shunt (tips)		T	0229	92.2507	$6,093.99		$1,218.80
37184	Prim art mech thrombectomy		T	0088	40.3117	$2,662.95	$655.22	$532.59
37185	Prim art m-thrombect add-on		T	0088	40.3117	$2,662.95	$655.22	$532.59
37186	Sec art m-thrombect add-on		T	0088	40.3117	$2,662.95	$655.22	$532.59
37187	Venous mech thrombectomy		T	0088	40.3117	$2,662.95	$655.22	$532.59
37188	Venous m-thrombectomy add-on		T	0088	40.3117	$2,662.95	$655.22	$532.59
37195	Thrombolytic therapy, stroke		T	0676	2.4525	$162.01		$32.41
37200	Transcatheter biopsy		T	0623	29.7476	$1,965.10		$393.02
37201	Transcatheter therapy infuse		T	0103	15.7264	$1,038.87		$207.78
37202	Transcatheter therapy infuse		T	0103	15.7264	$1,038.87		$207.78
37203	Transcatheter retrieval		T	0623	29.7476	$1,965.10		$393.02
37204	Transcatheter occlusion		T	0082	90.2562	$5,962.23		$1,192.45
37205	Transcath iv stent, percut		T	0229	92.2507	$6,093.99		$1,218.80
37206	Transcath iv stent/perc addl		T	0229	92.2507	$6,093.99		$1,218.80
37207	Transcath iv stent, open		T	0229	92.2507	$6,093.99		$1,218.80
37208	Transcath iv stent/open addl		T	0229	92.2507	$6,093.99		$1,218.80
37209	Change iv cath at thromb tx		T	0623	29.7476	$1,965.10		$393.02
37210	Embolization uterine fibroid		T	0229	92.2507	$6,093.99		$1,218.80
37215	Transcath stent, cca w/eps		C					
37216	Transcath stent, cca w/o eps		E					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
37250	Iv us first vessel add-on		N					
37251	Iv us each add vessel add-on		N					
37500	Endoscopy ligate perf veins		T	0091	43.7923	$2,892.88		$578.58
37501	Vascular endoscopy procedure		T	0092	27.3614	$1,807.47		$361.50
37565	Ligation of neck vein		T	0093	29.0343	$1,917.98		$383.60
37600	Ligation of neck artery		T	0093	29.0343	$1,917.98		$383.60
37605	Ligation of neck artery		T	0091	43.7923	$2,892.88		$578.58
37606	Ligation of neck artery		T	0092	27.3614	$1,807.47		$361.50
37607	Ligation of a-v fistula		T	0092	27.3614	$1,807.47		$361.50
37609	Temporal artery procedure		T	0021	15.8974	$1,050.17	$219.48	$210.04
37615	Ligation of neck artery		T	0092	27.3614	$1,807.47		$361.50
37616	Ligation of chest artery		C					
37617	Ligation of abdomen artery		C					
37618	Ligation of extremity artery		C					
37620	Revision of major vein		T	0091	43.7923	$2,892.88		$578.58
37650	Revision of major vein		T	0092	27.3614	$1,807.47		$361.50
37660	Revision of major vein		C					
37700	Revise leg vein		T	0092	27.3614	$1,807.47		$361.50
37718	Ligate/strip short leg vein		T	0092	27.3614	$1,807.47		$361.50
37722	Ligate/strip long leg vein		T	0091	43.7923	$2,892.88		$578.58
37735	Removal of leg veins/lesion		T	0091	43.7923	$2,892.88		$578.58
37760	Ligation, leg veins, open		T	0092	27.3614	$1,807.47		$361.50
37765	Phleb veins - extrem - to 20		T	0092	27.3614	$1,807.47		$361.50
37766	Phleb veins - extrem 20+		T	0092	27.3614	$1,807.47		$361.50
37780	Revision of leg vein		T	0092	27.3614	$1,807.47		$361.50
37785	Ligate/divide/excise vein		T	0092	27.3614	$1,807.47		$361.50
37788	Revascularization, penis		C					
37790	Penile venous occlusion		T	0181	35.5639	$2,349.32	$621.82	$469.87
37799	Vascular surgery procedure		T	0103	15.7264	$1,038.87		$207.78
38100	Removal of spleen, total		C					
38101	Removal of spleen, partial		C					
38102	Removal of spleen, total		C					
38115	Repair of ruptured spleen		C					
38120	Laparoscopy, splenectomy		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
38129	Laparoscope proc, spleen		T	0130	37.8887	$2,502.89	$659.53	$500.58
38200	Injection for spleen x-ray		N					
38204	Bl donor search management		N					
38205	Harvest allogenic stem cells		S	0111	11.5004	$759.70	$198.40	$151.94
38206	Harvest auto stem cells		S	0111	11.5004	$759.70	$198.40	$151.94
38207	Cryopreserve stem cells		S	0110	3.3544	$221.59		$44.32
38208	Thaw preserved stem cells		S	0110	3.3544	$221.59		$44.32
38209	Wash harvest stem cells		S	0110	3.3544	$221.59		$44.32

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
38210	T-cell depletion of harvest		S	0393	6.0581	$400.19	$82.04	$80.04
38211	Tumor cell deplete of harvst		S	0393	6.0581	$400.19	$82.04	$80.04
38212	Rbc depletion of harvest		S	0393	6.0581	$400.19	$82.04	$80.04
38213	Platelet deplete of harvest		S	0393	6.0581	$400.19	$82.04	$80.04
38214	Volume deplete of harvest		S	0393	6.0581	$400.19	$82.04	$80.04
38215	Harvest stem cell concentrte		S	0393	6.0581	$400.19	$82.04	$80.04
38220	Bone marrow aspiration		T	0003	3.1527	$208.26		$41.66
38221	Bone marrow biopsy		T	0003	3.1527	$208.26		$41.66
38230	Bone marrow collection		S	0112	30.7865	$2,033.73	$433.29	$406.75
38240	Bone marrow/stem transplant		S	0112	30.7865	$2,033.73	$433.29	$406.75
38241	Bone marrow/stem transplant		S	0112	30.7865	$2,033.73	$433.29	$406.75
38242	Lymphocyte infuse transplant		S	0111	11.5004	$759.70	$198.40	$151.94
38300	Drainage, lymph node lesion		T	0007	12.5953	$832.03		$166.41
38305	Drainage, lymph node lesion		T	0008	19.3873	$1,280.71		$256.15
38308	Incision of lymph channels		T	0113	23.6897	$1,564.92		$312.99
38380	Thoracic duct procedure		C					
38381	Thoracic duct procedure		C					
38382	Thoracic duct procedure		C					
38500	Biopsy/removal, lymph nodes		T	0113	23.6897	$1,564.92		$312.99
38505	Needle biopsy, lymph nodes		T	0005	7.3879	$488.04		$97.61
38510	Biopsy/removal, lymph nodes		T	0113	23.6897	$1,564.92		$312.99
38520	Biopsy/removal, lymph nodes		T	0113	23.6897	$1,564.92		$312.99
38525	Biopsy/removal, lymph nodes		T	0113	23.6897	$1,564.92		$312.99
38530	Biopsy/removal, lymph nodes		T	0113	23.6897	$1,564.92		$312.99
38542	Explore deep node(s), neck		T	0114	47.2067	$3,118.43		$623.69
38550	Removal, neck/armpit lesion		T	0113	23.6897	$1,564.92		$312.99
38555	Removal, neck/armpit lesion		T	0113	23.6897	$1,564.92		$312.99
38562	Removal, pelvic lymph nodes		C					
38564	Removal, abdomen lymph nodes		C					
38570	Laparoscopy, lymph node biop		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
38571	Laparoscopy, lymphadenectomy		T	0132	69.9234	$4,619.07	$1,239.22	$923.82
38572	Laparoscopy, lymphadenectomy		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
38589	Laparoscope proc, lymphatic		T	0130	37.8887	$2,502.89	$659.53	$500.58
38700	Removal of lymph nodes, neck		T	0113	23.6897	$1,564.92		$312.99
38720	Removal of lymph nodes, neck		T	0113	23.6897	$1,564.92		$312.99
38724	Removal of lymph nodes, neck		C					
38740	Remove armpit lymph nodes		T	0114	47.2067	$3,118.43		$623.69
38745	Remove armpit lymph nodes		T	0114	47.2067	$3,118.43		$623.69
38746	Remove thoracic lymph nodes		C					
38747	Remove abdominal lymph nodes		C					
38760	Remove groin lymph nodes		T	0113	23.6897	$1,564.92		$312.99
38765	Remove groin lymph nodes		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
38770	Remove pelvis lymph nodes		C					
38780	Remove abdomen lymph nodes		C					
38790	Inject for lymphatic x-ray		N					
38792	Identify sentinel node		Q1	0392	2.4943	$164.77	$43.95	$32.96
38794	Access thoracic lymph duct		N					
38999	Blood/lymph system procedure		S	0110	3.3544	$221.59		$44.32
39000	Exploration of chest		C					
39010	Exploration of chest		C					
39200	Removal chest lesion		C					
39220	Removal chest lesion		C					
39400	Visualization of chest		T	0069	33.5041	$2,213.25	$591.64	$442.65
39499	Chest procedure		C					
39501	Repair diaphragm laceration		C					
39502	Repair paraesophageal hernia		C					
39503	Repair of diaphragm hernia		C					
39520	Repair of diaphragm hernia		C					
39530	Repair of diaphragm hernia		C					
39531	Repair of diaphragm hernia		C					
39540	Repair of diaphragm hernia		C					
39541	Repair of diaphragm hernia		C					
39545	Revision of diaphragm		C					
39560	Resect diaphragm, simple		C					
39561	Resect diaphragm, complex		C					
39599	Diaphragm surgery procedure		C					
4000F	Tobacco use txmnt counseling		M					
4001F	Tobacco use txmnt, pharmacol		M					
4002F	Statin therapy, rx		M					
4003F	Pt ed write/oral, pts w/ hf		M					
4005F	Pharm thx for op rx'd		M					
4006F	Beta-blocker therapy rx		M					
4009F	Ace/arb inhibitor therapy rx		M					
4011F	Oral antiplatelet therapy rx		M					
4012F	Warfarin therapy rx		M					
4014F	Written discharge instr prvd		M					
4015F	Persist asthma medicine ctrl		M					
4016F	Anti-inflm/anlgsc agent rx		M					
4017F	Gi prophylaxis for nsaid rx		M					
4018F	Therapy exercise joint rx		M					
4019F	Doc recpt counsl vit d/calc+		M					
4025F	Inhaled bronchodilator rx		M					
4030F	Oxygen therapy rx		M					
4033F	Pulmonary rehab rec		M					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
4035F	Influenza imm rec		M					
4037F	Influenza imm order/admin		M					
4040F	Pneumoc vac/admin/rcvd		M					
4041F	Doc order cefazolin/cefurox		M					
4042F	Doc antibio not given		M					
4043F	Doc order given stop antibio		M					
4044F	Doc order given vte prophylx		M					
4045F	Empiric antibiotic rx		M					
4046F	Doc antibio given b/4 surg		M					
4047F	Doc antibio given b/4 surg		M					
4048F	Doc antibio given b/4 surg		M					
40490	Biopsy of lip		T	0251	3.3069	$218.45		$43.69
4049F	Doc order given stop antibio		M					
40500	Partial excision of lip		T	0253	17.2402	$1,138.87	$282.29	$227.78
4050F	Ht care plan doc		M					
40510	Partial excision of lip		T	0254	24.7557	$1,635.34		$327.07
4051F	Referred for an AV fistula		M					
40520	Partial excision of lip		T	0253	17.2402	$1,138.87	$282.29	$227.78
40525	Reconstruct lip with flap		T	0254	24.7557	$1,635.34		$327.07
40527	Reconstruct lip with flap		T	0254	24.7557	$1,635.34		$327.07
4052F	Hemodialysis via AV fistula		M					
40530	Partial removal of lip		T	0254	24.7557	$1,635.34		$327.07
4053F	Hemodialysis via AV graft		M					
4054F	Hemodialysis via catheter		M					
4055F	Pt. rcvng periton dialysis		M					
4056F	Approp. oral rehyd. recomm'd		M					
4058F	Ped gastro ed given, caregvr		M					
4060F	Psych svcs provided		M					
4062F	Pt referral psych doc'd		M					
4064F	Antidepressant rx		M					
40650	Repair lip		T	0252	7.5330	$497.62	$109.16	$99.53
40652	Repair lip		T	0252	7.5330	$497.62	$109.16	$99.53
40654	Repair lip		T	0252	7.5330	$497.62	$109.16	$99.53
4065F	Antipsychotic rx		M					
4066F	ECT provided		M					
4067F	Pt referral for ECT doc'd		M					
40700	Repair cleft lip/nasal		T	0256	41.8741	$2,766.16		$553.24
40701	Repair cleft lip/nasal		T	0256	41.8741	$2,766.16		$553.24
40702	Repair cleft lip/nasal		T	0256	41.8741	$2,766.16		$553.24
4070F	Dvt prophylx recv'd day 2		M					
40720	Repair cleft lip/nasal		T	0256	41.8741	$2,766.16		$553.24
4073F	Oral antiplat thx rx dischrg		M					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
4075F	Anticoag thx rx at dischrg		M					
40761	Repair cleft lip/nasal		T	0256	41.8741	$2,766.16		$553.24
4077F	Doc t-pa admin considered		M					
40799	Lip surgery procedure	CH	T	0250	1.1110	$73.39	$25.10	$14.68
4079F	Doc rehab svcs considered		M					
40800	Drainage of mouth lesion		T	0006	1.4128	$93.33		$18.67
40801	Drainage of mouth lesion		T	0252	7.5330	$497.62	$109.16	$99.53
40804	Removal, foreign body, mouth		X	0340	0.6462	$42.69		$8.54
40805	Removal, foreign body, mouth		T	0252	7.5330	$497.62	$109.16	$99.53
40806	Incision of lip fold		T	0251	3.3069	$218.45		$43.69
40808	Biopsy of mouth lesion		T	0251	3.3069	$218.45		$43.69
40810	Excision of mouth lesion		T	0253	17.2402	$1,138.87	$282.29	$227.78
40812	Excise/repair mouth lesion		T	0253	17.2402	$1,138.87	$282.29	$227.78
40814	Excise/repair mouth lesion		T	0253	17.2402	$1,138.87	$282.29	$227.78
40816	Excision of mouth lesion		T	0254	24.7557	$1,635.34		$327.07
40818	Excise oral mucosa for graft		T	0251	3.3069	$218.45		$43.69
40819	Excise lip or cheek fold		T	0252	7.5330	$497.62	$109.16	$99.53
40820	Treatment of mouth lesion		T	0253	17.2402	$1,138.87	$282.29	$227.78
40830	Repair mouth laceration		T	0251	3.3069	$218.45		$43.69
40831	Repair mouth laceration		T	0252	7.5330	$497.62	$109.16	$99.53
40840	Reconstruction of mouth		T	0254	24.7557	$1,635.34		$327.07
40842	Reconstruction of mouth		T	0254	24.7557	$1,635.34		$327.07
40843	Reconstruction of mouth		T	0254	24.7557	$1,635.34		$327.07
40844	Reconstruction of mouth		T	0256	41.8741	$2,766.16		$553.24
40845	Reconstruction of mouth		T	0256	41.8741	$2,766.16		$553.24
4084F	Aspirin recv'd w/in 24 hrs		M					
40899	Mouth surgery procedure	CH	T	0250	1.1110	$73.39	$25.10	$14.68
4090F	Pt rcvng epo thxpy		M					
4095F	Pt not rcvng epo thxpy		M					
41000	Drainage of mouth lesion		T	0253	17.2402	$1,138.87	$282.29	$227.78
41005	Drainage of mouth lesion		T	0251	3.3069	$218.45		$43.69
41006	Drainage of mouth lesion		T	0254	24.7557	$1,635.34		$327.07
41007	Drainage of mouth lesion		T	0253	17.2402	$1,138.87	$282.29	$227.78
41008	Drainage of mouth lesion		T	0253	17.2402	$1,138.87	$282.29	$227.78
41009	Drainage of mouth lesion		T	0251	3.3069	$218.45		$43.69
4100F	Biphos thxpy vein ord/rec'vd		M					
41010	Incision of tongue fold		T	0252	7.5330	$497.62	$109.16	$99.53
41015	Drainage of mouth lesion		T	0251	3.3069	$218.45		$43.69
41016	Drainage of mouth lesion		T	0252	7.5330	$497.62	$109.16	$99.53
41017	Drainage of mouth lesion		T	0252	7.5330	$497.62	$109.16	$99.53
41018	Drainage of mouth lesion		T	0252	7.5330	$497.62	$109.16	$99.53
41019	Place needles h&n for rt		T	0254	24.7557	$1,635.34		$327.07

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
41100	Biopsy of tongue		T	0252	7.5330	$497.62	$109.16	$99.53
41105	Biopsy of tongue		T	0253	17.2402	$1,138.87	$282.29	$227.78
41108	Biopsy of floor of mouth		T	0252	7.5330	$497.62	$109.16	$99.53
4110F	Int. mam art used for cabg		M					
41110	Excision of tongue lesion		T	0253	17.2402	$1,138.87	$282.29	$227.78
41112	Excision of tongue lesion		T	0253	17.2402	$1,138.87	$282.29	$227.78
41113	Excision of tongue lesion		T	0253	17.2402	$1,138.87	$282.29	$227.78
41114	Excision of tongue lesion		T	0254	24.7557	$1,635.34		$327.07
41115	Excision of tongue fold		T	0252	7.5330	$497.62	$109.16	$99.53
41116	Excision of mouth lesion		T	0253	17.2402	$1,138.87	$282.29	$227.78
41120	Partial removal of tongue		T	0254	24.7557	$1,635.34		$327.07
41130	Partial removal of tongue		C					
41135	Tongue and neck surgery		C					
41140	Removal of tongue		C					
41145	Tongue removal, neck surgery		C					
41150	Tongue, mouth, jaw surgery		C					
41153	Tongue, mouth, neck surgery		C					
41155	Tongue, jaw, & neck surgery		C					
4115F	Beta blckr admin w/in 24 hrs		M					
4120F	Antibiot rx'd/given		M					
4124F	Antibiot not rx'd/given		M					
41250	Repair tongue laceration	CH	T	0250	1.1110	$73.39	$25.10	$14.68
41251	Repair tongue laceration		T	0251	3.3069	$218.45		$43.69
41252	Repair tongue laceration		T	0252	7.5330	$497.62	$109.16	$99.53
4130F	Topical prep rx aoe		M					
4131F	Syst antimicrobial thx rx		M					
4132F	No syst antimicrobial thx rx		M					
4133F	Antihist/decong rx/recom		M					
4134F	No antihist/decong rx/recom		M					
4135F	Systemic corticosteroids rx		M					
4136F	Syst corticosteroids not rx		M					
4148F	Hep A vac injxn admin/recvd	NI	E					
4149F	Hep B vac injxn admin/recvd	NI	E					
41500	Fixation of tongue		T	0254	24.7557	$1,635.34		$327.07
4150F	Pt recvng antivir txmnt hepc		M					
41510	Tongue to lip surgery		T	0253	17.2402	$1,138.87	$282.29	$227.78
41512	Tongue suspension	NI	T	0252	7.5330	$497.62	$109.16	$99.53
4151F	Pt not recvng antiv hep c		M					
41520	Reconstruction, tongue fold		T	0252	7.5330	$497.62	$109.16	$99.53
4152F	Docd pegintf/rib thxy consd	CH	D					
41530	Tongue base vol reduction	NI	T	0253	17.2402	$1,138.87	$282.29	$227.78
4153F	Combo pegintf/rib rx		M					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
4154F	Hep A vac series recommended	CH	D					
4155F	Hep A vac series prev recvd		M					
4156F	Hep B vac series recommended	CH	D					
4157F	Hep B vac series prev recvd		M					
4158F	Pt edu re alcoh drnkng done		M					
41599	Tongue and mouth surgery	CH	T	0250	1.1110	$73.39	$25.10	$14.68
4159F	Contrcp talk b/4 antiv txmnt		M					
4163F	Pt couns 4 txmnt opt prost		M					
4164F	Adjv hrmnl thxpy rxd		M					
4165F	3d-crt/imrt received		M					
4167F	Hd bed tilted 1st day vent		M					
4168F	Pt care icu&vent w/in 24hrs		M					
4169F	No pt care ICU/vent in 24hrs		M					
4171F	Pt rcvng esa thxpy		M					
4172F	Pt. not rcvng esa thxpy		M					
4174F	Couns potent glauc impct		M					
4175F	Vis of >= 20/40 w/in 90 days		M					
4176F	Talk re uv light pt/crgvr		M					
4177F	Talk pt/crgvr re areds prev		M					
4178F	Antid glbln rcvd w/in 26wks		M					
4179F	Tamoxifen/AI prescribed		M					
41800	Drainage of gum lesion		T	0006	1.4128	$93.33		$18.67
41805	Removal foreign body, gum		T	0254	24.7557	$1,635.34		$327.07
41806	Removal foreign body,jawbone		T	0253	17.2402	$1,138.87	$282.29	$227.78
4180F	Adjv thxpyrxd/rcvd stg3a-c		M					
4181F	Conformal rad'n thxpy rcv'd		M					
41820	Excision, gum, each quadrant		T	0252	7.5330	$497.62	$109.16	$99.53
41821	Excision of gum flap		T	0252	7.5330	$497.62	$109.16	$99.53
41822	Excision of gum lesion		T	0253	17.2402	$1,138.87	$282.29	$227.78
41823	Excision of gum lesion		T	0254	24.7557	$1,635.34		$327.07
41825	Excision of gum lesion		T	0253	17.2402	$1,138.87	$282.29	$227.78
41826	Excision of gum lesion		T	0253	17.2402	$1,138.87	$282.29	$227.78
41827	Excision of gum lesion		T	0254	24.7557	$1,635.34		$327.07
41828	Excision of gum lesion		T	0253	17.2402	$1,138.87	$282.29	$227.78
4182F	No conformal radn thxpy		M					
41830	Removal of gum tissue		T	0253	17.2402	$1,138.87	$282.29	$227.78
41850	Treatment of gum lesion		T	0253	17.2402	$1,138.87	$282.29	$227.78
4185F	Continuous ppi or h2ra rcvd		M					
4186F	No cont ppi or h2ra rcvd		M					
41870	Gum graft		T	0254	24.7557	$1,635.34		$327.07
41872	Repair gum		T	0253	17.2402	$1,138.87	$282.29	$227.78
41874	Repair tooth socket		T	0254	24.7557	$1,635.34		$327.07

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
4187F	Anti rheum drugthxpyrxd/gvn		M					
4188F	Approp ACE/ARB tstng done		M					
41899	Dental surgery procedure	CH	T	0250	1.1110	$73.39	$25.10	$14.68
4189F	Approp digoxin tstng done		M					
4190F	Approp diuretic tstng done		M					
4191F	Approp anticonvuls tstng		M					
4192F	Pt not rcvng glucoco thxpy	NI	E					
4193F	Pt rcvng<10mg daily predniso	NI	E					
4194F	Pt rcvng>10mg daily predniso	NI	E					
4195F	Pt rcvng anti-rheum thxpy RA	NI	E					
4196F	Ptnot rcvng anti-rhm thxpyRA	NI	E					
42000	Drainage mouth roof lesion		T	0251	3.3069	$218.45		$43.69
4200F	External beam to prost only		M					
4201F	Extrnl beam other than prost		M					
42100	Biopsy roof of mouth		T	0252	7.5330	$497.62	$109.16	$99.53
42104	Excision lesion, mouth roof		T	0253	17.2402	$1,138.87	$282.29	$227.78
42106	Excision lesion, mouth roof		T	0253	17.2402	$1,138.87	$282.29	$227.78
42107	Excision lesion, mouth roof		T	0254	24.7557	$1,635.34		$327.07
4210F	ACE/ARB thxpy for >= 6 mons		M					
42120	Remove palate/lesion		T	0256	41.8741	$2,766.16		$553.24
42140	Excision of uvula		T	0252	7.5330	$497.62	$109.16	$99.53
42145	Repair palate, pharynx/uvula		T	0254	24.7557	$1,635.34		$327.07
42160	Treatment mouth roof lesion		T	0253	17.2402	$1,138.87	$282.29	$227.78
42180	Repair palate		T	0251	3.3069	$218.45		$43.69
42182	Repair palate		T	0256	41.8741	$2,766.16		$553.24
42200	Reconstruct cleft palate		T	0256	41.8741	$2,766.16		$553.24
42205	Reconstruct cleft palate		T	0256	41.8741	$2,766.16		$553.24
4220F	Digoxin thxpy for >= 6 mons		M					
42210	Reconstruct cleft palate		T	0256	41.8741	$2,766.16		$553.24
42215	Reconstruct cleft palate		T	0256	41.8741	$2,766.16		$553.24
4221F	Diuretic thxpy for >= 6 mons		M					
42220	Reconstruct cleft palate		T	0256	41.8741	$2,766.16		$553.24
42225	Reconstruct cleft palate		T	0256	41.8741	$2,766.16		$553.24
42226	Lengthening of palate		T	0256	41.8741	$2,766.16		$553.24
42227	Lengthening of palate		T	0256	41.8741	$2,766.16		$553.24
42235	Repair palate		T	0253	17.2402	$1,138.87	$282.29	$227.78
42260	Repair nose to lip fistula		T	0254	24.7557	$1,635.34		$327.07
42280	Preparation, palate mold		T	0251	3.3069	$218.45		$43.69
42281	Insertion, palate prosthesis		T	0253	17.2402	$1,138.87	$282.29	$227.78
42299	Palate/uvula surgery	CH	T	0250	1.1110	$73.39	$25.10	$14.68
42300	Drainage of salivary gland		T	0253	17.2402	$1,138.87	$282.29	$227.78
42305	Drainage of salivary gland		T	0253	17.2402	$1,138.87	$282.29	$227.78

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
4230F	Anticonv thxpy for >= 6 mons		M					
42310	Drainage of salivary gland		T	0251	3.3069	$218.45		$43.69
42320	Drainage of salivary gland		T	0251	3.3069	$218.45		$43.69
42330	Removal of salivary stone		T	0253	17.2402	$1,138.87	$282.29	$227.78
42335	Removal of salivary stone		T	0253	17.2402	$1,138.87	$282.29	$227.78
42340	Removal of salivary stone		T	0253	17.2402	$1,138.87	$282.29	$227.78
42400	Biopsy of salivary gland		T	0005	7.3879	$488.04		$97.61
42405	Biopsy of salivary gland		T	0253	17.2402	$1,138.87	$282.29	$227.78
42408	Excision of salivary cyst		T	0253	17.2402	$1,138.87	$282.29	$227.78
42409	Drainage of salivary cyst		T	0253	17.2402	$1,138.87	$282.29	$227.78
4240F	Instr xrcz 4bk pn >12 weeks		M					
42410	Excise parotid gland/lesion		T	0256	41.8741	$2,766.16		$553.24
42415	Excise parotid gland/lesion		T	0256	41.8741	$2,766.16		$553.24
42420	Excise parotid gland/lesion		T	0256	41.8741	$2,766.16		$553.24
42425	Excise parotid gland/lesion		T	0256	41.8741	$2,766.16		$553.24
42426	Excise parotid gland/lesion		C					
4242F	Sprvsd xrcz bk pn >12 weeks		M					
42440	Excise submaxillary gland		T	0256	41.8741	$2,766.16		$553.24
42450	Excise sublingual gland		T	0254	24.7557	$1,635.34		$327.07
4245F	Pt instr nrml lifest		M					
4248F	Pt instr-no bd rest>= 4 days		M					
42500	Repair salivary duct		T	0254	24.7557	$1,635.34		$327.07
42505	Repair salivary duct		T	0256	41.8741	$2,766.16		$553.24
42507	Parotid duct diversion		T	0256	41.8741	$2,766.16		$553.24
42508	Parotid duct diversion		T	0256	41.8741	$2,766.16		$553.24
42509	Parotid duct diversion		T	0256	41.8741	$2,766.16		$553.24
4250F	Wrmng 4 surg - normothermia		M					
42510	Parotid duct diversion		T	0256	41.8741	$2,766.16		$553.24
42550	Injection for salivary x-ray		N					
42600	Closure of salivary fistula		T	0253	17.2402	$1,138.87	$282.29	$227.78
4260F	Wound srfc culturetech used	NI	E					
4261F	Tech other than surfc cultr	NI	E					
42650	Dilation of salivary duct		T	0252	7.5330	$497.62	$109.16	$99.53
4265F	Wet-dry dressings Rx-recmd	NI	E					
42660	Dilation of salivary duct		T	0251	3.3069	$218.45		$43.69
42665	Ligation of salivary duct		T	0254	24.7557	$1,635.34		$327.07
4266F	No Wet-dry drssings Rx-recmd	NI	E					
4267F	Comprssion thxpy prescribed	NI	E					
4268F	Pt ed re comp thxpy rcvd	NI	E					
42699	Salivary surgery procedure	CH	T	0250	1.1110	$73.39	$25.10	$14.68
4269F	Appropos mthd offloading Rxd	NI	E					
42700	Drainage of tonsil abscess		T	0251	3.3069	$218.45		$43.69

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
4270F	Pt rcvng anti r-viral thxpy	NI	M					
4271F	Pt rcvng anti r-viral thxpy	NI	M					
42720	Drainage of throat abscess		T	0253	17.2402	$1,138.87	$282.29	$227.78
42725	Drainage of throat abscess		T	0256	41.8741	$2,766.16		$553.24
4274F	Flu immuno admin'd rcvd	NI	M					
4275F	Hep B vac inj admin/rcvd	NI	E					
4279F	PCP prophylaxis Rxd	NI	M					
42800	Biopsy of throat	CH	T	0253	17.2402	$1,138.87	$282.29	$227.78
42802	Biopsy of throat		T	0253	17.2402	$1,138.87	$282.29	$227.78
42804	Biopsy of upper nose/throat		T	0253	17.2402	$1,138.87	$282.29	$227.78
42806	Biopsy of upper nose/throat		T	0254	24.7557	$1,635.34		$327.07
42808	Excise pharynx lesion		T	0253	17.2402	$1,138.87	$282.29	$227.78
42809	Remove pharynx foreign body		X	0340	0.6462	$42.69		$8.54
4280F	PCP prophylax Rxd 3mon low %	NI	M					
42810	Excision of neck cyst		T	0254	24.7557	$1,635.34		$327.07
42815	Excision of neck cyst		T	0256	41.8741	$2,766.16		$553.24
42820	Remove tonsils and adenoids	CH	T	0254	24.7557	$1,635.34		$327.07
42821	Remove tonsils and adenoids	CH	T	0254	24.7557	$1,635.34		$327.07
42825	Removal of tonsils	CH	T	0254	24.7557	$1,635.34		$327.07
42826	Removal of tonsils	CH	T	0254	24.7557	$1,635.34		$327.07
42830	Removal of adenoids	CH	T	0254	24.7557	$1,635.34		$327.07
42831	Removal of adenoids	CH	T	0254	24.7557	$1,635.34		$327.07
42835	Removal of adenoids	CH	T	0254	24.7557	$1,635.34		$327.07
42836	Removal of adenoids	CH	T	0254	24.7557	$1,635.34		$327.07
42842	Extensive surgery of throat		T	0254	24.7557	$1,635.34		$327.07
42844	Extensive surgery of throat		T	0256	41.8741	$2,766.16		$553.24
42845	Extensive surgery of throat		C					
42860	Excision of tonsil tags	CH	T	0254	24.7557	$1,635.34		$327.07
42870	Excision of lingual tonsil	CH	T	0254	24.7557	$1,635.34		$327.07
42890	Partial removal of pharynx		T	0256	41.8741	$2,766.16		$553.24
42892	Revision of pharyngeal walls		T	0256	41.8741	$2,766.16		$553.24
42894	Revision of pharyngeal walls		C					
42900	Repair throat wound		T	0252	7.5330	$497.62	$109.16	$99.53
4290F	Pt scrned for inj drug use	NI	E					
4293F	Pt scrnd - hgh-rsk sex behav	NI	E					
42950	Reconstruction of throat		T	0254	24.7557	$1,635.34		$327.07
42953	Repair throat, esophagus		C					
42955	Surgical opening of throat		T	0254	24.7557	$1,635.34		$327.07
42960	Control throat bleeding		T	0250	1.1110	$73.39	$25.10	$14.68
42961	Control throat bleeding		C					
42962	Control throat bleeding		T	0256	41.8741	$2,766.16		$553.24
42970	Control nose/throat bleeding		T	0250	1.1110	$73.39	$25.10	$14.68

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
42971	Control nose/throat bleeding		C					
42972	Control nose/throat bleeding		T	0253	17.2402	$1,138.87	$282.29	$227.78
42999	Throat surgery procedure	CH	T	0250	1.1110	$73.39	$25.10	$14.68
4300F	Pt rcvng warf thxpy	NI	E					
4301F	Pt not rcvng warf thxpy	NI	E					
43020	Incision of esophagus		T	0252	7.5330	$497.62	$109.16	$99.53
43030	Throat muscle surgery		T	0253	17.2402	$1,138.87	$282.29	$227.78
43045	Incision of esophagus		C					
4305F	Pt ed re ft care inspct rcvd	NI	E					
4306F	Pt tlk psych & Rx opd addic	NI	E					
43100	Excision of esophagus lesion		C					
43101	Excision of esophagus lesion		C					
43107	Removal of esophagus		C					
43108	Removal of esophagus		C					
43112	Removal of esophagus		C					
43113	Removal of esophagus		C					
43116	Partial removal of esophagus		C					
43117	Partial removal of esophagus		C					
43118	Partial removal of esophagus		C					
43121	Partial removal of esophagus		C					
43122	Partial removal of esophagus		C					
43123	Partial removal of esophagus		C					
43124	Removal of esophagus		C					
43130	Removal of esophagus pouch		T	0256	41.8741	$2,766.16		$553.24
43135	Removal of esophagus pouch		C					
43200	Esophagus endoscopy		T	0141	8.6526	$571.58	$143.38	$114.32
43201	Esoph scope w/submucous inj		T	0141	8.6526	$571.58	$143.38	$114.32
43202	Esophagus endoscopy, biopsy		T	0141	8.6526	$571.58	$143.38	$114.32
43204	Esoph scope w/sclerosis inj		T	0141	8.6526	$571.58	$143.38	$114.32
43205	Esophagus endoscopy/ligation		T	0141	8.6526	$571.58	$143.38	$114.32
4320F	Pt talk psychsoc+rx oh dpnd	NI	E					
43215	Esophagus endoscopy		T	0141	8.6526	$571.58	$143.38	$114.32
43216	Esophagus endoscopy/lesion		T	0141	8.6526	$571.58	$143.38	$114.32
43217	Esophagus endoscopy		T	0141	8.6526	$571.58	$143.38	$114.32
43219	Esophagus endoscopy		T	0384	25.7008	$1,697.77		$339.56
43220	Esoph endoscopy, dilation		T	0141	8.6526	$571.58	$143.38	$114.32
43226	Esoph endoscopy, dilation		T	0141	8.6526	$571.58	$143.38	$114.32
43227	Esoph endoscopy, repair		T	0141	8.6526	$571.58	$143.38	$114.32
43228	Esoph endoscopy, ablation		T	0422	25.3785	$1,676.48	$448.81	$335.30
43231	Esoph endoscopy w/us exam		T	0141	8.6526	$571.58	$143.38	$114.32
43232	Esoph endoscopy w/us fn bx		T	0141	8.6526	$571.58	$143.38	$114.32
43234	Upper GI endoscopy, exam		T	0141	8.6526	$571.58	$143.38	$114.32

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
43235	Uppr gi endoscopy, diagnosis		T	0141	8.6526	$571.58	$143.38	$114.32
43236	Uppr gi scope w/submuc inj		T	0141	8.6526	$571.58	$143.38	$114.32
43237	Endoscopic us exam, esoph		T	0141	8.6526	$571.58	$143.38	$114.32
43238	Uppr gi endoscopy w/us fn bx		T	0141	8.6526	$571.58	$143.38	$114.32
43239	Upper GI endoscopy, biopsy		T	0141	8.6526	$571.58	$143.38	$114.32
43240	Esoph endoscope w/drain cyst		T	0141	8.6526	$571.58	$143.38	$114.32
43241	Upper GI endoscopy with tube		T	0141	8.6526	$571.58	$143.38	$114.32
43242	Uppr gi endoscopy w/us fn bx		T	0141	8.6526	$571.58	$143.38	$114.32
43243	Upper gi endoscopy & inject		T	0141	8.6526	$571.58	$143.38	$114.32
43244	Upper GI endoscopy/ligation		T	0141	8.6526	$571.58	$143.38	$114.32
43245	Uppr gi scope dilate strictr		T	0141	8.6526	$571.58	$143.38	$114.32
43246	Place gastrostomy tube		T	0141	8.6526	$571.58	$143.38	$114.32
43247	Operative upper GI endoscopy		T	0141	8.6526	$571.58	$143.38	$114.32
43248	Uppr gi endoscopy/guide wire		T	0141	8.6526	$571.58	$143.38	$114.32
43249	Esoph endoscopy, dilation		T	0141	8.6526	$571.58	$143.38	$114.32
43250	Upper GI endoscopy/tumor		T	0141	8.6526	$571.58	$143.38	$114.32
43251	Operative upper GI endoscopy		T	0141	8.6526	$571.58	$143.38	$114.32
43255	Operative upper GI endoscopy		T	0141	8.6526	$571.58	$143.38	$114.32
43256	Uppr gi endoscopy w/stent		T	0384	25.7008	$1,697.77		$339.56
43257	Uppr gi scope w/thrml txmnt		T	0422	25.3785	$1,676.48	$448.81	$335.30
43258	Operative upper GI endoscopy		T	0141	8.6526	$571.58	$143.38	$114.32
43259	Endoscopic ultrasound exam		T	0141	8.6526	$571.58	$143.38	$114.32
43260	Endo cholangiopancreatograph		T	0151	21.9315	$1,448.77		$289.76
43261	Endo cholangiopancreatograph		T	0151	21.9315	$1,448.77		$289.76
43262	Endo cholangiopancreatograph		T	0151	21.9315	$1,448.77		$289.76
43263	Endo cholangiopancreatograph		T	0151	21.9315	$1,448.77		$289.76
43264	Endo cholangiopancreatograph		T	0151	21.9315	$1,448.77		$289.76
43265	Endo cholangiopancreatograph		T	0151	21.9315	$1,448.77		$289.76
43267	Endo cholangiopancreatograph		T	0151	21.9315	$1,448.77		$289.76
43268	Endo cholangiopancreatograph		T	0384	25.7008	$1,697.77		$339.56
43269	Endo cholangiopancreatograph		T	0384	25.7008	$1,697.77		$339.56
43271	Endo cholangiopancreatograph		T	0151	21.9315	$1,448.77		$289.76
43272	Endo cholangiopancreatograph		T	0151	21.9315	$1,448.77		$289.76
43273	Endoscopic pancreatoscopy	NI	T	0151	21.9315	$1,448.77		$289.76
43279	Lap myotomy, heller	NI	C					
43280	Laparoscopy, fundoplasty		T	0132	69.9234	$4,619.07	$1,239.22	$923.82
43289	Laparoscope proc, esoph		T	0130	37.8887	$2,502.89	$659.53	$500.58
43300	Repair of esophagus		C					
43305	Repair esophagus and fistula		C					
43310	Repair of esophagus		C					
43312	Repair esophagus and fistula		C					
43313	Esophagoplasty congenital		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
43314	Tracheo-esophagoplasty cong		C					
43320	Fuse esophagus & stomach		C					
43324	Revise esophagus & stomach		C					
43325	Revise esophagus & stomach		C					
43326	Revise esophagus & stomach		C					
43330	Repair of esophagus		C					
43331	Repair of esophagus		C					
43340	Fuse esophagus & intestine		C					
43341	Fuse esophagus & intestine		C					
43350	Surgical opening, esophagus		C					
43351	Surgical opening, esophagus		C					
43352	Surgical opening, esophagus		C					
43360	Gastrointestinal repair		C					
43361	Gastrointestinal repair		C					
43400	Ligate esophagus veins		C					
43401	Esophagus surgery for veins		C					
43405	Ligate/staple esophagus		C					
43410	Repair esophagus wound		C					
43415	Repair esophagus wound		C					
43420	Repair esophagus opening	CH	T	0254	24.7557	$1,635.34		$327.07
43425	Repair esophagus opening		C					
43450	Dilate esophagus		T	0140	6.5579	$433.21	$91.40	$86.65
43453	Dilate esophagus		T	0140	6.5579	$433.21	$91.40	$86.65
43456	Dilate esophagus		T	0140	6.5579	$433.21	$91.40	$86.65
43458	Dilate esophagus		T	0141	8.6526	$571.58	$143.38	$114.32
43460	Pressure treatment esophagus		C					
43496	Free jejunum flap, microvasc		C					
43499	Esophagus surgery procedure		T	0141	8.6526	$571.58	$143.38	$114.32
43500	Surgical opening of stomach		C					
43501	Surgical repair of stomach		C					
43502	Surgical repair of stomach		C					
43510	Surgical opening of stomach		T	0141	8.6526	$571.58	$143.38	$114.32
43520	Incision of pyloric muscle		C					
43600	Biopsy of stomach		T	0141	8.6526	$571.58	$143.38	$114.32
43605	Biopsy of stomach		C					
43610	Excision of stomach lesion		C					
43611	Excision of stomach lesion		C					
43620	Removal of stomach		C					
43621	Removal of stomach		C					
43622	Removal of stomach		C					
43631	Removal of stomach, partial		C					
43632	Removal of stomach, partial		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
43633	Removal of stomach, partial		C					
43634	Removal of stomach, partial		C					
43635	Removal of stomach, partial		C					
43640	Vagotomy & pylorus repair		C					
43641	Vagotomy & pylorus repair		C					
43644	Lap gastric bypass/roux-en-y		C					
43645	Lap gastr bypass incl smll i		C					
43647	Lap impl electrode, antrum		S	0061	82.9048	$5,476.61		$1,095.33
43648	Lap revise/remv eltrd antrum		T	0130	37.8887	$2,502.89	$659.53	$500.58
43651	Laparoscopy, vagus nerve		T	0132	69.9234	$4,619.07	$1,239.22	$923.82
43652	Laparoscopy, vagus nerve		T	0132	69.9234	$4,619.07	$1,239.22	$923.82
43653	Laparoscopy, gastrostomy		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
43659	Laparoscope proc, stom		T	0130	37.8887	$2,502.89	$659.53	$500.58
43752	Nasal/orogastric w/stent		X	0272	1.2597	$83.21	$31.15	$16.65
43760	Change gastrostomy tube		T	0121	4.5958	$303.59		$60.72
43761	Reposition gastrostomy tube		T	0141	8.6526	$571.58	$143.38	$114.32
43770	Lap place gastr adj device		C					
43771	Lap revise gastr adj device		C					
43772	Lap rmvl gastr adj device		C					
43773	Lap replace gastr adj device		C					
43774	Lap rmvl gastr adj all parts		C					
43800	Reconstruction of pylorus		C					
43810	Fusion of stomach and bowel		C					
43820	Fusion of stomach and bowel		C					
43825	Fusion of stomach and bowel		C					
43830	Place gastrostomy tube		T	0422	25.3785	$1,676.48	$448.81	$335.30
43831	Place gastrostomy tube		T	0141	8.6526	$571.58	$143.38	$114.32
43832	Place gastrostomy tube		C					
43840	Repair of stomach lesion		C					
43842	V-band gastroplasty		E					
43843	Gastroplasty w/o v-band		C					
43845	Gastroplasty duodenal switch		C					
43846	Gastric bypass for obesity		C					
43847	Gastric bypass incl small i		C					
43848	Revision gastroplasty		C					
43850	Revise stomach-bowel fusion		C					
43855	Revise stomach-bowel fusion		C					
43860	Revise stomach-bowel fusion		C					
43865	Revise stomach-bowel fusion		C					
43870	Repair stomach opening		T	0141	8.6526	$571.58	$143.38	$114.32
43880	Repair stomach-bowel fistula		C					
43881	Impl/redo electrd, antrum		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
43882	Revise/remove electrd antrum		C					
43886	Revise gastric port, open		T	0137	21.0656	$1,391.57		$278.32
43887	Remove gastric port, open		T	0135	4.4306	$292.68		$58.54
43888	Change gastric port, open		T	0137	21.0656	$1,391.57		$278.32
43999	Stomach surgery procedure		T	0141	8.6526	$571.58	$143.38	$114.32
44005	Freeing of bowel adhesion		C					
44010	Incision of small bowel		C					
44015	Insert needle cath bowel		C					
44020	Explore small intestine		C					
44021	Decompress small bowel		C					
44025	Incision of large bowel		C					
44050	Reduce bowel obstruction		C					
44055	Correct malrotation of bowel		C					
44100	Biopsy of bowel		T	0141	8.6526	$571.58	$143.38	$114.32
44110	Excise intestine lesion(s)		C					
44111	Excision of bowel lesion(s)		C					
44120	Removal of small intestine		C					
44121	Removal of small intestine		C					
44125	Removal of small intestine		C					
44126	Enterectomy w/o taper, cong		C					
44127	Enterectomy w/taper, cong		C					
44128	Enterectomy cong, add-on		C					
44130	Bowel to bowel fusion		C					
44132	Enterectomy, cadaver donor		C					
44133	Enterectomy, live donor		C					
44135	Intestine transplnt, cadaver		C					
44136	Intestine transplant, live		C					
44137	Remove intestinal allograft		C					
44139	Mobilization of colon		C					
44140	Partial removal of colon		C					
44141	Partial removal of colon		C					
44143	Partial removal of colon		C					
44144	Partial removal of colon		C					
44145	Partial removal of colon		C					
44146	Partial removal of colon		C					
44147	Partial removal of colon		C					
44150	Removal of colon		C					
44151	Removal of colon/ileostomy		C					
44155	Removal of colon/ileostomy		C					
44156	Removal of colon/ileostomy		C					
44157	Colectomy w/ileoanal anast		C					
44158	Colectomy w/neo-rectum pouch		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
44160	Removal of colon		C					
44180	Lap, enterolysis		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
44186	Lap, jejunostomy		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
44187	Lap, ileo/jejuno-stomy		C					
44188	Lap, colostomy		C					
44202	Lap, enterectomy		C					
44203	Lap resect s/intestine, addl		C					
44204	Laparo partial colectomy		C					
44205	Lap colectomy part w/ileum		C					
44206	Lap part colectomy w/stoma		T	0132	69.9234	$4,619.07	$1,239.22	$923.82
44207	L colectomy/coloproctostomy		T	0132	69.9234	$4,619.07	$1,239.22	$923.82
44208	L colectomy/coloproctostomy		T	0132	69.9234	$4,619.07	$1,239.22	$923.82
44210	Laparo total proctocolectomy		C					
44211	Lap colectomy w/proctectomy		C					
44212	Laparo total proctocolectomy		C					
44213	Lap, mobil splenic fl add-on		T	0130	37.8887	$2,502.89	$659.53	$500.58
44227	Lap, close enterostomy		C					
44238	Laparoscope proc, intestine		T	0130	37.8887	$2,502.89	$659.53	$500.58
44300	Open bowel to skin		C					
44310	Ileostomy/jejunostomy		C					
44312	Revision of ileostomy		T	0137	21.0656	$1,391.57		$278.32
44314	Revision of ileostomy		C					
44316	Devise bowel pouch		C					
44320	Colostomy		C					
44322	Colostomy with biopsies		C					
44340	Revision of colostomy		T	0137	21.0656	$1,391.57		$278.32
44345	Revision of colostomy		C					
44346	Revision of colostomy		C					
44360	Small bowel endoscopy		T	0142	9.5724	$632.34	$152.78	$126.47
44361	Small bowel endoscopy/biopsy		T	0142	9.5724	$632.34	$152.78	$126.47
44363	Small bowel endoscopy		T	0142	9.5724	$632.34	$152.78	$126.47
44364	Small bowel endoscopy		T	0142	9.5724	$632.34	$152.78	$126.47
44365	Small bowel endoscopy		T	0142	9.5724	$632.34	$152.78	$126.47
44366	Small bowel endoscopy		T	0142	9.5724	$632.34	$152.78	$126.47
44369	Small bowel endoscopy		T	0142	9.5724	$632.34	$152.78	$126.47
44370	Small bowel endoscopy/stent		T	0384	25.7008	$1,697.77		$339.56
44372	Small bowel endoscopy		T	0142	9.5724	$632.34	$152.78	$126.47
44373	Small bowel endoscopy		T	0142	9.5724	$632.34	$152.78	$126.47
44376	Small bowel endoscopy		T	0142	9.5724	$632.34	$152.78	$126.47
44377	Small bowel endoscopy/biopsy		T	0142	9.5724	$632.34	$152.78	$126.47
44378	Small bowel endoscopy		T	0142	9.5724	$632.34	$152.78	$126.47
44379	S bowel endoscope w/stent		T	0384	25.7008	$1,697.77		$339.56

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
44380	Small bowel endoscopy		T	0142	9.5724	$632.34	$152.78	$126.47
44382	Small bowel endoscopy		T	0142	9.5724	$632.34	$152.78	$126.47
44383	Ileoscopy w/stent		T	0384	25.7008	$1,697.77		$339.56
44385	Endoscopy of bowel pouch		T	0143	8.9884	$593.76	$186.06	$118.76
44386	Endoscopy, bowel pouch/biop		T	0143	8.9884	$593.76	$186.06	$118.76
44388	Colonoscopy		T	0143	8.9884	$593.76	$186.06	$118.76
44389	Colonoscopy with biopsy		T	0143	8.9884	$593.76	$186.06	$118.76
44390	Colonoscopy for foreign body		T	0143	8.9884	$593.76	$186.06	$118.76
44391	Colonoscopy for bleeding		T	0143	8.9884	$593.76	$186.06	$118.76
44392	Colonoscopy & polypectomy		T	0143	8.9884	$593.76	$186.06	$118.76
44393	Colonoscopy, lesion removal		T	0143	8.9884	$593.76	$186.06	$118.76
44394	Colonoscopy w/snare		T	0143	8.9884	$593.76	$186.06	$118.76
44397	Colonoscopy w/stent		T	0384	25.7008	$1,697.77		$339.56
44500	Intro, gastrointestinal tube		T	0121	4.5958	$303.59		$60.72
44602	Suture, small intestine		C					
44603	Suture, small intestine		C					
44604	Suture, large intestine		C					
44605	Repair of bowel lesion		C					
44615	Intestinal stricturoplasty		C					
44620	Repair bowel opening		C					
44625	Repair bowel opening		C					
44626	Repair bowel opening		C					
44640	Repair bowel-skin fistula		C					
44650	Repair bowel fistula		C					
44660	Repair bowel-bladder fistula		C					
44661	Repair bowel-bladder fistula		C					
44680	Surgical revision, intestine		C					
44700	Suspend bowel w/prosthesis		C					
44701	Intraop colon lavage add-on		N					
44715	Prepare donor intestine		C					
44720	Prep donor intestine/venous		C					
44721	Prep donor intestine/artery		C					
44799	Unlisted procedure intestine		T	0153	23.4113	$1,546.53	$376.05	$309.31
44800	Excision of bowel pouch		C					
44820	Excision of mesentery lesion		C					
44850	Repair of mesentery		C					
44899	Bowel surgery procedure		C					
44900	Drain app abscess, open		C					
44901	Drain app abscess, percut		T	0037	13.5176	$892.96	$228.76	$178.60
44950	Appendectomy		C					
44955	Appendectomy add-on		C					
44960	Appendectomy		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
44970	Laparoscopy, appendectomy		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
44979	Laparoscope proc, app		T	0130	37.8887	$2,502.89	$659.53	$500.58
45000	Drainage of pelvic abscess		T	0155	12.2139	$806.84		$161.37
45005	Drainage of rectal abscess		T	0155	12.2139	$806.84		$161.37
45020	Drainage of rectal abscess		T	0155	12.2139	$806.84		$161.37
45100	Biopsy of rectum		T	0149	23.1877	$1,531.76		$306.36
45108	Removal of anorectal lesion		T	0149	23.1877	$1,531.76		$306.36
45110	Removal of rectum		C					
45111	Partial removal of rectum		C					
45112	Removal of rectum		C					
45113	Partial proctectomy		C					
45114	Partial removal of rectum		C					
45116	Partial removal of rectum		C					
45119	Remove rectum w/reservoir		C					
45120	Removal of rectum		C					
45121	Removal of rectum and colon		C					
45123	Partial proctectomy		C					
45126	Pelvic exenteration		C					
45130	Excision of rectal prolapse		C					
45135	Excision of rectal prolapse		C					
45136	Excise ileoanal reservior		C					
45150	Excision of rectal stricture		T	0149	23.1877	$1,531.76		$306.36
45160	Excision of rectal lesion		T	0149	23.1877	$1,531.76		$306.36
45170	Excision of rectal lesion		T	0149	23.1877	$1,531.76		$306.36
45190	Destruction, rectal tumor		T	0149	23.1877	$1,531.76		$306.36
45300	Proctosigmoidoscopy dx		T	0146	5.6133	$370.81		$74.17
45303	Proctosigmoidoscopy dilate		T	0147	9.1325	$603.28		$120.66
45305	Proctosigmoidoscopy w/bx		T	0147	9.1325	$603.28		$120.66
45307	Proctosigmoidoscopy fb		T	0428	23.6827	$1,564.46		$312.90
45308	Proctosigmoidoscopy removal		T	0147	9.1325	$603.28		$120.66
45309	Proctosigmoidoscopy removal		T	0147	9.1325	$603.28		$120.66
45315	Proctosigmoidoscopy removal		T	0147	9.1325	$603.28		$120.66
45317	Proctosigmoidoscopy bleed		T	0147	9.1325	$603.28		$120.66
45320	Proctosigmoidoscopy ablate		T	0428	23.6827	$1,564.46		$312.90
45321	Proctosigmoidoscopy volvul		T	0428	23.6827	$1,564.46		$312.90
45327	Proctosigmoidoscopy w/stent		T	0384	25.7008	$1,697.77		$339.56
45330	Diagnostic sigmoidoscopy		T	0146	5.6133	$370.81		$74.17
45331	Sigmoidoscopy and biopsy		T	0146	5.6133	$370.81		$74.17
45332	Sigmoidoscopy w/fb removal		T	0146	5.6133	$370.81		$74.17
45333	Sigmoidoscopy & polypectomy		T	0147	9.1325	$603.28		$120.66
45334	Sigmoidoscopy for bleeding		T	0147	9.1325	$603.28		$120.66
45335	Sigmoidoscopy w/submuc inj		T	0146	5.6133	$370.81		$74.17

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
45337	Sigmoidoscopy & decompress		T	0146	5.6133	$370.81		$74.17
45338	Sigmoidoscopy w/tumr remove		T	0147	9.1325	$603.28		$120.66
45339	Sigmoidoscopy w/ablate tumr		T	0147	9.1325	$603.28		$120.66
45340	Sig w/balloon dilation		T	0147	9.1325	$603.28		$120.66
45341	Sigmoidoscopy w/ultrasound		T	0147	9.1325	$603.28		$120.66
45342	Sigmoidoscopy w/us guide bx		T	0147	9.1325	$603.28		$120.66
45345	Sigmoidoscopy w/stent		T	0384	25.7008	$1,697.77		$339.56
45355	Surgical colonoscopy		T	0143	8.9884	$593.76	$186.06	$118.76
45378	Diagnostic colonoscopy		T	0143	8.9884	$593.76	$186.06	$118.76
45379	Colonoscopy w/fb removal		T	0143	8.9884	$593.76	$186.06	$118.76
45380	Colonoscopy and biopsy		T	0143	8.9884	$593.76	$186.06	$118.76
45381	Colonoscopy, submucous inj		T	0143	8.9884	$593.76	$186.06	$118.76
45382	Colonoscopy/control bleeding		T	0143	8.9884	$593.76	$186.06	$118.76
45383	Lesion removal colonoscopy		T	0143	8.9884	$593.76	$186.06	$118.76
45384	Lesion remove colonoscopy		T	0143	8.9884	$593.76	$186.06	$118.76
45385	Lesion removal colonoscopy		T	0143	8.9884	$593.76	$186.06	$118.76
45386	Colonoscopy dilate stricture		T	0143	8.9884	$593.76	$186.06	$118.76
45387	Colonoscopy w/stent		T	0384	25.7008	$1,697.77		$339.56
45391	Colonoscopy w/endoscope us		T	0143	8.9884	$593.76	$186.06	$118.76
45392	Colonoscopy w/endoscopic fnb		T	0143	8.9884	$593.76	$186.06	$118.76
45395	Lap, removal of rectum		C					
45397	Lap, remove rectum w/pouch		C					
45400	Laparoscopic proc		C					
45402	Lap proctopexy w/sig resect		C					
45499	Laparoscope proc, rectum		T	0130	37.8887	$2,502.89	$659.53	$500.58
45500	Repair of rectum		T	0149	23.1877	$1,531.76		$306.36
45505	Repair of rectum		T	0150	31.0398	$2,050.46	$437.12	$410.10
45520	Treatment of rectal prolapse		T	0013	0.8281	$54.70		$10.94
45540	Correct rectal prolapse		C					
45541	Correct rectal prolapse		T	0150	31.0398	$2,050.46	$437.12	$410.10
45550	Repair rectum/remove sigmoid		C					
45560	Repair of rectocele		T	0150	31.0398	$2,050.46	$437.12	$410.10
45562	Exploration/repair of rectum		C					
45563	Exploration/repair of rectum		C					
45800	Repair rect/bladder fistula		C					
45805	Repair fistula w/colostomy		C					
45820	Repair rectourethral fistula		C					
45825	Repair fistula w/colostomy		C					
45900	Reduction of rectal prolapse		T	0148	5.8523	$386.60		$77.32
45905	Dilation of anal sphincter		T	0149	23.1877	$1,531.76		$306.36
45910	Dilation of rectal narrowing		T	0149	23.1877	$1,531.76		$306.36
45915	Remove rectal obstruction		T	0155	12.2139	$806.84		$161.37

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
45990	Surg dx exam, anorectal		T	0149	23.1877	$1,531.76		$306.36
45999	Rectum surgery procedure		T	0148	5.8523	$386.60		$77.32
46020	Placement of seton		T	0149	23.1877	$1,531.76		$306.36
46030	Removal of rectal marker		T	0148	5.8523	$386.60		$77.32
46040	Incision of rectal abscess		T	0149	23.1877	$1,531.76		$306.36
46045	Incision of rectal abscess		T	0149	23.1877	$1,531.76		$306.36
46050	Incision of anal abscess		T	0155	12.2139	$806.84		$161.37
46060	Incision of rectal abscess		T	0149	23.1877	$1,531.76		$306.36
46070	Incision of anal septum		T	0155	12.2139	$806.84		$161.37
46080	Incision of anal sphincter		T	0149	23.1877	$1,531.76		$306.36
46083	Incise external hemorrhoid		T	0164	1.8697	$123.51		$24.71
46200	Removal of anal fissure		T	0149	23.1877	$1,531.76		$306.36
46210	Removal of anal crypt		T	0149	23.1877	$1,531.76		$306.36
46211	Removal of anal crypts		T	0149	23.1877	$1,531.76		$306.36
46220	Removal of anal tag		T	0149	23.1877	$1,531.76		$306.36
46221	Ligation of hemorrhoid(s)		T	0148	5.8523	$386.60		$77.32
46230	Removal of anal tags		T	0149	23.1877	$1,531.76		$306.36
46250	Hemorrhoidectomy		T	0149	23.1877	$1,531.76		$306.36
46255	Hemorrhoidectomy		T	0149	23.1877	$1,531.76		$306.36
46257	Remove hemorrhoids & fissure		T	0149	23.1877	$1,531.76		$306.36
46258	Remove hemorrhoids & fistula		T	0149	23.1877	$1,531.76		$306.36
46260	Hemorrhoidectomy		T	0149	23.1877	$1,531.76		$306.36
46261	Remove hemorrhoids & fissure		T	0149	23.1877	$1,531.76		$306.36
46262	Remove hemorrhoids & fistula		T	0149	23.1877	$1,531.76		$306.36
46270	Removal of anal fistula		T	0149	23.1877	$1,531.76		$306.36
46275	Removal of anal fistula		T	0149	23.1877	$1,531.76		$306.36
46280	Removal of anal fistula		T	0149	23.1877	$1,531.76		$306.36
46285	Removal of anal fistula		T	0149	23.1877	$1,531.76		$306.36
46288	Repair anal fistula		T	0149	23.1877	$1,531.76		$306.36
46320	Removal of hemorrhoid clot		T	0149	23.1877	$1,531.76		$306.36
46500	Injection into hemorrhoid(s)		T	0155	12.2139	$806.84		$161.37
46505	Chemodenervation anal musc	CH	T	0155	12.2139	$806.84		$161.37
46600	Diagnostic anoscopy		X	0340	0.6462	$42.69		$8.54
46604	Anoscopy and dilation		T	0147	9.1325	$603.28		$120.66
46606	Anoscopy and biopsy		T	0146	5.6133	$370.81		$74.17
46608	Anoscopy, remove for body		T	0147	9.1325	$603.28		$120.66
46610	Anoscopy, remove lesion		T	0428	23.6827	$1,564.46		$312.90
46611	Anoscopy		T	0147	9.1325	$603.28		$120.66
46612	Anoscopy, remove lesions		T	0428	23.6827	$1,564.46		$312.90
46614	Anoscopy, control bleeding		T	0146	5.6133	$370.81		$74.17
46615	Anoscopy		T	0428	23.6827	$1,564.46		$312.90
46700	Repair of anal stricture		T	0149	23.1877	$1,531.76		$306.36

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
46705	Repair of anal stricture		C					
46706	Repr of anal fistula w/glue		T	0150	31.0398	$2,050.46	$437.12	$410.10
46710	Repr per/vag pouch sngl proc		C					
46712	Repr per/vag pouch dbl proc		C					
46715	Rep perf anoper fistu		C					
46716	Rep perf anoper/vestib fistu		C					
46730	Construction of absent anus		C					
46735	Construction of absent anus		C					
46740	Construction of absent anus		C					
46742	Repair of imperforated anus		C					
46744	Repair of cloacal anomaly		C					
46746	Repair of cloacal anomaly		C					
46748	Repair of cloacal anomaly		C					
46750	Repair of anal sphincter		T	0150	31.0398	$2,050.46	$437.12	$410.10
46751	Repair of anal sphincter		C					
46753	Reconstruction of anus		T	0149	23.1877	$1,531.76		$306.36
46754	Removal of suture from anus		T	0149	23.1877	$1,531.76		$306.36
46760	Repair of anal sphincter		T	0150	31.0398	$2,050.46	$437.12	$410.10
46761	Repair of anal sphincter		T	0150	31.0398	$2,050.46	$437.12	$410.10
46762	Implant artificial sphincter		T	0150	31.0398	$2,050.46	$437.12	$410.10
46900	Destruction, anal lesion(s)		T	0016	2.7288	$180.26		$36.06
46910	Destruction, anal lesion(s)		T	0017	20.2578	$1,338.21		$267.65
46916	Cryosurgery, anal lesion(s)		T	0015	1.5170	$100.21		$20.05
46917	Laser surgery, anal lesions		T	0017	20.2578	$1,338.21		$267.65
46922	Excision of anal lesion(s)		T	0017	20.2578	$1,338.21		$267.65
46924	Destruction, anal lesion(s)		T	0017	20.2578	$1,338.21		$267.65
46930	Destroy internal hemorrhoids	NI	T	0148	5.8523	$386.60		$77.32
46934	Destruction of hemorrhoids	CH	D					
46935	Destruction of hemorrhoids	CH	D					
46936	Destruction of hemorrhoids	CH	D					
46937	Cryotherapy of rectal lesion		T	0149	23.1877	$1,531.76		$306.36
46938	Cryotherapy of rectal lesion		T	0150	31.0398	$2,050.46	$437.12	$410.10
46940	Treatment of anal fissure		T	0149	23.1877	$1,531.76		$306.36
46942	Treatment of anal fissure		T	0148	5.8523	$386.60		$77.32
46945	Ligation of hemorrhoids		T	0155	12.2139	$806.84		$161.37
46946	Ligation of hemorrhoids		T	0155	12.2139	$806.84		$161.37
46947	Hemorrhoidopexy by stapling		T	0150	31.0398	$2,050.46	$437.12	$410.10
46999	Anus surgery procedure		T	0148	5.8523	$386.60		$77.32
47000	Needle biopsy of liver		T	0685	9.5785	$632.75		$126.55
47001	Needle biopsy, liver add-on		N					
47010	Open drainage, liver lesion		C					
47011	Percut drain, liver lesion		T	0037	13.5176	$892.96	$228.76	$178.60

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
47015	Inject/aspirate liver cyst		C					
47100	Wedge biopsy of liver		C					
47120	Partial removal of liver		C					
47122	Extensive removal of liver		C					
47125	Partial removal of liver		C					
47130	Partial removal of liver		C					
47133	Removal of donor liver		C					
47135	Transplantation of liver		C					
47136	Transplantation of liver		C					
47140	Partial removal, donor liver		C					
47141	Partial removal, donor liver		C					
47142	Partial removal, donor liver		C					
47143	Prep donor liver, whole		C					
47144	Prep donor liver, 3-segment		C					
47145	Prep donor liver, lobe split		C					
47146	Prep donor liver/venous		C					
47147	Prep donor liver/arterial		C					
47300	Surgery for liver lesion		C					
47350	Repair liver wound		C					
47360	Repair liver wound		C					
47361	Repair liver wound		C					
47362	Repair liver wound		C					
47370	Laparo ablate liver tumor rf	CH	T	0174	119.7237	$7,908.83	$2,208.75	$1,581.77
47371	Laparo ablate liver cryosurg		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
47379	Laparoscope procedure, liver		T	0130	37.8887	$2,502.89	$659.53	$500.58
47380	Open ablate liver tumor rf		C					
47381	Open ablate liver tumor cryo		C					
47382	Percut ablate liver rf		T	0423	46.5013	$3,071.83		$614.37
47399	Liver surgery procedure		T	0004	4.4727	$295.46		$59.10
47400	Incision of liver duct		C					
47420	Incision of bile duct		C					
47425	Incision of bile duct		C					
47460	Incise bile duct sphincter		C					
47480	Incision of gallbladder		C					
47490	Incision of gallbladder		T	0152	30.4122	$2,009.00		$401.80
47500	Injection for liver x-rays		N					
47505	Injection for liver x-rays		N					
47510	Insert catheter, bile duct		T	0152	30.4122	$2,009.00		$401.80
47511	Insert bile duct drain		T	0152	30.4122	$2,009.00		$401.80
47525	Change bile duct catheter		T	0427	15.5994	$1,030.48		$206.10
47530	Revise/reinsert bile tube		T	0427	15.5994	$1,030.48		$206.10
47550	Bile duct endoscopy add-on		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
47552	Biliary endoscopy thru skin		T	0152	30.4122	$2,009.00		$401.80
47553	Biliary endoscopy thru skin		T	0152	30.4122	$2,009.00		$401.80
47554	Biliary endoscopy thru skin		T	0152	30.4122	$2,009.00		$401.80
47555	Biliary endoscopy thru skin		T	0152	30.4122	$2,009.00		$401.80
47556	Biliary endoscopy thru skin		T	0152	30.4122	$2,009.00		$401.80
47560	Laparoscopy w/cholangio		T	0130	37.8887	$2,502.89	$659.53	$500.58
47561	Laparo w/cholangio/biopsy		T	0130	37.8887	$2,502.89	$659.53	$500.58
47562	Laparoscopic cholecystectomy		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
47563	Laparo cholecystectomy/graph		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
47564	Laparo cholecystectomy/explr		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
47570	Laparo cholecystoenterostomy		C					
47579	Laparoscope proc, biliary		T	0130	37.8887	$2,502.89	$659.53	$500.58
47600	Removal of gallbladder		C					
47605	Removal of gallbladder		C					
47610	Removal of gallbladder		C					
47612	Removal of gallbladder		C					
47620	Removal of gallbladder		C					
47630	Remove bile duct stone		T	0152	30.4122	$2,009.00		$401.80
47700	Exploration of bile ducts		C					
47701	Bile duct revision		C					
47711	Excision of bile duct tumor		C					
47712	Excision of bile duct tumor		C					
47715	Excision of bile duct cyst		C					
47720	Fuse gallbladder & bowel		C					
47721	Fuse upper gi structures		C					
47740	Fuse gallbladder & bowel		C					
47741	Fuse gallbladder & bowel		C					
47760	Fuse bile ducts and bowel		C					
47765	Fuse liver ducts & bowel		C					
47780	Fuse bile ducts and bowel		C					
47785	Fuse bile ducts and bowel		C					
47800	Reconstruction of bile ducts		C					
47801	Placement, bile duct support		C					
47802	Fuse liver duct & intestine		C					
47900	Suture bile duct injury		C					
47999	Bile tract surgery procedure		T	0152	30.4122	$2,009.00		$401.80
48000	Drainage of abdomen		C					
48001	Placement of drain, pancreas		C					
48020	Removal of pancreatic stone		C					
48100	Biopsy of pancreas, open		C					
48102	Needle biopsy, pancreas		T	0685	9.5785	$632.75		$126.55
48105	Resect/debride pancreas		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
48120	Removal of pancreas lesion		C					
48140	Partial removal of pancreas		C					
48145	Partial removal of pancreas		C					
48146	Pancreatectomy		C					
48148	Removal of pancreatic duct		C					
48150	Partial removal of pancreas		C					
48152	Pancreatectomy		C					
48153	Pancreatectomy		C					
48154	Pancreatectomy		C					
48155	Removal of pancreas		C					
48160	Pancreas removal/transplant		E					
48400	Injection, intraop add-on		C					
48500	Surgery of pancreatic cyst		C					
48510	Drain pancreatic pseudocyst		C					
48511	Drain pancreatic pseudocyst		T	0037	13.5176	$892.96	$228.76	$178.60
48520	Fuse pancreas cyst and bowel		C					
48540	Fuse pancreas cyst and bowel		C					
48545	Pancreatorrhaphy		C					
48547	Duodenal exclusion		C					
48548	Fuse pancreas and bowel		C					
48550	Donor pancreatectomy		E					
48551	Prep donor pancreas		C					
48552	Prep donor pancreas/venous		C					
48554	Transpl allograft pancreas		C					
48556	Removal, allograft pancreas		C					
48999	Pancreas surgery procedure		T	0004	4.4727	$295.46		$59.10
49000	Exploration of abdomen		C					
49002	Reopening of abdomen		C					
49010	Exploration behind abdomen		C					
49020	Drain abdominal abscess		C					
49021	Drain abdominal abscess		T	0037	13.5176	$892.96	$228.76	$178.60
49040	Drain, open, abdom abscess		C					
49041	Drain, percut, abdom abscess		T	0037	13.5176	$892.96	$228.76	$178.60
49060	Drain, open, retrop abscess		C					
49061	Drain, percut, retroper absc		T	0037	13.5176	$892.96	$228.76	$178.60
49062	Drain to peritoneal cavity		C					
49080	Puncture, peritoneal cavity		T	0070	5.3343	$352.38		$70.48
49081	Removal of abdominal fluid		T	0070	5.3343	$352.38		$70.48
49180	Biopsy, abdominal mass		T	0685	9.5785	$632.75		$126.55
49203	Exc abd tum 5 cm or less		C					
49204	Exc abd tum over 5 cm		C					
49205	Exc abd tum over 10 cm		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
49215	Excise sacral spine tumor		C					
49220	Multiple surgery, abdomen		C					
49250	Excision of umbilicus		T	0153	23.4113	$1,546.53	$376.05	$309.31
49255	Removal of omentum		C					
49320	Diag laparo separate proc		T	0130	37.8887	$2,502.89	$659.53	$500.58
49321	Laparoscopy, biopsy		T	0130	37.8887	$2,502.89	$659.53	$500.58
49322	Laparoscopy, aspiration		T	0130	37.8887	$2,502.89	$659.53	$500.58
49323	Laparo drain lymphocele		T	0130	37.8887	$2,502.89	$659.53	$500.58
49324	Lap insertion perm ip cath		T	0130	37.8887	$2,502.89	$659.53	$500.58
49325	Lap revision perm ip cath		T	0130	37.8887	$2,502.89	$659.53	$500.58
49326	Lap w/omentopexy add-on		T	0130	37.8887	$2,502.89	$659.53	$500.58
49329	Laparo proc, abdm/per/oment		T	0130	37.8887	$2,502.89	$659.53	$500.58
49400	Air injection into abdomen		N					
49402	Remove foreign body, adbomen		T	0153	23.4113	$1,546.53	$376.05	$309.31
49419	Insrt abdom cath for chemotx		T	0115	32.9660	$2,177.70		$435.54
49420	Insert abdom drain, temp		T	0652	29.8670	$1,972.98		$394.60
49421	Insert abdom drain, perm		T	0652	29.8670	$1,972.98		$394.60
49422	Remove perm cannula/catheter		T	0105	22.1272	$1,461.70		$292.34
49423	Exchange drainage catheter		T	0427	15.5994	$1,030.48		$206.10
49424	Assess cyst, contrast inject		N					
49425	Insert abdomen-venous drain		C					
49426	Revise abdomen-venous shunt		T	0153	23.4113	$1,546.53	$376.05	$309.31
49427	Injection, abdominal shunt		N					
49428	Ligation of shunt		C					
49429	Removal of shunt		T	0105	22.1272	$1,461.70		$292.34
49435	Insert subq exten to ip cath		T	0427	15.5994	$1,030.48		$206.10
49436	Embedded ip cath exit-site		T	0427	15.5994	$1,030.48		$206.10
49440	Place gastrostomy tube perc		T	0141	8.6526	$571.58	$143.38	$114.32
49441	Place duod/jej tube perc		T	0141	8.6526	$571.58	$143.38	$114.32
49442	Place cecostomy tube perc		T	0155	12.2139	$806.84		$161.37
49446	Change g-tube to g-j perc		T	0141	8.6526	$571.58	$143.38	$114.32
49450	Replace g/c tube perc		T	0121	4.5958	$303.59		$60.72
49451	Replace duod/jej tube perc		T	0121	4.5958	$303.59		$60.72
49452	Replace g-j tube perc		T	0121	4.5958	$303.59		$60.72
49460	Fix g/colon tube w/device		T	0121	4.5958	$303.59		$60.72
49465	Fluoro exam of g/colon tube		Q1	0276	1.3298	$87.85	$34.87	$17.57
49491	Rpr hern preemie reduc		T	0154	31.6628	$2,091.61	$464.85	$418.33
49492	Rpr ing hern premie, blocked		T	0154	31.6628	$2,091.61	$464.85	$418.33
49495	Rpr ing hernia baby, reduc		T	0154	31.6628	$2,091.61	$464.85	$418.33
49496	Rpr ing hernia baby, blocked		T	0154	31.6628	$2,091.61	$464.85	$418.33
49500	Rpr ing hernia, init, reduce		T	0154	31.6628	$2,091.61	$464.85	$418.33
49501	Rpr ing hernia, init blocked		T	0154	31.6628	$2,091.61	$464.85	$418.33

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
49505	Prp i/hern init reduc >5 yr		T	0154	31.6628	$2,091.61	$464.85	$418.33
49507	Prp i/hern init block >5 yr		T	0154	31.6628	$2,091.61	$464.85	$418.33
49520	Rerepair ing hernia, reduce		T	0154	31.6628	$2,091.61	$464.85	$418.33
49521	Rerepair ing hernia, blocked		T	0154	31.6628	$2,091.61	$464.85	$418.33
49525	Repair ing hernia, sliding		T	0154	31.6628	$2,091.61	$464.85	$418.33
49540	Repair lumbar hernia		T	0154	31.6628	$2,091.61	$464.85	$418.33
49550	Rpr rem hernia, init, reduce		T	0154	31.6628	$2,091.61	$464.85	$418.33
49553	Rpr fem hernia, init blocked		T	0154	31.6628	$2,091.61	$464.85	$418.33
49555	Rerepair fem hernia, reduce		T	0154	31.6628	$2,091.61	$464.85	$418.33
49557	Rerepair fem hernia, blocked		T	0154	31.6628	$2,091.61	$464.85	$418.33
49560	Rpr ventral hern init, reduc		T	0154	31.6628	$2,091.61	$464.85	$418.33
49561	Rpr ventral hern init, block		T	0154	31.6628	$2,091.61	$464.85	$418.33
49565	Rerepair ventrl hern, reduce		T	0154	31.6628	$2,091.61	$464.85	$418.33
49566	Rerepair ventrl hern, block		T	0154	31.6628	$2,091.61	$464.85	$418.33
49568	Hernia repair w/mesh		T	0154	31.6628	$2,091.61	$464.85	$418.33
49570	Rpr epigastric hern, reduce		T	0154	31.6628	$2,091.61	$464.85	$418.33
49572	Rpr epigastric hern, blocked		T	0154	31.6628	$2,091.61	$464.85	$418.33
49580	Rpr umbil hern, reduc < 5 yr		T	0154	31.6628	$2,091.61	$464.85	$418.33
49582	Rpr umbil hern, block < 5 yr		T	0154	31.6628	$2,091.61	$464.85	$418.33
49585	Rpr umbil hern, reduc > 5 yr		T	0154	31.6628	$2,091.61	$464.85	$418.33
49587	Rpr umbil hern, block > 5 yr		T	0154	31.6628	$2,091.61	$464.85	$418.33
49590	Repair spigelian hernia		T	0154	31.6628	$2,091.61	$464.85	$418.33
49600	Repair umbilical lesion		T	0154	31.6628	$2,091.61	$464.85	$418.33
49605	Repair umbilical lesion		C					
49606	Repair umbilical lesion		C					
49610	Repair umbilical lesion		C					
49611	Repair umbilical lesion		C					
49650	Lap ing hernia repair init		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
49651	Lap ing hernia repair recur		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
49652	Lap vent/abd hernia repair	NI	T	0130	37.8887	$2,502.89	$659.53	$500.58
49653	Lap vent/abd hern proc comp	NI	T	0130	37.8887	$2,502.89	$659.53	$500.58
49654	Lap inc hernia repair	NI	T	0130	37.8887	$2,502.89	$659.53	$500.58
49655	Lap inc hern repair comp	NI	T	0130	37.8887	$2,502.89	$659.53	$500.58
49656	Lap inc hernia repair recur	NI	T	0130	37.8887	$2,502.89	$659.53	$500.58
49657	Lap inc hern recur comp	NI	T	0130	37.8887	$2,502.89	$659.53	$500.58
49659	Laparo proc, hernia repair		T	0130	37.8887	$2,502.89	$659.53	$500.58
49900	Repair of abdominal wall		C					
49904	Omental flap, extra-abdom		C					
49905	Omental flap, intra-abdom		C					
49906	Free omental flap, microvasc		C					
49999	Abdomen surgery procedure		T	0153	23.4113	$1,546.53	$376.05	$309.31
50010	Exploration of kidney		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
50020	Renal abscess, open drain		T	0162	25.5871	$1,690.26		$338.06
50021	Renal abscess, percut drain		T	0037	13.5176	$892.96	$228.76	$178.60
50040	Drainage of kidney		C					
50045	Exploration of kidney		C					
5005F	Pt counsld on exam for moles		M					
50060	Removal of kidney stone		C					
50065	Incision of kidney		C					
50070	Incision of kidney		C					
50075	Removal of kidney stone		C					
50080	Removal of kidney stone		T	0429	45.8088	$3,026.08		$605.22
50081	Removal of kidney stone		T	0429	45.8088	$3,026.08		$605.22
50100	Revise kidney blood vessels		C					
5010F	Macul+ fndngs to dr mng dm		M					
50120	Exploration of kidney		C					
50125	Explore and drain kidney		C					
50130	Removal of kidney stone		C					
50135	Exploration of kidney		C					
5015F	Doc fx & test/txmnt for op		M					
50200	Biopsy of kidney		T	0685	9.5785	$632.75		$126.55
50205	Biopsy of kidney		C					
5020F	Txmnts 2 main Dr by 1 mon		E					
50220	Remove kidney, open		C					
50225	Removal kidney open, complex		C					
50230	Removal kidney open, radical		C					
50234	Removal of kidney & ureter		C					
50236	Removal of kidney & ureter		C					
50240	Partial removal of kidney		C					
50250	Cryoablate renal mass open		C					
50280	Removal of kidney lesion		C					
50290	Removal of kidney lesion		C					
50300	Remove cadaver donor kidney		C					
50320	Remove kidney, living donor		C					
50323	Prep cadaver renal allograft		C					
50325	Prep donor renal graft		C					
50327	Prep renal graft/venous		C					
50328	Prep renal graft/arterial		C					
50329	Prep renal graft/ureteral		C					
50340	Removal of kidney		C					
50360	Transplantation of kidney		C					
50365	Transplantation of kidney		C					
50370	Remove transplanted kidney		C					
50380	Reimplantation of kidney		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
50382	Change ureter stent, percut		T	0162	25.5871	$1,690.26		$338.06
50384	Remove ureter stent, percut		T	0161	18.7931	$1,241.45		$248.29
50385	Change stent via transureth		T	0161	18.7931	$1,241.45		$248.29
50386	Remove stent via transureth		T	0160	7.2104	$476.31		$95.27
50387	Change ext/int ureter stent		T	0427	15.5994	$1,030.48		$206.10
50389	Remove renal tube w/fluoro		T	0160	7.2104	$476.31		$95.27
50390	Drainage of kidney lesion		T	0685	9.5785	$632.75		$126.55
50391	Instll rx agnt into rnal tub		T	0126	1.0435	$68.93	$16.21	$13.79
50392	Insert kidney drain		T	0161	18.7931	$1,241.45		$248.29
50393	Insert ureteral tube		T	0162	25.5871	$1,690.26		$338.06
50394	Injection for kidney x-ray		N					
50395	Create passage to kidney		T	0161	18.7931	$1,241.45		$248.29
50396	Measure kidney pressure		T	0164	1.8697	$123.51		$24.71
50398	Change kidney tube		T	0427	15.5994	$1,030.48		$206.10
50400	Revision of kidney/ureter		C					
50405	Revision of kidney/ureter		C					
50500	Repair of kidney wound		C					
5050F	Plan 2 main Dr. by 1 month		M					
50520	Close kidney-skin fistula		C					
50525	Repair renal-abdomen fistula		C					
50526	Repair renal-abdomen fistula		C					
50540	Revision of horseshoe kidney		C					
50541	Laparo ablate renal cyst		T	0130	37.8887	$2,502.89	$659.53	$500.58
50542	Laparo ablate renal mass	CH	T	0174	119.7237	$7,908.83	$2,208.75	$1,581.77
50543	Laparo partial nephrectomy		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
50544	Laparoscopy, pyeloplasty		T	0130	37.8887	$2,502.89	$659.53	$500.58
50545	Laparo radical nephrectomy		C					
50546	Laparoscopic nephrectomy		C					
50547	Laparo removal donor kidney		C					
50548	Laparo remove w/ureter		C					
50549	Laparoscope proc, renal		T	0130	37.8887	$2,502.89	$659.53	$500.58
50551	Kidney endoscopy		T	0160	7.2104	$476.31		$95.27
50553	Kidney endoscopy		T	0162	25.5871	$1,690.26		$338.06
50555	Kidney endoscopy & biopsy		T	0160	7.2104	$476.31		$95.27
50557	Kidney endoscopy & treatment		T	0162	25.5871	$1,690.26		$338.06
50561	Kidney endoscopy & treatment		T	0162	25.5871	$1,690.26		$338.06
50562	Renal scope w/tumor resect		T	0160	7.2104	$476.31		$95.27
50570	Kidney endoscopy		T	0160	7.2104	$476.31		$95.27
50572	Kidney endoscopy		T	0160	7.2104	$476.31		$95.27
50574	Kidney endoscopy & biopsy		T	0160	7.2104	$476.31		$95.27
50575	Kidney endoscopy		T	0163	35.8662	$2,369.29		$473.86
50576	Kidney endoscopy & treatment		T	0161	18.7931	$1,241.45		$248.29

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
50580	Kidney endoscopy & treatment		T	0161	18.7931	$1,241.45		$248.29
50590	Fragmenting of kidney stone		T	0169	41.8999	$2,767.87	$997.74	$553.58
50592	Perc rf ablate renal tumor		T	0423	46.5013	$3,071.83		$614.37
50593	Perc cryo ablate renal tum		T	0423	46.5013	$3,071.83		$614.37
50600	Exploration of ureter		C					
50605	Insert ureteral support		C					
5060F	Fndngs mammo 2pt w/in 3 days		M					
50610	Removal of ureter stone		C					
50620	Removal of ureter stone		C					
5062F	Doc f2fmammo fndng in 5 days		M					
50630	Removal of ureter stone		C					
50650	Removal of ureter		C					
50660	Removal of ureter		C					
50684	Injection for ureter x-ray		N					
50686	Measure ureter pressure		T	0126	1.0435	$68.93	$16.21	$13.79
50688	Change of ureter tube/stent		T	0427	15.5994	$1,030.48		$206.10
50690	Injection for ureter x-ray		N					
50700	Revision of ureter		C					
50715	Release of ureter		C					
50722	Release of ureter		C					
50725	Release/revise ureter		C					
50727	Revise ureter	CH	T	0165	20.0346	$1,323.47		$264.70
50728	Revise ureter		C					
50740	Fusion of ureter & kidney		C					
50750	Fusion of ureter & kidney		C					
50760	Fusion of ureters		C					
50770	Splicing of ureters		C					
50780	Reimplant ureter in bladder		C					
50782	Reimplant ureter in bladder		C					
50783	Reimplant ureter in bladder		C					
50785	Reimplant ureter in bladder		C					
50800	Implant ureter in bowel		C					
50810	Fusion of ureter & bowel		C					
50815	Urine shunt to intestine		C					
50820	Construct bowel bladder		C					
50825	Construct bowel bladder		C					
50830	Revise urine flow		C					
50840	Replace ureter by bowel		C					
50845	Appendico-vesicostomy		C					
50860	Transplant ureter to skin		C					
50900	Repair of ureter		C					
50920	Closure ureter/skin fistula		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
50930	Closure ureter/bowel fistula		C					
50940	Release of ureter		C					
50945	Laparoscopy ureterolithotomy		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
50947	Laparo new ureter/bladder		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
50948	Laparo new ureter/bladder		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
50949	Laparoscope proc, ureter		T	0130	37.8887	$2,502.89	$659.53	$500.58
50951	Endoscopy of ureter		T	0160	7.2104	$476.31		$95.27
50953	Endoscopy of ureter		T	0160	7.2104	$476.31		$95.27
50955	Ureter endoscopy & biopsy		T	0162	25.5871	$1,690.26		$338.06
50957	Ureter endoscopy & treatment		T	0162	25.5871	$1,690.26		$338.06
50961	Ureter endoscopy & treatment		T	0162	25.5871	$1,690.26		$338.06
50970	Ureter endoscopy		T	0160	7.2104	$476.31		$95.27
50972	Ureter endoscopy & catheter		T	0160	7.2104	$476.31		$95.27
50974	Ureter endoscopy & biopsy		T	0161	18.7931	$1,241.45		$248.29
50976	Ureter endoscopy & treatment		T	0161	18.7931	$1,241.45		$248.29
50980	Ureter endoscopy & treatment		T	0162	25.5871	$1,690.26		$338.06
5100F	Rsk fx ref w/n 24 hrs x-ray	NI	E					
51020	Incise & treat bladder		T	0162	25.5871	$1,690.26		$338.06
51030	Incise & treat bladder		T	0162	25.5871	$1,690.26		$338.06
51040	Incise & drain bladder		T	0162	25.5871	$1,690.26		$338.06
51045	Incise bladder/drain ureter		T	0160	7.2104	$476.31		$95.27
51050	Removal of bladder stone		T	0162	25.5871	$1,690.26		$338.06
51060	Removal of ureter stone		C					
51065	Remove ureter calculus		T	0162	25.5871	$1,690.26		$338.06
51080	Drainage of bladder abscess		T	0008	19.3873	$1,280.71		$256.15
51100	Drain bladder by needle		T	0164	1.8697	$123.51		$24.71
51101	Drain bladder by trocar/cath		T	0126	1.0435	$68.93	$16.21	$13.79
51102	Drain bl w/cath insertion		T	0165	20.0346	$1,323.47		$264.70
51500	Removal of bladder cyst		T	0154	31.6628	$2,091.61	$464.85	$418.33
51520	Removal of bladder lesion		T	0162	25.5871	$1,690.26		$338.06
51525	Removal of bladder lesion		C					
51530	Removal of bladder lesion		C					
51535	Repair of ureter lesion		T	0162	25.5871	$1,690.26		$338.06
51550	Partial removal of bladder		C					
51555	Partial removal of bladder		C					
51565	Revise bladder & ureter(s)		C					
51570	Removal of bladder		C					
51575	Removal of bladder & nodes		C					
51580	Remove bladder/revise tract		C					
51585	Removal of bladder & nodes		C					
51590	Remove bladder/revise tract		C					
51595	Remove bladder/revise tract		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
51596	Remove bladder/create pouch		C					
51597	Removal of pelvic structures		C					
51600	Injection for bladder x-ray		N					
51605	Preparation for bladder xray		N					
51610	Injection for bladder x-ray		N					
51700	Irrigation of bladder		T	0164	1.8697	$123.51		$24.71
51701	Insert bladder catheter		X	0340	0.6462	$42.69		$8.54
51702	Insert temp bladder cath		X	0340	0.6462	$42.69		$8.54
51703	Insert bladder cath, complex		T	0126	1.0435	$68.93	$16.21	$13.79
51705	Change of bladder tube		T	0164	1.8697	$123.51		$24.71
51710	Change of bladder tube		T	0427	15.5994	$1,030.48		$206.10
51715	Endoscopic injection/implant		T	0168	30.6101	$2,022.07		$404.42
51720	Treatment of bladder lesion	CH	T	0156	2.8838	$190.50		$38.10
51725	Simple cystometrogram		T	0156	2.8838	$190.50		$38.10
51726	Complex cystometrogram		T	0156	2.8838	$190.50		$38.10
51736	Urine flow measurement		T	0126	1.0435	$68.93	$16.21	$13.79
51741	Electro-uroflowmetry, first		T	0126	1.0435	$68.93	$16.21	$13.79
51772	Urethra pressure profile		T	0164	1.8697	$123.51		$24.71
51784	Anal/urinary muscle study		T	0126	1.0435	$68.93	$16.21	$13.79
51785	Anal/urinary muscle study		T	0164	1.8697	$123.51		$24.71
51792	Urinary reflex study		T	0126	1.0435	$68.93	$16.21	$13.79
51795	Urine voiding pressure study		T	0164	1.8697	$123.51		$24.71
51797	Intraabdominal pressure test		T	0164	1.8697	$123.51		$24.71
51798	Us urine capacity measure		X	0340	0.6462	$42.69		$8.54
51800	Revision of bladder/urethra		C					
51820	Revision of urinary tract		C					
51840	Attach bladder/urethra		C					
51841	Attach bladder/urethra		C					
51845	Repair bladder neck	CH	T	0202	43.7195	$2,888.07	$981.50	$577.62
51860	Repair of bladder wound	CH	T	0162	25.5871	$1,690.26		$338.06
51865	Repair of bladder wound		C					
51880	Repair of bladder opening		T	0162	25.5871	$1,690.26		$338.06
51900	Repair bladder/vagina lesion		C					
51920	Close bladder-uterus fistula		C					
51925	Hysterectomy/bladder repair		C					
51940	Correction of bladder defect		C					
51960	Revision of bladder & bowel		C					
51980	Construct bladder opening		C					
51990	Laparo urethral suspension		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
51992	Laparo sling operation		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
51999	Laparoscope proc, bla		T	0130	37.8887	$2,502.89	$659.53	$500.58
52000	Cystoscopy		T	0160	7.2104	$476.31		$95.27

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
52001	Cystoscopy, removal of clots		T	0161	18.7931	$1,241.45		$248.29
52005	Cystoscopy & ureter catheter		T	0161	18.7931	$1,241.45		$248.29
52007	Cystoscopy and biopsy		T	0162	25.5871	$1,690.26		$338.06
52010	Cystoscopy & duct catheter		T	0160	7.2104	$476.31		$95.27
52204	Cystoscopy w/biopsy(s)		T	0161	18.7931	$1,241.45		$248.29
52214	Cystoscopy and treatment		T	0162	25.5871	$1,690.26		$338.06
52224	Cystoscopy and treatment		T	0162	25.5871	$1,690.26		$338.06
52234	Cystoscopy and treatment		T	0162	25.5871	$1,690.26		$338.06
52235	Cystoscopy and treatment		T	0162	25.5871	$1,690.26		$338.06
52240	Cystoscopy and treatment		T	0162	25.5871	$1,690.26		$338.06
52250	Cystoscopy and radiotracer		T	0162	25.5871	$1,690.26		$338.06
52260	Cystoscopy and treatment		T	0161	18.7931	$1,241.45		$248.29
52265	Cystoscopy and treatment		T	0160	7.2104	$476.31		$95.27
52270	Cystoscopy & revise urethra		T	0161	18.7931	$1,241.45		$248.29
52275	Cystoscopy & revise urethra		T	0162	25.5871	$1,690.26		$338.06
52276	Cystoscopy and treatment		T	0162	25.5871	$1,690.26		$338.06
52277	Cystoscopy and treatment		T	0162	25.5871	$1,690.26		$338.06
52281	Cystoscopy and treatment		T	0161	18.7931	$1,241.45		$248.29
52282	Cystoscopy, implant stent		T	0163	35.8662	$2,369.29		$473.86
52283	Cystoscopy and treatment		T	0162	25.5871	$1,690.26		$338.06
52285	Cystoscopy and treatment		T	0161	18.7931	$1,241.45		$248.29
52290	Cystoscopy and treatment		T	0161	18.7931	$1,241.45		$248.29
52300	Cystoscopy and treatment		T	0162	25.5871	$1,690.26		$338.06
52301	Cystoscopy and treatment		T	0162	25.5871	$1,690.26		$338.06
52305	Cystoscopy and treatment		T	0162	25.5871	$1,690.26		$338.06
52310	Cystoscopy and treatment		T	0161	18.7931	$1,241.45		$248.29
52315	Cystoscopy and treatment		T	0162	25.5871	$1,690.26		$338.06
52317	Remove bladder stone		T	0162	25.5871	$1,690.26		$338.06
52318	Remove bladder stone		T	0162	25.5871	$1,690.26		$338.06
52320	Cystoscopy and treatment		T	0162	25.5871	$1,690.26		$338.06
52325	Cystoscopy, stone removal		T	0162	25.5871	$1,690.26		$338.06
52327	Cystoscopy, inject material	CH	T	0163	35.8662	$2,369.29		$473.86
52330	Cystoscopy and treatment		T	0162	25.5871	$1,690.26		$338.06
52332	Cystoscopy and treatment		T	0162	25.5871	$1,690.26		$338.06
52334	Create passage to kidney		T	0162	25.5871	$1,690.26		$338.06
52341	Cysto w/ureter stricture tx		T	0162	25.5871	$1,690.26		$338.06
52342	Cysto w/up stricture tx		T	0162	25.5871	$1,690.26		$338.06
52343	Cysto w/renal stricture tx		T	0162	25.5871	$1,690.26		$338.06
52344	Cysto/uretero, stricture tx		T	0162	25.5871	$1,690.26		$338.06
52345	Cysto/uretero w/up stricture		T	0162	25.5871	$1,690.26		$338.06
52346	Cystouretero w/renal strict		T	0162	25.5871	$1,690.26		$338.06
52351	Cystouretero & or pyeloscope		T	0162	25.5871	$1,690.26		$338.06

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
52352	Cystouretero w/stone remove		T	0162	25.5871	$1,690.26		$338.06
52353	Cystouretero w/lithotripsy		T	0163	35.8662	$2,369.29		$473.86
52354	Cystouretero w/biopsy		T	0162	25.5871	$1,690.26		$338.06
52355	Cystouretero w/excise tumor		T	0162	25.5871	$1,690.26		$338.06
52400	Cystouretero w/congen repr		T	0162	25.5871	$1,690.26		$338.06
52402	Cystourethro cut ejacul duct		T	0162	25.5871	$1,690.26		$338.06
52450	Incision of prostate		T	0162	25.5871	$1,690.26		$338.06
52500	Revision of bladder neck		T	0162	25.5871	$1,690.26		$338.06
52601	Prostatectomy (TURP)		T	0163	35.8662	$2,369.29		$473.86
52606	Control postop bleeding	CH	D					
52612	Prostatectomy, first stage	CH	D					
52614	Prostatectomy, second stage	CH	D					
52620	Remove residual prostate	CH	D					
52630	Remove prostate regrowth		T	0163	35.8662	$2,369.29		$473.86
52640	Relieve bladder contracture		T	0162	25.5871	$1,690.26		$338.06
52647	Laser surgery of prostate		T	0429	45.8088	$3,026.08		$605.22
52648	Laser surgery of prostate		T	0429	45.8088	$3,026.08		$605.22
52649	Prostate laser enucleation		T	0429	45.8088	$3,026.08		$605.22
52700	Drainage of prostate abscess		T	0162	25.5871	$1,690.26		$338.06
53000	Incision of urethra		T	0166	19.8629	$1,312.12		$262.43
53010	Incision of urethra		T	0166	19.8629	$1,312.12		$262.43
53020	Incision of urethra		T	0166	19.8629	$1,312.12		$262.43
53025	Incision of urethra		T	0166	19.8629	$1,312.12		$262.43
53040	Drainage of urethra abscess		T	0166	19.8629	$1,312.12		$262.43
53060	Drainage of urethra abscess		T	0166	19.8629	$1,312.12		$262.43
53080	Drainage of urinary leakage		T	0166	19.8629	$1,312.12		$262.43
53085	Drainage of urinary leakage		T	0166	19.8629	$1,312.12		$262.43
53200	Biopsy of urethra		T	0166	19.8629	$1,312.12		$262.43
53210	Removal of urethra		T	0168	30.6101	$2,022.07		$404.42
53215	Removal of urethra		T	0166	19.8629	$1,312.12		$262.43
53220	Treatment of urethra lesion		T	0168	30.6101	$2,022.07		$404.42
53230	Removal of urethra lesion		T	0168	30.6101	$2,022.07		$404.42
53235	Removal of urethra lesion		T	0166	19.8629	$1,312.12		$262.43
53240	Surgery for urethra pouch		T	0168	30.6101	$2,022.07		$404.42
53250	Removal of urethra gland		T	0166	19.8629	$1,312.12		$262.43
53260	Treatment of urethra lesion		T	0166	19.8629	$1,312.12		$262.43
53265	Treatment of urethra lesion		T	0166	19.8629	$1,312.12		$262.43
53270	Removal of urethra gland		T	0166	19.8629	$1,312.12		$262.43
53275	Repair of urethra defect		T	0166	19.8629	$1,312.12		$262.43
53400	Revise urethra, stage 1		T	0168	30.6101	$2,022.07		$404.42
53405	Revise urethra, stage 2		T	0168	30.6101	$2,022.07		$404.42
53410	Reconstruction of urethra		T	0168	30.6101	$2,022.07		$404.42

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
53415	Reconstruction of urethra		C					
53420	Reconstruct urethra, stage 1		T	0168	30.6101	$2,022.07		$404.42
53425	Reconstruct urethra, stage 2		T	0168	30.6101	$2,022.07		$404.42
53430	Reconstruction of urethra		T	0168	30.6101	$2,022.07		$404.42
53431	Reconstruct urethra/bladder		T	0168	30.6101	$2,022.07		$404.42
53440	Male sling procedure		S	0385	97.5997	$6,447.34		$1,289.47
53442	Remove/revise male sling		T	0168	30.6101	$2,022.07		$404.42
53444	Insert tandem cuff		S	0385	97.5997	$6,447.34		$1,289.47
53445	Insert uro/ves nck sphincter		S	0386	152.9428	$10,103.25		$2,020.65
53446	Remove uro sphincter		T	0168	30.6101	$2,022.07		$404.42
53447	Remove/replace ur sphincter		S	0386	152.9428	$10,103.25		$2,020.65
53448	Remov/replc ur sphinctr comp		C					
53449	Repair uro sphincter		T	0168	30.6101	$2,022.07		$404.42
53450	Revision of urethra		T	0168	30.6101	$2,022.07		$404.42
53460	Revision of urethra		T	0166	19.8629	$1,312.12		$262.43
53500	Urethrlys, transvag w/ scope		T	0168	30.6101	$2,022.07		$404.42
53502	Repair of urethra injury		T	0166	19.8629	$1,312.12		$262.43
53505	Repair of urethra injury		T	0168	30.6101	$2,022.07		$404.42
53510	Repair of urethra injury		T	0166	19.8629	$1,312.12		$262.43
53515	Repair of urethra injury		T	0168	30.6101	$2,022.07		$404.42
53520	Repair of urethra defect		T	0168	30.6101	$2,022.07		$404.42
53600	Dilate urethra stricture		T	0156	2.8838	$190.50		$38.10
53601	Dilate urethra stricture		T	0126	1.0435	$68.93	$16.21	$13.79
53605	Dilate urethra stricture		T	0161	18.7931	$1,241.45		$248.29
53620	Dilate urethra stricture		T	0165	20.0346	$1,323.47		$264.70
53621	Dilate urethra stricture		T	0164	1.8697	$123.51		$24.71
53660	Dilation of urethra		T	0126	1.0435	$68.93	$16.21	$13.79
53661	Dilation of urethra		T	0126	1.0435	$68.93	$16.21	$13.79
53665	Dilation of urethra		T	0166	19.8629	$1,312.12		$262.43
53850	Prostatic microwave thermotx		T	0429	45.8088	$3,026.08		$605.22
53852	Prostatic rf thermotx		T	0429	45.8088	$3,026.08		$605.22
53853	Prostatic water thermother	CH	D					
53899	Urology surgery procedure		T	0126	1.0435	$68.93	$16.21	$13.79
54000	Slitting of prepuce		T	0166	19.8629	$1,312.12		$262.43
54001	Slitting of prepuce		T	0166	19.8629	$1,312.12		$262.43
54015	Drain penis lesion		T	0008	19.3873	$1,280.71		$256.15
54050	Destruction, penis lesion(s)	CH	T	0013	0.8281	$54.70		$10.94
54055	Destruction, penis lesion(s)		T	0017	20.2578	$1,338.21		$267.65
54056	Cryosurgery, penis lesion(s)		T	0013	0.8281	$54.70		$10.94
54057	Laser surg, penis lesion(s)		T	0017	20.2578	$1,338.21		$267.65
54060	Excision of penis lesion(s)		T	0017	20.2578	$1,338.21		$267.65
54065	Destruction, penis lesion(s)		T	0017	20.2578	$1,338.21		$267.65

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
54100	Biopsy of penis		T	0021	15.8974	$1,050.17	$219.48	$210.04
54105	Biopsy of penis		T	0022	21.8429	$1,442.92	$354.45	$288.59
54110	Treatment of penis lesion		T	0181	35.5639	$2,349.32	$621.82	$469.87
54111	Treat penis lesion, graft		T	0181	35.5639	$2,349.32	$621.82	$469.87
54112	Treat penis lesion, graft		T	0181	35.5639	$2,349.32	$621.82	$469.87
54115	Treatment of penis lesion		T	0008	19.3873	$1,280.71		$256.15
54120	Partial removal of penis		T	0181	35.5639	$2,349.32	$621.82	$469.87
54125	Removal of penis		C					
54130	Remove penis & nodes		C					
54135	Remove penis & nodes		C					
54150	Circumcision w/regionl block		T	0183	22.8376	$1,508.63		$301.73
54160	Circumcision, neonate		T	0183	22.8376	$1,508.63		$301.73
54161	Circum 28 days or older		T	0183	22.8376	$1,508.63		$301.73
54162	Lysis penil circumic lesion		T	0183	22.8376	$1,508.63		$301.73
54163	Repair of circumcision		T	0183	22.8376	$1,508.63		$301.73
54164	Frenulotomy of penis		T	0183	22.8376	$1,508.63		$301.73
54200	Treatment of penis lesion		T	0164	1.8697	$123.51		$24.71
54205	Treatment of penis lesion		T	0181	35.5639	$2,349.32	$621.82	$469.87
54220	Treatment of penis lesion		T	0164	1.8697	$123.51		$24.71
54230	Prepare penis study		N					
54231	Dynamic cavernosometry		T	0165	20.0346	$1,323.47		$264.70
54235	Penile injection		T	0164	1.8697	$123.51		$24.71
54240	Penis study		T	0126	1.0435	$68.93	$16.21	$13.79
54250	Penis study		T	0164	1.8697	$123.51		$24.71
54300	Revision of penis		T	0181	35.5639	$2,349.32	$621.82	$469.87
54304	Revision of penis		T	0181	35.5639	$2,349.32	$621.82	$469.87
54308	Reconstruction of urethra		T	0181	35.5639	$2,349.32	$621.82	$469.87
54312	Reconstruction of urethra		T	0181	35.5639	$2,349.32	$621.82	$469.87
54316	Reconstruction of urethra		T	0181	35.5639	$2,349.32	$621.82	$469.87
54318	Reconstruction of urethra		T	0181	35.5639	$2,349.32	$621.82	$469.87
54322	Reconstruction of urethra		T	0181	35.5639	$2,349.32	$621.82	$469.87
54324	Reconstruction of urethra		T	0181	35.5639	$2,349.32	$621.82	$469.87
54326	Reconstruction of urethra		T	0181	35.5639	$2,349.32	$621.82	$469.87
54328	Revise penis/urethra		T	0181	35.5639	$2,349.32	$621.82	$469.87
54332	Revise penis/urethra	CH	T	0181	35.5639	$2,349.32	$621.82	$469.87
54336	Revise penis/urethra	CH	T	0181	35.5639	$2,349.32	$621.82	$469.87
54340	Secondary urethral surgery		T	0181	35.5639	$2,349.32	$621.82	$469.87
54344	Secondary urethral surgery		T	0181	35.5639	$2,349.32	$621.82	$469.87
54348	Secondary urethral surgery		T	0181	35.5639	$2,349.32	$621.82	$469.87
54352	Reconstruct urethra/penis		T	0181	35.5639	$2,349.32	$621.82	$469.87
54360	Penis plastic surgery		T	0181	35.5639	$2,349.32	$621.82	$469.87
54380	Repair penis		T	0181	35.5639	$2,349.32	$621.82	$469.87

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
54385	Repair penis		T	0181	35.5639	$2,349.32	$621.82	$469.87
54390	Repair penis and bladder		C					
54400	Insert semi-rigid prosthesis		S	0385	97.5997	$6,447.34		$1,289.47
54401	Insert self-contd prosthesis		S	0386	152.9428	$10,103.25		$2,020.65
54405	Insert multi-comp penis pros		S	0386	152.9428	$10,103.25		$2,020.65
54406	Remove muti-comp penis pros		T	0181	35.5639	$2,349.32	$621.82	$469.87
54408	Repair multi-comp penis pros		T	0181	35.5639	$2,349.32	$621.82	$469.87
54410	Remove/replace penis prosth		S	0386	152.9428	$10,103.25		$2,020.65
54411	Remov/replc penis pros, comp		C					
54415	Remove self-contd penis pros		T	0181	35.5639	$2,349.32	$621.82	$469.87
54416	Remv/repl penis contain pros		S	0386	152.9428	$10,103.25		$2,020.65
54417	Remv/replc penis pros, compl		C					
54420	Revision of penis		T	0181	35.5639	$2,349.32	$621.82	$469.87
54430	Revision of penis		C					
54435	Revision of penis		T	0181	35.5639	$2,349.32	$621.82	$469.87
54440	Repair of penis		T	0181	35.5639	$2,349.32	$621.82	$469.87
54450	Preputial stretching		T	0156	2.8838	$190.50		$38.10
54500	Biopsy of testis		T	0037	13.5176	$892.96	$228.76	$178.60
54505	Biopsy of testis		T	0183	22.8376	$1,508.63		$301.73
54512	Excise lesion testis		T	0183	22.8376	$1,508.63		$301.73
54520	Removal of testis		T	0183	22.8376	$1,508.63		$301.73
54522	Orchiectomy, partial		T	0183	22.8376	$1,508.63		$301.73
54530	Removal of testis		T	0154	31.6628	$2,091.61	$464.85	$418.33
54535	Extensive testis surgery	CH	T	0181	35.5639	$2,349.32	$621.82	$469.87
54550	Exploration for testis		T	0154	31.6628	$2,091.61	$464.85	$418.33
54560	Exploration for testis		T	0183	22.8376	$1,508.63		$301.73
54600	Reduce testis torsion		T	0183	22.8376	$1,508.63		$301.73
54620	Suspension of testis		T	0183	22.8376	$1,508.63		$301.73
54640	Suspension of testis		T	0154	31.6628	$2,091.61	$464.85	$418.33
54650	Orchiopexy (Fowler-Stephens)		C					
54660	Revision of testis		T	0183	22.8376	$1,508.63		$301.73
54670	Repair testis injury		T	0183	22.8376	$1,508.63		$301.73
54680	Relocation of testis(es)		T	0183	22.8376	$1,508.63		$301.73
54690	Laparoscopy, orchiectomy		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
54692	Laparoscopy, orchiopexy		T	0132	69.9234	$4,619.07	$1,239.22	$923.82
54699	Laparoscope proc, testis		T	0130	37.8887	$2,502.89	$659.53	$500.58
54700	Drainage of scrotum		T	0183	22.8376	$1,508.63		$301.73
54800	Biopsy of epididymis		T	0004	4.4727	$295.46		$59.10
54830	Remove epididymis lesion		T	0183	22.8376	$1,508.63		$301.73
54840	Remove epididymis lesion		T	0183	22.8376	$1,508.63		$301.73
54860	Removal of epididymis		T	0183	22.8376	$1,508.63		$301.73
54861	Removal of epididymis		T	0183	22.8376	$1,508.63		$301.73

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
54865	Explore epididymis		T	0183	22.8376	$1,508.63		$301.73
54900	Fusion of spermatic ducts		T	0183	22.8376	$1,508.63		$301.73
54901	Fusion of spermatic ducts		T	0183	22.8376	$1,508.63		$301.73
55000	Drainage of hydrocele		T	0004	4.4727	$295.46		$59.10
55040	Removal of hydrocele		T	0154	31.6628	$2,091.61	$464.85	$418.33
55041	Removal of hydroceles		T	0154	31.6628	$2,091.61	$464.85	$418.33
55060	Repair of hydrocele		T	0183	22.8376	$1,508.63		$301.73
55100	Drainage of scrotum abscess		T	0007	12.5953	$832.03		$166.41
55110	Explore scrotum		T	0183	22.8376	$1,508.63		$301.73
55120	Removal of scrotum lesion		T	0183	22.8376	$1,508.63		$301.73
55150	Removal of scrotum		T	0183	22.8376	$1,508.63		$301.73
55175	Revision of scrotum		T	0183	22.8376	$1,508.63		$301.73
55180	Revision of scrotum		T	0183	22.8376	$1,508.63		$301.73
55200	Incision of sperm duct		T	0183	22.8376	$1,508.63		$301.73
55250	Removal of sperm duct(s)		T	0183	22.8376	$1,508.63		$301.73
55300	Prepare, sperm duct x-ray		N					
55400	Repair of sperm duct		T	0183	22.8376	$1,508.63		$301.73
55450	Ligation of sperm duct		T	0183	22.8376	$1,508.63		$301.73
55500	Removal of hydrocele		T	0183	22.8376	$1,508.63		$301.73
55520	Removal of sperm cord lesion		T	0183	22.8376	$1,508.63		$301.73
55530	Revise spermatic cord veins		T	0183	22.8376	$1,508.63		$301.73
55535	Revise spermatic cord veins		T	0154	31.6628	$2,091.61	$464.85	$418.33
55540	Revise hernia & sperm veins		T	0154	31.6628	$2,091.61	$464.85	$418.33
55550	Laparo ligate spermatic vein		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
55559	Laparo proc, spermatic cord		T	0130	37.8887	$2,502.89	$659.53	$500.58
55600	Incise sperm duct pouch		T	0183	22.8376	$1,508.63		$301.73
55605	Incise sperm duct pouch		C					
55650	Remove sperm duct pouch		C					
55680	Remove sperm pouch lesion		T	0183	22.8376	$1,508.63		$301.73
55700	Biopsy of prostate		T	0184	11.5477	$762.83		$152.57
55705	Biopsy of prostate		T	0184	11.5477	$762.83		$152.57
55706	Prostate saturation sampling	NI	T	0184	11.5477	$762.83		$152.57
55720	Drainage of prostate abscess		T	0162	25.5871	$1,690.26		$338.06
55725	Drainage of prostate abscess		T	0162	25.5871	$1,690.26		$338.06
55801	Removal of prostate		C					
55810	Extensive prostate surgery		C					
55812	Extensive prostate surgery		C					
55815	Extensive prostate surgery		C					
55821	Removal of prostate		C					
55831	Removal of prostate		C					
55840	Extensive prostate surgery		C					
55842	Extensive prostate surgery		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
55845	Extensive prostate surgery		C					
55860	Surgical exposure, prostate		T	0165	20.0346	$1,323.47		$264.70
55862	Extensive prostate surgery		C					
55865	Extensive prostate surgery		C					
55866	Laparo radical prostatectomy		C					
55870	Electroejaculation		T	0189	3.0012	$198.26		$39.66
55873	Cryoablate prostate		T	0674	122.0254	$8,060.88		$1,612.18
55875	Transperi needle place, pros		Q3	0163	35.8662	$2,369.29		$473.86
55876	Place rt device/marker, pros	CH	X	0310	13.5167	$892.90	$325.27	$178.58
55899	Genital surgery procedure		T	0126	1.0435	$68.93	$16.21	$13.79
55920	Place needles pelvic for rt		T	0153	23.4113	$1,546.53	$376.05	$309.31
55970	Sex transformation, M to F		E					
55980	Sex transformation, F to M		E					
56405	I & D of vulva/perineum		T	0189	3.0012	$198.26		$39.66
56420	Drainage of gland abscess		T	0188	1.4229	$94.00		$18.80
56440	Surgery for vulva lesion		T	0193	19.7838	$1,306.90		$261.38
56441	Lysis of labial lesion(s)		T	0193	19.7838	$1,306.90		$261.38
56442	Hymenotomy		T	0193	19.7838	$1,306.90		$261.38
56501	Destroy, vulva lesions, sim		T	0017	20.2578	$1,338.21		$267.65
56515	Destroy vulva lesion/s compl		T	0017	20.2578	$1,338.21		$267.65
56605	Biopsy of vulva/perineum		T	0189	3.0012	$198.26		$39.66
56606	Biopsy of vulva/perineum		T	0188	1.4229	$94.00		$18.80
56620	Partial removal of vulva		T	0193	19.7838	$1,306.90		$261.38
56625	Complete removal of vulva		T	0193	19.7838	$1,306.90		$261.38
56630	Extensive vulva surgery		C					
56631	Extensive vulva surgery		C					
56632	Extensive vulva surgery		C					
56633	Extensive vulva surgery		C					
56634	Extensive vulva surgery		C					
56637	Extensive vulva surgery		C					
56640	Extensive vulva surgery		C					
56700	Partial removal of hymen		T	0193	19.7838	$1,306.90		$261.38
56740	Remove vagina gland lesion		T	0193	19.7838	$1,306.90		$261.38
56800	Repair of vagina		T	0193	19.7838	$1,306.90		$261.38
56805	Repair clitoris		T	0193	19.7838	$1,306.90		$261.38
56810	Repair of perineum		T	0193	19.7838	$1,306.90		$261.38
56820	Exam of vulva w/scope		T	0188	1.4229	$94.00		$18.80
56821	Exam/biopsy of vulva w/scope		T	0188	1.4229	$94.00		$18.80
57000	Exploration of vagina		T	0193	19.7838	$1,306.90		$261.38
57010	Drainage of pelvic abscess		T	0193	19.7838	$1,306.90		$261.38
57020	Drainage of pelvic fluid		T	0192	6.1378	$405.46		$81.10
57022	I & d vaginal hematoma, pp		T	0007	12.5953	$832.03		$166.41

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
57023	I & d vag hematoma, non-ob		T	0008	19.3873	$1,280.71		$256.15
57061	Destroy vag lesions, simple		T	0193	19.7838	$1,306.90		$261.38
57065	Destroy vag lesions, complex		T	0193	19.7838	$1,306.90		$261.38
57100	Biopsy of vagina		T	0192	6.1378	$405.46		$81.10
57105	Biopsy of vagina		T	0193	19.7838	$1,306.90		$261.38
57106	Remove vagina wall, partial		T	0193	19.7838	$1,306.90		$261.38
57107	Remove vagina tissue, part		T	0195	33.6934	$2,225.75	$483.80	$445.15
57109	Vaginectomy partial w/nodes		T	0195	33.6934	$2,225.75	$483.80	$445.15
57110	Remove vagina wall, complete		C					
57111	Remove vagina tissue, compl		C					
57112	Vaginectomy w/nodes, compl		C					
57120	Closure of vagina		T	0195	33.6934	$2,225.75	$483.80	$445.15
57130	Remove vagina lesion		T	0193	19.7838	$1,306.90		$261.38
57135	Remove vagina lesion		T	0193	19.7838	$1,306.90		$261.38
57150	Treat vagina infection		T	0188	1.4229	$94.00		$18.80
57155	Insert uteri tandems/ovoids		T	0192	6.1378	$405.46		$81.10
57160	Insert pessary/other device		T	0188	1.4229	$94.00		$18.80
57170	Fitting of diaphragm/cap		T	0191	0.1524	$10.07	$2.36	$2.02
57180	Treat vaginal bleeding		T	0188	1.4229	$94.00		$18.80
57200	Repair of vagina		T	0193	19.7838	$1,306.90		$261.38
57210	Repair vagina/perineum		T	0193	19.7838	$1,306.90		$261.38
57220	Revision of urethra		T	0202	43.7195	$2,888.07	$981.50	$577.62
57230	Repair of urethral lesion		T	0195	33.6934	$2,225.75	$483.80	$445.15
57240	Repair bladder & vagina		T	0195	33.6934	$2,225.75	$483.80	$445.15
57250	Repair rectum & vagina		T	0195	33.6934	$2,225.75	$483.80	$445.15
57260	Repair of vagina		T	0195	33.6934	$2,225.75	$483.80	$445.15
57265	Extensive repair of vagina		T	0202	43.7195	$2,888.07	$981.50	$577.62
57267	Insert mesh/pelvic flr addon		T	0195	33.6934	$2,225.75	$483.80	$445.15
57268	Repair of bowel bulge		T	0195	33.6934	$2,225.75	$483.80	$445.15
57270	Repair of bowel pouch		C					
57280	Suspension of vagina		C					
57282	Colpopexy, extraperitoneal		T	0202	43.7195	$2,888.07	$981.50	$577.62
57283	Colpopexy, intraperitoneal		T	0202	43.7195	$2,888.07	$981.50	$577.62
57284	Repair paravag defect, open		T	0202	43.7195	$2,888.07	$981.50	$577.62
57285	Repair paravag defect, vag		T	0195	33.6934	$2,225.75	$483.80	$445.15
57287	Revise/remove sling repair		T	0195	33.6934	$2,225.75	$483.80	$445.15
57288	Repair bladder defect		T	0202	43.7195	$2,888.07	$981.50	$577.62
57289	Repair bladder & vagina		T	0195	33.6934	$2,225.75	$483.80	$445.15
57291	Construction of vagina		T	0195	33.6934	$2,225.75	$483.80	$445.15
57292	Construct vagina with graft		T	0195	33.6934	$2,225.75	$483.80	$445.15
57295	Revise vag graft via vagina		T	0193	19.7838	$1,306.90		$261.38
57296	Revise vag graft, open abd		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
57300	Repair rectum-vagina fistula		T	0195	33.6934	$2,225.75	$483.80	$445.15
57305	Repair rectum-vagina fistula		C					
57307	Fistula repair & colostomy		C					
57308	Fistula repair, transperine		C					
57310	Repair urethrovaginal lesion		T	0202	43.7195	$2,888.07	$981.50	$577.62
57311	Repair urethrovaginal lesion		C					
57320	Repair bladder-vagina lesion		T	0195	33.6934	$2,225.75	$483.80	$445.15
57330	Repair bladder-vagina lesion		T	0195	33.6934	$2,225.75	$483.80	$445.15
57335	Repair vagina		T	0195	33.6934	$2,225.75	$483.80	$445.15
57400	Dilation of vagina		T	0193	19.7838	$1,306.90		$261.38
57410	Pelvic examination		T	0193	19.7838	$1,306.90		$261.38
57415	Remove vaginal foreign body		T	0193	19.7838	$1,306.90		$261.38
57420	Exam of vagina w/scope		T	0189	3.0012	$198.26		$39.66
57421	Exam/biopsy of vag w/scope		T	0189	3.0012	$198.26		$39.66
57423	Repair paravag defect, lap		T	0202	43.7195	$2,888.07	$981.50	$577.62
57425	Laparoscopy, surg, colpopexy		T	0130	37.8887	$2,502.89	$659.53	$500.58
57452	Exam of cervix w/scope		T	0189	3.0012	$198.26		$39.66
57454	Bx/curett of cervix w/scope		T	0189	3.0012	$198.26		$39.66
57455	Biopsy of cervix w/scope		T	0189	3.0012	$198.26		$39.66
57456	Endocerv curettage w/scope		T	0189	3.0012	$198.26		$39.66
57460	Bx of cervix w/scope, leep		T	0193	19.7838	$1,306.90		$261.38
57461	Conz of cervix w/scope, leep		T	0193	19.7838	$1,306.90		$261.38
57500	Biopsy of cervix		T	0192	6.1378	$405.46		$81.10
57505	Endocervical curettage		T	0192	6.1378	$405.46		$81.10
57510	Cauterization of cervix		T	0193	19.7838	$1,306.90		$261.38
57511	Cryocautery of cervix		T	0188	1.4229	$94.00		$18.80
57513	Laser surgery of cervix		T	0193	19.7838	$1,306.90		$261.38
57520	Conization of cervix		T	0193	19.7838	$1,306.90		$261.38
57522	Conization of cervix		T	0193	19.7838	$1,306.90		$261.38
57530	Removal of cervix		T	0195	33.6934	$2,225.75	$483.80	$445.15
57531	Removal of cervix, radical		C					
57540	Removal of residual cervix		C					
57545	Remove cervix/repair pelvis		C					
57550	Removal of residual cervix		T	0195	33.6934	$2,225.75	$483.80	$445.15
57555	Remove cervix/repair vagina		T	0195	33.6934	$2,225.75	$483.80	$445.15
57556	Remove cervix, repair bowel		T	0202	43.7195	$2,888.07	$981.50	$577.62
57558	D&c of cervical stump		T	0193	19.7838	$1,306.90		$261.38
57700	Revision of cervix		T	0193	19.7838	$1,306.90		$261.38
57720	Revision of cervix		T	0193	19.7838	$1,306.90		$261.38
57800	Dilation of cervical canal		T	0193	19.7838	$1,306.90		$261.38
58100	Biopsy of uterus lining		T	0188	1.4229	$94.00		$18.80
58110	Bx done w/colposcopy add-on		N					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
58120	Dilation and curettage		T	0193	19.7838	$1,306.90		$261.38
58140	Myomectomy abdom method		C					
58145	Myomectomy vag method		T	0195	33.6934	$2,225.75	$483.80	$445.15
58146	Myomectomy abdom complex		C					
58150	Total hysterectomy		C					
58152	Total hysterectomy		C					
58180	Partial hysterectomy		C					
58200	Extensive hysterectomy		C					
58210	Extensive hysterectomy		C					
58240	Removal of pelvis contents		C					
58260	Vaginal hysterectomy		T	0195	33.6934	$2,225.75	$483.80	$445.15
58262	Vag hyst including t/o		T	0195	33.6934	$2,225.75	$483.80	$445.15
58263	Vag hyst w/t/o & vag repair		T	0195	33.6934	$2,225.75	$483.80	$445.15
58267	Vag hyst w/urinary repair		C					
58270	Vag hyst w/enterocele repair		T	0195	33.6934	$2,225.75	$483.80	$445.15
58275	Hysterectomy/revise vagina		C					
58280	Hysterectomy/revise vagina		C					
58285	Extensive hysterectomy		C					
58290	Vag hyst complex		T	0202	43.7195	$2,888.07	$981.50	$577.62
58291	Vag hyst incl t/o, complex		T	0202	43.7195	$2,888.07	$981.50	$577.62
58292	Vag hyst t/o & repair, compl		T	0202	43.7195	$2,888.07	$981.50	$577.62
58293	Vag hyst w/uro repair, compl		C					
58294	Vag hyst w/enterocele, compl		T	0202	43.7195	$2,888.07	$981.50	$577.62
58300	Insert intrauterine device		E					
58301	Remove intrauterine device		T	0188	1.4229	$94.00		$18.80
58321	Artificial insemination		T	0189	3.0012	$198.26		$39.66
58322	Artificial insemination		T	0189	3.0012	$198.26		$39.66
58323	Sperm washing		T	0189	3.0012	$198.26		$39.66
58340	Catheter for hysterography		N					
58345	Reopen fallopian tube		T	0193	19.7838	$1,306.90		$261.38
58346	Insert heyman uteri capsule		T	0193	19.7838	$1,306.90		$261.38
58350	Reopen fallopian tube		T	0195	33.6934	$2,225.75	$483.80	$445.15
58353	Endometr ablate, thermal		T	0195	33.6934	$2,225.75	$483.80	$445.15
58356	Endometrial cryoablation		T	0202	43.7195	$2,888.07	$981.50	$577.62
58400	Suspension of uterus		C					
58410	Suspension of uterus		C					
58520	Repair of ruptured uterus		C					
58540	Revision of uterus		C					
58541	Lsh, uterus 250 g or less	CH	T	0132	69.9234	$4,619.07	$1,239.22	$923.82
58542	Lsh w/t/o ut 250 g or less	CH	T	0132	69.9234	$4,619.07	$1,239.22	$923.82
58543	Lsh uterus above 250 g	CH	T	0132	69.9234	$4,619.07	$1,239.22	$923.82
58544	Lsh w/t/o uterus above 250 g	CH	T	0132	69.9234	$4,619.07	$1,239.22	$923.82

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
58545	Laparoscopic myomectomy		T	0130	37.8887	$2,502.89	$659.53	$500.58
58546	Laparo-myomectomy, complex		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
58548	Lap radical hyst		C					
58550	Laparo-asst vag hysterectomy		T	0132	69.9234	$4,619.07	$1,239.22	$923.82
58552	Laparo-vag hyst incl t/o		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
58553	Laparo-vag hyst, complex		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
58554	Laparo-vag hyst w/t/o, compl		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
58555	Hysteroscopy, dx, sep proc		T	0190	22.0226	$1,454.79	$424.28	$290.96
58558	Hysteroscopy, biopsy		T	0190	22.0226	$1,454.79	$424.28	$290.96
58559	Hysteroscopy, lysis		T	0190	22.0226	$1,454.79	$424.28	$290.96
58560	Hysteroscopy, resect septum		T	0387	36.6478	$2,420.92	$655.55	$484.19
58561	Hysteroscopy, remove myoma		T	0387	36.6478	$2,420.92	$655.55	$484.19
58562	Hysteroscopy, remove fb		T	0190	22.0226	$1,454.79	$424.28	$290.96
58563	Hysteroscopy, ablation		T	0387	36.6478	$2,420.92	$655.55	$484.19
58565	Hysteroscopy, sterilization		T	0202	43.7195	$2,888.07	$981.50	$577.62
58570	Tlh, uterus 250 g or less		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
58571	Tlh w/t/o 250 g or less		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
58572	Tlh, uterus over 250 g		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
58573	Tlh w/t/o uterus over 250 g		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
58578	Laparo proc, uterus		T	0130	37.8887	$2,502.89	$659.53	$500.58
58579	Hysteroscope procedure		T	0190	22.0226	$1,454.79	$424.28	$290.96
58600	Division of fallopian tube		T	0195	33.6934	$2,225.75	$483.80	$445.15
58605	Division of fallopian tube		C					
58611	Ligate oviduct(s) add-on		C					
58615	Occlude fallopian tube(s)		T	0193	19.7838	$1,306.90		$261.38
58660	Laparoscopy, lysis		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
58661	Laparoscopy, remove adnexa		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
58662	Laparoscopy, excise lesions		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
58670	Laparoscopy, tubal cautery		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
58671	Laparoscopy, tubal block		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
58672	Laparoscopy, fimbrioplasty		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
58673	Laparoscopy, salpingostomy		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
58679	Laparo proc, oviduct-ovary		T	0130	37.8887	$2,502.89	$659.53	$500.58
58700	Removal of fallopian tube		C					
58720	Removal of ovary/tube(s)		C					
58740	Adhesiolysis tube, ovary		C					
58750	Repair oviduct		C					
58752	Revise ovarian tube(s)		C					
58760	Fimbrioplasty		C					
58770	Create new tubal opening		T	0195	33.6934	$2,225.75	$483.80	$445.15
58800	Drainage of ovarian cyst(s)		T	0193	19.7838	$1,306.90		$261.38
58805	Drainage of ovarian cyst(s)		T	0195	33.6934	$2,225.75	$483.80	$445.15

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
58820	Drain ovary abscess, open		T	0195	33.6934	$2,225.75	$483.80	$445.15
58822	Drain ovary abscess, percut		C					
58823	Drain pelvic abscess, percut		T	0193	19.7838	$1,306.90		$261.38
58825	Transposition, ovary(s)		C					
58900	Biopsy of ovary(s)		T	0193	19.7838	$1,306.90		$261.38
58920	Partial removal of ovary(s)		T	0195	33.6934	$2,225.75	$483.80	$445.15
58925	Removal of ovarian cyst(s)		T	0195	33.6934	$2,225.75	$483.80	$445.15
58940	Removal of ovary(s)		C					
58943	Removal of ovary(s)		C					
58950	Resect ovarian malignancy		C					
58951	Resect ovarian malignancy		C					
58952	Resect ovarian malignancy		C					
58953	Tah, rad dissect for debulk		C					
58954	Tah rad debulk/lymph remove		C					
58956	Bso, omentectomy w/tah		C					
58957	Resect recurrent gyn mal		C					
58958	Resect recur gyn mal w/lym		C					
58960	Exploration of abdomen		C					
58970	Retrieval of oocyte		T	0189	3.0012	$198.26		$39.66
58974	Transfer of embryo		T	0189	3.0012	$198.26		$39.66
58976	Transfer of embryo		T	0189	3.0012	$198.26		$39.66
58999	Genital surgery procedure		T	0191	0.1524	$10.07	$2.36	$2.02
59000	Amniocentesis, diagnostic		T	0189	3.0012	$198.26		$39.66
59001	Amniocentesis, therapeutic		T	0192	6.1378	$405.46		$81.10
59012	Fetal cord puncture,prenatal		T	0189	3.0012	$198.26		$39.66
59015	Chorion biopsy		T	0189	3.0012	$198.26		$39.66
59020	Fetal contract stress test		T	0188	1.4229	$94.00		$18.80
59025	Fetal non-stress test		T	0188	1.4229	$94.00		$18.80
59030	Fetal scalp blood sample		T	0189	3.0012	$198.26		$39.66
59050	Fetal monitor w/report		M					
59051	Fetal monitor/interpret only		B					
59070	Transabdom amnioinfus w/us		T	0189	3.0012	$198.26		$39.66
59072	Umbilical cord occlud w/us		T	0189	3.0012	$198.26		$39.66
59074	Fetal fluid drainage w/us		T	0189	3.0012	$198.26		$39.66
59076	Fetal shunt placement, w/us		T	0189	3.0012	$198.26		$39.66
59100	Remove uterus lesion		T	0195	33.6934	$2,225.75	$483.80	$445.15
59120	Treat ectopic pregnancy		C					
59121	Treat ectopic pregnancy		C					
59130	Treat ectopic pregnancy		C					
59135	Treat ectopic pregnancy		C					
59136	Treat ectopic pregnancy		C					
59140	Treat ectopic pregnancy		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
59150	Treat ectopic pregnancy		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
59151	Treat ectopic pregnancy		T	0131	46.3238	$3,060.10	$1,001.89	$612.02
59160	D & c after delivery		T	0193	19.7838	$1,306.90		$261.38
59200	Insert cervical dilator		T	0189	3.0012	$198.26		$39.66
59300	Episiotomy or vaginal repair		T	0193	19.7838	$1,306.90		$261.38
59320	Revision of cervix		T	0193	19.7838	$1,306.90		$261.38
59325	Revision of cervix		C					
59350	Repair of uterus		C					
59400	Obstetrical care		B					
59409	Obstetrical care		T	0193	19.7838	$1,306.90		$261.38
59410	Obstetrical care		B					
59412	Antepartum manipulation		T	0193	19.7838	$1,306.90		$261.38
59414	Deliver placenta		T	0193	19.7838	$1,306.90		$261.38
59425	Antepartum care only		B					
59426	Antepartum care only		B					
59430	Care after delivery		B					
59510	Cesarean delivery		B					
59514	Cesarean delivery only		C					
59515	Cesarean delivery		B					
59525	Remove uterus after cesarean		C					
59610	Vbac delivery		B					
59612	Vbac delivery only		T	0193	19.7838	$1,306.90		$261.38
59614	Vbac care after delivery		B					
59618	Attempted vbac delivery		B					
59620	Attempted vbac delivery only		C					
59622	Attempted vbac after care		B					
59812	Treatment of miscarriage		T	0193	19.7838	$1,306.90		$261.38
59820	Care of miscarriage		T	0193	19.7838	$1,306.90		$261.38
59821	Treatment of miscarriage		T	0193	19.7838	$1,306.90		$261.38
59830	Treat uterus infection		C					
59840	Abortion		T	0193	19.7838	$1,306.90		$261.38
59841	Abortion		T	0193	19.7838	$1,306.90		$261.38
59850	Abortion		C					
59851	Abortion		C					
59852	Abortion		C					
59855	Abortion		C					
59856	Abortion		C					
59857	Abortion		C					
59866	Abortion (mpr)		T	0189	3.0012	$198.26		$39.66
59870	Evacuate mole of uterus		T	0193	19.7838	$1,306.90		$261.38
59871	Remove cerclage suture		T	0193	19.7838	$1,306.90		$261.38
59897	Fetal invas px w/us	CH	T	0191	0.1524	$10.07	$2.36	$2.02

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
59898	Laparo proc, ob care/deliver		T	0130	37.8887	$2,502.89	$659.53	$500.58
59899	Maternity care procedure		T	0191	0.1524	$10.07	$2.36	$2.02
60000	Drain thyroid/tongue cyst		T	0252	7.5330	$497.62	$109.16	$99.53
6005F	Care level rationale doc		M					
60100	Biopsy of thyroid		T	0004	4.4727	$295.46		$59.10
6010F	Dysphag test done b/4 eating		M					
6015F	Dysphag test done b/4 eating		M					
60200	Remove thyroid lesion		T	0114	47.2067	$3,118.43		$623.69
6020F	Npo (nothing-mouth) ordered		M					
60210	Partial thyroid excision		T	0114	47.2067	$3,118.43		$623.69
60212	Partial thyroid excision		T	0114	47.2067	$3,118.43		$623.69
60220	Partial removal of thyroid		T	0114	47.2067	$3,118.43		$623.69
60225	Partial removal of thyroid		T	0114	47.2067	$3,118.43		$623.69
60240	Removal of thyroid		T	0114	47.2067	$3,118.43		$623.69
60252	Removal of thyroid		T	0256	41.8741	$2,766.16		$553.24
60254	Extensive thyroid surgery		C					
60260	Repeat thyroid surgery		T	0256	41.8741	$2,766.16		$553.24
60270	Removal of thyroid		C					
60271	Removal of thyroid		T	0256	41.8741	$2,766.16		$553.24
60280	Remove thyroid duct lesion		T	0114	47.2067	$3,118.43		$623.69
60281	Remove thyroid duct lesion		T	0114	47.2067	$3,118.43		$623.69
60300	Aspir/inj thyroid cyst		T	0004	4.4727	$295.46		$59.10
6030F	Max sterile barriers follwd		M					
6040F	Appro rad ds dvcs techs docd		M					
6045F	Radxps in end rprt4fluro pxd		M					
60500	Explore parathyroid glands		T	0256	41.8741	$2,766.16		$553.24
60502	Re-explore parathyroids		T	0256	41.8741	$2,766.16		$553.24
60505	Explore parathyroid glands		C					
60512	Autotransplant parathyroid		T	0022	21.8429	$1,442.92	$354.45	$288.59
60520	Removal of thymus gland		T	0256	41.8741	$2,766.16		$553.24
60521	Removal of thymus gland		C					
60522	Removal of thymus gland		C					
60540	Explore adrenal gland		C					
60545	Explore adrenal gland		C					
60600	Remove carotid body lesion		C					
60605	Remove carotid body lesion		C					
60650	Laparoscopy adrenalectomy		C					
60659	Laparo proc, endocrine		T	0130	37.8887	$2,502.89	$659.53	$500.58
60699	Endocrine surgery procedure		T	0114	47.2067	$3,118.43		$623.69
61000	Remove cranial cavity fluid	CH	T	0207	7.1721	$473.78		$94.76
61001	Remove cranial cavity fluid	CH	T	0207	7.1721	$473.78		$94.76
61020	Remove brain cavity fluid	CH	T	0207	7.1721	$473.78		$94.76

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
61026	Injection into brain canal	CH	T	0207	7.1721	$473.78		$94.76
61050	Remove brain canal fluid	CH	T	0207	7.1721	$473.78		$94.76
61055	Injection into brain canal	CH	T	0207	7.1721	$473.78		$94.76
61070	Brain canal shunt procedure		T	0121	4.5958	$303.59		$60.72
61105	Twist drill hole		C					
61107	Drill skull for implantation		C					
61108	Drill skull for drainage		C					
61120	Burr hole for puncture		C					
61140	Pierce skull for biopsy		C					
61150	Pierce skull for drainage		C					
61151	Pierce skull for drainage		C					
61154	Pierce skull & remove clot		C					
61156	Pierce skull for drainage		C					
61210	Pierce skull, implant device		C					
61215	Insert brain-fluid device		T	0224	42.0410	$2,777.19		$555.44
61250	Pierce skull & explore		C					
61253	Pierce skull & explore		C					
61304	Open skull for exploration		C					
61305	Open skull for exploration		C					
61312	Open skull for drainage		C					
61313	Open skull for drainage		C					
61314	Open skull for drainage		C					
61315	Open skull for drainage		C					
61316	Implt cran bone flap to abdo		C					
61320	Open skull for drainage		C					
61321	Open skull for drainage		C					
61322	Decompressive craniotomy		C					
61323	Decompressive lobectomy		C					
61330	Decompress eye socket		T	0256	41.8741	$2,766.16		$553.24
61332	Explore/biopsy eye socket		C					
61333	Explore orbit/remove lesion		C					
61334	Explore orbit/remove object		T	0256	41.8741	$2,766.16		$553.24
61340	Subtemporal decompression		C					
61343	Incise skull (press relief)		C					
61345	Relieve cranial pressure		C					
61440	Incise skull for surgery		C					
61450	Incise skull for surgery		C					
61458	Incise skull for brain wound		C					
61460	Incise skull for surgery		C					
61470	Incise skull for surgery		C					
61480	Incise skull for surgery		C					
61490	Incise skull for surgery		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
61500	Removal of skull lesion		C					
61501	Remove infected skull bone		C					
61510	Removal of brain lesion		C					
61512	Remove brain lining lesion		C					
61514	Removal of brain abscess		C					
61516	Removal of brain lesion		C					
61517	Implt brain chemotx add-on		C					
61518	Removal of brain lesion		C					
61519	Remove brain lining lesion		C					
61520	Removal of brain lesion		C					
61521	Removal of brain lesion		C					
61522	Removal of brain abscess		C					
61524	Removal of brain lesion		C					
61526	Removal of brain lesion		C					
61530	Removal of brain lesion		C					
61531	Implant brain electrodes		C					
61533	Implant brain electrodes		C					
61534	Removal of brain lesion		C					
61535	Remove brain electrodes		C					
61536	Removal of brain lesion		C					
61537	Removal of brain tissue		C					
61538	Removal of brain tissue		C					
61539	Removal of brain tissue		C					
61540	Removal of brain tissue		C					
61541	Incision of brain tissue		C					
61542	Removal of brain tissue		C					
61543	Removal of brain tissue		C					
61544	Remove & treat brain lesion		C					
61545	Excision of brain tumor		C					
61546	Removal of pituitary gland		C					
61548	Removal of pituitary gland		C					
61550	Release of skull seams		C					
61552	Release of skull seams		C					
61556	Incise skull/sutures		C					
61557	Incise skull/sutures		C					
61558	Excision of skull/sutures		C					
61559	Excision of skull/sutures		C					
61563	Excision of skull tumor		C					
61564	Excision of skull tumor		C					
61566	Removal of brain tissue		C					
61567	Incision of brain tissue		C					
61570	Remove foreign body, brain		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
61571	Incise skull for brain wound		C					
61575	Skull base/brainstem surgery		C					
61576	Skull base/brainstem surgery		C					
61580	Craniofacial approach, skull		C					
61581	Craniofacial approach, skull		C					
61582	Craniofacial approach, skull		C					
61583	Craniofacial approach, skull		C					
61584	Orbitocranial approach/skull		C					
61585	Orbitocranial approach/skull		C					
61586	Resect nasopharynx, skull		C					
61590	Infratemporal approach/skull		C					
61591	Infratemporal approach/skull		C					
61592	Orbitocranial approach/skull		C					
61595	Transtemporal approach/skull		C					
61596	Transcochlear approach/skull		C					
61597	Transcondylar approach/skull		C					
61598	Transpetrosal approach/skull		C					
61600	Resect/excise cranial lesion		C					
61601	Resect/excise cranial lesion		C					
61605	Resect/excise cranial lesion		C					
61606	Resect/excise cranial lesion		C					
61607	Resect/excise cranial lesion		C					
61608	Resect/excise cranial lesion		C					
61609	Transect artery, sinus		C					
61610	Transect artery, sinus		C					
61611	Transect artery, sinus		C					
61612	Transect artery, sinus		C					
61613	Remove aneurysm, sinus		C					
61615	Resect/excise lesion, skull		C					
61616	Resect/excise lesion, skull		C					
61618	Repair dura		C					
61619	Repair dura		C					
61623	Endovasc tempory vessel occl		T	0082	90.2562	$5,962.23		$1,192.45
61624	Transcath occlusion, cns		C					
61626	Transcath occlusion, non-cns		T	0082	90.2562	$5,962.23		$1,192.45
61630	Intracranial angioplasty		C					
61635	Intracran angioplsty w/stent		C					
61640	Dilate ic vasospasm, init		E					
61641	Dilate ic vasospasm add-on		E					
61642	Dilate ic vasospasm add-on		E					
61680	Intracranial vessel surgery		C					
61682	Intracranial vessel surgery		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
61684	Intracranial vessel surgery		C					
61686	Intracranial vessel surgery		C					
61690	Intracranial vessel surgery		C					
61692	Intracranial vessel surgery		C					
61697	Brain aneurysm repr, complx		C					
61698	Brain aneurysm repr, complx		C					
61700	Brain aneurysm repr, simple		C					
61702	Inner skull vessel surgery		C					
61703	Clamp neck artery		C					
61705	Revise circulation to head		C					
61708	Revise circulation to head		C					
61710	Revise circulation to head		C					
61711	Fusion of skull arteries		C					
61720	Incise skull/brain surgery		T	0221	35.9602	$2,375.49		$475.10
61735	Incise skull/brain surgery		C					
61750	Incise skull/brain biopsy		C					
61751	Brain biopsy w/ct/mr guide		C					
61760	Implant brain electrodes		C					
61770	Incise skull for treatment		T	0221	35.9602	$2,375.49		$475.10
61790	Treat trigeminal nerve		T	0220	18.5109	$1,222.81		$244.57
61791	Treat trigeminal tract		T	0203	14.3718	$949.39	$240.33	$189.88
61793	Focus radiation beam	CH	D					
61795	Brain surgery using computer		N					
61796	Srs, cranial lesion simple	NI	B					
61797	Srs, cran les simple, addl	NI	B					
61798	Srs, cranial lesion complex	NI	B					
61799	Srs, cran les complex, addl	NI	B					
61800	Apply srs headframe add-on	NI	B					
61850	Implant neuroelectrodes	CH	C					
61860	Implant neuroelectrodes		C					
61863	Implant neuroelectrode		C					
61864	Implant neuroelectrde, addl		C					
61867	Implant neuroelectrode		C					
61868	Implant neuroelectrde, add'l		C					
61870	Implant neuroelectrodes		C					
61875	Implant neuroelectrodes		C					
61880	Revise/remove neuroelectrode		T	0687	19.6378	$1,297.25	$397.37	$259.45
61885	Insrt/redo neurostim 1 array		S	0039	189.9087	$12,545.18		$2,509.04
61886	Implant neurostim arrays		S	0315	277.2288	$18,313.46		$3,662.70
61888	Revise/remove neuroreceiver		T	0688	29.5464	$1,951.81	$778.69	$390.37
62000	Treat skull fracture		T	0254	24.7557	$1,635.34		$327.07
62005	Treat skull fracture		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
62010	Treatment of head injury		C					
62100	Repair brain fluid leakage		C					
62115	Reduction of skull defect		C					
62116	Reduction of skull defect		C					
62117	Reduction of skull defect		C					
62120	Repair skull cavity lesion		C					
62121	Incise skull repair		C					
62140	Repair of skull defect		C					
62141	Repair of skull defect		C					
62142	Remove skull plate/flap		C					
62143	Replace skull plate/flap		C					
62145	Repair of skull & brain		C					
62146	Repair of skull with graft		C					
62147	Repair of skull with graft		C					
62148	Retr bone flap to fix skull		C					
62160	Neuroendoscopy add-on		N					
62161	Dissect brain w/scope		C					
62162	Remove colloid cyst w/scope		C					
62163	Neuroendoscopy w/fb removal		C					
62164	Remove brain tumor w/scope		C					
62165	Remove pituit tumor w/scope		C					
62180	Establish brain cavity shunt		C					
62190	Establish brain cavity shunt		C					
62192	Establish brain cavity shunt		C					
62194	Replace/irrigate catheter	CH	T	0207	7.1721	$473.78		$94.76
62200	Establish brain cavity shunt		C					
62201	Brain cavity shunt w/scope		C					
62220	Establish brain cavity shunt		C					
62223	Establish brain cavity shunt		C					
62225	Replace/irrigate catheter		T	0427	15.5994	$1,030.48		$206.10
62230	Replace/revise brain shunt		T	0224	42.0410	$2,777.19		$555.44
62252	Csf shunt reprogram		S	0691	2.4647	$162.82	$50.49	$32.57
62256	Remove brain cavity shunt		C					
62258	Replace brain cavity shunt		C					
62263	Epidural lysis mult sessions	CH	T	0207	7.1721	$473.78		$94.76
62264	Epidural lysis on single day		T	0203	14.3718	$949.39	$240.33	$189.88
62267	Interdiscal perq aspir, dx	NI	T	0004	4.4727	$295.46		$59.10
62268	Drain spinal cord cyst	CH	T	0207	7.1721	$473.78		$94.76
62269	Needle biopsy, spinal cord		T	0685	9.5785	$632.75		$126.55
62270	Spinal fluid tap, diagnostic		T	0206	3.6499	$241.11	$51.76	$48.23
62272	Drain cerebro spinal fluid		T	0206	3.6499	$241.11	$51.76	$48.23
62273	Inject epidural patch		T	0206	3.6499	$241.11	$51.76	$48.23

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
62280	Treat spinal cord lesion		T	0207	7.1721	$473.78		$94.76
62281	Treat spinal cord lesion		T	0207	7.1721	$473.78		$94.76
62282	Treat spinal canal lesion		T	0207	7.1721	$473.78		$94.76
62284	Injection for myelogram		N					
62287	Percutaneous diskectomy		T	0221	35.9602	$2,375.49		$475.10
62290	Inject for spine disk x-ray		N					
62291	Inject for spine disk x-ray		N					
62292	Injection into disk lesion	CH	T	0207	7.1721	$473.78		$94.76
62294	Injection into spinal artery	CH	T	0207	7.1721	$473.78		$94.76
62310	Inject spine c/t		T	0207	7.1721	$473.78		$94.76
62311	Inject spine l/s (cd)		T	0207	7.1721	$473.78		$94.76
62318	Inject spine w/cath, c/t		T	0207	7.1721	$473.78		$94.76
62319	Inject spine w/cath l/s (cd)		T	0207	7.1721	$473.78		$94.76
62350	Implant spinal canal cath		T	0224	42.0410	$2,777.19		$555.44
62351	Implant spinal canal cath		T	0208	48.6069	$3,210.92		$642.19
62355	Remove spinal canal catheter		T	0203	14.3718	$949.39	$240.33	$189.88
62360	Insert spine infusion device		T	0224	42.0410	$2,777.19		$555.44
62361	Implant spine infusion pump		T	0227	185.9307	$12,282.40		$2,456.48
62362	Implant spine infusion pump		T	0227	185.9307	$12,282.40		$2,456.48
62365	Remove spine infusion device		T	0221	35.9602	$2,375.49		$475.10
62367	Analyze spine infusion pump	CH	S	0692	1.6537	$109.24		$21.85
62368	Analyze spine infusion pump		S	0691	2.4647	$162.82	$50.49	$32.57
63001	Removal of spinal lamina		T	0208	48.6069	$3,210.92		$642.19
63003	Removal of spinal lamina		T	0208	48.6069	$3,210.92		$642.19
63005	Removal of spinal lamina		T	0208	48.6069	$3,210.92		$642.19
63011	Removal of spinal lamina		T	0208	48.6069	$3,210.92		$642.19
63012	Removal of spinal lamina		T	0208	48.6069	$3,210.92		$642.19
63015	Removal of spinal lamina		T	0208	48.6069	$3,210.92		$642.19
63016	Removal of spinal lamina		T	0208	48.6069	$3,210.92		$642.19
63017	Removal of spinal lamina		T	0208	48.6069	$3,210.92		$642.19
63020	Neck spine disk surgery		T	0208	48.6069	$3,210.92		$642.19
63030	Low back disk surgery		T	0208	48.6069	$3,210.92		$642.19
63035	Spinal disk surgery add-on		T	0208	48.6069	$3,210.92		$642.19
63040	Laminotomy, single cervical		T	0208	48.6069	$3,210.92		$642.19
63042	Laminotomy, single lumbar		T	0208	48.6069	$3,210.92		$642.19
63043	Laminotomy, add'l cervical		C					
63044	Laminotomy, add'l lumbar		C					
63045	Removal of spinal lamina		T	0208	48.6069	$3,210.92		$642.19
63046	Removal of spinal lamina		T	0208	48.6069	$3,210.92		$642.19
63047	Removal of spinal lamina		T	0208	48.6069	$3,210.92		$642.19
63048	Remove spinal lamina add-on		T	0208	48.6069	$3,210.92		$642.19
63050	Cervical laminoplasty		C					

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
63051	C-laminoplasty w/graft/plate		C					
63055	Decompress spinal cord		T	0208	48.6069	$3,210.92		$642.19
63056	Decompress spinal cord		T	0208	48.6069	$3,210.92		$642.19
63057	Decompress spine cord add-on		T	0208	48.6069	$3,210.92		$642.19
63064	Decompress spinal cord		T	0208	48.6069	$3,210.92		$642.19
63066	Decompress spine cord add-on		T	0208	48.6069	$3,210.92		$642.19
63075	Neck spine disk surgery		T	0208	48.6069	$3,210.92		$642.19
63076	Neck spine disk surgery		C					
63077	Spine disk surgery, thorax		C					
63078	Spine disk surgery, thorax		C					
63081	Removal of vertebral body		C					
63082	Remove vertebral body add-on		C					
63085	Removal of vertebral body		C					
63086	Remove vertebral body add-on		C					
63087	Removal of vertebral body		C					
63088	Remove vertebral body add-on		C					
63090	Removal of vertebral body		C					
63091	Remove vertebral body add-on		C					
63101	Removal of vertebral body		C					
63102	Removal of vertebral body		C					
63103	Remove vertebral body add-on		C					
63170	Incise spinal cord tract(s)		C					
63172	Drainage of spinal cyst		C					
63173	Drainage of spinal cyst		C					
63180	Revise spinal cord ligaments		C					
63182	Revise spinal cord ligaments		C					
63185	Incise spinal column/nerves		C					
63190	Incise spinal column/nerves		C					
63191	Incise spinal column/nerves		C					
63194	Incise spinal column & cord		C					
63195	Incise spinal column & cord		C					
63196	Incise spinal column & cord		C					
63197	Incise spinal column & cord		C					
63198	Incise spinal column & cord		C					
63199	Incise spinal column & cord		C					
63200	Release of spinal cord		C					
63250	Revise spinal cord vessels		C					
63251	Revise spinal cord vessels		C					
63252	Revise spinal cord vessels		C					
63265	Excise intraspinal lesion		C					
63266	Excise intraspinal lesion		C					
63267	Excise intraspinal lesion		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
63268	Excise intraspinal lesion		C					
63270	Excise intraspinal lesion		C					
63271	Excise intraspinal lesion		C					
63272	Excise intraspinal lesion		C					
63273	Excise intraspinal lesion		C					
63275	Biopsy/excise spinal tumor		C					
63276	Biopsy/excise spinal tumor		C					
63277	Biopsy/excise spinal tumor		C					
63278	Biopsy/excise spinal tumor		C					
63280	Biopsy/excise spinal tumor		C					
63281	Biopsy/excise spinal tumor		C					
63282	Biopsy/excise spinal tumor		C					
63283	Biopsy/excise spinal tumor		C					
63285	Biopsy/excise spinal tumor		C					
63286	Biopsy/excise spinal tumor		C					
63287	Biopsy/excise spinal tumor		C					
63290	Biopsy/excise spinal tumor		C					
63295	Repair of laminectomy defect		C					
63300	Removal of vertebral body		C					
63301	Removal of vertebral body		C					
63302	Removal of vertebral body		C					
63303	Removal of vertebral body		C					
63304	Removal of vertebral body		C					
63305	Removal of vertebral body		C					
63306	Removal of vertebral body		C					
63307	Removal of vertebral body		C					
63308	Remove vertebral body add-on		C					
63600	Remove spinal cord lesion		T	0220	18.5109	$1,222.81		$244.57
63610	Stimulation of spinal cord		T	0220	18.5109	$1,222.81		$244.57
63615	Remove lesion of spinal cord		T	0220	18.5109	$1,222.81		$244.57
63620	Srs, spinal lesion	NI	B					
63621	Srs, spinal lesion, addl	NI	B					
63650	Implant neuroelectrodes		S	0040	63.6772	$4,206.45		$841.29
63655	Implant neuroelectrodes		S	0061	82.9048	$5,476.61		$1,095.33
63660	Revise/remove neuroelectrode		T	0687	19.6378	$1,297.25	$397.37	$259.45
63685	Insrt/redo spine n generator		S	0222	235.6477	$15,566.65		$3,113.33
63688	Revise/remove neuroreceiver		T	0688	29.5464	$1,951.81	$778.69	$390.37
63700	Repair of spinal herniation		C					
63702	Repair of spinal herniation		C					
63704	Repair of spinal herniation		C					
63706	Repair of spinal herniation		C					
63707	Repair spinal fluid leakage		C					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
63709	Repair spinal fluid leakage		C					
63710	Graft repair of spine defect		C					
63740	Install spinal shunt		C					
63741	Install spinal shunt		T	0224	42.0410	$2,777.19		$555.44
63744	Revision of spinal shunt		T	0224	42.0410	$2,777.19		$555.44
63746	Removal of spinal shunt	CH	T	0203	14.3718	$949.39	$240.33	$189.88
64400	N block inj, trigeminal		T	0204	2.4871	$164.30	$40.13	$32.86
64402	N block inj, facial		T	0204	2.4871	$164.30	$40.13	$32.86
64405	N block inj, occipital		T	0206	3.6499	$241.11	$51.76	$48.23
64408	N block inj, vagus		T	0206	3.6499	$241.11	$51.76	$48.23
64410	N block inj, phrenic		T	0207	7.1721	$473.78		$94.76
64412	N block inj, spinal accessor		T	0207	7.1721	$473.78		$94.76
64413	N block inj, cervical plexus		T	0206	3.6499	$241.11	$51.76	$48.23
64415	N block inj, brachial plexus		T	0206	3.6499	$241.11	$51.76	$48.23
64416	N block cont infuse, b plex		T	0207	7.1721	$473.78		$94.76
64417	N block inj, axillary		T	0206	3.6499	$241.11	$51.76	$48.23
64418	N block inj, suprascapular		T	0206	3.6499	$241.11	$51.76	$48.23
64420	N block inj, intercost, sng		T	0206	3.6499	$241.11	$51.76	$48.23
64421	N block inj, intercost, mlt	CH	T	0207	7.1721	$473.78		$94.76
64425	N block inj, ilio-ing/hypogi		T	0206	3.6499	$241.11	$51.76	$48.23
64430	N block inj, pudendal		T	0207	7.1721	$473.78		$94.76
64435	N block inj, paracervical		T	0206	3.6499	$241.11	$51.76	$48.23
64445	N block inj, sciatic, sng		T	0206	3.6499	$241.11	$51.76	$48.23
64446	N blk inj, sciatic, cont inf		T	0203	14.3718	$949.39	$240.33	$189.88
64447	N block inj fem, single		T	0206	3.6499	$241.11	$51.76	$48.23
64448	N block inj fem, cont inf		T	0206	3.6499	$241.11	$51.76	$48.23
64449	N block inj, lumbar plexus		T	0207	7.1721	$473.78		$94.76
64450	N block, other peripheral		T	0206	3.6499	$241.11	$51.76	$48.23
64455	N block inj, plantar digit	NI	T	0204	2.4871	$164.30	$40.13	$32.86
64470	Inj paravertebral c/t		T	0207	7.1721	$473.78		$94.76
64472	Inj paravertebral c/t add-on		T	0206	3.6499	$241.11	$51.76	$48.23
64475	Inj paravertebral l/s		T	0207	7.1721	$473.78		$94.76
64476	Inj paravertebral l/s add-on		T	0204	2.4871	$164.30	$40.13	$32.86
64479	Inj foramen epidural c/t		T	0207	7.1721	$473.78		$94.76
64480	Inj foramen epidural add-on		T	0206	3.6499	$241.11	$51.76	$48.23
64483	Inj foramen epidural l/s		T	0207	7.1721	$473.78		$94.76
64484	Inj foramen epidural add-on		T	0206	3.6499	$241.11	$51.76	$48.23
64505	N block, spenopalatine gangl		T	0204	2.4871	$164.30	$40.13	$32.86
64508	N block, carotid sinus s/p		T	0204	2.4871	$164.30	$40.13	$32.86
64510	N block, stellate ganglion		T	0207	7.1721	$473.78		$94.76
64517	N block inj, hypogas plxs		T	0207	7.1721	$473.78		$94.76
64520	N block, lumbar/thoracic		T	0207	7.1721	$473.78		$94.76

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
64530	N block inj, celiac pelus		T	0207	7.1721	$473.78		$94.76
64550	Apply neurostimulator		A					
64553	Implant neuroelectrodes	CH	S	0040	63.6772	$4,206.45		$841.29
64555	Implant neuroelectrodes		S	0040	63.6772	$4,206.45		$841.29
64560	Implant neuroelectrodes		S	0040	63.6772	$4,206.45		$841.29
64561	Implant neuroelectrodes		S	0040	63.6772	$4,206.45		$841.29
64565	Implant neuroelectrodes		S	0040	63.6772	$4,206.45		$841.29
64573	Implant neuroelectrodes		S	0225	109.5182	$7,234.66		$1,446.94
64575	Implant neuroelectrodes		S	0061	82.9048	$5,476.61		$1,095.33
64577	Implant neuroelectrodes		S	0061	82.9048	$5,476.61		$1,095.33
64580	Implant neuroelectrodes		S	0061	82.9048	$5,476.61		$1,095.33
64581	Implant neuroelectrodes		S	0061	82.9048	$5,476.61		$1,095.33
64585	Revise/remove neuroelectrode		T	0687	19.6378	$1,297.25	$397.37	$259.45
64590	Insrt/redo pn/gastr stimul		S	0039	189.9087	$12,545.18		$2,509.04
64595	Revise/rmv pn/gastr stimul		T	0688	29.5464	$1,951.81	$778.69	$390.37
64600	Injection treatment of nerve		T	0203	14.3718	$949.39	$240.33	$189.88
64605	Injection treatment of nerve		T	0203	14.3718	$949.39	$240.33	$189.88
64610	Injection treatment of nerve		T	0203	14.3718	$949.39	$240.33	$189.88
64612	Destroy nerve, face muscle		T	0204	2.4871	$164.30	$40.13	$32.86
64613	Destroy nerve, neck muscle	CH	T	0206	3.6499	$241.11	$51.76	$48.23
64614	Destroy nerve, extrem musc	CH	T	0206	3.6499	$241.11	$51.76	$48.23
64620	Injection treatment of nerve		T	0207	7.1721	$473.78		$94.76
64622	Destr paravertebrl nerve l/s		T	0203	14.3718	$949.39	$240.33	$189.88
64623	Destr paravertebral n add-on		T	0207	7.1721	$473.78		$94.76
64626	Destr paravertebrl nerve c/t		T	0203	14.3718	$949.39	$240.33	$189.88
64627	Destr paravertebral n add-on		T	0204	2.4871	$164.30	$40.13	$32.86
64630	Injection treatment of nerve		T	0207	7.1721	$473.78		$94.76
64632	N block inj, common digit	NI	T	0204	2.4871	$164.30	$40.13	$32.86
64640	Injection treatment of nerve		T	0207	7.1721	$473.78		$94.76
64650	Chemodenerv eccrine glands		T	0204	2.4871	$164.30	$40.13	$32.86
64653	Chemodenerv eccrine glands		T	0204	2.4871	$164.30	$40.13	$32.86
64680	Injection treatment of nerve		T	0203	14.3718	$949.39	$240.33	$189.88
64681	Injection treatment of nerve		T	0203	14.3718	$949.39	$240.33	$189.88
64702	Revise finger/toe nerve		T	0220	18.5109	$1,222.81		$244.57
64704	Revise hand/foot nerve		T	0220	18.5109	$1,222.81		$244.57
64708	Revise arm/leg nerve		T	0220	18.5109	$1,222.81		$244.57
64712	Revision of sciatic nerve		T	0220	18.5109	$1,222.81		$244.57
64713	Revision of arm nerve(s)		T	0220	18.5109	$1,222.81		$244.57
64714	Revise low back nerve(s)		T	0220	18.5109	$1,222.81		$244.57
64716	Revision of cranial nerve		T	0220	18.5109	$1,222.81		$244.57
64718	Revise ulnar nerve at elbow		T	0220	18.5109	$1,222.81		$244.57
64719	Revise ulnar nerve at wrist		T	0220	18.5109	$1,222.81		$244.57

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
64721	Carpal tunnel surgery		T	0220	18.5109	$1,222.81		$244.57
64722	Relieve pressure on nerve(s)		T	0220	18.5109	$1,222.81		$244.57
64726	Release foot/toe nerve		T	0220	18.5109	$1,222.81		$244.57
64727	Internal nerve revision		T	0220	18.5109	$1,222.81		$244.57
64732	Incision of brow nerve		T	0220	18.5109	$1,222.81		$244.57
64734	Incision of cheek nerve		T	0220	18.5109	$1,222.81		$244.57
64736	Incision of chin nerve		T	0220	18.5109	$1,222.81		$244.57
64738	Incision of jaw nerve		T	0220	18.5109	$1,222.81		$244.57
64740	Incision of tongue nerve		T	0220	18.5109	$1,222.81		$244.57
64742	Incision of facial nerve		T	0220	18.5109	$1,222.81		$244.57
64744	Incise nerve, back of head		T	0220	18.5109	$1,222.81		$244.57
64746	Incise diaphragm nerve		T	0220	18.5109	$1,222.81		$244.57
64752	Incision of vagus nerve		C					
64755	Incision of stomach nerves		C					
64760	Incision of vagus nerve		C					
64761	Incision of pelvis nerve		T	0220	18.5109	$1,222.81		$244.57
64763	Incise hip/thigh nerve		T	0220	18.5109	$1,222.81		$244.57
64766	Incise hip/thigh nerve		T	0221	35.9602	$2,375.49		$475.10
64771	Sever cranial nerve		T	0220	18.5109	$1,222.81		$244.57
64772	Incision of spinal nerve		T	0220	18.5109	$1,222.81		$244.57
64774	Remove skin nerve lesion		T	0220	18.5109	$1,222.81		$244.57
64776	Remove digit nerve lesion		T	0220	18.5109	$1,222.81		$244.57
64778	Digit nerve surgery add-on		T	0220	18.5109	$1,222.81		$244.57
64782	Remove limb nerve lesion		T	0220	18.5109	$1,222.81		$244.57
64783	Limb nerve surgery add-on		T	0220	18.5109	$1,222.81		$244.57
64784	Remove nerve lesion		T	0220	18.5109	$1,222.81		$244.57
64786	Remove sciatic nerve lesion		T	0221	35.9602	$2,375.49		$475.10
64787	Implant nerve end		T	0220	18.5109	$1,222.81		$244.57
64788	Remove skin nerve lesion		T	0220	18.5109	$1,222.81		$244.57
64790	Removal of nerve lesion		T	0220	18.5109	$1,222.81		$244.57
64792	Removal of nerve lesion		T	0221	35.9602	$2,375.49		$475.10
64795	Biopsy of nerve		T	0220	18.5109	$1,222.81		$244.57
64802	Remove sympathetic nerves		T	0220	18.5109	$1,222.81		$244.57
64804	Remove sympathetic nerves		T	0220	18.5109	$1,222.81		$244.57
64809	Remove sympathetic nerves		C					
64818	Remove sympathetic nerves		C					
64820	Remove sympathetic nerves		T	0220	18.5109	$1,222.81		$244.57
64821	Remove sympathetic nerves		T	0054	27.9994	$1,849.61		$369.93
64822	Remove sympathetic nerves		T	0054	27.9994	$1,849.61		$369.93
64823	Remove sympathetic nerves		T	0054	27.9994	$1,849.61		$369.93
64831	Repair of digit nerve		T	0221	35.9602	$2,375.49		$475.10
64832	Repair nerve add-on		T	0221	35.9602	$2,375.49		$475.10

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
64834	Repair of hand or foot nerve		T	0221	35.9602	$2,375.49		$475.10
64835	Repair of hand or foot nerve		T	0221	35.9602	$2,375.49		$475.10
64836	Repair of hand or foot nerve		T	0221	35.9602	$2,375.49		$475.10
64837	Repair nerve add-on		T	0221	35.9602	$2,375.49		$475.10
64840	Repair of leg nerve		T	0221	35.9602	$2,375.49		$475.10
64856	Repair/transpose nerve		T	0221	35.9602	$2,375.49		$475.10
64857	Repair arm/leg nerve		T	0221	35.9602	$2,375.49		$475.10
64858	Repair sciatic nerve		T	0221	35.9602	$2,375.49		$475.10
64859	Nerve surgery		T	0221	35.9602	$2,375.49		$475.10
64861	Repair of arm nerves		T	0221	35.9602	$2,375.49		$475.10
64862	Repair of low back nerves		T	0221	35.9602	$2,375.49		$475.10
64864	Repair of facial nerve		T	0221	35.9602	$2,375.49		$475.10
64865	Repair of facial nerve		T	0221	35.9602	$2,375.49		$475.10
64866	Fusion of facial/other nerve		C					
64868	Fusion of facial/other nerve		C					
64870	Fusion of facial/other nerve		T	0221	35.9602	$2,375.49		$475.10
64872	Subsequent repair of nerve		T	0221	35.9602	$2,375.49		$475.10
64874	Repair & revise nerve add-on		T	0221	35.9602	$2,375.49		$475.10
64876	Repair nerve/shorten bone		T	0221	35.9602	$2,375.49		$475.10
64885	Nerve graft, head or neck		T	0221	35.9602	$2,375.49		$475.10
64886	Nerve graft, head or neck		T	0221	35.9602	$2,375.49		$475.10
64890	Nerve graft, hand or foot		T	0221	35.9602	$2,375.49		$475.10
64891	Nerve graft, hand or foot		T	0221	35.9602	$2,375.49		$475.10
64892	Nerve graft, arm or leg		T	0221	35.9602	$2,375.49		$475.10
64893	Nerve graft, arm or leg		T	0221	35.9602	$2,375.49		$475.10
64895	Nerve graft, hand or foot		T	0221	35.9602	$2,375.49		$475.10
64896	Nerve graft, hand or foot		T	0221	35.9602	$2,375.49		$475.10
64897	Nerve graft, arm or leg		T	0221	35.9602	$2,375.49		$475.10
64898	Nerve graft, arm or leg		T	0221	35.9602	$2,375.49		$475.10
64901	Nerve graft add-on		T	0221	35.9602	$2,375.49		$475.10
64902	Nerve graft add-on		T	0221	35.9602	$2,375.49		$475.10
64905	Nerve pedicle transfer		T	0221	35.9602	$2,375.49		$475.10
64907	Nerve pedicle transfer		T	0221	35.9602	$2,375.49		$475.10
64910	Nerve repair w/allograft	CH	T	0221	35.9602	$2,375.49		$475.10
64911	Neurorraphy w/vein autograft	CH	T	0221	35.9602	$2,375.49		$475.10
64999	Nervous system surgery		T	0204	2.4871	$164.30	$40.13	$32.86
65091	Revise eye		T	0242	38.5166	$2,544.37	$597.36	$508.88
65093	Revise eye with implant		T	0242	38.5166	$2,544.37	$597.36	$508.88
65101	Removal of eye		T	0242	38.5166	$2,544.37	$597.36	$508.88
65103	Remove eye/insert implant		T	0242	38.5166	$2,544.37	$597.36	$508.88
65105	Remove eye/attach implant		T	0242	38.5166	$2,544.37	$597.36	$508.88
65110	Removal of eye		T	0242	38.5166	$2,544.37	$597.36	$508.88

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
65112	Remove eye/revise socket		T	0242	38.5166	$2,544.37	$597.36	$508.88
65114	Remove eye/revise socket		T	0242	38.5166	$2,544.37	$597.36	$508.88
65125	Revise ocular implant	CH	T	0241	26.0302	$1,719.53	$383.45	$343.91
65130	Insert ocular implant		T	0241	26.0302	$1,719.53	$383.45	$343.91
65135	Insert ocular implant		T	0241	26.0302	$1,719.53	$383.45	$343.91
65140	Attach ocular implant		T	0242	38.5166	$2,544.37	$597.36	$508.88
65150	Revise ocular implant		T	0241	26.0302	$1,719.53	$383.45	$343.91
65155	Reinsert ocular implant		T	0242	38.5166	$2,544.37	$597.36	$508.88
65175	Removal of ocular implant		T	0240	19.3139	$1,275.86	$309.52	$255.18
65205	Remove foreign body from eye		S	0698	0.9338	$61.69		$12.34
65210	Remove foreign body from eye		S	0698	0.9338	$61.69		$12.34
65220	Remove foreign body from eye		S	0698	0.9338	$61.69		$12.34
65222	Remove foreign body from eye		S	0698	0.9338	$61.69		$12.34
65235	Remove foreign body from eye		T	0233	16.7409	$1,105.89	$266.33	$221.18
65260	Remove foreign body from eye	CH	T	0235	5.8277	$384.97		$77.00
65265	Remove foreign body from eye		T	0237	22.3269	$1,474.89		$294.98
65270	Repair of eye wound		T	0240	19.3139	$1,275.86	$309.52	$255.18
65272	Repair of eye wound		T	0234	23.8963	$1,578.57	$511.31	$315.72
65273	Repair of eye wound		C					
65275	Repair of eye wound		T	0234	23.8963	$1,578.57	$511.31	$315.72
65280	Repair of eye wound	CH	T	0237	22.3269	$1,474.89		$294.98
65285	Repair of eye wound		T	0672	38.1751	$2,521.81		$504.37
65286	Repair of eye wound		T	0232	4.6708	$308.55	$77.30	$61.71
65290	Repair of eye socket wound		T	0243	24.6556	$1,628.72	$430.35	$325.75
65400	Removal of eye lesion		T	0233	16.7409	$1,105.89	$266.33	$221.18
65410	Biopsy of cornea		T	0233	16.7409	$1,105.89	$266.33	$221.18
65420	Removal of eye lesion		T	0233	16.7409	$1,105.89	$266.33	$221.18
65426	Removal of eye lesion		T	0234	23.8963	$1,578.57	$511.31	$315.72
65430	Corneal smear		S	0698	0.9338	$61.69		$12.34
65435	Curette/treat cornea		T	0239	7.6973	$508.48		$101.70
65436	Curette/treat cornea		T	0233	16.7409	$1,105.89	$266.33	$221.18
65450	Treatment of corneal lesion		S	0231	2.1549	$142.35		$28.47
65600	Revision of cornea		T	0240	19.3139	$1,275.86	$309.52	$255.18
65710	Corneal transplant		T	0244	37.9664	$2,508.02	$803.26	$501.61
65730	Corneal transplant		T	0244	37.9664	$2,508.02	$803.26	$501.61
65750	Corneal transplant		T	0244	37.9664	$2,508.02	$803.26	$501.61
65755	Corneal transplant		T	0244	37.9664	$2,508.02	$803.26	$501.61
65756	Corneal trnspl, endothelial	NI	T	0244	37.9664	$2,508.02	$803.26	$501.61
65757	Prep corneal endo allograft	NI	N					
65760	Revision of cornea		E					
65765	Revision of cornea		E					
65767	Corneal tissue transplant		E					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
65770	Revise cornea with implant		T	0293	104.7499	$6,919.67		$1,383.94
65771	Radial keratotomy		E					
65772	Correction of astigmatism		T	0233	16.7409	$1,105.89	$266.33	$221.18
65775	Correction of astigmatism		T	0233	16.7409	$1,105.89	$266.33	$221.18
65780	Ocular reconst, transplant		T	0244	37.9664	$2,508.02	$803.26	$501.61
65781	Ocular reconst, transplant		T	0244	37.9664	$2,508.02	$803.26	$501.61
65782	Ocular reconst, transplant		T	0244	37.9664	$2,508.02	$803.26	$501.61
65800	Drainage of eye		T	0233	16.7409	$1,105.89	$266.33	$221.18
65805	Drainage of eye		T	0233	16.7409	$1,105.89	$266.33	$221.18
65810	Drainage of eye		T	0234	23.8963	$1,578.57	$511.31	$315.72
65815	Drainage of eye		T	0234	23.8963	$1,578.57	$511.31	$315.72
65820	Relieve inner eye pressure		T	0232	4.6708	$308.55	$77.30	$61.71
65850	Incision of eye		T	0234	23.8963	$1,578.57	$511.31	$315.72
65855	Laser surgery of eye		T	0247	5.2647	$347.78	$104.31	$69.56
65860	Incise inner eye adhesions		T	0247	5.2647	$347.78	$104.31	$69.56
65865	Incise inner eye adhesions		T	0233	16.7409	$1,105.89	$266.33	$221.18
65870	Incise inner eye adhesions		T	0234	23.8963	$1,578.57	$511.31	$315.72
65875	Incise inner eye adhesions		T	0234	23.8963	$1,578.57	$511.31	$315.72
65880	Incise inner eye adhesions		T	0233	16.7409	$1,105.89	$266.33	$221.18
65900	Remove eye lesion		T	0233	16.7409	$1,105.89	$266.33	$221.18
65920	Remove implant of eye		T	0234	23.8963	$1,578.57	$511.31	$315.72
65930	Remove blood clot from eye		T	0234	23.8963	$1,578.57	$511.31	$315.72
66020	Injection treatment of eye		T	0233	16.7409	$1,105.89	$266.33	$221.18
66030	Injection treatment of eye		T	0232	4.6708	$308.55	$77.30	$61.71
66130	Remove eye lesion		T	0234	23.8963	$1,578.57	$511.31	$315.72
66150	Glaucoma surgery		T	0234	23.8963	$1,578.57	$511.31	$315.72
66155	Glaucoma surgery		T	0234	23.8963	$1,578.57	$511.31	$315.72
66160	Glaucoma surgery		T	0234	23.8963	$1,578.57	$511.31	$315.72
66165	Glaucoma surgery		T	0234	23.8963	$1,578.57	$511.31	$315.72
66170	Glaucoma surgery		T	0234	23.8963	$1,578.57	$511.31	$315.72
66172	Incision of eye		T	0234	23.8963	$1,578.57	$511.31	$315.72
66180	Implant eye shunt		T	0673	40.9535	$2,705.35	$649.56	$541.07
66185	Revise eye shunt		T	0673	40.9535	$2,705.35	$649.56	$541.07
66220	Repair eye lesion		T	0672	38.1751	$2,521.81		$504.37
66225	Repair/graft eye lesion		T	0673	40.9535	$2,705.35	$649.56	$541.07
66250	Follow-up surgery of eye		T	0233	16.7409	$1,105.89	$266.33	$221.18
66500	Incision of iris		T	0232	4.6708	$308.55	$77.30	$61.71
66505	Incision of iris		T	0232	4.6708	$308.55	$77.30	$61.71
66600	Remove iris and lesion		T	0234	23.8963	$1,578.57	$511.31	$315.72
66605	Removal of iris		T	0234	23.8963	$1,578.57	$511.31	$315.72
66625	Removal of iris	CH	T	0233	16.7409	$1,105.89	$266.33	$221.18
66630	Removal of iris		T	0234	23.8963	$1,578.57	$511.31	$315.72

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
66635	Removal of iris		T	0234	23.8963	$1,578.57	$511.31	$315.72
66680	Repair iris & ciliary body		T	0234	23.8963	$1,578.57	$511.31	$315.72
66682	Repair iris & ciliary body		T	0234	23.8963	$1,578.57	$511.31	$315.72
66700	Destruction, ciliary body		T	0233	16.7409	$1,105.89	$266.33	$221.18
66710	Ciliary transsleral therapy		T	0233	16.7409	$1,105.89	$266.33	$221.18
66711	Ciliary endoscopic ablation		T	0233	16.7409	$1,105.89	$266.33	$221.18
66720	Destruction, ciliary body		T	0233	16.7409	$1,105.89	$266.33	$221.18
66740	Destruction, ciliary body		T	0234	23.8963	$1,578.57	$511.31	$315.72
66761	Revision of iris		T	0247	5.2647	$347.78	$104.31	$69.56
66762	Revision of iris		T	0247	5.2647	$347.78	$104.31	$69.56
66770	Removal of inner eye lesion		T	0247	5.2647	$347.78	$104.31	$69.56
66820	Incision, secondary cataract		T	0232	4.6708	$308.55	$77.30	$61.71
66821	After cataract laser surgery		T	0247	5.2647	$347.78	$104.31	$69.56
66825	Reposition intraocular lens		T	0234	23.8963	$1,578.57	$511.31	$315.72
66830	Removal of lens lesion		T	0232	4.6708	$308.55	$77.30	$61.71
66840	Removal of lens material		T	0245	14.1882	$937.26	$214.11	$187.46
66850	Removal of lens material		T	0249	31.3304	$2,069.65	$524.67	$413.93
66852	Removal of lens material		T	0249	31.3304	$2,069.65	$524.67	$413.93
66920	Extraction of lens		T	0249	31.3304	$2,069.65	$524.67	$413.93
66930	Extraction of lens		T	0249	31.3304	$2,069.65	$524.67	$413.93
66940	Extraction of lens		T	0245	14.1882	$937.26	$214.11	$187.46
66982	Cataract surgery, complex		T	0246	24.2955	$1,604.94	$495.96	$320.99
66983	Cataract surg w/iol, 1 stage		T	0246	24.2955	$1,604.94	$495.96	$320.99
66984	Cataract surg w/iol, 1 stage		T	0246	24.2955	$1,604.94	$495.96	$320.99
66985	Insert lens prosthesis		T	0246	24.2955	$1,604.94	$495.96	$320.99
66986	Exchange lens prosthesis		T	0246	24.2955	$1,604.94	$495.96	$320.99
66990	Ophthalmic endoscope add-on		N					
66999	Eye surgery procedure		T	0232	4.6708	$308.55	$77.30	$61.71
67005	Partial removal of eye fluid		T	0237	22.3269	$1,474.89		$294.98
67010	Partial removal of eye fluid		T	0237	22.3269	$1,474.89		$294.98
67015	Release of eye fluid	CH	T	0672	38.1751	$2,521.81		$504.37
67025	Replace eye fluid		T	0237	22.3269	$1,474.89		$294.98
67027	Implant eye drug system		T	0672	38.1751	$2,521.81		$504.37
67028	Injection eye drug	CH	T	0238	3.1524	$208.24		$41.65
67030	Incise inner eye strands	CH	T	0237	22.3269	$1,474.89		$294.98
67031	Laser surgery, eye strands		T	0247	5.2647	$347.78	$104.31	$69.56
67036	Removal of inner eye fluid		T	0672	38.1751	$2,521.81		$504.37
67039	Laser treatment of retina		T	0672	38.1751	$2,521.81		$504.37
67040	Laser treatment of retina		T	0672	38.1751	$2,521.81		$504.37
67041	Vit for macular pucker		T	0672	38.1751	$2,521.81		$504.37
67042	Vit for macular hole		T	0672	38.1751	$2,521.81		$504.37
67043	Vit for membrane dissect		T	0672	38.1751	$2,521.81		$504.37

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
67101	Repair detached retina	CH	T	0235	5.8277	$384.97		$77.00
67105	Repair detached retina		T	0247	5.2647	$347.78	$104.31	$69.56
67107	Repair detached retina		T	0672	38.1751	$2,521.81		$504.37
67108	Repair detached retina		T	0672	38.1751	$2,521.81		$504.37
67110	Repair detached retina	CH	T	0237	22.3269	$1,474.89		$294.98
67112	Rerepair detached retina		T	0672	38.1751	$2,521.81		$504.37
67113	Repair retinal detach, cplx		T	0672	38.1751	$2,521.81		$504.37
67115	Release encircling material	CH	T	0237	22.3269	$1,474.89		$294.98
67120	Remove eye implant material	CH	T	0237	22.3269	$1,474.89		$294.98
67121	Remove eye implant material		T	0237	22.3269	$1,474.89		$294.98
67141	Treatment of retina		T	0235	5.8277	$384.97		$77.00
67145	Treatment of retina		T	0247	5.2647	$347.78	$104.31	$69.56
67208	Treatment of retinal lesion	CH	T	0235	5.8277	$384.97		$77.00
67210	Treatment of retinal lesion		T	0247	5.2647	$347.78	$104.31	$69.56
67218	Treatment of retinal lesion	CH	T	0237	22.3269	$1,474.89		$294.98
67220	Treatment of choroid lesion		T	0235	5.8277	$384.97		$77.00
67221	Ocular photodynamic ther		T	0235	5.8277	$384.97		$77.00
67225	Eye photodynamic ther add-on		T	0235	5.8277	$384.97		$77.00
67227	Treatment of retinal lesion		T	0237	22.3269	$1,474.89		$294.98
67228	Treatment of retinal lesion		T	0247	5.2647	$347.78	$104.31	$69.56
67229	Tr retinal les preterm inf		T	0247	5.2647	$347.78	$104.31	$69.56
67250	Reinforce eye wall		T	0240	19.3139	$1,275.86	$309.52	$255.18
67255	Reinforce/graft eye wall		T	0237	22.3269	$1,474.89		$294.98
67299	Eye surgery procedure		T	0235	5.8277	$384.97		$77.00
67311	Revise eye muscle		T	0243	24.6556	$1,628.72	$430.35	$325.75
67312	Revise two eye muscles		T	0243	24.6556	$1,628.72	$430.35	$325.75
67314	Revise eye muscle		T	0243	24.6556	$1,628.72	$430.35	$325.75
67316	Revise two eye muscles		T	0243	24.6556	$1,628.72	$430.35	$325.75
67318	Revise eye muscle(s)		T	0243	24.6556	$1,628.72	$430.35	$325.75
67320	Revise eye muscle(s) add-on		T	0243	24.6556	$1,628.72	$430.35	$325.75
67331	Eye surgery follow-up add-on		T	0243	24.6556	$1,628.72	$430.35	$325.75
67332	Rerevise eye muscles add-on		T	0243	24.6556	$1,628.72	$430.35	$325.75
67334	Revise eye muscle w/suture		T	0243	24.6556	$1,628.72	$430.35	$325.75
67335	Eye suture during surgery		T	0243	24.6556	$1,628.72	$430.35	$325.75
67340	Revise eye muscle add-on		T	0243	24.6556	$1,628.72	$430.35	$325.75
67343	Release eye tissue		T	0243	24.6556	$1,628.72	$430.35	$325.75
67345	Destroy nerve of eye muscle		T	0238	3.1524	$208.24		$41.65
67346	Biopsy, eye muscle		T	0699	14.4782	$956.42		$191.29
67399	Eye muscle surgery procedure		T	0243	24.6556	$1,628.72	$430.35	$325.75
67400	Explore/biopsy eye socket	CH	T	0240	19.3139	$1,275.86	$309.52	$255.18
67405	Explore/drain eye socket		T	0241	26.0302	$1,719.53	$383.45	$343.91
67412	Explore/treat eye socket	CH	T	0240	19.3139	$1,275.86	$309.52	$255.18

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
67413	Explore/treat eye socket		T	0241	26.0302	$1,719.53	$383.45	$343.91
67414	Explr/decompress eye socket		T	0242	38.5166	$2,544.37	$597.36	$508.88
67415	Aspiration, orbital contents		T	0240	19.3139	$1,275.86	$309.52	$255.18
67420	Explore/treat eye socket		T	0242	38.5166	$2,544.37	$597.36	$508.88
67430	Explore/treat eye socket		T	0242	38.5166	$2,544.37	$597.36	$508.88
67440	Explore/drain eye socket		T	0242	38.5166	$2,544.37	$597.36	$508.88
67445	Explr/decompress eye socket		T	0242	38.5166	$2,544.37	$597.36	$508.88
67450	Explore/biopsy eye socket		T	0242	38.5166	$2,544.37	$597.36	$508.88
67500	Inject/treat eye socket		S	0231	2.1549	$142.35		$28.47
67505	Inject/treat eye socket		T	0238	3.1524	$208.24		$41.65
67515	Inject/treat eye socket		T	0238	3.1524	$208.24		$41.65
67550	Insert eye socket implant		T	0242	38.5166	$2,544.37	$597.36	$508.88
67560	Revise eye socket implant		T	0241	26.0302	$1,719.53	$383.45	$343.91
67570	Decompress optic nerve		T	0242	38.5166	$2,544.37	$597.36	$508.88
67599	Orbit surgery procedure		T	0238	3.1524	$208.24		$41.65
67700	Drainage of eyelid abscess		T	0238	3.1524	$208.24		$41.65
67710	Incision of eyelid		T	0239	7.6973	$508.48		$101.70
67715	Incision of eyelid fold		T	0240	19.3139	$1,275.86	$309.52	$255.18
67800	Remove eyelid lesion		T	0238	3.1524	$208.24		$41.65
67801	Remove eyelid lesions		T	0239	7.6973	$508.48		$101.70
67805	Remove eyelid lesions		T	0238	3.1524	$208.24		$41.65
67808	Remove eyelid lesion(s)		T	0240	19.3139	$1,275.86	$309.52	$255.18
67810	Biopsy of eyelid		T	0238	3.1524	$208.24		$41.65
67820	Revise eyelashes		S	0698	0.9338	$61.69		$12.34
67825	Revise eyelashes		T	0238	3.1524	$208.24		$41.65
67830	Revise eyelashes		T	0239	7.6973	$508.48		$101.70
67835	Revise eyelashes		T	0240	19.3139	$1,275.86	$309.52	$255.18
67840	Remove eyelid lesion		T	0239	7.6973	$508.48		$101.70
67850	Treat eyelid lesion		T	0239	7.6973	$508.48		$101.70
67875	Closure of eyelid by suture		T	0239	7.6973	$508.48		$101.70
67880	Revision of eyelid		T	0233	16.7409	$1,105.89	$266.33	$221.18
67882	Revision of eyelid		T	0240	19.3139	$1,275.86	$309.52	$255.18
67900	Repair brow defect	CH	T	0241	26.0302	$1,719.53	$383.45	$343.91
67901	Repair eyelid defect		T	0240	19.3139	$1,275.86	$309.52	$255.18
67902	Repair eyelid defect	CH	T	0241	26.0302	$1,719.53	$383.45	$343.91
67903	Repair eyelid defect		T	0240	19.3139	$1,275.86	$309.52	$255.18
67904	Repair eyelid defect		T	0240	19.3139	$1,275.86	$309.52	$255.18
67906	Repair eyelid defect		T	0240	19.3139	$1,275.86	$309.52	$255.18
67908	Repair eyelid defect		T	0240	19.3139	$1,275.86	$309.52	$255.18
67909	Revise eyelid defect		T	0240	19.3139	$1,275.86	$309.52	$255.18
67911	Revise eyelid defect		T	0240	19.3139	$1,275.86	$309.52	$255.18
67912	Correction eyelid w/implant		T	0240	19.3139	$1,275.86	$309.52	$255.18

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
67914	Repair eyelid defect		T	0240	19.3139	$1,275.86	$309.52	$255.18
67915	Repair eyelid defect		T	0240	19.3139	$1,275.86	$309.52	$255.18
67916	Repair eyelid defect		T	0240	19.3139	$1,275.86	$309.52	$255.18
67917	Repair eyelid defect		T	0240	19.3139	$1,275.86	$309.52	$255.18
67921	Repair eyelid defect		T	0240	19.3139	$1,275.86	$309.52	$255.18
67922	Repair eyelid defect		T	0240	19.3139	$1,275.86	$309.52	$255.18
67923	Repair eyelid defect		T	0240	19.3139	$1,275.86	$309.52	$255.18
67924	Repair eyelid defect		T	0240	19.3139	$1,275.86	$309.52	$255.18
67930	Repair eyelid wound		T	0240	19.3139	$1,275.86	$309.52	$255.18
67935	Repair eyelid wound		T	0240	19.3139	$1,275.86	$309.52	$255.18
67938	Remove eyelid foreign body		S	0231	2.1549	$142.35		$28.47
67950	Revision of eyelid		T	0240	19.3139	$1,275.86	$309.52	$255.18
67961	Revision of eyelid		T	0240	19.3139	$1,275.86	$309.52	$255.18
67966	Revision of eyelid		T	0240	19.3139	$1,275.86	$309.52	$255.18
67971	Reconstruction of eyelid	CH	T	0240	19.3139	$1,275.86	$309.52	$255.18
67973	Reconstruction of eyelid		T	0241	26.0302	$1,719.53	$383.45	$343.91
67974	Reconstruction of eyelid	CH	T	0240	19.3139	$1,275.86	$309.52	$255.18
67975	Reconstruction of eyelid		T	0240	19.3139	$1,275.86	$309.52	$255.18
67999	Revision of eyelid		T	0238	3.1524	$208.24		$41.65
68020	Incise/drain eyelid lining	CH	T	0238	3.1524	$208.24		$41.65
68040	Treatment of eyelid lesions		S	0698	0.9338	$61.69		$12.34
68100	Biopsy of eyelid lining		T	0232	4.6708	$308.55	$77.30	$61.71
68110	Remove eyelid lining lesion		T	0699	14.4782	$956.42		$191.29
68115	Remove eyelid lining lesion		T	0240	19.3139	$1,275.86	$309.52	$255.18
68130	Remove eyelid lining lesion		T	0233	16.7409	$1,105.89	$266.33	$221.18
68135	Remove eyelid lining lesion		T	0239	7.6973	$508.48		$101.70
68200	Treat eyelid by injection		S	0698	0.9338	$61.69		$12.34
68320	Revise/graft eyelid lining	CH	T	0241	26.0302	$1,719.53	$383.45	$343.91
68325	Revise/graft eyelid lining		T	0241	26.0302	$1,719.53	$383.45	$343.91
68326	Revise/graft eyelid lining	CH	T	0240	19.3139	$1,275.86	$309.52	$255.18
68328	Revise/graft eyelid lining		T	0241	26.0302	$1,719.53	$383.45	$343.91
68330	Revise eyelid lining		T	0234	23.8963	$1,578.57	$511.31	$315.72
68335	Revise/graft eyelid lining		T	0241	26.0302	$1,719.53	$383.45	$343.91
68340	Separate eyelid adhesions		T	0240	19.3139	$1,275.86	$309.52	$255.18
68360	Revise eyelid lining		T	0234	23.8963	$1,578.57	$511.31	$315.72
68362	Revise eyelid lining		T	0234	23.8963	$1,578.57	$511.31	$315.72
68371	Harvest eye tissue, alograft		T	0233	16.7409	$1,105.89	$266.33	$221.18
68399	Eyelid lining surgery		T	0238	3.1524	$208.24		$41.65
68400	Incise/drain tear gland		T	0238	3.1524	$208.24		$41.65
68420	Incise/drain tear sac		T	0240	19.3139	$1,275.86	$309.52	$255.18
68440	Incise tear duct opening		T	0238	3.1524	$208.24		$41.65
68500	Removal of tear gland		T	0241	26.0302	$1,719.53	$383.45	$343.91

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
68505	Partial removal, tear gland		T	0241	26.0302	$1,719.53	$383.45	$343.91
68510	Biopsy of tear gland		T	0240	19.3139	$1,275.86	$309.52	$255.18
68520	Removal of tear sac		T	0241	26.0302	$1,719.53	$383.45	$343.91
68525	Biopsy of tear sac		T	0240	19.3139	$1,275.86	$309.52	$255.18
68530	Clearance of tear duct	CH	T	0238	3.1524	$208.24		$41.65
68540	Remove tear gland lesion	CH	T	0240	19.3139	$1,275.86	$309.52	$255.18
68550	Remove tear gland lesion		T	0241	26.0302	$1,719.53	$383.45	$343.91
68700	Repair tear ducts	CH	T	0240	19.3139	$1,275.86	$309.52	$255.18
68705	Revise tear duct opening		T	0238	3.1524	$208.24		$41.65
68720	Create tear sac drain		T	0241	26.0302	$1,719.53	$383.45	$343.91
68745	Create tear duct drain		T	0241	26.0302	$1,719.53	$383.45	$343.91
68750	Create tear duct drain		T	0241	26.0302	$1,719.53	$383.45	$343.91
68760	Close tear duct opening	CH	T	0238	3.1524	$208.24		$41.65
68761	Close tear duct opening	CH	T	0238	3.1524	$208.24		$41.65
68770	Close tear system fistula	CH	T	0241	26.0302	$1,719.53	$383.45	$343.91
68801	Dilate tear duct opening		S	0698	0.9338	$61.69		$12.34
68810	Probe nasolacrimal duct		S	0231	2.1549	$142.35		$28.47
68811	Probe nasolacrimal duct		T	0240	19.3139	$1,275.86	$309.52	$255.18
68815	Probe nasolacrimal duct		T	0240	19.3139	$1,275.86	$309.52	$255.18
68816	Probe nl duct w/balloon		T	0240	19.3139	$1,275.86	$309.52	$255.18
68840	Explore/irrigate tear ducts		S	0231	2.1549	$142.35		$28.47
68850	Injection for tear sac x-ray		N					
68899	Tear duct system surgery		T	0238	3.1524	$208.24		$41.65
69000	Drain external ear lesion		T	0006	1.4128	$93.33		$18.67
69005	Drain external ear lesion		T	0008	19.3873	$1,280.71		$256.15
69020	Drain outer ear canal lesion		T	0006	1.4128	$93.33		$18.67
69090	Pierce earlobes		E					
69100	Biopsy of external ear		T	0251	3.3069	$218.45		$43.69
69105	Biopsy of external ear canal		T	0253	17.2402	$1,138.87	$282.29	$227.78
69110	Remove external ear, partial		T	0021	15.8974	$1,050.17	$219.48	$210.04
69120	Removal of external ear		T	0254	24.7557	$1,635.34		$327.07
69140	Remove ear canal lesion(s)		T	0254	24.7557	$1,635.34		$327.07
69145	Remove ear canal lesion(s)		T	0021	15.8974	$1,050.17	$219.48	$210.04
69150	Extensive ear canal surgery		T	0252	7.5330	$497.62	$109.16	$99.53
69155	Extensive ear/neck surgery		C					
69200	Clear outer ear canal		X	0340	0.6462	$42.69		$8.54
69205	Clear outer ear canal		T	0022	21.8429	$1,442.92	$354.45	$288.59
69210	Remove impacted ear wax		X	0340	0.6462	$42.69		$8.54
69220	Clean out mastoid cavity		T	0013	0.8281	$54.70		$10.94
69222	Clean out mastoid cavity		T	0253	17.2402	$1,138.87	$282.29	$227.78
69300	Revise external ear		T	0254	24.7557	$1,635.34		$327.07
69310	Rebuild outer ear canal		T	0256	41.8741	$2,766.16		$553.24

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
69320	Rebuild outer ear canal		T	0256	41.8741	$2,766.16		$553.24
69399	Outer ear surgery procedure	CH	T	0250	1.1110	$73.39	$25.10	$14.68
69400	Inflate middle ear canal		T	0251	3.3069	$218.45		$43.69
69401	Inflate middle ear canal		T	0251	3.3069	$218.45		$43.69
69405	Catheterize middle ear canal		T	0252	7.5330	$497.62	$109.16	$99.53
69420	Incision of eardrum		T	0251	3.3069	$218.45		$43.69
69421	Incision of eardrum		T	0253	17.2402	$1,138.87	$282.29	$227.78
69424	Remove ventilating tube		T	0253	17.2402	$1,138.87	$282.29	$227.78
69433	Create eardrum opening		T	0252	7.5330	$497.62	$109.16	$99.53
69436	Create eardrum opening		T	0253	17.2402	$1,138.87	$282.29	$227.78
69440	Exploration of middle ear		T	0254	24.7557	$1,635.34		$327.07
69450	Eardrum revision		T	0256	41.8741	$2,766.16		$553.24
69501	Mastoidectomy		T	0256	41.8741	$2,766.16		$553.24
69502	Mastoidectomy		T	0254	24.7557	$1,635.34		$327.07
69505	Remove mastoid structures		T	0256	41.8741	$2,766.16		$553.24
69511	Extensive mastoid surgery		T	0256	41.8741	$2,766.16		$553.24
69530	Extensive mastoid surgery		T	0256	41.8741	$2,766.16		$553.24
69535	Remove part of temporal bone		C					
69540	Remove ear lesion		T	0253	17.2402	$1,138.87	$282.29	$227.78
69550	Remove ear lesion		T	0256	41.8741	$2,766.16		$553.24
69552	Remove ear lesion		T	0256	41.8741	$2,766.16		$553.24
69554	Remove ear lesion		C					
69601	Mastoid surgery revision		T	0256	41.8741	$2,766.16		$553.24
69602	Mastoid surgery revision		T	0256	41.8741	$2,766.16		$553.24
69603	Mastoid surgery revision		T	0256	41.8741	$2,766.16		$553.24
69604	Mastoid surgery revision		T	0256	41.8741	$2,766.16		$553.24
69605	Mastoid surgery revision		T	0256	41.8741	$2,766.16		$553.24
69610	Repair of eardrum		T	0254	24.7557	$1,635.34		$327.07
69620	Repair of eardrum		T	0254	24.7557	$1,635.34		$327.07
69631	Repair eardrum structures		T	0256	41.8741	$2,766.16		$553.24
69632	Rebuild eardrum structures		T	0256	41.8741	$2,766.16		$553.24
69633	Rebuild eardrum structures		T	0256	41.8741	$2,766.16		$553.24
69635	Repair eardrum structures		T	0256	41.8741	$2,766.16		$553.24
69636	Rebuild eardrum structures		T	0256	41.8741	$2,766.16		$553.24
69637	Rebuild eardrum structures		T	0256	41.8741	$2,766.16		$553.24
69641	Revise middle ear & mastoid		T	0256	41.8741	$2,766.16		$553.24
69642	Revise middle ear & mastoid		T	0256	41.8741	$2,766.16		$553.24
69643	Revise middle ear & mastoid		T	0256	41.8741	$2,766.16		$553.24
69644	Revise middle ear & mastoid		T	0256	41.8741	$2,766.16		$553.24
69645	Revise middle ear & mastoid		T	0256	41.8741	$2,766.16		$553.24
69646	Revise middle ear & mastoid		T	0256	41.8741	$2,766.16		$553.24
69650	Release middle ear bone		T	0254	24.7557	$1,635.34		$327.07

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
69660	Revise middle ear bone		T	0256	41.8741	$2,766.16		$553.24
69661	Revise middle ear bone		T	0256	41.8741	$2,766.16		$553.24
69662	Revise middle ear bone		T	0256	41.8741	$2,766.16		$553.24
69666	Repair middle ear structures		T	0256	41.8741	$2,766.16		$553.24
69667	Repair middle ear structures		T	0256	41.8741	$2,766.16		$553.24
69670	Remove mastoid air cells		T	0256	41.8741	$2,766.16		$553.24
69676	Remove middle ear nerve		T	0256	41.8741	$2,766.16		$553.24
69700	Close mastoid fistula		T	0256	41.8741	$2,766.16		$553.24
69710	Implant/replace hearing aid		E					
69711	Remove/repair hearing aid		T	0256	41.8741	$2,766.16		$553.24
69714	Implant temple bone w/stimul	CH	T	0425	121.7668	$8,043.79		$1,608.76
69715	Temple bne implnt w/stimulat	CH	T	0425	121.7668	$8,043.79		$1,608.76
69717	Temple bone implant revision	CH	T	0425	121.7668	$8,043.79		$1,608.76
69718	Revise temple bone implant	CH	T	0425	121.7668	$8,043.79		$1,608.76
69720	Release facial nerve		T	0256	41.8741	$2,766.16		$553.24
69725	Release facial nerve		T	0256	41.8741	$2,766.16		$553.24
69740	Repair facial nerve		T	0256	41.8741	$2,766.16		$553.24
69745	Repair facial nerve		T	0256	41.8741	$2,766.16		$553.24
69799	Middle ear surgery procedure	CH	T	0250	1.1110	$73.39	$25.10	$14.68
69801	Incise inner ear		T	0256	41.8741	$2,766.16		$553.24
69802	Incise inner ear		T	0256	41.8741	$2,766.16		$553.24
69805	Explore inner ear		T	0256	41.8741	$2,766.16		$553.24
69806	Explore inner ear		T	0256	41.8741	$2,766.16		$553.24
69820	Establish inner ear window		T	0256	41.8741	$2,766.16		$553.24
69840	Revise inner ear window		T	0256	41.8741	$2,766.16		$553.24
69905	Remove inner ear		T	0256	41.8741	$2,766.16		$553.24
69910	Remove inner ear & mastoid		T	0256	41.8741	$2,766.16		$553.24
69915	Incise inner ear nerve		T	0256	41.8741	$2,766.16		$553.24
69930	Implant cochlear device		T	0259	401.1259	$26,497.98	$8,543.66	$5,299.60
69949	Inner ear surgery procedure	CH	T	0250	1.1110	$73.39	$25.10	$14.68
69950	Incise inner ear nerve		C					
69955	Release facial nerve		T	0256	41.8741	$2,766.16		$553.24
69960	Release inner ear canal		T	0256	41.8741	$2,766.16		$553.24
69970	Remove inner ear lesion		T	0256	41.8741	$2,766.16		$553.24
69979	Temporal bone surgery	CH	T	0250	1.1110	$73.39	$25.10	$14.68
69990	Microsurgery add-on		N					
70010	Contrast x-ray of brain		Q2	0274	7.1945	$475.26		$95.06
70015	Contrast x-ray of brain		Q2	0274	7.1945	$475.26		$95.06
70030	X-ray eye for foreign body		X	0260	0.6767	$44.70		$8.94
70100	X-ray exam of jaw		X	0260	0.6767	$44.70		$8.94
7010F	Pt info into recall system		M					
70110	X-ray exam of jaw		X	0260	0.6767	$44.70		$8.94

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
70120	X-ray exam of mastoids		X	0260	0.6767	$44.70		$8.94
70130	X-ray exam of mastoids		X	0260	0.6767	$44.70		$8.94
70134	X-ray exam of middle ear		X	0261	1.1269	$74.44		$14.89
70140	X-ray exam of facial bones		X	0260	0.6767	$44.70		$8.94
70150	X-ray exam of facial bones		X	0260	0.6767	$44.70		$8.94
70160	X-ray exam of nasal bones		X	0260	0.6767	$44.70		$8.94
70170	X-ray exam of tear duct	CH	Q2	0263	3.0202	$199.51		$39.91
70190	X-ray exam of eye sockets		X	0260	0.6767	$44.70		$8.94
70200	X-ray exam of eye sockets		X	0260	0.6767	$44.70		$8.94
7020F	Mammo assess cat in dbase		M					
70210	X-ray exam of sinuses		X	0260	0.6767	$44.70		$8.94
70220	X-ray exam of sinuses		X	0260	0.6767	$44.70		$8.94
70240	X-ray exam, pituitary saddle		X	0260	0.6767	$44.70		$8.94
70250	X-ray exam of skull		X	0260	0.6767	$44.70		$8.94
7025F	Pt infosys alarm 4 nxt mammo		M					
70260	X-ray exam of skull		X	0261	1.1269	$74.44		$14.89
70300	X-ray exam of teeth		X	0262	0.4855	$32.07		$6.42
70310	X-ray exam of teeth		X	0262	0.4855	$32.07		$6.42
70320	Full mouth x-ray of teeth		X	0262	0.4855	$32.07		$6.42
70328	X-ray exam of jaw joint		X	0260	0.6767	$44.70		$8.94
70330	X-ray exam of jaw joints		X	0260	0.6767	$44.70		$8.94
70332	X-ray exam of jaw joint		Q2	0275	4.0175	$265.39	$69.09	$53.08
70336	Magnetic image, jaw joint	CH	Q3	0336	5.2689	$348.06	$137.40	$69.62
70350	X-ray head for orthodontia		X	0260	0.6767	$44.70		$8.94
70355	Panoramic x-ray of jaws		X	0260	0.6767	$44.70		$8.94
70360	X-ray exam of neck		X	0260	0.6767	$44.70		$8.94
70370	Throat x-ray & fluoroscopy		X	0272	1.2597	$83.21	$31.15	$16.65
70371	Speech evaluation, complex		X	0272	1.2597	$83.21	$31.15	$16.65
70373	Contrast x-ray of larynx		Q2	0263	3.0202	$199.51		$39.91
70380	X-ray exam of salivary gland		X	0260	0.6767	$44.70		$8.94
70390	X-ray exam of salivary duct		Q2	0263	3.0202	$199.51		$39.91
70450	Ct head/brain w/o dye	CH	Q3	0332	2.9426	$194.39	$75.24	$38.88
70460	Ct head/brain w/dye	CH	Q3	0283	4.6595	$307.80	$100.37	$61.56
70470	Ct head/brain w/o & w/dye	CH	Q3	0333	5.1615	$340.96	$119.01	$68.20
70480	Ct orbit/ear/fossa w/o dye	CH	Q3	0332	2.9426	$194.39	$75.24	$38.88
70481	Ct orbit/ear/fossa w/dye	CH	Q3	0283	4.6595	$307.80	$100.37	$61.56
70482	Ct orbit/ear/fossa w/o&w/dye	CH	Q3	0333	5.1615	$340.96	$119.01	$68.20
70486	Ct maxillofacial w/o dye	CH	Q3	0332	2.9426	$194.39	$75.24	$38.88
70487	Ct maxillofacial w/dye	CH	Q3	0283	4.6595	$307.80	$100.37	$61.56
70488	Ct maxillofacial w/o & w/dye	CH	Q3	0333	5.1615	$340.96	$119.01	$68.20
70490	Ct soft tissue neck w/o dye	CH	Q3	0332	2.9426	$194.39	$75.24	$38.88
70491	Ct soft tissue neck w/dye	CH	Q3	0283	4.6595	$307.80	$100.37	$61.56

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
70492	Ct sft tsue nck w/o & w/dye	CH	Q3	0333	5.1615	$340.96	$119.01	$68.20
70496	Ct angiography, head	CH	Q3	0662	5.3264	$351.86	$118.88	$70.38
70498	Ct angiography, neck	CH	Q3	0662	5.3264	$351.86	$118.88	$70.38
70540	Mri orbit/face/neck w/o dye	CH	Q3	0336	5.2689	$348.06	$137.40	$69.62
70542	Mri orbit/face/neck w/dye	CH	Q3	0284	6.4701	$427.41	$148.40	$85.49
70543	Mri orbt/fac/nck w/o & w/dye	CH	Q3	0337	8.1548	$538.70	$199.53	$107.74
70544	Mr angiography head w/o dye	CH	Q3	0336	5.2689	$348.06	$137.40	$69.62
70545	Mr angiography head w/dye	CH	Q3	0284	6.4701	$427.41	$148.40	$85.49
70546	Mr angiograph head w/o&w/dye	CH	Q3	0337	8.1548	$538.70	$199.53	$107.74
70547	Mr angiography neck w/o dye	CH	Q3	0336	5.2689	$348.06	$137.40	$69.62
70548	Mr angiography neck w/dye	CH	Q3	0284	6.4701	$427.41	$148.40	$85.49
70549	Mr angiograph neck w/o&w/dye	CH	Q3	0337	8.1548	$538.70	$199.53	$107.74
70551	Mri brain w/o dye	CH	Q3	0336	5.2689	$348.06	$137.40	$69.62
70552	Mri brain w/dye	CH	Q3	0284	6.4701	$427.41	$148.40	$85.49
70553	Mri brain w/o & w/dye	CH	Q3	0337	8.1548	$538.70	$199.53	$107.74
70554	Fmri brain by tech	CH	Q3	0336	5.2689	$348.06	$137.40	$69.62
70555	Fmri brain by phys/psych		S	0336	5.2689	$348.06	$137.40	$69.62
70557	Mri brain w/o dye		S	0336	5.2689	$348.06	$137.40	$69.62
70558	Mri brain w/dye		S	0284	6.4701	$427.41	$148.40	$85.49
70559	Mri brain w/o & w/dye		S	0337	8.1548	$538.70	$199.53	$107.74
71010	Chest x-ray		X	0260	0.6767	$44.70		$8.94
71015	Chest x-ray		X	0260	0.6767	$44.70		$8.94
71020	Chest x-ray		X	0260	0.6767	$44.70		$8.94
71021	Chest x-ray		X	0260	0.6767	$44.70		$8.94
71022	Chest x-ray		X	0260	0.6767	$44.70		$8.94
71023	Chest x-ray and fluoroscopy		X	0272	1.2597	$83.21	$31.15	$16.65
71030	Chest x-ray		X	0260	0.6767	$44.70		$8.94
71034	Chest x-ray and fluoroscopy		X	0272	1.2597	$83.21	$31.15	$16.65
71035	Chest x-ray		X	0260	0.6767	$44.70		$8.94
71040	Contrast x-ray of bronchi		Q2	0263	3.0202	$199.51		$39.91
71060	Contrast x-ray of bronchi	CH	Q2	0263	3.0202	$199.51		$39.91
71090	X-ray & pacemaker insertion		N					
71100	X-ray exam of ribs		X	0260	0.6767	$44.70		$8.94
71101	X-ray exam of ribs/chest		X	0260	0.6767	$44.70		$8.94
71110	X-ray exam of ribs		X	0260	0.6767	$44.70		$8.94
71111	X-ray exam of ribs/chest		X	0261	1.1269	$74.44		$14.89
71120	X-ray exam of breastbone		X	0260	0.6767	$44.70		$8.94
71130	X-ray exam of breastbone		X	0260	0.6767	$44.70		$8.94
71250	Ct thorax w/o dye	CH	Q3	0332	2.9426	$194.39	$75.24	$38.88
71260	Ct thorax w/dye	CH	Q3	0283	4.6595	$307.80	$100.37	$61.56
71270	Ct thorax w/o & w/dye	CH	Q3	0333	5.1615	$340.96	$119.01	$68.20
71275	Ct angiography, chest	CH	Q3	0662	5.3264	$351.86	$118.88	$70.38

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
71550	Mri chest w/o dye	CH	Q3	0336	5.2689	$348.06	$137.40	$69.62
71551	Mri chest w/dye	CH	Q3	0284	6.4701	$427.41	$148.40	$85.49
71552	Mri chest w/o & w/dye	CH	Q3	0337	8.1548	$538.70	$199.53	$107.74
71555	Mri angio chest w or w/o dye		B					
72010	X-ray exam of spine	CH	X	0261	1.1269	$74.44		$14.89
72020	X-ray exam of spine		X	0260	0.6767	$44.70		$8.94
72040	X-ray exam of neck spine		X	0260	0.6767	$44.70		$8.94
72050	X-ray exam of neck spine		X	0261	1.1269	$74.44		$14.89
72052	X-ray exam of neck spine		X	0261	1.1269	$74.44		$14.89
72069	X-ray exam of trunk spine		X	0260	0.6767	$44.70		$8.94
72070	X-ray exam of thoracic spine		X	0260	0.6767	$44.70		$8.94
72072	X-ray exam of thoracic spine		X	0260	0.6767	$44.70		$8.94
72074	X-ray exam of thoracic spine		X	0260	0.6767	$44.70		$8.94
72080	X-ray exam of trunk spine		X	0260	0.6767	$44.70		$8.94
72090	X-ray exam of trunk spine		X	0261	1.1269	$74.44		$14.89
72100	X-ray exam of lower spine		X	0260	0.6767	$44.70		$8.94
72110	X-ray exam of lower spine		X	0261	1.1269	$74.44		$14.89
72114	X-ray exam of lower spine		X	0261	1.1269	$74.44		$14.89
72120	X-ray exam of lower spine		X	0261	1.1269	$74.44		$14.89
72125	Ct neck spine w/o dye	CH	Q3	0332	2.9426	$194.39	$75.24	$38.88
72126	Ct neck spine w/dye	CH	Q3	0283	4.6595	$307.80	$100.37	$61.56
72127	Ct neck spine w/o & w/dye	CH	Q3	0333	5.1615	$340.96	$119.01	$68.20
72128	Ct chest spine w/o dye	CH	Q3	0332	2.9426	$194.39	$75.24	$38.88
72129	Ct chest spine w/dye	CH	Q3	0283	4.6595	$307.80	$100.37	$61.56
72130	Ct chest spine w/o & w/dye	CH	Q3	0333	5.1615	$340.96	$119.01	$68.20
72131	Ct lumbar spine w/o dye	CH	Q3	0332	2.9426	$194.39	$75.24	$38.88
72132	Ct lumbar spine w/dye	CH	Q3	0283	4.6595	$307.80	$100.37	$61.56
72133	Ct lumbar spine w/o & w/dye	CH	Q3	0333	5.1615	$340.96	$119.01	$68.20
72141	Mri neck spine w/o dye	CH	Q3	0336	5.2689	$348.06	$137.40	$69.62
72142	Mri neck spine w/dye	CH	Q3	0284	6.4701	$427.41	$148.40	$85.49
72146	Mri chest spine w/o dye	CH	Q3	0336	5.2689	$348.06	$137.40	$69.62
72147	Mri chest spine w/dye	CH	Q3	0284	6.4701	$427.41	$148.40	$85.49
72148	Mri lumbar spine w/o dye	CH	Q3	0336	5.2689	$348.06	$137.40	$69.62
72149	Mri lumbar spine w/dye	CH	Q3	0284	6.4701	$427.41	$148.40	$85.49
72156	Mri neck spine w/o & w/dye	CH	Q3	0337	8.1548	$538.70	$199.53	$107.74
72157	Mri chest spine w/o & w/dye	CH	Q3	0337	8.1548	$538.70	$199.53	$107.74
72158	Mri lumbar spine w/o & w/dye	CH	Q3	0337	8.1548	$538.70	$199.53	$107.74
72159	Mr angio spine w/o&w/dye		E					
72170	X-ray exam of pelvis		X	0260	0.6767	$44.70		$8.94
72190	X-ray exam of pelvis		X	0260	0.6767	$44.70		$8.94
72191	Ct angiograph pelv w/o&w/dye	CH	Q3	0662	5.3264	$351.86	$118.88	$70.38
72192	Ct pelvis w/o dye	CH	Q3	0332	2.9426	$194.39	$75.24	$38.88

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
72193	Ct pelvis w/dye	CH	Q3	0283	4.6595	$307.80	$100.37	$61.56
72194	Ct pelvis w/o & w/dye	CH	Q3	0333	5.1615	$340.96	$119.01	$68.20
72195	Mri pelvis w/o dye	CH	Q3	0336	5.2689	$348.06	$137.40	$69.62
72196	Mri pelvis w/dye	CH	Q3	0284	6.4701	$427.41	$148.40	$85.49
72197	Mri pelvis w/o & w/dye	CH	Q3	0337	8.1548	$538.70	$199.53	$107.74
72198	Mr angio pelvis w/o & w/dye		B					
72200	X-ray exam sacroiliac joints		X	0260	0.6767	$44.70		$8.94
72202	X-ray exam sacroiliac joints		X	0260	0.6767	$44.70		$8.94
72220	X-ray exam of tailbone		X	0260	0.6767	$44.70		$8.94
72240	Contrast x-ray of neck spine		Q2	0274	7.1945	$475.26		$95.06
72255	Contrast x-ray, thorax spine		Q2	0274	7.1945	$475.26		$95.06
72265	Contrast x-ray, lower spine		Q2	0274	7.1945	$475.26		$95.06
72270	Contrast x-ray, spine		Q2	0274	7.1945	$475.26		$95.06
72275	Epidurography		N					
72285	X-ray c/t spine disk		Q2	0388	22.7705	$1,504.20		$300.84
72291	Perq vertebroplasty, fluor		N					
72292	Perq vertebroplasty, ct		N					
72295	X-ray of lower spine disk		Q2	0388	22.7705	$1,504.20		$300.84
73000	X-ray exam of collar bone		X	0260	0.6767	$44.70		$8.94
73010	X-ray exam of shoulder blade		X	0260	0.6767	$44.70		$8.94
73020	X-ray exam of shoulder		X	0260	0.6767	$44.70		$8.94
73030	X-ray exam of shoulder		X	0260	0.6767	$44.70		$8.94
73040	Contrast x-ray of shoulder		Q2	0275	4.0175	$265.39	$69.09	$53.08
73050	X-ray exam of shoulders		X	0260	0.6767	$44.70		$8.94
73060	X-ray exam of humerus		X	0260	0.6767	$44.70		$8.94
73070	X-ray exam of elbow		X	0260	0.6767	$44.70		$8.94
73080	X-ray exam of elbow		X	0260	0.6767	$44.70		$8.94
73085	Contrast x-ray of elbow		Q2	0275	4.0175	$265.39	$69.09	$53.08
73090	X-ray exam of forearm		X	0260	0.6767	$44.70		$8.94
73092	X-ray exam of arm, infant		X	0260	0.6767	$44.70		$8.94
73100	X-ray exam of wrist		X	0260	0.6767	$44.70		$8.94
73110	X-ray exam of wrist		X	0260	0.6767	$44.70		$8.94
73115	Contrast x-ray of wrist		Q2	0275	4.0175	$265.39	$69.09	$53.08
73120	X-ray exam of hand		X	0260	0.6767	$44.70		$8.94
73130	X-ray exam of hand		X	0260	0.6767	$44.70		$8.94
73140	X-ray exam of finger(s)		X	0260	0.6767	$44.70		$8.94
73200	Ct upper extremity w/o dye	CH	Q3	0332	2.9426	$194.39	$75.24	$38.88
73201	Ct upper extremity w/dye	CH	Q3	0283	4.6595	$307.80	$100.37	$61.56
73202	Ct uppr extremity w/o&w/dye	CH	Q3	0333	5.1615	$340.96	$119.01	$68.20
73206	Ct angio upr extrm w/o&w/dye	CH	Q3	0662	5.3264	$351.86	$118.88	$70.38
73218	Mri upper extremity w/o dye	CH	Q3	0336	5.2689	$348.06	$137.40	$69.62
73219	Mri upper extremity w/dye	CH	Q3	0284	6.4701	$427.41	$148.40	$85.49

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73220	Mri uppr extremity w/o&w/dye	CH	Q3	0337	8.1548	$538.70	$199.53	$107.74
73221	Mri joint upr extrem w/o dye	CH	Q3	0336	5.2689	$348.06	$137.40	$69.62
73222	Mri joint upr extrem w/dye	CH	Q3	0284	6.4701	$427.41	$148.40	$85.49
73223	Mri joint upr extr w/o&w/dye	CH	Q3	0337	8.1548	$538.70	$199.53	$107.74
73225	Mr angio upr extr w/o&w/dye		E					
73500	X-ray exam of hip		X	0260	0.6767	$44.70		$8.94
73510	X-ray exam of hip		X	0260	0.6767	$44.70		$8.94
73520	X-ray exam of hips		X	0261	1.1269	$74.44		$14.89
73525	Contrast x-ray of hip		Q2	0275	4.0175	$265.39	$69.09	$53.08
73530	X-ray exam of hip		N					
73540	X-ray exam of pelvis & hips		X	0260	0.6767	$44.70		$8.94
73542	X-ray exam, sacroiliac joint		Q2	0275	4.0175	$265.39	$69.09	$53.08
73550	X-ray exam of thigh		X	0260	0.6767	$44.70		$8.94
73560	X-ray exam of knee, 1 or 2		X	0260	0.6767	$44.70		$8.94
73562	X-ray exam of knee, 3		X	0260	0.6767	$44.70		$8.94
73564	X-ray exam, knee, 4 or more		X	0260	0.6767	$44.70		$8.94
73565	X-ray exam of knees		X	0260	0.6767	$44.70		$8.94
73580	Contrast x-ray of knee joint		Q2	0275	4.0175	$265.39	$69.09	$53.08
73590	X-ray exam of lower leg		X	0260	0.6767	$44.70		$8.94
73592	X-ray exam of leg, infant		X	0260	0.6767	$44.70		$8.94
73600	X-ray exam of ankle		X	0260	0.6767	$44.70		$8.94
73610	X-ray exam of ankle		X	0260	0.6767	$44.70		$8.94
73615	Contrast x-ray of ankle		Q2	0275	4.0175	$265.39	$69.09	$53.08
73620	X-ray exam of foot		X	0260	0.6767	$44.70		$8.94
73630	X-ray exam of foot		X	0260	0.6767	$44.70		$8.94
73650	X-ray exam of heel		X	0260	0.6767	$44.70		$8.94
73660	X-ray exam of toe(s)		X	0260	0.6767	$44.70		$8.94
73700	Ct lower extremity w/o dye	CH	Q3	0332	2.9426	$194.39	$75.24	$38.88
73701	Ct lower extremity w/dye	CH	Q3	0283	4.6595	$307.80	$100.37	$61.56
73702	Ct lwr extremity w/o&w/dye	CH	Q3	0333	5.1615	$340.96	$119.01	$68.20
73706	Ct angio lwr extr w/o&w/dye	CH	Q3	0662	5.3264	$351.86	$118.88	$70.38
73718	Mri lower extremity w/o dye	CH	Q3	0336	5.2689	$348.06	$137.40	$69.62
73719	Mri lower extremity w/dye	CH	Q3	0284	6.4701	$427.41	$148.40	$85.49
73720	Mri lwr extremity w/o&w/dye	CH	Q3	0337	8.1548	$538.70	$199.53	$107.74
73721	Mri jnt of lwr extre w/o dye	CH	Q3	0336	5.2689	$348.06	$137.40	$69.62
73722	Mri joint of lwr extr w/dye	CH	Q3	0284	6.4701	$427.41	$148.40	$85.49
73723	Mri joint lwr extr w/o&w/dye	CH	Q3	0337	8.1548	$538.70	$199.53	$107.74
73725	Mr ang lwr ext w or w/o dye		B					
74000	X-ray exam of abdomen		X	0260	0.6767	$44.70		$8.94
74010	X-ray exam of abdomen		X	0260	0.6767	$44.70		$8.94
74020	X-ray exam of abdomen		X	0260	0.6767	$44.70		$8.94
74022	X-ray exam series, abdomen		X	0261	1.1269	$74.44		$14.89

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74150	Ct abdomen w/o dye	CH	Q3	0332	2.9426	$194.39	$75.24	$38.88
74160	Ct abdomen w/dye	CH	Q3	0283	4.6595	$307.80	$100.37	$61.56
74170	Ct abdomen w/o & w/dye	CH	Q3	0333	5.1615	$340.96	$119.01	$68.20
74175	Ct angio abdom w/o & w/dye	CH	Q3	0662	5.3264	$351.86	$118.88	$70.38
74181	Mri abdomen w/o dye	CH	Q3	0336	5.2689	$348.06	$137.40	$69.62
74182	Mri abdomen w/dye	CH	Q3	0284	6.4701	$427.41	$148.40	$85.49
74183	Mri abdomen w/o & w/dye	CH	Q3	0337	8.1548	$538.70	$199.53	$107.74
74185	Mri angio, abdom w orw/o dye		B					
74190	X-ray exam of peritoneum	CH	Q2	0263	3.0202	$199.51		$39.91
74210	Contrst x-ray exam of throat		S	0276	1.3298	$87.85	$34.87	$17.57
74220	Contrast x-ray, esophagus		S	0276	1.3298	$87.85	$34.87	$17.57
74230	Cine/vid x-ray, throat/esoph		S	0276	1.3298	$87.85	$34.87	$17.57
74235	Remove esophagus obstruction		N					
74240	X-ray exam, upper gi tract		S	0276	1.3298	$87.85	$34.87	$17.57
74241	X-ray exam, upper gi tract		S	0276	1.3298	$87.85	$34.87	$17.57
74245	X-ray exam, upper gi tract		S	0277	2.1621	$142.83	$54.52	$28.57
74246	Contrst x-ray uppr gi tract		S	0276	1.3298	$87.85	$34.87	$17.57
74247	Contrst x-ray uppr gi tract		S	0276	1.3298	$87.85	$34.87	$17.57
74249	Contrst x-ray uppr gi tract		S	0277	2.1621	$142.83	$54.52	$28.57
74250	X-ray exam of small bowel		S	0276	1.3298	$87.85	$34.87	$17.57
74251	X-ray exam of small bowel		S	0277	2.1621	$142.83	$54.52	$28.57
74260	X-ray exam of small bowel		S	0276	1.3298	$87.85	$34.87	$17.57
74270	Contrast x-ray exam of colon		S	0276	1.3298	$87.85	$34.87	$17.57
74280	Contrast x-ray exam of colon		S	0277	2.1621	$142.83	$54.52	$28.57
74283	Contrast x-ray exam of colon		S	0276	1.3298	$87.85	$34.87	$17.57
74290	Contrast x-ray, gallbladder		S	0276	1.3298	$87.85	$34.87	$17.57
74291	Contrast x-rays, gallbladder		S	0276	1.3298	$87.85	$34.87	$17.57
74300	X-ray bile ducts/pancreas		N					
74301	X-rays at surgery add-on		N					
74305	X-ray bile ducts/pancreas	CH	Q2	0263	3.0202	$199.51		$39.91
74320	Contrast x-ray of bile ducts		Q2	0317	5.1044	$337.19		$67.44
74327	X-ray bile stone removal		N					
74328	X-ray bile duct endoscopy		N					
74329	X-ray for pancreas endoscopy		N					
74330	X-ray bile/panc endoscopy		N					
74340	X-ray guide for GI tube		N					
74355	X-ray guide, intestinal tube		N					
74360	X-ray guide, GI dilation		N					
74363	X-ray, bile duct dilation		N					
74400	Contrst x-ray, urinary tract		S	0278	2.6340	$174.00	$59.40	$34.80
74410	Contrst x-ray, urinary tract		S	0278	2.6340	$174.00	$59.40	$34.80
74415	Contrst x-ray, urinary tract		S	0278	2.6340	$174.00	$59.40	$34.80

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74420	Contrst x-ray, urinary tract		S	0278	2.6340	$174.00	$59.40	$34.80
74425	Contrst x-ray, urinary tract		Q2	0278	2.6340	$174.00	$59.40	$34.80
74430	Contrast x-ray, bladder		Q2	0278	2.6340	$174.00	$59.40	$34.80
74440	X-ray, male genital tract		Q2	0278	2.6340	$174.00	$59.40	$34.80
74445	X-ray exam of penis		Q2	0278	2.6340	$174.00	$59.40	$34.80
74450	X-ray, urethra/bladder		Q2	0278	2.6340	$174.00	$59.40	$34.80
74455	X-ray, urethra/bladder		Q2	0278	2.6340	$174.00	$59.40	$34.80
74470	X-ray exam of kidney lesion		Q2	0263	3.0202	$199.51		$39.91
74475	X-ray control, cath insert		Q2	0317	5.1044	$337.19		$67.44
74480	X-ray control, cath insert		Q2	0317	5.1044	$337.19		$67.44
74485	X-ray guide, GU dilation		Q2	0317	5.1044	$337.19		$67.44
74710	X-ray measurement of pelvis		X	0261	1.1269	$74.44		$14.89
74740	X-ray, female genital tract		Q2	0263	3.0202	$199.51		$39.91
74742	X-ray, fallopian tube		N					
74775	X-ray exam of perineum		S	0278	2.6340	$174.00	$59.40	$34.80
75557	Cardiac mri for morph	CH	Q3	0336	5.2689	$348.06	$137.40	$69.62
75558	Cardiac mri flow/velocity		E					
75559	Cardiac mri w/stress img	CH	Q3	0336	5.2689	$348.06	$137.40	$69.62
75560	Cardiac mri flow/vel/stress		E					
75561	Cardiac mri for morph w/dye	CH	Q3	0337	8.1548	$538.70	$199.53	$107.74
75562	Card mri flow/vel w/dye		E					
75563	Card mri w/stress img & dye	CH	Q3	0337	8.1548	$538.70	$199.53	$107.74
75564	Ht mri w/flo/vel/strs & dye		E					
75600	Contrast x-ray exam of aorta		Q2	0279	29.5853	$1,954.38		$390.88
75605	Contrast x-ray exam of aorta		Q2	0279	29.5853	$1,954.38		$390.88
75625	Contrast x-ray exam of aorta		Q2	0279	29.5853	$1,954.38		$390.88
75630	X-ray aorta, leg arteries		Q2	0279	29.5853	$1,954.38		$390.88
75635	Ct angio abdominal arteries	CH	Q2	0662	5.3264	$351.86	$118.88	$70.38
75650	Artery x-rays, head & neck		Q2	0280	44.7368	$2,955.27		$591.06
75658	Artery x-rays, arm		Q2	0279	29.5853	$1,954.38		$390.88
75660	Artery x-rays, head & neck		Q2	0280	44.7368	$2,955.27		$591.06
75662	Artery x-rays, head & neck		Q2	0280	44.7368	$2,955.27		$591.06
75665	Artery x-rays, head & neck		Q2	0279	29.5853	$1,954.38		$390.88
75671	Artery x-rays, head & neck		Q2	0280	44.7368	$2,955.27		$591.06
75676	Artery x-rays, neck		Q2	0279	29.5853	$1,954.38		$390.88
75680	Artery x-rays, neck		Q2	0279	29.5853	$1,954.38		$390.88
75685	Artery x-rays, spine		Q2	0279	29.5853	$1,954.38		$390.88
75705	Artery x-rays, spine		Q2	0279	29.5853	$1,954.38		$390.88
75710	Artery x-rays, arm/leg		Q2	0279	29.5853	$1,954.38		$390.88
75716	Artery x-rays, arms/legs		Q2	0279	29.5853	$1,954.38		$390.88
75722	Artery x-rays, kidney		Q2	0279	29.5853	$1,954.38		$390.88
75724	Artery x-rays, kidneys		Q2	0279	29.5853	$1,954.38		$390.88

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75726	Artery x-rays, abdomen		Q2	0279	29.5853	$1,954.38		$390.88
75731	Artery x-rays, adrenal gland		Q2	0279	29.5853	$1,954.38		$390.88
75733	Artery x-rays, adrenals		Q2	0279	29.5853	$1,954.38		$390.88
75736	Artery x-rays, pelvis		Q2	0279	29.5853	$1,954.38		$390.88
75741	Artery x-rays, lung		Q2	0279	29.5853	$1,954.38		$390.88
75743	Artery x-rays, lungs		Q2	0279	29.5853	$1,954.38		$390.88
75746	Artery x-rays, lung		Q2	0668	10.3351	$682.73		$136.55
75756	Artery x-rays, chest		Q2	0668	10.3351	$682.73		$136.55
75774	Artery x-ray, each vessel		N					
75790	Visualize A-V shunt		Q2	0668	10.3351	$682.73		$136.55
75801	Lymph vessel x-ray, arm/leg		Q2	0317	5.1044	$337.19		$67.44
75803	Lymph vessel x-ray,arms/legs		Q2	0317	5.1044	$337.19		$67.44
75805	Lymph vessel x-ray, trunk		Q2	0317	5.1044	$337.19		$67.44
75807	Lymph vessel x-ray, trunk		Q2	0317	5.1044	$337.19		$67.44
75809	Nonvascular shunt, x-ray	CH	Q2	0261	1.1269	$74.44		$14.89
75810	Vein x-ray, spleen/liver		Q2	0279	29.5853	$1,954.38		$390.88
75820	Vein x-ray, arm/leg		Q2	0668	10.3351	$682.73		$136.55
75822	Vein x-ray, arms/legs		Q2	0668	10.3351	$682.73		$136.55
75825	Vein x-ray, trunk		Q2	0279	29.5853	$1,954.38		$390.88
75827	Vein x-ray, chest		Q2	0668	10.3351	$682.73		$136.55
75831	Vein x-ray, kidney		Q2	0279	29.5853	$1,954.38		$390.88
75833	Vein x-ray, kidneys		Q2	0279	29.5853	$1,954.38		$390.88
75840	Vein x-ray, adrenal gland		Q2	0279	29.5853	$1,954.38		$390.88
75842	Vein x-ray, adrenal glands		Q2	0279	29.5853	$1,954.38		$390.88
75860	Vein x-ray, neck		Q2	0668	10.3351	$682.73		$136.55
75870	Vein x-ray, skull		Q2	0668	10.3351	$682.73		$136.55
75872	Vein x-ray, skull		Q2	0668	10.3351	$682.73		$136.55
75880	Vein x-ray, eye socket		Q2	0668	10.3351	$682.73		$136.55
75885	Vein x-ray, liver		Q2	0279	29.5853	$1,954.38		$390.88
75887	Vein x-ray, liver		Q2	0668	10.3351	$682.73		$136.55
75889	Vein x-ray, liver		Q2	0279	29.5853	$1,954.38		$390.88
75891	Vein x-ray, liver		Q2	0279	29.5853	$1,954.38		$390.88
75893	Venous sampling by catheter		Q2	0279	29.5853	$1,954.38		$390.88
75894	X-rays, transcath therapy		N					
75896	X-rays, transcath therapy		N					
75898	Follow-up angiography		Q1	0263	3.0202	$199.51		$39.91
75900	Intravascular cath exchange		C					
75901	Remove cva device obstruct		N					
75902	Remove cva lumen obstruct		N					
75940	X-ray placement, vein filter		N					
75945	Intravascular us		Q2	0267	2.3186	$153.16	$60.50	$30.64
75946	Intravascular us add-on		N					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
75952	Endovasc repair abdom aorta		C					
75953	Abdom aneurysm endovas rpr		C					
75954	Iliac aneurysm endovas rpr		C					
75956	Xray, endovasc thor ao repr		C					
75957	Xray, endovasc thor ao repr		C					
75958	Xray, place prox ext thor ao		C					
75959	Xray, place dist ext thor ao		C					
75960	Transcath iv stent rs&i		N					
75961	Retrieval, broken catheter		N					
75962	Repair arterial blockage		Q2	0083	48.3584	$3,194.51		$638.91
75964	Repair artery blockage, each		N					
75966	Repair arterial blockage		Q2	0083	48.3584	$3,194.51		$638.91
75968	Repair artery blockage, each		N					
75970	Vascular biopsy		N					
75978	Repair venous blockage		Q2	0083	48.3584	$3,194.51		$638.91
75980	Contrast xray exam bile duct		N					
75982	Contrast xray exam bile duct		N					
75984	Xray control catheter change		N					
75989	Abscess drainage under x-ray		N					
75992	Atherectomy, x-ray exam		N					
75993	Atherectomy, x-ray exam		N					
75994	Atherectomy, x-ray exam		N					
75995	Atherectomy, x-ray exam		N					
75996	Atherectomy, x-ray exam		N					
76000	Fluoroscope examination		Q1	0272	1.2597	$83.21	$31.15	$16.65
76001	Fluoroscope exam, extensive		N					
76010	X-ray, nose to rectum		X	0260	0.6767	$44.70		$8.94
76080	X-ray exam of fistula		Q2	0263	3.0202	$199.51		$39.91
76098	X-ray exam, breast specimen	CH	X	0317	5.1044	$337.19		$67.44
76100	X-ray exam of body section		X	0261	1.1269	$74.44		$14.89
76101	Complex body section x-ray		X	0263	3.0202	$199.51		$39.91
76102	Complex body section x-rays		X	0263	3.0202	$199.51		$39.91
76120	Cine/video x-rays		X	0272	1.2597	$83.21	$31.15	$16.65
76125	Cine/video x-rays add-on		N					
76140	X-ray consultation		E					
76150	X-ray exam, dry process		X	0260	0.6767	$44.70		$8.94
76350	Special x-ray contrast study		N					
76376	3d render w/o postprocess		N					
76377	3d rendering w/postprocess		N					
76380	CAT scan follow-up study		S	0282	1.5897	$105.01	$37.81	$21.01
76390	Mr spectroscopy		E					
76496	Fluoroscopic procedure		X	0272	1.2597	$83.21	$31.15	$16.65

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
76497	Ct procedure		S	0282	1.5897	$105.01	$37.81	$21.01
76498	Mri procedure	CH	S	0336	5.2689	$348.06	$137.40	$69.62
76499	Radiographic procedure		X	0260	0.6767	$44.70		$8.94
76506	Echo exam of head		S	0265	0.9461	$62.50	$22.35	$12.50
76510	Ophth us, b & quant a		T	0232	4.6708	$308.55	$77.30	$61.71
76511	Ophth us, quant a only		S	0266	1.4801	$97.77	$37.80	$19.56
76512	Ophth us, b w/non-quant a		S	0266	1.4801	$97.77	$37.80	$19.56
76513	Echo exam of eye, water bath		S	0266	1.4801	$97.77	$37.80	$19.56
76514	Echo exam of eye, thickness	CH	X	0035	0.2186	$14.44		$2.89
76516	Echo exam of eye		S	0265	0.9461	$62.50	$22.35	$12.50
76519	Echo exam of eye		S	0266	1.4801	$97.77	$37.80	$19.56
76529	Echo exam of eye		S	0265	0.9461	$62.50	$22.35	$12.50
76536	Us exam of head and neck		S	0266	1.4801	$97.77	$37.80	$19.56
76604	Us exam, chest	CH	Q3	0265	0.9461	$62.50	$22.35	$12.50
76645	Us exam, breast(s)		S	0265	0.9461	$62.50	$22.35	$12.50
76700	Us exam, abdom, complete	CH	Q3	0266	1.4801	$97.77	$37.80	$19.56
76705	Echo exam of abdomen	CH	Q3	0266	1.4801	$97.77	$37.80	$19.56
76770	Us exam abdo back wall, comp	CH	Q3	0266	1.4801	$97.77	$37.80	$19.56
76775	Us exam abdo back wall, lim	CH	Q3	0266	1.4801	$97.77	$37.80	$19.56
76776	Us exam k transpl w/doppler	CH	Q3	0266	1.4801	$97.77	$37.80	$19.56
76800	Us exam, spinal canal		S	0266	1.4801	$97.77	$37.80	$19.56
76801	Ob us < 14 wks, single fetus		S	0266	1.4801	$97.77	$37.80	$19.56
76802	Ob us < 14 wks, add'l fetus		S	0265	0.9461	$62.50	$22.35	$12.50
76805	Ob us >/= 14 wks, sngl fetus		S	0266	1.4801	$97.77	$37.80	$19.56
76810	Ob us >/= 14 wks, addl fetus		S	0266	1.4801	$97.77	$37.80	$19.56
76811	Ob us, detailed, sngl fetus		S	0267	2.3186	$153.16	$60.50	$30.64
76812	Ob us, detailed, addl fetus		S	0265	0.9461	$62.50	$22.35	$12.50
76813	Ob us nuchal meas, 1 gest	CH	S	0265	0.9461	$62.50	$22.35	$12.50
76814	Ob us nuchal meas, add-on		S	0265	0.9461	$62.50	$22.35	$12.50
76815	Ob us, limited, fetus(s)		S	0265	0.9461	$62.50	$22.35	$12.50
76816	Ob us, follow-up, per fetus		S	0265	0.9461	$62.50	$22.35	$12.50
76817	Transvaginal us, obstetric		S	0265	0.9461	$62.50	$22.35	$12.50
76818	Fetal biophys profile w/nst		S	0266	1.4801	$97.77	$37.80	$19.56
76819	Fetal biophys profil w/o nst		S	0266	1.4801	$97.77	$37.80	$19.56
76820	Umbilical artery echo		S	0096	1.4327	$94.64	$37.42	$18.93
76821	Middle cerebral artery echo		S	0096	1.4327	$94.64	$37.42	$18.93
76825	Echo exam of fetal heart	CH	S	0269	6.5300	$431.37		$86.28
76826	Echo exam of fetal heart	CH	S	0697	3.8610	$255.05		$51.01
76827	Echo exam of fetal heart		S	0265	0.9461	$62.50	$22.35	$12.50
76828	Echo exam of fetal heart		S	0265	0.9461	$62.50	$22.35	$12.50
76830	Transvaginal us, non-ob		S	0266	1.4801	$97.77	$37.80	$19.56
76831	Echo exam, uterus	CH	Q3	0267	2.3186	$153.16	$60.50	$30.64

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
76856	Us exam, pelvic, complete	CH	Q3	0266	1.4801	$97.77	$37.80	$19.56
76857	Us exam, pelvic, limited	CH	Q3	0265	0.9461	$62.50	$22.35	$12.50
76870	Us exam, scrotum	CH	Q3	0266	1.4801	$97.77	$37.80	$19.56
76872	Us, transrectal		S	0266	1.4801	$97.77	$37.80	$19.56
76873	Echograp trans r, pros study		S	0266	1.4801	$97.77	$37.80	$19.56
76880	Us exam, extremity		S	0266	1.4801	$97.77	$37.80	$19.56
76885	Us exam infant hips, dynamic		S	0265	0.9461	$62.50	$22.35	$12.50
76886	Us exam infant hips, static		S	0265	0.9461	$62.50	$22.35	$12.50
76930	Echo guide, cardiocentesis		N					
76932	Echo guide for heart biopsy		N					
76936	Echo guide for artery repair	CH	S	0096	1.4327	$94.64	$37.42	$18.93
76937	Us guide, vascular access		N					
76940	Us guide, tissue ablation		N					
76941	Echo guide for transfusion		N					
76942	Echo guide for biopsy		N					
76945	Echo guide, villus sampling		N					
76946	Echo guide for amniocentesis		N					
76948	Echo guide, ova aspiration		N					
76950	Echo guidance radiotherapy		N					
76965	Echo guidance radiotherapy		N					
76970	Ultrasound exam follow-up		S	0265	0.9461	$62.50	$22.35	$12.50
76975	GI endoscopic ultrasound		Q2	0267	2.3186	$153.16	$60.50	$30.64
76977	Us bone density measure		X	0340	0.6462	$42.69		$8.54
76998	Us guide, intraop		N					
76999	Echo examination procedure		S	0265	0.9461	$62.50	$22.35	$12.50
77001	Fluoroguide for vein device		N					
77002	Needle localization by xray		N					
77003	Fluoroguide for spine inject		N					
77011	Ct scan for localization		N					
77012	Ct scan for needle biopsy		N					
77013	Ct guide for tissue ablation		N					
77014	Ct scan for therapy guide		N					
77021	Mr guidance for needle place		N					
77022	Mri for tissue ablation		N					
77031	Stereotact guide for brst bx		N					
77032	Guidance for needle, breast		N					
77051	Computer dx mammogram add-on		A					
77052	Comp screen mammogram add-on		A					
77053	X-ray of mammary duct		Q2	0263	3.0202	$199.51		$39.91
77054	X-ray of mammary ducts		Q2	0263	3.0202	$199.51		$39.91
77055	Mammogram, one breast		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
77056	Mammogram, both breasts		A					
77057	Mammogram, screening		A					
77058	Mri, one breast		B					
77059	Mri, both breasts		B					
77071	X-ray stress view		X	0260	0.6767	$44.70		$8.94
77072	X-rays for bone age		X	0260	0.6767	$44.70		$8.94
77073	X-rays, bone length studies		X	0260	0.6767	$44.70		$8.94
77074	X-rays, bone survey, limited		X	0261	1.1269	$74.44		$14.89
77075	X-rays, bone survey complete		X	0261	1.1269	$74.44		$14.89
77076	X-rays, bone survey, infant	CH	X	0261	1.1269	$74.44		$14.89
77077	Joint survey, single view		X	0260	0.6767	$44.70		$8.94
77078	Ct bone density, axial		S	0288	1.0887	$71.92	$28.66	$14.39
77079	Ct bone density, peripheral		S	0282	1.5897	$105.01	$37.81	$21.01
77080	Dxa bone density, axial		S	0288	1.0887	$71.92	$28.66	$14.39
77081	Dxa bone density/peripheral		S	0665	0.4798	$31.70	$12.67	$6.34
77082	Dxa bone density, vert fx		X	0260	0.6767	$44.70		$8.94
77083	Radiographic absorptiometry		X	0261	1.1269	$74.44		$14.89
77084	Magnetic image, bone marrow	CH	S	0336	5.2689	$348.06	$137.40	$69.62
77261	Radiation therapy planning		B					
77262	Radiation therapy planning		B					
77263	Radiation therapy planning		B					
77280	Set radiation therapy field		X	0304	1.7364	$114.70	$38.68	$22.94
77285	Set radiation therapy field		X	0305	3.8706	$255.69	$91.38	$51.14
77290	Set radiation therapy field		X	0305	3.8706	$255.69	$91.38	$51.14
77295	Set radiation therapy field		X	0310	13.5167	$892.90	$325.27	$178.58
77299	Radiation therapy planning		X	0304	1.7364	$114.70	$38.68	$22.94
77300	Radiation therapy dose plan		X	0304	1.7364	$114.70	$38.68	$22.94
77301	Radiotherapy dose plan, imrt		X	0310	13.5167	$892.90	$325.27	$178.58
77305	Teletx isodose plan simple		X	0304	1.7364	$114.70	$38.68	$22.94
77310	Teletx isodose plan intermed	CH	X	0304	1.7364	$114.70	$38.68	$22.94
77315	Teletx isodose plan complex		X	0305	3.8706	$255.69	$91.38	$51.14
77321	Special teletx port plan		X	0305	3.8706	$255.69	$91.38	$51.14
77326	Brachytx isodose calc simp		X	0304	1.7364	$114.70	$38.68	$22.94
77327	Brachytx isodose calc interm		X	0305	3.8706	$255.69	$91.38	$51.14
77328	Brachytx isodose plan compl		X	0305	3.8706	$255.69	$91.38	$51.14
77331	Special radiation dosimetry		X	0304	1.7364	$114.70	$38.68	$22.94
77332	Radiation treatment aid(s)		X	0303	2.8484	$188.16	$66.95	$37.64
77333	Radiation treatment aid(s)		X	0303	2.8484	$188.16	$66.95	$37.64
77334	Radiation treatment aid(s)		X	0303	2.8484	$188.16	$66.95	$37.64
77336	Radiation physics consult		X	0304	1.7364	$114.70	$38.68	$22.94
77370	Radiation physics consult		X	0304	1.7364	$114.70	$38.68	$22.94
77371	Srs, multisource		S	0127	115.6797	$7,641.69		$1,528.34

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
77372	Srs, linear based		B					
77373	Sbrt delivery		B					
77399	External radiation dosimetry		X	0304	1.7364	$114.70	$38.68	$22.94
77401	Radiation treatment delivery		S	0300	1.4211	$93.88		$18.78
77402	Radiation treatment delivery		S	0300	1.4211	$93.88		$18.78
77403	Radiation treatment delivery		S	0300	1.4211	$93.88		$18.78
77404	Radiation treatment delivery		S	0300	1.4211	$93.88		$18.78
77406	Radiation treatment delivery	CH	S	0301	2.3018	$152.05		$30.41
77407	Radiation treatment delivery		S	0300	1.4211	$93.88		$18.78
77408	Radiation treatment delivery		S	0300	1.4211	$93.88		$18.78
77409	Radiation treatment delivery		S	0300	1.4211	$93.88		$18.78
77411	Radiation treatment delivery		S	0301	2.3018	$152.05		$30.41
77412	Radiation treatment delivery		S	0301	2.3018	$152.05		$30.41
77413	Radiation treatment delivery		S	0301	2.3018	$152.05		$30.41
77414	Radiation treatment delivery		S	0301	2.3018	$152.05		$30.41
77416	Radiation treatment delivery		S	0301	2.3018	$152.05		$30.41
77417	Radiology port film(s)		N					
77418	Radiation tx delivery, imrt		S	0412	6.2192	$410.83		$82.17
77421	Stereoscopic x-ray guidance		N					
77422	Neutron beam tx, simple		S	0301	2.3018	$152.05		$30.41
77423	Neutron beam tx, complex		S	0301	2.3018	$152.05		$30.41
77427	Radiation tx management, x5		B					
77431	Radiation therapy management		B					
77432	Stereotactic radiation trmt		B					
77435	Sbrt management		N					
77470	Special radiation treatment		S	0299	5.6497	$373.21		$74.65
77499	Radiation therapy management		B					
77520	Proton trmt, simple w/o comp		S	0664	10.6477	$703.38		$140.68
77522	Proton trmt, simple w/comp		S	0664	10.6477	$703.38		$140.68
77523	Proton trmt, intermediate		S	0667	12.7244	$840.56		$168.12
77525	Proton treatment, complex		S	0667	12.7244	$840.56		$168.12
77600	Hyperthermia treatment		S	0299	5.6497	$373.21		$74.65
77605	Hyperthermia treatment		S	0299	5.6497	$373.21		$74.65
77610	Hyperthermia treatment		S	0299	5.6497	$373.21		$74.65
77615	Hyperthermia treatment		S	0299	5.6497	$373.21		$74.65
77620	Hyperthermia treatment		S	0299	5.6497	$373.21		$74.65
77750	Infuse radioactive materials		S	0301	2.3018	$152.05		$30.41
77761	Apply intrcav radiat simple		S	0312	6.5193	$430.66		$86.14
77762	Apply intrcav radiat interm		S	0312	6.5193	$430.66		$86.14
77763	Apply intrcav radiat compl		S	0312	6.5193	$430.66		$86.14
77776	Apply interstit radiat simpl		S	0312	6.5193	$430.66		$86.14
77777	Apply interstit radiat inter		S	0312	6.5193	$430.66		$86.14

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
77778	Apply interstit radiat compl		Q3	0651	13.1120	$866.17		$173.24
77781	High intensity brachytherapy	CH	D					
77782	High intensity brachytherapy	CH	D					
77783	High intensity brachytherapy	CH	D					
77784	High intensity brachytherapy	CH	D					
77785	Hdr brachytx, 1 channel	NI	S	0313	11.1000	$733.25	$293.30	$146.65
77786	Hdr brachytx, 2-12 channel	NI	S	0313	11.1000	$733.25	$293.30	$146.65
77787	Hdr brachytx over 12 chan	NI	S	0313	11.1000	$733.25	$293.30	$146.65
77789	Apply surface radiation		S	0300	1.4211	$93.88		$18.78
77790	Radiation handling		N					
77799	Radium/radioisotope therapy		S	0312	6.5193	$430.66		$86.14
78000	Thyroid, single uptake		S	0389	1.7779	$117.45	$33.81	$23.49
78001	Thyroid, multiple uptakes		S	0389	1.7779	$117.45	$33.81	$23.49
78003	Thyroid suppress/stimul		S	0392	2.4943	$164.77	$43.95	$32.96
78006	Thyroid imaging with uptake		S	0391	3.3593	$221.91	$66.18	$44.39
78007	Thyroid image, mult uptakes		S	0391	3.3593	$221.91	$66.18	$44.39
78010	Thyroid imaging		S	0390	2.0640	$136.35	$52.15	$27.27
78011	Thyroid imaging with flow		S	0390	2.0640	$136.35	$52.15	$27.27
78015	Thyroid met imaging		S	0406	4.5288	$299.17	$90.99	$59.84
78016	Thyroid met imaging/studies		S	0406	4.5288	$299.17	$90.99	$59.84
78018	Thyroid met imaging, body		S	0406	4.5288	$299.17	$90.99	$59.84
78020	Thyroid met uptake		N					
78070	Parathyroid nuclear imaging		S	0391	3.3593	$221.91	$66.18	$44.39
78075	Adrenal nuclear imaging		S	0408	15.1962	$1,003.85		$200.77
78099	Endocrine nuclear procedure		S	0390	2.0640	$136.35	$52.15	$27.27
78102	Bone marrow imaging, ltd		S	0400	3.9752	$262.60	$93.22	$52.52
78103	Bone marrow imaging, mult		S	0400	3.9752	$262.60	$93.22	$52.52
78104	Bone marrow imaging, body		S	0400	3.9752	$262.60	$93.22	$52.52
78110	Plasma volume, single		S	0393	6.0581	$400.19	$82.04	$80.04
78111	Plasma volume, multiple		S	0393	6.0581	$400.19	$82.04	$80.04
78120	Red cell mass, single		S	0393	6.0581	$400.19	$82.04	$80.04
78121	Red cell mass, multiple		S	0393	6.0581	$400.19	$82.04	$80.04
78122	Blood volume		S	0393	6.0581	$400.19	$82.04	$80.04
78130	Red cell survival study		S	0393	6.0581	$400.19	$82.04	$80.04
78135	Red cell survival kinetics		S	0393	6.0581	$400.19	$82.04	$80.04
78140	Red cell sequestration		S	0393	6.0581	$400.19	$82.04	$80.04
78185	Spleen imaging		S	0400	3.9752	$262.60	$93.22	$52.52
78190	Platelet survival, kinetics		S	0392	2.4943	$164.77	$43.95	$32.96
78191	Platelet survival		S	0392	2.4943	$164.77	$43.95	$32.96
78195	Lymph system imaging		S	0400	3.9752	$262.60	$93.22	$52.52
78199	Blood/lymph nuclear exam		S	0400	3.9752	$262.60	$93.22	$52.52
78201	Liver imaging		S	0394	4.1626	$274.98	$99.32	$55.00

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
78202	Liver imaging with flow		S	0394	4.1626	$274.98	$99.32	$55.00
78205	Liver imaging (3D)		S	0394	4.1626	$274.98	$99.32	$55.00
78206	Liver image (3d) with flow		S	0394	4.1626	$274.98	$99.32	$55.00
78215	Liver and spleen imaging		S	0394	4.1626	$274.98	$99.32	$55.00
78216	Liver & spleen image/flow		S	0394	4.1626	$274.98	$99.32	$55.00
78220	Liver function study		S	0394	4.1626	$274.98	$99.32	$55.00
78223	Hepatobiliary imaging		S	0394	4.1626	$274.98	$99.32	$55.00
78230	Salivary gland imaging		S	0395	3.6804	$243.12	$89.73	$48.63
78231	Serial salivary imaging		S	0395	3.6804	$243.12	$89.73	$48.63
78232	Salivary gland function exam		S	0395	3.6804	$243.12	$89.73	$48.63
78258	Esophageal motility study		S	0395	3.6804	$243.12	$89.73	$48.63
78261	Gastric mucosa imaging		S	0395	3.6804	$243.12	$89.73	$48.63
78262	Gastroesophageal reflux exam		S	0395	3.6804	$243.12	$89.73	$48.63
78264	Gastric emptying study		S	0395	3.6804	$243.12	$89.73	$48.63
78267	Breath tst attain/anal c-14		A					
78268	Breath test analysis, c-14		A					
78270	Vit B-12 absorption exam		S	0392	2.4943	$164.77	$43.95	$32.96
78271	Vit b-12 absrp exam, int fac		S	0392	2.4943	$164.77	$43.95	$32.96
78272	Vit B-12 absorp, combined		S	0392	2.4943	$164.77	$43.95	$32.96
78278	Acute GI blood loss imaging		S	0395	3.6804	$243.12	$89.73	$48.63
78282	GI protein loss exam		S	0395	3.6804	$243.12	$89.73	$48.63
78290	Meckel's divert exam		S	0395	3.6804	$243.12	$89.73	$48.63
78291	Leveen/shunt patency exam		S	0395	3.6804	$243.12	$89.73	$48.63
78299	GI nuclear procedure		S	0395	3.6804	$243.12	$89.73	$48.63
78300	Bone imaging, limited area		S	0396	3.7205	$245.77	$95.02	$49.16
78305	Bone imaging, multiple areas		S	0396	3.7205	$245.77	$95.02	$49.16
78306	Bone imaging, whole body		S	0396	3.7205	$245.77	$95.02	$49.16
78315	Bone imaging, 3 phase		S	0396	3.7205	$245.77	$95.02	$49.16
78320	Bone imaging (3D)		S	0396	3.7205	$245.77	$95.02	$49.16
78350	Bone mineral, single photon		E					
78351	Bone mineral, dual photon		E					
78399	Musculoskeletal nuclear exam		S	0396	3.7205	$245.77	$95.02	$49.16
78414	Non-imaging heart function		S	0398	4.7291	$312.40	$100.06	$62.48
78428	Cardiac shunt imaging		S	0398	4.7291	$312.40	$100.06	$62.48
78445	Vascular flow imaging		S	0397	2.8298	$186.93	$46.29	$37.39
78456	Acute venous thrombus image		S	0397	2.8298	$186.93	$46.29	$37.39
78457	Venous thrombosis imaging		S	0397	2.8298	$186.93	$46.29	$37.39
78458	Ven thrombosis images, bilat		S	0397	2.8298	$186.93	$46.29	$37.39
78459	Heart muscle imaging (PET)		S	0307	17.5127	$1,156.87	$241.53	$231.38
78460	Heart muscle blood, single		S	0377	11.7188	$774.13	$158.84	$154.83
78461	Heart muscle blood, multiple		S	0377	11.7188	$774.13	$158.84	$154.83
78464	Heart image (3d), single		S	0377	11.7188	$774.13	$158.84	$154.83

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
78465	Heart image (3d), multiple		S	0377	11.7188	$774.13	$158.84	$154.83
78466	Heart infarct image		S	0398	4.7291	$312.40	$100.06	$62.48
78468	Heart infarct image (ef)		S	0398	4.7291	$312.40	$100.06	$62.48
78469	Heart infarct image (3D)		S	0398	4.7291	$312.40	$100.06	$62.48
78472	Gated heart, planar, single		S	0398	4.7291	$312.40	$100.06	$62.48
78473	Gated heart, multiple		S	0398	4.7291	$312.40	$100.06	$62.48
78478	Heart wall motion add-on		N					
78480	Heart function add-on		N					
78481	Heart first pass, single		S	0398	4.7291	$312.40	$100.06	$62.48
78483	Heart first pass, multiple		S	0398	4.7291	$312.40	$100.06	$62.48
78491	Heart image (pet), single		S	0307	17.5127	$1,156.87	$241.53	$231.38
78492	Heart image (pet), multiple		S	0307	17.5127	$1,156.87	$241.53	$231.38
78494	Heart image, spect		S	0398	4.7291	$312.40	$100.06	$62.48
78496	Heart first pass add-on		N					
78499	Cardiovascular nuclear exam		S	0398	4.7291	$312.40	$100.06	$62.48
78580	Lung perfusion imaging		S	0401	3.2040	$211.65	$76.52	$42.33
78584	Lung V/Q image single breath		S	0378	4.9163	$324.77	$125.33	$64.96
78585	Lung V/Q imaging		S	0378	4.9163	$324.77	$125.33	$64.96
78586	Aerosol lung image, single		S	0401	3.2040	$211.65	$76.52	$42.33
78587	Aerosol lung image, multiple		S	0401	3.2040	$211.65	$76.52	$42.33
78588	Perfusion lung image		S	0378	4.9163	$324.77	$125.33	$64.96
78591	Vent image, 1 breath, 1 proj		S	0401	3.2040	$211.65	$76.52	$42.33
78593	Vent image, 1 proj, gas		S	0401	3.2040	$211.65	$76.52	$42.33
78594	Vent image, mult proj, gas		S	0401	3.2040	$211.65	$76.52	$42.33
78596	Lung differential function		S	0378	4.9163	$324.77	$125.33	$64.96
78599	Respiratory nuclear exam		S	0401	3.2040	$211.65	$76.52	$42.33
78600	Brain image < 4 views		S	0403	2.8236	$186.52	$72.42	$37.31
78601	Brain image w/flow < 4 views		S	0403	2.8236	$186.52	$72.42	$37.31
78605	Brain image 4+ views		S	0403	2.8236	$186.52	$72.42	$37.31
78606	Brain image w/flow 4 + views		S	0402	8.3063	$548.71	$111.42	$109.75
78607	Brain imaging (3D)		S	0402	8.3063	$548.71	$111.42	$109.75
78608	Brain imaging (PET)		S	0308	15.6969	$1,036.92		$207.39
78609	Brain imaging (PET)		E					
78610	Brain flow imaging only		S	0402	8.3063	$548.71	$111.42	$109.75
78630	Cerebrospinal fluid scan		S	0402	8.3063	$548.71	$111.42	$109.75
78635	CSF ventriculography		S	0402	8.3063	$548.71	$111.42	$109.75
78645	CSF shunt evaluation		S	0403	2.8236	$186.52	$72.42	$37.31
78647	Cerebrospinal fluid scan		S	0402	8.3063	$548.71	$111.42	$109.75
78650	CSF leakage imaging		S	0402	8.3063	$548.71	$111.42	$109.75
78660	Nuclear exam of tear flow		S	0403	2.8236	$186.52	$72.42	$37.31
78699	Nervous system nuclear exam		S	0403	2.8236	$186.52	$72.42	$37.31
78700	Kidney imaging, morphol		S	0404	4.9803	$328.99	$84.11	$65.80

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
78701	Kidney imaging with flow		S	0404	4.9803	$328.99	$84.11	$65.80
78707	K flow/funct image w/o drug		S	0404	4.9803	$328.99	$84.11	$65.80
78708	K flow/funct image w/drug		S	0404	4.9803	$328.99	$84.11	$65.80
78709	K flow/funct image, multiple		S	0404	4.9803	$328.99	$84.11	$65.80
78710	Kidney imaging (3D)		S	0404	4.9803	$328.99	$84.11	$65.80
78725	Kidney function study		S	0392	2.4943	$164.77	$43.95	$32.96
78730	Urinary bladder retention		S	0389	1.7779	$117.45	$33.81	$23.49
78740	Ureteral reflux study		S	0404	4.9803	$328.99	$84.11	$65.80
78761	Testicular imaging w/flow		S	0404	4.9803	$328.99	$84.11	$65.80
78799	Genitourinary nuclear exam		S	0404	4.9803	$328.99	$84.11	$65.80
78800	Tumor imaging, limited area		S	0406	4.5288	$299.17	$90.99	$59.84
78801	Tumor imaging, mult areas	CH	S	0414	8.5379	$564.01	$214.44	$112.81
78802	Tumor imaging, whole body		S	0414	8.5379	$564.01	$214.44	$112.81
78803	Tumor imaging (3D)		S	0408	15.1962	$1,003.85		$200.77
78804	Tumor imaging, whole body		S	0408	15.1962	$1,003.85		$200.77
78805	Abscess imaging, ltd area		S	0414	8.5379	$564.01	$214.44	$112.81
78806	Abscess imaging, whole body		S	0414	8.5379	$564.01	$214.44	$112.81
78807	Nuclear localization/abscess		S	0414	8.5379	$564.01	$214.44	$112.81
78808	Iv inj ra drug dx study	NI	Q1	0392	2.4943	$164.77	$43.95	$32.96
78811	Pet image, ltd area		S	0308	15.6969	$1,036.92		$207.39
78812	Pet image, skull-thigh		S	0308	15.6969	$1,036.92		$207.39
78813	Pet image, full body		S	0308	15.6969	$1,036.92		$207.39
78814	Pet image w/ct, lmtd		S	0308	15.6969	$1,036.92		$207.39
78815	Pet image w/ct, skull-thigh		S	0308	15.6969	$1,036.92		$207.39
78816	Pet image w/ct, full body		S	0308	15.6969	$1,036.92		$207.39
78890	Nuclear medicine data proc	CH	D					
78891	Nuclear med data proc	CH	D					
78999	Nuclear diagnostic exam		S	0389	1.7779	$117.45	$33.81	$23.49
79005	Nuclear rx, oral admin		S	0407	3.2584	$215.25	$78.13	$43.05
79101	Nuclear rx, iv admin		S	0407	3.2584	$215.25	$78.13	$43.05
79200	Nuclear rx, intracav admin		S	0413	5.4802	$362.02		$72.41
79300	Nuclr rx, interstit colloid		S	0407	3.2584	$215.25	$78.13	$43.05
79403	Hematopoietic nuclear tx		S	0413	5.4802	$362.02		$72.41
79440	Nuclear rx, intra-articular		S	0413	5.4802	$362.02		$72.41
79445	Nuclear rx, intra-arterial		S	0407	3.2584	$215.25	$78.13	$43.05
79999	Nuclear medicine therapy		S	0407	3.2584	$215.25	$78.13	$43.05
80047	Metabolic panel ionized ca		A					
80048	Metabolic panel total ca		A					
80050	General health panel		E					
80051	Electrolyte panel		A					
80053	Comprehen metabolic panel		A					
80055	Obstetric panel		E					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
80061	Lipid panel		A					
80069	Renal function panel		A					
80074	Acute hepatitis panel		A					
80076	Hepatic function panel		A					
80100	Drug screen, qualitate/multi		A					
80101	Drug screen, single		A					
80102	Drug confirmation		A					
80103	Drug analysis, tissue prep		N					
80150	Assay of amikacin		A					
80152	Assay of amitriptyline		A					
80154	Assay of benzodiazepines		A					
80156	Assay, carbamazepine, total		A					
80157	Assay, carbamazepine, free		A					
80158	Assay of cyclosporine		A					
80160	Assay of desipramine		A					
80162	Assay of digoxin		A					
80164	Assay, dipropylacetic acid		A					
80166	Assay of doxepin		A					
80168	Assay of ethosuximide		A					
80170	Assay of gentamicin		A					
80172	Assay of gold		A					
80173	Assay of haloperidol		A					
80174	Assay of imipramine		A					
80176	Assay of lidocaine		A					
80178	Assay of lithium		A					
80182	Assay of nortriptyline		A					
80184	Assay of phenobarbital		A					
80185	Assay of phenytoin, total		A					
80186	Assay of phenytoin, free		A					
80188	Assay of primidone		A					
80190	Assay of procainamide		A					
80192	Assay of procainamide		A					
80194	Assay of quinidine		A					
80195	Assay of sirolimus		A					
80196	Assay of salicylate		A					
80197	Assay of tacrolimus		A					
80198	Assay of theophylline		A					
80200	Assay of tobramycin		A					
80201	Assay of topiramate		A					
80202	Assay of vancomycin		A					
80299	Quantitative assay, drug		A					
80400	Acth stimulation panel		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
80402	Acth stimulation panel		A					
80406	Acth stimulation panel		A					
80408	Aldosterone suppression eval		A					
80410	Calcitonin stimul panel		A					
80412	CRH stimulation panel		A					
80414	Testosterone response		A					
80415	Estradiol response panel		A					
80416	Renin stimulation panel		A					
80417	Renin stimulation panel		A					
80418	Pituitary evaluation panel		A					
80420	Dexamethasone panel		A					
80422	Glucagon tolerance panel		A					
80424	Glucagon tolerance panel		A					
80426	Gonadotropin hormone panel		A					
80428	Growth hormone panel		A					
80430	Growth hormone panel		A					
80432	Insulin suppression panel		A					
80434	Insulin tolerance panel		A					
80435	Insulin tolerance panel		A					
80436	Metyrapone panel		A					
80438	TRH stimulation panel		A					
80439	TRH stimulation panel		A					
80440	TRH stimulation panel		A					
80500	Lab pathology consultation		X	0433	0.2498	$16.50	$5.17	$3.30
80502	Lab pathology consultation		X	0342	0.1523	$10.06	$2.02	$2.02
81000	Urinalysis, nonauto w/scope		A					
81001	Urinalysis, auto w/scope		A					
81002	Urinalysis nonauto w/o scope		A					
81003	Urinalysis, auto, w/o scope		A					
81005	Urinalysis		A					
81007	Urine screen for bacteria		A					
81015	Microscopic exam of urine		A					
81020	Urinalysis, glass test		A					
81025	Urine pregnancy test		A					
81050	Urinalysis, volume measure		A					
81099	Urinalysis test procedure		A					
82000	Assay of blood acetaldehyde		A					
82003	Assay of acetaminophen		A					
82009	Test for acetone/ketones		A					
82010	Acetone assay		A					
82013	Acetylcholinesterase assay		A					
82016	Acylcarnitines, qual		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
82017	Acylcarnitines, quant		A					
82024	Assay of acth		A					
82030	Assay of adp & amp		A					
82040	Assay of serum albumin		A					
82042	Assay of urine albumin		A					
82043	Microalbumin, quantitative		A					
82044	Microalbumin, semiquant		A					
82045	Albumin, ischemia modified		A					
82055	Assay of ethanol		A					
82075	Assay of breath ethanol		A					
82085	Assay of aldolase		A					
82088	Assay of aldosterone		A					
82101	Assay of urine alkaloids		A					
82103	Alpha-1-antitrypsin, total		A					
82104	Alpha-1-antitrypsin, pheno		A					
82105	Alpha-fetoprotein, serum		A					
82106	Alpha-fetoprotein, amniotic		A					
82107	Alpha-fetoprotein l3		A					
82108	Assay of aluminum		A					
82120	Amines, vaginal fluid qual		A					
82127	Amino acid, single qual		A					
82128	Amino acids, mult qual		A					
82131	Amino acids, single quant		A					
82135	Assay, aminolevulinic acid		A					
82136	Amino acids, quant, 2-5		A					
82139	Amino acids, quan, 6 or more		A					
82140	Assay of ammonia		A					
82143	Amniotic fluid scan		A					
82145	Assay of amphetamines		A					
82150	Assay of amylase		A					
82154	Androstanediol glucuronide		A					
82157	Assay of androstenedione		A					
82160	Assay of androsterone		A					
82163	Assay of angiotensin II		A					
82164	Angiotensin I enzyme test		A					
82172	Assay of apolipoprotein		A					
82175	Assay of arsenic		A					
82180	Assay of ascorbic acid		A					
82190	Atomic absorption		A					
82205	Assay of barbiturates		A					
82232	Assay of beta-2 protein		A					
82239	Bile acids, total		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
82240	Bile acids, cholylglycine		A					
82247	Bilirubin, total		A					
82248	Bilirubin, direct		A					
82252	Fecal bilirubin test		A					
82261	Assay of biotinidase		A					
82270	Occult blood, feces		A					
82271	Occult blood, other sources		A					
82272	Occult bld feces, 1-3 tests		A					
82274	Assay test for blood, fecal		A					
82286	Assay of bradykinin		A					
82300	Assay of cadmium		A					
82306	Assay of vitamin D		A					
82307	Assay of vitamin D		A					
82308	Assay of calcitonin		A					
82310	Assay of calcium		A					
82330	Assay of calcium		A					
82331	Calcium infusion test		A					
82340	Assay of calcium in urine		A					
82355	Calculus analysis, qual		A					
82360	Calculus assay, quant		A					
82365	Calculus spectroscopy		A					
82370	X-ray assay, calculus		A					
82373	Assay, c-d transfer measure		A					
82374	Assay, blood carbon dioxide		A					
82375	Assay, carboxyhb, quant		A					
82376	Assay, carboxyhb, qual		A					
82378	Carcinoembryonic antigen		A					
82379	Assay of carnitine		A					
82380	Assay of carotene		A					
82382	Assay, urine catecholamines		A					
82383	Assay, blood catecholamines		A					
82384	Assay, three catecholamines		A					
82387	Assay of cathepsin-d		A					
82390	Assay of ceruloplasmin		A					
82397	Chemiluminescent assay		A					
82415	Assay of chloramphenicol		A					
82435	Assay of blood chloride		A					
82436	Assay of urine chloride		A					
82438	Assay, other fluid chlorides		A					
82441	Test for chlorohydrocarbons		A					
82465	Assay, bld/serum cholesterol		A					
82480	Assay, serum cholinesterase		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
82482	Assay, rbc cholinesterase		A					
82485	Assay, chondroitin sulfate		A					
82486	Gas/liquid chromatography		A					
82487	Paper chromatography		A					
82488	Paper chromatography		A					
82489	Thin layer chromatography		A					
82491	Chromotography, quant, sing		A					
82492	Chromotography, quant, mult		A					
82495	Assay of chromium		A					
82507	Assay of citrate		A					
82520	Assay of cocaine		A					
82523	Collagen crosslinks		A					
82525	Assay of copper		A					
82528	Assay of corticosterone		A					
82530	Cortisol, free		A					
82533	Total cortisol		A					
82540	Assay of creatine		A					
82541	Column chromotography, qual		A					
82542	Column chromotography, quant		A					
82543	Column chromotograph/isotope		A					
82544	Column chromotograph/isotope		A					
82550	Assay of ck (cpk)		A					
82552	Assay of cpk in blood		A					
82553	Creatine, MB fraction		A					
82554	Creatine, isoforms		A					
82565	Assay of creatinine		A					
82570	Assay of urine creatinine		A					
82575	Creatinine clearance test		A					
82585	Assay of cryofibrinogen		A					
82595	Assay of cryoglobulin		A					
82600	Assay of cyanide		A					
82607	Vitamin B-12		A					
82608	B-12 binding capacity		A					
82610	Cystatin c		A					
82615	Test for urine cystines		A					
82626	Dehydroepiandrosterone		A					
82627	Dehydroepiandrosterone		A					
82633	Desoxycorticosterone		A					
82634	Deoxycortisol		A					
82638	Assay of dibucaine number		A					
82646	Assay of dihydrocodeinone		A					
82649	Assay of dihydromorphinone		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
82651	Assay of dihydrotestosterone		A					
82652	Assay of dihydroxyvitamin d		A					
82654	Assay of dimethadione		A					
82656	Pancreatic elastase, fecal		A					
82657	Enzyme cell activity		A					
82658	Enzyme cell activity, ra		A					
82664	Electrophoretic test		A					
82666	Assay of epiandrosterone		A					
82668	Assay of erythropoietin		A					
82670	Assay of estradiol		A					
82671	Assay of estrogens		A					
82672	Assay of estrogen		A					
82677	Assay of estriol		A					
82679	Assay of estrone		A					
82690	Assay of ethchlorvynol		A					
82693	Assay of ethylene glycol		A					
82696	Assay of etiocholanolone		A					
82705	Fats/lipids, feces, qual		A					
82710	Fats/lipids, feces, quant		A					
82715	Assay of fecal fat		A					
82725	Assay of blood fatty acids		A					
82726	Long chain fatty acids		A					
82728	Assay of ferritin		A					
82731	Assay of fetal fibronectin		A					
82735	Assay of fluoride		A					
82742	Assay of flurazepam		A					
82746	Blood folic acid serum		A					
82747	Assay of folic acid, rbc		A					
82757	Assay of semen fructose		A					
82759	Assay of rbc galactokinase		A					
82760	Assay of galactose		A					
82775	Assay galactose transferase		A					
82776	Galactose transferase test		A					
82784	Assay of gammaglobulin igm		A					
82785	Assay of gammaglobulin ige		A					
82787	Igg 1, 2, 3 or 4, each		A					
82800	Blood pH		A					
82803	Blood gases: pH, pO2 & pCO2		A					
82805	Blood gases w/02 saturation		A					
82810	Blood gases, O2 sat only		A					
82820	Hemoglobin-oxygen affinity		A					
82926	Assay of gastric acid		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
82928	Assay of gastric acid		A					
82938	Gastrin test		A					
82941	Assay of gastrin		A					
82943	Assay of glucagon		A					
82945	Glucose other fluid		A					
82946	Glucagon tolerance test		A					
82947	Assay, glucose, blood quant		A					
82948	Reagent strip/blood glucose		A					
82950	Glucose test		A					
82951	Glucose tolerance test (GTT)		A					
82952	GTT-added samples		A					
82953	Glucose-tolbutamide test		A					
82955	Assay of g6pd enzyme		A					
82960	Test for G6PD enzyme		A					
82962	Glucose blood test		A					
82963	Assay of glucosidase		A					
82965	Assay of gdh enzyme		A					
82975	Assay of glutamine		A					
82977	Assay of GGT		A					
82978	Assay of glutathione		A					
82979	Assay, rbc glutathione		A					
82980	Assay of glutethimide		A					
82985	Glycated protein		A					
83001	Gonadotropin (FSH)		A					
83002	Gonadotropin (LH)		A					
83003	Assay, growth hormone (hgh)		A					
83008	Assay of guanosine		A					
83009	H pylori (c-13), blood		A					
83010	Assay of haptoglobin, quant		A					
83012	Assay of haptoglobins		A					
83013	H pylori (c-13), breath		A					
83014	H pylori drug admin		A					
83015	Heavy metal screen		A					
83018	Quantitative screen, metals		A					
83020	Hemoglobin electrophoresis		A					
83021	Hemoglobin chromotography		A					
83026	Hemoglobin, copper sulfate		A					
83030	Fetal hemoglobin, chemical		A					
83033	Fetal hemoglobin assay, qual		A					
83036	Glycosylated hemoglobin test		A					
83037	Glycosylated hb, home device		A					
83045	Blood methemoglobin test		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
83050	Blood methemoglobin assay		A					
83051	Assay of plasma hemoglobin		A					
83055	Blood sulfhemoglobin test		A					
83060	Blood sulfhemoglobin assay		A					
83065	Assay of hemoglobin heat		A					
83068	Hemoglobin stability screen		A					
83069	Assay of urine hemoglobin		A					
83070	Assay of hemosiderin, qual		A					
83071	Assay of hemosiderin, quant		A					
83080	Assay of b hexosaminidase		A					
83088	Assay of histamine		A					
83090	Assay of homocystine		A					
83150	Assay of for hva		A					
83491	Assay of corticosteroids		A					
83497	Assay of 5-hiaa		A					
83498	Assay of progesterone		A					
83499	Assay of progesterone		A					
83500	Assay, free hydroxyproline		A					
83505	Assay, total hydroxyproline		A					
83516	Immunoassay, nonantibody		A					
83518	Immunoassay, dipstick		A					
83519	Immunoassay, nonantibody		A					
83520	Immunoassay, RIA		A					
83525	Assay of insulin		A					
83527	Assay of insulin		A					
83528	Assay of intrinsic factor		A					
83540	Assay of iron		A					
83550	Iron binding test		A					
83570	Assay of idh enzyme		A					
83582	Assay of ketogenic steroids		A					
83586	Assay 17- ketosteroids		A					
83593	Fractionation, ketosteroids		A					
83605	Assay of lactic acid		A					
83615	Lactate (LD) (LDH) enzyme		A					
83625	Assay of ldh enzymes		A					
83630	Lactoferrin, fecal (qual)		A					
83631	Lactoferrin, fecal (quant)		A					
83632	Placental lactogen		A					
83633	Test urine for lactose		A					
83634	Assay of urine for lactose		A					
83655	Assay of lead		A					
83661	L/s ratio, fetal lung		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
83662	Foam stability, fetal lung		A					
83663	Fluoro polarize, fetal lung		A					
83664	Lamellar bdy, fetal lung		A					
83670	Assay of lap enzyme		A					
83690	Assay of lipase		A					
83695	Assay of lipoprotein(a)		A					
83698	Assay lipoprotein pla2		A					
83700	Lipopro bld, electrophoretic		A					
83701	Lipoprotein bld, hr fraction		A					
83704	Lipoprotein, bld, by nmr		A					
83718	Assay of lipoprotein		A					
83719	Assay of blood lipoprotein		A					
83721	Assay of blood lipoprotein		A					
83727	Assay of lrh hormone		A					
83735	Assay of magnesium		A					
83775	Assay of md enzyme		A					
83785	Assay of manganese		A					
83788	Mass spectrometry qual		A					
83789	Mass spectrometry quant		A					
83805	Assay of meprobamate		A					
83825	Assay of mercury		A					
83835	Assay of metanephrines		A					
83840	Assay of methadone		A					
83857	Assay of methemalbumin		A					
83858	Assay of methsuximide		A					
83864	Mucopolysaccharides		A					
83866	Mucopolysaccharides screen		A					
83872	Assay synovial fluid mucin		A					
83873	Assay of csf protein		A					
83874	Assay of myoglobin		A					
83876	Assay, myeloperoxidase	NI	A					
83880	Natriuretic peptide		A					
83883	Assay, nephelometry not spec		A					
83885	Assay of nickel		A					
83887	Assay of nicotine		A					
83890	Molecule isolate		A					
83891	Molecule isolate nucleic		A					
83892	Molecular diagnostics		A					
83893	Molecule dot/slot/blot		A					
83894	Molecule gel electrophor		A					
83896	Molecular diagnostics		A					
83897	Molecule nucleic transfer		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
83898	Molecule nucleic ampli, each		A					
83900	Molecule nucleic ampli 2 seq		A					
83901	Molecule nucleic ampli addon		A					
83902	Molecular diagnostics		A					
83903	Molecule mutation scan		A					
83904	Molecule mutation identify		A					
83905	Molecule mutation identify		A					
83906	Molecule mutation identify		A					
83907	Lyse cells for nucleic ext		A					
83908	Nucleic acid, signal ampli		A					
83909	Nucleic acid, high resolute		A					
83912	Genetic examination		A					
83913	Molecular, rna stabilization		A					
83914	Mutation ident ola/sbce/aspe		A					
83915	Assay of nucleotidase		A					
83916	Oligoclonal bands		A					
83918	Organic acids, total, quant		A					
83919	Organic acids, qual, each		A					
83921	Organic acid, single, quant		A					
83925	Assay of opiates		A					
83930	Assay of blood osmolality		A					
83935	Assay of urine osmolality		A					
83937	Assay of osteocalcin		A					
83945	Assay of oxalate		A					
83950	Oncoprotein, her-2/neu		A					
83951	Oncoprotein, dcp	NI	A					
83970	Assay of parathormone		A					
83986	Assay of body fluid acidity		A					
83992	Assay for phencyclidine		A					
83993	Assay for calprotectin fecal		A					
84022	Assay of phenothiazine		A					
84030	Assay of blood pku		A					
84035	Assay of phenylketones		A					
84060	Assay acid phosphatase		A					
84061	Phosphatase, forensic exam		A					
84066	Assay prostate phosphatase		A					
84075	Assay alkaline phosphatase		A					
84078	Assay alkaline phosphatase		A					
84080	Assay alkaline phosphatases		A					
84081	Amniotic fluid enzyme test		A					
84085	Assay of rbc pg6d enzyme		A					
84087	Assay phosphohexose enzymes		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
84100	Assay of phosphorus		A					
84105	Assay of urine phosphorus		A					
84106	Test for porphobilinogen		A					
84110	Assay of porphobilinogen		A					
84119	Test urine for porphyrins		A					
84120	Assay of urine porphyrins		A					
84126	Assay of feces porphyrins		A					
84127	Assay of feces porphyrins		A					
84132	Assay of serum potassium		A					
84133	Assay of urine potassium		A					
84134	Assay of prealbumin		A					
84135	Assay of pregnanediol		A					
84138	Assay of pregnanetriol		A					
84140	Assay of pregnenolone		A					
84143	Assay of 17-hydroxypregneno		A					
84144	Assay of progesterone		A					
84146	Assay of prolactin		A					
84150	Assay of prostaglandin		A					
84152	Assay of psa, complexed		A					
84153	Assay of psa, total		A					
84154	Assay of psa, free		A					
84155	Assay of protein, serum		A					
84156	Assay of protein, urine		A					
84157	Assay of protein, other		A					
84160	Assay of protein, any source		A					
84163	Pappa, serum		A					
84165	Protein e-phoresis, serum		A					
84166	Protein e-phoresis/urine/csf		A					
84181	Western blot test		A					
84182	Protein, western blot test		A					
84202	Assay RBC protoporphyrin		A					
84203	Test RBC protoporphyrin		A					
84206	Assay of proinsulin		A					
84207	Assay of vitamin b-6		A					
84210	Assay of pyruvate		A					
84220	Assay of pyruvate kinase		A					
84228	Assay of quinine		A					
84233	Assay of estrogen		A					
84234	Assay of progesterone		A					
84235	Assay of endocrine hormone		A					
84238	Assay, nonendocrine receptor		A					
84244	Assay of renin		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
84252	Assay of vitamin b-2		A					
84255	Assay of selenium		A					
84260	Assay of serotonin		A					
84270	Assay of sex hormone globul		A					
84275	Assay of sialic acid		A					
84285	Assay of silica		A					
84295	Assay of serum sodium		A					
84300	Assay of urine sodium		A					
84302	Assay of sweat sodium		A					
84305	Assay of somatomedin		A					
84307	Assay of somatostatin		A					
84311	Spectrophotometry		A					
84315	Body fluid specific gravity		A					
84375	Chromatogram assay, sugars		A					
84376	Sugars, single, qual		A					
84377	Sugars, multiple, qual		A					
84378	Sugars, single, quant		A					
84379	Sugars multiple quant		A					
84392	Assay of urine sulfate		A					
84402	Assay of testosterone		A					
84403	Assay of total testosterone		A					
84425	Assay of vitamin b-1		A					
84430	Assay of thiocyanate		A					
84432	Assay of thyroglobulin		A					
84436	Assay of total thyroxine		A					
84437	Assay of neonatal thyroxine		A					
84439	Assay of free thyroxine		A					
84442	Assay of thyroid activity		A					
84443	Assay thyroid stim hormone		A					
84445	Assay of tsi		A					
84446	Assay of vitamin e		A					
84449	Assay of transcortin		A					
84450	Transferase (AST) (SGOT)		A					
84460	Alanine amino (ALT) (SGPT)		A					
84466	Assay of transferrin		A					
84478	Assay of triglycerides		A					
84479	Assay of thyroid (t3 or t4)		A					
84480	Assay, triiodothyronine (t3)		A					
84481	Free assay (FT-3)		A					
84482	T3 reverse		A					
84484	Assay of troponin, quant		A					
84485	Assay duodenal fluid trypsin		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
84488	Test feces for trypsin		A					
84490	Assay of feces for trypsin		A					
84510	Assay of tyrosine		A					
84512	Assay of troponin, qual		A					
84520	Assay of urea nitrogen		A					
84525	Urea nitrogen semi-quant		A					
84540	Assay of urine/urea-n		A					
84545	Urea-N clearance test		A					
84550	Assay of blood/uric acid		A					
84560	Assay of urine/uric acid		A					
84577	Assay of feces/urobilinogen		A					
84578	Test urine urobilinogen		A					
84580	Assay of urine urobilinogen		A					
84583	Assay of urine urobilinogen		A					
84585	Assay of urine vma		A					
84586	Assay of vip		A					
84588	Assay of vasopressin		A					
84590	Assay of vitamin a		A					
84591	Assay of nos vitamin		A					
84597	Assay of vitamin k		A					
84600	Assay of volatiles		A					
84620	Xylose tolerance test		A					
84630	Assay of zinc		A					
84681	Assay of c-peptide		A					
84702	Chorionic gonadotropin test		A					
84703	Chorionic gonadotropin assay		A					
84704	Hcg, free betachain test		A					
84830	Ovulation tests		A					
84999	Clinical chemistry test		A					
85002	Bleeding time test		A					
85004	Automated diff wbc count		A					
85007	Bl smear w/diff wbc count		A					
85008	Bl smear w/o diff wbc count		A					
85009	Manual diff wbc count b-coat		A					
85013	Spun microhematocrit		A					
85014	Hematocrit		A					
85018	Hemoglobin		A					
85025	Complete cbc w/auto diff wbc		A					
85027	Complete cbc, automated		A					
85032	Manual cell count, each		A					
85041	Automated rbc count		A					
85044	Manual reticulocyte count		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
85045	Automated reticulocyte count		A					
85046	Reticyte/hgb concentrate		A					
85048	Automated leukocyte count		A					
85049	Automated platelet count		A					
85055	Reticulated platelet assay		A					
85060	Blood smear interpretation		B					
85097	Bone marrow interpretation		X	0343	0.5230	$34.55	$10.84	$6.91
85130	Chromogenic substrate assay		A					
85170	Blood clot retraction		A					
85175	Blood clot lysis time		A					
85210	Blood clot factor II test		A					
85220	Blood clot factor V test		A					
85230	Blood clot factor VII test		A					
85240	Blood clot factor VIII test		A					
85244	Blood clot factor VIII test		A					
85245	Blood clot factor VIII test		A					
85246	Blood clot factor VIII test		A					
85247	Blood clot factor VIII test		A					
85250	Blood clot factor IX test		A					
85260	Blood clot factor X test		A					
85270	Blood clot factor XI test		A					
85280	Blood clot factor XII test		A					
85290	Blood clot factor XIII test		A					
85291	Blood clot factor XIII test		A					
85292	Blood clot factor assay		A					
85293	Blood clot factor assay		A					
85300	Antithrombin III test		A					
85301	Antithrombin III test		A					
85302	Blood clot inhibitor antigen		A					
85303	Blood clot inhibitor test		A					
85305	Blood clot inhibitor assay		A					
85306	Blood clot inhibitor test		A					
85307	Assay activated protein c		A					
85335	Factor inhibitor test		A					
85337	Thrombomodulin		A					
85345	Coagulation time		A					
85347	Coagulation time		A					
85348	Coagulation time		A					
85360	Euglobulin lysis		A					
85362	Fibrin degradation products		A					
85366	Fibrinogen test		A					
85370	Fibrinogen test		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
85378	Fibrin degrade, semiquant		A					
85379	Fibrin degradation, quant		A					
85380	Fibrin degradation, vte		A					
85384	Fibrinogen		A					
85385	Fibrinogen		A					
85390	Fibrinolysins screen		A					
85396	Clotting assay, whole blood		N					
85397	Clotting funct activity	NI	A					
85400	Fibrinolytic plasmin		A					
85410	Fibrinolytic antiplasmin		A					
85415	Fibrinolytic plasminogen		A					
85420	Fibrinolytic plasminogen		A					
85421	Fibrinolytic plasminogen		A					
85441	Heinz bodies, direct		A					
85445	Heinz bodies, induced		A					
85460	Hemoglobin, fetal		A					
85461	Hemoglobin, fetal		A					
85475	Hemolysin		A					
85520	Heparin assay		A					
85525	Heparin neutralization		A					
85530	Heparin-protamine tolerance		A					
85536	Iron stain peripheral blood		A					
85540	Wbc alkaline phosphatase		A					
85547	RBC mechanical fragility		A					
85549	Muramidase		A					
85555	RBC osmotic fragility		A					
85557	RBC osmotic fragility		A					
85576	Blood platelet aggregation		A					
85597	Platelet neutralization		A					
85610	Prothrombin time		A					
85611	Prothrombin test		A					
85612	Viper venom prothrombin time		A					
85613	Russell viper venom, diluted		A					
85635	Reptilase test		A					
85651	Rbc sed rate, nonautomated		A					
85652	Rbc sed rate, automated		A					
85660	RBC sickle cell test		A					
85670	Thrombin time, plasma		A					
85675	Thrombin time, titer		A					
85705	Thromboplastin inhibition		A					
85730	Thromboplastin time, partial		A					
85732	Thromboplastin time, partial		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
85810	Blood viscosity examination		A					
85999	Hematology procedure		A					
86000	Agglutinins, febrile		A					
86001	Allergen specific igg		A					
86003	Allergen specific IgE		A					
86005	Allergen specific IgE		A					
86021	WBC antibody identification		A					
86022	Platelet antibodies		A					
86023	Immunoglobulin assay		A					
86038	Antinuclear antibodies		A					
86039	Antinuclear antibodies (ANA)		A					
86060	Antistreptolysin o, titer		A					
86063	Antistreptolysin o, screen		A					
86077	Physician blood bank service		X	0433	0.2498	$16.50	$5.17	$3.30
86078	Physician blood bank service		X	0343	0.5230	$34.55	$10.84	$6.91
86079	Physician blood bank service		X	0433	0.2498	$16.50	$5.17	$3.30
86140	C-reactive protein		A					
86141	C-reactive protein, hs		A					
86146	Glycoprotein antibody		A					
86147	Cardiolipin antibody		A					
86148	Phospholipid antibody		A					
86155	Chemotaxis assay		A					
86156	Cold agglutinin, screen		A					
86157	Cold agglutinin, titer		A					
86160	Complement, antigen		A					
86161	Complement/function activity		A					
86162	Complement, total (CH50)		A					
86171	Complement fixation, each		A					
86185	Counterimmunoelectrophoresis		A					
86200	Ccp antibody		A					
86215	Deoxyribonuclease, antibody		A					
86225	DNA antibody		A					
86226	DNA antibody, single strand		A					
86235	Nuclear antigen antibody		A					
86243	Fc receptor		A					
86255	Fluorescent antibody, screen		A					
86256	Fluorescent antibody, titer		A					
86277	Growth hormone antibody		A					
86280	Hemagglutination inhibition		A					
86294	Immunoassay, tumor, qual		A					
86300	Immunoassay, tumor, ca 15-3		A					
86301	Immunoassay, tumor, ca 19-9		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
86304	Immunoassay, tumor, ca 125		A					
86308	Heterophile antibodies		A					
86309	Heterophile antibodies		A					
86310	Heterophile antibodies		A					
86316	Immunoassay, tumor other		A					
86317	Immunoassay,infectious agent		A					
86318	Immunoassay,infectious agent		A					
86320	Serum immunoelectrophoresis		A					
86325	Other immunoelectrophoresis		A					
86327	Immunoelectrophoresis assay		A					
86329	Immunodiffusion		A					
86331	Immunodiffusion ouchterlony		A					
86332	Immune complex assay		A					
86334	Immunofix e-phoresis, serum		A					
86335	Immunfix e-phorsis/urine/csf		A					
86336	Inhibin A		A					
86337	Insulin antibodies		A					
86340	Intrinsic factor antibody		A					
86341	Islet cell antibody		A					
86343	Leukocyte histamine release		A					
86344	Leukocyte phagocytosis		A					
86353	Lymphocyte transformation		A					
86355	B cells, total count		A					
86356	Mononuclear cell antigen		A					
86357	Nk cells, total count		A					
86359	T cells, total count		A					
86360	T cell, absolute count/ratio		A					
86361	T cell, absolute count		A					
86367	Stem cells, total count		A					
86376	Microsomal antibody		A					
86378	Migration inhibitory factor		A					
86382	Neutralization test, viral		A					
86384	Nitroblue tetrazolium dye		A					
86403	Particle agglutination test		A					
86406	Particle agglutination test		A					
86430	Rheumatoid factor test		A					
86431	Rheumatoid factor, quant		A					
86480	Tb test, cell immun measure		A					
86485	Skin test, candida		X	0341	0.0834	$5.51	$2.14	$1.11
86486	Skin test, nos antigen	CH	X	0341	0.0834	$5.51	$2.14	$1.11
86490	Coccidioidomycosis skin test		X	0341	0.0834	$5.51	$2.14	$1.11
86510	Histoplasmosis skin test		X	0341	0.0834	$5.51	$2.14	$1.11

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
86580	TB intradermal test		X	0341	0.0834	$5.51	$2.14	$1.11
86590	Streptokinase, antibody		A					
86592	Blood serology, qualitative		A					
86593	Blood serology, quantitative		A					
86602	Antinomyces antibody		A					
86603	Adenovirus antibody		A					
86606	Aspergillus antibody		A					
86609	Bacterium antibody		A					
86611	Bartonella antibody		A					
86612	Blastomyces antibody		A					
86615	Bordetella antibody		A					
86617	Lyme disease antibody		A					
86618	Lyme disease antibody		A					
86619	Borrelia antibody		A					
86622	Brucella antibody		A					
86625	Campylobacter antibody		A					
86628	Candida antibody		A					
86631	Chlamydia antibody		A					
86632	Chlamydia igm antibody		A					
86635	Coccidioides antibody		A					
86638	Q fever antibody		A					
86641	Cryptococcus antibody		A					
86644	CMV antibody		A					
86645	CMV antibody, IgM		A					
86648	Diphtheria antibody		A					
86651	Encephalitis antibody		A					
86652	Encephalitis antibody		A					
86653	Encephalitis antibody		A					
86654	Encephalitis antibody		A					
86658	Enterovirus antibody		A					
86663	Epstein-barr antibody		A					
86664	Epstein-barr antibody		A					
86665	Epstein-barr antibody		A					
86666	Ehrlichia antibody		A					
86668	Francisella tularensis		A					
86671	Fungus antibody		A					
86674	Giardia lamblia antibody		A					
86677	Helicobacter pylori		A					
86682	Helminth antibody		A					
86684	Hemophilus influenza		A					
86687	Htlv-i antibody		A					
86688	Htlv-ii antibody		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
86689	HTLV/HIV confirmatory test		A					
86692	Hepatitis, delta agent		A					
86694	Herpes simplex test		A					
86695	Herpes simplex test		A					
86696	Herpes simplex type 2		A					
86698	Histoplasma		A					
86701	HIV-1		A					
86702	HIV-2		A					
86703	HIV-1/HIV-2, single assay		A					
86704	Hep b core antibody, total		A					
86705	Hep b core antibody, igm		A					
86706	Hep b surface antibody		A					
86707	Hep be antibody		A					
86708	Hep a antibody, total		A					
86709	Hep a antibody, igm		A					
86710	Influenza virus antibody		A					
86713	Legionella antibody		A					
86717	Leishmania antibody		A					
86720	Leptospira antibody		A					
86723	Listeria monocytogenes ab		A					
86727	Lymph choriomeningitis ab		A					
86729	Lympho venereum antibody		A					
86732	Mucormycosis antibody		A					
86735	Mumps antibody		A					
86738	Mycoplasma antibody		A					
86741	Neisseria meningitidis		A					
86744	Nocardia antibody		A					
86747	Parvovirus antibody		A					
86750	Malaria antibody		A					
86753	Protozoa antibody nos		A					
86756	Respiratory virus antibody		A					
86757	Rickettsia antibody		A					
86759	Rotavirus antibody		A					
86762	Rubella antibody		A					
86765	Rubeola antibody		A					
86768	Salmonella antibody		A					
86771	Shigella antibody		A					
86774	Tetanus antibody		A					
86777	Toxoplasma antibody		A					
86778	Toxoplasma antibody, igm		A					
86781	Treponema pallidum, confirm		A					
86784	Trichinella antibody		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
86787	Varicella-zoster antibody		A					
86788	West nile virus ab, igm		A					
86789	West nile virus antibody		A					
86790	Virus antibody nos		A					
86793	Yersinia antibody		A					
86800	Thyroglobulin antibody		A					
86803	Hepatitis c ab test		A					
86804	Hep c ab test, confirm		A					
86805	Lymphocytotoxicity assay		A					
86806	Lymphocytotoxicity assay		A					
86807	Cytotoxic antibody screening		A					
86808	Cytotoxic antibody screening		A					
86812	HLA typing, A, B, or C		A					
86813	HLA typing, A, B, or C		A					
86816	HLA typing, DR/DQ		A					
86817	HLA typing, DR/DQ		A					
86821	Lymphocyte culture, mixed		A					
86822	Lymphocyte culture, primed		A					
86849	Immunology procedure		A					
86850	RBC antibody screen		X	0345	0.2194	$14.49		$2.90
86860	RBC antibody elution		X	0346	0.3807	$25.15		$5.03
86870	RBC antibody identification		X	0346	0.3807	$25.15		$5.03
86880	Coombs test, direct		X	0409	0.1168	$7.72	$2.20	$1.55
86885	Coombs test, indirect, qual		X	0409	0.1168	$7.72	$2.20	$1.55
86886	Coombs test, indirect, titer		X	0409	0.1168	$7.72	$2.20	$1.55
86890	Autologous blood process		X	0347	0.7337	$48.47	$9.94	$9.70
86891	Autologous blood, op salvage	CH	X	0345	0.2194	$14.49		$2.90
86900	Blood typing, ABO		X	0409	0.1168	$7.72	$2.20	$1.55
86901	Blood typing, Rh (D)		X	0409	0.1168	$7.72	$2.20	$1.55
86903	Blood typing, antigen screen		X	0345	0.2194	$14.49		$2.90
86904	Blood typing, patient serum	CH	X	0345	0.2194	$14.49		$2.90
86905	Blood typing, RBC antigens		X	0345	0.2194	$14.49		$2.90
86906	Blood typing, Rh phenotype		X	0345	0.2194	$14.49		$2.90
86910	Blood typing, paternity test		E					
86911	Blood typing, antigen system		E					
86920	Compatibility test, spin	CH	X	0345	0.2194	$14.49		$2.90
86921	Compatibility test, incubate		X	0345	0.2194	$14.49		$2.90
86922	Compatibility test, antiglob		X	0346	0.3807	$25.15		$5.03
86923	Compatibility test, electric		X	0345	0.2194	$14.49		$2.90
86927	Plasma, fresh frozen		X	0345	0.2194	$14.49		$2.90
86930	Frozen blood prep		X	0347	0.7337	$48.47	$9.94	$9.70
86931	Frozen blood thaw		X	0347	0.7337	$48.47	$9.94	$9.70

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
86932	Frozen blood freeze/thaw		X	0347	0.7337	$48.47	$9.94	$9.70
86940	Hemolysins/agglutinins, auto		A					
86941	Hemolysins/agglutinins		A					
86945	Blood product/irradiation		X	0345	0.2194	$14.49		$2.90
86950	Leukacyte transfusion		X	0345	0.2194	$14.49		$2.90
86960	Vol reduction of blood/prod		X	0345	0.2194	$14.49		$2.90
86965	Pooling blood platelets		X	0346	0.3807	$25.15		$5.03
86970	RBC pretreatment		X	0345	0.2194	$14.49		$2.90
86971	RBC pretreatment		X	0345	0.2194	$14.49		$2.90
86972	RBC pretreatment	CH	X	0345	0.2194	$14.49		$2.90
86975	RBC pretreatment, serum		X	0346	0.3807	$25.15		$5.03
86976	RBC pretreatment, serum		X	0345	0.2194	$14.49		$2.90
86977	RBC pretreatment, serum	CH	X	0347	0.7337	$48.47	$9.94	$9.70
86978	RBC pretreatment, serum		X	0346	0.3807	$25.15		$5.03
86985	Split blood or products		X	0345	0.2194	$14.49		$2.90
86999	Transfusion procedure		X	0345	0.2194	$14.49		$2.90
87001	Small animal inoculation		A					
87003	Small animal inoculation		A					
87015	Specimen concentration		A					
87040	Blood culture for bacteria		A					
87045	Feces culture, bacteria		A					
87046	Stool cultr, bacteria, each		A					
87070	Culture, bacteria, other		A					
87071	Culture bacteri aerobic othr		A					
87073	Culture bacteria anaerobic		A					
87075	Cultr bacteria, except blood		A					
87076	Culture anaerobe ident, each		A					
87077	Culture aerobic identify		A					
87081	Culture screen only		A					
87084	Culture of specimen by kit		A					
87086	Urine culture/colony count		A					
87088	Urine bacteria culture		A					
87101	Skin fungi culture		A					
87102	Fungus isolation culture		A					
87103	Blood fungus culture		A					
87106	Fungi identification, yeast		A					
87107	Fungi identification, mold		A					
87109	Mycoplasma		A					
87110	Chlamydia culture		A					
87116	Mycobacteria culture		A					
87118	Mycobacteric identification		A					
87140	Culture type immunofluoresc		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
87143	Culture typing, glc/hplc		A					
87147	Culture type, immunologic		A					
87149	Culture type, nucleic acid		A					
87152	Culture type pulse field gel		A					
87158	Culture typing, added method		A					
87164	Dark field examination		A					
87166	Dark field examination		A					
87168	Macroscopic exam arthropod		A					
87169	Macroscopic exam parasite		A					
87172	Pinworm exam		A					
87176	Tissue homogenization, cultr		A					
87177	Ova and parasites smears		A					
87181	Microbe susceptible, diffuse		A					
87184	Microbe susceptible, disk		A					
87185	Microbe susceptible, enzyme		A					
87186	Microbe susceptible, mic		A					
87187	Microbe susceptible, mlc		A					
87188	Microbe suscept, macrobroth		A					
87190	Microbe suscept, mycobacteri		A					
87197	Bactericidal level, serum		A					
87205	Smear, gram stain		A					
87206	Smear, fluorescent/acid stai		A					
87207	Smear, special stain		A					
87209	Smear, complex stain		A					
87210	Smear, wet mount, saline/ink		A					
87220	Tissue exam for fungi		A					
87230	Assay, toxin or antitoxin		A					
87250	Virus inoculate, eggs/animal		A					
87252	Virus inoculation, tissue		A					
87253	Virus inoculate tissue, addl		A					
87254	Virus inoculation, shell via		A					
87255	Genet virus isolate, hsv		A					
87260	Adenovirus ag, if		A					
87265	Pertussis ag, if		A					
87267	Enterovirus antibody, dfa		A					
87269	Giardia ag, if		A					
87270	Chlamydia trachomatis ag, if		A					
87271	Cytomegalovirus dfa		A					
87272	Cryptosporidium ag, if		A					
87273	Herpes simplex 2, ag, if		A					
87274	Herpes simplex 1, ag, if		A					
87275	Influenza b, ag, if		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
87276	Influenza a, ag, if		A					
87277	Legionella micdadei, ag, if		A					
87278	Legion pneumophilia ag, if		A					
87279	Parainfluenza, ag, if		A					
87280	Respiratory syncytial ag, if		A					
87281	Pneumocystis carinii, ag, if		A					
87283	Rubeola, ag, if		A					
87285	Treponema pallidum, ag, if		A					
87290	Varicella zoster, ag, if		A					
87299	Antibody detection, nos, if		A					
87300	Ag detection, polyval, if		A					
87301	Adenovirus ag, eia		A					
87305	Aspergillus ag, eia		A					
87320	Chylmd trach ag, eia		A					
87324	Clostridium ag, eia		A					
87327	Cryptococcus neoform ag, eia		A					
87328	Cryptosporidium ag, eia		A					
87329	Giardia ag, eia		A					
87332	Cytomegalovirus ag, eia		A					
87335	E coli 0157 ag, eia		A					
87336	Entamoeb hist dispr, ag, eia		A					
87337	Entamoeb hist group, ag, eia		A					
87338	Hpylori, stool, eia		A					
87339	H pylori ag, eia		A					
87340	Hepatitis b surface ag, eia		A					
87341	Hepatitis b surface, ag, eia		A					
87350	Hepatitis be ag, eia		A					
87380	Hepatitis delta ag, eia		A					
87385	Histoplasma capsul ag, eia		A					
87390	Hiv-1 ag, eia		A					
87391	Hiv-2 ag, eia		A					
87400	Influenza a/b, ag, eia		A					
87420	Resp syncytial ag, eia		A					
87425	Rotavirus ag, eia		A					
87427	Shiga-like toxin ag, eia		A					
87430	Strep a ag, eia		A					
87449	Ag detect nos, eia, mult		A					
87450	Ag detect nos, eia, single		A					
87451	Ag detect polyval, eia, mult		A					
87470	Bartonella, dna, dir probe		A					
87471	Bartonella, dna, amp probe		A					
87472	Bartonella, dna, quant		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
87475	Lyme dis, dna, dir probe		A					
87476	Lyme dis, dna, amp probe		A					
87477	Lyme dis, dna, quant		A					
87480	Candida, dna, dir probe		A					
87481	Candida, dna, amp probe		A					
87482	Candida, dna, quant		A					
87485	Chylmd pneum, dna, dir probe		A					
87486	Chylmd pneum, dna, amp probe		A					
87487	Chylmd pneum, dna, quant		A					
87490	Chylmd trach, dna, dir probe		A					
87491	Chylmd trach, dna, amp probe		A					
87492	Chylmd trach, dna, quant		A					
87495	Cytomeg, dna, dir probe		A					
87496	Cytomeg, dna, amp probe		A					
87497	Cytomeg, dna, quant		A					
87498	Enterovirus, dna, amp probe		A					
87500	Vanomycin, dna, amp probe		A					
87510	Gardner vag, dna, dir probe		A					
87511	Gardner vag, dna, amp probe		A					
87512	Gardner vag, dna, quant		A					
87515	Hepatitis b, dna, dir probe		A					
87516	Hepatitis b, dna, amp probe		A					
87517	Hepatitis b, dna, quant		A					
87520	Hepatitis c, rna, dir probe		A					
87521	Hepatitis c, rna, amp probe		A					
87522	Hepatitis c, rna, quant		A					
87525	Hepatitis g, dna, dir probe		A					
87526	Hepatitis g, dna, amp probe		A					
87527	Hepatitis g, dna, quant		A					
87528	Hsv, dna, dir probe		A					
87529	Hsv, dna, amp probe		A					
87530	Hsv, dna, quant		A					
87531	Hhv-6, dna, dir probe		A					
87532	Hhv-6, dna, amp probe		A					
87533	Hhv-6, dna, quant		A					
87534	Hiv-1, dna, dir probe		A					
87535	Hiv-1, dna, amp probe		A					
87536	Hiv-1, dna, quant		A					
87537	Hiv-2, dna, dir probe		A					
87538	Hiv-2, dna, amp probe		A					
87539	Hiv-2, dna, quant		A					
87540	Legion pneumo, dna, dir prob		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
87541	Legion pneumo, dna, amp prob		A					
87542	Legion pneumo, dna, quant		A					
87550	Mycobacteria, dna, dir probe		A					
87551	Mycobacteria, dna, amp probe		A					
87552	Mycobacteria, dna, quant		A					
87555	M.tuberculo, dna, dir probe		A					
87556	M.tuberculo, dna, amp probe		A					
87557	M.tuberculo, dna, quant		A					
87560	M.avium-intra, dna, dir prob		A					
87561	M.avium-intra, dna, amp prob		A					
87562	M.avium-intra, dna, quant		A					
87580	M.pneumon, dna, dir probe		A					
87581	M.pneumon, dna, amp probe		A					
87582	M.pneumon, dna, quant		A					
87590	N.gonorrhoeae, dna, dir prob		A					
87591	N.gonorrhoeae, dna, amp prob		A					
87592	N.gonorrhoeae, dna, quant		A					
87620	Hpv, dna, dir probe		A					
87621	Hpv, dna, amp probe		A					
87622	Hpv, dna, quant		A					
87640	Staph a, dna, amp probe		A					
87641	Mr-staph, dna, amp probe		A					
87650	Strep a, dna, dir probe		A					
87651	Strep a, dna, amp probe		A					
87652	Strep a, dna, quant		A					
87653	Strep b, dna, amp probe		A					
87660	Trichomonas vagin, dir probe		A					
87797	Detect agent nos, dna, dir		A					
87798	Detect agent nos, dna, amp		A					
87799	Detect agent nos, dna, quant		A					
87800	Detect agnt mult, dna, direc		A					
87801	Detect agnt mult, dna, ampli		A					
87802	Strep b assay w/optic		A					
87803	Clostridium toxin a w/optic		A					
87804	Influenza assay w/optic		A					
87807	Rsv assay w/optic		A					
87808	Trichomonas assay w/optic		A					
87809	Adenovirus assay w/optic		A					
87810	Chylmd trach assay w/optic		A					
87850	N. gonorrhoeae assay w/optic		A					
87880	Strep a assay w/optic		A					
87899	Agent nos assay w/optic		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
87900	Phenotype, infect agent drug		A					
87901	Genotype, dna, hiv reverse t		A					
87902	Genotype, dna, hepatitis C		A					
87903	Phenotype, dna hiv w/culture		A					
87904	Phenotype, dna hiv w/clt add		A					
87905	Sialidase enzyme assay	NI	A					
87999	Microbiology procedure		A					
88000	Autopsy (necropsy), gross		E					
88005	Autopsy (necropsy), gross		E					
88007	Autopsy (necropsy), gross		E					
88012	Autopsy (necropsy), gross		E					
88014	Autopsy (necropsy), gross		E					
88016	Autopsy (necropsy), gross		E					
88020	Autopsy (necropsy), complete		E					
88025	Autopsy (necropsy), complete		E					
88027	Autopsy (necropsy), complete		E					
88028	Autopsy (necropsy), complete		E					
88029	Autopsy (necropsy), complete		E					
88036	Limited autopsy		E					
88037	Limited autopsy		E					
88040	Forensic autopsy (necropsy)		E					
88045	Coroner's autopsy (necropsy)		E					
88099	Necropsy (autopsy) procedure		E					
88104	Cytopath fl nongyn, smears		X	0433	0.2498	$16.50	$5.17	$3.30
88106	Cytopath fl nongyn, filter		X	0433	0.2498	$16.50	$5.17	$3.30
88107	Cytopath fl nongyn, sm/fltr		X	0343	0.5230	$34.55	$10.84	$6.91
88108	Cytopath, concentrate tech	CH	X	0433	0.2498	$16.50	$5.17	$3.30
88112	Cytopath, cell enhance tech		X	0343	0.5230	$34.55	$10.84	$6.91
88125	Forensic cytopathology		X	0433	0.2498	$16.50	$5.17	$3.30
88130	Sex chromatin identification		A					
88140	Sex chromatin identification		A					
88141	Cytopath, c/v, interpret		N					
88142	Cytopath, c/v, thin layer		A					
88143	Cytopath c/v thin layer redo		A					
88147	Cytopath, c/v, automated		A					
88148	Cytopath, c/v, auto rescreen		A					
88150	Cytopath, c/v, manual		A					
88152	Cytopath, c/v, auto redo		A					
88153	Cytopath, c/v, redo		A					
88154	Cytopath, c/v, select		A					
88155	Cytopath, c/v, index add-on		A					
88160	Cytopath smear, other source		X	0433	0.2498	$16.50	$5.17	$3.30

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
88161	Cytopath smear, other source		X	0433	0.2498	$16.50	$5.17	$3.30
88162	Cytopath smear, other source	CH	X	0433	0.2498	$16.50	$5.17	$3.30
88164	Cytopath tbs, c/v, manual		A					
88165	Cytopath tbs, c/v, redo		A					
88166	Cytopath tbs, c/v, auto redo		A					
88167	Cytopath tbs, c/v, select		A					
88172	Cytopathology eval of fna		X	0343	0.5230	$34.55	$10.84	$6.91
88173	Cytopath eval, fna, report		X	0343	0.5230	$34.55	$10.84	$6.91
88174	Cytopath, c/v auto, in fluid		A					
88175	Cytopath c/v auto fluid redo		A					
88182	Cell marker study		X	0343	0.5230	$34.55	$10.84	$6.91
88184	Flowcytometry/ tc, 1 marker		X	0433	0.2498	$16.50	$5.17	$3.30
88185	Flowcytometry/tc, add-on		X	0433	0.2498	$16.50	$5.17	$3.30
88187	Flowcytometry/read, 2-8	CH	X	0342	0.1523	$10.06	$2.02	$2.02
88188	Flowcytometry/read, 9-15	CH	X	0343	0.5230	$34.55	$10.84	$6.91
88189	Flowcytometry/read, 16 & >		X	0343	0.5230	$34.55	$10.84	$6.91
88199	Cytopathology procedure		X	0342	0.1523	$10.06	$2.02	$2.02
88230	Tissue culture, lymphocyte		A					
88233	Tissue culture, skin/biopsy		A					
88235	Tissue culture, placenta		A					
88237	Tissue culture, bone marrow		A					
88239	Tissue culture, tumor		A					
88240	Cell cryopreserve/storage		A					
88241	Frozen cell preparation		A					
88245	Chromosome analysis, 20-25		A					
88248	Chromosome analysis, 50-100		A					
88249	Chromosome analysis, 100		A					
88261	Chromosome analysis, 5		A					
88262	Chromosome analysis, 15-20		A					
88263	Chromosome analysis, 45		A					
88264	Chromosome analysis, 20-25		A					
88267	Chromosome analys, placenta		A					
88269	Chromosome analys, amniotic		A					
88271	Cytogenetics, dna probe		A					
88272	Cytogenetics, 3-5		A					
88273	Cytogenetics, 10-30		A					
88274	Cytogenetics, 25-99		A					
88275	Cytogenetics, 100-300		A					
88280	Chromosome karyotype study		A					
88283	Chromosome banding study		A					
88285	Chromosome count, additional		A					
88289	Chromosome study, additional		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
88291	Cyto/molecular report		M					
88299	Cytogenetic study		X	0342	0.1523	$10.06	$2.02	$2.02
88300	Surgical path, gross		X	0433	0.2498	$16.50	$5.17	$3.30
88302	Tissue exam by pathologist		X	0433	0.2498	$16.50	$5.17	$3.30
88304	Tissue exam by pathologist		X	0343	0.5230	$34.55	$10.84	$6.91
88305	Tissue exam by pathologist		X	0343	0.5230	$34.55	$10.84	$6.91
88307	Tissue exam by pathologist		X	0344	0.8223	$54.32	$15.66	$10.87
88309	Tissue exam by pathologist		X	0344	0.8223	$54.32	$15.66	$10.87
88311	Decalcify tissue	CH	X	0342	0.1523	$10.06	$2.02	$2.02
88312	Special stains		X	0433	0.2498	$16.50	$5.17	$3.30
88313	Special stains		X	0433	0.2498	$16.50	$5.17	$3.30
88314	Histochemical stain		X	0433	0.2498	$16.50	$5.17	$3.30
88318	Chemical histochemistry		X	0433	0.2498	$16.50	$5.17	$3.30
88319	Enzyme histochemistry	CH	X	0344	0.8223	$54.32	$15.66	$10.87
88321	Microslide consultation		X	0433	0.2498	$16.50	$5.17	$3.30
88323	Microslide consultation		X	0343	0.5230	$34.55	$10.84	$6.91
88325	Comprehensive review of data		X	0344	0.8223	$54.32	$15.66	$10.87
88329	Path consult introp		X	0433	0.2498	$16.50	$5.17	$3.30
88331	Path consult intraop, 1 bloc		X	0343	0.5230	$34.55	$10.84	$6.91
88332	Path consult intraop, add'l		X	0433	0.2498	$16.50	$5.17	$3.30
88333	Intraop cyto path consult, 1	CH	X	0433	0.2498	$16.50	$5.17	$3.30
88334	Intraop cyto path consult, 2		X	0433	0.2498	$16.50	$5.17	$3.30
88342	Immunohistochemistry		X	0343	0.5230	$34.55	$10.84	$6.91
88346	Immunofluorescent study		X	0343	0.5230	$34.55	$10.84	$6.91
88347	Immunofluorescent study		X	0343	0.5230	$34.55	$10.84	$6.91
88348	Electron microscopy		X	0661	2.4143	$159.49	$57.69	$31.90
88349	Scanning electron microscopy		X	0661	2.4143	$159.49	$57.69	$31.90
88355	Analysis, skeletal muscle		X	0343	0.5230	$34.55	$10.84	$6.91
88356	Analysis, nerve		X	0344	0.8223	$54.32	$15.66	$10.87
88358	Analysis, tumor	CH	X	0343	0.5230	$34.55	$10.84	$6.91
88360	Tumor immunohistochem/manual		X	0343	0.5230	$34.55	$10.84	$6.91
88361	Tumor immunohistochem/comput	CH	X	0343	0.5230	$34.55	$10.84	$6.91
88362	Nerve teasing preparations		X	0344	0.8223	$54.32	$15.66	$10.87
88365	Insitu hybridization (fish)		X	0344	0.8223	$54.32	$15.66	$10.87
88367	Insitu hybridization, auto		X	0344	0.8223	$54.32	$15.66	$10.87
88368	Insitu hybridization, manual		X	0343	0.5230	$34.55	$10.84	$6.91
88371	Protein, western blot tissue		A					
88372	Protein analysis w/probe		A					
88380	Microdissection, laser		N					
88381	Microdissection, manual		N					
88384	Eval molecular probes, 11-50		X	0433	0.2498	$16.50	$5.17	$3.30

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
88385	Eval molecul probes, 51-250		X	0343	0.5230	$34.55	$10.84	$6.91
88386	Eval molecul probes, 251-500		X	0344	0.8223	$54.32	$15.66	$10.87
88399	Surgical pathology procedure		X	0342	0.1523	$10.06	$2.02	$2.02
88400	Bilirubin total transcut	CH	D					
88720	Bilirubin total transcut	NI	A					
88740	Transcutaneous carboxyhb	NI	A					
88741	Transcutaneous methb	NI	A					
89049	Chct for mal hyperthermia	CH	X	0342	0.1523	$10.06	$2.02	$2.02
89050	Body fluid cell count		A					
89051	Body fluid cell count		A					
89055	Leukocyte assessment, fecal		A					
89060	Exam,synovial fluid crystals		A					
89100	Sample intestinal contents		X	0360	1.5113	$99.83	$33.88	$19.97
89105	Sample intestinal contents		X	0360	1.5113	$99.83	$33.88	$19.97
89125	Specimen fat stain		A					
89130	Sample stomach contents		X	0360	1.5113	$99.83	$33.88	$19.97
89132	Sample stomach contents		X	0360	1.5113	$99.83	$33.88	$19.97
89135	Sample stomach contents		X	0360	1.5113	$99.83	$33.88	$19.97
89136	Sample stomach contents		X	0360	1.5113	$99.83	$33.88	$19.97
89140	Sample stomach contents		X	0360	1.5113	$99.83	$33.88	$19.97
89141	Sample stomach contents		X	0360	1.5113	$99.83	$33.88	$19.97
89160	Exam feces for meat fibers		A					
89190	Nasal smear for eosinophils		A					
89220	Sputum specimen collection	CH	X	0433	0.2498	$16.50	$5.17	$3.30
89225	Starch granules, feces		A					
89230	Collect sweat for test		X	0343	0.5230	$34.55	$10.84	$6.91
89235	Water load test		A					
89240	Pathology lab procedure		X	0342	0.1523	$10.06	$2.02	$2.02
89250	Cultr oocyte/embryo <4 days		X	0344	0.8223	$54.32	$15.66	$10.87
89251	Cultr oocyte/embryo <4 days		X	0344	0.8223	$54.32	$15.66	$10.87
89253	Embryo hatching		X	0344	0.8223	$54.32	$15.66	$10.87
89254	Oocyte identification		X	0344	0.8223	$54.32	$15.66	$10.87
89255	Prepare embryo for transfer		X	0344	0.8223	$54.32	$15.66	$10.87
89257	Sperm identification		X	0344	0.8223	$54.32	$15.66	$10.87
89258	Cryopreservation; embryo(s)		X	0344	0.8223	$54.32	$15.66	$10.87
89259	Cryopreservation, sperm		X	0344	0.8223	$54.32	$15.66	$10.87
89260	Sperm isolation, simple		X	0344	0.8223	$54.32	$15.66	$10.87
89261	Sperm isolation, complex		X	0344	0.8223	$54.32	$15.66	$10.87
89264	Identify sperm tissue		X	0344	0.8223	$54.32	$15.66	$10.87
89268	Insemination of oocytes		X	0344	0.8223	$54.32	$15.66	$10.87
89272	Extended culture of oocytes		X	0344	0.8223	$54.32	$15.66	$10.87
89280	Assist oocyte fertilization		X	0344	0.8223	$54.32	$15.66	$10.87

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
89281	Assist oocyte fertilization		X	0344	0.8223	$54.32	$15.66	$10.87
89290	Biopsy, oocyte polar body		X	0344	0.8223	$54.32	$15.66	$10.87
89291	Biopsy, oocyte polar body		X	0344	0.8223	$54.32	$15.66	$10.87
89300	Semen analysis w/huhner		A					
89310	Semen analysis w/count		A					
89320	Semen anal vol/count/mot		A					
89321	Semen anal, sperm detection		A					
89322	Semen anal, strict criteria		A					
89325	Sperm antibody test		A					
89329	Sperm evaluation test		A					
89330	Evaluation, cervical mucus		A					
89331	Retrograde ejaculation anal		A					
89335	Cryopreserve testicular tiss		X	0344	0.8223	$54.32	$15.66	$10.87
89342	Storage/year; embryo(s)		X	0344	0.8223	$54.32	$15.66	$10.87
89343	Storage/year; sperm/semen		X	0344	0.8223	$54.32	$15.66	$10.87
89344	Storage/year; reprod tissue		X	0344	0.8223	$54.32	$15.66	$10.87
89346	Storage/year; oocyte(s)		X	0344	0.8223	$54.32	$15.66	$10.87
89352	Thawing cryopresrved; embryo		X	0344	0.8223	$54.32	$15.66	$10.87
89353	Thawing cryopresrved; sperm		X	0344	0.8223	$54.32	$15.66	$10.87
89354	Thaw cryoprsvrd; reprod tiss		X	0344	0.8223	$54.32	$15.66	$10.87
89356	Thawing cryopresrved; oocyte		X	0344	0.8223	$54.32	$15.66	$10.87
90281	Human ig, im		E					
90283	Human ig, iv		E					
90284	Human ig, sc		E					
90287	Botulinum antitoxin		E					
90288	Botulism ig, iv		E					
90291	Cmv ig, iv		E					
90296	Diphtheria antitoxin	CH	K	1212		$182.05		$36.41
90371	Hep b ig, im		K	1630		$121.53		$24.31
90375	Rabies ig, im/sc		K	9133		$89.18		$17.84
90376	Rabies ig, heat treated		K	9134		$96.22		$19.25
90378	Rsv ig, im, 50mg	CH	K	9003		$882.44		$176.49
90379	Rsv ig, iv		E					
90384	Rh ig, full-dose, im		E					
90385	Rh ig, minidose, im		N					
90386	Rh ig, iv		E					
90389	Tetanus ig, im		E					
90393	Vaccina ig, im		N					
90396	Varicella-zoster ig, im		K	9135		$109.88		$21.98
90399	Immune globulin		E					
90465	Immune admin 1 inj, < 8 yrs		B					
90466	Immune admin addl inj, < 8 y		B					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
90467	Immune admin o or n, < 8 yrs		B					
90468	Immune admin o/n, addl < 8 y		B					
90471	Immunization admin	CH	S	0436	0.3768	$24.89		$4.98
90472	Immunization admin, each add		S	0436	0.3768	$24.89		$4.98
90473	Immune admin oral/nasal		S	0436	0.3768	$24.89		$4.98
90474	Immune admin oral/nasal addl		S	0436	0.3768	$24.89		$4.98
90476	Adenovirus vaccine, type 4		N					
90477	Adenovirus vaccine, type 7		N					
90581	Anthrax vaccine, sc		N					
90585	Bcg vaccine, percut		K	9137		$115.88		$23.18
90586	Bcg vaccine, intravesical		B					
90632	Hep a vaccine, adult im		N					
90633	Hep a vacc, ped/adol, 2 dose		N					
90634	Hep a vacc, ped/adol, 3 dose		N					
90636	Hep a/hep b vacc, adult im		N					
90645	Hib vaccine, hboc, im		N					
90646	Hib vaccine, prp-d, im		N					
90647	Hib vaccine, prp-omp, im		N					
90648	Hib vaccine, prp-t, im		N					
90649	Hpv vaccine 4 valent, im		B					
90650	Hpv vaccine 2 valent, im		E					
90655	Flu vaccine no preserv 6-35m		L					
90656	Flu vaccine no preserv 3 & >		L					
90657	Flu vaccine, 3 yrs, im		L					
90658	Flu vaccine, 3 yrs & >, im		L					
90660	Flu vaccine, nasal		L					
90661	Flu vacc cell cult prsv free		E					
90662	Flu vacc prsv free inc antig		E					
90663	Flu vacc pandemic		E					
90665	Lyme disease vaccine, im	CH	K	1216		$72.67		$14.54
90669	Pneumococcal vacc, ped <5		L					
90675	Rabies vaccine, im		K	9139		$144.11		$28.83
90676	Rabies vaccine, id		K	9140		$112.29		$22.46
90680	Rotovirus vacc 3 dose, oral		N					
90681	Rotavirus vacc 2 dose oral	CH	K	1239		$106.60		$21.32
90690	Typhoid vaccine, oral		N					
90691	Typhoid vaccine, im		N					
90692	Typhoid vaccine, h-p, sc/id		N					
90693	Typhoid vaccine, akd, sc		B					
90696	Dtap-ipv vacc 4-6 yr im	CH	K	1219		$49.92		$9.98
90698	Dtap-hib-ip vaccine, im		N					
90700	Dtap vaccine, < 7 yrs, im		N					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
90701	Dtp vaccine, im		N					
90702	Dt vaccine < 7, im		N					
90703	Tetanus vaccine, im		N					
90704	Mumps vaccine, sc		N					
90705	Measles vaccine, sc		N					
90706	Rubella vaccine, sc		N					
90707	Mmr vaccine, sc		N					
90708	Measles-rubella vaccine, sc	CH	N					
90710	Mmrv vaccine, sc		N					
90712	Oral poliovirus vaccine		N					
90713	Poliovirus, ipv, sc/im		N					
90714	Td vaccine no prsrv >/= 7 im		N					
90715	Tdap vaccine >7 im		N					
90716	Chicken pox vaccine, sc		B					
90717	Yellow fever vaccine, sc		N					
90718	Td vaccine > 7, im		N					
90719	Diphtheria vaccine, im		N					
90720	Dtp/hib vaccine, im		N					
90721	Dtap/hib vaccine, im		N					
90723	Dtap-hep b-ipv vaccine, im		E					
90725	Cholera vaccine, injectable		N					
90727	Plague vaccine, im		N					
90732	Pneumococcal vaccine		L					
90733	Meningococcal vaccine, sc		K	9143		$92.09		$18.42
90734	Meningococcal vaccine, im		K	9145		$80.46		$16.10
90735	Encephalitis vaccine, sc	CH	E					
90736	Zoster vacc, sc		M					
90738	Inactivated je vacc im		E					
90740	Hepb vacc, ill pat 3 dose im		F					
90743	Hep b vacc, adol, 2 dose, im		F					
90744	Hepb vacc ped/adol 3 dose im		F					
90746	Hep b vaccine, adult, im		F					
90747	Hepb vacc, ill pat 4 dose im		F					
90748	Hep b/hib vaccine, im		E					
90749	Vaccine toxoid		N					
90760	Hydration iv infusion, init	CH	D					
90761	Hydrate iv infusion, add-on	CH	D					
90765	Ther/proph/diag iv inf, init	CH	D					
90766	Ther/proph/dg iv inf, add-on	CH	D					
90767	Tx/proph/dg addl seq iv inf	CH	D					
90768	Ther/diag concurrent inf	CH	D					
90769	Sc ther infusion, up to 1 hr	CH	D					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
90770	Sc ther infusion, addl hr	CH	D					
90771	Sc ther infusion, reset pump	CH	D					
90772	Ther/proph/diag inj, sc/im	CH	D					
90773	Ther/proph/diag inj, ia	CH	D					
90774	Ther/proph/diag inj, iv push	CH	D					
90775	Tx/pro/dx inj new drug addon	CH	D					
90776	Tx/pro/dx inj same drug adon	CH	D					
90779	Ther/prop/diag inj/inf proc	CH	D					
90801	Psy dx interview		Q3	0323	1.6317	$107.79		$21.56
90802	Intac psy dx interview		Q3	0323	1.6317	$107.79		$21.56
90804	Psytx, office, 20-30 min		Q3	0322	1.3097	$86.52		$17.31
90805	Psytx, off, 20-30 min w/e&m		Q3	0322	1.3097	$86.52		$17.31
90806	Psytx, off, 45-50 min		Q3	0323	1.6317	$107.79		$21.56
90807	Psytx, off, 45-50 min w/e&m		Q3	0323	1.6317	$107.79		$21.56
90808	Psytx, office, 75-80 min		Q3	0323	1.6317	$107.79		$21.56
90809	Psytx, off, 75-80, w/e&m		Q3	0323	1.6317	$107.79		$21.56
90810	Intac psytx, off, 20-30 min		Q3	0322	1.3097	$86.52		$17.31
90811	Intac psytx, 20-30, w/e&m		Q3	0322	1.3097	$86.52		$17.31
90812	Intac psytx, off, 45-50 min		Q3	0323	1.6317	$107.79		$21.56
90813	Intac psytx, 45-50 min w/e&m		Q3	0323	1.6317	$107.79		$21.56
90814	Intac psytx, off, 75-80 min		Q3	0323	1.6317	$107.79		$21.56
90815	Intac psytx, 75-80 w/e&m		Q3	0323	1.6317	$107.79		$21.56
90816	Psytx, hosp, 20-30 min	CH	P					
90817	Psytx, hosp, 20-30 min w/e&m	CH	P					
90818	Psytx, hosp, 45-50 min	CH	P					
90819	Psytx, hosp, 45-50 min w/e&m	CH	P					
90821	Psytx, hosp, 75-80 min	CH	P					
90822	Psytx, hosp, 75-80 min w/e&m	CH	P					
90823	Intac psytx, hosp, 20-30 min	CH	P					
90824	Intac psytx, hsp 20-30 w/e&m	CH	P					
90826	Intac psytx, hosp, 45-50 min	CH	P					
90827	Intac psytx, hsp 45-50 w/e&m	CH	P					
90828	Intac psytx, hosp, 75-80 min	CH	P					
90829	Intac psytx, hsp 75-80 w/e&m	CH	P					
90845	Psychoanalysis		Q3	0323	1.6317	$107.79		$21.56
90846	Family psytx w/o patient		Q3	0324	2.4859	$164.22		$32.85
90847	Family psytx w/patient		Q3	0324	2.4859	$164.22		$32.85
90849	Multiple family group psytx		Q3	0325	0.9800	$64.74	$13.81	$12.95
90853	Group psychotherapy		Q3	0325	0.9800	$64.74	$13.81	$12.95
90857	Intac group psytx		Q3	0325	0.9800	$64.74	$13.81	$12.95
90862	Medication management		Q3	0606	1.3585	$89.74		$17.95
90865	Narcosynthesis		Q3	0323	1.6317	$107.79		$21.56

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
90870	Electroconvulsive therapy		S	0320	5.7528	$380.02	$80.06	$76.01
90875	Psychophysiological therapy		E					
90876	Psychophysiological therapy		E					
90880	Hypnotherapy		Q3	0323	1.6317	$107.79		$21.56
90882	Environmental manipulation		E					
90885	Psy evaluation of records		N					
90887	Consultation with family		N					
90889	Preparation of report		N					
90899	Psychiatric service/therapy		Q3	0322	1.3097	$86.52		$17.31
90901	Biofeedback train, any meth		A					
90911	Biofeedback peri/uro/rectal		T	0126	1.0435	$68.93	$16.21	$13.79
90918	ESRD related services, month	CH	D					
90919	ESRD related services, month	CH	D					
90920	ESRD related services, month	CH	D					
90921	ESRD related services, month	CH	D					
90922	ESRD related services, day	CH	D					
90923	Esrd related services, day	CH	D					
90924	Esrd related services, day	CH	D					
90925	Esrd related services, day	CH	D					
90935	Hemodialysis, one evaluation		S	0170	6.5599	$433.34		$86.67
90937	Hemodialysis, repeated eval		B					
90940	Hemodialysis access study		N					
90945	Dialysis, one evaluation	CH	V	0607	1.7192	$113.57		$22.72
90947	Dialysis, repeated eval		B					
90951	Esrd serv, 4 visits p mo, <2	NI	M					
90952	Esrd serv, 2-3 vsts p mo, <2	NI	M					
90953	Esrd serv, 1 visit p mo, <2	NI	M					
90954	Esrd serv, 4 vsts p mo, 2-11	NI	M					
90955	Esrd srv 2-3 vsts p mo, 2-11	NI	M					
90956	Esrd srv, 1 visit p mo, 2-11	NI	M					
90957	Esrd srv, 4 vsts p mo, 12-19	NI	M					
90958	Esrd srv 2-3 vsts p mo 12-19	NI	M					
90959	Esrd serv, 1 vst p mo, 12-19	NI	M					
90960	Esrd srv, 4 visits p mo, 20+	NI	M					
90961	Esrd srv, 2-3 vsts p mo, 20+	NI	M					
90962	Esrd serv, 1 visit p mo, 20+	NI	M					
90963	Esrd home pt, serv p mo, <2	NI	M					
90964	Esrd home pt serv p mo, 2-11	NI	M					
90965	Esrd home pt serv p mo 12-19	NI	M					
90966	Esrd home pt, serv p mo, 20+	NI	M					
90967	Esrd home pt serv p day, <2	NI	M					
90968	Esrd home pt srv p day, 2-11	NI	M					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
90969	Esrd home pt srv p day 12-19	NI	M					
90970	Esrd home pt serv p day, 20+	NI	M					
90989	Dialysis training, complete		B					
90993	Dialysis training, incompl		B					
90997	Hemoperfusion		B					
90999	Dialysis procedure		B					
91000	Esophageal intubation		X	0361	3.9733	$262.47	$83.23	$52.50
91010	Esophagus motility study		X	0361	3.9733	$262.47	$83.23	$52.50
91011	Esophagus motility study		X	0361	3.9733	$262.47	$83.23	$52.50
91012	Esophagus motility study		X	0361	3.9733	$262.47	$83.23	$52.50
91020	Gastric motility studies		X	0361	3.9733	$262.47	$83.23	$52.50
91022	Duodenal motility study		X	0361	3.9733	$262.47	$83.23	$52.50
91030	Acid perfusion of esophagus		X	0361	3.9733	$262.47	$83.23	$52.50
91034	Gastroesophageal reflux test		X	0361	3.9733	$262.47	$83.23	$52.50
91035	G-esoph reflx tst w/electrod		X	0361	3.9733	$262.47	$83.23	$52.50
91037	Esoph imped function test		X	0361	3.9733	$262.47	$83.23	$52.50
91038	Esoph imped funct test > 1h		X	0361	3.9733	$262.47	$83.23	$52.50
91040	Esoph balloon distension tst		X	0360	1.5113	$99.83	$33.88	$19.97
91052	Gastric analysis test		X	0361	3.9733	$262.47	$83.23	$52.50
91055	Gastric intubation for smear		X	0360	1.5113	$99.83	$33.88	$19.97
91065	Breath hydrogen test		X	0360	1.5113	$99.83	$33.88	$19.97
91100	Pass intestine bleeding tube	CH	D					
91105	Gastric intubation treatment		X	0360	1.5113	$99.83	$33.88	$19.97
91110	Gi tract capsule endoscopy		T	0142	9.5724	$632.34	$152.78	$126.47
91111	Esophageal capsule endoscopy		T	0141	8.6526	$571.58	$143.38	$114.32
91120	Rectal sensation test		T	0126	1.0435	$68.93	$16.21	$13.79
91122	Anal pressure record	CH	T	0156	2.8838	$190.50		$38.10
91123	Irrigate fecal impaction		N					
91132	Electrogastrography		X	0360	1.5113	$99.83	$33.88	$19.97
91133	Electrogastrography w/test		X	0360	1.5113	$99.83	$33.88	$19.97
91299	Gastroenterology procedure		X	0360	1.5113	$99.83	$33.88	$19.97
92002	Eye exam, new patient		V	0605	1.0439	$68.96		$13.80
92004	Eye exam, new patient		V	0606	1.3585	$89.74		$17.95
92012	Eye exam established pat		V	0604	0.8277	$54.68		$10.94
92014	Eye exam & treatment		V	0605	1.0439	$68.96		$13.80
92015	Refraction		E					
92018	New eye exam & treatment		T	0699	14.4782	$956.42		$191.29
92019	Eye exam & treatment		T	0699	14.4782	$956.42		$191.29
92020	Special eye evaluation		S	0230	0.6461	$42.68		$8.54
92025	Corneal topography		S	0698	0.9338	$61.69		$12.34
92060	Special eye evaluation		S	0698	0.9338	$61.69		$12.34
92065	Orthoptic/pleoptic training		S	0698	0.9338	$61.69		$12.34

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
92070	Fitting of contact lens		N					
92081	Visual field examination(s)		S	0230	0.6461	$42.68		$8.54
92082	Visual field examination(s)		S	0698	0.9338	$61.69		$12.34
92083	Visual field examination(s)		S	0698	0.9338	$61.69		$12.34
92100	Serial tonometry exam(s)		N					
92120	Tonography & eye evaluation		S	0698	0.9338	$61.69		$12.34
92130	Water provocation tonography		S	0230	0.6461	$42.68		$8.54
92135	Ophth dx imaging post seg		S	0230	0.6461	$42.68		$8.54
92136	Ophthalmic biometry		S	0698	0.9338	$61.69		$12.34
92140	Glaucoma provocative tests		S	0230	0.6461	$42.68		$8.54
92225	Special eye exam, initial		S	0230	0.6461	$42.68		$8.54
92226	Special eye exam, subsequent		S	0698	0.9338	$61.69		$12.34
92230	Eye exam with photos		S	0231	2.1549	$142.35		$28.47
92235	Eye exam with photos		S	0231	2.1549	$142.35		$28.47
92240	Icg angiography		S	0231	2.1549	$142.35		$28.47
92250	Eye exam with photos		S	0698	0.9338	$61.69		$12.34
92260	Ophthalmoscopy/dynamometry		S	0230	0.6461	$42.68		$8.54
92265	Eye muscle evaluation		S	0698	0.9338	$61.69		$12.34
92270	Electro-oculography		S	0230	0.6461	$42.68		$8.54
92275	Electroretinography		S	0231	2.1549	$142.35		$28.47
92283	Color vision examination		S	0230	0.6461	$42.68		$8.54
92284	Dark adaptation eye exam		S	0698	0.9338	$61.69		$12.34
92285	Eye photography		S	0698	0.9338	$61.69		$12.34
92286	Internal eye photography		S	0231	2.1549	$142.35		$28.47
92287	Internal eye photography		S	0231	2.1549	$142.35		$28.47
92310	Contact lens fitting		E					
92311	Contact lens fitting		S	0698	0.9338	$61.69		$12.34
92312	Contact lens fitting		S	0698	0.9338	$61.69		$12.34
92313	Contact lens fitting		S	0230	0.6461	$42.68		$8.54
92314	Prescription of contact lens		E					
92315	Prescription of contact lens		S	0230	0.6461	$42.68		$8.54
92316	Prescription of contact lens		S	0698	0.9338	$61.69		$12.34
92317	Prescription of contact lens		S	0230	0.6461	$42.68		$8.54
92325	Modification of contact lens		S	0230	0.6461	$42.68		$8.54
92326	Replacement of contact lens		S	0698	0.9338	$61.69		$12.34
92340	Fitting of spectacles		E					
92341	Fitting of spectacles		E					
92342	Fitting of spectacles		E					
92352	Special spectacles fitting		S	0698	0.9338	$61.69		$12.34
92353	Special spectacles fitting		S	0230	0.6461	$42.68		$8.54
92354	Special spectacles fitting		S	0230	0.6461	$42.68		$8.54
92355	Special spectacles fitting		S	0230	0.6461	$42.68		$8.54

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
92358	Eye prosthesis service		S	0230	0.6461	$42.68		$8.54
92370	Repair & adjust spectacles		E					
92371	Repair & adjust spectacles		S	0230	0.6461	$42.68		$8.54
92499	Eye service or procedure		S	0230	0.6461	$42.68		$8.54
92502	Ear and throat examination		T	0251	3.3069	$218.45		$43.69
92504	Ear microscopy examination		N					
92506	Speech/hearing evaluation		A					
92507	Speech/hearing therapy		A					
92508	Speech/hearing therapy		A					
92511	Nasopharyngoscopy		T	0071	0.8215	$54.27	$11.20	$10.86
92512	Nasal function studies		X	0363	0.9042	$59.73	$17.10	$11.95
92516	Facial nerve function test		X	0660	1.5831	$104.58	$28.06	$20.92
92520	Laryngeal function studies		X	0660	1.5831	$104.58	$28.06	$20.92
92526	Oral function therapy		A					
92531	Spontaneous nystagmus study		N					
92532	Positional nystagmus test		N					
92533	Caloric vestibular test		N					
92534	Optokinetic nystagmus test		N					
92541	Spontaneous nystagmus test		X	0363	0.9042	$59.73	$17.10	$11.95
92542	Positional nystagmus test		X	0363	0.9042	$59.73	$17.10	$11.95
92543	Caloric vestibular test		X	0660	1.5831	$104.58	$28.06	$20.92
92544	Optokinetic nystagmus test		X	0363	0.9042	$59.73	$17.10	$11.95
92545	Oscillating tracking test		X	0363	0.9042	$59.73	$17.10	$11.95
92546	Sinusoidal rotational test		X	0660	1.5831	$104.58	$28.06	$20.92
92547	Supplemental electrical test		N					
92548	Posturography		X	0660	1.5831	$104.58	$28.06	$20.92
92551	Pure tone hearing test, air		E					
92552	Pure tone audiometry, air		X	0364	0.4730	$31.25	$7.06	$6.25
92553	Audiometry, air & bone		X	0365	1.2779	$84.42	$18.52	$16.89
92555	Speech threshold audiometry		X	0364	0.4730	$31.25	$7.06	$6.25
92556	Speech audiometry, complete		X	0364	0.4730	$31.25	$7.06	$6.25
92557	Comprehensive hearing test		X	0365	1.2779	$84.42	$18.52	$16.89
92559	Group audiometric testing		E					
92560	Bekesy audiometry, screen		E					
92561	Bekesy audiometry, diagnosis		X	0364	0.4730	$31.25	$7.06	$6.25
92562	Loudness balance test		X	0364	0.4730	$31.25	$7.06	$6.25
92563	Tone decay hearing test		X	0364	0.4730	$31.25	$7.06	$6.25
92564	Sisi hearing test		X	0364	0.4730	$31.25	$7.06	$6.25
92565	Stenger test, pure tone		X	0364	0.4730	$31.25	$7.06	$6.25
92567	Tympanometry		X	0364	0.4730	$31.25	$7.06	$6.25
92568	Acoustic refl threshold tst		X	0364	0.4730	$31.25	$7.06	$6.25
92569	Acoustic reflex decay test		X	0364	0.4730	$31.25	$7.06	$6.25

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
92571	Filtered speech hearing test		X	0364	0.4730	$31.25	$7.06	$6.25
92572	Staggered spondaic word test		X	0366	1.7097	$112.94	$25.79	$22.59
92575	Sensorineural acuity test		X	0364	0.4730	$31.25	$7.06	$6.25
92576	Synthetic sentence test		X	0364	0.4730	$31.25	$7.06	$6.25
92577	Stenger test, speech		X	0366	1.7097	$112.94	$25.79	$22.59
92579	Visual audiometry (vra)		X	0365	1.2779	$84.42	$18.52	$16.89
92582	Conditioning play audiometry		X	0365	1.2779	$84.42	$18.52	$16.89
92583	Select picture audiometry		X	0364	0.4730	$31.25	$7.06	$6.25
92584	Electrocochleography		S	0216	2.6652	$176.06		$35.22
92585	Auditor evoke potent, compre		S	0216	2.6652	$176.06		$35.22
92586	Auditor evoke potent, limit		S	0218	1.1853	$78.30		$15.66
92587	Evoked auditory test		X	0363	0.9042	$59.73	$17.10	$11.95
92588	Evoked auditory test		X	0660	1.5831	$104.58	$28.06	$20.92
92590	Hearing aid exam, one ear		E					
92591	Hearing aid exam, both ears		E					
92592	Hearing aid check, one ear		E					
92593	Hearing aid check, both ears		E					
92594	Electro hearng aid test, one		E					
92595	Electro hearng aid tst, both		E					
92596	Ear protector evaluation		X	0364	0.4730	$31.25	$7.06	$6.25
92597	Oral speech device eval		A					
92601	Cochlear implt f/up exam < 7		X	0366	1.7097	$112.94	$25.79	$22.59
92602	Reprogram cochlear implt < 7		X	0366	1.7097	$112.94	$25.79	$22.59
92603	Cochlear implt f/up exam 7 >		X	0366	1.7097	$112.94	$25.79	$22.59
92604	Reprogram cochlear implt 7 >		X	0366	1.7097	$112.94	$25.79	$22.59
92605	Eval for nonspeech device rx		A					
92606	Non-speech device service		A					
92607	Ex for speech device rx, 1hr		A					
92608	Ex for speech device rx addl		A					
92609	Use of speech device service		A					
92610	Evaluate swallowing function		A					
92611	Motion fluoroscopy/swallow		A					
92612	Endoscopy swallow tst (fees)		A					
92613	Endoscopy swallow tst (fees)		B					
92614	Laryngoscopic sensory test		A					
92615	Eval laryngoscopy sense tst		E					
92616	Fees w/laryngeal sense test		A					
92617	Interprt fees/laryngeal test		E					
92620	Auditory function, 60 min		X	0365	1.2779	$84.42	$18.52	$16.89
92621	Auditory function, + 15 min		N					
92625	Tinnitus assessment		X	0365	1.2779	$84.42	$18.52	$16.89
92626	Eval aud rehab status	CH	X	0366	1.7097	$112.94	$25.79	$22.59

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
92627	Eval aud status rehab add-on		N					
92630	Aud rehab pre-ling hear loss		E					
92633	Aud rehab postling hear loss		E					
92640	Aud brainstem implt programg		X	0365	1.2779	$84.42	$18.52	$16.89
92700	Ent procedure/service		X	0364	0.4730	$31.25	$7.06	$6.25
92950	Heart/lung resuscitation cpr		S	0094	2.4181	$159.74	$46.29	$31.95
92953	Temporary external pacing		S	0094	2.4181	$159.74	$46.29	$31.95
92960	Cardioversion electric, ext		S	0679	5.4782	$361.88	$95.30	$72.38
92961	Cardioversion, electric, int		S	0679	5.4782	$361.88	$95.30	$72.38
92970	Cardioassist, internal		C					
92971	Cardioassist, external		C					
92973	Percut coronary thrombectomy		T	0088	40.3117	$2,662.95	$655.22	$532.59
92974	Cath place, cardio brachytx		T	0103	15.7264	$1,038.87		$207.78
92975	Dissolve clot, heart vessel		C					
92977	Dissolve clot, heart vessel		T	0676	2.4525	$162.01		$32.41
92978	Intravasc us, heart add-on		N					
92979	Intravasc us, heart add-on		N					
92980	Insert intracoronary stent		T	0104	85.3503	$5,638.16		$1,127.64
92981	Insert intracoronary stent		T	0104	85.3503	$5,638.16		$1,127.64
92982	Coronary artery dilation		T	0083	48.3584	$3,194.51		$638.91
92984	Coronary artery dilation		T	0083	48.3584	$3,194.51		$638.91
92986	Revision of aortic valve		T	0083	48.3584	$3,194.51		$638.91
92987	Revision of mitral valve		T	0083	48.3584	$3,194.51		$638.91
92990	Revision of pulmonary valve		T	0083	48.3584	$3,194.51		$638.91
92992	Revision of heart chamber		C					
92993	Revision of heart chamber		C					
92995	Coronary atherectomy		T	0082	90.2562	$5,962.23		$1,192.45
92996	Coronary atherectomy add-on		T	0082	90.2562	$5,962.23		$1,192.45
92997	Pul art balloon repr, percut		T	0083	48.3584	$3,194.51		$638.91
92998	Pul art balloon repr, percut		T	0083	48.3584	$3,194.51		$638.91
93000	Electrocardiogram, complete	CH	M					
93005	Electrocardiogram, tracing		S	0099	0.3949	$26.09		$5.22
93010	Electrocardiogram report		B					
93012	Transmission of ecg		N					
93014	Report on transmitted ecg		B					
93015	Cardiovascular stress test		B					
93016	Cardiovascular stress test		B					
93017	Cardiovascular stress test		X	0100	2.5884	$170.99	$41.44	$34.20
93018	Cardiovascular stress test		B					
93024	Cardiac drug stress test		X	0100	2.5884	$170.99	$41.44	$34.20
93025	Microvolt t-wave assess		X	0100	2.5884	$170.99	$41.44	$34.20
93040	Rhythm ECG with report		B					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
93041	Rhythm ECG, tracing	CH	X	0035	0.2186	$14.44		$2.89
93042	Rhythm ECG, report		B					
93224	ECG monitor/report, 24 hrs	CH	M					
93225	ECG monitor/record, 24 hrs		X	0097	0.9946	$65.70	$23.79	$13.14
93226	ECG monitor/report, 24 hrs		X	0097	0.9946	$65.70	$23.79	$13.14
93227	ECG monitor/review, 24 hrs	CH	M					
93228	Remote 30 day ecg rev/report	NI	M					
93229	Remote 30 day ecg tech supp	NI	S	0209	11.4202	$754.41	$268.73	$150.89
93230	ECG monitor/report, 24 hrs	CH	M					
93231	Ecg monitor/record, 24 hrs		X	0097	0.9946	$65.70	$23.79	$13.14
93232	ECG monitor/report, 24 hrs		X	0097	0.9946	$65.70	$23.79	$13.14
93233	ECG monitor/review, 24 hrs	CH	M					
93235	ECG monitor/report, 24 hrs	CH	M					
93236	ECG monitor/report, 24 hrs		X	0097	0.9946	$65.70	$23.79	$13.14
93237	ECG monitor/review, 24 hrs	CH	M					
93268	ECG record/review	CH	M					
93270	ECG recording		X	0097	0.9946	$65.70	$23.79	$13.14
93271	Ecg/monitoring and analysis	CH	S	0692	1.6537	$109.24		$21.85
93272	Ecg/review, interpret only	CH	M					
93278	ECG/signal-averaged		X	0340	0.6462	$42.69		$8.54
93279	Pm device progr eval, sngl	NI	S	0690	0.3508	$23.17	$8.67	$4.64
93280	Pm device progr eval, dual	NI	S	0690	0.3508	$23.17	$8.67	$4.64
93281	Pm device progr eval, multi	NI	S	0690	0.3508	$23.17	$8.67	$4.64
93282	Icd device prog eval, 1 sngl	NI	S	0689	0.5941	$39.25		$7.85
93283	Icd device progr eval, dual	NI	S	0689	0.5941	$39.25		$7.85
93284	Icd device progr eval, mult	NI	S	0689	0.5941	$39.25		$7.85
93285	Ilr device eval progr	NI	S	0690	0.3508	$23.17	$8.67	$4.64
93286	Pre-op pm device eval	NI	N					
93287	Pre-op icd device eval	NI	N					
93288	Pm device eval in person	NI	S	0690	0.3508	$23.17	$8.67	$4.64
93289	Icd device interrogate	NI	S	0689	0.5941	$39.25		$7.85
93290	Icm device eval	NI	S	0690	0.3508	$23.17	$8.67	$4.64
93291	Ilr device interrogate	NI	S	0690	0.3508	$23.17	$8.67	$4.64
93292	Wcd device interrogate	NI	S	0689	0.5941	$39.25		$7.85
93293	Pm phone r-strip device eval	NI	S	0689	0.5941	$39.25		$7.85
93294	Pm device interrogate remote	NI	M					
93295	Icd device interrogat remote	NI	M					
93296	Pm/icd remote tech serv	NI	S	0689	0.5941	$39.25		$7.85
93297	Icm device interrogat remote	NI	M					
93298	Ilr device interrogat remote	NI	M					
93299	Icm/ilr remote tech serv	NI	S	0209	11.4202	$754.41	$268.73	$150.89
93303	Echo transthoracic		S	0269	6.5300	$431.37		$86.28

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
93304	Echo transthoracic		S	0697	3.8610	$255.05		$51.01
93306	Tte w/doppler, complete	NI	S	0269	6.5300	$431.37		$86.28
93307	Tte w/o doppler, complete	CH	S	0697	3.8610	$255.05		$51.01
93308	Tte, f-up or lmtd		S	0697	3.8610	$255.05		$51.01
93312	Echo transesophageal		S	0270	8.3489	$551.52	$141.32	$110.31
93313	Echo transesophageal		S	0270	8.3489	$551.52	$141.32	$110.31
93314	Echo transesophageal		N					
93315	Echo transesophageal		S	0270	8.3489	$551.52	$141.32	$110.31
93316	Echo transesophageal		S	0270	8.3489	$551.52	$141.32	$110.31
93317	Echo transesophageal		N					
93318	Echo transesophageal intraop		S	0270	8.3489	$551.52	$141.32	$110.31
93320	Doppler echo exam, heart		N					
93321	Doppler echo exam, heart		N					
93325	Doppler color flow add-on		N					
93350	Stress tte only		S	0269	6.5300	$431.37		$86.28
93351	Stress tte complete	NI	S	0269	6.5300	$431.37		$86.28
93352	Admin ecg contrast agent	NI	M					
93501	Right heart catheterization		T	0080	39.2661	$2,593.88	$838.92	$518.78
93503	Insert/place heart catheter		T	0103	15.7264	$1,038.87		$207.78
93505	Biopsy of heart lining		T	0103	15.7264	$1,038.87		$207.78
93508	Cath placement, angiography		T	0080	39.2661	$2,593.88	$838.92	$518.78
93510	Left heart catheterization		T	0080	39.2661	$2,593.88	$838.92	$518.78
93511	Left heart catheterization		T	0080	39.2661	$2,593.88	$838.92	$518.78
93514	Left heart catheterization		T	0080	39.2661	$2,593.88	$838.92	$518.78
93524	Left heart catheterization		T	0080	39.2661	$2,593.88	$838.92	$518.78
93526	Rt & Lt heart catheters		T	0080	39.2661	$2,593.88	$838.92	$518.78
93527	Rt & Lt heart catheters		T	0080	39.2661	$2,593.88	$838.92	$518.78
93528	Rt & Lt heart catheters		T	0080	39.2661	$2,593.88	$838.92	$518.78
93529	Rt, lt heart catheterization		T	0080	39.2661	$2,593.88	$838.92	$518.78
93530	Rt heart cath, congenital		T	0080	39.2661	$2,593.88	$838.92	$518.78
93531	R & l heart cath, congenital		T	0080	39.2661	$2,593.88	$838.92	$518.78
93532	R & l heart cath, congenital		T	0080	39.2661	$2,593.88	$838.92	$518.78
93533	R & l heart cath, congenital		T	0080	39.2661	$2,593.88	$838.92	$518.78
93539	Injection, cardiac cath		N					
93540	Injection, cardiac cath		N					
93541	Injection for lung angiogram		N					
93542	Injection for heart x-rays		N					
93543	Injection for heart x-rays		N					
93544	Injection for aortography		N					
93545	Inject for coronary x-rays		N					
93555	Imaging, cardiac cath		N					
93556	Imaging, cardiac cath		N					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
93561	Cardiac output measurement		N					
93562	Cardiac output measurement		N					
93571	Heart flow reserve measure		N					
93572	Heart flow reserve measure		N					
93580	Transcath closure of asd		T	0434	153.6340	$10,148.91		$2,029.79
93581	Transcath closure of vsd		T	0434	153.6340	$10,148.91		$2,029.79
93600	Bundle of His recording		S	0084	10.2559	$677.49		$135.50
93602	Intra-atrial recording		S	0084	10.2559	$677.49		$135.50
93603	Right ventricular recording		S	0084	10.2559	$677.49		$135.50
93609	Map tachycardia, add-on		N					
93610	Intra-atrial pacing		S	0084	10.2559	$677.49		$135.50
93612	Intraventricular pacing		S	0084	10.2559	$677.49		$135.50
93613	Electrophys map 3d, add-on		N					
93615	Esophageal recording		S	0084	10.2559	$677.49		$135.50
93616	Esophageal recording		S	0084	10.2559	$677.49		$135.50
93618	Heart rhythm pacing		S	0084	10.2559	$677.49		$135.50
93619	Electrophysiology evaluation		Q3	0085	49.3497	$3,259.99		$652.00
93620	Electrophysiology evaluation		Q3	0085	49.3497	$3,259.99		$652.00
93621	Electrophysiology evaluation		N					
93622	Electrophysiology evaluation		N					
93623	Stimulation, pacing heart		N					
93624	Electrophysiologic study		T	0085	49.3497	$3,259.99		$652.00
93631	Heart pacing, mapping		N					
93640	Evaluation heart device		N					
93641	Electrophysiology evaluation		N					
93642	Electrophysiology evaluation		S	0084	10.2559	$677.49		$135.50
93650	Ablate heart dysrhythm focus		Q3	0085	49.3497	$3,259.99		$652.00
93651	Ablate heart dysrhythm focus		Q3	0086	100.1431	$6,615.35		$1,323.07
93652	Ablate heart dysrhythm focus		Q3	0086	100.1431	$6,615.35		$1,323.07
93660	Tilt table evaluation		S	0101	4.2301	$279.44	$100.24	$55.89
93662	Intracardiac ecg (ice)		N					
93668	Peripheral vascular rehab		E					
93701	Bioimpedance, thoracic		S	0099	0.3949	$26.09		$5.22
93720	Total body plethysmography		B					
93721	Plethysmography tracing		X	0368	0.8326	$55.00	$20.93	$11.00
93722	Plethysmography report		B					
93724	Analyze pacemaker system		S	0690	0.3508	$23.17	$8.67	$4.64
93727	Analyze ilr system	CH	D					
93731	Analyze pacemaker system	CH	D					
93732	Analyze pacemaker system	CH	D					
93733	Telephone analy, pacemaker	CH	D					
93734	Analyze pacemaker system	CH	D					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
93735	Analyze pacemaker system	CH	D					
93736	Telephonic analy, pacemaker	CH	D					
93740	Temperature gradient studies		X	0368	0.8326	$55.00	$20.93	$11.00
93741	Analyze ht pace device sngl	CH	D					
93742	Analyze ht pace device sngl	CH	D					
93743	Analyze ht pace device dual	CH	D					
93744	Analyze ht pace device dual	CH	D					
93745	Set-up cardiovert-defibrill		S	0689	0.5941	$39.25		$7.85
93760	Cephalic thermogram	CH	D					
93762	Peripheral thermogram	CH	D					
93770	Measure venous pressure		N					
93784	Ambulatory BP monitoring		E					
93786	Ambulatory BP recording		X	0097	0.9946	$65.70	$23.79	$13.14
93788	Ambulatory BP analysis		X	0097	0.9946	$65.70	$23.79	$13.14
93790	Review/report BP recording	CH	M					
93797	Cardiac rehab		S	0095	0.5712	$37.73	$13.86	$7.55
93798	Cardiac rehab/monitor		S	0095	0.5712	$37.73	$13.86	$7.55
93799	Cardiovascular procedure		X	0097	0.9946	$65.70	$23.79	$13.14
93875	Extracranial study		S	0096	1.4327	$94.64	$37.42	$18.93
93880	Extracranial study		S	0267	2.3186	$153.16	$60.50	$30.64
93882	Extracranial study		S	0267	2.3186	$153.16	$60.50	$30.64
93886	Intracranial study		S	0267	2.3186	$153.16	$60.50	$30.64
93888	Intracranial study		S	0265	0.9461	$62.50	$22.35	$12.50
93890	Tcd, vasoreactivity study		S	0266	1.4801	$97.77	$37.80	$19.56
93892	Tcd, emboli detect w/o inj		S	0266	1.4801	$97.77	$37.80	$19.56
93893	Tcd, emboli detect w/inj		S	0266	1.4801	$97.77	$37.80	$19.56
93922	Extremity study		S	0096	1.4327	$94.64	$37.42	$18.93
93923	Extremity study		S	0096	1.4327	$94.64	$37.42	$18.93
93924	Extremity study		S	0096	1.4327	$94.64	$37.42	$18.93
93925	Lower extremity study		S	0267	2.3186	$153.16	$60.50	$30.64
93926	Lower extremity study		S	0266	1.4801	$97.77	$37.80	$19.56
93930	Upper extremity study		S	0267	2.3186	$153.16	$60.50	$30.64
93931	Upper extremity study		S	0266	1.4801	$97.77	$37.80	$19.56
93965	Extremity study		S	0096	1.4327	$94.64	$37.42	$18.93
93970	Extremity study		S	0267	2.3186	$153.16	$60.50	$30.64
93971	Extremity study		S	0266	1.4801	$97.77	$37.80	$19.56
93975	Vascular study		S	0267	2.3186	$153.16	$60.50	$30.64
93976	Vascular study		S	0267	2.3186	$153.16	$60.50	$30.64
93978	Vascular study		S	0267	2.3186	$153.16	$60.50	$30.64
93979	Vascular study		S	0266	1.4801	$97.77	$37.80	$19.56
93980	Penile vascular study		S	0267	2.3186	$153.16	$60.50	$30.64
93981	Penile vascular study		S	0267	2.3186	$153.16	$60.50	$30.64

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
93982	Aneurysm pressure sens study		X	0097	0.9946	$65.70	$23.79	$13.14
93990	Doppler flow testing		S	0266	1.4801	$97.77	$37.80	$19.56
94002	Vent mgmt inpat, init day		S	0079	2.9177	$192.74		$38.55
94003	Vent mgmt inpat, subq day		S	0079	2.9177	$192.74		$38.55
94004	Vent mgmt nf per day		B					
94005	Home vent mgmt supervision		M					
94010	Breathing capacity test		X	0368	0.8326	$55.00	$20.93	$11.00
94014	Patient recorded spirometry		X	0367	0.5627	$37.17	$13.76	$7.44
94015	Patient recorded spirometry		X	0367	0.5627	$37.17	$13.76	$7.44
94016	Review patient spirometry		A					
94060	Evaluation of wheezing	CH	S	0078	1.3903	$91.84		$18.37
94070	Evaluation of wheezing		X	0369	2.7955	$184.67	$44.18	$36.94
94150	Vital capacity test		X	0367	0.5627	$37.17	$13.76	$7.44
94200	Lung function test (MBC/MVV)		X	0367	0.5627	$37.17	$13.76	$7.44
94240	Residual lung capacity		X	0368	0.8326	$55.00	$20.93	$11.00
94250	Expired gas collection	CH	X	0368	0.8326	$55.00	$20.93	$11.00
94260	Thoracic gas volume		X	0368	0.8326	$55.00	$20.93	$11.00
94350	Lung nitrogen washout curve		X	0368	0.8326	$55.00	$20.93	$11.00
94360	Measure airflow resistance		X	0367	0.5627	$37.17	$13.76	$7.44
94370	Breath airway closing volume		X	0367	0.5627	$37.17	$13.76	$7.44
94375	Respiratory flow volume loop		X	0368	0.8326	$55.00	$20.93	$11.00
94400	CO2 breathing response curve		X	0367	0.5627	$37.17	$13.76	$7.44
94450	Hypoxia response curve		X	0368	0.8326	$55.00	$20.93	$11.00
94452	Hast w/report		X	0368	0.8326	$55.00	$20.93	$11.00
94453	Hast w/oxygen titrate	CH	X	0368	0.8326	$55.00	$20.93	$11.00
94610	Surfactant admin thru tube		S	0077	0.4024	$26.58	$7.74	$5.32
94620	Pulmonary stress test/simple		X	0368	0.8326	$55.00	$20.93	$11.00
94621	Pulm stress test/complex		X	0369	2.7955	$184.67	$44.18	$36.94
94640	Airway inhalation treatment		S	0077	0.4024	$26.58	$7.74	$5.32
94642	Aerosol inhalation treatment		S	0078	1.3903	$91.84		$18.37
94644	Cbt, 1st hour	CH	X	0340	0.6462	$42.69		$8.54
94645	Cbt, each addl hour	CH	X	0340	0.6462	$42.69		$8.54
94660	Pos airway pressure, CPAP		S	0078	1.3903	$91.84		$18.37
94662	Neg press ventilation, cnp		S	0079	2.9177	$192.74		$38.55
94664	Evaluate pt use of inhaler		S	0077	0.4024	$26.58	$7.74	$5.32
94667	Chest wall manipulation		S	0077	0.4024	$26.58	$7.74	$5.32
94668	Chest wall manipulation		S	0077	0.4024	$26.58	$7.74	$5.32
94680	Exhaled air analysis, o2		X	0368	0.8326	$55.00	$20.93	$11.00
94681	Exhaled air analysis, o2/co2		X	0368	0.8326	$55.00	$20.93	$11.00
94690	Exhaled air analysis		X	0367	0.5627	$37.17	$13.76	$7.44
94720	Monoxide diffusing capacity		X	0368	0.8326	$55.00	$20.93	$11.00
94725	Membrane diffusion capacity		X	0368	0.8326	$55.00	$20.93	$11.00

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
94750	Pulmonary compliance study	CH	X	0367	0.5627	$37.17	$13.76	$7.44
94760	Measure blood oxygen level		N					
94761	Measure blood oxygen level		N					
94762	Measure blood oxygen level		Q1	0097	0.9946	$65.70	$23.79	$13.14
94770	Exhaled carbon dioxide test		X	0367	0.5627	$37.17	$13.76	$7.44
94772	Breath recording, infant		X	0369	2.7955	$184.67	$44.18	$36.94
94774	Ped home apnea rec, compl		B					
94775	Ped home apnea rec, hk-up		X	0097	0.9946	$65.70	$23.79	$13.14
94776	Ped home apnea rec, downld		X	0097	0.9946	$65.70	$23.79	$13.14
94777	Ped home apnea rec, report		B					
94799	Pulmonary service/procedure		X	0367	0.5627	$37.17	$13.76	$7.44
95004	Percut allergy skin tests		X	0381	0.3517	$23.23		$4.65
95010	Percut allergy titrate test		X	0381	0.3517	$23.23		$4.65
95012	Exhaled nitric oxide meas		X	0367	0.5627	$37.17	$13.76	$7.44
95015	Id allergy titrate-drug/bug		X	0381	0.3517	$23.23		$4.65
95024	Id allergy test, drug/bug		X	0381	0.3517	$23.23		$4.65
95027	Id allergy titrate-airborne		X	0381	0.3517	$23.23		$4.65
95028	Id allergy test-delayed type		X	0381	0.3517	$23.23		$4.65
95044	Allergy patch tests		X	0381	0.3517	$23.23		$4.65
95052	Photo patch test		X	0381	0.3517	$23.23		$4.65
95056	Photosensitivity tests		X	0370	1.4677	$96.95		$19.39
95060	Eye allergy tests		X	0370	1.4677	$96.95		$19.39
95065	Nose allergy test		X	0381	0.3517	$23.23		$4.65
95070	Bronchial allergy tests		X	0369	2.7955	$184.67	$44.18	$36.94
95071	Bronchial allergy tests		X	0369	2.7955	$184.67	$44.18	$36.94
95075	Ingestion challenge test		X	0361	3.9733	$262.47	$83.23	$52.50
95115	Immunotherapy, one injection		S	0436	0.3768	$24.89		$4.98
95117	Immunotherapy injections	CH	S	0436	0.3768	$24.89		$4.98
95120	Immunotherapy, one injection		E					
95125	Immunotherapy, many antigens		E					
95130	Immunotherapy, insect venom		E					
95131	Immunotherapy, insect venoms		E					
95132	Immunotherapy, insect venoms		E					
95133	Immunotherapy, insect venoms		E					
95134	Immunotherapy, insect venoms		E					
95144	Antigen therapy services		S	0437	0.5469	$36.13		$7.23
95145	Antigen therapy services	CH	S	0436	0.3768	$24.89		$4.98
95146	Antigen therapy services	CH	S	0438	1.1152	$73.67		$14.74
95147	Antigen therapy services	CH	S	0438	1.1152	$73.67		$14.74
95148	Antigen therapy services		S	0437	0.5469	$36.13		$7.23
95149	Antigen therapy services	CH	S	0439	1.9470	$128.62		$25.73
95165	Antigen therapy services	CH	S	0436	0.3768	$24.89		$4.98

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
95170	Antigen therapy services	CH	S	0436	0.3768	$24.89		$4.98
95180	Rapid desensitization		X	0370	1.4677	$96.95		$19.39
95199	Allergy immunology services		X	0381	0.3517	$23.23		$4.65
95250	Glucose monitoring, cont		V	0607	1.7192	$113.57		$22.72
95251	Gluc monitor, cont, phys i&r		B					
95803	Actigraphy testing	NI	S	0218	1.1853	$78.30		$15.66
95805	Multiple sleep latency test		S	0209	11.4202	$754.41	$268.73	$150.89
95806	Sleep study, unattended		S	0213	2.3168	$153.05	$53.58	$30.61
95807	Sleep study, attended		S	0209	11.4202	$754.41	$268.73	$150.89
95808	Polysomnography, 1-3		S	0209	11.4202	$754.41	$268.73	$150.89
95810	Polysomnography, 4 or more		S	0209	11.4202	$754.41	$268.73	$150.89
95811	Polysomnography w/cpap		S	0209	11.4202	$754.41	$268.73	$150.89
95812	Eeg, 41-60 minutes		S	0213	2.3168	$153.05	$53.58	$30.61
95813	Eeg, over 1 hour		S	0213	2.3168	$153.05	$53.58	$30.61
95816	Eeg, awake and drowsy		S	0213	2.3168	$153.05	$53.58	$30.61
95819	Eeg, awake and asleep		S	0213	2.3168	$153.05	$53.58	$30.61
95822	Eeg, coma or sleep only		S	0213	2.3168	$153.05	$53.58	$30.61
95824	Eeg, cerebral death only		S	0216	2.6652	$176.06		$35.22
95827	Eeg, all night recording		S	0213	2.3168	$153.05	$53.58	$30.61
95829	Surgery electrocorticogram		N					
95830	Insert electrodes for EEG		B					
95831	Limb muscle testing, manual		A					
95832	Hand muscle testing, manual		A					
95833	Body muscle testing, manual		A					
95834	Body muscle testing, manual		A					
95851	Range of motion measurements		A					
95852	Range of motion measurements		A					
95857	Tensilon test		S	0218	1.1853	$78.30		$15.66
95860	Muscle test, one limb		S	0218	1.1853	$78.30		$15.66
95861	Muscle test, 2 limbs		S	0218	1.1853	$78.30		$15.66
95863	Muscle test, 3 limbs		S	0218	1.1853	$78.30		$15.66
95864	Muscle test, 4 limbs		S	0218	1.1853	$78.30		$15.66
95865	Muscle test, larynx		S	0218	1.1853	$78.30		$15.66
95866	Muscle test, hemidiaphragm		S	0218	1.1853	$78.30		$15.66
95867	Muscle test cran nerv unilat		S	0218	1.1853	$78.30		$15.66
95868	Muscle test cran nerve bilat		S	0218	1.1853	$78.30		$15.66
95869	Muscle test, thor paraspinal	CH	S	0215	0.5994	$39.60		$7.92
95870	Muscle test, nonparaspinal		S	0215	0.5994	$39.60		$7.92
95872	Muscle test, one fiber		S	0218	1.1853	$78.30		$15.66
95873	Guide nerv destr, elec stim		N					
95874	Guide nerv destr, needle emg		N					
95875	Limb exercise test		S	0215	0.5994	$39.60		$7.92

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
95900	Motor nerve conduction test		S	0215	0.5994	$39.60		$7.92
95903	Motor nerve conduction test		S	0215	0.5994	$39.60		$7.92
95904	Sense nerve conduction test		S	0215	0.5994	$39.60		$7.92
95920	Intraop nerve test add-on		N					
95921	Autonomic nerv function test	CH	S	0215	0.5994	$39.60		$7.92
95922	Autonomic nerv function test	CH	S	0215	0.5994	$39.60		$7.92
95923	Autonomic nerv function test		S	0218	1.1853	$78.30		$15.66
95925	Somatosensory testing		S	0216	2.6652	$176.06		$35.22
95926	Somatosensory testing		S	0216	2.6652	$176.06		$35.22
95927	Somatosensory testing		S	0216	2.6652	$176.06		$35.22
95928	C motor evoked, uppr limbs		S	0218	1.1853	$78.30		$15.66
95929	C motor evoked, lwr limbs		S	0218	1.1853	$78.30		$15.66
95930	Visual evoked potential test		S	0216	2.6652	$176.06		$35.22
95933	Blink reflex test		S	0215	0.5994	$39.60		$7.92
95934	H-reflex test		S	0215	0.5994	$39.60		$7.92
95936	H-reflex test		S	0215	0.5994	$39.60		$7.92
95937	Neuromuscular junction test		S	0218	1.1853	$78.30		$15.66
95950	Ambulatory eeg monitoring		S	0209	11.4202	$754.41	$268.73	$150.89
95951	EEG monitoring/videorecord		S	0209	11.4202	$754.41	$268.73	$150.89
95953	EEG monitoring/computer		S	0209	11.4202	$754.41	$268.73	$150.89
95954	EEG monitoring/giving drugs		S	0218	1.1853	$78.30		$15.66
95955	EEG during surgery		N					
95956	Eeg monitoring, cable/radio		S	0209	11.4202	$754.41	$268.73	$150.89
95957	EEG digital analysis		N					
95958	EEG monitoring/function test		S	0213	2.3168	$153.05	$53.58	$30.61
95961	Electrode stimulation, brain		S	0216	2.6652	$176.06		$35.22
95962	Electrode stim, brain add-on		S	0216	2.6652	$176.06		$35.22
95965	Meg, spontaneous		S	0067	57.5732	$3,803.23		$760.65
95966	Meg, evoked, single		S	0065	14.4171	$952.38		$190.48
95967	Meg, evoked, each add'l		S	0065	14.4171	$952.38		$190.48
95970	Analyze neurostim, no prog		S	0218	1.1853	$78.30		$15.66
95971	Analyze neurostim, simple		S	0692	1.6537	$109.24		$21.85
95972	Analyze neurostim, complex	CH	S	0692	1.6537	$109.24		$21.85
95973	Analyze neurostim, complex	CH	S	0692	1.6537	$109.24		$21.85
95974	Cranial neurostim, complex	CH	S	0692	1.6537	$109.24		$21.85
95975	Cranial neurostim, complex		S	0692	1.6537	$109.24		$21.85
95978	Analyze neurostim brain/1h		S	0692	1.6537	$109.24		$21.85
95979	Analyz neurostim brain addon	CH	S	0692	1.6537	$109.24		$21.85
95980	Io anal gast n-stim init		N					
95981	Io anal gast n-stim subsq		S	0218	1.1853	$78.30		$15.66
95982	Io ga n-stim subsq w/reprog		S	0692	1.6537	$109.24		$21.85
95990	Spin/brain pump refil & main	CH	S	0440	2.8454	$187.96		$37.60

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
95991	Spin/brain pump refil & main	CH	S	0440	2.8454	$187.96		$37.60
95992	Canalith repositioning proc	NI	A					
95999	Neurological procedure		S	0215	0.5994	$39.60		$7.92
96000	Motion analysis, video/3d		S	0216	2.6652	$176.06		$35.22
96001	Motion test w/ft press meas		S	0216	2.6652	$176.06		$35.22
96002	Dynamic surface emg		S	0218	1.1853	$78.30		$15.66
96003	Dynamic fine wire emg		S	0215	0.5994	$39.60		$7.92
96004	Phys review of motion tests		B					
96020	Functional brain mapping		N					
96040	Genetic counseling, 30 min		B					
96101	Psycho testing by psych/phys		Q3	0382	2.4430	$161.38		$32.28
96102	Psycho testing by technician		Q3	0382	2.4430	$161.38		$32.28
96103	Psycho testing admin by comp		Q3	0373	1.3408	$88.57		$17.72
96105	Assessment of aphasia		A					
96110	Developmental test, lim		Q3	0373	1.3408	$88.57		$17.72
96111	Developmental test, extend		Q3	0382	2.4430	$161.38		$32.28
96116	Neurobehavioral status exam		Q3	0382	2.4430	$161.38		$32.28
96118	Neuropsych tst by psych/phys		Q3	0382	2.4430	$161.38		$32.28
96119	Neuropsych testing by tec		Q3	0382	2.4430	$161.38		$32.28
96120	Neuropsych tst admin w/comp		Q3	0373	1.3408	$88.57		$17.72
96125	Cognitive test by hc pro		A					
96150	Assess hlth/behave, init		Q3	0432	0.4065	$26.85		$5.37
96151	Assess hlth/behave, subseq		Q3	0432	0.4065	$26.85		$5.37
96152	Intervene hlth/behave, indiv		Q3	0432	0.4065	$26.85		$5.37
96153	Intervene hlth/behave, group		Q3	0432	0.4065	$26.85		$5.37
96154	Interv hlth/behav, fam w/pt		Q3	0432	0.4065	$26.85		$5.37
96155	Interv hlth/behav fam no pt		E					
96360	Hydration iv infusion, init	NI	S	0438	1.1152	$73.67		$14.74
96361	Hydrate iv infusion, add-on	NI	S	0436	0.3768	$24.89		$4.98
96365	Ther/proph/diag iv inf, init	NI	S	0439	1.9470	$128.62		$25.73
96366	Ther/proph/diag iv inf addon	NI	S	0436	0.3768	$24.89		$4.98
96367	Tx/proph/dg addl seq iv inf	NI	S	0437	0.5469	$36.13		$7.23
96368	Ther/diag concurrent inf	NI	N					
96369	Sc ther infusion, up to 1 hr	NI	S	0438	1.1152	$73.67		$14.74
96370	Sc ther infusion, addl hr	NI	S	0437	0.5469	$36.13		$7.23
96371	Sc ther infusion, reset pump	NI	S	0436	0.3768	$24.89		$4.98
96372	Ther/proph/diag inj, sc/im	NI	S	0436	0.3768	$24.89		$4.98
96373	Ther/proph/diag inj, ia	NI	S	0437	0.5469	$36.13		$7.23
96374	Ther/proph/diag inj, iv push	NI	S	0437	0.5469	$36.13		$7.23
96375	Tx/pro/dx inj new drug addon	NI	S	0437	0.5469	$36.13		$7.23
96376	Tx/pro/dx inj new drug adon	NI	N					
96379	Ther/prop/diag inj/inf proc	NI	S	0436	0.3768	$24.89		$4.98

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
96401	Chemo, anti-neopl, sq/im	CH	S	0437	0.5469	$36.13		$7.23
96402	Chemo hormon antineopl sq/im	CH	S	0437	0.5469	$36.13		$7.23
96405	Chemo intralesional, up to 7	CH	S	0437	0.5469	$36.13		$7.23
96406	Chemo intralesional over 7		S	0438	1.1152	$73.67		$14.74
96409	Chemo, iv push, sngl drug		S	0439	1.9470	$128.62		$25.73
96411	Chemo, iv push, addl drug	CH	S	0438	1.1152	$73.67		$14.74
96413	Chemo, iv infusion, 1 hr	CH	S	0440	2.8454	$187.96		$37.60
96415	Chemo, iv infusion, addl hr	CH	S	0437	0.5469	$36.13		$7.23
96416	Chemo prolong infuse w/pump	CH	S	0440	2.8454	$187.96		$37.60
96417	Chemo iv infus each addl seq		S	0438	1.1152	$73.67		$14.74
96420	Chemo, ia, push tecnique		S	0439	1.9470	$128.62		$25.73
96422	Chemo ia infusion up to 1 hr	CH	S	0440	2.8454	$187.96		$37.60
96423	Chemo ia infuse each addl hr		S	0438	1.1152	$73.67		$14.74
96425	Chemotherapy,infusion method	CH	S	0440	2.8454	$187.96		$37.60
96440	Chemotherapy, intracavitary	CH	S	0440	2.8454	$187.96		$37.60
96445	Chemotherapy, intracavitary	CH	S	0440	2.8454	$187.96		$37.60
96450	Chemotherapy, into CNS	CH	S	0440	2.8454	$187.96		$37.60
96521	Refill/maint, portable pump		S	0440	2.8454	$187.96		$37.60
96522	Refill/maint pump/resvr syst	CH	S	0439	1.9470	$128.62		$25.73
96523	Irrig drug delivery device		Q1	0624	0.6043	$39.92	$12.65	$7.99
96542	Chemotherapy injection	CH	S	0439	1.9470	$128.62		$25.73
96549	Chemotherapy, unspecified		S	0436	0.3768	$24.89		$4.98
96567	Photodynamic tx, skin		T	0013	0.8281	$54.70		$10.94
96570	Photodynamic tx, 30 min		T	0015	1.5170	$100.21		$20.05
96571	Photodynamic tx, addl 15 min		T	0015	1.5170	$100.21		$20.05
96900	Ultraviolet light therapy		S	0001	0.5101	$33.70	$7.00	$6.74
96902	Trichogram		N					
96904	Whole body photography		N					
96910	Photochemotherapy with UV-B		S	0001	0.5101	$33.70	$7.00	$6.74
96912	Photochemotherapy with UV-A		S	0001	0.5101	$33.70	$7.00	$6.74
96913	Photochemotherapy, UV-A or B		S	0683	2.7022	$178.50		$35.70
96920	Laser tx, skin < 250 sq cm		T	0015	1.5170	$100.21		$20.05
96921	Laser tx, skin 250-500 sq cm		T	0015	1.5170	$100.21		$20.05
96922	Laser tx, skin > 500 sq cm		T	0015	1.5170	$100.21		$20.05
96999	Dermatological procedure		T	0012	0.4183	$27.63		$5.53
97001	Pt evaluation		A					
97002	Pt re-evaluation		A					
97003	Ot evaluation		A					
97004	Ot re-evaluation		A					
97005	Athletic train eval		E					
97006	Athletic train reeval		E					
97010	Hot or cold packs therapy		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
97012	Mechanical traction therapy		A					
97014	Electric stimulation therapy		E					
97016	Vasopneumatic device therapy		A					
97018	Paraffin bath therapy		A					
97022	Whirlpool therapy		A					
97024	Diathermy eg, microwave		A					
97026	Infrared therapy		A					
97028	Ultraviolet therapy		A					
97032	Electrical stimulation		A					
97033	Electric current therapy		A					
97034	Contrast bath therapy		A					
97035	Ultrasound therapy		A					
97036	Hydrotherapy		A					
97039	Physical therapy treatment		A					
97110	Therapeutic exercises		A					
97112	Neuromuscular reeducation		A					
97113	Aquatic therapy/exercises		A					
97116	Gait training therapy		A					
97124	Massage therapy		A					
97139	Physical medicine procedure		A					
97140	Manual therapy		A					
97150	Group therapeutic procedures		A					
97530	Therapeutic activities		A					
97532	Cognitive skills development		A					
97533	Sensory integration		A					
97535	Self care mngment training		A					
97537	Community/work reintegration		A					
97542	Wheelchair mngment training		A					
97545	Work hardening		A					
97546	Work hardening add-on		A					
97597	Active wound care/20 cm or <		T	0015	1.5170	$100.21		$20.05
97598	Active wound care > 20 cm		T	0015	1.5170	$100.21		$20.05
97602	Wound(s) care non-selective	CH	T	0013	0.8281	$54.70		$10.94
97605	Neg press wound tx, < 50 cm		T	0013	0.8281	$54.70		$10.94
97606	Neg press wound tx, > 50 cm	CH	T	0013	0.8281	$54.70		$10.94
97750	Physical performance test		A					
97755	Assistive technology assess		A					
97760	Orthotic mgmt and training		A					
97761	Prosthetic training		A					
97762	C/o for orthotic/prosth use		A					
97799	Physical medicine procedure		A					
97802	Medical nutrition, indiv, in		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
97803	Med nutrition, indiv, subseq		A					
97804	Medical nutrition, group		A					
97810	Acupunct w/o stimul 15 min		E					
97811	Acupunct w/o stimul addl 15m		E					
97813	Acupunct w/stimul 15 min		E					
97814	Acupunct w/stimul addl 15m		E					
98925	Osteopathic manipulation		S	0060	0.4302	$28.42		$5.69
98926	Osteopathic manipulation		S	0060	0.4302	$28.42		$5.69
98927	Osteopathic manipulation		S	0060	0.4302	$28.42		$5.69
98928	Osteopathic manipulation		S	0060	0.4302	$28.42		$5.69
98929	Osteopathic manipulation		S	0060	0.4302	$28.42		$5.69
98940	Chiropractic manipulation		S	0060	0.4302	$28.42		$5.69
98941	Chiropractic manipulation		S	0060	0.4302	$28.42		$5.69
98942	Chiropractic manipulation		S	0060	0.4302	$28.42		$5.69
98943	Chiropractic manipulation		E					
98960	Self-mgmt educ & train, 1 pt		E					
98961	Self-mgmt educ/train, 2-4 pt		E					
98962	Self-mgmt educ/train, 5-8 pt		E					
98966	Hc pro phone call 5-10 min		E					
98967	Hc pro phone call 11-20 min		E					
98968	Hc pro phone call 21-30 min		E					
98969	Online service by hc pro		E					
99000	Specimen handling		E					
99001	Specimen handling		E					
99002	Device handling		B					
99024	Postop follow-up visit		B					
99026	In-hospital on call service		E					
99027	Out-of-hosp on call service		E					
99050	Medical services after hrs		B					
99051	Med serv, eve/wkend/holiday		B					
99053	Med serv 10pm-8am, 24 hr fac		B					
99056	Med service out of office		B					
99058	Office emergency care		B					
99060	Out of office emerg med serv		B					
99070	Special supplies		B					
99071	Patient education materials		B					
99075	Medical testimony		E					
99078	Group health education		N					
99080	Special reports or forms		B					
99082	Unusual physician travel		B					
99090	Computer data analysis		B					
99091	Collect/review data from pt		N					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
99100	Special anesthesia service		B					
99116	Anesthesia with hypothermia		B					
99135	Special anesthesia procedure		B					
99140	Emergency anesthesia		B					
99143	Mod cs by same phys, < 5 yrs		N					
99144	Mod cs by same phys, 5 yrs +		N					
99145	Mod cs by same phys add-on		N					
99148	Mod cs diff phys < 5 yrs		N					
99149	Mod cs diff phys 5 yrs +		N					
99150	Mod cs diff phys add-on		N					
99170	Anogenital exam, child		T	0191	0.1524	$10.07	$2.36	$2.02
99172	Ocular function screen		E					
99173	Visual acuity screen		E					
99174	Ocular photoscreening		E					
99175	Induction of vomiting		N					
99183	Hyperbaric oxygen therapy		B					
99185	Regional hypothermia		N					
99186	Total body hypothermia		N					
99190	Special pump services		C					
99191	Special pump services		C					
99192	Special pump services		C					
99195	Phlebotomy		X	0624	0.6043	$39.92	$12.65	$7.99
99199	Special service/proc/report		B					
99201	Office/outpatient visit, new		V	0604	0.8277	$54.68		$10.94
99202	Office/outpatient visit, new		V	0605	1.0439	$68.96		$13.80
99203	Office/outpatient visit, new		V	0606	1.3585	$89.74		$17.95
99204	Office/outpatient visit, new		V	0607	1.7192	$113.57		$22.72
99205	Office/outpatient visit, new		Q3	0608	2.4477	$161.69		$32.34
99211	Office/outpatient visit, est		V	0604	0.8277	$54.68		$10.94
99212	Office/outpatient visit, est		V	0605	1.0439	$68.96		$13.80
99213	Office/outpatient visit, est		V	0605	1.0439	$68.96		$13.80
99214	Office/outpatient visit, est		V	0606	1.3585	$89.74		$17.95
99215	Office/outpatient visit, est		Q3	0607	1.7192	$113.57		$22.72
99217	Observation care discharge		B					
99218	Observation care		B					
99219	Observation care		B					
99220	Observation care		B					
99221	Initial hospital care		B					
99222	Initial hospital care		B					
99223	Initial hospital care		B					
99231	Subsequent hospital care		B					
99232	Subsequent hospital care		B					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
99233	Subsequent hospital care		B					
99234	Observ/hosp same date		B					
99235	Observ/hosp same date		B					
99236	Observ/hosp same date		B					
99238	Hospital discharge day		B					
99239	Hospital discharge day		B					
99241	Office consultation		B					
99242	Office consultation		B					
99243	Office consultation		B					
99244	Office consultation		B					
99245	Office consultation		B					
99251	Inpatient consultation		C					
99252	Inpatient consultation		C					
99253	Inpatient consultation		C					
99254	Inpatient consultation		C					
99255	Inpatient consultation		C					
99281	Emergency dept visit		V	0609	0.7972	$52.66	$12.70	$10.54
99282	Emergency dept visit		V	0613	1.3040	$86.14	$21.06	$17.23
99283	Emergency dept visit		V	0614	2.0694	$136.70	$34.50	$27.34
99284	Emergency dept visit		Q3	0615	3.2987	$217.91	$48.49	$43.59
99285	Emergency dept visit		Q3	0616	4.9032	$323.90	$72.86	$64.78
99288	Direct advanced life support		B					
99289	Ped crit care transport	CH	D					
99290	Ped crit care transport addl	CH	D					
99291	Critical care, first hour		Q3	0617	7.3479	$485.39	$111.59	$97.08
99292	Critical care, add'l 30 min		N					
99293	Ped critical care, initial	CH	D					
99294	Ped critical care, subseq	CH	D					
99295	Neonate crit care, initial	CH	D					
99296	Neonate critical care subseq	CH	D					
99298	Ic for lbw infant < 1500 gm	CH	D					
99299	Ic, lbw infant 1500-2500 gm	CH	D					
99300	Ic, infant pbw 2501-5000 gm	CH	D					
99304	Nursing facility care, init		B					
99305	Nursing facility care, init		B					
99306	Nursing facility care, init		B					
99307	Nursing fac care, subseq		B					
99308	Nursing fac care, subseq		B					
99309	Nursing fac care, subseq		B					
99310	Nursing fac care, subseq		B					
99315	Nursing fac discharge day		B					
99316	Nursing fac discharge day		B					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
99318	Annual nursing fac assessmnt		B					
99324	Domicil/r-home visit new pat		B					
99325	Domicil/r-home visit new pat		B					
99326	Domicil/r-home visit new pat		B					
99327	Domicil/r-home visit new pat		B					
99328	Domicil/r-home visit new pat		B					
99334	Domicil/r-home visit est pat		B					
99335	Domicil/r-home visit est pat		B					
99336	Domicil/r-home visit est pat		B					
99337	Domicil/r-home visit est pat		B					
99339	Domicil/r-home care supervis		B					
99340	Domicil/r-home care supervis		B					
99341	Home visit, new patient		B					
99342	Home visit, new patient		B					
99343	Home visit, new patient		B					
99344	Home visit, new patient		B					
99345	Home visit, new patient		B					
99347	Home visit, est patient		B					
99348	Home visit, est patient		B					
99349	Home visit, est patient		B					
99350	Home visit, est patient		B					
99354	Prolonged service, office		N					
99355	Prolonged service, office		N					
99356	Prolonged service, inpatient		C					
99357	Prolonged service, inpatient		C					
99358	Prolonged serv, w/o contact		N					
99359	Prolonged serv, w/o contact		N					
99360	Physician standby services		B					
99363	Anticoag mgmt, init		B					
99364	Anticoag mgmt, subseq		B					
99366	Team conf w/pat by hc pro		N					
99367	Team conf w/o pat by phys		N					
99368	Team conf w/o pat by hc pro		N					
99374	Home health care supervision		B					
99375	Home health care supervision		E					
99377	Hospice care supervision		B					
99378	Hospice care supervision		E					
99379	Nursing fac care supervision		B					
99380	Nursing fac care supervision		B					
99381	Init pm e/m, new pat, inf		E					
99382	Init pm e/m, new pat 1-4 yrs		E					
99383	Prev visit, new, age 5-11		E					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
99384	Prev visit, new, age 12-17		E					
99385	Prev visit, new, age 18-39		E					
99386	Prev visit, new, age 40-64		E					
99387	Init pm e/m, new pat 65+ yrs		E					
99391	Per pm reeval, est pat, inf		E					
99392	Prev visit, est, age 1-4		E					
99393	Prev visit, est, age 5-11		E					
99394	Prev visit, est, age 12-17		E					
99395	Prev visit, est, age 18-39		E					
99396	Prev visit, est, age 40-64		E					
99397	Per pm reeval est pat 65+ yr		E					
99401	Preventive counseling, indiv		E					
99402	Preventive counseling, indiv		E					
99403	Preventive counseling, indiv		E					
99404	Preventive counseling, indiv		E					
99406	Behav chng smoking 3-10 min		X	0031	0.1729	$11.42		$2.29
99407	Behav chng smoking > 10 min		X	0031	0.1729	$11.42		$2.29
99408	Audit/dast, 15-30 min		E					
99409	Audit/dast, over 30 min		E					
99411	Preventive counseling, group		E					
99412	Preventive counseling, group		E					
99420	Health risk assessment test		E					
99429	Unlisted preventive service		E					
99431	Initial care, normal newborn	CH	D					
99432	Newborn care, not in hosp	CH	D					
99433	Normal newborn care/hospital	CH	D					
99435	Newborn discharge day hosp	CH	D					
99436	Attendance, birth	CH	D					
99440	Newborn resuscitation	CH	D					
99441	Phone e/m by phys 5-10 min		E					
99442	Phone e/m by phys 11-20 min		E					
99443	Phone e/m by phys 21-30 min		E					
99444	Online e/m by phys		E					
99450	Basic life disability exam		E					
99455	Work related disability exam		B					
99456	Disability examination		B					
99460	Init nb em per day, hosp	NI	V	0605	1.0439	$68.96		$13.80
99461	Init nb em per day, non-fac	NI	M					
99462	Sbsq nb em per day, hosp	NI	C					
99463	Same day nb discharge	NI	V	0605	1.0439	$68.96		$13.80
99464	Attendance at delivery	NI	N					
99465	Nb resuscitation	NI	S	0094	2.4181	$159.74	$46.29	$31.95

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
99466	Ped crit care transport	NI	N					
99467	Ped crit care transport addl	NI	N					
99468	Neonate crit care, initial	NI	C					
99469	Neonate crit care, subsq	NI	C					
99471	Ped critical care, initial	NI	C					
99472	Ped critical care, subsq	NI	C					
99475	Ped crit care age 2-5, init	NI	C					
99476	Ped crit care age 2-5, subsq	NI	C					
99477	Init day hosp neonate care		C					
99478	Ic, lbw inf < 1500 gm subsq	NI	C					
99479	Ic lbw inf 1500-2500 g subsq	NI	C					
99480	Ic inf pbw 2501-5000 g subsq	NI	C					
99499	Unlisted e&m service		B					
99500	Home visit, prenatal		E					
99501	Home visit, postnatal		E					
99502	Home visit, nb care		E					
99503	Home visit, resp therapy		E					
99504	Home visit mech ventilator		E					
99505	Home visit, stoma care		E					
99506	Home visit, im injection		E					
99507	Home visit, cath maintain		E					
99509	Home visit day life activity		E					
99510	Home visit, sing/m/fam couns		E					
99511	Home visit, fecal/enema mgmt		E					
99512	Home visit for hemodialysis		E					
99600	Home visit nos		E					
99601	Home infusion/visit, 2 hrs		E					
99602	Home infusion, each addtl hr		E					
99605	Mtms by pharm, np, 15 min		E					
99606	Mtms by pharm, est, 15 min		E					
99607	Mtms by pharm, addl 15 min		E					
A0021	Outside state ambulance serv		E					
A0080	Noninterest escort in non er		E					
A0090	Interest escort in non er		E					
A0100	Nonemergency transport taxi		E					
A0110	Nonemergency transport bus		E					
A0120	Noner transport mini-bus		E					
A0130	Noner transport wheelch van		E					
A0140	Nonemergency transport air		E					
A0160	Noner transport case worker		E					
A0170	Transport parking fees/tolls		E					
A0180	Noner transport lodgng recip		E					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
A0190	Noner transport meals recip		E					
A0200	Noner transport lodgng escrt		E					
A0210	Noner transport meals escort		E					
A0225	Neonatal emergency transport		E					
A0380	Basic life support mileage		E					
A0382	Basic support routine suppls		A					
A0384	Bls defibrillation supplies		A					
A0390	Advanced life support mileag		E					
A0392	Als defibrillation supplies		A					
A0394	Als IV drug therapy supplies		A					
A0396	Als esophageal intub suppls		A					
A0398	Als routine disposble suppls		A					
A0420	Ambulance waiting 1/2 hr		A					
A0422	Ambulance 02 life sustaining		A					
A0424	Extra ambulance attendant		A					
A0425	Ground mileage		A					
A0426	Als 1		A					
A0427	ALS1-emergency		A					
A0428	bls		A					
A0429	BLS-emergency		A					
A0430	Fixed wing air transport		A					
A0431	Rotary wing air transport		A					
A0432	PI volunteer ambulance co		A					
A0433	als 2		A					
A0434	Specialty care transport		A					
A0435	Fixed wing air mileage		A					
A0436	Rotary wing air mileage		A					
A0888	Noncovered ambulance mileage		E					
A0998	Ambulance response/treatment		E					
A0999	Unlisted ambulance service		A					
A4206	1 CC sterile syringe&needle		E					
A4207	2 CC sterile syringe&needle		E					
A4208	3 CC sterile syringe&needle		E					
A4209	5+ CC sterile syringe&needle		E					
A4210	Nonneedle injection device		E					
A4211	Supp for self-adm injections		E					
A4212	Non coring needle or stylet		B					
A4213	20+ CC syringe only		E					
A4215	Sterile needle		E					
A4216	Sterile water/saline, 10 ml		A					
A4217	Sterile water/saline, 500 ml		A					
A4218	Sterile saline or water		N					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
A4220	Infusion pump refill kit		N					
A4221	Maint drug infus cath per wk		Y					
A4222	Infusion supplies with pump		Y					
A4223	Infusion supplies w/o pump		E					
A4230	Infus insulin pump non needl		N					
A4231	Infusion insulin pump needle		N					
A4232	Syringe w/needle insulin 3cc		E					
A4233	Alkalin batt for glucose mon		Y					
A4234	J-cell batt for glucose mon		Y					
A4235	Lithium batt for glucose mon		Y					
A4236	Silvr oxide batt glucose mon		Y					
A4244	Alcohol or peroxide per pint		E					
A4245	Alcohol wipes per box		E					
A4246	Betadine/phisohex solution		E					
A4247	Betadine/iodine swabs/wipes		E					
A4248	Chlorhexidine antisept		N					
A4250	Urine reagent strips/tablets		E					
A4252	Blood ketone test or strip		E					
A4253	Blood glucose/reagent strips		Y					
A4255	Glucose monitor platforms		Y					
A4256	Calibrator solution/chips		Y					
A4257	Replace Lensshield Cartridge		Y					
A4258	Lancet device each		Y					
A4259	Lancets per box		Y					
A4261	Cervical cap contraceptive		E					
A4262	Temporary tear duct plug		N					
A4263	Permanent tear duct plug		N					
A4265	Paraffin		Y					
A4266	Diaphragm		E					
A4267	Male condom		E					
A4268	Female condom		E					
A4269	Spermicide		E					
A4270	Disposable endoscope sheath		N					
A4280	Brst prsths adhsv attchmnt		A					
A4281	Replacement breastpump tube		E					
A4282	Replacement breastpump adpt		E					
A4283	Replacement breastpump cap		E					
A4284	Replcmnt breast pump shield		E					
A4285	Replcmnt breast pump bottle		E					
A4286	Replcmnt breastpump lok ring		E					
A4290	Sacral nerve stim test lead		B					
A4300	Cath impl vasc access portal		N					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
A4301	Implantable access syst perc		N					
A4305	Drug delivery system >=50 ML		N					
A4306	Drug delivery system <=50 ml		N					
A4310	Insert tray w/o bag/cath		A					
A4311	Catheter w/o bag 2-way latex		A					
A4312	Cath w/o bag 2-way silicone		A					
A4313	Catheter w/bag 3-way		A					
A4314	Cath w/drainage 2-way latex		A					
A4315	Cath w/drainage 2-way silcne		A					
A4316	Cath w/drainage 3-way		A					
A4320	Irrigation tray		A					
A4321	Cath therapeutic irrig agent		A					
A4322	Irrigation syringe		A					
A4326	Male external catheter		A					
A4327	Fem urinary collect dev cup		A					
A4328	Fem urinary collect pouch		A					
A4330	Stool collection pouch		A					
A4331	Extension drainage tubing		A					
A4332	Lube sterile packet		A					
A4333	Urinary cath anchor device		A					
A4334	Urinary cath leg strap		A					
A4335	Incontinence supply		A					
A4338	Indwelling catheter latex		A					
A4340	Indwelling catheter special		A					
A4344	Cath indw foley 2 way silicn		A					
A4346	Cath indw foley 3 way		A					
A4349	Disposable male external cat		A					
A4351	Straight tip urine catheter		A					
A4352	Coude tip urinary catheter		A					
A4353	Intermittent urinary cath		A					
A4354	Cath insertion tray w/bag		A					
A4355	Bladder irrigation tubing		A					
A4356	Ext ureth clmp or compr dvc		A					
A4357	Bedside drainage bag		A					
A4358	Urinary leg or abdomen bag		A					
A4361	Ostomy face plate		A					
A4362	Solid skin barrier		A					
A4363	Ostomy clamp, replacement		A					
A4364	Adhesive, liquid or equal		A					
A4365	Adhesive remover wipes		A					
A4366	Ostomy vent		A					
A4367	Ostomy belt		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
A4368	Ostomy filter		A					
A4369	Skin barrier liquid per oz		A					
A4371	Skin barrier powder per oz		A					
A4372	Skin barrier solid 4x4 equiv		A					
A4373	Skin barrier with flange		A					
A4375	Drainable plastic pch w fcpl		A					
A4376	Drainable rubber pch w fcplt		A					
A4377	Drainable plstic pch w/o fp		A					
A4378	Drainable rubber pch w/o fp		A					
A4379	Urinary plastic pouch w fcpl		A					
A4380	Urinary rubber pouch w fcplt		A					
A4381	Urinary plastic pouch w/o fp		A					
A4382	Urinary hvy plstc pch w/o fp		A					
A4383	Urinary rubber pouch w/o fp		A					
A4384	Ostomy faceplt/silicone ring		A					
A4385	Ost skn barrier sld ext wear		A					
A4387	Ost clsd pouch w att st barr		A					
A4388	Drainable pch w ex wear barr		A					
A4389	Drainable pch w st wear barr		A					
A4390	Drainable pch ex wear convex		A					
A4391	Urinary pouch w ex wear barr		A					
A4392	Urinary pouch w st wear barr		A					
A4393	Urine pch w ex wear bar conv		A					
A4394	Ostomy pouch liq deodorant		A					
A4395	Ostomy pouch solid deodorant		A					
A4396	Peristomal hernia supprt blt		A					
A4397	Irrigation supply sleeve		A					
A4398	Ostomy irrigation bag		A					
A4399	Ostomy irrig cone/cath w brs		A					
A4400	Ostomy irrigation set		A					
A4402	Lubricant per ounce		A					
A4404	Ostomy ring each		A					
A4405	Nonpectin based ostomy paste		A					
A4406	Pectin based ostomy paste		A					
A4407	Ext wear ost skn barr <=4sq"		A					
A4408	Ext wear ost skn barr >4sq"		A					
A4409	Ost skn barr convex <=4 sq i		A					
A4410	Ost skn barr extnd >4 sq		A					
A4411	Ost skn barr extnd =4sq		A					
A4412	Ost pouch drain high output		A					
A4413	2 pc drainable ost pouch		A					
A4414	Ost sknbar w/o conv<=4 sq in		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
A4415	Ost skn barr w/o conv >4 sqi		A					
A4416	Ost pch clsd w barrier/filtr		A					
A4417	Ost pch w bar/bltinconv/fltr		A					
A4418	Ost pch clsd w/o bar w filtr		A					
A4419	Ost pch for bar w flange/flt		A					
A4420	Ost pch clsd for bar w lk fl		A					
A4421	Ostomy supply misc		E					
A4422	Ost pouch absorbent material		A					
A4423	Ost pch for bar w lk fl/fltr		A					
A4424	Ost pch drain w bar & filter		A					
A4425	Ost pch drain for barrier fl		A					
A4426	Ost pch drain 2 piece system		A					
A4427	Ost pch drain/barr lk flng/f		A					
A4428	Urine ost pouch w faucet/tap		A					
A4429	Urine ost pouch w bltinconv		A					
A4430	Ost urine pch w b/bltin conv		A					
A4431	Ost pch urine w barrier/tapv		A					
A4432	Os pch urine w bar/fange/tap		A					
A4433	Urine ost pch bar w lock fln		A					
A4434	Ost pch urine w lock flng/ft		A					
A4450	Non-waterproof tape		A					
A4452	Waterproof tape		A					
A4455	Adhesive remover per ounce		A					
A4458	Reusable enema bag		E					
A4461	Surgicl dress hold non-reuse		A					
A4463	Surgical dress holder reuse		A					
A4465	Non-elastic extremity binder		N					
A4470	Gravlee jet washer		N					
A4480	Vabra aspirator		N					
A4481	Tracheostoma filter		A					
A4483	Moisture exchanger		A					
A4490	Above knee surgical stocking		E					
A4495	Thigh length surg stocking		E					
A4500	Below knee surgical stocking		E					
A4510	Full length surg stocking		E					
A4520	Incontinence garment anytype		E					
A4550	Surgical trays		B					
A4554	Disposable underpads		E					
A4556	Electrodes, pair		Y					
A4557	Lead wires, pair		Y					
A4558	Conductive gel or paste		Y					
A4559	Coupling gel or paste		Y					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
A4561	Pessary rubber, any type		N					
A4562	Pessary, non rubber,any type		N					
A4565	Slings		N					
A4570	Splint		E					
A4575	Hyperbaric o2 chamber disps		E					
A4580	Cast supplies (plaster)		E					
A4590	Special casting material		E					
A4595	TENS suppl 2 lead per month		Y					
A4600	Sleeve, inter limb comp dev		Y					
A4601	Lith ion batt, non-pros use		Y					
A4604	Tubing with heating element		Y					
A4605	Trach suction cath close sys		Y					
A4606	Oxygen probe used w oximeter		A					
A4608	Transtracheal oxygen cath		Y					
A4611	Heavy duty battery		Y					
A4612	Battery cables		Y					
A4613	Battery charger		Y					
A4614	Hand-held PEFR meter		Y					
A4615	Cannula nasal		Y					
A4616	Tubing (oxygen) per foot		Y					
A4617	Mouth piece		Y					
A4618	Breathing circuits		Y					
A4619	Face tent		Y					
A4620	Variable concentration mask		Y					
A4623	Tracheostomy inner cannula		A					
A4624	Tracheal suction tube		Y					
A4625	Trach care kit for new trach		A					
A4626	Tracheostomy cleaning brush		A					
A4627	Spacer bag/reservoir		E					
A4628	Oropharyngeal suction cath		Y					
A4629	Tracheostomy care kit		A					
A4630	Repl bat t.e.n.s. own by pt		Y					
A4633	Uvl replacement bulb		Y					
A4634	Replacement bulb th lightbox		A					
A4635	Underarm crutch pad		Y					
A4636	Handgrip for cane etc		Y					
A4637	Repl tip cane/crutch/walker		Y					
A4638	Repl batt pulse gen sys		Y					
A4639	Infrared ht sys replcmnt pad		Y					
A4640	Alternating pressure pad		Y					
A4641	Radiopharm dx agent noc		N					
A4642	In111 satumomab		N					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
A4648	Implantable tissue marker		N					
A4649	Surgical supplies		N					
A4650	Implant radiation dosimeter		N					
A4651	Calibrated microcap tube		A					
A4652	Microcapillary tube sealant		A					
A4653	PD catheter anchor belt		A					
A4657	Syringe w/wo needle		N					
A4660	Sphyg/bp app w cuff and stet		N					
A4663	Dialysis blood pressure cuff		N					
A4670	Automatic bp monitor, dial		E					
A4671	Disposable cycler set		B					
A4672	Drainage ext line, dialysis		B					
A4673	Ext line w easy lock connect		B					
A4674	Chem/antisept solution, 8oz		B					
A4680	Activated carbon filter, ea		N					
A4690	Dialyzer, each		N					
A4706	Bicarbonate conc sol per gal		N					
A4707	Bicarbonate conc pow per pac		N					
A4708	Acetate conc sol per gallon		N					
A4709	Acid conc sol per gallon		N					
A4714	Treated water per gallon		N					
A4719	"Y set" tubing		N					
A4720	Dialysat sol fld vol > 249cc		N					
A4721	Dialysat sol fld vol > 999cc		N					
A4722	Dialys sol fld vol > 1999cc		N					
A4723	Dialys sol fld vol > 2999cc		N					
A4724	Dialys sol fld vol > 3999cc		N					
A4725	Dialys sol fld vol > 4999cc		N					
A4726	Dialys sol fld vol > 5999cc		N					
A4728	Dialysate solution, non-dex		B					
A4730	Fistula cannulation set, ea		N					
A4736	Topical anesthetic, per gram		N					
A4737	Inj anesthetic per 10 ml		N					
A4740	Shunt accessory		N					
A4750	Art or venous blood tubing		N					
A4755	Comb art/venous blood tubing		N					
A4760	Dialysate sol test kit, each		N					
A4765	Dialysate conc pow per pack		N					
A4766	Dialysate conc sol add 10 ml		N					
A4770	Blood collection tube/vacuum		N					
A4771	Serum clotting time tube		N					
A4772	Blood glucose test strips		N					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
A4773	Occult blood test strips		N					
A4774	Ammonia test strips		N					
A4802	Protamine sulfate per 50 mg		N					
A4860	Disposable catheter tips		N					
A4870	Plumb/elec wk hm hemo equip		N					
A4890	Repair/maint cont hemo equip		N					
A4911	Drain bag/bottle		N					
A4913	Misc dialysis supplies noc		N					
A4918	Venous pressure clamp		N					
A4927	Non-sterile gloves		N					
A4928	Surgical mask		N					
A4929	Tourniquet for dialysis, ea		N					
A4930	Sterile, gloves per pair		N					
A4931	Reusable oral thermometer		N					
A4932	Reusable rectal thermometer		E					
A5051	Pouch clsd w barr attached		A					
A5052	Clsd ostomy pouch w/o barr		A					
A5053	Clsd ostomy pouch faceplate		A					
A5054	Clsd ostomy pouch w/flange		A					
A5055	Stoma cap		A					
A5061	Pouch drainable w barrier at		A					
A5062	Drnble ostomy pouch w/o barr		A					
A5063	Drain ostomy pouch w/flange		A					
A5071	Urinary pouch w/barrier		A					
A5072	Urinary pouch w/o barrier		A					
A5073	Urinary pouch on barr w/flng		A					
A5081	Continent stoma plug		A					
A5082	Continent stoma catheter		A					
A5083	Stoma absorptive cover		A					
A5093	Ostomy accessory convex inse		A					
A5102	Bedside drain btl w/wo tube		A					
A5105	Urinary suspensory		A					
A5112	Urinary leg bag		A					
A5113	Latex leg strap		A					
A5114	Foam/fabric leg strap		A					
A5120	Skin barrier, wipe or swab		A					
A5121	Solid skin barrier 6x6		A					
A5122	Solid skin barrier 8x8		A					
A5126	Disk/foam pad +or- adhesive		A					
A5131	Appliance cleaner		A					
A5200	Percutaneous catheter anchor		A					
A5500	Diab shoe for density insert		Y					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
A5501	Diabetic custom molded shoe		Y					
A5503	Diabetic shoe w/roller/rockr		Y					
A5504	Diabetic shoe with wedge		Y					
A5505	Diab shoe w/metatarsal bar		Y					
A5506	Diabetic shoe w/off set heel		Y					
A5507	Modification diabetic shoe		Y					
A5508	Diabetic deluxe shoe		Y					
A5510	Compression form shoe insert		E					
A5512	Multi den insert direct form		Y					
A5513	Multi den insert custom mold		Y					
A6000	Wound warming wound cover		E					
A6010	Collagen based wound filler		A					
A6011	Collagen gel/paste wound fil		A					
A6021	Collagen dressing <=16 sq in		A					
A6022	Collagen drsg>6<=48 sq in		A					
A6023	Collagen dressing >48 sq in		A					
A6024	Collagen dsg wound filler		A					
A6025	Silicone gel sheet, each		E					
A6154	Wound pouch each		A					
A6196	Alginate dressing <=16 sq in		A					
A6197	Alginate drsg >16 <=48 sq in		A					
A6198	alginate dressing > 48 sq in		A					
A6199	Alginate drsg wound filler		A					
A6200	Compos drsg <=16 no border		E					
A6201	Compos drsg >16<=48 no bdr		E					
A6202	Compos drsg >48 no border		E					
A6203	Composite drsg <= 16 sq in		A					
A6204	Composite drsg >16<=48 sq in		A					
A6205	Composite drsg > 48 sq in		A					
A6206	Contact layer <= 16 sq in		A					
A6207	Contact layer >16<= 48 sq in		A					
A6208	Contact layer > 48 sq in		A					
A6209	Foam drsg <=16 sq in w/o bdr		A					
A6210	Foam drg >16<=48 sq in w/o b		A					
A6211	Foam drg > 48 sq in w/o brdr		A					
A6212	Foam drg <=16 sq in w/border		A					
A6213	Foam drg >16<=48 sq in w/bdr		A					
A6214	Foam drg > 48 sq in w/border		A					
A6215	Foam dressing wound filler		A					
A6216	Non-sterile gauze<=16 sq in		A					
A6217	Non-sterile gauze>16<=48 sq		A					
A6218	Non-sterile gauze > 48 sq in		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
A6219	Gauze <= 16 sq in w/border		A					
A6220	Gauze >16 <=48 sq in w/bordr		A					
A6221	Gauze > 48 sq in w/border		A					
A6222	Gauze <=16 in no w/sal w/o b		A					
A6223	Gauze >16<=48 no w/sal w/o b		A					
A6224	Gauze > 48 in no w/sal w/o b		A					
A6228	Gauze <= 16 sq in water/sal		A					
A6229	Gauze >16<=48 sq in watr/sal		A					
A6230	Gauze > 48 sq in water/salne		A					
A6231	Hydrogel dsg<=16 sq in		A					
A6232	Hydrogel dsg>16<=48 sq in		A					
A6233	Hydrogel dressing >48 sq in		A					
A6234	Hydrocolld drg <=16 w/o bdr		A					
A6235	Hydrocolld drg >16<=48 w/o b		A					
A6236	Hydrocolld drg > 48 in w/o b		A					
A6237	Hydrocolld drg <=16 in w/bdr		A					
A6238	Hydrocolld drg >16<=48 w/bdr		A					
A6239	Hydrocolld drg > 48 in w/bdr		A					
A6240	Hydrocolld drg filler paste		A					
A6241	Hydrocolloid drg filler dry		A					
A6242	Hydrogel drg <=16 in w/o bdr		A					
A6243	Hydrogel drg >16<=48 w/o bdr		A					
A6244	Hydrogel drg >48 in w/o bdr		A					
A6245	Hydrogel drg <= 16 in w/bdr		A					
A6246	Hydrogel drg >16<=48 in w/b		A					
A6247	Hydrogel drg > 48 sq in w/b		A					
A6248	Hydrogel drsg gel filler		A					
A6250	Skin seal protect moisturizr		A					
A6251	Absorpt drg <=16 sq in w/o b		A					
A6252	Absorpt drg >16 <=48 w/o bdr		A					
A6253	Absorpt drg > 48 sq in w/o b		A					
A6254	Absorpt drg <=16 sq in w/bdr		A					
A6255	Absorpt drg >16<=48 in w/bdr		A					
A6256	Absorpt drg > 48 sq in w/bdr		A					
A6257	Transparent film <= 16 sq in		A					
A6258	Transparent film >16<=48 in		A					
A6259	Transparent film > 48 sq in		A					
A6260	Wound cleanser any type/size		A					
A6261	Wound filler gel/paste /oz		A					
A6262	Wound filler dry form / gram		A					
A6266	Impreg gauze no h20/sal/yard		A					
A6402	Sterile gauze <= 16 sq in		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
A6403	Sterile gauze>16 <= 48 sq in		A					
A6404	Sterile gauze > 48 sq in		A					
A6407	Packing strips, non-impreg		A					
A6410	Sterile eye pad		A					
A6411	Non-sterile eye pad		A					
A6412	Occlusive eye patch		E					
A6413	Adhesive bandage, first-aid		E					
A6441	Pad band w>=3" <5"/yd		A					
A6442	Conform band n/s w<3"/yd		A					
A6443	Conform band n/s w>=3"<5"/yd		A					
A6444	Conform band n/s w>=5"/yd		A					
A6445	Conform band s w <3"/yd		A					
A6446	Conform band s w>=3" <5"/yd		A					
A6447	Conform band s w >=5"/yd		A					
A6448	Lt compres band <3"/yd		A					
A6449	Lt compres band >=3" <5"/yd		A					
A6450	Lt compres band >=5"/yd		A					
A6451	Mod compres band w>=3"<5"/yd		A					
A6452	High compres band w>=3"<5"yd		A					
A6453	Self-adher band w <3"/yd		A					
A6454	Self-adher band w>=3" <5"/yd		A					
A6455	Self-adher band >=5"/yd		A					
A6456	Zinc paste band w >=3"<5"/yd		A					
A6457	Tubular dressing		A					
A6501	Compres burngarment bodysuit		A					
A6502	Compres burngarment chinstrp		A					
A6503	Compres burngarment facehood		A					
A6504	Cmprsburngarment glove-wrist		A					
A6505	Cmprsburngarment glove-elbow		A					
A6506	Cmprsburngrmnt glove-axilla		A					
A6507	Cmprs burngarment foot-knee		A					
A6508	Cmprs burngarment foot-thigh		A					
A6509	Compres burn garment jacket		A					
A6510	Compres burn garment leotard		A					
A6511	Compres burn garment panty		A					
A6512	Compres burn garment, noc		A					
A6513	Compress burn mask face/neck		B					
A6530	Compression stocking BK18-30		E					
A6531	Compression stocking BK30-40		A					
A6532	Compression stocking BK40-50		A					
A6533	Gc stocking thighlngth 18-30		E					
A6534	Gc stocking thighlngth 30-40		E					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
A6535	Gc stocking thighlngth 40-50		E					
A6536	Gc stocking full lngth 18-30		E					
A6537	Gc stocking full lngth 30-40		E					
A6538	Gc stocking full lngth 40-50		E					
A6539	Gc stocking waistlngth 18-30		E					
A6540	Gc stocking waistlngth 30-40		E					
A6541	Gc stocking waistlngth 40-50		E					
A6542	Gc stocking custom made		E					
A6543	Gc stocking lymphedema		E					
A6544	Gc stocking garter belt		E					
A6545	Grad comp non-elastic BK	NI	A					
A6549	G compression stocking		E					
A6550	Neg pres wound ther drsg set		Y					
A7000	Disposable canister for pump		Y					
A7001	Nondisposable pump canister		Y					
A7002	Tubing used w suction pump		Y					
A7003	Nebulizer administration set		Y					
A7004	Disposable nebulizer sml vol		Y					
A7005	Nondisposable nebulizer set		Y					
A7006	Filtered nebulizer admin set		Y					
A7007	Lg vol nebulizer disposable		Y					
A7008	Disposable nebulizer prefill		Y					
A7009	Nebulizer reservoir bottle		Y					
A7010	Disposable corrugated tubing		Y					
A7011	Nondispos corrugated tubing		Y					
A7012	Nebulizer water collec devic		Y					
A7013	Disposable compressor filter		Y					
A7014	Compressor nondispos filter		Y					
A7015	Aerosol mask used w nebulize		Y					
A7016	Nebulizer dome & mouthpiece		Y					
A7017	Nebulizer not used w oxygen		Y					
A7018	Water distilled w/nebulizer		Y					
A7025	Replace chest compress vest		Y					
A7026	Replace chst cmprss sys hose		Y					
A7027	Combination oral/nasal mask		Y					
A7028	Repl oral cushion combo mask		Y					
A7029	Repl nasal pillow comb mask		Y					
A7030	CPAP full face mask		Y					
A7031	Replacement facemask interfa		Y					
A7032	Replacement nasal cushion		Y					
A7033	Replacement nasal pillows		Y					
A7034	Nasal application device		Y					

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
A7035	Pos airway press headgear		Y					
A7036	Pos airway press chinstrap		Y					
A7037	Pos airway pressure tubing		Y					
A7038	Pos airway pressure filter		Y					
A7039	Filter, non disposable w pap		Y					
A7040	One way chest drain valve		A					
A7041	Water seal drain container		A					
A7042	Implanted pleural catheter		N					
A7043	Vacuum drainagebottle/tubing		A					
A7044	PAP oral interface		Y					
A7045	Repl exhalation port for PAP		Y					
A7046	Repl water chamber, PAP dev		Y					
A7501	Tracheostoma valve w diaphra		A					
A7502	Replacement diaphragm/fplate		A					
A7503	HMES filter holder or cap		A					
A7504	Tracheostoma HMES filter		A					
A7505	HMES or trach valve housing		A					
A7506	HMES/trachvalve adhesivedisk		A					
A7507	Integrated filter & holder		A					
A7508	Housing & Integrated Adhesiv		A					
A7509	Heat & moisture exchange sys		A					
A7520	Trach/laryn tube non-cuffed		A					
A7521	Trach/laryn tube cuffed		A					
A7522	Trach/laryn tube stainless		A					
A7523	Tracheostomy shower protect		A					
A7524	Tracheostoma stent/stud/bttn		A					
A7525	Tracheostomy mask		A					
A7526	Tracheostomy tube collar		A					
A7527	Trach/laryn tube plug/stop		A					
A8000	Soft protect helmet prefab		Y					
A8001	Hard protect helmet prefab		Y					
A8002	Soft protect helmet custom		Y					
A8003	Hard protect helmet custom		Y					
A8004	Repl soft interface, helmet		Y					
A9150	Misc/exper non-prescript dru		B					
A9152	Single vitamin nos		E					
A9153	Multi-vitamin nos		E					
A9155	Artificial saliva		B					
A9180	Lice treatment, topical		E					
A9270	Non-covered item or service		E					
A9274	Ext amb insulin delivery sys		E					
A9275	Disp home glucose monitor		E					

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
A9276	Disposable sensor, CGM sys		E					
A9277	External transmitter, CGM		E					
A9278	External receiver, CGM sys		E					
A9279	Monitoring feature/deviceNOC		E					
A9280	Alert device, noc		E					
A9281	Reaching/grabbing device		E					
A9282	Wig any type		E					
A9283	Foot press off load supp dev		E					
A9284	Non-electronic spirometer	NI	N					
A9300	Exercise equipment		E					
A9500	Tc99m sestamibi		N					
A9501	Technetium TC-99m teboroxime		N					
A9502	Tc99m tetrofosmin		N					
A9503	Tc99m medronate		N					
A9504	Tc99m apcitide		N					
A9505	TL201 thallium		N					
A9507	In111 capromab		N					
A9508	I131 iodobenguate, dx		N					
A9509	Iodine I-123 sod iodide mil		N					
A9510	Tc99m disofenin		N					
A9512	Tc99m pertechnetate		N					
A9516	Iodine I-123 sod iodide mic		N					
A9517	I131 iodide cap, rx		H	1064				
A9521	Tc99m exametazime		N					
A9524	I131 serum albumin, dx		N					
A9526	Nitrogen N-13 ammonia		N					
A9527	Iodine I-125 sodium iodide		U	2632				
A9528	Iodine I-131 iodide cap, dx		N					
A9529	I131 iodide sol, dx		N					
A9530	I131 iodide sol, rx		H	1150				
A9531	I131 max 100uCi		N					
A9532	I125 serum albumin, dx		N					
A9535	Injection, methylene blue		N					
A9536	Tc99m depreotide		N					
A9537	Tc99m mebrofenin		N					
A9538	Tc99m pyrophosphate		N					
A9539	Tc99m pentetate		N					
A9540	Tc99m MAA		N					
A9541	Tc99m sulfur colloid		N					
A9542	In111 ibritumomab, dx		N					
A9543	Y90 ibritumomab, rx		H	1643				
A9544	I131 tositumomab, dx		N					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
A9545	I131 tositumomab, rx		H	1645				
A9546	Co57/58		N					
A9547	In111 oxyquinoline		N					
A9548	In111 pentetate		N					
A9550	Tc99m gluceptate		N					
A9551	Tc99m succimer		N					
A9552	F18 fdg		N					
A9553	Cr51 chromate		N					
A9554	I125 iothalamate, dx		N					
A9555	Rb82 rubidium		N					
A9556	Ga67 gallium		N					
A9557	Tc99m bicisate		N					
A9558	Xe133 xenon 10mci		N					
A9559	Co57 cyano		N					
A9560	Tc99m labeled rbc		N					
A9561	Tc99m oxidronate		N					
A9562	Tc99m mertiatide		N					
A9563	P32 Na phosphate		H	1675				
A9564	P32 chromic phosphate		H	1676				
A9566	Tc99m fanolesomab		N					
A9567	Technetium TC-99m aerosol		N					
A9568	Technetium tc99m arcitumomab		N					
A9569	Technetium TC-99m auto WBC		N					
A9570	Indium In-111 auto WBC		N					
A9571	Indium IN-111 auto platelet		N					
A9572	Indium In-111 pentetreotide		N					
A9576	Inj prohance multipack		N					
A9577	Inj multihance		N					
A9578	Inj multihance multipack		N					
A9579	Gad-base MR contrast NOS,1ml		N					
A9580	Sodium fluoride F-18	NI	N					
A9600	Sr89 strontium		H	0701				
A9605	Sm 153 lexidronm		H	0702				
A9698	Non-rad contrast materialNOC		N					
A9699	Radiopharm rx agent noc		N					
A9700	Echocardiography Contrast		B					
A9900	Supply/accessory/service		Y					
A9901	Delivery/set up/dispensing		A					
A9999	DME supply or accessory, nos		Y					
B4034	Enter feed supkit syr by day		Y					
B4035	Enteral feed supp pump per d		Y					
B4036	Enteral feed sup kit grav by		Y					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
B4081	Enteral ng tubing w/ stylet		Y					
B4082	Enteral ng tubing w/o stylet		Y					
B4083	Enteral stomach tube levine		Y					
B4087	Gastro/jejuno tube, std		A					
B4088	Gastro/jejuno tube, low-pro		A					
B4100	Food thickener oral		E					
B4102	EF adult fluids and electro		Y					
B4103	EF ped fluid and electrolyte		Y					
B4104	Additive for enteral formula		E					
B4149	EF blenderized foods		Y					
B4150	EF complet w/intact nutrient		Y					
B4152	EF calorie dense>/=1.5Kcal		Y					
B4153	EF hydrolyzed/amino acids		Y					
B4154	EF spec metabolic noninherit		Y					
B4155	EF incomplete/modular		Y					
B4157	EF special metabolic inherit		Y					
B4158	EF ped complete intact nut		Y					
B4159	EF ped complete soy based		Y					
B4160	EF ped caloric dense>/=0.7kc		Y					
B4161	EF ped hydrolyzed/amino acid		Y					
B4162	EF ped specmetabolic inherit		Y					
B4164	Parenteral 50% dextrose solu		Y					
B4168	Parenteral sol amino acid 3.		Y					
B4172	Parenteral sol amino acid 5.		Y					
B4176	Parenteral sol amino acid 7-		Y					
B4178	Parenteral sol amino acid >		Y					
B4180	Parenteral sol carb > 50%		Y					
B4185	Parenteral sol 10 gm lipids		B					
B4189	Parenteral sol amino acid &		Y					
B4193	Parenteral sol 52-73 gm prot		Y					
B4197	Parenteral sol 74-100 gm pro		Y					
B4199	Parenteral sol > 100gm prote		Y					
B4216	Parenteral nutrition additiv		Y					
B4220	Parenteral supply kit premix		Y					
B4222	Parenteral supply kit homemi		Y					
B4224	Parenteral administration ki		Y					
B5000	Parenteral sol renal-amirosy		Y					
B5100	Parenteral sol hepatic-fream		Y					
B5200	Parenteral sol stres-brnch c		Y					
B9000	Enter infusion pump w/o alrm		Y					
B9002	Enteral infusion pump w/ ala		Y					
B9004	Parenteral infus pump portab		Y					

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
B9006	Parenteral infus pump statio		Y					
B9998	Enteral supp not otherwise c		Y					
B9999	Parenteral supp not othrws c		Y					
C1300	HYPERBARIC Oxygen		S	0659	1.5677	$103.56		$20.72
C1713	Anchor/screw bn/bn,tis/bn		N					
C1714	Cath, trans atherectomy, dir		N					
C1715	Brachytherapy needle		N					
C1716	Brachytx, non-str, Gold-198		U	1716				
C1717	Brachytx, non-str,HDR Ir-192		U	1717				
C1719	Brachytx, NS, Non-HDRIr-192		U	1719				
C1721	AICD, dual chamber		N					
C1722	AICD, single chamber		N					
C1724	Cath, trans atherec,rotation		N					
C1725	Cath, translumin non-laser		N					
C1726	Cath, bal dil, non-vascular		N					
C1727	Cath, bal tis dis, non-vas		N					
C1728	Cath, brachytx seed adm		N					
C1729	Cath, drainage		N					
C1730	Cath, EP, 19 or few elect		N					
C1731	Cath, EP, 20 or more elec		N					
C1732	Cath, EP, diag/abl, 3D/vect		N					
C1733	Cath, EP, othr than cool-tip		N					
C1750	Cath, hemodialysis,long-term		N					
C1751	Cath, inf, per/cent/midline		N					
C1752	Cath,hemodialysis,short-term		N					
C1753	Cath, intravas ultrasound		N					
C1754	Catheter, intradiscal		N					
C1755	Catheter, intraspinal		N					
C1756	Cath, pacing, transesoph		N					
C1757	Cath, thrombectomy/embolect		N					
C1758	Catheter, ureteral		N					
C1759	Cath, intra echocardiography		N					
C1760	Closure dev, vasc		N					
C1762	Conn tiss, human(inc fascia)		N					
C1763	Conn tiss, non-human		N					
C1764	Event recorder, cardiac		N					
C1765	Adhesion barrier		N					
C1766	Intro/sheath,strble,non-peel		N					
C1767	Generator, neuro non-recharg		N					
C1768	Graft, vascular		N					
C1769	Guide wire		N					
C1770	Imaging coil, MR, insertable		N					

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
C1771	Rep dev, urinary, w/sling		N					
C1772	Infusion pump, programmable		N					
C1773	Ret dev, insertable		N					
C1776	Joint device (implantable)		N					
C1777	Lead, AICD, endo single coil		N					
C1778	Lead, neurostimulator		N					
C1779	Lead, pmkr, transvenous VDD		N					
C1780	Lens, intraocular (new tech)		N					
C1781	Mesh (implantable)		N					
C1782	Morcellator		N					
C1783	Ocular imp, aqueous drain de		N					
C1784	Ocular dev, intraop, det ret		N					
C1785	Pmkr, dual, rate-resp		N					
C1786	Pmkr, single, rate-resp		N					
C1787	Patient progr, neurostim		N					
C1788	Port, indwelling, imp		N					
C1789	Prosthesis, breast, imp		N					
C1813	Prosthesis, penile, inflatab		N					
C1814	Retinal tamp, silicone oil		N					
C1815	Pros, urinary sph, imp		N					
C1816	Receiver/transmitter, neuro		N					
C1817	Septal defect imp sys		N					
C1818	Integrated keratoprosthesis		N					
C1819	Tissue localization-excision		N					
C1820	Generator neuro rechg bat sy		N					
C1821	Interspinous implant	CH	N					
C1874	Stent, coated/cov w/del sys		N					
C1875	Stent, coated/cov w/o del sy		N					
C1876	Stent, non-coa/non-cov w/del		N					
C1877	Stent, non-coat/cov w/o del		N					
C1878	Matrl for vocal cord		N					
C1879	Tissue marker, implantable		N					
C1880	Vena cava filter		N					
C1881	Dialysis access system		N					
C1882	AICD, other than sing/dual		N					
C1883	Adapt/ext, pacing/neuro lead		N					
C1884	Embolization Protect syst		N					
C1885	Cath, translumin angio laser		N					
C1887	Catheter, guiding		N					
C1888	Endovas non-cardiac abl cath		N					
C1891	Infusion pump,non-prog, perm		N					
C1892	Intro/sheath,fixed,peel-away		N					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
C1893	Intro/sheath, fixed,non-peel		N					
C1894	Intro/sheath, non-laser		N					
C1895	Lead, AICD, endo dual coil		N					
C1896	Lead, AICD, non sing/dual		N					
C1897	Lead, neurostim test kit		N					
C1898	Lead, pmkr, other than trans		N					
C1899	Lead, pmkr/AICD combination		N					
C1900	Lead, coronary venous		N					
C2614	Probe, perc lumb disc		N					
C2615	Sealant, pulmonary, liquid		N					
C2616	Brachytx, non-str,Yttrium-90		U	2616				
C2617	Stent, non-cor, tem w/o del		N					
C2618	Probe, cryoablation		N					
C2619	Pmkr, dual, non rate-resp		N					
C2620	Pmkr, single, non rate-resp		N					
C2621	Pmkr, other than sing/dual		N					
C2622	Prosthesis, penile, non-inf		N					
C2625	Stent, non-cor, tem w/del sy		N					
C2626	Infusion pump, non-prog,temp		N					
C2627	Cath, suprapubic/cystoscopic		N					
C2628	Catheter, occlusion		N					
C2629	Intro/sheath, laser		N					
C2630	Cath, EP, cool-tip		N					
C2631	Rep dev, urinary, w/o sling		N					
C2634	Brachytx, non-str, HA, I-125		U	2634				
C2635	Brachytx, non-str, HA, P-103		U	2635				
C2636	Brachy linear, non-str,P-103		U	2636				
C2637	Brachy,non-str,Ytterbium-169		B					
C2638	Brachytx, stranded, I-125		U	2638				
C2639	Brachytx, non-stranded,I-125		U	2639				
C2640	Brachytx, stranded, P-103		U	2640				
C2641	Brachytx, non-stranded,P-103		U	2641				
C2642	Brachytx, stranded, C-131		U	2642				
C2643	Brachytx, non-stranded,C-131		U	2643				
C2698	Brachytx, stranded, NOS		U	2698				
C2699	Brachytx, non-stranded, NOS		U	2699				
C8900	MRA w/cont, abd	CH	Q3	0284	6.4701	$427.41	$148.40	$85.49
C8901	MRA w/o cont, abd	CH	Q3	0336	5.2689	$348.06	$137.40	$69.62
C8902	MRA w/o fol w/cont, abd	CH	Q3	0337	8.1548	$538.70	$199.53	$107.74
C8903	MRI w/cont, breast, uni	CH	Q3	0284	6.4701	$427.41	$148.40	$85.49
C8904	MRI w/o cont, breast, uni	CH	Q3	0336	5.2689	$348.06	$137.40	$69.62
C8905	MRI w/o fol w/cont, brst, un	CH	Q3	0337	8.1548	$538.70	$199.53	$107.74

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
C8906	MRI w/cont, breast, bi	CH	Q3	0284	6.4701	$427.41	$148.40	$85.49
C8907	MRI w/o cont, breast, bi	CH	Q3	0336	5.2689	$348.06	$137.40	$69.62
C8908	MRI w/o fol w/cont, breast,	CH	Q3	0337	8.1548	$538.70	$199.53	$107.74
C8909	MRA w/cont, chest	CH	Q3	0284	6.4701	$427.41	$148.40	$85.49
C8910	MRA w/o cont, chest	CH	Q3	0336	5.2689	$348.06	$137.40	$69.62
C8911	MRA w/o fol w/cont, chest	CH	Q3	0337	8.1548	$538.70	$199.53	$107.74
C8912	MRA w/cont, lwr ext	CH	Q3	0284	6.4701	$427.41	$148.40	$85.49
C8913	MRA w/o cont, lwr ext	CH	Q3	0336	5.2689	$348.06	$137.40	$69.62
C8914	MRA w/o fol w/cont, lwr ext	CH	Q3	0337	8.1548	$538.70	$199.53	$107.74
C8918	MRA w/cont, pelvis	CH	Q3	0284	6.4701	$427.41	$148.40	$85.49
C8919	MRA w/o cont, pelvis	CH	Q3	0336	5.2689	$348.06	$137.40	$69.62
C8920	MRA w/o fol w/cont, pelvis	CH	Q3	0337	8.1548	$538.70	$199.53	$107.74
C8921	TTE w or w/o fol w/cont, com		S	0128	8.5705	$566.16	$216.29	$113.24
C8922	TTE w or w/o fol w/cont, f/u		S	0128	8.5705	$566.16	$216.29	$113.24
C8923	2D TTE w or w/o fol w/con,co		S	0128	8.5705	$566.16	$216.29	$113.24
C8924	2D TTE w or w/o fol w/con,fu		S	0128	8.5705	$566.16	$216.29	$113.24
C8925	2D TEE w or w/o fol w/con,in		S	0128	8.5705	$566.16	$216.29	$113.24
C8926	TEE w or w/o fol w/cont,cong		S	0128	8.5705	$566.16	$216.29	$113.24
C8927	TEE w or w/o fol w/cont, mon		S	0128	8.5705	$566.16	$216.29	$113.24
C8928	TTE w or w/o fol w/con,stres		S	0128	8.5705	$566.16	$216.29	$113.24
C8929	TTE w or wo fol wcon,Doppler	NI	S	0128	8.5705	$566.16	$216.29	$113.24
C8930	TTE w or w/o contr, cont ECG	NI	S	0128	8.5705	$566.16	$216.29	$113.24
C8957	Prolonged IV inf, req pump	CH	S	0440	2.8454	$187.96		$37.60
C9003	Palivizumab, per 50 mg	CH	D					
C9113	Inj pantoprazole sodium, via		N					
C9121	Injection, argatroban		K	9121		$19.87		$3.98
C9237	Inj, lanreotide acetate	CH	D					
C9238	Inj, levetiracetam	CH	D					
C9239	Inj, temsirolimus	CH	D					
C9240	Injection, ixabepilone	CH	D					
C9241	Injection, doripenem	CH	D					
C9242	Injection, fosaprepitant	CH	D					
C9243	Injection, bendamustine hcl	CH	D					
C9244	Injection, regadenoson	CH	D					
C9245	Injection, romiplostim	NI	G	9245		$45.05		$8.84
C9246	Inj, gadoxetate disodium	NI	G	9246		$13.78		$2.70
C9247	Inj, iobenguane, I-123, dx	NI	N					
C9248	Inj, clevidipine butyrate	NI	G	9248		$6.15		$1.21
C9352	Neuragen nerve guide, per cm	CH	N					
C9353	Neurawrap nerve protector,cm	CH	N					
C9354	Veritas collagen matrix, cm2		G	9354		$11.18		$2.19
C9355	Neuromatrix nerve cuff, cm		G	9355		$212.46		$41.69

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
C9356	TenoGlide tendon prot, cm2		G	9356		$28.32		$5.56
C9357	Flowable wound matrix, 1 cc	CH	D					
C9358	SurgiMend, 0.5cm2		G	9358		$10.55		$2.07
C9359	Implant, bone void filler		G	9359		$56.71		$11.13
C9399	Unclassified drugs or biolog		A					
C9716	Radiofrequency energy to anu		T	0150	31.0398	$2,050.46	$437.12	$410.10
C9723	Dyn IR Perf Img	CH	D					
C9724	EPS gast cardia plic		T	0422	25.3785	$1,676.48	$448.81	$335.30
C9725	Place endorectal app	CH	T	0148	5.8523	$386.60		$77.32
C9726	Rxt breast appl place/remov	CH	T	0028	21.4851	$1,419.28	$303.74	$283.86
C9727	Insert palate implants	CH	T	0252	7.5330	$497.62	$109.16	$99.53
C9728	Place device/marker, non pro	CH	X	0310	13.5167	$892.90	$325.27	$178.58
C9898	Inpnt stay radiolabeled item		N					
C9899	Inpt implant pros dev,no cov	NI	A					
D0120	Periodic oral evaluation		E					
D0140	Limit oral eval problm focus		E					
D0145	Oral evaluation, pt < 3yrs		E					
D0150	Comprehensve oral evaluation		S	0330	7.6534	$505.58		$101.12
D0160	Extensv oral eval prob focus		E					
D0170	Re-eval,est pt,problem focus		E					
D0180	Comp periodontal evaluation		E					
D0210	Intraor complete film series		E					
D0220	Intraoral periapical first f		E					
D0230	Intraoral periapical ea add		E					
D0240	Intraoral occlusal film		S	0330	7.6534	$505.58		$101.12
D0250	Extraoral first film		S	0330	7.6534	$505.58		$101.12
D0260	Extraoral ea additional film		S	0330	7.6534	$505.58		$101.12
D0270	Dental bitewing single film		S	0330	7.6534	$505.58		$101.12
D0272	Dental bitewings two films		S	0330	7.6534	$505.58		$101.12
D0273	Bitewings - three films		E					
D0274	Dental bitewings four films		S	0330	7.6534	$505.58		$101.12
D0277	Vert bitewings-sev to eight		S	0330	7.6534	$505.58		$101.12
D0290	Dental film skull/facial bon		E					
D0310	Dental saliography		E					
D0320	Dental tmj arthrogram incl i		E					
D0321	Dental other tmj films		E					
D0322	Dental tomographic survey		E					
D0330	Dental panoramic film		E					
D0340	Dental cephalometric film		E					
D0350	Oral/facial photo images		E					
D0360	Cone beam ct		E					
D0362	Cone beam, two dimensional		E					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
D0363	Cone beam, three dimensional		E					
D0415	Collection of microorganisms		E					
D0416	Viral culture		B					
D0421	Gen tst suscept oral disease		B					
D0425	Caries susceptibility test		E					
D0431	Diag tst detect mucos abnorm		B					
D0460	Pulp vitality test		S	0330	7.6534	$505.58		$101.12
D0470	Diagnostic casts		E					
D0472	Gross exam, prep & report		B					
D0473	Micro exam, prep & report		B					
D0474	Micro w exam of surg margins		B					
D0475	Decalcification procedure		B					
D0476	Spec stains for microorganis		B					
D0477	Spec stains not for microorg		B					
D0478	Immunohistochemical stains		B					
D0479	Tissue in-situ hybridization		B					
D0480	Cytopath smear prep & report		B					
D0481	Electron microscopy diagnost		B					
D0482	Direct immunofluorescence		B					
D0483	Indirect immunofluorescence		B					
D0484	Consult slides prep elsewher		B					
D0485	Consult inc prep of slides		B					
D0486	Accession of brush biopsy		E					
D0502	Other oral pathology procedu		B					
D0999	Unspecified diagnostic proce		B					
D1110	Dental prophylaxis adult		E					
D1120	Dental prophylaxis child		E					
D1203	Topical fluor w/o prophy chi		E					
D1204	Topical fluor w/o prophy adu		E					
D1206	Topical fluoride varnish		E					
D1310	Nutri counsel-control caries		E					
D1320	Tobacco counseling		E					
D1330	Oral hygiene instruction		E					
D1351	Dental sealant per tooth		E					
D1510	Space maintainer fxd unilat		S	0330	7.6534	$505.58		$101.12
D1515	Fixed bilat space maintainer		S	0330	7.6534	$505.58		$101.12
D1520	Remove unilat space maintain		S	0330	7.6534	$505.58		$101.12
D1525	Remove bilat space maintain		S	0330	7.6534	$505.58		$101.12
D1550	Recement space maintainer		S	0330	7.6534	$505.58		$101.12
D1555	Remove fix space maintainer		E					
D2140	Amalgam one surface permanen		E					
D2150	Amalgam two surfaces permane		E					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
D2160	Amalgam three surfaces perma		E					
D2161	Amalgam 4 or > surfaces perm		E					
D2330	Resin one surface-anterior		E					
D2331	Resin two surfaces-anterior		E					
D2332	Resin three surfaces-anterio		E					
D2335	Resin 4/> surf or w incis an		E					
D2390	Ant resin-based cmpst crown		E					
D2391	Post 1 srfc resinbased cmpst		E					
D2392	Post 2 srfc resinbased cmpst		E					
D2393	Post 3 srfc resinbased cmpst		E					
D2394	Post >=4srfc resinbase cmpst		E					
D2410	Dental gold foil one surface		E					
D2420	Dental gold foil two surface		E					
D2430	Dental gold foil three surfa		E					
D2510	Dental inlay metalic 1 surf		E					
D2520	Dental inlay metallic 2 surf		E					
D2530	Dental inlay metl 3/more sur		E					
D2542	Dental onlay metallic 2 surf		E					
D2543	Dental onlay metallic 3 surf		E					
D2544	Dental onlay metl 4/more sur		E					
D2610	Inlay porcelain/ceramic 1 su		E					
D2620	Inlay porcelain/ceramic 2 su		E					
D2630	Dental onlay porc 3/more sur		E					
D2642	Dental onlay porcelin 2 surf		E					
D2643	Dental onlay porcelin 3 surf		E					
D2644	Dental onlay porc 4/more sur		E					
D2650	Inlay composite/resin one su		E					
D2651	Inlay composite/resin two su		E					
D2652	Dental inlay resin 3/mre sur		E					
D2662	Dental onlay resin 2 surface		E					
D2663	Dental onlay resin 3 surface		E					
D2664	Dental onlay resin 4/mre sur		E					
D2710	Crown resin-based indirect		E					
D2712	Crown 3/4 resin-based compos		E					
D2720	Crown resin w/ high noble me		E					
D2721	Crown resin w/ base metal		E					
D2722	Crown resin w/ noble metal		E					
D2740	Crown porcelain/ceramic subs		E					
D2750	Crown porcelain w/ h noble m		E					
D2751	Crown porcelain fused base m		E					
D2752	Crown porcelain w/ noble met		E					
D2780	Crown 3/4 cast hi noble met		E					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
D2781	Crown 3/4 cast base metal		E					
D2782	Crown 3/4 cast noble metal		E					
D2783	Crown 3/4 porcelain/ceramic		E					
D2790	Crown full cast high noble m		E					
D2791	Crown full cast base metal		E					
D2792	Crown full cast noble metal		E					
D2794	Crown-titanium		E					
D2799	Provisional crown		E					
D2910	Recement inlay onlay or part		E					
D2915	Recement cast or prefab post		E					
D2920	Dental recement crown		E					
D2930	Prefab stnlss steel crwn pri		E					
D2931	Prefab stnlss steel crown pe		E					
D2932	Prefabricated resin crown		E					
D2933	Prefab stainless steel crown		E					
D2934	Prefab steel crown primary		E					
D2940	Dental sedative filling		E					
D2950	Core build-up incl any pins		E					
D2951	Tooth pin retention		E					
D2952	Post and core cast + crown		E					
D2953	Each addtnl cast post		E					
D2954	Prefab post/core + crown		E					
D2955	Post removal		E					
D2957	Each addtnl prefab post		E					
D2960	Laminate labial veneer		E					
D2961	Lab labial veneer resin		E					
D2962	Lab labial veneer porcelain		E					
D2970	Temp crown (fractured tooth)		E					
D2971	Add proc construct new crown		E					
D2975	Coping		E					
D2980	Crown repair		E					
D2999	Dental unspec restorative pr		S	0330	7.6534	$505.58		$101.12
D3110	Pulp cap direct		E					
D3120	Pulp cap indirect		E					
D3220	Therapeutic pulpotomy		E					
D3221	Gross pulpal debridement		E					
D3230	Pulpal therapy anterior prim		E					
D3240	Pulpal therapy posterior pri		E					
D3310	Anterior		E					
D3320	Root canal therapy 2 canals		E					
D3330	Root canal therapy 3 canals		E					
D3331	Non-surg tx root canal obs		E					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
D3332	Incomplete endodontic tx		E					
D3333	Internal root repair		E					
D3346	Retreat root canal anterior		E					
D3347	Retreat root canal bicuspid		E					
D3348	Retreat root canal molar		E					
D3351	Apexification/recalc initial		E					
D3352	Apexification/recalc interim		E					
D3353	Apexification/recalc final		E					
D3410	Apicoect/perirad surg anter		E					
D3421	Root surgery bicuspid		E					
D3425	Root surgery molar		E					
D3426	Root surgery ea add root		E					
D3430	Retrograde filling		E					
D3450	Root amputation		E					
D3460	Endodontic endosseous implan		S	0330	7.6534	$505.58		$101.12
D3470	Intentional replantation		E					
D3910	Isolation- tooth w rubb dam		E					
D3920	Tooth splitting		E					
D3950	Canal prep/fitting of dowel		E					
D3999	Endodontic procedure		S	0330	7.6534	$505.58		$101.12
D4210	Gingivectomy/plasty per quad		E					
D4211	Gingivectomy/plasty per toot		E					
D4230	Ana crown exp 4 or> per quad		E					
D4231	Ana crown exp 1-3 per quad		E					
D4240	Gingival flap proc w/ planin		E					
D4241	Gngvl flap w rootplan 1-3 th		E					
D4245	Apically positioned flap		E					
D4249	Crown lengthen hard tissue		E					
D4260	Osseous surgery per quadrant		S	0330	7.6534	$505.58		$101.12
D4261	Osseous surgl-3teethperquad		E					
D4263	Bone replce graft first site		S	0330	7.6534	$505.58		$101.12
D4264	Bone replce graft each add		S	0330	7.6534	$505.58		$101.12
D4265	Bio mtrls to aid soft/os reg		E					
D4266	Guided tiss regen resorble		E					
D4267	Guided tiss regen nonresorb		E					
D4268	Surgical revision procedure		S	0330	7.6534	$505.58		$101.12
D4270	Pedicle soft tissue graft pr		S	0330	7.6534	$505.58		$101.12
D4271	Free soft tissue graft proc		S	0330	7.6534	$505.58		$101.12
D4273	Subepithelial tissue graft		S	0330	7.6534	$505.58		$101.12
D4274	Distal/proximal wedge proc		E					
D4275	Soft tissue allograft		E					
D4276	Con tissue w dble ped graft		E					

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
D4320	Provision splnt intracoronal		E					
D4321	Provisional splint extracoro		E					
D4341	Periodontal scaling & root		E					
D4342	Periodontal scaling 1-3teeth		E					
D4355	Full mouth debridement		S	0330	7.6534	$505.58		$101.12
D4381	Localized delivery antimicro		S	0330	7.6534	$505.58		$101.12
D4910	Periodontal maint procedures		E					
D4920	Unscheduled dressing change		E					
D4999	Unspecified periodontal proc		E					
D5110	Dentures complete maxillary		E					
D5120	Dentures complete mandible		E					
D5130	Dentures immediat maxillary		E					
D5140	Dentures immediat mandible		E					
D5211	Dentures maxill part resin		E					
D5212	Dentures mand part resin		E					
D5213	Dentures maxill part metal		E					
D5214	Dentures mandibl part metal		E					
D5225	Maxillary part denture flex		E					
D5226	Mandibular part denture flex		E					
D5281	Removable partial denture		E					
D5410	Dentures adjust cmplt maxil		E					
D5411	Dentures adjust cmplt mand		E					
D5421	Dentures adjust part maxill		E					
D5422	Dentures adjust part mandbl		E					
D5510	Dentur repr broken compl bas		E					
D5520	Replace denture teeth complt		E					
D5610	Dentures repair resin base		E					
D5620	Rep part denture cast frame		E					
D5630	Rep partial denture clasp		E					
D5640	Replace part denture teeth		E					
D5650	Add tooth to partial denture		E					
D5660	Add clasp to partial denture		E					
D5670	Replc tth&acrlc on mtl frmwk		E					
D5671	Replc tth&acrlc mandibular		E					
D5710	Dentures rebase cmplt maxil		E					
D5711	Dentures rebase cmplt mand		E					
D5720	Dentures rebase part maxill		E					
D5721	Dentures rebase part mandbl		E					
D5730	Denture reln cmplt maxil ch		E					
D5731	Denture reln cmplt mand chr		E					
D5740	Denture reln part maxil chr		E					
D5741	Denture reln part mand chr		E					

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
D5750	Denture reln cmplt max lab		E					
D5751	Denture reln cmplt mand lab		E					
D5760	Denture reln part maxil lab		E					
D5761	Denture reln part mand lab		E					
D5810	Denture interm cmplt maxill		E					
D5811	Denture interm cmplt mandbl		E					
D5820	Denture interm part maxill		E					
D5821	Denture interm part mandbl		E					
D5850	Denture tiss conditn maxill		E					
D5851	Denture tiss condtin mandbl		E					
D5860	Overdenture complete		E					
D5861	Overdenture partial		E					
D5862	Precision attachment		E					
D5867	Replacement of precision att		E					
D5875	Prosthesis modification		E					
D5899	Removable prosthodontic proc		E					
D5911	Facial moulage sectional		S	0330	7.6534	$505.58		$101.12
D5912	Facial moulage complete		S	0330	7.6534	$505.58		$101.12
D5913	Nasal prosthesis		E					
D5914	Auricular prosthesis		E					
D5915	Orbital prosthesis		E					
D5916	Ocular prosthesis		E					
D5919	Facial prosthesis		E					
D5922	Nasal septal prosthesis		E					
D5923	Ocular prosthesis interim		E					
D5924	Cranial prosthesis		E					
D5925	Facial augmentation implant		E					
D5926	Replacement nasal prosthesis		E					
D5927	Auricular replacement		E					
D5928	Orbital replacement		E					
D5929	Facial replacement		E					
D5931	Surgical obturator		E					
D5932	Postsurgical obturator		E					
D5933	Refitting of obturator		E					
D5934	Mandibular flange prosthesis		E					
D5935	Mandibular denture prosth		E					
D5936	Temp obturator prosthesis		E					
D5937	Trismus appliance		E					
D5951	Feeding aid		E					
D5952	Pediatric speech aid		E					
D5953	Adult speech aid		E					
D5954	Superimposed prosthesis		E					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
D5955	Palatal lift prosthesis		E					
D5958	Intraoral con def inter plt		E					
D5959	Intraoral con def mod palat		E					
D5960	Modify speech aid prosthesis		E					
D5982	Surgical stent		E					
D5983	Radiation applicator		S	0330	7.6534	$505.58		$101.12
D5984	Radiation shield		S	0330	7.6534	$505.58		$101.12
D5985	Radiation cone locator		S	0330	7.6534	$505.58		$101.12
D5986	Fluoride applicator		E					
D5987	Commissure splint		S	0330	7.6534	$505.58		$101.12
D5988	Surgical splint		E					
D5999	Maxillofacial prosthesis		E					
D6010	Odontics endosteal implant		E					
D6012	Endosteal implant		E					
D6040	Odontics eposteal implant		E					
D6050	Odontics transosteal implnt		E					
D6053	Implnt/abtmnt spprt remv dnt		E					
D6054	Implnt/abtmnt spprt remvprtl		E					
D6055	Implant connecting bar		E					
D6056	Prefabricated abutment		E					
D6057	Custom abutment		E					
D6058	Abutment supported crown		E					
D6059	Abutment supported mtl crown		E					
D6060	Abutment supported mtl crown		E					
D6061	Abutment supported mtl crown		E					
D6062	Abutment supported mtl crown		E					
D6063	Abutment supported mtl crown		E					
D6064	Abutment supported mtl crown		E					
D6065	Implant supported crown		E					
D6066	Implant supported mtl crown		E					
D6067	Implant supported mtl crown		E					
D6068	Abutment supported retainer		E					
D6069	Abutment supported retainer		E					
D6070	Abutment supported retainer		E					
D6071	Abutment supported retainer		E					
D6072	Abutment supported retainer		E					
D6073	Abutment supported retainer		E					
D6074	Abutment supported retainer		E					
D6075	Implant supported retainer		E					
D6076	Implant supported retainer		E					
D6077	Implant supported retainer		E					
D6078	Implnt/abut suprtd fixd dent		E					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
D6079	Implnt/abut suprtd fixd dent		E					
D6080	Implant maintenance		E					
D6090	Repair implant		E					
D6091	Repl semi/precision attach		E					
D6092	Recement supp crown		E					
D6093	Recement supp part denture		E					
D6094	Abut support crown titanium		E					
D6095	Odontics repr abutment		E					
D6100	Removal of implant		E					
D6190	Radio/surgical implant index		E					
D6194	Abut support retainer titani		E					
D6199	Implant procedure		E					
D6205	Pontic-indirect resin based		E					
D6210	Prosthodont high noble metal		E					
D6211	Bridge base metal cast		E					
D6212	Bridge noble metal cast		E					
D6214	Pontic titanium		E					
D6240	Bridge porcelain high noble		E					
D6241	Bridge porcelain base metal		E					
D6242	Bridge porcelain nobel metal		E					
D6245	Bridge porcelain/ceramic		E					
D6250	Bridge resin w/high noble		E					
D6251	Bridge resin base metal		E					
D6252	Bridge resin w/noble metal		E					
D6253	Provisional pontic		E					
D6545	Dental retainr cast metl		E					
D6548	Porcelain/ceramic retainer		E					
D6600	Porcelain/ceramic inlay 2srf		E					
D6601	Porc/ceram inlay >= 3 surfac		E					
D6602	Cst hgh nble mtl inlay 2 srf		E					
D6603	Cst hgh nble mtl inlay >=3sr		E					
D6604	Cst bse mtl inlay 2 surfaces		E					
D6605	Cst bse mtl inlay >= 3 surfa		E					
D6606	Cast noble metal inlay 2 sur		E					
D6607	Cst noble mtl inlay >=3 surf		E					
D6608	Onlay porc/crmc 2 surfaces		E					
D6609	Onlay porc/crmc >=3 surfaces		E					
D6610	Onlay cst hgh nbl mtl 2 srfc		E					
D6611	Onlay cst hgh nbl mtl >=3srf		E					
D6612	Onlay cst base mtl 2 surface		E					
D6613	Onlay cst base mtl >=3 surfa		E					
D6614	Onlay cst nbl mtl 2 surfaces		E					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
D6615	Onlay cst nbl mtl >=3 surfac		E					
D6624	Inlay titanium		E					
D6634	Onlay titanium		E					
D6710	Crown-indirect resin based		E					
D6720	Retain crown resin w hi nble		E					
D6721	Crown resin w/base metal		E					
D6722	Crown resin w/noble metal		E					
D6740	Crown porcelain/ceramic		E					
D6750	Crown porcelain high noble		E					
D6751	Crown porcelain base metal		E					
D6752	Crown porcelain noble metal		E					
D6780	Crown 3/4 high noble metal		E					
D6781	Crown 3/4 cast based metal		E					
D6782	Crown 3/4 cast noble metal		E					
D6783	Crown 3/4 porcelain/ceramic		E					
D6790	Crown full high noble metal		E					
D6791	Crown full base metal cast		E					
D6792	Crown full noble metal cast		E					
D6793	Provisional retainer crown		E					
D6794	Crown titanium		E					
D6920	Dental connector bar		S	0330	7.6534	$505.58		$101.12
D6930	Dental recement bridge		E					
D6940	Stress breaker		E					
D6950	Precision attachment		E					
D6970	Post & core plus retainer		E					
D6972	Prefab post & core plus reta		E					
D6973	Core build up for retainer		E					
D6975	Coping metal		E					
D6976	Each addtnl cast post		E					
D6977	Each addtl prefab post		E					
D6980	Bridge repair		E					
D6985	Pediatric partial denture fx		E					
D6999	Fixed prosthodontic proc		E					
D7111	Extraction coronal remnants		S	0330	7.6534	$505.58		$101.12
D7140	Extraction erupted tooth/exr		S	0330	7.6534	$505.58		$101.12
D7210	Rem imp tooth w mucoper flp		S	0330	7.6534	$505.58		$101.12
D7220	Impact tooth remov soft tiss		S	0330	7.6534	$505.58		$101.12
D7230	Impact tooth remov part bony		S	0330	7.6534	$505.58		$101.12
D7240	Impact tooth remov comp bony		S	0330	7.6534	$505.58		$101.12
D7241	Impact tooth rem bony w/comp		S	0330	7.6534	$505.58		$101.12
D7250	Tooth root removal		S	0330	7.6534	$505.58		$101.12
D7260	Oral antral fistula closure		S	0330	7.6534	$505.58		$101.12

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
D7261	Primary closure sinus perf		S	0330	7.6534	$505.58		$101.12
D7270	Tooth reimplantation		E					
D7272	Tooth transplantation		E					
D7280	Exposure impact tooth orthod		E					
D7282	Mobilize erupted/malpos toot		E					
D7283	Place device impacted tooth		B					
D7285	Biopsy of oral tissue hard		E					
D7286	Biopsy of oral tissue soft		E					
D7287	Exfoliative cytolog collect		E					
D7288	Brush biopsy		B					
D7290	Repositioning of teeth		E					
D7291	Transseptal fiberotomy		S	0330	7.6534	$505.58		$101.12
D7292	Screw retained plate		E					
D7293	Temp anchorage dev w flap		E					
D7294	Temp anchorage dev w/o flap		E					
D7310	Alveoplasty w/ extraction		E					
D7311	Alveoloplasty w/extract 1-3		E					
D7320	Alveoplasty w/o extraction		E					
D7321	Alveoloplasty not w/extracts		B					
D7340	Vestibuloplasty ridge extens		E					
D7350	Vestibuloplasty exten graft		E					
D7410	Rad exc lesion up to 1.25 cm		E					
D7411	Excision benign lesion>1.25c		E					
D7412	Excision benign lesion compl		E					
D7413	Excision malig lesion<=1.25c		E					
D7414	Excision malig lesion>1.25cm		E					
D7415	Excision malig les complicat		E					
D7440	Malig tumor exc to 1.25 cm		E					
D7441	Malig tumor > 1.25 cm		E					
D7450	Rem odontogen cyst to 1.25cm		E					
D7451	Rem odontogen cyst > 1.25 cm		E					
D7460	Rem nonodonto cyst to 1.25cm		E					
D7461	Rem nonodonto cyst > 1.25 cm		E					
D7465	Lesion destruction		E					
D7471	Rem exostosis any site		E					
D7472	Removal of torus palatinus		E					
D7473	Remove torus mandibularis		E					
D7485	Surg reduct osseoustuberosit		E					
D7490	Maxilla or mandible resectio		E					
D7510	I&d absc intraoral soft tiss		E					
D7511	Incision/drain abscess intra		B					
D7520	I&d abscess extraoral		E					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
D7521	Incision/drain abscess extra		B					
D7530	Removal fb skin/areolar tiss		E					
D7540	Removal of fb reaction		E					
D7550	Removal of sloughed off bone		E					
D7560	Maxillary sinusotomy		E					
D7610	Maxilla open reduct simple		E					
D7620	Clsd reduct simpl maxilla fx		E					
D7630	Open red simpl mandible fx		E					
D7640	Clsd red simpl mandible fx		E					
D7650	Open red simp malar/zygom fx		E					
D7660	Clsd red simp malar/zygom fx		E					
D7670	Closd rductn splint alveolus		E					
D7671	Alveolus open reduction		E					
D7680	Reduct simple facial bone fx		E					
D7710	Maxilla open reduct compound		E					
D7720	Clsd reduct compd maxilla fx		E					
D7730	Open reduct compd mandble fx		E					
D7740	Clsd reduct compd mandble fx		E					
D7750	Open red comp malar/zygma fx		E					
D7760	Clsd red comp malar/zygma fx		E					
D7770	Open reduc compd alveolus fx		E					
D7771	Alveolus clsd reduc stblz te		E					
D7780	Reduct compnd facial bone fx		E					
D7810	Tmj open reduct-dislocation		E					
D7820	Closed tmp manipulation		E					
D7830	Tmj manipulation under anest		E					
D7840	Removal of tmj condyle		E					
D7850	Tmj meniscectomy		E					
D7852	Tmj repair of joint disc		E					
D7854	Tmj excisn of joint membrane		E					
D7856	Tmj cutting of a muscle		E					
D7858	Tmj reconstruction		E					
D7860	Tmj cutting into joint		E					
D7865	Tmj reshaping components		E					
D7870	Tmj aspiration joint fluid		E					
D7871	Lysis + lavage w catheters		E					
D7872	Tmj diagnostic arthroscopy		E					
D7873	Tmj arthroscopy lysis adhesn		E					
D7874	Tmj arthroscopy disc reposit		E					
D7875	Tmj arthroscopy synovectomy		E					
D7876	Tmj arthroscopy discectomy		E					
D7877	Tmj arthroscopy debridement		E					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
D7880	Occlusal orthotic appliance		E					
D7899	Tmj unspecified therapy		E					
D7910	Dent sutur recent wnd to 5cm		E					
D7911	Dental suture wound to 5 cm		E					
D7912	Suture complicate wnd > 5 cm		E					
D7920	Dental skin graft		E					
D7940	Reshaping bone orthognathic		S	0330	7.6534	$505.58		$101.12
D7941	Bone cutting ramus closed		E					
D7943	Cutting ramus open w/graft		E					
D7944	Bone cutting segmented		E					
D7945	Bone cutting body mandible		E					
D7946	Reconstruction maxilla total		E					
D7947	Reconstruct maxilla segment		E					
D7948	Reconstruct midface no graft		E					
D7949	Reconstruct midface w/graft		E					
D7950	Mandible graft		E					
D7951	Sinus aug w bone/bone sup		E					
D7953	Bone replacement graft		E					
D7955	Repair maxillofacial defects		E					
D7960	Frenulectomy/frenulotomy		E					
D7963	Frenuloplasty		E					
D7970	Excision hyperplastic tissue		E					
D7971	Excision pericoronal gingiva		E					
D7972	Surg redct fibrous tuberosit		E					
D7980	Sialolithotomy		E					
D7981	Excision of salivary gland		E					
D7982	Sialodochoplasty		E					
D7983	Closure of salivary fistula		E					
D7990	Emergency tracheotomy		E					
D7991	Dental coronoidectomy		E					
D7995	Synthetic graft facial bones		E					
D7996	Implant mandible for augment		E					
D7997	Appliance removal		E					
D7998	Intraoral place of fix dev		E					
D7999	Oral surgery procedure		E					
D8010	Limited dental tx primary		E					
D8020	Limited dental tx transition		E					
D8030	Limited dental tx adolescent		E					
D8040	Limited dental tx adult		E					
D8050	Intercep dental tx primary		E					
D8060	Intercep dental tx transitn		E					
D8070	Compre dental tx transition		E					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
D8080	Compre dental tx adolescent		E					
D8090	Compre dental tx adult		E					
D8210	Orthodontic rem appliance tx		E					
D8220	Fixed appliance therapy habt		E					
D8660	Preorthodontic tx visit		E					
D8670	Periodic orthodontc tx visit		E					
D8680	Orthodontic retention		E					
D8690	Orthodontic treatment		E					
D8691	Repair ortho appliance		E					
D8692	Replacement retainer		E					
D8693	Rebond/cement/repair retain		E					
D8999	Orthodontic procedure		E					
D9110	Tx dental pain minor proc		N					
D9120	Fix partial denture section		E					
D9210	Dent anesthesia w/o surgery		E					
D9211	Regional block anesthesia		E					
D9212	Trigeminal block anesthesia		E					
D9215	Local anesthesia		E					
D9220	General anesthesia		E					
D9221	General anesthesia ea ad 15m		E					
D9230	Analgesia		N					
D9241	Intravenous sedation		E					
D9242	IV sedation ea ad 30 m		E					
D9248	Sedation (non-iv)		N					
D9310	Dental consultation		E					
D9410	Dental house call		E					
D9420	Hospital call		E					
D9430	Office visit during hours		E					
D9440	Office visit after hours		E					
D9450	Case presentation tx plan		E					
D9610	Dent therapeutic drug inject		E					
D9612	Thera par drugs 2 or > admin		E					
D9630	Other drugs/medicaments		S	0330	7.6534	$505.58		$101.12
D9910	Dent appl desensitizing med		E					
D9911	Appl desensitizing resin		E					
D9920	Behavior management		E					
D9930	Treatment of complications		S	0330	7.6534	$505.58		$101.12
D9940	Dental occlusal guard		S	0330	7.6534	$505.58		$101.12
D9941	Fabrication athletic guard		E					
D9942	Repair/reline occlusal guard		E					
D9950	Occlusion analysis		S	0330	7.6534	$505.58		$101.12
D9951	Limited occlusal adjustment		S	0330	7.6534	$505.58		$101.12

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
D9952	Complete occlusal adjustment		S	0330	7.6534	$505.58		$101.12
D9970	Enamel microabrasion		E					
D9971	Odontoplasty 1-2 teeth		E					
D9972	Extrnl bleaching per arch		E					
D9973	Extrnl bleaching per tooth		E					
D9974	Intrnl bleaching per tooth		E					
D9999	Adjunctive procedure		E					
E0100	Cane adjust/fixed with tip		Y					
E0105	Cane adjust/fixed quad/3 pro		Y					
E0110	Crutch forearm pair		Y					
E0111	Crutch forearm each		Y					
E0112	Crutch underarm pair wood		Y					
E0113	Crutch underarm each wood		Y					
E0114	Crutch underarm pair no wood		Y					
E0116	Crutch underarm each no wood		Y					
E0117	Underarm springassist crutch		Y					
E0118	Crutch substitute		E					
E0130	Walker rigid adjust/fixed ht		Y					
E0135	Walker folding adjust/fixed		Y					
E0140	Walker w trunk support		Y					
E0141	Rigid wheeled walker adj/fix		Y					
E0143	Walker folding wheeled w/o s		Y					
E0144	Enclosed walker w rear seat		Y					
E0147	Walker variable wheel resist		Y					
E0148	Heavyduty walker no wheels		Y					
E0149	Heavy duty wheeled walker		Y					
E0153	Forearm crutch platform atta		Y					
E0154	Walker platform attachment		Y					
E0155	Walker wheel attachment,pair		Y					
E0156	Walker seat attachment		Y					
E0157	Walker crutch attachment		Y					
E0158	Walker leg extenders set of4		Y					
E0159	Brake for wheeled walker		Y					
E0160	Sitz type bath or equipment		Y					
E0161	Sitz bath/equipment w/faucet		Y					
E0162	Sitz bath chair		Y					
E0163	Commode chair with fixed arm		Y					
E0165	Commode chair with detacharm		Y					
E0167	Commode chair pail or pan		Y					
E0168	Heavyduty/wide commode chair		Y					
E0170	Commode chair electric		Y					
E0171	Commode chair non-electric		Y					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
E0172	Seat lift mechanism toilet		E					
E0175	Commode chair foot rest		Y					
E0181	Press pad alternating w/ pum		Y					
E0182	Replace pump, alt press pad		Y					
E0184	Dry pressure mattress		Y					
E0185	Gel pressure mattress pad		Y					
E0186	Air pressure mattress		Y					
E0187	Water pressure mattress		Y					
E0188	Synthetic sheepskin pad		Y					
E0189	Lambswool sheepskin pad		Y					
E0190	Positioning cushion		E					
E0191	Protector heel or elbow		Y					
E0193	Powered air flotation bed		Y					
E0194	Air fluidized bed		Y					
E0196	Gel pressure mattress		Y					
E0197	Air pressure pad for mattres		Y					
E0198	Water pressure pad for mattr		Y					
E0199	Dry pressure pad for mattres		Y					
E0200	Heat lamp without stand		Y					
E0202	Phototherapy light w/ photom		Y					
E0203	Therapeutic lightbox tabletp		E					
E0205	Heat lamp with stand		Y					
E0210	Electric heat pad standard		Y					
E0215	Electric heat pad moist		Y					
E0217	Water circ heat pad w pump		Y					
E0218	Water circ cold pad w pump		Y					
E0220	Hot water bottle		Y					
E0221	Infrared heating pad system		Y					
E0225	Hydrocollator unit		Y					
E0230	Ice cap or collar		Y					
E0231	Wound warming device		E					
E0232	Warming card for NWT		E					
E0235	Paraffin bath unit portable		Y					
E0236	Pump for water circulating p		Y					
E0238	Heat pad non-electric moist		Y					
E0239	Hydrocollator unit portable		Y					
E0240	Bath/shower chair		E					
E0241	Bath tub wall rail		E					
E0242	Bath tub rail floor		E					
E0243	Toilet rail		E					
E0244	Toilet seat raised		E					
E0245	Tub stool or bench		E					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
E0246	Transfer tub rail attachment		E					
E0247	Trans bench w/wo comm open		E					
E0248	HDtrans bench w/wo comm open		E					
E0249	Pad water circulating heat u		Y					
E0250	Hosp bed fixed ht w/ mattres		E					
E0251	Hosp bed fixd ht w/o mattres		E					
E0255	Hospital bed var ht w/ mattr		E					
E0256	Hospital bed var ht w/o matt		E					
E0260	Hosp bed semi-electr w/ matt		E					
E0261	Hosp bed semi-electr w/o mat		E					
E0265	Hosp bed total electr w/ mat		E					
E0266	Hosp bed total elec w/o matt		E					
E0270	Hospital bed institutional t		E					
E0271	Mattress innerspring		E					
E0272	Mattress foam rubber		E					
E0273	Bed board		E					
E0274	Over-bed table		E					
E0275	Bed pan standard		Y					
E0276	Bed pan fracture		Y					
E0277	Powered pres-redu air mattrs		Y					
E0280	Bed cradle		Y					
E0290	Hosp bed fx ht w/o rails w/m		E					
E0291	Hosp bed fx ht w/o rail w/o		Y					
E0292	Hosp bed var ht w/o rail w/o		E					
E0293	Hosp bed var ht w/o rail w/		Y					
E0294	Hosp bed semi-elect w/ mattr		E					
E0295	Hosp bed semi-elect w/o matt		Y					
E0296	Hosp bed total elect w/ matt		E					
E0297	Hosp bed total elect w/o mat		Y					
E0300	Enclosed ped crib hosp grade		Y					
E0301	HD hosp bed, 350-600 lbs		Y					
E0302	Ex hd hosp bed > 600 lbs		Y					
E0303	Hosp bed hvy dty xtra wide		E					
E0304	Hosp bed xtra hvy dty x wide		E					
E0305	Rails bed side half length		E					
E0310	Rails bed side full length		E					
E0315	Bed accessory brd/tbl/supprt		E					
E0316	Bed safety enclosure		Y					
E0325	Urinal male jug-type		Y					
E0326	Urinal female jug-type		Y					
E0328	Ped hospital bed, manual		Y					
E0329	Ped hospital bed semi/elect		Y					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
E0350	Control unit bowel system		E					
E0352	Disposable pack w/bowel syst		E					
E0370	Air elevator for heel		E					
E0371	Nonpower mattress overlay		Y					
E0372	Powered air mattress overlay		Y					
E0373	Nonpowered pressure mattress		Y					
E0424	Stationary compressed gas 02		Y					
E0425	Gas system stationary compre		E					
E0430	Oxygen system gas portable		E					
E0431	Portable gaseous 02		Y					
E0434	Portable liquid 02		Y					
E0435	Oxygen system liquid portabl		E					
E0439	Stationary liquid 02		Y					
E0440	Oxygen system liquid station		E					
E0441	Oxygen contents, gaseous		Y					
E0442	Oxygen contents, liquid		Y					
E0443	Portable 02 contents, gas		Y					
E0444	Portable 02 contents, liquid		Y					
E0445	Oximeter non-invasive		N					
E0450	Vol control vent invasiv int		Y					
E0455	Oxygen tent excl croup/ped t		Y					
E0457	Chest shell		Y					
E0459	Chest wrap		Y					
E0460	Neg press vent portabl/statn		Y					
E0461	Vol control vent noninv int		Y					
E0462	Rocking bed w/ or w/o side r		Y					
E0463	Press supp vent invasive int		Y					
E0464	Press supp vent noninv int		Y					
E0470	RAD w/o backup non-inv intfc		Y					
E0471	RAD w/backup non inv intrfc		Y					
E0472	RAD w backup invasive intrfc		Y					
E0480	Percussor elect/pneum home m		Y					
E0481	Intrpulmnry percuss vent sys		E					
E0482	Cough stimulating device		Y					
E0483	Chest compression gen system		Y					
E0484	Non-elec oscillatory pep dvc		Y					
E0485	Oral device/appliance prefab		Y					
E0486	Oral device/appliance cusfab		Y					
E0487	Electronic spirometer	NI	N					
E0500	Ippb all types		Y					
E0550	Humidif extens supple w ippb		Y					
E0555	Humidifier for use w/ regula		Y					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
E0560	Humidifier supplemental w/ i		Y					
E0561	Humidifier nonheated w PAP		Y					
E0562	Humidifier heated used w PAP		Y					
E0565	Compressor air power source		Y					
E0570	Nebulizer with compression		Y					
E0571	Aerosol compressor for svneb		Y					
E0572	Aerosol compressor adjust pr		Y					
E0574	Ultrasonic generator w svneb		Y					
E0575	Nebulizer ultrasonic		Y					
E0580	Nebulizer for use w/ regulat		Y					
E0585	Nebulizer w/ compressor & he		Y					
E0600	Suction pump portab hom modl		Y					
E0601	Cont airway pressure device		Y					
E0602	Manual breast pump		Y					
E0603	Electric breast pump		N					
E0604	Hosp grade elec breast pump		A					
E0605	Vaporizer room type		Y					
E0606	Drainage board postural		Y					
E0607	Blood glucose monitor home		Y					
E0610	Pacemaker monitr audible/vis		Y					
E0615	Pacemaker monitr digital/vis		Y					
E0616	Cardiac event recorder		N					
E0617	Automatic ext defibrillator		Y					
E0618	Apnea monitor		Y					
E0619	Apnea monitor w recorder		Y					
E0620	Cap bld skin piercing laser		Y					
E0621	Patient lift sling or seat		Y					
E0625	Patient lift bathroom or toi		E					
E0627	Seat lift incorp lift-chair		Y					
E0628	Seat lift for pt furn-electr		Y					
E0629	Seat lift for pt furn-non-el		Y					
E0630	Patient lift hydraulic		Y					
E0635	Patient lift electric		Y					
E0636	PT support & positioning sys		Y					
E0637	Combination sit to stand sys		E					
E0638	Standing frame sys		E					
E0639	Moveable patient lift system		E					
E0640	Fixed patient lift system		E					
E0641	Multi-position stnd fram sys		E					
E0642	Dynamic standing frame		E					
E0650	Pneuma compresor non-segment		Y					
E0651	Pneum compressor segmental		Y					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
E0652	Pneum compres w/cal pressure		Y					
E0655	Pneumatic appliance half arm		Y					
E0656	Segmental pneumatic trunk	NI	Y					
E0657	Segmental pneumatic chest	NI	Y					
E0660	Pneumatic appliance full leg		Y					
E0665	Pneumatic appliance full arm		Y					
E0666	Pneumatic appliance half leg		Y					
E0667	Seg pneumatic appl full leg		Y					
E0668	Seg pneumatic appl full arm		Y					
E0669	Seg pneumatic appli half leg		Y					
E0671	Pressure pneum appl full leg		Y					
E0672	Pressure pneum appl full arm		Y					
E0673	Pressure pneum appl half leg		Y					
E0675	Pneumatic compression device		Y					
E0676	Inter limb compress dev NOS		Y					
E0691	Uvl pnl 2 sq ft or less		Y					
E0692	Uvl sys panel 4 ft		Y					
E0693	Uvl sys panel 6 ft		Y					
E0694	Uvl md cabinet sys 6 ft		Y					
E0700	Safety equipment		E					
E0705	Transfer device		B					
E0710	Restraints any type		E					
E0720	Tens two lead		Y					
E0730	Tens four lead		Y					
E0731	Conductive garment for tens/		Y					
E0740	Incontinence treatment systm		Y					
E0744	Neuromuscular stim for scoli		Y					
E0745	Neuromuscular stim for shock		Y					
E0746	Electromyograph biofeedback		N					
E0747	Elec osteogen stim not spine		Y					
E0748	Elec osteogen stim spinal		Y					
E0749	Elec osteogen stim implanted		N					
E0755	Electronic salivary reflex s		E					
E0760	Osteogen ultrasound stimltor		Y					
E0761	Nontherm electromgntc device		E					
E0762	Trans elec jt stim dev sys		B					
E0764	Functional neuromuscularstim		Y					
E0765	Nerve stimulator for tx n&v		Y					
E0769	Electric wound treatment dev		B					
E0770	Functional electric stim NOS	NI	Y					
E0776	Iv pole		Y					
E0779	Amb infusion pump mechanical		Y					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
E0780	Mech amb infusion pump <8hrs		Y					
E0781	External ambulatory infus pu		Y					
E0782	Non-programble infusion pump		N					
E0783	Programmable infusion pump		N					
E0784	Ext amb infusn pump insulin		Y					
E0785	Replacement impl pump cathet		N					
E0786	Implantable pump replacement		N					
E0791	Parenteral infusion pump sta		Y					
E0830	Ambulatory traction device		N					
E0840	Tract frame attach headboard		Y					
E0849	Cervical pneum trac equip		Y					
E0850	Traction stand free standing		Y					
E0855	Cervical traction equipment		Y					
E0856	Cervic collar w air bladder		Y					
E0860	Tract equip cervical tract		Y					
E0870	Tract frame attach footboard		Y					
E0880	Trac stand free stand extrem		Y					
E0890	Traction frame attach pelvic		Y					
E0900	Trac stand free stand pelvic		Y					
E0910	Trapeze bar attached to bed		Y					
E0911	HD trapeze bar attach to bed		Y					
E0912	HD trapeze bar free standing		Y					
E0920	Fracture frame attached to b		Y					
E0930	Fracture frame free standing		Y					
E0935	Cont pas motion exercise dev		Y					
E0936	CPM device, other than knee		E					
E0940	Trapeze bar free standing		Y					
E0941	Gravity assisted traction de		Y					
E0942	Cervical head harness/halter		Y					
E0944	Pelvic belt/harness/boot		Y					
E0945	Belt/harness extremity		Y					
E0946	Fracture frame dual w cross		Y					
E0947	Fracture frame attachmnts pe		Y					
E0948	Fracture frame attachmnts ce		Y					
E0950	Tray		Y					
E0951	Loop heel		Y					
E0952	Toe loop/holder, each		Y					
E0955	Cushioned headrest		Y					
E0956	W/c lateral trunk/hip suppor		Y					
E0957	W/c medial thigh support		Y					
E0958	Whlchr att- conv 1 arm drive		Y					
E0959	Amputee adapter		B					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
E0960	W/c shoulder harness/straps		Y					
E0961	Wheelchair brake extension		B					
E0966	Wheelchair head rest extensi		B					
E0967	Manual wc hand rim w project		Y					
E0968	Wheelchair commode seat		Y					
E0969	Wheelchair narrowing device		Y					
E0970	Wheelchair no. 2 footplates		E					
E0971	Wheelchair anti-tipping devi		B					
E0973	W/Ch access det adj armrest		B					
E0974	W/Ch access anti-rollback		B					
E0978	W/C acc,saf belt pelv strap		B					
E0980	Wheelchair safety vest		Y					
E0981	Seat upholstery, replacement		Y					
E0982	Back upholstery, replacement		Y					
E0983	Add pwr joystick		Y					
E0984	Add pwr tiller		Y					
E0985	W/c seat lift mechanism		Y					
E0986	Man w/c push-rim pow assist		Y					
E0990	Wheelchair elevating leg res		B					
E0992	Wheelchair solid seat insert		B					
E0994	Wheelchair arm rest		Y					
E0995	Wheelchair calf rest		B					
E1002	Pwr seat tilt		Y					
E1003	Pwr seat recline		Y					
E1004	Pwr seat recline mech		Y					
E1005	Pwr seat recline pwr		Y					
E1006	Pwr seat combo w/o shear		Y					
E1007	Pwr seat combo w/shear		Y					
E1008	Pwr seat combo pwr shear		Y					
E1009	Add mech leg elevation		Y					
E1010	Add pwr leg elevation		Y					
E1011	Ped wc modify width adjustm		Y					
E1014	Reclining back add ped w/c		Y					
E1015	Shock absorber for man w/c		Y					
E1016	Shock absorber for power w/c		Y					
E1017	HD shck absrbr for hd man wc		Y					
E1018	HD shck absrber for hd powwc		Y					
E1020	Residual limb support system		Y					
E1028	W/c manual swingaway		Y					
E1029	W/c vent tray fixed		Y					
E1030	W/c vent tray gimbaled		Y					
E1031	Rollabout chair with casters		Y					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
E1035	Patient transfer system		Y					
E1037	Transport chair, ped size		Y					
E1038	Transport chair pt wt<=300lb		Y					
E1039	Transport chair pt wt >300lb		Y					
E1050	Whelchr fxd full length arms		Y					
E1060	Wheelchair detachable arms		Y					
E1070	Wheelchair detachable foot r		Y					
E1083	Hemi-wheelchair fixed arms		Y					
E1084	Hemi-wheelchair detachable a		Y					
E1085	Hemi-wheelchair fixed arms		E					
E1086	Hemi-wheelchair detachable a		E					
E1087	Wheelchair lightwt fixed arm		Y					
E1088	Wheelchair lightweight det a		Y					
E1089	Wheelchair lightwt fixed arm		E					
E1090	Wheelchair lightweight det a		E					
E1092	Wheelchair wide w/ leg rests		Y					
E1093	Wheelchair wide w/ foot rest		Y					
E1100	Whchr s-recl fxd arm leg res		Y					
E1110	Wheelchair semi-recl detach		Y					
E1130	Whlchr stand fxd arm ft rest		E					
E1140	Wheelchair standard detach a		E					
E1150	Wheelchair standard w/ leg r		Y					
E1160	Wheelchair fixed arms		Y					
E1161	Manual adult wc w tiltinspac		Y					
E1170	Whlchr ampu fxd arm leg rest		Y					
E1171	Wheelchair amputee w/o leg r		Y					
E1172	Wheelchair amputee detach ar		Y					
E1180	Wheelchair amputee w/ foot r		Y					
E1190	Wheelchair amputee w/ leg re		Y					
E1195	Wheelchair amputee heavy dut		Y					
E1200	Wheelchair amputee fixed arm		Y					
E1220	Whlchr special size/constrc		Y					
E1221	Wheelchair spec size w foot		Y					
E1222	Wheelchair spec size w/ leg		Y					
E1223	Wheelchair spec size w foot		Y					
E1224	Wheelchair spec size w/ leg		Y					
E1225	Manual semi-reclining back		Y					
E1226	Manual fully reclining back		B					
E1227	Wheelchair spec sz spec ht a		Y					
E1228	Wheelchair spec sz spec ht b		Y					
E1229	Pediatric wheelchair NOS		Y					
E1230	Power operated vehicle		Y					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
E1231	Rigid ped w/c tilt-in-space		Y					
E1232	Folding ped wc tilt-in-space		Y					
E1233	Rig ped wc tltnspc w/o seat		Y					
E1234	Fld ped wc tltnspc w/o seat		Y					
E1235	Rigid ped wc adjustable		Y					
E1236	Folding ped wc adjustable		Y					
E1237	Rgd ped wc adjstabl w/o seat		Y					
E1238	Fld ped wc adjstabl w/o seat		Y					
E1239	Ped power wheelchair NOS		Y					
E1240	Whchr litwt det arm leg rest		Y					
E1250	Wheelchair lightwt fixed arm		E					
E1260	Wheelchair lightwt foot rest		E					
E1270	Wheelchair lightweight leg r		Y					
E1280	Whchr h-duty det arm leg res		Y					
E1285	Wheelchair heavy duty fixed		E					
E1290	Wheelchair hvy duty detach a		E					
E1295	Wheelchair heavy duty fixed		Y					
E1296	Wheelchair special seat heig		Y					
E1297	Wheelchair special seat dept		Y					
E1298	Wheelchair spec seat depth/w		Y					
E1300	Whirlpool portable		E					
E1310	Whirlpool non-portable		Y					
E1340	Repair for DME, per 15 min		Y					
E1353	Oxygen supplies regulator		Y					
E1354	Wheeled cart, port cyl/conc	NI	Y					
E1355	Oxygen supplies stand/rack		Y					
E1356	Batt pack/cart, port conc	NI	Y					
E1357	Battery charger, port conc	NI	Y					
E1358	DC power adapter, port conc	NI	Y					
E1372	Oxy suppl heater for nebuliz		Y					
E1390	Oxygen concentrator		Y					
E1391	Oxygen concentrator, dual		Y					
E1392	Portable oxygen concentrator		Y					
E1399	Durable medical equipment mi		Y					
E1405	O2/water vapor enrich w/heat		Y					
E1406	O2/water vapor enrich w/o he		Y					
E1500	Centrifuge		A					
E1510	Kidney dialysate delivry sys		A					
E1520	Heparin infusion pump		A					
E1530	Replacement air bubble detec		A					
E1540	Replacement pressure alarm		A					
E1550	Bath conductivity meter		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
E1560	Replace blood leak detector		A					
E1570	Adjustable chair for esrd pt		A					
E1575	Transducer protect/fld bar		A					
E1580	Unipuncture control system		A					
E1590	Hemodialysis machine		A					
E1592	Auto interm peritoneal dialy		A					
E1594	Cycler dialysis machine		A					
E1600	Deli/install chrg hemo equip		A					
E1610	Reverse osmosis h2o puri sys		A					
E1615	Deionizer H2O puri system		A					
E1620	Replacement blood pump		A					
E1625	Water softening system		A					
E1630	Reciprocating peritoneal dia		A					
E1632	Wearable artificial kidney		A					
E1634	Peritoneal dialysis clamp		B					
E1635	Compact travel hemodialyzer		A					
E1636	Sorbent cartridges per 10		A					
E1637	Hemostats for dialysis, each		A					
E1639	Dialysis scale		A					
E1699	Dialysis equipment noc		A					
E1700	Jaw motion rehab system		Y					
E1701	Repl cushions for jaw motion		Y					
E1702	Repl measr scales jaw motion		Y					
E1800	Adjust elbow ext/flex device		Y					
E1801	SPS elbow device		Y					
E1802	Adjst forearm pro/sup device		Y					
E1805	Adjust wrist ext/flex device		Y					
E1806	SPS wrist device		Y					
E1810	Adjust knee ext/flex device		Y					
E1811	SPS knee device		Y					
E1812	Knee ext/flex w act res ctrl		Y					
E1815	Adjust ankle ext/flex device		Y					
E1816	SPS ankle device		Y					
E1818	SPS forearm device		Y					
E1820	Soft interface material		Y					
E1821	Replacement interface SPSD		Y					
E1825	Adjust finger ext/flex devc		Y					
E1830	Adjust toe ext/flex device		Y					
E1840	Adj shoulder ext/flex device		Y					
E1841	Static str shldr dev rom adj		Y					
E1902	AAC non-electronic board	CH	Y					
E2000	Gastric suction pump hme mdl		Y					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
E2100	Bld glucose monitor w voice		Y					
E2101	Bld glucose monitor w lance		Y					
E2120	Pulse gen sys tx endolymp fl		Y					
E2201	Man w/ch acc seat w>=20"<24"		Y					
E2202	Seat width 24-27 in		Y					
E2203	Frame depth less than 22 in		Y					
E2204	Frame depth 22 to 25 in		Y					
E2205	Manual wc accessory, handrim		Y					
E2206	Complete wheel lock assembly		Y					
E2207	Crutch and cane holder		Y					
E2208	Cylinder tank carrier		Y					
E2209	Arm trough each		Y					
E2210	Wheelchair bearings		Y					
E2211	Pneumatic propulsion tire		Y					
E2212	Pneumatic prop tire tube		Y					
E2213	Pneumatic prop tire insert		Y					
E2214	Pneumatic caster tire each		Y					
E2215	Pneumatic caster tire tube		Y					
E2216	Foam filled propulsion tire		Y					
E2217	Foam filled caster tire each		Y					
E2218	Foam propulsion tire each		Y					
E2219	Foam caster tire any size ea		Y					
E2220	Solid propulsion tire each		Y					
E2221	Solid caster tire each		Y					
E2222	Solid caster integrated whl		Y					
E2223	Valve replacement only each		Y					
E2224	Propulsion whl excludes tire		Y					
E2225	Caster wheel excludes tire		Y					
E2226	Caster fork replacement only		Y					
E2227	Gear reduction drive wheel		Y					
E2228	Mwc acc, wheelchair brake		Y					
E2230	Manual standing system	NI	E					
E2231	Solid seat support base	NI	Y					
E2291	Planar back for ped size wc		Y					
E2292	Planar seat for ped size wc		Y					
E2293	Contour back for ped size wc		Y					
E2294	Contour seat for ped size wc		Y					
E2295	Ped dynamic seating frame	NI	Y					
E2300	Pwr seat elevation sys		Y					
E2301	Pwr standing		Y					
E2310	Electro connect btw control		Y					
E2311	Electro connect btw 2 sys		Y					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
E2312	Mini-prop remote joystick		Y					
E2313	PWC harness, expand control		Y					
E2321	Hand interface joystick		Y					
E2322	Mult mech switches		Y					
E2323	Special joystick handle		Y					
E2324	Chin cup interface		Y					
E2325	Sip and puff interface		Y					
E2326	Breath tube kit		Y					
E2327	Head control interface mech		Y					
E2328	Head/extremity control inter		Y					
E2329	Head control nonproportional		Y					
E2330	Head control proximity switc		Y					
E2331	Attendant control		Y					
E2340	W/c wdth 20-23 in seat frame		Y					
E2341	W/c wdth 24-27 in seat frame		Y					
E2342	W/c dpth 20-21 in seat frame		Y					
E2343	W/c dpth 22-25 in seat frame		Y					
E2351	Electronic SGD interface		Y					
E2360	22nf nonsealed leadacid		Y					
E2361	22nf sealed leadacid battery		Y					
E2362	Gr24 nonsealed leadacid		Y					
E2363	Gr24 sealed leadacid battery		Y					
E2364	U1nonsealed leadacid battery		Y					
E2365	U1 sealed leadacid battery		Y					
E2366	Battery charger, single mode		Y					
E2367	Battery charger, dual mode		Y					
E2368	Power wc motor replacement		Y					
E2369	Pwr wc gear box replacement		Y					
E2370	Pwr wc motor/gear box combo		Y					
E2371	Gr27 sealed leadacid battery		Y					
E2372	Gr27 non-sealed leadacid		Y					
E2373	Hand/chin ctrl spec joystick		Y					
E2374	Hand/chin ctrl std joystick		Y					
E2375	Non-expandable controller		Y					
E2376	Expandable controller, repl		Y					
E2377	Expandable controller, initl		Y					
E2381	Pneum drive wheel tire		Y					
E2382	Tube, pneum wheel drive tire		Y					
E2383	Insert, pneum wheel drive		Y					
E2384	Pneumatic caster tire		Y					
E2385	Tube, pneumatic caster tire		Y					
E2386	Foam filled drive wheel tire		Y					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
E2387	Foam filled caster tire		Y					
E2388	Foam drive wheel tire		Y					
E2389	Foam caster tire		Y					
E2390	Solid drive wheel tire		Y					
E2391	Solid caster tire		Y					
E2392	Solid caster tire, integrate		Y					
E2393	Valve, pneumatic tire tube		Y					
E2394	Drive wheel excludes tire		Y					
E2395	Caster wheel excludes tire		Y					
E2396	Caster fork		Y					
E2397	Pwc acc, lith-based battery		Y					
E2399	Noc interface		Y					
E2402	Neg press wound therapy pump		Y					
E2500	SGD digitized pre-rec <=8min		Y					
E2502	SGD prerec msg >8min <=20min		Y					
E2504	SGD prerec msg>20min <=40min		Y					
E2506	SGD prerec msg > 40 min		Y					
E2508	SGD spelling phys contact		Y					
E2510	SGD w multi methods msg/accs		Y					
E2511	SGD sftwre prgrm for PC/PDA		Y					
E2512	SGD accessory, mounting sys		Y					
E2599	SGD accessory noc		Y					
E2601	Gen w/c cushion wdth < 22 in		Y					
E2602	Gen w/c cushion wdth >=22 in		Y					
E2603	Skin protect wc cus wd <22in		Y					
E2604	Skin protect wc cus wd>=22in		Y					
E2605	Position wc cush wdth <22 in		Y					
E2606	Position wc cush wdth>=22 in		Y					
E2607	Skin pro/pos wc cus wd <22in		Y					
E2608	Skin pro/pos wc cus wd>=22in		Y					
E2609	Custom fabricate w/c cushion		Y					
E2610	Powered w/c cushion		B					
E2611	Gen use back cush wdth <22in		Y					
E2612	Gen use back cush wdth>=22in		Y					
E2613	Position back cush wd <22in		Y					
E2614	Position back cush wd>=22in		Y					
E2615	Pos back post/lat wdth <22in		Y					
E2616	Pos back post/lat wdth>=22in		Y					
E2617	Custom fab w/c back cushion		Y					
E2619	Replace cover w/c seat cush		Y					
E2620	WC planar back cush wd <22in		Y					
E2621	WC planar back cush wd>=22in		Y					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
E8000	Posterior gait trainer		E					
E8001	Upright gait trainer		E					
E8002	Anterior gait trainer		E					
G0008	Admin influenza virus vac		S	0350	0.3768	$24.89		
G0009	Admin pneumococcal vaccine		S	0350	0.3768	$24.89		
G0010	Admin hepatitis b vaccine		B					
G0027	Semen analysis		A					
G0101	CA screen;pelvic/breast exam		V	0604	0.8277	$54.68		$10.94
G0102	Prostate ca screening; dre		N					
G0103	PSA screening		A					
G0104	CA screen;flexi sigmoidscope		S	0159	5.0788	$335.50		$83.88
G0105	Colorectal scrn; hi risk ind		T	0158	7.9944	$528.10		$132.03
G0106	Colon CA screen;barium enema		S	0157	2.2661	$149.70		$29.94
G0108	Diab manage trn per indiv		A					
G0109	Diab manage trn ind/group		A					
G0117	Glaucoma scrn hgh risk direc		S	0698	0.9338	$61.69		$12.34
G0118	Glaucoma scrn hgh risk direc		S	0230	0.6461	$42.68		$8.54
G0120	Colon ca scrn; barium enema		S	0157	2.2661	$149.70		$29.94
G0121	Colon ca scrn not hi rsk ind		T	0158	7.9944	$528.10		$132.03
G0122	Colon ca scrn; barium enema		E					
G0123	Screen cerv/vag thin layer		A					
G0124	Screen c/v thin layer by MD		B					
G0127	Trim nail(s)		T	0013	0.8281	$54.70		$10.94
G0128	CORF skilled nursing service		B					
G0129	Partial hosp prog service	CH	P					
G0130	Single energy x-ray study		X	0260	0.6767	$44.70		$8.94
G0141	Scr c/v cyto,autosys and md		B					
G0143	Scr c/v cyto,thinlayer,rescr		A					
G0144	Scr c/v cyto,thinlayer,rescr		A					
G0145	Scr c/v cyto,thinlayer,rescr		A					
G0147	Scr c/v cyto, automated sys		A					
G0148	Scr c/v cyto, autosys, rescr		A					
G0151	HHCP-serv of pt,ea 15 min		B					
G0152	HHCP-serv of ot,ea 15 min		B					
G0153	HHCP-svs of s/l path,ea 15mn		B					
G0154	HHCP-svs of rn,ea 15 min		B					
G0155	HHCP-svs of csw,ea 15 min		B					
G0156	HHCP-svs of aide,ea 15 min		B					
G0166	Extrnl counterpulse, per tx		T	0678	1.5475	$102.23		$20.45
G0168	Wound closure by adhesive		B					
G0173	Linear acc stereo radsur com		S	0067	57.5732	$3,803.23		$760.65
G0175	OPPS Service,sched team conf	CH	V	0606	1.3585	$89.74		$17.95

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
G0176	OPPS/PHP;activity therapy	CH	P					
G0177	OPPS/PHP; train & educ serv		N					
G0179	MD recertification HHA PT		M					
G0180	MD certification HHA patient		M					
G0181	Home health care supervision		M					
G0182	Hospice care supervision		M					
G0186	Dstry eye lesn,fdr vssl tech		T	0235	5.8277	$384.97		$77.00
G0202	Screeningmammographydigital		A					
G0204	Diagnosticmammographydigital		A					
G0206	Diagnosticmammographydigital		A					
G0219	PET img wholbod melano nonco		E					
G0235	PET not otherwise specified		E					
G0237	Therapeutic procd strg endur		S	0077	0.4024	$26.58	$7.74	$5.32
G0238	Oth resp proc, indiv		S	0077	0.4024	$26.58	$7.74	$5.32
G0239	Oth resp proc, group		S	0077	0.4024	$26.58	$7.74	$5.32
G0245	Initial foot exam pt lops		V	0604	0.8277	$54.68		$10.94
G0246	Followup eval of foot pt lop		V	0605	1.0439	$68.96		$13.80
G0247	Routine footcare pt w lops		T	0013	0.8281	$54.70		$10.94
G0248	Demonstrate use home inr mon		V	0607	1.7192	$113.57		$22.72
G0249	Provide INR test mater/equip		V	0607	1.7192	$113.57		$22.72
G0250	MD INR test revie inter mgmt		M					
G0251	Linear acc based stero radio		S	0065	14.4171	$952.38		$190.48
G0252	PET imaging initial dx		E					
G0255	Current percep threshold tst		E					
G0257	Unsched dialysis ESRD pt hos		S	0170	6.5599	$433.34		$86.67
G0259	Inject for sacroiliac joint		N					
G0260	Inj for sacroiliac jt anesth		T	0207	7.1721	$473.78		$94.76
G0268	Removal of impacted wax md		N					
G0269	Occlusive device in vein art		N					
G0270	MNT subs tx for change dx		A					
G0271	Group MNT 2 or more 30 mins		A					
G0275	Renal angio, cardiac cath		N					
G0278	Iliac art angio,cardiac cath		N					
G0281	Elec stim unattend for press		A					
G0282	Elect stim wound care not pd		E					
G0283	Elec stim other than wound		A					
G0288	Recon, CTA for surg plan		N					
G0289	Arthro, loose body + chondro		N					
G0290	Drug-eluting stents, single		T	0656	116.0944	$7,669.08		$1,533.82
G0291	Drug-eluting stents,each add		T	0656	116.0944	$7,669.08		$1,533.82
G0293	Non-cov surg proc,clin trial		X	0340	0.6462	$42.69		$8.54
G0294	Non-cov proc, clinical trial		X	0340	0.6462	$42.69		$8.54

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
G0295	Electromagnetic therapy onc		E					
G0302	Pre-op service LVRS complete		S	0209	11.4202	$754.41	$268.73	$150.89
G0303	Pre-op service LVRS 10-15dos		S	0209	11.4202	$754.41	$268.73	$150.89
G0304	Pre-op service LVRS 1-9 dos		S	0213	2.3168	$153.05	$53.58	$30.61
G0305	Post op service LVRS min 6		S	0213	2.3168	$153.05	$53.58	$30.61
G0306	CBC/diffwbc w/o platelet		A					
G0307	CBC without platelet		A					
G0308	ESRD related svc 4+mo < 2yrs	CH	D					
G0309	ESRD related svc 2-3mo <2yrs	CH	D					
G0310	ESRD related svc 1 vst <2yrs	CH	D					
G0311	ESRD related svs 4+mo 2-11yr	CH	D					
G0312	ESRD relate svs 2-3 mo 2-11y	CH	D					
G0313	ESRD related svs 1 mon 2-11y	CH	D					
G0314	ESRD related svs 4+ mo 12-19	CH	D					
G0315	ESRD related svs 2-3mo/12-19	CH	D					
G0316	ESRD related svs 1vis/12-19y	CH	D					
G0317	ESRD related svs 4+mo 20+yrs	CH	D					
G0318	ESRD related svs 2-3 mo 20+y	CH	D					
G0319	ESRD related svs 1visit 20+y	CH	D					
G0320	ESD related svs home undr 2	CH	D					
G0321	ESRDrelatedsvs home mo 2-11y	CH	D					
G0322	ESRD related svs hom mo12-19	CH	D					
G0323	ESRD related svs home mo 20+	CH	D					
G0324	ESRD relate svs home/dy <2yr	CH	D					
G0325	ESRD relate home/day/ 2-11yr	CH	D					
G0326	ESRD relate home/dy 12-19yr	CH	D					
G0327	ESRD relate home/dy 20+yrs	CH	D					
G0328	Fecal blood scrn immunoassay		A					
G0329	Electromagntic tx for ulcers		A					
G0332	Preadmin IV immunoglobulin	CH	D					
G0333	Dispense fee initial 30 day		M					
G0337	Hospice evaluation preelecti		B					
G0339	Robot lin-radsurg com, first		S	0067	57.5732	$3,803.23		$760.65
G0340	Robt lin-radsurg fractx 2-5		S	0066	39.0533	$2,579.82		$515.97
G0341	Percutaneous islet celltrans		C					
G0342	Laparoscopy islet cell trans		C					
G0343	Laparotomy islet cell transp		C					
G0344	Initial preventive exam	CH	D					
G0364	Bone marrow aspirate &biopsy	CH	X	0340	0.6462	$42.69		$8.54
G0365	Vessel mapping hemo access		S	0267	2.3186	$153.16	$60.50	$30.64
G0366	EKG for initial prevent exam	CH	D					
G0367	EKG tracing for initial prev	CH	D					

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G0368	EKG interpret & report preve	CH	D					
G0372	MD service required for PMD		M					
G0378	Hospital observation per hr		N					
G0379	Direct admit hospital observ		Q3	0604	0.8277	$54.68		$10.94
G0380	Lev 1 hosp type B ED visit	CH	V	0626	0.6840	$45.18		$9.04
G0381	Lev 2 hosp type B ED visit	CH	V	0627	0.9302	$61.45		$12.29
G0382	Lev 3 hosp type B ED visit	CH	V	0628	1.3418	$88.64		$17.73
G0383	Lev 4 hosp type B ED visit	CH	V	0629	2.4093	$159.16		$31.84
G0384	Lev 5 hosp type B ED visit	CH	Q3	0616	4.9032	$323.90	$72.86	$64.78
G0389	Ultrasound exam AAA screen		S	0266	1.4801	$97.77	$37.80	$19.56
G0390	Trauma Respons w/hosp criti		S	0618	14.1558	$935.12		$187.03
G0392	AV fistula or graft arterial		T	0083	48.3584	$3,194.51		$638.91
G0393	AV fistula or graft venous		T	0083	48.3584	$3,194.51		$638.91
G0394	Blood occult test,colorectal		A					
G0396	Alcohol/subs interv 15-30mn		S	0432	0.4065	$26.85		$5.37
G0397	Alcohol/subs interv >30 min		S	0432	0.4065	$26.85		$5.37
G0398	Home sleep test/type 2 Porta		S	0213	2.3168	$153.05	$53.58	$30.61
G0399	Home sleep test/type 3 Porta		S	0213	2.3168	$153.05	$53.58	$30.61
G0400	Home sleep test/type 4 Porta		S	0213	2.3168	$153.05	$53.58	$30.61
G0402	Initial preventive exam	NI	V	0605	1.0439	$68.96		$13.80
G0403	EKG for initial prevent exam	NI	M					
G0404	EKG tracing for initial prev	NI	S	0099	0.3949	$26.09		$5.22
G0405	EKG interpret & report preve	NI	B					
G0406	Telhealth inpt consult 15min	NI	C					
G0407	Telheath inpt consult 25min	NI	C					
G0408	Telhealth inpt consult 35min	NI	C					
G0409	CORF related serv 15 mins ea	NI	M					
G0410	Grp psych partial hosp 45-50	NI	P					
G0411	Inter active grp psych parti	NI	P					
G0412	Open tx iliac spine uni/bil	NI	C					
G0413	Pelvic ring fracture uni/bil	NI	T	0050	29.8816	$1,973.95		$394.79
G0414	Pelvic ring fx treat int fix	NI	C					
G0415	Open tx post pelvic fracture	NI	C					
G0416	Sat biopsy prostate 1-20 spc	NI	S	1505		$350.00		$70.00
G0417	Sat biopsy prostate 21-40	NI	S	1507		$550.00		$110.00
G0418	Sat biopsy prostate 41-60	NI	S	1511		$950.00		$190.00
G0419	Sat biopsy prostate: >60	NI	S	1513		$1,150.00		$230.00
G3001	Admin + supply, tositumomab		S	0442	28.9015	$1,909.20		$381.84
G8006	AMI pt recd aspirin at arriv		M					
G8007	AMI pt did not receiv aspiri		M					
G8008	AMI pt ineligible for aspiri		M					
G8009	AMI pt recd Bblock at arr		M					

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
G8010	AMI pt did not rec bblock		M					
G8011	AMI pt inelig Bbloc at arriv		M					
G8012	Pneum pt recv antibiotic 4 h		M					
G8013	Pneum pt w/o antibiotic 4 hr		M					
G8014	Pneum pt not elig antibiotic		M					
G8015	Diabetic pt w/ HBA1c>9%		M					
G8016	Diabetic pt w/ HBA1c<or=9%		M					
G8017	DM pt inelig for HBA1c measu		M					
G8018	Care not provided for HbA1c		M					
G8019	Diabetic pt w/LDL>= 100mg/dl		M					
G8020	Diab pt w/LDL< 100mg/dl		M					
G8021	Diab pt inelig for LDL meas		M					
G8022	Care not provided for LDL		M					
G8023	DM pt w BP>=140/80		M					
G8024	Diabetic pt wBP<140/80		M					
G8025	Diabetic pt inelig for BP me		M					
G8026	Diabet pt w no care re BP me		M					
G8027	HF p w/LVSD on ACE-I/ARB		M					
G8028	HF pt w/LVSD not on ACE-I/AR		M					
G8029	HF pt not elig for ACE-I/ARB		M					
G8030	HF pt w/LVSD on Bblocker		M					
G8031	HF pt w/LVSD not on Bblocker		M					
G8032	HF pt not elig for Bblocker		M					
G8033	PMI-CAD pt on Bblocker		M					
G8034	PMI-CAD pt not on Bblocker		M					
G8035	PMI-CAD pt inelig Bblocker		M					
G8036	AMI-CAD pt doc on antiplatel		M					
G8037	AMI-CAD pt not docu on antip		M					
G8038	AMI-CAD inelig antiplate mea		M					
G8039	CAD pt w/LDL>100mg/dl		M					
G8040	CAD pt w/LDL<or=100mg/dl		M					
G8041	CAD pt not eligible for LDL		M					
G8051	Osteoporosis assess		M					
G8052	Osteopor pt not assess		M					
G8053	Pt inelig for osteopor meas		M					
G8054	Falls assess not docum 12 mo		M					
G8055	Falls assess w/ 12 mon		M					
G8056	Not elig for falls assessmen		M					
G8057	Hearing assess receive		M					
G8058	Pt w/o hearing assess		M					
G8059	Pt inelig for hearing assess		M					
G8060	Urinary incont pt assess		M					

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
G8061	Pt not assess for urinary in		M					
G8062	Pt not elig for urinary inco		M					
G8075	ESRD pt w/ dialy of URR>=65%		M					
G8076	ESRD pt w/ dialy of URR<65%		M					
G8077	ESRD pt not elig for URR/KtV		M					
G8078	ESRD pt w/Hct>or=33		M					
G8079	ESRD pt w/Hct<33		M					
G8080	ESRD pt inelig for HCT/Hgb		M					
G8081	ESRD pt w/ auto AV fistula		M					
G8082	ESRD pt w other fistula		M					
G8085	ESRD PT inelig auto AV FISTU		M					
G8093	COPD pt rec smoking cessat		M					
G8094	COPD pt w/o smoke cessat int		M					
G8099	Osteopo pt given Ca+VitD sup		M					
G8100	Osteop pt inelig for Ca+VitD		M					
G8103	New dx osteo pt w/antiresorp		M					
G8104	Osteo pt inelig for antireso		M					
G8106	Bone dens meas test perf		M					
G8107	Bone dens meas test inelig		M					
G8108	Pt receiv influenza vacc		M					
G8109	Pt w/o influenza vacc		M					
G8110	Pt inelig for influenza vacc		M					
G8111	Pt receiv mammogram		M					
G8112	Pt not doc mammogram		M					
G8113	Pt ineligible mammography		M					
G8114	Care not provided for mamogr		M					
G8115	Pt receiv pneumo vacc		M					
G8116	Pt did not rec pneumo vacc		M					
G8117	Pt was inelig for pneumo vac		M					
G8126	Pt treat w/antidepress12wks		M					
G8127	Pt not treat w/antidepres12w		M					
G8128	Pt inelig for antidepres med		M					
G8129	Pt treat w/antidepres for 6m		M					
G8130	Pt not treat w/antidepres 6m		M					
G8131	Pt inelig for antidepres med		M					
G8152	Pt w/AB 1 hr prior to incisi		M					
G8153	Pt not doc for AB 1 hr prior		M					
G8154	Pt ineligi for AB therapy		M					
G8155	Pt recd thromboemb prophylax		M					
G8156	Pt did not rec thromboembo		M					
G8157	Pt ineligi for thrombolism		M					
G8159	Pt w/CABG w/o IMA		M					

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
G8162	Iso CABG pt w/o preop Bblock		M					
G8164	Iso CABG pt w/prolng intub		M					
G8165	Iso CABG pt w/o prolng intub		M					
G8166	Iso CABG req surg rexpo		M					
G8167	Iso CABG w/o surg explo		M					
G8170	CEA/ext bypass pt on aspirin		M					
G8171	Pt w/carot endarct/ext bypas		M					
G8172	CEA/ext bypass pt not on asp		M					
G8182	CAD pt care not prov LDL		M					
G8183	HF/atrial fib pt on warfarin		M					
G8184	HF/atrial fib pt inelig warf		M					
G8185	Osteoarth pt w/ assess pain		M					
G8186	Osteoarth pt inelig assess		M					
G8193	Antibio not doc prior surg		M					
G8196	Antibio not docum prior surg		M					
G8200	Cefazolin not docum prophy		M					
G8204	MD not doc order to d/c anti		M					
G8209	Clinician did not doc		M					
G8214	Clini not doc order VTE		M					
G8217	Pt not received DVT proph		M					
G8219	Received DVT proph day 2		M					
G8220	Pt not rec DVT proph day 2		M					
G8221	Pt inelig for DVT proph		M					
G8223	Pt not doc for presc antipla		M					
G8226	Pt no prescr anticoa at D/C		M					
G8231	Pt not doc for admin t-PA		M					
G8234	Pt not doc dysphagia screen		M					
G8238	Pt not doc to rec rehab serv		M					
G8240	Inter carotid stenosis30-99%		M					
G8243	Pt not doc MRI/CT w/o lesion		M					
G8246	Pt inelig hx w new/chg mole		M					
G8248	Pt w/one alarm symp not doc		M					
G8251	Pt not doc w/Barretts, endo		M					
G8254	Pt w/no doc order for barium		M					
G8257	Pt not doc rev meds D/C		M					
G8260	Pt not doc to have dec maker		M					
G8263	Pt not doc assess urinary in		M					
G8266	Pt not doc charc urin incon		M					
G8268	Pt not doc rec care urin inc		M					
G8271	Pt no doc screen fall		M					
G8274	Clini not doc pres/abs alarm		M					
G8276	Pt not doc mole change		M					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
G8279	Pt not doc rec PE		M					
G8282	Pt not doc to rec couns		M					
G8285	Pt did not rec pres osteo		M					
G8289	Pt not doc rec Ca/Vit D		M					
G8293	COPD pt w/o spir results		M					
G8296	COPD pt not doc bronch ther		M					
G8298	Pt doc optic nerve eval		M					
G8299	Pt not doc optic nerv eval		M					
G8302	Pt doc w/ target IOP		M					
G8303	Pt not doc w/ IOP		M					
G8304	Clin doc pt inelig IOP		M					
G8305	Clin not prov care POAG		M					
G8306	POAG w/ IOP rec care plan		M					
G8307	POAG w/ IOP no care plan		M					
G8308	POAG w/ IOP not doc plan		M					
G8310	Pt not doc rec antiox		M					
G8314	Pt not doc to rec mac exam		M					
G8318	Pt doc not have visual func		M					
G8322	Pt not doc pre axial leng		M					
G8326	Pt not doc rec fundus exam		M					
G8330	Pt not doc rec dilated mac		M					
G8334	Doc of macular not giv MD		M					
G8338	Clin not doc pt test osteo		M					
G8341	Pt not doc for DEXA		M					
G8345	Pt not doc have DEXA		M					
G8351	Pt not doc ECG		M					
G8354	Pt not rec aspirin prior ER		M					
G8357	Pt not doc to have ECG		M					
G8360	Pt not doc vital signs recor		M					
G8362	Pt not doc 02 SAT assess		M					
G8365	Pt not doc mental status		M					
G8367	Pt not doc have empiric AB		M					
G8370	Asthma pt w survey not docum		M					
G8371	Chemother not rec stg3 colon		M					
G8372	Chemother rec stg3 colon ca		M					
G8373	Chemo plan documen prior che		M					
G8374	Chemo plan not doc prior che		M					
G8375	CLL pt w/o doc flow cytometr		M					
G8376	Brst ca pt inelig tamoxifen		M					
G8377	MD doc colon ca pt inelig ch		M					
G8378	MD doc pt inelig radiation		M					
G8379	Doc radiat tx recom 12mo ov		M					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
G8380	Pt w stgIC-3Brst ca not rec		M					
G8381	Pt w stgIC-3Brst ca rec tam		M					
G8382	MM pt w/o doc IV bisphophon		M					
G8383	No doc radiation rec 12mo ov		M					
G8384	Base cytogen test MDS notper		M					
G8385	Diabet pt no do Hgb A1c 12m		M					
G8386	Diabet pt nodoc LDLiprotei		M					
G8387	ESRD pt w Hct/Hgb not docume		M					
G8388	ESRD pt w URR/Ktv notdoc eli		M					
G8389	MDS pt no doc FE st prio EPO		M					
G8390	Diabetic w/o document BP 12m		M					
G8391	Pt w asthma no doc med or tx		M					
G8395	LVEF>=40% doc normal or mild		M					
G8396	LVEF not performed		M					
G8397	Dil macula/fundus exam/w doc		M					
G8398	Dil macular/fundus not perfo		M					
G8399	Pt w/DXA document or order		M					
G8400	Pt w/DXA no document or orde		M					
G8401	Pt inelig osteo screen measu		M					
G8402	Smoke preven interven counse		M					
G8403	Smoke preven nocounsel		M					
G8404	Low extemity neur exam docum		M					
G8405	Low extemity neur not perfor		M					
G8406	Pt inelig lower extrem neuro		M					
G8407	ABI documented		M					
G8408	ABI not documented		M					
G8409	Pt inelig for ABI measure		M					
G8410	Eval on foot documented		M					
G8415	Eval on foot not performed		M					
G8416	Pt inelig footwear evaluatio		M					
G8417	Calc BMI abv up param f/u		M					
G8418	Calc BMI blw low param f/u		M					
G8419	Calc BMI out nrm param nof/u		M					
G8420	Calc BMI norm parameters		M					
G8421	BMI not calculated		M					
G8422	Pt inelig BMI calculation		M					
G8423	Pt screen flu vac & counsel		M					
G8424	Flu vaccine not screen		M					
G8425	Flu vaccine screen not curre		M					
G8426	Pt not approp screen & counc		M					
G8427	Doc meds verified w/pt or re		M					
G8428	Meds document w/o verifica		M					

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
G8429	Incomplete doc pt on meds		M					
G8430	Pt inelig med check		M					
G8431	Pos Clin depres scrn f/u doc		M					
G8432	Clin depression screen not d		M					
G8433	Pt inelig; Scrn clin dep		M					
G8434	Cognitive impairment screen		M					
G8435	Cognitive screen not documen		M					
G8436	Pt inelig for cognitive impa		M					
G8437	Care plan develop & document		M					
G8438	Pt inelig for devlp care pln		M					
G8439	Care plan develp & not docum		M					
G8440	Pain assess f/u pln document		M					
G8441	No document of pain assess		M					
G8442	Pt inelig pain assessment		M					
G8443	Prescription by E-Prescrib s		M					
G8445	Prescrip not gen at encounte		M					
G8446	Some prescrib print or call		M					
G8447	Pt vis doc use CCHIT cer EHR		M					
G8448	Pt vis doc w/non-CCHIT EHR		M					
G8449	Pt not doc w/EMR due to syst		M					
G8450	Beta-bloc rx pt w/abn lvef		M					
G8451	Pt w/abn lvef inelig b-bloc		M					
G8452	Pt w/abn lvef b-bloc no rx		M					
G8453	Tob use cess int counsel		M					
G8454	Tob use cess int no counsel		M					
G8455	Current tobacco smoker		M					
G8456	Smokeless tobacco user		M					
G8457	Cur tobacco non-user		M					
G8458	Pt inelig geno no antvir tx		M					
G8459	Doc pt rec antivir treat		M					
G8460	Pt inelig RNA no antvir tx		M					
G8461	Pt rec antivir treat hep c		M					
G8462	Pt inelig couns no antvir tx		M					
G8463	Pt rec antiviral treat doc		M					
G8464	Pt inelig; lo to no dter rsk		M					
G8465	High risk recurrence pro ca		M					
G8466	Pt inelig suic; MDD remis		M					
G8467	New dx init/rec episode MDD		M					
G8468	ACE/ARB rx pt w/abn lvef		M					
G8469	Pt w/abn lvef inelig ACE/ARB		M					
G8470	Pt w/ normal lvef		M					
G8471	LVEF not performed/doc		M					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
G8472	ACE/ARB no rx pt w/abn lvef		M					
G8473	ACE/ARB thxpy rx'd		M					
G8474	ACE/ARB not rx'd; doc reas		M					
G8475	ACE/ARB thxpy not rx'd		M					
G8476	BP sys <130 and dias <80		M					
G8477	BP sys>=130 and/or dias >=80		M					
G8478	BP not performed/doc		M					
G8479	MD rx'd ACE/ARB thxpy		M					
G8480	Pt inelig ACE/ARB thxpy		M					
G8481	MD not rx'd ACE/ARB thxpy		M					
G8482	Flu immunize order/admin		M					
G8483	Flu imm no ord/admin doc rea		M					
G8484	Flu immunize no order/admin		M					
G8485	Report, Diabetes measures		M					
G8486	Report, Prev Care Measures		M					
G8487	Report CKD Measures		M					
G8488	Report ESRD Measures		M					
G8489	CAD measures grp	NI	M					
G8490	RA measures grp	NI	M					
G8491	HIV/AIDS measures grp	NI	M					
G8492	Prev Care measures grp	NI	M					
G8493	Back pain measures grp	NI	M					
G8494	DM meas qual act perform	NI	M					
G8495	CKD meas qual act perform	NI	M					
G8496	PC meas qual act perform	NI	M					
G8497	CABG meas qual act perform	NI	M					
G8498	CAD meas qual act perform	NI	M					
G8499	RA meas qual act perform	NI	M					
G8500	HIV meas qual act perform	NI	M					
G8501	Perio meas qual act perform	NI	M					
G8502	BP meas qual act perform	NI	M					
G8503	Doc proph antibx w/in 1 hr	NI	M					
G8504	Doc ord pro antbx w/in 1 hr	NI	M					
G8505	No doc proph antibx w/in 1hr	NI	M					
G8506	Pt rec ACE/ARB	NI	M					
G8507	Pt inelig pt verif meds	NI	M					
G8508	Pt inelig; pain asses no f/u	NI	M					
G8509	Pain assess no f/u pln doc	NI	M					
G8510	Pt inelig neg scrn depres	NI	M					
G8511	Clin depres scrn no f/u doc	NI	M					
G8512	Pain sev quant present	NI	M					
G8513	ABI meas & doc	NI	M					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
G8514	PT inelig; ABI measure	NI	M					
G8515	No ABI measurement	NI	M					
G8516	Scrn fal rsk >2 fal or w/inj	NI	M					
G8517	Scrn fall rsk; <2 falls	NI	M					
G8518	Clin stg b/f lun/eso ca surg	NI	M					
G8519	Pt in; clin ca stg b/f surg	NI	M					
G8520	Clin stg b/f surg not doc	NI	M					
G8521	Antplt recd 48 hrs & disch	NI	M					
G8522	Pt inelig; antiplt therapy	NI	M					
G8523	Antplt not recd reas no spec	NI	M					
G8524	Patch closure conv CEA	NI	M					
G8525	No patch closure CEA	NI	M					
G8526	No patch closure conv CEA	NI	M					
G8527	Doc ord antimic prophy	NI	M					
G8528	Pt inelig; proph antibiot	NI	M					
G8529	No doc ord antimic prophy	NI	M					
G8530	Auto AV fistula recd	NI	M					
G8531	Pt inelig; auto AV fistula	NI	M					
G8532	No auto AV fistula; no reas	NI	M					
G8533	Partic in clin data base reg	NI	M					
G8534	Doc elder mal scrn f/u plan	NI	M					
G8535	Pt inelig no eld mal scrn	NI	M					
G8536	No doc elder mal scrn	NI	M					
G8537	Pt inelig eldmal scrn no f/u	NI	M					
G8538	Eld mal scrn no f/u pln	NI	M					
G8539	Cur funct assess & care pln	NI	M					
G8540	Pt inelig funct assess	NI	M					
G8541	No doc cur funct assess	NI	M					
G8542	Pt inelig func asses no pln	NI	M					
G8543	Cur funct asses; no care pln	NI	M					
G8544	CABG measures grp	NI	M					
G9001	MCCD, initial rate		B					
G9002	MCCD,maintenance rate		B					
G9003	MCCD, risk adj hi, initial		B					
G9004	MCCD, risk adj lo, initial		B					
G9005	MCCD, risk adj, maintenance		B					
G9006	MCCD, Home monitoring		B					
G9007	MCCD, sch team conf		B					
G9008	Mccd,phys coor-care ovrsght		B					
G9009	MCCD, risk adj, level 3		B					
G9010	MCCD, risk adj, level 4		B					
G9011	MCCD, risk adj, level 5		B					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
G9012	Other Specified Case Mgmt		B					
G9013	ESRD demo bundle level I		E					
G9014	ESRD demo bundle-level II		E					
G9016	Demo-smoking cessation coun		E					
G9017	Amantadine HCL 100mg oral		A					
G9018	Zanamivir,inhalation pwd 10m		A					
G9019	Oseltamivir phosphate 75mg		A					
G9020	Rimantadine HCL 100mg oral		A					
G9033	Amantadine HCL oral brand		A					
G9034	Zanamivir, inh pwdr, brand		A					
G9035	Oseltamivir phosp, brand		A					
G9036	Rimantadine HCL, brand		A					
G9041	Low vision rehab occupationa		A					
G9042	Low vision rehab orient/mobi		A					
G9043	Low vision lowvision therapi		A					
G9044	Low vision rehabilate teache		A					
G9050	Oncology work-up evaluation		E					
G9051	Oncology tx decision-mgmt		E					
G9052	Onc surveillance for disease		E					
G9053	Onc expectant management pt		E					
G9054	Onc supervision palliative		E					
G9055	Onc visit unspecified NOS		E					
G9056	Onc prac mgmt adheres guide		E					
G9057	Onc pract mgmt differs trial		E					
G9058	Onc prac mgmt disagree w/gui		E					
G9059	Onc prac mgmt pt opt alterna		E					
G9060	Onc prac mgmt dif pt comorb		E					
G9061	Onc prac cond noadd by guide		E					
G9062	Onc prac guide differs nos		E					
G9063	Onc dx nsclc stgl no progres		M					
G9064	Onc dx nsclc stg2 no progres		M					
G9065	Onc dx nsclc stg3A no progre		M					
G9066	Onc dx nsclc stg3B-4 metasta		M					
G9067	Onc dx nsclc dx unknown nos		M					
G9068	Onc dx sclc/nsclc limited		M					
G9069	Onc dx sclc/nsclc ext at dx		M					
G9070	Onc dx sclc/nsclc ext unknwn		M					
G9071	Onc dx brst stg1-2B HR,nopro		M					
G9072	Onc dx brst stg1-2 noprogres		M					
G9073	Onc dx brst stg3-HR, no pro		M					
G9074	Onc dx brst stg3-noprogress		M					
G9075	Onc dx brst metastic/ recur		M					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
G9077	Onc dx prostate T1no progres		M					
G9078	Onc dx prostate T2no progres		M					
G9079	Onc dx prostate T3b-T4noprog		M					
G9080	Onc dx prostate w/rise PSA		M					
G9083	Onc dx prostate unknwn nos		M					
G9084	Onc dx colon t1-3,n1-2,no pr		M					
G9085	Onc dx colon T4, N0 w/o prog		M					
G9086	Onc dx colon T1-4 no dx prog		M					
G9087	Onc dx colon metas evid dx		M					
G9088	Onc dx colon metas noevid dx		M					
G9089	Onc dx colon extent unknown		M					
G9090	Onc dx rectal T1-2 no progr		M					
G9091	Onc dx rectal T3 N0 no prog		M					
G9092	Onc dx rectal T1-3,N1-2noprg		M					
G9093	Onc dx rectal T4,N,M0 no prg		M					
G9094	Onc dx rectal M1 w/mets prog		M					
G9095	Onc dx rectal extent unknwn		M					
G9096	Onc dx esophag T1-T3 noprog		M					
G9097	Onc dx esophageal T4 no prog		M					
G9098	Onc dx esophageal mets recur		M					
G9099	Onc dx esophageal unknown		M					
G9100	Onc dx gastric no recurrence		M					
G9101	Onc dx gastric p R1-R2noprog		M					
G9102	Onc dx gastric unresectable		M					
G9103	Onc dx gastric recurrent		M					
G9104	Onc dx gastric unknown NOS		M					
G9105	Onc dx pancreatc p R0 res no		M					
G9106	Onc dx pancreatc p R1/R2 no		M					
G9107	Onc dx pancreatic unresectab		M					
G9108	Onc dx pancreatic unknwn NOS		M					
G9109	Onc dx head/neck T1-T2no prg		M					
G9110	Onc dx head/neck T3-4 noprog		M					
G9111	Onc dx head/neck M1 mets rec		M					
G9112	Onc dx head/neck ext unknown		M					
G9113	Onc dx ovarian stg1A-B no pr		M					
G9114	Onc dx ovarian stg1A-B or 2		M					
G9115	Onc dx ovarian stg3/4 noprog		M					
G9116	Onc dx ovarian recurrence		M					
G9117	Onc dx ovarian unknown NOS		M					
G9123	Onc dx CML chronic phase		M					
G9124	Onc dx CML acceler phase		M					
G9125	Onc dx CML blast phase		M					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
G9126	Onc dx CML remission		M					
G9128	Onc dx multi myeloma stage I		M					
G9129	Onc dx mult myeloma stg2 hig		M					
G9130	Onc dx multi myeloma unknown		M					
G9131	Onc dx brst unknown NOS		M					
G9132	Onc dx prostate mets no cast		M					
G9133	Onc dx prostate clinical met		M					
G9134	Onc NHLstg 1-2 no relap no		M					
G9135	Onc dx NHL stg 3-4 not relap		M					
G9136	Onc dx NHL trans to Ig Bcell		M					
G9137	Onc dx NHL relapse/refractor		M					
G9138	Onc dx NHL stg unknown		M					
G9139	Onc dx CML dx status unknown		M					
G9140	Frontier extended stay demo		A					
J0120	Tetracyclin injection		N					
J0128	Abarelix injection		K	9216		$67.32		$13.47
J0129	Abatacept injection	CH	K	9230		$18.51		$3.71
J0130	Abciximab injection		K	1605		$433.69		$86.74
J0132	Acetylcysteine injection	CH	K	1186		$2.15		$0.43
J0133	Acyclovir injection		N					
J0135	Adalimumab injection		K	1083		$338.53		$67.71
J0150	Injection adenosine 6 MG		K	0379		$9.25		$1.85
J0152	Adenosine injection		K	0917		$69.44		$13.89
J0170	Adrenalin epinephrin inject		N					
J0180	Agalsidase beta injection		K	9208		$128.54		$25.71
J0190	Inj biperiden lactate/5 mg	CH	N					
J0200	Alatrofloxacin mesylate		N					
J0205	Alglucerase injection		K	0900		$39.63		$7.93
J0207	Amifostine		K	7000		$416.03		$83.21
J0210	Methyldopate hcl injection		K	2210		$12.39		$2.48
J0215	Alefacept		K	1633		$27.81		$5.57
J0220	Alglucosidase alfa injection		K	9234		$124.80		$24.96
J0256	Alpha 1 proteinase inhibitor		K	0901		$3.62		$0.73
J0270	Alprostadil for injection		B					
J0275	Alprostadil urethral suppos		B					
J0278	Amikacin sulfate injection		N					
J0280	Aminophyllin 250 MG inj		N					
J0282	Amiodarone HCl		N					
J0285	Amphotericin B		N					
J0287	Amphotericin b lipid complex		K	9024		$10.05		$2.01
J0288	Ampho b cholesteryl sulfate		K	0735		$11.78		$2.36
J0289	Amphotericin b liposome inj		K	0736		$15.82		$3.17

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
J0290	Ampicillin 500 MG inj		N					
J0295	Ampicillin sodium per 1.5 gm		N					
J0300	Amobarbital 125 MG inj		N					
J0330	Succinycholine chloride inj		N					
J0348	Anidulafungin injection	CH	K	0760		$1.34		$0.27
J0350	Injection anistreplase 30 u	CH	N					
J0360	Hydralazine hcl injection		N					
J0364	Apomorphine hydrochloride		N					
J0365	Aprotonin, 10,000 kiu		K	1682		$2.60		$0.52
J0380	Inj metaraminol bitartrate		N					
J0390	Chloroquine injection		N					
J0395	Arbutamine hcl injection		N					
J0400	Aripiprazole injection	CH	N					
J0456	Azithromycin		N					
J0460	Atropine sulfate injection		N					
J0470	Dimecaprol injection	CH	K	1206		$26.26		$5.26
J0475	Baclofen 10 MG injection		K	9032		$184.28		$36.86
J0476	Baclofen intrathecal trial		K	1631		$68.14		$13.63
J0480	Basiliximab		K	1683		$1,565.52		$313.11
J0500	Dicyclomine injection		N					
J0515	Inj benztropine mesylate		N					
J0520	Bethanechol chloride inject		N					
J0530	Penicillin g benzathine inj		N					
J0540	Penicillin g benzathine inj		N					
J0550	Penicillin g benzathine inj	CH	K	1217		$31.99		$6.40
J0560	Penicillin g benzathine inj		N					
J0570	Penicillin g benzathine inj		N					
J0580	Penicillin g benzathine inj		N					
J0583	Bivalirudin		K	3041		$2.30		$0.46
J0585	Botulinum toxin a per unit		K	0902		$5.30		$1.06
J0587	Botulinum toxin type B		K	9018		$8.94		$1.79
J0592	Buprenorphine hydrochloride		N					
J0594	Busulfan injection		K	1178		$11.93		$2.39
J0595	Butorphanol tartrate 1 mg		N					
J0600	Edetate calcium disodium inj		K	0999		$49.29		$9.86
J0610	Calcium gluconate injection		N					
J0620	Calcium glycer & lact/10 ML		N					
J0630	Calcitonin salmon injection	CH	K	1220		$48.04		$9.61
J0636	Inj calcitriol per 0.1 mcg		N					
J0637	Caspofungin acetate		K	9019		$14.47		$2.90
J0640	Leucovorin calcium injection		N					
J0641	Levoleucovorin injection	NI	K	1236		$1.03		$0.21

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
J0670	Inj mepivacaine HCL/10 ml		N					
J0690	Cefazolin sodium injection		N					
J0692	Cefepime HCl for injection		N					
J0694	Cefoxitin sodium injection		N					
J0696	Ceftriaxone sodium injection		N					
J0697	Sterile cefuroxime injection		N					
J0698	Cefotaxime sodium injection		N					
J0702	Betamethasone acet&sod phosp		N					
J0704	Betamethasone sod phosp/4 MG		N					
J0706	Caffeine citrate injection		N					
J0710	Cephapirin sodium injection		N					
J0713	Inj ceftazidime per 500 mg		N					
J0715	Ceftizoxime sodium / 500 MG		N					
J0720	Chloramphenicol sodium injec		N					
J0725	Chorionic gonadotropin/1000u		N					
J0735	Clonidine hydrochloride		K	0935		$63.41		$12.69
J0740	Cidofovir injection		K	9033		$747.70		$149.54
J0743	Cilastatin sodium injection		N					
J0744	Ciprofloxacin iv		N					
J0745	Inj codeine phosphate /30 MG		N					
J0760	Colchicine injection		N					
J0770	Colistimethate sodium inj		N					
J0780	Prochlorperazine injection		N					
J0795	Corticorelin ovine triflutal		K	1684		$4.31		$0.87
J0800	Corticotropin injection		K	1280		$2,310.04		$462.01
J0835	Inj cosyntropin per 0.25 MG		K	0835		$95.34		$19.07
J0850	Cytomegalovirus imm IV /vial		K	0903		$862.24		$172.45
J0878	Daptomycin injection		K	9124		$0.37		$0.08
J0881	Darbepoetin alfa, non-esrd		K	1685		$2.91		$0.59
J0882	Darbepoetin alfa, esrd use		A					
J0885	Epoetin alfa, non-esrd		K	1686		$8.92		$1.79
J0886	Epoetin alfa 1000 units ESRD		A					
J0894	Decitabine injection	CH	K	9231		$26.23		$5.25
J0895	Deferoxamine mesylate inj		N					
J0900	Testosterone enanthate inj		N					
J0945	Brompheniramine maleate inj		N					
J0970	Estradiol valerate injection		N					
J1000	Depo-estradiol cypionate inj		N					
J1020	Methylprednisolone 20 MG inj		N					
J1030	Methylprednisolone 40 MG inj		N					
J1040	Methylprednisolone 80 MG inj		N					
J1051	Medroxyprogesterone inj		N					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
J1055	Medrxyprogester acetate inj		E					
J1056	MA/EC contraceptiveinjection		E					
J1060	Testosterone cypionate 1 ML		N					
J1070	Testosterone cypionat 100 MG		N					
J1080	Testosterone cypionat 200 MG		N					
J1094	Inj dexamethasone acetate		N					
J1100	Dexamethasone sodium phos		N					
J1110	Inj dihydroergotamine mesylt		N					
J1120	Acetazolamid sodium injectio		N					
J1160	Digoxin injection		N					
J1162	Digoxin immune fab (ovine)		K	1687		$484.63		$96.93
J1165	Phenytoin sodium injection		N					
J1170	Hydromorphone injection		N					
J1180	Dyphylline injection		N					
J1190	Dexrazoxane HCl injection		K	0726		$263.77		$52.76
J1200	Diphenhydramine hcl injectio		N					
J1205	Chlorothiazide sodium inj		K	0747		$189.58		$37.92
J1212	Dimethyl sulfoxide 50% 50 ML	CH	K	1221		$64.31		$12.87
J1230	Methadone injection		N					
J1240	Dimenhydrinate injection		N					
J1245	Dipyridamole injection		N					
J1250	Inj dobutamine HCL/250 mg		N					
J1260	Dolasetron mesylate		K	0750		$4.52		$0.91
J1265	Dopamine injection		N					
J1267	Doripenem injection	NI	G	9241		$0.65		$0.13
J1270	Injection, doxercalciferol		N					
J1300	Eculizumab injection		G	9236		$176.38		$34.61
J1320	Amitriptyline injection		N					
J1324	Enfuvirtide injection	CH	N					
J1325	Epoprostenol injection		N					
J1327	Eptifibatide injection		K	1607		$17.55		$3.51
J1330	Ergonovine maleate injection		N					
J1335	Ertapenem injection		N					
J1364	Erythro lactobionate /500 MG		N					
J1380	Estradiol valerate 10 MG inj		N					
J1390	Estradiol valerate 20 MG inj		N					
J1410	Inj estrogen conjugate 25 MG		K	9038		$74.17		$14.84
J1430	Ethanolamine oleate 100 mg		K	1688		$147.14		$29.43
J1435	Injection estrone per 1 MG		N					
J1436	Etidronate disodium inj		K	1436		$70.06		$14.02
J1438	Etanercept injection		K	1608		$170.59		$34.12
J1440	Filgrastim 300 mcg injection		K	0728		$196.54		$39.31

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
J1441	Filgrastim 480 mcg injection		K	7049		$301.43		$60.29
J1450	Fluconazole		N					
J1451	Fomepizole, 15 mg		K	1689		$11.63		$2.33
J1452	Intraocular Fomivirsen na		N					
J1453	Fosaprepitant injection	NI	G	9242		$1.57		$0.31
J1455	Foscarnet sodium injection	CH	K	1189		$10.50		$2.10
J1457	Gallium nitrate injection		K	0878		$1.56		$0.32
J1458	Galsulfase injection		K	9224		$325.95		$65.19
J1459	Inj IVIG privigen 500 mg	NI	G	1214		$33.64		$6.60
J1460	Gamma globulin 1 CC inj		K	3043		$11.87		$2.38
J1470	Gamma globulin 2 CC inj		K	0898		$23.72		$4.75
J1480	Gamma globulin 3 CC inj		K	0899		$35.58		$7.12
J1490	Gamma globulin 4 CC inj		K	0904		$47.44		$9.49
J1500	Gamma globulin 5 CC inj		K	0919		$59.31		$11.87
J1510	Gamma globulin 6 CC inj		K	0920		$71.18		$14.24
J1520	Gamma globulin 7 CC inj		K	0921		$82.99		$16.60
J1530	Gamma globulin 8 CC inj		K	0922		$94.89		$18.98
J1540	Gamma globulin 9 CC inj		K	0923		$106.78		$21.36
J1550	Gamma globulin 10 CC inj		K	0924		$118.61		$23.73
J1560	Gamma globulin > 10 CC inj		K	0933		$118.61		$23.73
J1561	Gamunex injection		K	0948		$34.14		$6.83
J1562	Vivaglobin, inj		K	0804		$6.94		$1.39
J1565	RSV-ivig		K	0906		$15.87		$3.18
J1566	Immune globulin, powder		K	2731		$28.68		$5.74
J1568	Octagam injection		K	0943		$35.18		$7.04
J1569	Gammagard liquid injection		K	0944		$34.35		$6.87
J1570	Ganciclovir sodium injection		N					
J1571	Hepagam b im injection		G	0946		$43.92		$8.62
J1572	Flebogamma injection		K	0947		$35.02		$7.01
J1573	Hepagam b intravenous, inj		G	1138		$43.92		$8.62
J1580	Garamycin gentamicin inj		N					
J1590	Gatifloxacin injection		N					
J1595	Injection glatiramer acetate		K	1015		$63.46		$12.70
J1600	Gold sodium thiomaleate inj		N					
J1610	Glucagon hydrochloride/1 MG		K	9042		$71.40		$14.28
J1620	Gonadorelin hydroch/ 100 mcg		K	7005		$176.89		$35.38
J1626	Granisetron hcl injection		K	0764		$4.25		$0.85
J1630	Haloperidol injection		N					
J1631	Haloperidol decanoate inj		N					
J1640	Hemin, 1 mg		K	1690		$7.45		$1.49
J1642	Inj heparin sodium per 10 u		N					
J1644	Inj heparin sodium per 1000u		N					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
J1645	Dalteparin sodium		N					
J1650	Inj enoxaparin sodium		N					
J1652	Fondaparinux sodium		K	0883		$6.03		$1.21
J1655	Tinzaparin sodium injection		N					
J1670	Tetanus immune globulin inj		K	1670		$134.95		$26.99
J1675	Histrelin acetate		B					
J1700	Hydrocortisone acetate inj		N					
J1710	Hydrocortisone sodium ph inj		N					
J1720	Hydrocortisone sodium succ i		N					
J1730	Diazoxide injection		K	1740		$112.16		$22.44
J1740	Ibandronate sodium injection	CH	K	9229		$137.65		$27.53
J1742	Ibutilide fumarate injection		K	9044		$364.11		$72.83
J1743	Idursulfase injection	CH	K	9232		$450.71		$90.15
J1745	Infliximab injection		K	7043		$56.00		$11.20
J1750	Inj iron dextran	CH	K	1237		$11.59		$2.32
J1751	Iron dextran 165 injection	CH	D					
J1752	Iron dextran 267 injection	CH	D					
J1756	Iron sucrose injection		K	9046		$0.36		$0.08
J1785	Injection imiglucerase /unit		K	0916		$3.96		$0.80
J1790	Droperidol injection		N					
J1800	Propranolol injection		N					
J1810	Droperidol/fentanyl inj		E					
J1815	Insulin injection		N					
J1817	Insulin for insulin pump use		N					
J1825	Interferon beta-1a		E					
J1830	Interferon beta-1b / .25 MG		K	0910		$107.92		$21.59
J1835	Itraconazole injection		K	9047		$36.84		$7.37
J1840	Kanamycin sulfate 500 MG inj		N					
J1850	Kanamycin sulfate 75 MG inj		N					
J1885	Ketorolac tromethamine inj		N					
J1890	Cephalothin sodium injection		N					
J1930	Lanreotide injection	NI	K	9237		$26.21		$5.25
J1931	Laronidase injection		K	9209		$24.14		$4.83
J1940	Furosemide injection		N					
J1945	Lepirudin		K	1693		$173.32		$34.67
J1950	Leuprolide acetate /3.75 MG		K	0800		$435.72		$87.15
J1953	Levetiracetam injection	NI	G	9238		$0.41		$0.08
J1955	Inj levocarnitine per 1 gm		B					
J1956	Levofloxacin injection		N					
J1960	Levorphanol tartrate inj		N					
J1980	Hyoscyamine sulfate inj		N					
J1990	Chlordiazepoxide injection		N					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
J2001	Lidocaine injection		N					
J2010	Lincomycin injection		N					
J2020	Linezolid injection		K	9001		$28.18		$5.64
J2060	Lorazepam injection		N					
J2150	Mannitol injection		N					
J2170	Mecasermin injection	CH	N					
J2175	Meperidine hydrochl /100 MG		N					
J2180	Meperidine/promethazine inj		N					
J2185	Meropenem		N					
J2210	Methylergonovin maleate inj		N					
J2248	Micafungin sodium injection	CH	K	9227		$1.24		$0.25
J2250	Inj midazolam hydrochloride		N					
J2260	Inj milrinone lactate / 5 MG		N					
J2270	Morphine sulfate injection		N					
J2271	Morphine so4 injection 100mg		N					
J2275	Morphine sulfate injection		N					
J2278	Ziconotide injection		K	1694		$6.37		$1.28
J2280	Inj, moxifloxacin 100 mg		N					
J2300	Inj nalbuphine hydrochloride		N					
J2310	Inj naloxone hydrochloride		N					
J2315	Naltrexone, depot form		K	0759		$1.85		$0.37
J2320	Nandrolone decanoate 50 MG		N					
J2321	Nandrolone decanoate 100 MG		N					
J2322	Nandrolone decanoate 200 MG		N					
J2323	Natalizumab injection	CH	K	9126		$7.44		$1.49
J2325	Nesiritide injection		K	1695		$33.91		$6.79
J2353	Octreotide injection, depot		K	1207		$101.89		$20.38
J2354	Octreotide inj, non-depot		N					
J2355	Oprelvekin injection		K	7011		$242.00		$48.40
J2357	Omalizumab injection		K	9300		$17.79		$3.56
J2360	Orphenadrine injection		N					
J2370	Phenylephrine hcl injection		N					
J2400	Chloroprocaine hcl injection		N					
J2405	Ondansetron hcl injection		K	0768		$0.19		$0.04
J2410	Oxymorphone hcl injection		N					
J2425	Palifermin injection		K	1696		$11.18		$2.24
J2430	Pamidronate disodium /30 MG		K	0730		$28.68		$5.74
J2440	Papaverin hcl injection		N					
J2460	Oxytetracycline injection	CH	K	1211		$165.50		$33.10
J2469	Palonosetron hcl		K	9210		$16.13		$3.23
J2501	Paricalcitol		N					
J2503	Pegaptanib sodium injection		K	1697		$1,002.76		$200.56

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
J2504	Pegademase bovine, 25 iu		K	1739		$221.87		$44.38
J2505	Injection, pegfilgrastim 6mg		K	9119		$2,155.11		$431.03
J2510	Penicillin g procaine inj		N					
J2513	Pentastarch 10% solution	CH	K	1222		$158.76		$31.76
J2515	Pentobarbital sodium inj	CH	K	1223		$7.78		$1.56
J2540	Penicillin g potassium inj		N					
J2543	Piperacillin/tazobactam		N					
J2545	Pentamidine non-comp unit		B					
J2550	Promethazine hcl injection		N					
J2560	Phenobarbital sodium inj		N					
J2590	Oxytocin injection		N					
J2597	Inj desmopressin acetate		N					
J2650	Prednisolone acetate inj		N					
J2670	Totazoline hcl injection		N					
J2675	Inj progesterone per 50 MG		N					
J2680	Fluphenazine decanoate 25 MG		N					
J2690	Procainamide hcl injection		N					
J2700	Oxacillin sodium injeciton		N					
J2710	Neostigmine methylslfte inj		N					
J2720	Inj protamine sulfate/10 MG		N					
J2724	Protein c concentrate		K	1139		$11.96		$2.40
J2725	Inj protirelin per 250 mcg		N					
J2730	Pralidoxime chloride inj		K	1023		$83.55		$16.71
J2760	Phentolaine mesylate inj		N					
J2765	Metoclopramide hcl injection		N					
J2770	Quinupristin/dalfopristin		K	2770		$137.14		$27.43
J2778	Ranibizumab injection	CH	K	9233		$402.31		$80.47
J2780	Ranitidine hydrochloride inj		N					
J2783	Rasburicase		K	0738		$152.34		$30.47
J2785	Regadenoson injection	NI	G	9244		$214.49		$42.09
J2788	Rho d immune globulin 50 mcg		K	9023		$26.36		$5.28
J2790	Rho d immune globulin inj		K	0884		$82.95		$16.59
J2791	Rhophylac injection		K	0945		$5.15		$1.03
J2792	Rho(D) immune globulin h, sd		K	1609		$16.49		$3.30
J2794	Risperidone, long acting		K	9125		$4.86		$0.98
J2795	Ropivacaine HCl injection		N					
J2800	Methocarbamol injection		N					
J2805	Sincalide injection	CH	K	1224		$60.01		$12.01
J2810	Inj theophylline per 40 MG		N					
J2820	Sargramostim injection		K	0731		$25.76		$5.16
J2850	Inj secretin synthetic human		K	1700		$19.93		$3.99
J2910	Aurothioglucose injeciton		N					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
J2916	Na ferric gluconate complex		N					
J2920	Methylprednisolone injection		N					
J2930	Methylprednisolone injection		N					
J2940	Somatrem injection	CH	K	1225		$43.99		$8.80
J2941	Somatropin injection		K	7034		$49.82		$9.97
J2950	Promazine hcl injection		N					
J2993	Reteplase injection		K	9005		$828.27		$165.66
J2995	Inj streptokinase /250000 IU	CH	K	1226		$78.00		$15.60
J2997	Alteplase recombinant		K	7048		$32.26		$6.46
J3000	Streptomycin injection		N					
J3010	Fentanyl citrate injeciton		N					
J3030	Sumatriptan succinate / 6 MG		K	3030		$71.21		$14.25
J3070	Pentazocine injection		N					
J3100	Tenecteplase injection	CH	D					
J3101	Tenecteplase injection	NI	K	9002		$1,929.45		$385.89
J3105	Terbutaline sulfate inj		N					
J3110	Teriparatide injection		B					
J3120	Testosterone enanthate inj		N					
J3130	Testosterone enanthate inj		N					
J3140	Testosterone suspension inj		N					
J3150	Testosteron propionate inj		N					
J3230	Chlorpromazine hcl injection		N					
J3240	Thyrotropin injection		K	9108		$961.31		$192.27
J3243	Tigecycline injection	CH	K	9228		$1.09		$0.22
J3246	Tirofiban HCl		K	7041		$7.18		$1.44
J3250	Trimethobenzamide hcl inj		N					
J3260	Tobramycin sulfate injection		N					
J3265	Injection torsemide 10 mg/ml		N					
J3280	Thiethylperazine maleate inj		N					
J3285	Treprostinil injection		K	1701		$55.95		$11.19
J3300	Triamcinolone A inj PRS-free	NI	N					
J3301	Triamcinolone acet inj NOS		N					
J3302	Triamcinolone diacetate inj		N					
J3303	Triamcinolone hexacetonl inj		N					
J3305	Inj trimetrexate glucoronate		K	7045		$146.89		$29.38
J3310	Perphenazine injeciton		N					
J3315	Triptorelin pamoate		K	9122		$149.61		$29.93
J3320	Spectinomycn di-hcl inj		N					
J3350	Urea injection	CH	K	1227		$73.95		$14.79
J3355	Urofollitropin, 75 iu		K	1741		$50.03		$10.01
J3360	Diazepam injection		N					
J3364	Urokinase 5000 IU injection		N					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
J3365	Urokinase 250,000 IU inj		K	7036		$449.09		$89.82
J3370	Vancomycin hcl injection		N					
J3396	Verteporfin injection		K	1203		$9.15		$1.83
J3400	Triflupromazine hcl inj	CH	K	1218		$20.51		$4.11
J3410	Hydroxyzine hcl injection		N					
J3411	Thiamine hcl 100 mg		N					
J3415	Pyridoxine hcl 100 mg		N					
J3420	Vitamin b12 injection		N					
J3430	Vitamin k phytonadione inj		N					
J3465	Injection, voriconazole		K	1052		$5.19		$1.04
J3470	Hyaluronidase injection		N					
J3471	Ovine, up to 999 USP units		N					
J3472	Ovine, 1000 USP units		K	1703		$130.62		$26.13
J3473	Hyaluronidase recombinant	CH	K	1228		$0.48		$0.10
J3475	Inj magnesium sulfate		N					
J3480	Inj potassium chloride		N					
J3485	Zidovudine		N					
J3486	Ziprasidone mesylate		N					
J3487	Zoledronic acid		K	9115		$210.02		$42.01
J3488	Reclast injection		G	0951		$216.61		$42.50
J3490	Drugs unclassified injection		N					
J3520	Edetate disodium per 150 mg		E					
J3530	Nasal vaccine inhalation		N					
J3535	Metered dose inhaler drug		E					
J3570	Laetrile amygdalin vit B17		E					
J3590	Unclassified biologics		N					
J7030	Normal saline solution infus		N					
J7040	Normal saline solution infus		N					
J7042	5% dextrose/normal saline		N					
J7050	Normal saline solution infus		N					
J7060	5% dextrose/water		N					
J7070	D5w infusion		N					
J7100	Dextran 40 infusion		N					
J7110	Dextran 75 infusion		N					
J7120	Ringers lactate infusion		N					
J7130	Hypertonic saline solution		N					
J7186	Antihemophilic viii/vwf comp	NI	K	1213		$0.81		$0.17
J7187	Humate-P, inj		K	1704		$0.86		$0.18
J7189	Factor viia		K	1705		$1.21		$0.25
J7190	Factor viii		K	0925		$0.81		$0.17
J7191	Factor VIII (porcine)	CH	K	1208		$0.98		$0.20
J7192	Factor viii recombinant		K	0927		$1.06		$0.22

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
J7193	Factor IX non-recombinant		K	0931		$0.88		$0.18
J7194	Factor ix complex		K	0928		$0.80		$0.16
J7195	Factor IX recombinant		K	0932		$1.05		$0.21
J7197	Antithrombin iii injection	CH	N					
J7198	Anti-inhibitor		K	0929		$1.46		$0.30
J7199	Hemophilia clot factor noc		B					
J7300	Intraut copper contraceptive		E					
J7302	Levonorgestrel iu contracept		E					
J7303	Contraceptive vaginal ring		E					
J7304	Contraceptive hormone patch		E					
J7306	Levonorgestrel implant sys		E					
J7307	Etonogestrel implant system		E					
J7308	Aminolevulinic acid hcl top		K	7308		$115.29		$23.06
J7310	Ganciclovir long act implant		K	0913		$16,640.00		$3,328.00
J7311	Fluocinolone acetonide implt		K	9225		$18,980.00		$3,796.00
J7321	Hyalgan/supartz inj per dose		K	0873		$97.02		$19.41
J7322	Synvisc inj per dose		K	0874		$181.29		$36.26
J7323	Euflexxa inj per dose		K	0875		$107.54		$21.51
J7324	Orthovisc inj per dose		K	0877		$176.11		$35.23
J7330	Cultured chondrocytes implnt		B					
J7340	Metabolic active D/E tissue	CH	D					
J7341	Non-human, metabolic tissue	CH	D					
J7342	Metabolically active tissue	CH	D					
J7343	Nonmetabolic act d/e tissue	CH	D					
J7344	Nonmetabolic active tissue	CH	D					
J7346	Injectable human tissue	CH	D					
J7347	Integra matrix tissue	CH	D					
J7348	Tissuemend tissue	CH	D					
J7349	Primatrix tissue	CH	D					
J7500	Azathioprine oral 50mg		N					
J7501	Azathioprine parenteral		K	0887		$89.27		$17.86
J7502	Cyclosporine oral 100 mg		K	0888		$3.61		$0.73
J7504	Lymphocyte immune globulin		K	0890		$431.18		$86.24
J7505	Monoclonal antibodies		K	7038		$1,083.34		$216.67
J7506	Prednisone oral		N					
J7507	Tacrolimus oral per 1 MG		K	0891		$3.82		$0.77
J7509	Methylprednisolone oral		N					
J7510	Prednisolone oral per 5 mg		N					
J7511	Antithymocyte globuln rabbit		K	9104		$365.31		$73.07
J7513	Daclizumab, parenteral		K	1612		$338.05		$67.61
J7515	Cyclosporine oral 25 mg		N					
J7516	Cyclosporin parenteral 250mg	CH	K	1204		$19.01		$3.81

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
J7517	Mycophenolate mofetil oral		K	9015		$3.09		$0.62
J7518	Mycophenolic acid		K	9219		$2.56		$0.52
J7520	Sirolimus, oral		K	9020		$8.24		$1.65
J7525	Tacrolimus injection		K	9006		$136.97		$27.40
J7599	Immunosuppressive drug noc		N					
J7602	Albuterol inh non-comp con	CH	D					
J7603	Albuterol inh non-comp u d	CH	D					
J7604	Acetylcysteine comp unit		M					
J7605	Arformoterol non-comp unit		M					
J7606	Formoterol fumarate, inh	NI	M					
J7607	Levalbuterol comp con		M					
J7608	Acetylcysteine non-comp unit		M					
J7609	Albuterol comp unit		M					
J7610	Albuterol comp con		M					
J7611	Albuterol non-comp con		M					
J7612	Levalbuterol non-comp con		M					
J7613	Albuterol non-comp unit		M					
J7614	Levalbuterol non-comp unit		M					
J7615	Levalbuterol comp unit		M					
J7620	Albuterol ipratrop non-comp		M					
J7622	Beclomethasone comp unit		M					
J7624	Betamethasone comp unit		M					
J7626	Budesonide non-comp unit		M					
J7627	Budesonide comp unit		M					
J7628	Bitolterol mesylate comp con		M					
J7629	Bitolterol mesylate comp unt		M					
J7631	Cromolyn sodium noncomp unit		M					
J7632	Cromolyn sodium comp unit		M					
J7633	Budesonide non-comp con		M					
J7634	Budesonide comp con		M					
J7635	Atropine comp con		M					
J7636	Atropine comp unit		M					
J7637	Dexamethasone comp con		M					
J7638	Dexamethasone comp unit		M					
J7639	Dornase alfa non-comp unit		M					
J7640	Formoterol comp unit		E					
J7641	Flunisolide comp unit		M					
J7642	Glycopyrrolate comp con		M					
J7643	Glycopyrrolate comp unit		M					
J7644	Ipratropium bromide non-comp		M					
J7645	Ipratropium bromide comp		M					
J7647	Isoetharine comp con		M					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
J7648	Isoetharine non-comp con		M					
J7649	Isoetharine non-comp unit		M					
J7650	Isoetharine comp unit		M					
J7657	Isoproterenol comp con		M					
J7658	Isoproterenol non-comp con		M					
J7659	Isoproterenol non-comp unit		M					
J7660	Isoproterenol comp unit		M					
J7667	Metaproterenol comp con		M					
J7668	Metaproterenol non-comp con		M					
J7669	Metaproterenol non-comp unit		M					
J7670	Metaproterenol comp unit		M					
J7674	Methacholine chloride, neb		N					
J7676	Pentamidine comp unit dose		M					
J7680	Terbutaline sulf comp con		M					
J7681	Terbutaline sulf comp unit		M					
J7682	Tobramycin non-comp unit		M					
J7683	Triamcinolone comp con		M					
J7684	Triamcinolone comp unit		M					
J7685	Tobramycin comp unit		M					
J7699	Inhalation solution for DME		M					
J7799	Non-inhalation drug for DME		N					
J8498	Antiemetic rectal/supp NOS		B					
J8499	Oral prescrip drug non chemo		E					
J8501	Oral aprepitant		K	0868		$5.24		$1.05
J8510	Oral busulfan		K	7015		$2.74		$0.55
J8515	Cabergoline, oral 0.25mg		E					
J8520	Capecitabine, oral, 150 mg		K	7042		$4.82		$0.97
J8521	Capecitabine, oral, 500 mg		K	0934		$16.04		$3.21
J8530	Cyclophosphamide oral 25 MG		N					
J8540	Oral dexamethasone		N					
J8560	Etoposide oral 50 MG		K	0802		$28.79		$5.76
J8565	Gefitinib oral		E					
J8597	Antiemetic drug oral NOS		N					
J8600	Melphalan oral 2 MG	CH	N					
J8610	Methotrexate oral 2.5 MG		N					
J8650	Nabilone oral	CH	K	1230		$16.64		$3.33
J8700	Temozolomide		K	1086		$8.09		$1.62
J8705	Topotecan oral	NI	K	1238		$68.58		$13.72
J8999	Oral prescription drug chemo		B					
J9000	Doxorubicin hcl injection		N					
J9001	Doxorubicin hcl liposome inj		K	7046		$421.41		$84.29
J9010	Alemtuzumab injection		K	9110		$540.84		$108.17

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
J9015	Aldesleukin injection		K	0807		$792.77		$158.56
J9017	Arsenic trioxide injection		K	9012		$33.88		$6.78
J9020	Asparaginase injection		K	0814		$56.97		$11.40
J9025	Azacitidine injection		K	1709		$4.50		$0.90
J9027	Clofarabine injection		K	1710		$113.61		$22.73
J9031	Bcg live intravesical vac		K	0809		$112.33		$22.47
J9033	Bendamustine injection	NI	G	9243		$18.70		$3.67
J9035	Bevacizumab injection		K	9214		$56.29		$11.26
J9040	Bleomycin sulfate injection	CH	N					
J9041	Bortezomib injection		K	9207		$34.68		$6.94
J9045	Carboplatin injection	CH	N					
J9050	Carmustine injection		K	0812		$161.32		$32.27
J9055	Cetuximab injection		K	9215		$48.82		$9.77
J9060	Cisplatin 10 MG injection		N					
J9062	Cisplatin 50 MG injection		N					
J9065	Inj cladribine per 1 MG		K	0858		$28.79		$5.76
J9070	Cyclophosphamide 100 MG inj		N					
J9080	Cyclophosphamide 200 MG inj		N					
J9090	Cyclophosphamide 500 MG inj		N					
J9091	Cyclophosphamide 1.0 grm inj		N					
J9092	Cyclophosphamide 2.0 grm inj		N					
J9093	Cyclophosphamide lyophilized		N					
J9094	Cyclophosphamide lyophilized		N					
J9095	Cyclophosphamide lyophilized		N					
J9096	Cyclophosphamide lyophilized		N					
J9097	Cyclophosphamide lyophilized		N					
J9098	Cytarabine liposome inj		K	1166		$439.71		$87.95
J9100	Cytarabine hcl 100 MG inj		N					
J9110	Cytarabine hcl 500 MG inj		N					
J9120	Dactinomycin injection		K	0752		$486.26		$97.26
J9130	Dacarbazine 100 mg inj		N					
J9140	Dacarbazine 200 MG inj		N					
J9150	Daunorubicin injection		K	0820		$16.58		$3.32
J9151	Daunorubicin citrate inj		K	0821		$55.04		$11.01
J9160	Denileukin diftitox inj		K	1084		$1,405.27		$281.06
J9165	Diethylstilbestrol injection	CH	K	1209		$78.08		$15.62
J9170	Docetaxel injection		K	0823		$328.32		$65.67
J9175	Elliotts b solution per ml		N					
J9178	Inj, epirubicin hcl, 2 mg		K	1167		$5.34		$1.07
J9181	Etoposide injection		N					
J9182	Etoposide 100 MG inj	CH	D					
J9185	Fludarabine phosphate inj		K	0842		$217.03		$43.41

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
J9190	Fluorouracil injection		N					
J9200	Floxuridine injection		K	0827		$49.58		$9.92
J9201	Gemcitabine hcl injection		K	0828		$132.54		$26.51
J9202	Goserelin acetate implant		K	0810		$185.87		$37.18
J9206	Irinotecan injection		K	0830		$36.30		$7.26
J9207	Ixabepilone injection	NI	G	9240		$65.15		$12.78
J9208	Ifosfomide injection		K	0831		$33.16		$6.64
J9209	Mesna injection		K	0732		$6.83		$1.37
J9211	Idarubicin hcl injection		K	0832		$230.09		$46.02
J9212	Interferon alfacon-1 inj	CH	N					
J9213	Interferon alfa-2a inj		K	0834		$39.76		$7.96
J9214	Interferon alfa-2b inj		K	0836		$14.45		$2.89
J9215	Interferon alfa-n3 inj		K	0865		$17.89		$3.58
J9216	Interferon gamma 1-b inj		K	0838		$345.15		$69.03
J9217	Leuprolide acetate suspnsion		K	9217		$169.68		$33.94
J9218	Leuprolide acetate injeciton		K	0861		$6.56		$1.32
J9219	Leuprolide acetate implant		K	7051		$1,661.45		$332.29
J9225	Vantas implant		G	1711		$1,430.40		$280.68
J9226	Supprelin LA implant		G	1142		$14,609.22		$2,866.71
J9230	Mechlorethamine hcl inj		K	0751		$141.96		$28.40
J9245	Inj melphalan hydrochl 50 MG		K	0840		$1,593.94		$318.79
J9250	Methotrexate sodium inj		N					
J9260	Methotrexate sodium inj		N					
J9261	Nelarabine injection		G	0825		$96.09		$18.86
J9263	Oxaliplatin		K	1738		$9.38		$1.88
J9264	Paclitaxel protein bound		K	1712		$8.63		$1.73
J9265	Paclitaxel injection		K	0863		$10.83		$2.17
J9266	Pegaspargase injection		K	0843		$2,569.13		$513.83
J9268	Pentostatin injection		K	0844		$1,592.03		$318.41
J9270	Plicamycin (mithramycin) inj	CH	K	1231		$77.49		$15.50
J9280	Mitomycin 5 MG inj	CH	K	1232		$15.56		$3.12
J9290	Mitomycin 20 MG inj	CH	K	1233		$62.25		$12.45
J9291	Mitomycin 40 MG inj	CH	K	1234		$124.50		$24.90
J9293	Mitoxantrone hydrochl / 5 MG		K	0864		$85.55		$17.11
J9300	Gemtuzumab ozogamicin inj		K	9004		$2,448.21		$489.65
J9303	Panitumumab injection	CH	K	9235		$80.93		$16.19
J9305	Pemetrexed injection		K	9213		$46.40		$9.28
J9310	Rituximab injection		K	0849		$524.58		$104.92
J9320	Streptozocin injection		K	0850		$193.00		$38.60
J9330	Temsirolimus injection	NI	G	1168		$47.90		$9.40
J9340	Thiotepa injection		K	0851		$92.76		$18.56
J9350	Topotecan injection		K	0852		$913.11		$182.63

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
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J9355	Trastuzumab injection		K	1613		$60.33		$12.07
J9357	Valrubicin injection	CH	K	1235		$384.38		$76.88
J9360	Vinblastine sulfate inj		N					
J9370	Vincristine sulfate 1 MG inj		N					
J9375	Vincristine sulfate 2 MG inj		N					
J9380	Vincristine sulfate 5 MG inj		N					
J9390	Vinorelbine tartrate inj		K	0855		$16.26		$3.26
J9395	Injection, Fulvestrant		K	9120		$79.70		$15.94
J9600	Porfimer sodium injection		K	0856		$2,490.53		$498.11
J9999	Chemotherapy drug		N					
K0001	Standard wheelchair		Y					
K0002	Stnd hemi (low seat) whlchr		Y					
K0003	Lightweight wheelchair		Y					
K0004	High strength ltwt whlchr		Y					
K0005	Ultralightweight wheelchair		Y					
K0006	Heavy duty wheelchair		Y					
K0007	Extra heavy duty wheelchair		Y					
K0009	Other manual wheelchair/base		Y					
K0010	Stnd wt frame power whlchr		Y					
K0011	Stnd wt pwr whlchr w control		Y					
K0012	Ltwt portbl power whlchr		Y					
K0014	Other power whlchr base		Y					
K0015	Detach non-adjus hght armrst		Y					
K0017	Detach adjust armrest base		Y					
K0018	Detach adjust armrst upper		Y					
K0019	Arm pad each		Y					
K0020	Fixed adjust armrest pair		Y					
K0037	High mount flip-up footrest		Y					
K0038	Leg strap each		Y					
K0039	Leg strap h style each		Y					
K0040	Adjustable angle footplate		Y					
K0041	Large size footplate each		Y					
K0042	Standard size footplate each		Y					
K0043	Ftrst lower extension tube		Y					
K0044	Ftrst upper hanger bracket		Y					
K0045	Footrest complete assembly		Y					
K0046	Elevat legrst low extension		Y					
K0047	Elevat legrst up hangr brack		Y					
K0050	Ratchet assembly		Y					
K0051	Cam relese assem ftrst/lgrst		Y					
K0052	Swingaway detach footrest		Y					
K0053	Elevate footrest articulate		Y					

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
K0056	Seat ht <17 or >=21 ltwt wc		Y					
K0065	Spoke protectors		Y					
K0069	Rear whl complete solid tire		Y					
K0070	Rear whl compl pneum tire		Y					
K0071	Front castr compl pneum tire		Y					
K0072	Frnt cstr cmpl sem-pneum tir		Y					
K0073	Caster pin lock each		Y					
K0077	Front caster assem complete		Y					
K0098	Drive belt power wheelchair		Y					
K0105	Iv hanger		Y					
K0108	W/c component-accessory NOS		Y					
K0195	Elevating whlchair leg rests		Y					
K0455	Pump uninterrupted infusion		Y					
K0462	Temporary replacement eqpmnt		Y					
K0552	Supply/ext inf pump syr type		Y					
K0601	Repl batt silver oxide 1.5 v		Y					
K0602	Repl batt silver oxide 3 v		Y					
K0603	Repl batt alkaline 1.5 v		Y					
K0604	Repl batt lithium 3.6 v		Y					
K0605	Repl batt lithium 4.5 v		Y					
K0606	AED garment w elec analysis		Y					
K0607	Repl batt for AED		Y					
K0608	Repl garment for AED		Y					
K0609	Repl electrode for AED		Y					
K0669	Seat/back cus no sadmerc ver		Y					
K0672	Removable soft interface LE		A					
K0730	Ctrl dose inh drug deliv sys		Y					
K0733	12-24hr sealed lead acid		Y					
K0734	Adj skin pro w/c cus wd<22in		Y					
K0735	Adj skin pro wc cus wd>=22in		Y					
K0736	Adj skin pro/pos wc cus<22in		Y					
K0737	Adj skin pro/pos wc cus>=22"		Y					
K0738	Portable gas oxygen system		Y					
K0800	POV group 1 std up to 300lbs		Y					
K0801	POV group 1 hd 301-450 lbs		Y					
K0802	POV group 1 vhd 451-600 lbs		Y					
K0806	POV group 2 std up to 300lbs		Y					
K0807	POV group 2 hd 301-450 lbs		Y					
K0808	POV group 2 vhd 451-600 lbs		Y					
K0812	Power operated vehicle NOC		Y					
K0813	PWC gp 1 std port seat/back		Y					
K0814	PWC gp 1 std port cap chair		Y					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
K0815	PWC gp 1 std seat/back		Y					
K0816	PWC gp 1 std cap chair		Y					
K0820	PWC gp 2 std port seat/back		Y					
K0821	PWC gp 2 std port cap chair		Y					
K0822	PWC gp 2 std seat/back		Y					
K0823	PWC gp 2 std cap chair		Y					
K0824	PWC gp 2 hd seat/back		Y					
K0825	PWC gp 2 hd cap chair		Y					
K0826	PWC gp 2 vhd seat/back		Y					
K0827	PWC gp vhd cap chair		Y					
K0828	PWC gp 2 xtra hd seat/back		Y					
K0829	PWC gp 2 xtra hd cap chair		Y					
K0830	PWC gp2 std seat elevate s/b		Y					
K0831	PWC gp2 std seat elevate cap		Y					
K0835	PWC gp2 std sing pow opt s/b		Y					
K0836	PWC gp2 std sing pow opt cap		Y					
K0837	PWC gp 2 hd sing pow opt s/b		Y					
K0838	PWC gp 2 hd sing pow opt cap		Y					
K0839	PWC gp2 vhd sing pow opt s/b		Y					
K0840	PWC gp2 xhd sing pow opt s/b		Y					
K0841	PWC gp2 std mult pow opt s/b		Y					
K0842	PWC gp2 std mult pow opt cap		Y					
K0843	PWC gp2 hd mult pow opt s/b		Y					
K0848	PWC gp 3 std seat/back		Y					
K0849	PWC gp 3 std cap chair		Y					
K0850	PWC gp 3 hd seat/back		Y					
K0851	PWC gp 3 hd cap chair		Y					
K0852	PWC gp 3 vhd seat/back		Y					
K0853	PWC gp 3 vhd cap chair		Y					
K0854	PWC gp 3 xhd seat/back		Y					
K0855	PWC gp 3 xhd cap chair		Y					
K0856	PWC gp3 std sing pow opt s/b		Y					
K0857	PWC gp3 std sing pow opt cap		Y					
K0858	PWC gp3 hd sing pow opt s/b		Y					
K0859	PWC gp3 hd sing pow opt cap		Y					
K0860	PWC gp3 vhd sing pow opt s/b		Y					
K0861	PWC gp3 std mult pow opt s/b		Y					
K0862	PWC gp3 hd mult pow opt s/b		Y					
K0863	PWC gp3 vhd mult pow opt s/b		Y					
K0864	PWC gp3 xhd mult pow opt s/b		Y					
K0868	PWC gp 4 std seat/back		Y					
K0869	PWC gp 4 std cap chair		Y					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
K0870	PWC gp 4 hd seat/back		Y					
K0871	PWC gp 4 vhd seat/back		Y					
K0877	PWC gp4 std sing pow opt s/b		Y					
K0878	PWC gp4 std sing pow opt cap		Y					
K0879	PWC gp4 hd sing pow opt s/b		Y					
K0880	PWC gp4 vhd sing pow opt s/b		Y					
K0884	PWC gp4 std mult pow opt s/b		Y					
K0885	PWC gp4 std mult pow opt cap		Y					
K0886	PWC gp4 hd mult pow s/b		Y					
K0890	PWC gp5 ped sing pow opt s/b		Y					
K0891	PWC gp5 ped mult pow opt s/b		Y					
K0898	Power wheelchair NOC		Y					
K0899	Pow mobil dev no SADMERC		Y					
L0112	Cranial cervical orthosis		A					
L0113	Cranial cervical torticollis	NI	A					
L0120	Cerv flexible non-adjustable		A					
L0130	Flex thermoplastic collar mo		A					
L0140	Cervical semi-rigid adjustab		A					
L0150	Cerv semi-rig adj molded chn		A					
L0160	Cerv semi-rig wire occ/mand		A					
L0170	Cervical collar molded to pt		A					
L0172	Cerv col thermplas foam 2 pi		A					
L0174	Cerv col foam 2 piece w thor		A					
L0180	Cer post col occ/man sup adj		A					
L0190	Cerv collar supp adj cerv ba		A					
L0200	Cerv col supp adj bar & thor		A					
L0210	Thoracic rib belt		A					
L0220	Thor rib belt custom fabrica		A					
L0430	Dewall posture protector		A					
L0450	TLSO flex prefab thoracic		A					
L0452	tlso flex custom fab thoraci		A					
L0454	TLSO flex prefab sacrococ-T9		A					
L0456	TLSO flex prefab		A					
L0458	TLSO 2Mod symphis-xipho pre		A					
L0460	TLSO2Mod symphysis-stern pre		A					
L0462	TLSO 3Mod sacro-scap pre		A					
L0464	TLSO 4Mod sacro-scap pre		A					
L0466	TLSO rigid frame pre soft ap		A					
L0468	TLSO rigid frame prefab pelv		A					
L0470	TLSO rigid frame pre subclav		A					
L0472	TLSO rigid frame hyperex pre		A					
L0480	TLSO rigid plastic custom fa		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
L0482	TLSO rigid lined custom fab		A					
L0484	TLSO rigid plastic cust fab		A					
L0486	TLSO rigidlined cust fab two		A					
L0488	TLSO rigid lined pre one pie		A					
L0490	TLSO rigid plastic pre one		A					
L0491	TLSO 2 piece rigid shell		A					
L0492	TLSO 3 piece rigid shell		A					
L0621	SIO flex pelvisacral prefab		A					
L0622	SIO flex pelvisacral custom		A					
L0623	SIO panel prefab		A					
L0624	SIO panel custom		A					
L0625	LO flexibl L1-below L5 pre		A					
L0626	LO sag stays/panels pre-fab		A					
L0627	LO sagitt rigid panel prefab		A					
L0628	LO flex w/o rigid stays pre		A					
L0629	LSO flex w/rigid stays cust		A					
L0630	LSO post rigid panel pre		A					
L0631	LSO sag-coro rigid frame pre		A					
L0632	LSO sag rigid frame cust		A					
L0633	LSO flexion control prefab		A					
L0634	LSO flexion control custom		A					
L0635	LSO sagit rigid panel prefab		A					
L0636	LSO sagittal rigid panel cus		A					
L0637	LSO sag-coronal panel prefab		A					
L0638	LSO sag-coronal panel custom		A					
L0639	LSO s/c shell/panel prefab		A					
L0640	LSO s/c shell/panel custom		A					
L0700	Ctlso a-p-l control molded		A					
L0710	Ctlso a-p-l control w/ inter		A					
L0810	Halo cervical into jckt vest		A					
L0820	Halo cervical into body jack		A					
L0830	Halo cerv into milwaukee typ		A					
L0859	MRI compatible system		A					
L0861	Halo repl liner/interface		A					
L0970	Tlso corset front		A					
L0972	Lso corset front		A					
L0974	Tlso full corset		A					
L0976	Lso full corset		A					
L0978	Axillary crutch extension		A					
L0980	Peroneal straps pair		A					
L0982	Stocking supp grips set of f		A					
L0984	Protective body sock each		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
L0999	Add to spinal orthosis NOS		A					
L1000	Ctlso milwauke initial model		A					
L1001	CTLSO infant immobilizer		A					
L1005	Tension based scoliosis orth		A					
L1010	Ctlso axilla sling		A					
L1020	Kyphosis pad		A					
L1025	Kyphosis pad floating		A					
L1030	Lumbar bolster pad		A					
L1040	Lumbar or lumbar rib pad		A					
L1050	Sternal pad		A					
L1060	Thoracic pad		A					
L1070	Trapezius sling		A					
L1080	Outrigger		A					
L1085	Outrigger bil w/ vert extens		A					
L1090	Lumbar sling		A					
L1100	Ring flange plastic/leather		A					
L1110	Ring flange plas/leather mol		A					
L1120	Covers for upright each		A					
L1200	Furnsh initial orthosis only		A					
L1210	Lateral thoracic extension		A					
L1220	Anterior thoracic extension		A					
L1230	Milwaukee type superstructur		A					
L1240	Lumbar derotation pad		A					
L1250	Anterior asis pad		A					
L1260	Anterior thoracic derotation		A					
L1270	Abdominal pad		A					
L1280	Rib gusset (elastic) each		A					
L1290	Lateral trochanteric pad		A					
L1300	Body jacket mold to patient		A					
L1310	Post-operative body jacket		A					
L1499	Spinal orthosis NOS		A					
L1500	Thkao mobility frame		A					
L1510	Thkao standing frame		A					
L1520	Thkao swivel walker		A					
L1600	Abduct hip flex frejka w cvr		A					
L1610	Abduct hip flex frejka covr		A					
L1620	Abduct hip flex pavlik harne		A					
L1630	Abduct control hip semi-flex		A					
L1640	Pelv band/spread bar thigh c		A					
L1650	HO abduction hip adjustable		A					
L1652	HO bi thighcuffs w sprdr bar		A					
L1660	HO abduction static plastic		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
L1680	Pelvic & hip control thigh c		A					
L1685	Post-op hip abduct custom fa		A					
L1686	HO post-op hip abduction		A					
L1690	Combination bilateral HO		A					
L1700	Leg perthes orth toronto typ		A					
L1710	Legg perthes orth newington		A					
L1720	Legg perthes orthosis trilat		A					
L1730	Legg perthes orth scottish r		A					
L1755	Legg perthes patten bottom t		A					
L1800	Knee orthoses elas w stays		A					
L1810	Ko elastic with joints		A					
L1815	Elastic with condylar pads		A					
L1820	Ko elas w/ condyle pads & jo		A					
L1825	Ko elastic knee cap		A					
L1830	Ko immobilizer canvas longit		A					
L1831	Knee orth pos locking joint		A					
L1832	KO adj jnt pos rigid support		A					
L1834	Ko w/0 joint rigid molded to		A					
L1836	Rigid KO wo joints		A					
L1840	Ko derot ant cruciate custom		A					
L1843	KO single upright custom fit		A					
L1844	Ko w/adj jt rot cntrl molded		A					
L1845	Ko w/ adj flex/ext rotat cus		A					
L1846	Ko w adj flex/ext rotat mold		A					
L1847	KO adjustable w air chambers		A					
L1850	Ko swedish type		A					
L1860	Ko supracondylar socket mold		A					
L1900	Afo sprng wir drsflx calf bd		A					
L1901	Prefab ankle orthosis		A					
L1902	Afo ankle gauntlet		A					
L1904	Afo molded ankle gauntlet		A					
L1906	Afo multiligamentus ankle su		A					
L1907	AFO supramalleolar custom		A					
L1910	Afo sing bar clasp attach sh		A					
L1920	Afo sing upright w/ adjust s		A					
L1930	Afo plastic		A					
L1932	Afo rig ant tib prefab TCF/=		A					
L1940	Afo molded to patient plasti		A					
L1945	Afo molded plas rig ant tib		A					
L1950	Afo spiral molded to pt plas		A					
L1951	AFO spiral prefabricated		A					
L1960	Afo pos solid ank plastic mo		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
L1970	Afo plastic molded w/ankle j		A					
L1971	AFO w/ankle joint, prefab		A					
L1980	Afo sing solid stirrup calf		A					
L1990	Afo doub solid stirrup calf		A					
L2000	Kafo sing fre stirr thi/calf		A					
L2005	KAFO sng/dbl mechanical act		A					
L2010	Kafo sng solid stirrup w/o j		A					
L2020	Kafo dbl solid stirrup band/		A					
L2030	Kafo dbl solid stirrup w/o j		A					
L2034	KAFO pla sin up w/wo k/a cus		A					
L2035	KAFO plastic pediatric size		A					
L2036	Kafo plas doub free knee mol		A					
L2037	Kafo plas sing free knee mol		A					
L2038	Kafo w/o joint multi-axis an		A					
L2040	Hkafo torsion bil rot straps		A					
L2050	Hkafo torsion cable hip pelv		A					
L2060	Hkafo torsion ball bearing j		A					
L2070	Hkafo torsion unilat rot str		A					
L2080	Hkafo unilat torsion cable		A					
L2090	Hkafo unilat torsion ball br		A					
L2106	Afo tib fx cast plaster mold		A					
L2108	Afo tib fx cast molded to pt		A					
L2112	Afo tibial fracture soft		A					
L2114	Afo tib fx semi-rigid		A					
L2116	Afo tibial fracture rigid		A					
L2126	Kafo fem fx cast thermoplas		A					
L2128	Kafo fem fx cast molded to p		A					
L2132	Kafo femoral fx cast soft		A					
L2134	Kafo fem fx cast semi-rigid		A					
L2136	Kafo femoral fx cast rigid		A					
L2180	Plas shoe insert w ank joint		A					
L2182	Drop lock knee		A					
L2184	Limited motion knee joint		A					
L2186	Adj motion knee jnt lerman t		A					
L2188	Quadrilateral brim		A					
L2190	Waist belt		A					
L2192	Pelvic band & belt thigh fla		A					
L2200	Limited ankle motion ea jnt		A					
L2210	Dorsiflexion assist each joi		A					
L2220	Dorsi & plantar flex ass/res		A					
L2230	Split flat caliper stirr & p		A					
L2232	Rocker bottom, contact AFO		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
L2240	Round caliper and plate atta		A					
L2250	Foot plate molded stirrup at		A					
L2260	Reinforced solid stirrup		A					
L2265	Long tongue stirrup		A					
L2270	Varus/valgus strap padded/li		A					
L2275	Plastic mod low ext pad/line		A					
L2280	Molded inner boot		A					
L2300	Abduction bar jointed adjust		A					
L2310	Abduction bar-straight		A					
L2320	Non-molded lacer		A					
L2330	Lacer molded to patient mode		A					
L2335	Anterior swing band		A					
L2340	Pre-tibial shell molded to p		A					
L2350	Prosthetic type socket molde		A					
L2360	Extended steel shank		A					
L2370	Patten bottom		A					
L2375	Torsion ank & half solid sti		A					
L2380	Torsion straight knee joint		A					
L2385	Straight knee joint heavy du		A					
L2387	Add LE poly knee custom KAFO		A					
L2390	Offset knee joint each		A					
L2395	Offset knee joint heavy duty		A					
L2397	Suspension sleeve lower ext		A					
L2405	Knee joint drop lock ea jnt		A					
L2415	Knee joint cam lock each joi		A					
L2425	Knee disc/dial lock/adj flex		A					
L2430	Knee jnt ratchet lock ea jnt		A					
L2492	Knee lift loop drop lock rin		A					
L2500	Thi/glut/ischia wgt bearing		A					
L2510	Th/wght bear quad-lat brim m		A					
L2520	Th/wght bear quad-lat brim c		A					
L2525	Th/wght bear nar m-l brim mo		A					
L2526	Th/wght bear nar m-l brim cu		A					
L2530	Thigh/wght bear lacer non-mo		A					
L2540	Thigh/wght bear lacer molded		A					
L2550	Thigh/wght bear high roll cu		A					
L2570	Hip clevis type 2 posit jnt		A					
L2580	Pelvic control pelvic sling		A					
L2600	Hip clevis/thrust bearing fr		A					
L2610	Hip clevis/thrust bearing lo		A					
L2620	Pelvic control hip heavy dut		A					
L2622	Hip joint adjustable flexion		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
L2624	Hip adj flex ext abduct cont		A					
L2627	Plastic mold recipro hip & c		A					
L2628	Metal frame recipro hip & ca		A					
L2630	Pelvic control band & belt u		A					
L2640	Pelvic control band & belt b		A					
L2650	Pelv & thor control gluteal		A					
L2660	Thoracic control thoracic ba		A					
L2670	Thorac cont paraspinal uprig		A					
L2680	Thorac cont lat support upri		A					
L2750	Plating chrome/nickel pr bar		A					
L2755	Carbon graphite lamination		A					
L2760	Extension per extension per		A					
L2768	Ortho sidebar disconnect		A					
L2770	Low ext orthosis per bar/jnt		A					
L2780	Non-corrosive finish		A					
L2785	Drop lock retainer each		A					
L2795	Knee control full kneecap		A					
L2800	Knee cap medial or lateral p		A					
L2810	Knee control condylar pad		A					
L2820	Soft interface below knee se		A					
L2830	Soft interface above knee se		A					
L2840	Tibial length sock fx or equ		A					
L2850	Femoral lgth sock fx or equa		A					
L2860	Torsion mechanism knee/ankle	CH	D					
L2999	Lower extremity orthosis NOS		A					
L3000	Ft insert ucb berkeley shell		A					
L3001	Foot insert remov molded spe		A					
L3002	Foot insert plastazote or eq		A					
L3003	Foot insert silicone gel eac		A					
L3010	Foot longitudinal arch suppo		A					
L3020	Foot longitud/metatarsal sup		A					
L3030	Foot arch support remov prem		A					
L3031	Foot lamin/prepreg composite		A					
L3040	Ft arch suprt premold longit		A					
L3050	Foot arch supp premold metat		A					
L3060	Foot arch supp longitud/meta		A					
L3070	Arch suprt att to sho longit		A					
L3080	Arch supp att to shoe metata		A					
L3090	Arch supp att to shoe long/m		A					
L3100	Hallus-valgus nght dynamic s		A					
L3140	Abduction rotation bar shoe		A					
L3150	Abduct rotation bar w/o shoe		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
L3160	Shoe styled positioning dev		A					
L3170	Foot plastic heel stabilizer		A					
L3201	Oxford w supinat/pronat inf		A					
L3202	Oxford w/ supinat/pronator c		A					
L3203	Oxford w/ supinator/pronator		A					
L3204	Hightop w/ supp/pronator inf		A					
L3206	Hightop w/ supp/pronator chi		A					
L3207	Hightop w/ supp/pronator jun		A					
L3208	Surgical boot each infant		A					
L3209	Surgical boot each child		A					
L3211	Surgical boot each junior		A					
L3212	Benesch boot pair infant		A					
L3213	Benesch boot pair child		A					
L3214	Benesch boot pair junior		A					
L3215	Orthopedic ftwear ladies oxf		E					
L3216	Orthoped ladies shoes dpth i		E					
L3217	Ladies shoes hightop depth i		E					
L3219	Orthopedic mens shoes oxford		E					
L3221	Orthopedic mens shoes dpth i		E					
L3222	Mens shoes hightop depth inl		E					
L3224	Woman's shoe oxford brace		A					
L3225	Man's shoe oxford brace		A					
L3230	Custom shoes depth inlay		A					
L3250	Custom mold shoe remov prost		A					
L3251	Shoe molded to pt silicone s		A					
L3252	Shoe molded plastazote cust		A					
L3253	Shoe molded plastazote cust		A					
L3254	Orth foot non-stndard size/w		A					
L3255	Orth foot non-standard size/		A					
L3257	Orth foot add charge split s		A					
L3260	Ambulatory surgical boot eac		E					
L3265	Plastazote sandal each		A					
L3300	Sho lift taper to metatarsal		A					
L3310	Shoe lift elev heel/sole neo		A					
L3320	Shoe lift elev heel/sole cor		A					
L3330	Lifts elevation metal extens		A					
L3332	Shoe lifts tapered to one-ha		A					
L3334	Shoe lifts elevation heel /i		A					
L3340	Shoe wedge sach		A					
L3350	Shoe heel wedge		A					
L3360	Shoe sole wedge outside sole		A					
L3370	Shoe sole wedge between sole		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
L3380	Shoe clubfoot wedge		A					
L3390	Shoe outflare wedge		A					
L3400	Shoe metatarsal bar wedge ro		A					
L3410	Shoe metatarsal bar between		A					
L3420	Full sole/heel wedge btween		A					
L3430	Sho heel count plast reinfor		A					
L3440	Heel leather reinforced		A					
L3450	Shoe heel sach cushion type		A					
L3455	Shoe heel new leather standa		A					
L3460	Shoe heel new rubber standar		A					
L3465	Shoe heel thomas with wedge		A					
L3470	Shoe heel thomas extend to b		A					
L3480	Shoe heel pad & depress for		A					
L3485	Shoe heel pad removable for		A					
L3500	Ortho shoe add leather insol		A					
L3510	Orthopedic shoe add rub insl		A					
L3520	O shoe add felt w leath insl		A					
L3530	Ortho shoe add half sole		A					
L3540	Ortho shoe add full sole		A					
L3550	O shoe add standard toe tap		A					
L3560	O shoe add horseshoe toe tap		A					
L3570	O shoe add instep extension		A					
L3580	O shoe add instep velcro clo		A					
L3590	O shoe convert to sof counte		A					
L3595	Ortho shoe add march bar		A					
L3600	Trans shoe calip plate exist		A					
L3610	Trans shoe caliper plate new		A					
L3620	Trans shoe solid stirrup exi		A					
L3630	Trans shoe solid stirrup new		A					
L3640	Shoe dennis browne splint bo		A					
L3649	Orthopedic shoe modifica NOS		A					
L3650	Shlder fig 8 abduct restrain		A					
L3651	Prefab shoulder orthosis		A					
L3652	Prefab dbl shoulder orthosis		A					
L3660	Abduct restrainer canvas&web		A					
L3670	Acromio/clavicular canvas&we		A					
L3671	SO cap design w/o jnts CF		A					
L3672	SO airplane w/o jnts CF		A					
L3673	SO airplane w/joint CF		A					
L3675	Canvas vest SO		A					
L3677	SO hard plastic stabilizer		E					
L3700	Elbow orthoses elas w stays		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
L3701	Prefab elbow orthosis		A					
L3702	EO w/o joints CF		A					
L3710	Elbow elastic with metal joi		A					
L3720	Forearm/arm cuffs free motio		A					
L3730	Forearm/arm cuffs ext/flex a		A					
L3740	Cuffs adj lock w/ active con		A					
L3760	EO withjoint, Prefabricated		A					
L3762	Rigid EO wo joints		A					
L3763	EWHO rigid w/o jnts CF		A					
L3764	EWHO w/joint(s) CF		A					
L3765	EWHFO rigid w/o jnts CF		A					
L3766	EWHFO w/joint(s) CF		A					
L3806	WHFO w/joint(s) custom fab		A					
L3807	WHFO,no joint, prefabricated		A					
L3808	WHFO, rigid w/o joints		A					
L3890	Torsion mechanism wrist/elbo	CH	D					
L3900	Hinge extension/flex wrist/f		A					
L3901	Hinge ext/flex wrist finger		A					
L3904	Whfo electric custom fitted		A					
L3905	WHO w/nontorsion jnt(s) CF		A					
L3906	WHO w/o joints CF		A					
L3908	Wrist cock-up non-molded		A					
L3909	Prefab wrist orthosis		A					
L3911	Prefab hand finger orthosis		A					
L3912	Flex glove w/elastic finger		A					
L3913	HFO w/o joints CF		A					
L3915	WHO w nontor jnt(s) prefab		A					
L3917	Prefab metacarpl fx orthosis		A					
L3919	HO w/o joints CF		A					
L3921	HFO w/joint(s) CF		A					
L3923	HFO w/o joints PF		A					
L3925	FO pip/dip with joint/spring		A					
L3927	FO pip/dip w/o joint/spring		A					
L3929	HFO nontorsion joint, prefab		A					
L3931	WHFO nontorsion joint prefab		A					
L3933	FO w/o joints CF		A					
L3935	FO nontorsion joint CF		A					
L3956	Add joint upper ext orthosis		A					
L3960	Sewho airplan desig abdu pos		A					
L3961	SEWHO cap design w/o jnts CF		A					
L3962	Sewho erbs palsey design abd		A					
L3964	Seo mobile arm sup att to wc		Y					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
L3965	Arm supp att to wc rancho ty		Y					
L3966	Mobile arm supports reclinin		Y					
L3967	SEWHO airplane w/o jnts CF		A					
L3968	Friction dampening arm supp		Y					
L3969	Monosuspension arm/hand supp		Y					
L3970	Elevat proximal arm support		Y					
L3971	SEWHO cap design w/jnt(s) CF		A					
L3972	Offset/lat rocker arm w/ ela		Y					
L3973	SEWHO airplane w/jnt(s) CF		A					
L3974	Mobile arm support supinator		Y					
L3975	SEWHFO cap design w/o jnt CF		A					
L3976	SEWHFO airplane w/o jnts CF		A					
L3977	SEWHFO cap desgn w/jnt(s) CF		A					
L3978	SEWHFO airplane w/jnt(s) CF		A					
L3980	Upp ext fx orthosis humeral		A					
L3982	Upper ext fx orthosis rad/ul		A					
L3984	Upper ext fx orthosis wrist		A					
L3995	Sock fracture or equal each		A					
L3999	Upper limb orthosis NOS		A					
L4000	Repl girdle milwaukee orth		A					
L4002	Replace strap, any orthosis		A					
L4010	Replace trilateral socket br		A					
L4020	Replace quadlat socket brim		A					
L4030	Replace socket brim cust fit		A					
L4040	Replace molded thigh lacer		A					
L4045	Replace non-molded thigh lac		A					
L4050	Replace molded calf lacer		A					
L4055	Replace non-molded calf lace		A					
L4060	Replace high roll cuff		A					
L4070	Replace prox & dist upright		A					
L4080	Repl met band kafo-afo prox		A					
L4090	Repl met band kafo-afo calf/		A					
L4100	Repl leath cuff kafo prox th		A					
L4110	Repl leath cuff kafo-afo cal		A					
L4130	Replace pretibial shell		A					
L4205	Ortho dvc repair per 15 min		A					
L4210	Orth dev repair/repl minor p		A					
L4350	Ankle control orthosi prefab		A					
L4360	Pneumati walking boot prefab		A					
L4370	Pneumatic full leg splint		A					
L4380	Pneumatic knee splint		A					
L4386	Non-pneum walk boot prefab		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
L4392	Replace AFO soft interface		A					
L4394	Replace foot drop spint		A					
L4396	Static AFO		A					
L4398	Foot drop splint recumbent		A					
L5000	Sho insert w arch toe filler		A					
L5010	Mold socket ank hgt w/ toe f		A					
L5020	Tibial tubercle hgt w/ toe f		A					
L5050	Ank symes mold sckt sach ft		A					
L5060	Symes met fr leath socket ar		A					
L5100	Molded socket shin sach foot		A					
L5105	Plast socket jts/thgh lacer		A					
L5150	Mold sckt ext knee shin sach		A					
L5160	Mold socket bent knee shin s		A					
L5200	Kne sing axis fric shin sach		A					
L5210	No knee/ankle joints w/ ft b		A					
L5220	No knee joint with artic ali		A					
L5230	Fem focal defic constant fri		A					
L5250	Hip canad sing axi cons fric		A					
L5270	Tilt table locking hip sing		A					
L5280	Hemipelvect canad sing axis		A					
L5301	BK mold socket SACH ft endo		A					
L5311	Knee disart, SACH ft, endo		A					
L5321	AK open end SACH		A					
L5331	Hip disart canadian SACH ft		A					
L5341	Hemipelvectomy canadian SACH		A					
L5400	Postop dress & 1 cast chg bk		A					
L5410	Postop dsg bk ea add cast ch		A					
L5420	Postop dsg & 1 cast chg ak/d		A					
L5430	Postop dsg ak ea add cast ch		A					
L5450	Postop app non-wgt bear dsg		A					
L5460	Postop app non-wgt bear dsg		A					
L5500	Init bk ptb plaster direct		A					
L5505	Init ak ischal plstr direct		A					
L5510	Prep BK ptb plaster molded		A					
L5520	Perp BK ptb thermopls direct		A					
L5530	Prep BK ptb thermopls molded		A					
L5535	Prep BK ptb open end socket		A					
L5540	Prep BK ptb laminated socket		A					
L5560	Prep AK ischial plast molded		A					
L5570	Prep AK ischial direct form		A					
L5580	Prep AK ischial thermo mold		A					
L5585	Prep AK ischial open end		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
L5590	Prep AK ischial laminated		A					
L5595	Hip disartic sach thermopls		A					
L5600	Hip disart sach laminat mold		A					
L5610	Above knee hydracadence		A					
L5611	Ak 4 bar link w/fric swing		A					
L5613	Ak 4 bar ling w/hydraul swig		A					
L5614	4-bar link above knee w/swng		A					
L5616	Ak univ multiplex sys frict		A					
L5617	AK/BK self-aligning unit ea		A					
L5618	Test socket symes		A					
L5620	Test socket below knee		A					
L5622	Test socket knee disarticula		A					
L5624	Test socket above knee		A					
L5626	Test socket hip disarticulat		A					
L5628	Test socket hemipelvectomy		A					
L5629	Below knee acrylic socket		A					
L5630	Syme typ expandabl wall sckt		A					
L5631	Ak/knee disartic acrylic soc		A					
L5632	Symes type ptb brim design s		A					
L5634	Symes type poster opening so		A					
L5636	Symes type medial opening so		A					
L5637	Below knee total contact		A					
L5638	Below knee leather socket		A					
L5639	Below knee wood socket		A					
L5640	Knee disarticulat leather so		A					
L5642	Above knee leather socket		A					
L5643	Hip flex inner socket ext fr		A					
L5644	Above knee wood socket		A					
L5645	Bk flex inner socket ext fra		A					
L5646	Below knee cushion socket		A					
L5647	Below knee suction socket		A					
L5648	Above knee cushion socket		A					
L5649	Isch containmt/narrow m-l so		A					
L5650	Tot contact ak/knee disart s		A					
L5651	Ak flex inner socket ext fra		A					
L5652	Suction susp ak/knee disart		A					
L5653	Knee disart expand wall sock		A					
L5654	Socket insert symes		A					
L5655	Socket insert below knee		A					
L5656	Socket insert knee articulat		A					
L5658	Socket insert above knee		A					
L5661	Multi-durometer symes		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
L5665	Multi-durometer below knee		A					
L5666	Below knee cuff suspension		A					
L5668	Socket insert w/o lock lower		A					
L5670	Bk molded supracondylar susp		A					
L5671	BK/AK locking mechanism		A					
L5672	Bk removable medial brim sus		A					
L5673	Socket insert w lock mech		A					
L5676	Bk knee joints single axis p		A					
L5677	Bk knee joints polycentric p		A					
L5678	Bk joint covers pair		A					
L5679	Socket insert w/o lock mech		A					
L5680	Bk thigh lacer non-molded		A					
L5681	Intl custm cong/latyp insert		A					
L5682	Bk thigh lacer glut/ischia m		A					
L5683	Initial custom socket insert		A					
L5684	Bk fork strap		A					
L5685	Below knee sus/seal sleeve		A					
L5686	Bk back check		A					
L5688	Bk waist belt webbing		A					
L5690	Bk waist belt padded and lin		A					
L5692	Ak pelvic control belt light		A					
L5694	Ak pelvic control belt pad/l		A					
L5695	Ak sleeve susp neoprene/equa		A					
L5696	Ak/knee disartic pelvic join		A					
L5697	Ak/knee disartic pelvic band		A					
L5698	Ak/knee disartic silesian ba		A					
L5699	Shoulder harness		A					
L5700	Replace socket below knee		A					
L5701	Replace socket above knee		A					
L5702	Replace socket hip		A					
L5703	Symes ankle w/o (SACH) foot		A					
L5704	Custom shape cover BK		A					
L5705	Custom shape cover AK		A					
L5706	Custom shape cvr knee disart		A					
L5707	Custom shape cvr hip disart		A					
L5710	Kne-shin exo sng axi mnl loc		A					
L5711	Knee-shin exo mnl lock ultra		A					
L5712	Knee-shin exo frict swg & st		A					
L5714	Knee-shin exo variable frict		A					
L5716	Knee-shin exo mech stance ph		A					
L5718	Knee-shin exo frct swg & sta		A					
L5722	Knee-shin pneum swg frct exo		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
L5724	Knee-shin exo fluid swing ph		A					
L5726	Knee-shin ext jnts fld swg e		A					
L5728	Knee-shin fluid swg & stance		A					
L5780	Knee-shin pneum/hydra pneum		A					
L5781	Lower limb pros vacuum pump		A					
L5782	HD low limb pros vacuum pump		A					
L5785	Exoskeletal bk ultralt mater		A					
L5790	Exoskeletal ak ultra-light m		A					
L5795	Exoskel hip ultra-light mate		A					
L5810	Endoskel knee-shin mnl lock		A					
L5811	Endo knee-shin mnl lck ultra		A					
L5812	Endo knee-shin frct swg & st		A					
L5814	Endo knee-shin hydral swg ph		A					
L5816	Endo knee-shin polyc mch sta		A					
L5818	Endo knee-shin frct swg & st		A					
L5822	Endo knee-shin pneum swg frc		A					
L5824	Endo knee-shin fluid swing p		A					
L5826	Miniature knee joint		A					
L5828	Endo knee-shin fluid swg/sta		A					
L5830	Endo knee-shin pneum/swg pha		A					
L5840	Multi-axial knee/shin system		A					
L5845	Knee-shin sys stance flexion		A					
L5848	Knee-shin sys hydraul stance		A					
L5850	Endo ak/hip knee extens assi		A					
L5855	Mech hip extension assist		A					
L5856	Elec knee-shin swing/stance		A					
L5857	Elec knee-shin swing only		A					
L5858	Stance phase only		A					
L5910	Endo below knee alignable sy		A					
L5920	Endo ak/hip alignable system		A					
L5925	Above knee manual lock		A					
L5930	High activity knee frame		A					
L5940	Endo bk ultra-light material		A					
L5950	Endo ak ultra-light material		A					
L5960	Endo hip ultra-light materia		A					
L5962	Below knee flex cover system		A					
L5964	Above knee flex cover system		A					
L5966	Hip flexible cover system		A					
L5968	Multiaxial ankle w dorsiflex		A					
L5970	Foot external keel sach foot		A					
L5971	SACH foot, replacement		A					
L5972	Flexible keel foot		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
L5974	Foot single axis ankle/foot		A					
L5975	Combo ankle/foot prosthesis		A					
L5976	Energy storing foot		A					
L5978	Ft prosth multiaxial ankl/ft		A					
L5979	Multi-axial ankle/ft prosth		A					
L5980	Flex foot system		A					
L5981	Flex-walk sys low ext prosth		A					
L5982	Exoskeletal axial rotation u		A					
L5984	Endoskeletal axial rotation		A					
L5985	Lwr ext dynamic prosth pylon		A					
L5986	Multi-axial rotation unit		A					
L5987	Shank ft w vert load pylon		A					
L5988	Vertical shock reducing pylo		A					
L5990	User adjustable heel height		A					
L5993	Heavy duty feature, foot	CH	D					
L5994	Heavy duty feature, knee	CH	D					
L5995	Lower ext pros heavyduty fea	CH	D					
L5999	Lowr extremity prosthes NOS		A					
L6000	Par hand robin-aids thum rem		A					
L6010	Hand robin-aids little/ring		A					
L6020	Part hand robin-aids no fing		A					
L6025	Part hand disart myoelectric		A					
L6050	Wrst MLd sck flx hng tri pad		A					
L6055	Wrst mold sock w/exp interfa		A					
L6100	Elb mold sock flex hinge pad		A					
L6110	Elbow mold sock suspension t		A					
L6120	Elbow mold doub splt soc ste		A					
L6130	Elbow stump activated lock h		A					
L6200	Elbow mold outsid lock hinge		A					
L6205	Elbow molded w/ expand inter		A					
L6250	Elbow inter loc elbow forarm		A					
L6300	Shlder disart int lock elbow		A					
L6310	Shoulder passive restor comp		A					
L6320	Shoulder passive restor cap		A					
L6350	Thoracic intern lock elbow		A					
L6360	Thoracic passive restor comp		A					
L6370	Thoracic passive restor cap		A					
L6380	Postop dsg cast chg wrst/elb		A					
L6382	Postop dsg cast chg elb dis/		A					
L6384	Postop dsg cast chg shlder/t		A					
L6386	Postop ea cast chg & realign		A					
L6388	Postop applicat rigid dsg on		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
L6400	Below elbow prosth tiss shap		A					
L6450	Elb disart prosth tiss shap		A					
L6500	Above elbow prosth tiss shap		A					
L6550	Shldr disar prosth tiss shap		A					
L6570	Scap thorac prosth tiss shap		A					
L6580	Wrist/elbow bowden cable mol		A					
L6582	Wrist/elbow bowden cbl dir f		A					
L6584	Elbow fair lead cable molded		A					
L6586	Elbow fair lead cable dir fo		A					
L6588	Shdr fair lead cable molded		A					
L6590	Shdr fair lead cable direct		A					
L6600	Polycentric hinge pair		A					
L6605	Single pivot hinge pair		A					
L6610	Flexible metal hinge pair		A					
L6611	Additional switch, ext power		A					
L6615	Disconnect locking wrist uni		A					
L6616	Disconnect insert locking wr		A					
L6620	Flexion/extension wrist unit		A					
L6621	Flex/ext wrist w/wo friction		A					
L6623	Spring-ass rot wrst w/ latch		A					
L6624	Flex/ext/rotation wrist unit		A					
L6625	Rotation wrst w/ cable lock		A					
L6628	Quick disconn hook adapter o		A					
L6629	Lamination collar w/ couplin		A					
L6630	Stainless steel any wrist		A					
L6632	Latex suspension sleeve each		A					
L6635	Lift assist for elbow		A					
L6637	Nudge control elbow lock		A					
L6638	Elec lock on manual pw elbow		A					
L6639	Heavy duty elbow feature		A					
L6640	Shoulder abduction joint pai		A					
L6641	Excursion amplifier pulley t		A					
L6642	Excursion amplifier lever ty		A					
L6645	Shoulder flexion-abduction j		A					
L6646	Multipo locking shoulder jnt		A					
L6647	Shoulder lock actuator		A					
L6648	Ext pwrd shlder lock/unlock		A					
L6650	Shoulder universal joint		A					
L6655	Standard control cable extra		A					
L6660	Heavy duty control cable		A					
L6665	Teflon or equal cable lining		A					
L6670	Hook to hand cable adapter		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
L6672	Harness chest/shlder saddle		A					
L6675	Harness figure of 8 sing con		A					
L6676	Harness figure of 8 dual con		A					
L6677	UE triple control harness		A					
L6680	Test sock wrist disart/bel e		A					
L6682	Test sock elbw disart/above		A					
L6684	Test socket shldr disart/tho		A					
L6686	Suction socket		A					
L6687	Frame typ socket bel elbow/w		A					
L6688	Frame typ sock above elb/dis		A					
L6689	Frame typ socket shoulder di		A					
L6690	Frame typ sock interscap-tho		A					
L6691	Removable insert each		A					
L6692	Silicone gel insert or equal		A					
L6693	Lockingelbow forearm cntrbal		A					
L6694	Elbow socket ins use w/lock		A					
L6695	Elbow socket ins use w/o lck		A					
L6696	Cus elbo skt in for con/atyp		A					
L6697	Cus elbo skt in not con/atyp		A					
L6698	Below/above elbow lock mech		A					
L6703	Term dev, passive hand mitt		A					
L6704	Term dev, sport/rec/work att		A					
L6706	Term dev mech hook vol open		A					
L6707	Term dev mech hook vol close		A					
L6708	Term dev mech hand vol open		A					
L6709	Term dev mech hand vol close		A					
L6711	Ped term dev, hook, vol open	NI	A					
L6712	Ped term dev, hook, vol clos	NI	A					
L6713	Ped term dev, hand, vol open	NI	A					
L6714	Ped term dev, hand, vol clos	NI	A					
L6721	Hook/hand, hvy dty, vol open	NI	A					
L6722	Hook/hand, hvy dty, vol clos	NI	A					
L6805	Term dev modifier wrist unit		A					
L6810	Term dev precision pinch dev		A					
L6881	Term dev auto grasp feature		A					
L6882	Microprocessor control uplmb		A					
L6883	Replc sockt below e/w disa		A					
L6884	Replc sockt above elbow disa		A					
L6885	Replc sockt shldr dis/interc		A					
L6890	Prefab glove for term device		A					
L6895	Custom glove for term device		A					
L6900	Hand restorat thumb/1 finger		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
L6905	Hand restoration multiple fi		A					
L6910	Hand restoration no fingers		A					
L6915	Hand restoration replacmnt g		A					
L6920	Wrist disarticul switch ctrl		A					
L6925	Wrist disart myoelectronic c		A					
L6930	Below elbow switch control		A					
L6935	Below elbow myoelectronic ct		A					
L6940	Elbow disarticulation switch		A					
L6945	Elbow disart myoelectronic c		A					
L6950	Above elbow switch control		A					
L6955	Above elbow myoelectronic ct		A					
L6960	Shldr disartic switch contro		A					
L6965	Shldr disartic myoelectronic		A					
L6970	Interscapular-thor switch ct		A					
L6975	Interscap-thor myoelectronic		A					
L7007	Adult electric hand		A					
L7008	Pediatric electric hand		A					
L7009	Adult electric hook		A					
L7040	Prehensile actuator		A					
L7045	Pediatric electric hook		A					
L7170	Electronic elbow hosmer swit		A					
L7180	Electronic elbow sequential		A					
L7181	Electronic elbo simultaneous		A					
L7185	Electron elbow adolescent sw		A					
L7186	Electron elbow child switch		A					
L7190	Elbow adolescent myoelectron		A					
L7191	Elbow child myoelectronic ct		A					
L7260	Electron wrist rotator otto		A					
L7261	Electron wrist rotator utah		A					
L7266	Servo control steeper or equ		A					
L7272	Analogue control unb or equa		A					
L7274	Proportional ctl 12 volt uta		A					
L7360	Six volt bat otto bock/eq ea		A					
L7362	Battery chrgr six volt otto		A					
L7364	Twelve volt battery utah/equ		A					
L7366	Battery chrgr 12 volt utah/e		A					
L7367	Replacemnt lithium ionbatter		A					
L7368	Lithium ion battery charger		A					
L7400	Add UE prost be/wd, ultlite		A					
L7401	Add UE prost a/e ultlite mat		A					
L7402	Add UE prost s/d ultlite mat		A					
L7403	Add UE prost b/e acrylic		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
L7404	Add UE prost a/e acrylic		A					
L7405	Add UE prost s/d acrylic		A					
L7499	Upper extremity prosthes NOS		A					
L7500	Prosthetic dvc repair hourly		A					
L7510	Prosthetic device repair rep		A					
L7520	Repair prosthesis per 15 min		A					
L7600	Prosthetic donning sleeve		E					
L7611	Ped term dev, hook, vol open	CH	D					
L7612	Ped term dev, hook, vol clos	CH	D					
L7613	Ped term dev, hand, vol open	CH	D					
L7614	Ped term dev, hand, vol clos	CH	D					
L7621	Hook/hand, hvy dty, vol open	CH	D					
L7622	Hook/hand, hvy dty, vol clos	CH	D					
L7900	Male vacuum erection system		A					
L8000	Mastectomy bra		A					
L8001	Breast prosthesis bra & form		A					
L8002	Brst prsth bra & bilat form		A					
L8010	Mastectomy sleeve		A					
L8015	Ext breastprosthesis garment		A					
L8020	Mastectomy form		A					
L8030	Breast prosthesis silicone/e		A					
L8035	Custom breast prosthesis		A					
L8039	Breast prosthesis NOS		A					
L8040	Nasal prosthesis		A					
L8041	Midfacial prosthesis		A					
L8042	Orbital prosthesis		A					
L8043	Upper facial prosthesis		A					
L8044	Hemi-facial prosthesis		A					
L8045	Auricular prosthesis		A					
L8046	Partial facial prosthesis		A					
L8047	Nasal septal prosthesis		A					
L8048	Unspec maxillofacial prosth		A					
L8049	Repair maxillofacial prosth		A					
L8300	Truss single w/ standard pad		A					
L8310	Truss double w/ standard pad		A					
L8320	Truss addition to std pad wa		A					
L8330	Truss add to std pad scrotal		A					
L8400	Sheath below knee		A					
L8410	Sheath above knee		A					
L8415	Sheath upper limb		A					
L8417	Pros sheath/sock w gel cushn		A					
L8420	Prosthetic sock multi ply BK		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
L8430	Prosthetic sock multi ply AK		A					
L8435	Pros sock multi ply upper lm		A					
L8440	Shrinker below knee		A					
L8460	Shrinker above knee		A					
L8465	Shrinker upper limb		A					
L8470	Pros sock single ply BK		A					
L8480	Pros sock single ply AK		A					
L8485	Pros sock single ply upper l		A					
L8499	Unlisted misc prosthetic ser		A					
L8500	Artificial larynx		A					
L8501	Tracheostomy speaking valve		A					
L8505	Artificial larynx, accessory		A					
L8507	Trach-esoph voice pros pt in		A					
L8509	Trach-esoph voice pros md in		A					
L8510	Voice amplifier		A					
L8511	Indwelling trach insert		A					
L8512	Gel cap for trach voice pros		A					
L8513	Trach pros cleaning device		A					
L8514	Repl trach puncture dilator		A					
L8515	Gel cap app device for trach		A					
L8600	Implant breast silicone/eq		N					
L8603	Collagen imp urinary 2.5 ml		N					
L8604	Dextranomer/hyaluronic acid	NI	N					
L8606	Synthetic implnt urinary 1ml		N					
L8609	Artificial cornea		N					
L8610	Ocular implant		N					
L8612	Aqueous shunt prosthesis		N					
L8613	Ossicular implant		N					
L8614	Cochlear device		N					
L8615	Coch implant headset replace		A					
L8616	Coch implant microphone repl		A					
L8617	Coch implant trans coil repl		A					
L8618	Coch implant tran cable repl		A					
L8619	Replace cochlear processor		A					
L8621	Repl zinc air battery		A					
L8622	Repl alkaline battery		A					
L8623	Lith ion batt CID,non-earlvl		A					
L8624	Lith ion batt CID, ear level		A					
L8630	Metacarpophalangeal implant		N					
L8631	MCP joint repl 2 pc or more		N					
L8641	Metatarsal joint implant		N					
L8642	Hallux implant		N					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
L8658	Interphalangeal joint spacer		N					
L8659	Interphalangeal joint repl		N					
L8670	Vascular graft, synthetic		N					
L8680	Implt neurostim elctr each		B					
L8681	Pt prgrm for implt neurostim		A					
L8682	Implt neurostim radiofq rec		N					
L8683	Radiofq trsmtr for implt neu		A					
L8684	Radiof trsmtr implt scrl neu		A					
L8685	Implt nrostm pls gen sng rec	CH	N					
L8686	Implt nrostm pls gen sng non	CH	N					
L8687	Implt nrostm pls gen dua rec	CH	N					
L8688	Implt nrostm pls gen dua non	CH	N					
L8689	External recharg sys intern		A					
L8690	Aud osseo dev, int/ext comp	CH	N					
L8691	Aud osseo dev ext snd proces		A					
L8695	External recharg sys extern		A					
L8699	Prosthetic implant NOS		N					
L9900	O&P supply/accessory/service		N					
M0064	Visit for drug monitoring		Q3	0606	1.3585	$89.74		$17.95
M0075	Cellular therapy		E					
M0076	Prolotherapy		E					
M0100	Intragastric hypothermia		E					
M0300	IV chelationtherapy		E					
M0301	Fabric wrapping of aneurysm		E					
P2028	Cephalin floculation test		A					
P2029	Congo red blood test		A					
P2031	Hair analysis		E					
P2033	Blood thymol turbidity		A					
P2038	Blood mucoprotein		A					
P3000	Screen pap by tech w md supv		A					
P3001	Screening pap smear by phys		B					
P7001	Culture bacterial urine		E					
P9010	Whole blood for transfusion		R	0950	3.4878	$230.40		$46.08
P9011	Blood split unit		R	0967	0.4711	$31.12		$6.23
P9012	Cryoprecipitate each unit		R	0952	0.6428	$42.46		$8.50
P9016	RBC leukocytes reduced		R	0954	2.8598	$188.92		$37.79
P9017	Plasma 1 donor frz w/in 8 hr		R	9508	1.1615	$76.73		$15.35
P9019	Platelets, each unit		R	0957	1.1088	$73.25		$14.65
P9020	Plaelet rich plasma unit		R	0958	5.9788	$394.95		$78.99
P9021	Red blood cells unit		R	0959	2.0712	$136.82		$27.37
P9022	Washed red blood cells unit		R	0960	3.9607	$261.64		$52.33
P9023	Frozen plasma, pooled, sd		R	0949	0.8906	$58.83		$11.77

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
P9031	Platelets leukocytes reduced		R	1013	1.6904	$111.67		$22.34
P9032	Platelets, irradiated		R	9500	2.4890	$164.42		$32.89
P9033	Platelets leukoreduced irrad		R	0968	1.9405	$128.19		$25.64
P9034	Platelets, pheresis		R	9507	7.0946	$468.66		$93.74
P9035	Platelet pheres leukoreduced		R	9501	7.7934	$514.82		$102.97
P9036	Platelet pheresis irradiated		R	9502	7.1078	$469.53		$93.91
P9037	Plate pheres leukoredu irrad		R	1019	9.8927	$653.50		$130.70
P9038	RBC irradiated		R	9505	3.7950	$250.69		$50.14
P9039	RBC deglycerolized		R	9504	5.1685	$341.43		$68.29
P9040	RBC leukoreduced irradiated		R	0969	3.8046	$251.33		$50.27
P9041	Albumin (human),5%, 50ml		K	0961		$19.12		$3.83
P9043	Plasma protein fract,5%,50ml		R	0956	0.2365	$15.62		$3.13
P9044	Cryoprecipitatereducedplasma		R	1009	1.2892	$85.16		$17.04
P9045	Albumin (human), 5%, 250 ml		K	0963		$70.02		$14.01
P9046	Albumin (human), 25%, 20 ml		K	0964		$24.67		$4.94
P9047	Albumin (human), 25%, 50ml		K	0965		$69.22		$13.85
P9048	Plasmaprotein fract,5%,250ml		R	0966	2.9712	$196.27		$39.26
P9050	Granulocytes, pheresis unit		R	9506	25.2803	$1,669.99		$334.00
P9051	Blood, l/r, cmv-neg		R	1010	2.1819	$144.13		$28.83
P9052	Platelets, hla-m, l/r, unit		R	1011	10.7766	$711.89		$142.38
P9053	Plt, pher, l/r cmv-neg, irr		R	1020	9.8282	$649.24		$129.85
P9054	Blood, l/r, froz/degly/wash		R	1016	1.5392	$101.68		$20.34
P9055	Plt, aph/pher, l/r, cmv-neg		R	1017	7.2725	$480.41		$96.09
P9056	Blood, l/r, irradiated		R	1018	3.4259	$226.31		$45.27
P9057	RBC, frz/deg/wsh, l/r, irrad		R	1021	6.4286	$424.67		$84.94
P9058	RBC, l/r, cmv-neg, irrad		R	1022	4.5631	$301.43		$60.29
P9059	Plasma, frz between 8-24hour		R	0955	1.1447	$75.62		$15.13
P9060	Fr frz plasma donor retested		R	9503	0.9726	$64.25		$12.85
P9603	One-way allow prorated miles		A					
P9604	One-way allow prorated trip		A					
P9612	Catheterize for urine spec		A					
P9615	Urine specimen collect mult		N					
Q0035	Cardiokymography		X	0100	2.5884	$170.99	$41.44	$34.20
Q0081	Infusion ther other than che		B					
Q0083	Chemo by other than infusion		B					
Q0084	Chemotherapy by infusion		B					
Q0085	Chemo by both infusion and o		B					
Q0091	Obtaining screen pap smear		T	0191	0.1524	$10.07	$2.36	$2.02
Q0092	Set up port xray equipment		N					
Q0111	Wet mounts/ w preparations		A					
Q0112	Potassium hydroxide preps		A					
Q0113	Pinworm examinations		A					

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HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
Q0114	Fern test		A					
Q0115	Post-coital mucous exam		A					
Q0144	Azithromycin dihydrate, oral		E					
Q0163	Diphenhydramine HCl 50mg		N					
Q0164	Prochlorperazine maleate 5mg		N					
Q0165	Prochlorperazine maleate10mg	CH	N					
Q0166	Granisetron hcl 1 mg oral		K	0765		$17.54		$3.51
Q0167	Dronabinol 2.5mg oral		N					
Q0168	Dronabinol 5mg oral	CH	N					
Q0169	Promethazine HCl 12.5mg oral		N					
Q0170	Promethazine HCl 25 mg oral	CH	N					
Q0171	Chlorpromazine HCl 10mg oral		N					
Q0172	Chlorpromazine HCl 25mg oral	CH	N					
Q0173	Trimethobenzamide HCl 250mg		N					
Q0174	Thiethylperazine maleate10mg		N					
Q0175	Perphenazine 4mg oral		N					
Q0176	Perphenazine 8mg oral	CH	N					
Q0177	Hydroxyzine pamoate 25mg		N					
Q0178	Hydroxyzine pamoate 50mg	CH	N					
Q0179	Ondansetron hcl 8 mg oral		K	0769		$3.86		$0.78
Q0180	Dolasetron mesylate oral		K	0763		$56.00		$11.20
Q0181	Unspecified oral anti-emetic		E					
Q0480	Driver pneumatic vad, rep		A					
Q0481	Microprcsr cu elec vad, rep		A					
Q0482	Microprcsr cu combo vad, rep		A					
Q0483	Monitor elec vad, rep		A					
Q0484	Monitor elec or comb vad rep		A					
Q0485	Monitor cable elec vad, rep		A					
Q0486	Mon cable elec/pneum vad rep		A					
Q0487	Leads any type vad, rep only		A					
Q0488	Pwr pack base elec vad, rep		A					
Q0489	Pwr pck base combo vad, rep		A					
Q0490	Emr pwr source elec vad, rep		A					
Q0491	Emr pwr source combo vad rep		A					
Q0492	Emr pwr cbl elec vad, rep		A					
Q0493	Emr pwr cbl combo vad, rep		A					
Q0494	Emr hd pmp elec/combo, rep		A					
Q0495	Charger elec/combo vad, rep		A					
Q0496	Battery elec/combo vad, rep		A					
Q0497	Bat clps elec/comb vad, rep		A					
Q0498	Holster elec/combo vad, rep		A					
Q0499	Belt/vest elec/combo vad rep		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
Q0500	Filters elec/combo vad, rep		A					
Q0501	Shwr cov elec/combo vad, rep		A					
Q0502	Mobility cart pneum vad, rep		A					
Q0503	Battery pneum vad replacemnt		A					
Q0504	Pwr adpt pneum vad, rep veh		A					
Q0505	Miscl supply/accessory vad		A					
Q0510	Dispens fee immunosupressive		B					
Q0511	Sup fee antiem,antica,immuno		B					
Q0512	Px sup fee anti-can sub pres		B					
Q0513	Disp fee inhal drugs/30 days		B					
Q0514	Disp fee inhal drugs/90 days		B					
Q0515	Sermorelin acetate injection		K	3050		$1.71		$0.35
Q1003	Ntiol category 3		N					
Q1004	Ntiol category 4		E					
Q1005	Ntiol category 5		E					
Q2004	Bladder calculi irrig sol		N					
Q2009	Fosphenytoin, 50 mg	CH	N					
Q2017	Teniposide, 50 mg		K	7035		$297.01		$59.41
Q3001	Brachytherapy Radioelements		B					
Q3014	Telehealth facility fee		A					
Q3025	IM inj interferon beta 1-a		K	9022		$143.90		$28.78
Q3026	Subc inj interferon beta-1a		E					
Q3031	Collagen skin test		N					
Q4001	Cast sup body cast plaster		B					
Q4002	Cast sup body cast fiberglas		B					
Q4003	Cast sup shoulder cast plstr		B					
Q4004	Cast sup shoulder cast fbrgl		B					
Q4005	Cast sup long arm adult plst		B					
Q4006	Cast sup long arm adult fbrg		B					
Q4007	Cast sup long arm ped plster		B					
Q4008	Cast sup long arm ped fbrgls		B					
Q4009	Cast sup sht arm adult plstr		B					
Q4010	Cast sup sht arm adult fbrgl		B					
Q4011	Cast sup sht arm ped plaster		B					
Q4012	Cast sup sht arm ped fbrglas		B					
Q4013	Cast sup gauntlet plaster		B					
Q4014	Cast sup gauntlet fiberglass		B					
Q4015	Cast sup gauntlet ped plster		B					
Q4016	Cast sup gauntlet ped fbrgls		B					
Q4017	Cast sup lng arm splint plst		B					
Q4018	Cast sup lng arm splint fbrg		B					
Q4019	Cast sup lng arm splnt ped p		B					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
Q4020	Cast sup lng arm splnt ped f		B					
Q4021	Cast sup sht arm splint plst		B					
Q4022	Cast sup sht arm splint fbrg		B					
Q4023	Cast sup sht arm splnt ped p		B					
Q4024	Cast sup sht arm splnt ped f		B					
Q4025	Cast sup hip spica plaster		B					
Q4026	Cast sup hip spica fiberglas		B					
Q4027	Cast sup hip spica ped plstr		B					
Q4028	Cast sup hip spica ped fbrgl		B					
Q4029	Cast sup long leg plaster		B					
Q4030	Cast sup long leg fiberglass		B					
Q4031	Cast sup lng leg ped plaster		B					
Q4032	Cast sup lng leg ped fbrgls		B					
Q4033	Cast sup lng leg cylinder pl		B					
Q4034	Cast sup lng leg cylinder fb		B					
Q4035	Cast sup lngleg cylndr ped p		B					
Q4036	Cast sup lngleg cylndr ped f		B					
Q4037	Cast sup shrt leg plaster		B					
Q4038	Cast sup shrt leg fiberglass		B					
Q4039	Cast sup shrt leg ped plster		B					
Q4040	Cast sup shrt leg ped fbrgls		B					
Q4041	Cast sup lng leg splnt plstr		B					
Q4042	Cast sup lng leg splnt fbrgl		B					
Q4043	Cast sup lng leg splnt ped p		B					
Q4044	Cast sup lng leg splnt ped f		B					
Q4045	Cast sup sht leg splnt plstr		B					
Q4046	Cast sup sht leg splnt fbrgl		B					
Q4047	Cast sup sht leg splnt ped p		B					
Q4048	Cast sup sht leg splnt ped f		B					
Q4049	Finger splint, static		B					
Q4050	Cast supplies unlisted		B					
Q4051	Splint supplies misc		B					
Q4080	Iloprost non-comp unit dose		Y					
Q4081	Epoetin alfa, 100 units ESRD		A					
Q4082	Drug/bio NOC part B drug CAP		B					
Q4096	VWF complex, NOS	CH	D					
Q4097	Inj IVIG privigen 500 mg	CH	D					
Q4098	Inj iron dextran	CH	D					
Q4099	Formoterol fumarate, inh	CH	D					
Q4100	Skin substitute, NOS	NI	N					
Q4101	Apligraf skin sub	NI	K	1240		$30.92		$6.18
Q4102	Oasis wound matrix skin sub	NI	K	1241		$4.00		$0.80

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
Q4103	Oasis burn matrix skin sub	NI	K	1242		$4.00		$0.80
Q4104	Integra BMWD skin sub	NI	K	1243		$11.13		$2.23
Q4105	Integra DRT skin sub	NI	K	1244		$11.13		$2.23
Q4106	Dermagraft skin sub	NI	K	1245		$37.76		$7.55
Q4107	Graftjacket skin sub	NI	K	1246		$86.03		$17.21
Q4108	Integra matrix skin sub	NI	K	1247		$16.83		$3.37
Q4109	Tissuemend skin sub	NI	N					
Q4110	Primatrix skin sub	NI	K	1248		$34.41		$6.88
Q4112	Cymetra allograft	NI	K	1249		$376.03		$75.21
Q4113	Graftjacket express allograft	NI	K	1250		$376.03		$75.21
Q4114	Integra flowable wound matri	NI	G	1251		$875.21		$171.74
Q5001	Hospice in patient home		B					
Q5002	Hospice in assisted living		B					
Q5003	Hospice in LT/non-skilled NF		B					
Q5004	Hospice in SNF		B					
Q5005	Hospice, inpatient hospital		B					
Q5006	Hospice in hospice facility		B					
Q5007	Hospice in LTCH		B					
Q5008	Hospice in inpatient psych		B					
Q5009	Hospice care, NOS		B					
Q9951	LOCM >= 400 mg/ml iodine,1ml		N					
Q9953	Inj Fe-based MR contrast,1ml		N					
Q9954	Oral MR contrast, 100 ml		N					
Q9955	Inj perflexane lip micros,ml		N					
Q9956	Inj octafluoropropane mic,ml		N					
Q9957	Inj perflutren lip micros,ml		N					
Q9958	HOCM <=149 mg/ml iodine, 1ml		N					
Q9959	HOCM 150-199mg/ml iodine,1ml		N					
Q9960	HOCM 200-249mg/ml iodine,1ml		N					
Q9961	HOCM 250-299mg/ml iodine,1ml		N					
Q9962	HOCM 300-349mg/ml iodine,1ml		N					
Q9963	HOCM 350-399mg/ml iodine,1ml		N					
Q9964	HOCM>= 400mg/ml iodine, 1ml		N					
Q9965	LOCM 100-199mg/ml iodine,1ml		N					
Q9966	LOCM 200-299mg/ml iodine,1ml		N					
Q9967	LOCM 300-399mg/ml iodine,1ml		N					
R0070	Transport portable x-ray		B					
R0075	Transport port x-ray multipl		B					
R0076	Transport portable EKG		B					
V2020	Vision svcs frames purchases		A					
V2025	Eyeglasses delux frames		E					
V2100	Lens spher single plano 4.00		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
V2101	Single visn sphere 4.12-7.00		A					
V2102	Singl visn sphere 7.12-20.00		A					
V2103	Spherocylindr 4.00d/12-2.00d		A					
V2104	Spherocylindr 4.00d/2.12-4d		A					
V2105	Spherocylinder 4.00d/4.25-6d		A					
V2106	Spherocylinder 4.00d/>6.00d		A					
V2107	Spherocylinder 4.25d/12-2d		A					
V2108	Spherocylinder 4.25d/2.12-4d		A					
V2109	Spherocylinder 4.25d/4.25-6d		A					
V2110	Spherocylinder 4.25d/over 6d		A					
V2111	Spherocylindr 7.25d/.25-2.25		A					
V2112	Spherocylindr 7.25d/2.25-4d		A					
V2113	Spherocylindr 7.25d/4.25-6d		A					
V2114	Spherocylinder over 12.00d		A					
V2115	Lens lenticular bifocal		A					
V2118	Lens aniseikonic single		A					
V2121	Lenticular lens, single		A					
V2199	Lens single vision not oth c		A					
V2200	Lens spher bifoc plano 4.00d		A					
V2201	Lens sphere bifocal 4.12-7.0		A					
V2202	Lens sphere bifocal 7.12-20.		A					
V2203	Lens sphcyl bifocal 4.00d/.1		A					
V2204	Lens sphcy bifocal 4.00d/2.1		A					
V2205	Lens sphcy bifocal 4.00d/4.2		A					
V2206	Lens sphcy bifocal 4.00d/ove		A					
V2207	Lens sphcy bifocal 4.25-7d/.		A					
V2208	Lens sphcy bifocal 4.25-7/2.		A					
V2209	Lens sphcy bifocal 4.25-7/4.		A					
V2210	Lens sphcy bifocal 4.25-7/ov		A					
V2211	Lens sphcy bifo 7.25-12/.25-		A					
V2212	Lens sphcyl bifo 7.25-12/2.2		A					
V2213	Lens sphcyl bifo 7.25-12/4.2		A					
V2214	Lens sphcyl bifocal over 12.		A					
V2215	Lens lenticular bifocal		A					
V2218	Lens aniseikonic bifocal		A					
V2219	Lens bifocal seg width over		A					
V2220	Lens bifocal add over 3.25d		A					
V2221	Lenticular lens, bifocal		A					
V2299	Lens bifocal speciality		A					
V2300	Lens sphere trifocal 4.00d		A					
V2301	Lens sphere trifocal 4.12-7.		A					
V2302	Lens sphere trifocal 7.12-20		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009

HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
V2303	Lens sphcy trifocal 4.0/.12-		A					
V2304	Lens sphcy trifocal 4.0/2.25		A					
V2305	Lens sphcy trifocal 4.0/4.25		A					
V2306	Lens sphcyl trifocal 4.00/>6		A					
V2307	Lens sphcy trifocal 4.25-7/.		A					
V2308	Lens sphc trifocal 4.25-7/2.		A					
V2309	Lens sphc trifocal 4.25-7/4.		A					
V2310	Lens sphc trifocal 4.25-7/>6		A					
V2311	Lens sphc trifo 7.25-12/.25-		A					
V2312	Lens sphc trifo 7.25-12/2.25		A					
V2313	Lens sphc trifo 7.25-12/4.25		A					
V2314	Lens sphcyl trifocal over 12		A					
V2315	Lens lenticular trifocal		A					
V2318	Lens aniseikonic trifocal		A					
V2319	Lens trifocal seg width > 28		A					
V2320	Lens trifocal add over 3.25d		A					
V2321	Lenticular lens, trifocal		A					
V2399	Lens trifocal speciality		A					
V2410	Lens variab asphericity sing		A					
V2430	Lens variable asphericity bi		A					
V2499	Variable asphericity lens		A					
V2500	Contact lens pmma spherical		A					
V2501	Cntct lens pmma-toric/prism		A					
V2502	Contact lens pmma bifocal		A					
V2503	Cntct lens pmma color vision		A					
V2510	Cntct gas permeable sphericl		A					
V2511	Cntct toric prism ballast		A					
V2512	Cntct lens gas permbl bifocl		A					
V2513	Contact lens extended wear		A					
V2520	Contact lens hydrophilic		A					
V2521	Cntct lens hydrophilic toric		A					
V2522	Cntct lens hydrophil bifocl		A					
V2523	Cntct lens hydrophil extend		A					
V2530	Contact lens gas impermeable		A					
V2531	Contact lens gas permeable		A					
V2599	Contact lens/es other type		A					
V2600	Hand held low vision aids		A					
V2610	Single lens spectacle mount		A					
V2615	Telescop/othr compound lens		A					
V2623	Plastic eye prosth custom		A					
V2624	Polishing artifical eye		A					
V2625	Enlargemnt of eye prosthesis		A					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
V2626	Reduction of eye prosthesis		A					
V2627	Scleral cover shell		A					
V2628	Fabrication & fitting		A					
V2629	Prosthetic eye other type		A					
V2630	Anter chamber intraocul lens		N					
V2631	Iris support intraoclr lens		N					
V2632	Post chmbr intraocular lens		N					
V2700	Balance lens		A					
V2702	Deluxe lens feature		E					
V2710	Glass/plastic slab off prism		A					
V2715	Prism lens/es		A					
V2718	Fresnell prism press-on lens		A					
V2730	Special base curve		A					
V2744	Tint photochromatic lens/es		A					
V2745	Tint, any color/solid/grad		A					
V2750	Anti-reflective coating		A					
V2755	UV lens/es		A					
V2756	Eye glass case		E					
V2760	Scratch resistant coating		A					
V2761	Mirror coating		B					
V2762	Polarization, any lens		A					
V2770	Occluder lens/es		A					
V2780	Oversize lens/es		A					
V2781	Progressive lens per lens		B					
V2782	Lens, 1.54-1.65 p/1.60-1.79g		A					
V2783	Lens, >= 1.66 p/>=1.80 g		A					
V2784	Lens polycarb or equal		A					
V2785	Corneal tissue processing		F					
V2786	Occupational multifocal lens		A					
V2787	Astigmatism-correct function		E					
V2788	Presbyopia-correct function		E					
V2790	Amniotic membrane		N					
V2797	Vis item/svc in other code		A					
V2799	Miscellaneous vision service		A					
V5008	Hearing screening		E					
V5010	Assessment for hearing aid		E					
V5011	Hearing aid fitting/checking		E					
V5014	Hearing aid repair/modifying		E					
V5020	Conformity evaluation		E					
V5030	Body-worn hearing aid air		E					
V5040	Body-worn hearing aid bone		E					
V5050	Hearing aid monaural in ear		E					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
V5060	Behind ear hearing aid		E					
V5070	Glasses air conduction		E					
V5080	Glasses bone conduction		E					
V5090	Hearing aid dispensing fee		E					
V5095	Implant mid ear hearing pros		E					
V5100	Body-worn bilat hearing aid		E					
V5110	Hearing aid dispensing fee		E					
V5120	Body-worn binaur hearing aid		E					
V5130	In ear binaural hearing aid		E					
V5140	Behind ear binaur hearing ai		E					
V5150	Glasses binaural hearing aid		E					
V5160	Dispensing fee binaural		E					
V5170	Within ear cros hearing aid		E					
V5180	Behind ear cros hearing aid		E					
V5190	Glasses cros hearing aid		E					
V5200	Cros hearing aid dispens fee		E					
V5210	In ear bicros hearing aid		E					
V5220	Behind ear bicros hearing ai		E					
V5230	Glasses bicros hearing aid		E					
V5240	Dispensing fee bicros		E					
V5241	Dispensing fee, monaural		E					
V5242	Hearing aid, monaural, cic		E					
V5243	Hearing aid, monaural, itc		E					
V5244	Hearing aid, prog, mon, cic		E					
V5245	Hearing aid, prog, mon, itc		E					
V5246	Hearing aid, prog, mon, ite		E					
V5247	Hearing aid, prog, mon, bte		E					
V5248	Hearing aid, binaural, cic		E					
V5249	Hearing aid, binaural, itc		E					
V5250	Hearing aid, prog, bin, cic		E					
V5251	Hearing aid, prog, bin, itc		E					
V5252	Hearing aid, prog, bin, ite		E					
V5253	Hearing aid, prog, bin, bte		E					
V5254	Hearing id, digit, mon, cic		E					
V5255	Hearing aid, digit, mon, itc		E					
V5256	Hearing aid, digit, mon, ite		E					
V5257	Hearing aid, digit, mon, bte		E					
V5258	Hearing aid, digit, bin, cic		E					
V5259	Hearing aid, digit, bin, itc		E					
V5260	Hearing aid, digit, bin, ite		E					
V5261	Hearing aid, digit, bin, bte		E					
V5262	Hearing aid, disp, monaural		E					

ADDENDUM B.—FINAL OPPS PAYMENT BY HCPCS CODE FOR CY 2009								
HCPCS Code	Short Descriptor	CI	SI	APC	Relative Weight	Payment Rate	National Unadjusted Copayment	Minimum Unadjusted Copayment
V5263	Hearing aid, disp, binaural		E					
V5264	Ear mold/insert		E					
V5265	Ear mold/insert, disp		E					
V5266	Battery for hearing device		E					
V5267	Hearing aid supply/accessory		E					
V5268	ALD Telephone Amplifier		E					
V5269	Alerting device, any type		E					
V5270	ALD, TV amplifier, any type		E					
V5271	ALD, TV caption decoder		E					
V5272	Tdd		E					
V5273	ALD for cochlear implant		E					
V5274	ALD unspecified		E					
V5275	Ear impression		E					
V5298	Hearing aid noc		E					
V5299	Hearing service		B					
V5336	Repair communication device		E					
V5362	Speech screening		E					
V5363	Language screening		E					
V5364	Dysphagia screening		E					

ADDENDUM BB.--FINAL ASC COVERED ANCILLARY SERVICES INTEGRAL TO COVERED SURGICAL PROCEDURES FOR CY 2009 (INCLUDING ANCILLARY SERVICES FOR WHICH PAYMENT IS PACKAGED)

ADDENDUM BB.--FINAL ASC COVERED ANCILLARY SERVICES INTEGRAL TO COVERED SURGICAL PROCEDURES FOR CY 2009 (INCLUDING ANCILLARY SERVICES FOR WHICH PAYMENT IS PACKAGED)					
HCPCS Code	Short Descriptor	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
0028T	Dexa body composition study	CH	D5		
0042T	Ct perfusion w/contrast, cbf		N1		
0067T	Ct colonography;dx		Z2	2.8693	$118.77
0073T	Delivery, comp imrt		Z2	6.0643	$251.02
0126T	Chd risk imt study		N1		
0144T	Ct heart wo dye; qual calc		Z2	1.5501	$64.16
0145T	Ct heart w/wo dye funct		Z2	4.1727	$172.72
0146T	Ccta w/wo dye		Z2	4.1727	$172.72
0147T	Ccta w/wo, quan calcium		Z2	4.1727	$172.72
0148T	Ccta w/wo, strxr		Z2	4.1727	$172.72
0149T	Ccta w/wo, strxr quan calc		Z2	4.1727	$172.72
0150T	Ccta w/wo, disease strxr		Z2	4.1727	$172.72
0151T	Ct heart funct add-on		Z2	1.5501	$64.16
0159T	Cad breast mri		N1		
0174T	Cad cxr with interp		N1		
0175T	Cad cxr remote		N1		
0182T	Hdr elect brachytherapy		Z2	25.8319	$1,069.26
0185T	Comptr probability analysis		N1		
70010	Contrast x-ray of brain		N1		
70015	Contrast x-ray of brain		N1		
70030	X-ray eye for foreign body		Z3	0.4443	$18.39
70100	X-ray exam of jaw		Z3	0.488	$20.20
70110	X-ray exam of jaw		Z3	0.6013	$24.89
70120	X-ray exam of mastoids		Z3	0.5402	$22.36
70130	X-ray exam of mastoids		Z2	0.6599	$27.32
70134	X-ray exam of middle ear		Z3	0.6622	$27.41
70140	X-ray exam of facial bones		Z3	0.453	$18.75
70150	X-ray exam of facial bones		Z2	0.6599	$27.32
70160	X-ray exam of nasal bones		Z3	0.5315	$22.00
70170	X-ray exam of tear duct		N1		
70190	X-ray exam of eye sockets		Z3	0.5576	$23.08
70200	X-ray exam of eye sockets		Z2	0.6599	$27.32
70210	X-ray exam of sinuses		Z3	0.4706	$19.48
70220	X-ray exam of sinuses		Z3	0.5926	$24.53
70240	X-ray exam, pituitary saddle		Z3	0.4443	$18.39
70250	X-ray exam of skull		Z3	0.5402	$22.36
70260	X-ray exam of skull		Z3	0.6883	$28.49
70300	X-ray exam of teeth		Z3	0.1916	$7.93

NOTE: The Medicare program payment is 80 percent of the total payment amount and beneficiary coinsurance is 20 percent of the total payment amount, except for screening flexible sigmoidoscopies and screening colonoscopies for which the program payment is 75 percent and the beneficiary coinsurance is 25 percent.

ADDENDUM BB.--FINAL ASC COVERED ANCILLARY SERVICES INTEGRAL TO COVERED SURGICAL PROCEDURES FOR CY 2009 (INCLUDING ANCILLARY SERVICES FOR WHICH PAYMENT IS PACKAGED)

HCPCS Code	Short Descriptor	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
70310	X-ray exam of teeth	CH	Z2	0.4734	$19.60
70320	Full mouth x-ray of teeth		Z2	0.4734	$19.60
70328	X-ray exam of jaw joint		Z3	0.4706	$19.48
70330	X-ray exam of jaw joints		Z2	0.6599	$27.32
70332	X-ray exam of jaw joint		N1		
70336	Magnetic image, jaw joint		Z2	5.1377	$212.66
70350	X-ray head for orthodontia		Z3	0.2614	$10.82
70355	Panoramic x-ray of jaws		Z3	0.2701	$11.18
70360	X-ray exam of neck		Z3	0.4182	$17.31
70370	Throat x-ray & fluoroscopy	CH	Z2	1.2283	$50.84
70371	Speech evaluation, complex		Z2	1.2283	$50.84
70373	Contrast x-ray of larynx		N1		
70380	X-ray exam of salivary gland		Z3	0.6361	$26.33
70390	X-ray exam of salivary duct		N1		
70450	Ct head/brain w/o dye		Z2	2.8693	$118.77
70460	Ct head/brain w/dye		Z2	4.5435	$188.07
70470	Ct head/brain w/o & w/dye		Z2	5.033	$208.33
70480	Ct orbit/ear/fossa w/o dye		Z2	2.8693	$118.77
70481	Ct orbit/ear/fossa w/dye		Z2	4.5435	$188.07
70482	Ct orbit/ear/fossa w/o&w/dye		Z2	5.033	$208.33
70486	Ct maxillofacial w/o dye		Z2	2.8693	$118.77
70487	Ct maxillofacial w/dye		Z2	4.5435	$188.07
70488	Ct maxillofacial w/o & w/dye		Z2	5.033	$208.33
70490	Ct soft tissue neck w/o dye		Z2	2.8693	$118.77
70491	Ct soft tissue neck w/dye		Z2	4.5435	$188.07
70492	Ct sft tsue nck w/o & w/dye		Z2	5.033	$208.33
70496	Ct angiography, head		Z2	5.1938	$214.99
70498	Ct angiography, neck		Z2	5.1938	$214.99
70540	Mri orbit/face/neck w/o dye		Z2	5.1377	$212.66
70542	Mri orbit/face/neck w/dye		Z2	6.309	$261.15
70543	Mri orbt/fac/nck w/o & w/dye		Z2	7.9517	$329.14
70544	Mr angiography head w/o dye		Z2	5.1377	$212.66
70545	Mr angiography head w/dye		Z2	6.309	$261.15
70546	Mr angiograph head w/o&w/dye		Z2	7.9517	$329.14
70547	Mr angiography neck w/o dye		Z2	5.1377	$212.66
70548	Mr angiography neck w/dye		Z2	6.309	$261.15
70549	Mr angiograph neck w/o&w/dye		Z2	7.9517	$329.14
70551	Mri brain w/o dye		Z2	5.1377	$212.66
70552	Mri brain w/dye		Z2	6.309	$261.15
70553	Mri brain w/o & w/dye		Z2	7.9517	$329.14
70554	Fmri brain by tech		Z2	5.1377	$212.66
70555	Fmri brain by phys/psych		Z2	5.1377	$212.66

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HCPCS Code	Short Descriptor	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
70557	Mri brain w/o dye		Z2	5.1377	$212.66
70558	Mri brain w/dye		Z2	6.309	$261.15
70559	Mri brain w/o & w/dye		Z2	7.9517	$329.14
71010	Chest x-ray		Z3	0.3399	$14.07
71015	Chest x-ray		Z3	0.4356	$18.03
71020	Chest x-ray		Z3	0.4619	$19.12
71021	Chest x-ray		Z3	0.5576	$23.08
71022	Chest x-ray		Z2	0.6599	$27.32
71023	Chest x-ray and fluoroscopy		Z3	1.0804	$44.72
71030	Chest x-ray		Z2	0.6599	$27.32
71034	Chest x-ray and fluoroscopy		Z2	1.2283	$50.84
71035	Chest x-ray		Z3	0.575	$23.80
71040	Contrast x-ray of bronchi		N1		
71060	Contrast x-ray of bronchi		N1		
71090	X-ray & pacemaker insertion		N1		
71100	X-ray exam of ribs		Z3	0.4793	$19.84
71101	X-ray exam of ribs/chest		Z3	0.5837	$24.16
71110	X-ray exam of ribs		Z3	0.61	$25.25
71111	X-ray exam of ribs/chest		Z3	0.8103	$33.54
71120	X-ray exam of breastbone		Z3	0.5054	$20.92
71130	X-ray exam of breastbone		Z3	0.5926	$24.53
71250	Ct thorax w/o dye		Z2	2.8693	$118.77
71260	Ct thorax w/dye		Z2	4.5435	$188.07
71270	Ct thorax w/o & w/dye		Z2	5.033	$208.33
71275	Ct angiography, chest		Z2	5.1938	$214.99
71550	Mri chest w/o dye		Z2	5.1377	$212.66
71551	Mri chest w/dye		Z2	6.309	$261.15
71552	Mri chest w/o & w/dye		Z2	7.9517	$329.14
72010	X-ray exam of spine		Z2	1.0988	$45.48
72020	X-ray exam of spine		Z3	0.3573	$14.79
72040	X-ray exam of neck spine		Z3	0.575	$23.80
72050	X-ray exam of neck spine		Z3	0.819	$33.90
72052	X-ray exam of neck spine	CH	Z2	1.0988	$45.48
72069	X-ray exam of trunk spine		Z3	0.5402	$22.36
72070	X-ray exam of thoracic spine		Z3	0.5054	$20.92
72072	X-ray exam of thoracic spine		Z3	0.61	$25.25
72074	X-ray exam of thoracic spine		Z2	0.6599	$27.32
72080	X-ray exam of trunk spine		Z3	0.5402	$22.36
72090	X-ray exam of trunk spine		Z3	0.7233	$29.94
72100	X-ray exam of lower spine		Z3	0.6187	$25.61
72110	X-ray exam of lower spine		Z3	0.8627	$35.71
72114	X-ray exam of lower spine		Z2	1.0988	$45.48

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HCPCS Code	Short Descriptor	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
72120	X-ray exam of lower spine		Z3	0.8364	$34.62
72125	Ct neck spine w/o dye		Z2	2.8693	$118.77
72126	Ct neck spine w/dye		Z2	4.5435	$188.07
72127	Ct neck spine w/o & w/dye		Z2	5.033	$208.33
72128	Ct chest spine w/o dye		Z2	2.8693	$118.77
72129	Ct chest spine w/dye		Z2	4.5435	$188.07
72130	Ct chest spine w/o & w/dye		Z2	5.033	$208.33
72131	Ct lumbar spine w/o dye		Z2	2.8693	$118.77
72132	Ct lumbar spine w/dye		Z2	4.5435	$188.07
72133	Ct lumbar spine w/o & w/dye		Z2	5.033	$208.33
72141	Mri neck spine w/o dye		Z2	5.1377	$212.66
72142	Mri neck spine w/dye		Z2	6.309	$261.15
72146	Mri chest spine w/o dye		Z2	5.1377	$212.66
72147	Mri chest spine w/dye		Z2	6.309	$261.15
72148	Mri lumbar spine w/o dye		Z2	5.1377	$212.66
72149	Mri lumbar spine w/dye		Z2	6.309	$261.15
72156	Mri neck spine w/o & w/dye		Z2	7.9517	$329.14
72157	Mri chest spine w/o & w/dye		Z2	7.9517	$329.14
72158	Mri lumbar spine w/o & w/dye		Z2	7.9517	$329.14
72170	X-ray exam of pelvis		Z3	0.3921	$16.23
72190	X-ray exam of pelvis	CH	Z2	0.6599	$27.32
72191	Ct angiograph pelv w/o&w/dye		Z2	5.1938	$214.99
72192	Ct pelvis w/o dye		Z2	2.8693	$118.77
72193	Ct pelvis w/dye		Z2	4.5435	$188.07
72194	Ct pelvis w/o & w/dye		Z2	5.033	$208.33
72195	Mri pelvis w/o dye		Z2	5.1377	$212.66
72196	Mri pelvis w/dye		Z2	6.309	$261.15
72197	Mri pelvis w/o & w/dye		Z2	7.9517	$329.14
72200	X-ray exam sacroiliac joints		Z3	0.4619	$19.12
72202	X-ray exam sacroiliac joints		Z3	0.5663	$23.44
72220	X-ray exam of tailbone		Z3	0.4619	$19.12
72240	Contrast x-ray of neck spine		N1		
72255	Contrast x-ray, thorax spine		N1		
72265	Contrast x-ray, lower spine		N1		
72270	Contrast x-ray, spine		N1		
72275	Epidurography		N1		
72285	X-ray c/t spine disk		N1		
72291	Perq vertebroplasty, fluor		N1		
72292	Perq vertebroplasty, ct		N1		
72295	X-ray of lower spine disk		N1		
73000	X-ray exam of collar bone		Z3	0.4356	$18.03
73010	X-ray exam of shoulder blade		Z3	0.4443	$18.39

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HCPCS Code	Short Descriptor	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
73020	X-ray exam of shoulder		Z3	0.3573	$14.79
73030	X-ray exam of shoulder		Z3	0.453	$18.75
73040	Contrast x-ray of shoulder		N1		
73050	X-ray exam of shoulders		Z3	0.5663	$23.44
73060	X-ray exam of humerus		Z3	0.453	$18.75
73070	X-ray exam of elbow		Z3	0.4356	$18.03
73080	X-ray exam of elbow		Z3	0.575	$23.80
73085	Contrast x-ray of elbow		N1		
73090	X-ray exam of forearm		Z3	0.4356	$18.03
73092	X-ray exam of arm, infant		Z3	0.453	$18.75
73100	X-ray exam of wrist		Z3	0.453	$18.75
73110	X-ray exam of wrist		Z3	0.575	$23.80
73115	Contrast x-ray of wrist		N1		
73120	X-ray exam of hand		Z3	0.4269	$17.67
73130	X-ray exam of hand		Z3	0.5054	$20.92
73140	X-ray exam of finger(s)		Z3	0.4967	$20.56
73200	Ct upper extremity w/o dye		Z2	2.8693	$118.77
73201	Ct upper extremity w/dye		Z2	4.5435	$188.07
73202	Ct uppr extremity w/o&w/dye		Z2	5.033	$208.33
73206	Ct angio upr extrm w/o&w/dye		Z2	5.1938	$214.99
73218	Mri upper extremity w/o dye		Z2	5.1377	$212.66
73219	Mri upper extremity w/dye		Z2	6.309	$261.15
73220	Mri uppr extremity w/o&w/dye		Z2	7.9517	$329.14
73221	Mri joint upr extrem w/o dye		Z2	5.1377	$212.66
73222	Mri joint upr extrem w/dye		Z2	6.309	$261.15
73223	Mri joint upr extr w/o&w/dye		Z2	7.9517	$329.14
73500	X-ray exam of hip		Z3	0.3747	$15.51
73510	X-ray exam of hip		Z3	0.575	$23.80
73520	X-ray exam of hips		Z3	0.5926	$24.53
73525	Contrast x-ray of hip		N1		
73530	X-ray exam of hip		N1		
73540	X-ray exam of pelvis & hips		Z3	0.5926	$24.53
73542	X-ray exam, sacroiliac joint		N1		
73550	X-ray exam of thigh		Z3	0.4356	$18.03
73560	X-ray exam of knee, 1 or 2		Z3	0.4443	$18.39
73562	X-ray exam of knee, 3		Z3	0.5489	$22.72
73564	X-ray exam, knee, 4 or more		Z3	0.6361	$26.33
73565	X-ray exam of knees		Z3	0.4793	$19.84
73580	Contrast x-ray of knee joint		N1		
73590	X-ray exam of lower leg		Z3	0.4182	$17.31
73592	X-ray exam of leg, infant		Z3	0.453	$18.75
73600	X-ray exam of ankle		Z3	0.4269	$17.67

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HCPCS Code	Short Descriptor	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
73610	X-ray exam of ankle		Z3	0.5054	$20.92
73615	Contrast x-ray of ankle		N1		
73620	X-ray exam of foot		Z3	0.4095	$16.95
73630	X-ray exam of foot		Z3	0.4967	$20.56
73650	X-ray exam of heel		Z3	0.4182	$17.31
73660	X-ray exam of toe(s)		Z3	0.4706	$19.48
73700	Ct lower extremity w/o dye		Z2	2.8693	$118.77
73701	Ct lower extremity w/dye		Z2	4.5435	$188.07
73702	Ct lwr extremity w/o&w/dye		Z2	5.033	$208.33
73706	Ct angio lwr extr w/o&w/dye		Z2	5.1938	$214.99
73718	Mri lower extremity w/o dye		Z2	5.1377	$212.66
73719	Mri lower extremity w/dye		Z2	6.309	$261.15
73720	Mri lwr extremity w/o&w/dye		Z2	7.9517	$329.14
73721	Mri jnt of lwr extre w/o dye		Z2	5.1377	$212.66
73722	Mri joint of lwr extr w/dye		Z2	6.309	$261.15
73723	Mri joint lwr extr w/o&w/dye		Z2	7.9517	$329.14
74000	X-ray exam of abdomen		Z3	0.3747	$15.51
74010	X-ray exam of abdomen		Z3	0.5837	$24.16
74020	X-ray exam of abdomen		Z3	0.5926	$24.53
74022	X-ray exam series, abdomen		Z3	0.7233	$29.94
74150	Ct abdomen w/o dye		Z2	2.8693	$118.77
74160	Ct abdomen w/dye		Z2	4.5435	$188.07
74170	Ct abdomen w/o & w/dye		Z2	5.033	$208.33
74175	Ct angio abdom w/o & w/dye		Z2	5.1938	$214.99
74181	Mri abdomen w/o dye		Z2	5.1377	$212.66
74182	Mri abdomen w/dye		Z2	6.309	$261.15
74183	Mri abdomen w/o & w/dye		Z2	7.9517	$329.14
74190	X-ray exam of peritoneum		N1		
74210	Contrst x-ray exam of throat	CH	Z2	1.2967	$53.67
74220	Contrast x-ray, esophagus		Z2	1.2967	$53.67
74230	Cine/vid x-ray, throat/esoph		Z2	1.2967	$53.67
74235	Remove esophagus obstruction		N1		
74240	X-ray exam, upper gi tract		Z2	1.2967	$53.67
74241	X-ray exam, upper gi tract		Z2	1.2967	$53.67
74245	X-ray exam, upper gi tract		Z2	2.1083	$87.27
74246	Contrst x-ray uppr gi tract		Z2	1.2967	$53.67
74247	Contrst x-ray uppr gi tract		Z2	1.2967	$53.67
74249	Contrst x-ray uppr gi tract		Z2	2.1083	$87.27
74250	X-ray exam of small bowel		Z2	1.2967	$53.67
74251	X-ray exam of small bowel		Z2	2.1083	$87.27
74260	X-ray exam of small bowel		Z2	1.2967	$53.67
74270	Contrast x-ray exam of colon		Z2	1.2967	$53.67

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HCPCS Code	Short Descriptor	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
74280	Contrast x-ray exam of colon		Z2	2.1083	$87.27
74283	Contrast x-ray exam of colon		Z2	1.2967	$53.67
74290	Contrast x-ray, gallbladder		Z3	1.1065	$45.80
74291	Contrast x-rays, gallbladder		Z3	1.063	$44.00
74300	X-ray bile ducts/pancreas		N1		
74301	X-rays at surgery add-on		N1		
74305	X-ray bile ducts/pancreas		N1		
74320	Contrast x-ray of bile ducts		N1		
74327	X-ray bile stone removal		N1		
74328	X-ray bile duct endoscopy		N1		
74329	X-ray for pancreas endoscopy		N1		
74330	X-ray bile/panc endoscopy		N1		
74340	X-ray guide for gi tube		N1		
74355	X-ray guide, intestinal tube		N1		
74360	X-ray guide, gi dilation		N1		
74363	X-ray, bile duct dilation		N1		
74400	Contrst x-ray, urinary tract		Z3	1.9257	$79.71
74410	Contrst x-ray, urinary tract		Z3	2.0564	$85.12
74415	Contrst x-ray, urinary tract		Z3	2.4572	$101.71
74420	Contrst x-ray, urinary tract		Z2	2.5684	$106.31
74425	Contrst x-ray, urinary tract		N1		
74430	Contrast x-ray, bladder		N1		
74440	X-ray, male genital tract		N1		
74445	X-ray exam of penis		N1		
74450	X-ray, urethra/bladder		N1		
74455	X-ray, urethra/bladder		N1		
74470	X-ray exam of kidney lesion		N1		
74475	X-ray control, cath insert		N1		
74480	X-ray control, cath insert		N1		
74485	X-ray guide, gu dilation		N1		
74710	X-ray measurement of pelvis		Z3	0.575	$23.80
74740	X-ray, female genital tract		N1		
74742	X-ray, fallopian tube		N1		
74775	X-ray exam of perineum		Z2	2.5684	$106.31
75557	Cardiac mri for morph		Z2	5.1377	$212.66
75559	Cardiac mri w/stress img		Z2	5.1377	$212.66
75561	Cardiac mri for morph w/dye		Z2	7.9517	$329.14
75563	Card mri w/stress img & dye		Z2	7.9517	$329.14
75600	Contrast x-ray exam of aorta		N1		
75605	Contrast x-ray exam of aorta		N1		
75625	Contrast x-ray exam of aorta		N1		
75630	X-ray aorta, leg arteries		N1		

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HCPCS Code	Short Descriptor	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
75635	Ct angio abdominal arteries		N1		
75650	Artery x-rays, head & neck		N1		
75658	Artery x-rays, arm		N1		
75660	Artery x-rays, head & neck		N1		
75662	Artery x-rays, head & neck		N1		
75665	Artery x-rays, head & neck		N1		
75671	Artery x-rays, head & neck		N1		
75676	Artery x-rays, neck		N1		
75680	Artery x-rays, neck		N1		
75685	Artery x-rays, spine		N1		
75705	Artery x-rays, spine		N1		
75710	Artery x-rays, arm/leg		N1		
75716	Artery x-rays, arms/legs		N1		
75722	Artery x-rays, kidney		N1		
75724	Artery x-rays, kidneys		N1		
75726	Artery x-rays, abdomen		N1		
75731	Artery x-rays, adrenal gland		N1		
75733	Artery x-rays, adrenals		N1		
75736	Artery x-rays, pelvis		N1		
75741	Artery x-rays, lung		N1		
75743	Artery x-rays, lungs		N1		
75746	Artery x-rays, lung		N1		
75756	Artery x-rays, chest		N1		
75774	Artery x-ray, each vessel		N1		
75790	Visualize a-v shunt		N1		
75801	Lymph vessel x-ray, arm/leg		N1		
75803	Lymph vessel x-ray,arms/legs		N1		
75805	Lymph vessel x-ray, trunk		N1		
75807	Lymph vessel x-ray, trunk		N1		
75809	Nonvascular shunt, x-ray		N1		
75810	Vein x-ray, spleen/liver		N1		
75820	Vein x-ray, arm/leg		N1		
75822	Vein x-ray, arms/legs		N1		
75825	Vein x-ray, trunk		N1		
75827	Vein x-ray, chest		N1		
75831	Vein x-ray, kidney		N1		
75833	Vein x-ray, kidneys		N1		
75840	Vein x-ray, adrenal gland		N1		
75842	Vein x-ray, adrenal glands		N1		
75860	Vein x-ray, neck		N1		
75870	Vein x-ray, skull		N1		
75872	Vein x-ray, skull		N1		

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HCPCS Code	Short Descriptor	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
75880	Vein x-ray, eye socket		N1		
75885	Vein x-ray, liver		N1		
75887	Vein x-ray, liver		N1		
75889	Vein x-ray, liver		N1		
75891	Vein x-ray, liver		N1		
75893	Venous sampling by catheter		N1		
75894	X-rays, transcath therapy		N1		
75896	X-rays, transcath therapy		N1		
75898	Follow-up angiography		N1		
75901	Remove cva device obstruct		N1		
75902	Remove cva lumen obstruct		N1		
75940	X-ray placement, vein filter		N1		
75945	Intravascular us		N1		
75946	Intravascular us add-on		N1		
75960	Transcath iv stent rs&i		N1		
75961	Retrieval, broken catheter		N1		
75962	Repair arterial blockage		N1		
75964	Repair artery blockage, each		N1		
75966	Repair arterial blockage		N1		
75968	Repair artery blockage, each		N1		
75970	Vascular biopsy		N1		
75978	Repair venous blockage		N1		
75980	Contrast xray exam bile duct		N1		
75982	Contrast xray exam bile duct		N1		
75984	Xray control catheter change		N1		
75989	Abscess drainage under x-ray		N1		
75992	Atherectomy, x-ray exam		N1		
75993	Atherectomy, x-ray exam		N1		
75994	Atherectomy, x-ray exam		N1		
75995	Atherectomy, x-ray exam		N1		
75996	Atherectomy, x-ray exam		N1		
76000	Fluoroscope examination		N1		
76001	Fluoroscope exam, extensive		N1		
76010	X-ray, nose to rectum		Z3	0.4269	$17.67
76080	X-ray exam of fistula		N1		
76098	X-ray exam, breast specimen		Z3	0.2614	$10.82
76100	X-ray exam of body section		Z2	1.0988	$45.48
76101	Complex body section x-ray		Z2	2.945	$121.90
76102	Complex body section x-rays		Z2	2.945	$121.90
76120	Cine/video x-rays	CH	Z2	1.2283	$50.84
76125	Cine/video x-rays add-on		N1		
76150	X-ray exam, dry process		Z3	0.4269	$17.67

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76350	Special x-ray contrast study		N1		
76376	3d render w/o postprocess		N1		
76377	3d rendering w/postprocess		N1		
76380	Cat scan follow-up study		Z2	1.5501	$64.16
76496	Fluoroscopic procedure		Z2	1.2283	$50.84
76497	Ct procedure		Z2	1.5501	$64.16
76498	Mri procedure		Z2	5.1377	$212.66
76499	Radiographic procedure		Z2	0.6599	$27.32
76506	Echo exam of head		Z2	0.9225	$38.19
76510	Ophth us, b & quant a		Z3	1.5684	$64.92
76511	Ophth us, quant a only		Z3	1.0978	$45.44
76512	Ophth us, b w/non-quant a		Z3	0.9323	$38.59
76513	Echo exam of eye, water bath		Z3	1.1328	$46.89
76514	Echo exam of eye, thickness		Z3	0.0785	$3.25
76516	Echo exam of eye	CH	Z3	0.8888	$36.79
76519	Echo exam of eye		Z3	0.9934	$41.12
76529	Echo exam of eye		Z3	0.8627	$35.71
76536	Us exam of head and neck		Z2	1.4432	$59.74
76604	Us exam, chest		Z2	0.9225	$38.19
76645	Us exam, breast(s)		Z2	0.9225	$38.19
76700	Us exam, abdom, complete		Z2	1.4432	$59.74
76705	Echo exam of abdomen		Z2	1.4432	$59.74
76770	Us exam abdo back wall, comp		Z2	1.4432	$59.74
76775	Us exam abdo back wall, lim		Z2	1.4432	$59.74
76776	Us exam k transpl w/doppler		Z2	1.4432	$59.74
76800	Us exam, spinal canal		Z2	1.4432	$59.74
76801	Ob us < 14 wks, single fetus		Z2	1.4432	$59.74
76802	Ob us < 14 wks, add'l fetus		Z3	0.6883	$28.49
76805	Ob us >/= 14 wks, sngl fetus		Z2	1.4432	$59.74
76810	Ob us >/= 14 wks, addl fetus		Z3	1.0891	$45.08
76811	Ob us, detailed, sngl fetus		Z2	2.2609	$93.59
76812	Ob us, detailed, addl fetus		Z2	0.9225	$38.19
76813	Ob us nuchal meas, 1 gest		Z2	0.9225	$38.19
76814	Ob us nuchal meas, add-on		Z3	0.732	$30.30
76815	Ob us, limited, fetus(s)		Z2	0.9225	$38.19
76816	Ob us, follow-up, per fetus		Z2	0.9225	$38.19
76817	Transvaginal us, obstetric		Z2	0.9225	$38.19
76818	Fetal biophys profile w/nst		Z2	1.4432	$59.74
76819	Fetal biophys profil w/o nst		Z3	1.2461	$51.58
76820	Umbilical artery echo		Z3	0.6187	$25.61
76821	Middle cerebral artery echo		Z2	1.397	$57.83
76825	Echo exam of fetal heart	CH	Z3	2.9102	$120.46

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76826	Echo exam of fetal heart	CH	Z3	1.7339	$71.77
76827	Echo exam of fetal heart		Z2	0.9225	$38.19
76828	Echo exam of fetal heart		Z3	0.5489	$22.72
76830	Transvaginal us, non-ob		Z2	1.4432	$59.74
76831	Echo exam, uterus		Z3	1.9431	$80.43
76856	Us exam, pelvic, complete		Z2	1.4432	$59.74
76857	Us exam, pelvic, limited		Z2	0.9225	$38.19
76870	Us exam, scrotum		Z2	1.4432	$59.74
76872	Us, transrectal		Z2	1.4432	$59.74
76873	Echograp trans r, pros study		Z2	1.4432	$59.74
76880	Us exam, extremity		Z2	1.4432	$59.74
76885	Us exam infant hips, dynamic		Z2	0.9225	$38.19
76886	Us exam infant hips, static		Z2	0.9225	$38.19
76930	Echo guide, cardiocentesis		N1		
76932	Echo guide for heart biopsy		N1		
76936	Echo guide for artery repair	CH	Z2	1.397	$57.83
76937	Us guide, vascular access		N1		
76940	Us guide, tissue ablation		N1		
76941	Echo guide for transfusion		N1		
76942	Echo guide for biopsy		N1		
76945	Echo guide, villus sampling		N1		
76946	Echo guide for amniocentesis		N1		
76948	Echo guide, ova aspiration		N1		
76950	Echo guidance radiotherapy		N1		
76965	Echo guidance radiotherapy		N1		
76970	Ultrasound exam follow-up		Z2	0.9225	$38.19
76975	Gi endoscopic ultrasound		N1		
76977	Us bone density measure		Z3	0.2353	$9.74
76998	Us guide, intraop		N1		
76999	Echo examination procedure		Z2	0.9225	$38.19
77001	Fluoroguide for vein device		N1		
77002	Needle localization by xray		N1		
77003	Fluoroguide for spine inject		N1		
77011	Ct scan for localization		N1		
77012	Ct scan for needle biopsy		N1		
77013	Ct guide for tissue ablation		N1		
77014	Ct scan for therapy guide		N1		
77021	Mr guidance for needle place		N1		
77022	Mri for tissue ablation		N1		
77031	Stereotact guide for brst bx		N1		
77032	Guidance for needle, breast		N1		
77053	X-ray of mammary duct		N1		

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77054	X-ray of mammary ducts		N1		
77071	X-ray stress view		Z3	0.5402	$22.36
77072	X-rays for bone age		Z3	0.3136	$12.98
77073	X-rays, bone length studies		Z3	0.5315	$22.00
77074	X-rays, bone survey, limited		Z3	1.0456	$43.28
77075	X-rays, bone survey complete		Z2	1.0988	$45.48
77076	X-rays, bone survey, infant		Z2	1.0988	$45.48
77077	Joint survey, single view	CH	Z3	0.5926	$24.53
77078	Ct bone density, axial		Z2	1.0616	$43.94
77079	Ct bone density, peripheral	CH	Z3	1.0891	$45.08
77080	Dxa bone density, axial		Z2	1.0616	$43.94
77081	Dxa bone density/peripheral	CH	Z3	0.4269	$17.67
77082	Dxa bone density, vert fx		Z3	0.4619	$19.12
77083	Radiographic absorptiometry		Z3	0.366	$15.15
77084	Magnetic image, bone marrow		Z2	5.1377	$212.66
77280	Set radiation therapy field		Z2	1.6932	$70.09
77285	Set radiation therapy field		Z2	3.7742	$156.23
77290	Set radiation therapy field		Z2	3.7742	$156.23
77295	Set radiation therapy field	CH	Z3	9.8896	$409.36
77299	Radiation therapy planning		Z2	1.6932	$70.09
77300	Radiation therapy dose plan		Z3	0.9149	$37.87
77301	Radiotherapy dose plan, imrt		Z2	13.1801	$545.56
77305	Teletx isodose plan simple		Z3	0.8364	$34.62
77310	Teletx isodose plan intermed		Z3	1.0891	$45.08
77315	Teletx isodose plan complex		Z3	1.5858	$65.64
77321	Special teletx port plan		Z3	1.6469	$68.17
77326	Brachytx isodose calc simp		Z2	1.6932	$70.09
77327	Brachytx isodose calc interm		Z3	3.0759	$127.32
77328	Brachytx isodose plan compl		Z2	3.7742	$156.23
77331	Special radiation dosimetry		Z3	0.4356	$18.03
77332	Radiation treatment aid(s)		Z3	1.1676	$48.33
77333	Radiation treatment aid(s)		Z3	0.5663	$23.44
77334	Radiation treatment aid(s)		Z3	2.1871	$90.53
77336	Radiation physics consult	CH	Z3	1.3768	$56.99
77370	Radiation physics consult		Z2	1.6932	$70.09
77371	Srs, multisource	CH	Z2	112.7993	$4,669.10
77399	External radiation dosimetry		Z2	1.6932	$70.09
77401	Radiation treatment delivery		Z3	0.6883	$28.49
77402	Radiation treatment delivery		Z2	1.3857	$57.36
77403	Radiation treatment delivery		Z2	1.3857	$57.36
77404	Radiation treatment delivery		Z2	1.3857	$57.36
77406	Radiation treatment delivery		Z2	2.2445	$92.91

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77407	Radiation treatment delivery		Z2	1.3857	$57.36
77408	Radiation treatment delivery		Z2	1.3857	$57.36
77409	Radiation treatment delivery		Z2	1.3857	$57.36
77411	Radiation treatment delivery		Z2	2.2445	$92.91
77412	Radiation treatment delivery		Z2	2.2445	$92.91
77413	Radiation treatment delivery		Z2	2.2445	$92.91
77414	Radiation treatment delivery		Z2	2.2445	$92.91
77416	Radiation treatment delivery		Z2	2.2445	$92.91
77417	Radiology port film(s)		N1		
77418	Radiation tx delivery, imrt		Z2	6.0643	$251.02
77421	Stereoscopic x-ray guidance		N1		
77422	Neutron beam tx, simple		Z2	2.2445	$92.91
77423	Neutron beam tx, complex		Z2	2.2445	$92.91
77435	Sbrt management		N1		
77470	Special radiation treatment		Z3	3.224	$133.45
77520	Proton trmt, simple w/o comp		Z2	10.3826	$429.77
77522	Proton trmt, simple w/comp		Z2	10.3826	$429.77
77523	Proton trmt, intermediate		Z2	12.4076	$513.59
77525	Proton treatment, complex		Z2	12.4076	$513.59
77600	Hyperthermia treatment		Z2	5.509	$228.03
77605	Hyperthermia treatment		Z2	5.509	$228.03
77610	Hyperthermia treatment		Z2	5.509	$228.03
77615	Hyperthermia treatment		Z2	5.509	$228.03
77620	Hyperthermia treatment		Z2	5.509	$228.03
77750	Infuse radioactive materials		Z3	2.1434	$88.72
77761	Apply intrcav radiat simple		Z3	3.7729	$156.17
77762	Apply intrcav radiat interm		Z3	4.4698	$185.02
77763	Apply intrcav radiat compl		Z3	5.7594	$238.40
77776	Apply interstit radiat simpl		Z3	4.0864	$169.15
77777	Apply interstit radiat inter		Z3	4.4872	$185.74
77778	Apply interstit radiat compl		Z3	5.9773	$247.42
77781	High intensity brachytherapy	CH	D5		
77782	High intensity brachytherapy	CH	D5		
77783	High intensity brachytherapy	CH	D5		
77784	High intensity brachytherapy	CH	D5		
77785	Hdr brachytx, 1 channel	NI	Z3	2.6575	$110.00
77786	Hdr brachytx, 2-12 channel	NI	Z3	9.3405	$386.63
77787	Hdr brachytx over 12 chan	NI	Z2	10.8236	$448.02
77789	Apply surface radiation		Z3	1.1154	$46.17
77790	Radiation handling		N1		
77799	Radium/radioisotope therapy		Z2	6.357	$263.14
78000	Thyroid, single uptake		Z3	1.3679	$56.62

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78001	Thyroid, multiple uptakes	CH	Z2	1.7336	$71.76
78003	Thyroid suppress/stimul		Z3	1.3768	$56.99
78006	Thyroid imaging with uptake		Z2	3.2757	$135.59
78007	Thyroid image, mult uptakes		Z3	2.4224	$100.27
78010	Thyroid imaging		Z2	2.0126	$83.31
78011	Thyroid imaging with flow		Z2	2.0126	$83.31
78015	Thyroid met imaging		Z3	3.9123	$161.94
78016	Thyroid met imaging/studies		Z2	4.416	$182.79
78018	Thyroid met imaging, body		Z2	4.416	$182.79
78020	Thyroid met uptake		N1		
78070	Parathyroid nuclear imaging		Z3	3.0061	$124.43
78075	Adrenal nuclear imaging		Z3	8.5128	$352.37
78099	Endocrine nuclear procedure		Z2	2.0126	$83.31
78102	Bone marrow imaging, ltd		Z3	3.0409	$125.87
78103	Bone marrow imaging, mult	CH	Z2	3.8762	$160.45
78104	Bone marrow imaging, body		Z2	3.8762	$160.45
78110	Plasma volume, single		Z3	1.5423	$63.84
78111	Plasma volume, multiple		Z3	1.9518	$80.79
78120	Red cell mass, single		Z3	1.7078	$70.69
78121	Red cell mass, multiple		Z3	2.0214	$83.67
78122	Blood volume		Z3	2.3961	$99.18
78130	Red cell survival study		Z3	2.7795	$115.05
78135	Red cell survival kinetics		Z2	5.9073	$244.52
78140	Red cell sequestration		Z3	2.6227	$108.56
78185	Spleen imaging	CH	Z2	3.8762	$160.45
78190	Platelet survival, kinetics		Z2	2.4322	$100.68
78191	Platelet survival		Z2	2.4322	$100.68
78195	Lymph system imaging		Z2	3.8762	$160.45
78199	Blood/lymph nuclear exam		Z2	3.8762	$160.45
78201	Liver imaging		Z3	3.4503	$142.82
78202	Liver imaging with flow	CH	Z2	4.059	$168.01
78205	Liver imaging (3d)		Z2	4.059	$168.01
78206	Liver image (3d) with flow		Z2	4.059	$168.01
78215	Liver and spleen imaging		Z3	3.6509	$151.12
78216	Liver & spleen image/flow		Z3	2.4746	$102.43
78220	Liver function study		Z3	2.7012	$111.81
78223	Hepatobiliary imaging		Z2	4.059	$168.01
78230	Salivary gland imaging		Z3	3.0669	$126.95
78231	Serial salivary imaging		Z3	2.4135	$99.90
78232	Salivary gland function exam		Z3	2.5181	$104.23
78258	Esophageal motility study	CH	Z2	3.5888	$148.55
78261	Gastric mucosa imaging		Z2	3.5888	$148.55

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78262	Gastroesophageal reflux exam		Z2	3.5888	$148.55
78264	Gastric emptying study		Z2	3.5888	$148.55
78270	Vit b-12 absorption exam		Z3	1.5684	$64.92
78271	Vit b-12 absrp exam, int fac		Z3	1.5945	$66.00
78272	Vit b-12 absorp, combined		Z3	1.7513	$72.49
78278	Acute gi blood loss imaging		Z2	3.5888	$148.55
78282	Gi protein loss exam		Z2	3.5888	$148.55
78290	Meckel's divert exam		Z2	3.5888	$148.55
78291	Leveen/shunt patency exam		Z2	3.5888	$148.55
78299	Gi nuclear procedure		Z2	3.5888	$148.55
78300	Bone imaging, limited area		Z3	3.1281	$129.48
78305	Bone imaging, multiple areas		Z2	3.6279	$150.17
78306	Bone imaging, whole body		Z2	3.6279	$150.17
78315	Bone imaging, 3 phase		Z2	3.6279	$150.17
78320	Bone imaging (3d)		Z2	3.6279	$150.17
78399	Musculoskeletal nuclear exam		Z2	3.6279	$150.17
78414	Non-imaging heart function		Z2	4.6113	$190.88
78428	Cardiac shunt imaging		Z3	3.5376	$146.43
78445	Vascular flow imaging	CH	Z2	2.7593	$114.22
78456	Acute venous thrombus image		Z2	2.7593	$114.22
78457	Venous thrombosis imaging		Z2	2.7593	$114.22
78458	Ven thrombosis images, bilat		Z2	2.7593	$114.22
78459	Heart muscle imaging (pet)		Z2	17.0766	$706.85
78460	Heart muscle blood, single		Z3	3.3109	$137.05
78461	Heart muscle blood, multiple		Z3	3.3373	$138.14
78464	Heart image (3d), single		Z3	4.8967	$202.69
78465	Heart image (3d), multiple		Z3	9.2709	$383.75
78466	Heart infarct image		Z3	3.2849	$135.97
78468	Heart infarct image (ef)		Z3	4.1997	$173.84
78469	Heart infarct image (3d)		Z2	4.6113	$190.88
78472	Gated heart, planar, single		Z2	4.6113	$190.88
78473	Gated heart, multiple		Z2	4.6113	$190.88
78478	Heart wall motion add-on		N1		
78480	Heart function add-on		N1		
78481	Heart first pass, single		Z3	3.9818	$164.82
78483	Heart first pass, multiple		Z2	4.6113	$190.88
78491	Heart image (pet), single		Z2	17.0766	$706.85
78492	Heart image (pet), multiple		Z2	17.0766	$706.85
78494	Heart image, spect		Z2	4.6113	$190.88
78496	Heart first pass add-on		N1		
78499	Cardiovascular nuclear exam		Z2	4.6113	$190.88
78580	Lung perfusion imaging		Z2	3.1242	$129.32

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78584	Lung v/q image single breath		Z3	2.4135	$99.90
78585	Lung v/q imaging		Z2	4.7939	$198.43
78586	Aerosol lung image, single	CH	Z2	3.1242	$129.32
78587	Aerosol lung image, multiple		Z2	3.1242	$129.32
78588	Perfusion lung image		Z2	4.7939	$198.43
78591	Vent image, 1 breath, 1 proj	CH	Z2	3.1242	$129.32
78593	Vent image, 1 proj, gas		Z2	3.1242	$129.32
78594	Vent image, mult proj, gas		Z2	3.1242	$129.32
78596	Lung differential function		Z2	4.7939	$198.43
78599	Respiratory nuclear exam		Z2	3.1242	$129.32
78600	Brain image < 4 views		Z2	2.7533	$113.97
78601	Brain image w/flow < 4 views		Z2	2.7533	$113.97
78605	Brain image 4+ views		Z2	2.7533	$113.97
78606	Brain image w/flow 4 + views		Z3	6.1863	$256.07
78607	Brain imaging (3d)		Z3	6.7963	$281.32
78608	Brain imaging (pet)		Z2	15.306	$633.56
78610	Brain flow imaging only		Z3	3.6683	$151.84
78630	Cerebrospinal fluid scan		Z3	6.5349	$270.50
78635	Csf ventriculography		Z3	6.0208	$249.22
78645	Csf shunt evaluation		Z2	2.7533	$113.97
78647	Cerebrospinal fluid scan		Z3	6.6656	$275.91
78650	Csf leakage imaging		Z3	6.4564	$267.25
78660	Nuclear exam of tear flow	CH	Z2	2.7533	$113.97
78699	Nervous system nuclear exam		Z2	2.7533	$113.97
78700	Kidney imaging, morphol		Z3	3.3895	$140.30
78701	Kidney imaging with flow		Z3	4.1302	$170.96
78707	K flow/funct image w/o drug		Z3	4.313	$178.53
78708	K flow/funct image w/drug		Z3	2.9539	$122.27
78709	K flow/funct image, multiple		Z2	4.8563	$201.02
78710	Kidney imaging (3d)		Z3	4.5571	$188.63
78725	Kidney function study		Z3	1.8211	$75.38
78730	Urinary bladder retention		Z3	1.5423	$63.84
78740	Ureteral reflux study		Z3	4.0256	$166.63
78761	Testicular imaging w/flow		Z3	3.8424	$159.05
78799	Genitourinary nuclear exam		Z2	4.8563	$201.02
78800	Tumor imaging, limited area		Z3	3.3982	$140.66
78801	Tumor imaging, mult areas		Z3	4.6617	$192.96
78802	Tumor imaging, whole body		Z3	6.317	$261.48
78803	Tumor imaging (3d)		Z3	6.7702	$280.24
78804	Tumor imaging, whole body		Z3	11.815	$489.06
78805	Abscess imaging, ltd area		Z3	3.3196	$137.41
78806	Abscess imaging, whole body		Z3	6.6395	$274.83

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HCPCS Code	Short Descriptor	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
78807	Nuclear localization/abscess		Z3	6.7789	$280.60
78808	Iv inj ra drug dx study	NI	N1		
78811	Pet image, ltd area		Z2	15.306	$633.56
78812	Pet image, skull-thigh		Z2	15.306	$633.56
78813	Pet image, full body		Z2	15.306	$633.56
78814	Pet image w/ct, lmtd		Z2	15.306	$633.56
78815	Pet image w/ct, skull-thigh		Z2	15.306	$633.56
78816	Pet image w/ct, full body		Z2	15.306	$633.56
78890	Nuclear medicine data proc	CH	D5		
78891	Nuclear med data proc	CH	D5		
78999	Nuclear diagnostic exam		Z2	1.7336	$71.76
79005	Nuclear rx, oral admin		Z3	1.3942	$57.71
79101	Nuclear rx, iv admin		Z3	1.5249	$63.12
79200	Nuclear rx, intracav admin		Z3	1.6469	$68.17
79300	Nuclr rx, interstit colloid		Z2	3.1773	$131.52
79403	Hematopoietic nuclear tx		Z3	2.3613	$97.74
79440	Nuclear rx, intra-articular		Z3	1.3331	$55.18
79445	Nuclear rx, intra-arterial		Z2	3.1773	$131.52
79999	Nuclear medicine therapy		Z2	3.1773	$131.52
90296	Diphtheria antitoxin	CH	K2		$182.05
90371	Hep b ig, im		K2		$121.53
90375	Rabies ig, im/sc		K2		$89.18
90376	Rabies ig, heat treated		K2		$96.22
90378	Rsv ig, im, 50mg	CH	K2		$882.44
90385	Rh ig, minidose, im		N1		
90393	Vaccina ig, im		N1		
90396	Varicella-zoster ig, im		K2		$109.88
90476	Adenovirus vaccine, type 4		N1		
90477	Adenovirus vaccine, type 7		N1		
90581	Anthrax vaccine, sc		N1		
90585	Bcg vaccine, percut		K2		$115.88
90632	Hep a vaccine, adult im		N1		
90633	Hep a vacc, ped/adol, 2 dose		N1		
90634	Hep a vacc, ped/adol, 3 dose		N1		
90636	Hep a/hep b vacc, adult im		N1		
90645	Hib vaccine, hboc, im		N1		
90646	Hib vaccine, prp-d, im		N1		
90647	Hib vaccine, prp-omp, im		N1		
90648	Hib vaccine, prp-t, im		N1		
90655	Flu vaccine no preserv 6-35m		L1		
90656	Flu vaccine no preserv 3 & >		L1		
90657	Flu vaccine, 3 yrs, im		L1		

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90658	Flu vaccine, 3 yrs & >, im		L1		
90660	Flu vaccine, nasal		L1		
90665	Lyme disease vaccine, im	CH	K2		$72.67
90669	Pneumococcal vacc, ped <5		L1		
90675	Rabies vaccine, im		K2		$144.11
90676	Rabies vaccine, id		K2		$112.29
90680	Rotovirus vacc 3 dose, oral		N1		
90681	Rotavirus vacc 2 dose oral	CH	K2		$106.60
90690	Typhoid vaccine, oral		N1		
90691	Typhoid vaccine, im		N1		
90692	Typhoid vaccine, h-p, sc/id		N1		
90696	Dtap-ipv vacc 4-6 yr im	CH	K2		$49.92
90698	Dtap-hib-ip vaccine, im		N1		
90700	Dtap vaccine, < 7 yrs, im		N1		
90701	Dtp vaccine, im		N1		
90702	Dt vaccine < 7, im		N1		
90703	Tetanus vaccine, im		N1		
90704	Mumps vaccine, sc		N1		
90705	Measles vaccine, sc		N1		
90706	Rubella vaccine, sc		N1		
90707	Mmr vaccine, sc		N1		
90708	Measles-rubella vaccine, sc	CH	N1		
90710	Mmrv vaccine, sc		N1		
90712	Oral poliovirus vaccine		N1		
90713	Poliovirus, ipv, sc/im		N1		
90714	Td vaccine no prsrv >/= 7 im		N1		
90715	Tdap vaccine >7 im		N1		
90717	Yellow fever vaccine, sc		N1		
90718	Td vaccine > 7, im		N1		
90719	Diphtheria vaccine, im		N1		
90720	Dtp/hib vaccine, im		N1		
90721	Dtap/hib vaccine, im		N1		
90725	Cholera vaccine, injectable		N1		
90727	Plague vaccine, im		N1		
90732	Pneumococcal vaccine		L1		
90733	Meningococcal vaccine, sc		K2		$92.09
90734	Meningococcal vaccine, im		K2		$80.46
90740	Hepb vacc, ill pat 3 dose im	CH	F4		
90743	Hep b vacc, adol, 2 dose, im	CH	F4		
90744	Hepb vacc ped/adol 3 dose im	CH	F4		
90746	Hep b vaccine, adult, im	CH	F4		
90747	Hepb vacc, ill pat 4 dose im	CH	F4		

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90749	Vaccine toxoid		N1		
A4218	Sterile saline or water		N1		
A4220	Infusion pump refill kit		N1		
A4248	Chlorhexidine antisept		N1		
A4262	Temporary tear duct plug		N1		
A4263	Permanent tear duct plug		N1		
A4270	Disposable endoscope sheath		N1		
A4300	Cath impl vasc access portal		N1		
A4301	Implantable access syst perc		N1		
A4305	Drug delivery system >=50 ML		N1		
A4306	Drug delivery system <=50 ml		N1		
A4641	Radiopharm dx agent noc		N1		
A4642	In111 satumomab		N1		
A4648	Implantable tissue marker		N1		
A4650	Implant radiation dosimeter		N1		
A9500	Tc99m sestamibi		N1		
A9501	Technetium TC-99m teboroxime		N1		
A9502	Tc99m tetrofosmin		N1		
A9503	Tc99m medronate		N1		
A9504	Tc99m apcitide		N1		
A9505	TL201 thallium		N1		
A9507	In111 capromab		N1		
A9508	I131 iodobenguate, dx		N1		
A9509	Iodine I-123 sod iodide mil		N1		
A9510	Tc99m disofenin		N1		
A9512	Tc99m pertechnetate		N1		
A9516	Iodine I-123 sod iodide mic		N1		
A9521	Tc99m exametazime		N1		
A9524	I131 serum albumin, dx		N1		
A9526	Nitrogen N-13 ammonia		N1		
A9527	Iodine I-125 sodium iodide		H7		
A9528	Iodine I-131 iodide cap, dx		N1		
A9529	I131 iodide sol, dx		N1		
A9531	I131 max 100uCi		N1		
A9532	I125 serum albumin, dx		N1		
A9535	Injection, methylene blue		N1		
A9536	Tc99m depreotide		N1		
A9537	Tc99m mebrofenin		N1		
A9538	Tc99m pyrophosphate		N1		
A9539	Tc99m pentetate		N1		
A9540	Tc99m MAA		N1		
A9541	Tc99m sulfur colloid		N1		

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A9542	In111 ibritumomab, dx		N1		
A9544	I131 tositumomab, dx		N1		
A9546	Co57/58		N1		
A9547	In111 oxyquinoline		N1		
A9548	In111 pentetate		N1		
A9550	Tc99m gluceptate		N1		
A9551	Tc99m succimer		N1		
A9552	F18 fdg		N1		
A9553	Cr51 chromate		N1		
A9554	I125 iothalamate, dx		N1		
A9555	Rb82 rubidium		N1		
A9556	Ga67 gallium		N1		
A9557	Tc99m bicisate		N1		
A9558	Xe133 xenon 10mci		N1		
A9559	Co57 cyano		N1		
A9560	Tc99m labeled rbc		N1		
A9561	Tc99m oxidronate		N1		
A9562	Tc99m mertiatide		N1		
A9566	Tc99m fanolesomab		N1		
A9567	Technetium TC-99m aerosol		N1		
A9568	Technetium tc99m arcitumomab		N1		
A9569	Technetium TC-99m auto WBC		N1		
A9570	Indium In-111 auto WBC		N1		
A9571	Indium In-111 auto platelet		N1		
A9572	Indium In-111 pentetreotide		N1		
A9576	Inj prohance multipack		N1		
A9577	Inj multihance		N1		
A9578	Inj multihance multipack		N1		
A9579	Gad-base MR contrast NOS,1ml		N1		
A9580	Sodium fluoride F-18	NI	N1		
A9698	Non-rad contrast materialNOC		N1		
C1713	Anchor/screw bn/bn,tis/bn		N1		
C1714	Cath, trans atherectomy, dir		N1		
C1715	Brachytherapy needle		N1		
C1716	Brachytx, non-str, Gold-198		H7		
C1717	Brachytx, non-str,HDR Ir-192		H7		
C1719	Brachytx, NS, Non-HDRIr-192		H7		
C1721	AICD, dual chamber		N1		
C1722	AICD, single chamber		N1		
C1724	Cath, trans atherec,rotation		N1		
C1725	Cath, translumin non-laser		N1		
C1726	Cath, bal dil, non-vascular		N1		

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C1727	Cath, bal tis dis, non-vas		N1		
C1728	Cath, brachytx seed adm		N1		
C1729	Cath, drainage		N1		
C1730	Cath, EP, 19 or few elect		N1		
C1731	Cath, EP, 20 or more elec		N1		
C1732	Cath, EP, diag/abl, 3D/vect		N1		
C1733	Cath, EP, othr than cool-tip		N1		
C1750	Cath, hemodialysis,long-term		N1		
C1751	Cath, inf, per/cent/midline		N1		
C1752	Cath,hemodialysis,short-term		N1		
C1753	Cath, intravas ultrasound		N1		
C1754	Catheter, intradiscal		N1		
C1755	Catheter, intraspinal		N1		
C1756	Cath, pacing, transesoph		N1		
C1757	Cath, thrombectomy/embolect		N1		
C1758	Catheter, ureteral		N1		
C1759	Cath, intra echocardiography		N1		
C1760	Closure dev, vasc		N1		
C1762	Conn tiss, human(inc fascia)		N1		
C1763	Conn tiss, non-human		N1		
C1764	Event recorder, cardiac		N1		
C1765	Adhesion barrier		N1		
C1766	Intro/sheath,strble,non-peel		N1		
C1767	Generator, neuro non-recharg		N1		
C1768	Graft, vascular		N1		
C1769	Guide wire		N1		
C1770	Imaging coil, MR, insertable		N1		
C1771	Rep dev, urinary, w/sling		N1		
C1772	Infusion pump, programmable		N1		
C1773	Ret dev, insertable		N1		
C1776	Joint device (implantable)		N1		
C1777	Lead, AICD, endo single coil		N1		
C1778	Lead, neurostimulator		N1		
C1779	Lead, pmkr, transvenous VDD		N1		
C1780	Lens, intraocular (new tech)		N1		
C1781	Mesh (implantable)		N1		
C1782	Morcellator		N1		
C1783	Ocular imp, aqueous drain de		N1		
C1784	Ocular dev, intraop, det ret		N1		
C1785	Pmkr, dual, rate-resp		N1		
C1786	Pmkr, single, rate-resp		N1		
C1787	Patient progr, neurostim		N1		

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C1788	Port, indwelling, imp		N1		
C1789	Prosthesis, breast, imp		N1		
C1813	Prosthesis, penile, inflatab		N1		
C1814	Retinal tamp, silicone oil		N1		
C1815	Pros, urinary sph, imp		N1		
C1816	Receiver/transmitter, neuro		N1		
C1817	Septal defect imp sys		N1		
C1818	Integrated keratoprosthesis		N1		
C1819	Tissue localization-excision		N1		
C1820	Generator neuro rechg bat sy		N1		
C1821	Interspinous implant	CH	N1		
C1874	Stent, coated/cov w/del sys		N1		
C1875	Stent, coated/cov w/o del sy		N1		
C1876	Stent, non-coa/non-cov w/del		N1		
C1877	Stent, non-coat/cov w/o del		N1		
C1878	Matrl for vocal cord		N1		
C1879	Tissue marker, implantable		N1		
C1880	Vena cava filter		N1		
C1881	Dialysis access system		N1		
C1882	AICD, other than sing/dual		N1		
C1883	Adapt/ext, pacing/neuro lead		N1		
C1884	Embolization Protect syst		N1		
C1885	Cath, translumin angio laser		N1		
C1887	Catheter, guiding		N1		
C1888	Endovas non-cardiac abl cath		N1		
C1891	Infusion pump,non-prog, perm		N1		
C1892	Intro/sheath,fixed,peel-away		N1		
C1893	Intro/sheath, fixed,non-peel		N1		
C1894	Intro/sheath, non-laser		N1		
C1895	Lead, AICD, endo dual coil		N1		
C1896	Lead, AICD, non sing/dual		N1		
C1897	Lead, neurostim test kit		N1		
C1898	Lead, pmkr, other than trans		N1		
C1899	Lead, pmkr/AICD combination		N1		
C1900	Lead, coronary venous		N1		
C2614	Probe, perc lumb disc		N1		
C2615	Sealant, pulmonary, liquid		N1		
C2616	Brachytx, non-str,Yttrium-90		H7		
C2617	Stent, non-cor, tem w/o del		N1		
C2618	Probe, cryoablation		N1		
C2619	Pmkr, dual, non rate-resp		N1		
C2620	Pmkr, single, non rate-resp		N1		

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C2621	Pmkr, other than sing/dual		N1		
C2622	Prosthesis, penile, non-inf		N1		
C2625	Stent, non-cor, tem w/del sy		N1		
C2626	Infusion pump, non-prog,temp		N1		
C2627	Cath, suprapubic/cystoscopic		N1		
C2628	Catheter, occlusion		N1		
C2629	Intro/sheath, laser		N1		
C2630	Cath, EP, cool-tip		N1		
C2631	Rep dev, urinary, w/o sling		N1		
C2634	Brachytx, non-str, HA, I-125		H7		
C2635	Brachytx, non-str, HA, P-103		H7		
C2636	Brachy linear, non-str,P-103		H7		
C2638	Brachytx, stranded, I-125		H7		
C2639	Brachytx, non-stranded,I-125		H7		
C2640	Brachytx, stranded, P-103		H7		
C2641	Brachytx, non-stranded,P-103		H7		
C2642	Brachytx, stranded, C-131		H7		
C2643	Brachytx, non-stranded,C-131		H7		
C2698	Brachytx, stranded, NOS		H7		
C2699	Brachytx, non-stranded, NOS		H7		
C8900	MRA w/cont, abd		Z2	6.309	$261.15
C8901	MRA w/o cont, abd		Z2	5.1377	$212.66
C8902	MRA w/o fol w/cont, abd		Z2	7.9517	$329.14
C8903	MRI w/cont, breast, uni		Z2	6.309	$261.15
C8904	MRI w/o cont, breast, uni		Z2	5.1377	$212.66
C8905	MRI w/o fol w/cont, brst, un		Z2	7.9517	$329.14
C8906	MRI w/cont, breast, bi		Z2	6.309	$261.15
C8907	MRI w/o cont, breast, bi		Z2	5.1377	$212.66
C8908	MRI w/o fol w/cont, breast,		Z2	7.9517	$329.14
C8909	MRA w/cont, chest		Z2	6.309	$261.15
C8910	MRA w/o cont, chest		Z2	5.1377	$212.66
C8911	MRA w/o fol w/cont, chest		Z2	7.9517	$329.14
C8912	MRA w/cont, lwr ext		Z2	6.309	$261.15
C8913	MRA w/o cont, lwr ext		Z2	5.1377	$212.66
C8914	MRA w/o fol w/cont, lwr ext		Z2	7.9517	$329.14
C8918	MRA w/cont, pelvis		Z2	6.309	$261.15
C8919	MRA w/o cont, pelvis		Z2	5.1377	$212.66
C8920	MRA w/o fol w/cont, pelvis		Z2	7.9517	$329.14
C9003	Palivizumab, per 50 mg	CH	D5		
C9113	Inj pantoprazole sodium, via		N1		
C9121	Injection, argatroban		K2		$19.87
C9237	Inj, lanreotide acetate	CH	D5		

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C9238	Inj, levetiracetam	CH	D5		
C9239	Inj, temsirolimus	CH	D5		
C9240	Injection, ixabepilone	CH	D5		
C9241	Injection, doripenem	CH	D5		
C9242	Injection, fosaprepitant	CH	D5		
C9243	Injection, bendamustine hcl	CH	D5		
C9244	Injection, regadenoson	CH	D5		
C9245	Injection, romiplostim	NI	K2		$45.05
C9246	Inj, gadoxetate disodium	NI	K2		$13.78
C9247	Inj, iobenguane, I-123, dx	NI	N1		
C9248	Inj, clevidipine butyrate	NI	K2		$6.15
C9352	Neuragen nerve guide, per cm	CH	N1		
C9353	Neurawrap nerve protector,cm	CH	N1		
C9354	Veritas collagen matrix, cm2		K2		$11.18
C9355	Neuromatrix nerve cuff, cm		K2		$212.46
C9356	TenoGlide tendon prot, cm2		K2		$28.32
C9357	Flowable wound matrix, 1 cc	CH	D5		
C9358	SurgiMend, 0.5cm2		K2		$10.55
C9359	Implant, bone void filler		K2		$56.71
C9399	Unclassified drugs or biolog		K7		
E0616	Cardiac event recorder		N1		
E0749	Elec osteogen stim implanted		N1		
E0782	Non-programble infusion pump		N1		
E0783	Programmable infusion pump		N1		
E0785	Replacement impl pump cathet		N1		
E0786	Implantable pump replacement		N1		
G0130	Single energy x-ray study		Z3	0.488	$20.20
G0173	Linear acc stereo radsur com		Z2	56.1396	$2,323.79
G0251	Linear acc based stero radio		Z2	14.0581	$581.91
G0288	Recon, CTA for surg plan		N1		
G0339	Robot lin-radsurg com, first		Z2	56.1396	$2,323.79
G0340	Robt lin-radsurg fractx 2-5		Z2	38.0809	$1,576.28
J0120	Tetracyclin injection		N1		
J0128	Abarelix injection		K2		$67.32
J0129	Abatacept injection		K2		$18.51
J0130	Abciximab injection		K2		$433.69
J0132	Acetylcysteine injection	CH	K2		$2.15
J0133	Acyclovir injection		N1		
J0135	Adalimumab injection		K2		$338.53
J0150	Injection adenosine 6 MG		K2		$9.25
J0152	Adenosine injection		K2		$69.44
J0170	Adrenalin epinephrin inject		N1		

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HCPCS Code	Short Descriptor	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
J0180	Agalsidase beta injection		K2		$128.54
J0190	Inj biperiden lactate/5 mg	CH	N1		
J0200	Alatrofloxacin mesylate		N1		
J0205	Alglucerase injection		K2		$39.63
J0207	Amifostine		K2		$416.03
J0210	Methyldopate hcl injection		K2		$12.39
J0215	Alefacept		K2		$27.81
J0220	Alglucosidase alfa injection		K2		$124.80
J0256	Alpha 1 proteinase inhibitor		K2		$3.62
J0278	Amikacin sulfate injection		N1		
J0280	Aminophyllin 250 MG inj		N1		
J0282	Amiodarone HCl		N1		
J0285	Amphotericin B		N1		
J0287	Amphotericin b lipid complex		K2		$10.05
J0288	Ampho b cholesteryl sulfate		K2		$11.78
J0289	Amphotericin b liposome inj		K2		$15.82
J0290	Ampicillin 500 MG inj		N1		
J0295	Ampicillin sodium per 1.5 gm		N1		
J0300	Amobarbital 125 MG inj		N1		
J0330	Succinycholine chloride inj		N1		
J0348	Anidulafungin injection		K2		$1.34
J0350	Injection anistreplase 30 u	CH	N1		
J0360	Hydralazine hcl injection		N1		
J0364	Apomorphine hydrochloride		N1		
J0365	Aprotonin, 10,000 kiu		K2		$2.60
J0380	Inj metaraminol bitartrate		N1		
J0390	Chloroquine injection		N1		
J0395	Arbutamine hcl injection		N1		
J0400	Aripiprazole injection	CH	N1		
J0456	Azithromycin		N1		
J0460	Atropine sulfate injection		N1		
J0470	Dimecaprol injection	CH	K2		$26.26
J0475	Baclofen 10 MG injection		K2		$184.28
J0476	Baclofen intrathecal trial		K2		$68.14
J0480	Basiliximab		K2		$1,565.52
J0500	Dicyclomine injection		N1		
J0515	Inj benztropine mesylate		N1		
J0520	Bethanechol chloride inject		N1		
J0530	Penicillin g benzathine inj		N1		
J0540	Penicillin g benzathine inj		N1		
J0550	Penicillin g benzathine inj	CH	K2		$31.99
J0560	Penicillin g benzathine inj		N1		

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J0570	Penicillin g benzathine inj		N1		
J0580	Penicillin g benzathine inj		N1		
J0583	Bivalirudin		K2		$2.30
J0585	Botulinum toxin a per unit		K2		$5.30
J0587	Botulinum toxin type B		K2		$8.94
J0592	Buprenorphine hydrochloride		N1		
J0594	Busulfan injection		K2		$11.93
J0595	Butorphanol tartrate 1 mg		N1		
J0600	Edetate calcium disodium inj		K2		$49.29
J0610	Calcium gluconate injection		N1		
J0620	Calcium glycer & lact/10 ML		N1		
J0630	Calcitonin salmon injection	CH	K2		$48.04
J0636	Inj calcitriol per 0.1 mcg		N1		
J0637	Caspofungin acetate		K2		$14.47
J0640	Leucovorin calcium injection		N1		
J0641	Levoleucovorin injection	NI	K2		$1.03
J0670	Inj mepivacaine HCL/10 ml		N1		
J0690	Cefazolin sodium injection		N1		
J0692	Cefepime HCl for injection		N1		
J0694	Cefoxitin sodium injection		N1		
J0696	Ceftriaxone sodium injection		N1		
J0697	Sterile cefuroxime injection		N1		
J0698	Cefotaxime sodium injection		N1		
J0702	Betamethasone acet&sod phosp		N1		
J0704	Betamethasone sod phosp/4 MG		N1		
J0706	Caffeine citrate injection		N1		
J0710	Cephapirin sodium injection		N1		
J0713	Inj ceftazidime per 500 mg		N1		
J0715	Ceftizoxime sodium / 500 MG		N1		
J0720	Chloramphenicol sodium injec		N1		
J0725	Chorionic gonadotropin/1000u		N1		
J0735	Clonidine hydrochloride		K2		$63.41
J0740	Cidofovir injection		K2		$747.70
J0743	Cilastatin sodium injection		N1		
J0744	Ciprofloxacin iv		N1		
J0745	Inj codeine phosphate /30 MG		N1		
J0760	Colchicine injection		N1		
J0770	Colistimethate sodium inj		N1		
J0780	Prochlorperazine injection		N1		
J0795	Corticorelin ovine triflutal		K2		$4.31
J0800	Corticotropin injection		K2		$2,310.04
J0835	Inj cosyntropin per 0.25 MG		K2		$95.34

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J0850	Cytomegalovirus imm IV /vial		K2		$862.24
J0878	Daptomycin injection		K2		$0.37
J0881	Darbepoetin alfa, non-esrd		K2		$2.91
J0885	Epoetin alfa, non-esrd		K2		$8.92
J0894	Decitabine injection		K2		$26.23
J0895	Deferoxamine mesylate inj		N1		
J0900	Testosterone enanthate inj		N1		
J0945	Brompheniramine maleate inj		N1		
J0970	Estradiol valerate injection		N1		
J1000	Depo-estradiol cypionate inj		N1		
J1020	Methylprednisolone 20 MG inj		N1		
J1030	Methylprednisolone 40 MG inj		N1		
J1040	Methylprednisolone 80 MG inj		N1		
J1051	Medroxyprogesterone inj		N1		
J1060	Testosterone cypionate 1 ML		N1		
J1070	Testosterone cypionat 100 MG		N1		
J1080	Testosterone cypionat 200 MG		N1		
J1094	Inj dexamethasone acetate		N1		
J1100	Dexamethasone sodium phos		N1		
J1110	Inj dihydroergotamine mesylt		N1		
J1120	Acetazolamid sodium injectio		N1		
J1160	Digoxin injection		N1		
J1162	Digoxin immune fab (ovine)		K2		$484.63
J1165	Phenytoin sodium injection		N1		
J1170	Hydromorphone injection		N1		
J1180	Dyphylline injection		N1		
J1190	Dexrazoxane HCl injection		K2		$263.77
J1200	Diphenhydramine hcl injectio		N1		
J1205	Chlorothiazide sodium inj		K2		$189.58
J1212	Dimethyl sulfoxide 50% 50 ML	CH	K2		$64.31
J1230	Methadone injection		N1		
J1240	Dimenhydrinate injection		N1		
J1245	Dipyridamole injection		N1		
J1250	Inj dobutamine HCL/250 mg		N1		
J1260	Dolasetron mesylate		K2		$4.52
J1265	Dopamine injection		N1		
J1267	Doripenem injection	NI	K2		$0.65
J1270	Injection, doxercalciferol		N1		
J1300	Eculizumab injection		K2		$176.38
J1320	Amitriptyline injection		N1		
J1324	Enfuvirtide injection	CH	N1		
J1325	Epoprostenol injection		N1		

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J1327	Eptifibatide injection		K2		$17.55
J1330	Ergonovine maleate injection		N1		
J1335	Ertapenem injection		N1		
J1364	Erythro lactobionate /500 MG		N1		
J1380	Estradiol valerate 10 MG inj		N1		
J1390	Estradiol valerate 20 MG inj		N1		
J1410	Inj estrogen conjugate 25 MG		K2		$74.17
J1430	Ethanolamine oleate 100 mg		K2		$147.14
J1435	Injection estrone per 1 MG		N1		
J1436	Etidronate disodium inj		K2		$70.06
J1438	Etanercept injection		K2		$170.59
J1440	Filgrastim 300 mcg injection		K2		$196.54
J1441	Filgrastim 480 mcg injection		K2		$301.43
J1450	Fluconazole		N1		
J1451	Fomepizole, 15 mg		K2		$11.63
J1452	Intraocular Fomivirsen na		N1		
J1453	Fosaprepitant injection	NI	K2		$1.57
J1455	Foscarnet sodium injection	CH	K2		$10.50
J1457	Gallium nitrate injection		K2		$1.56
J1458	Galsulfase injection		K2		$325.95
J1459	Inj IVIG privigen 500 mg	NI	K2		$33.64
J1460	Gamma globulin 1 CC inj		K2		$11.87
J1470	Gamma globulin 2 CC inj		K2		$23.72
J1480	Gamma globulin 3 CC inj		K2		$35.58
J1490	Gamma globulin 4 CC inj		K2		$47.44
J1500	Gamma globulin 5 CC inj		K2		$59.31
J1510	Gamma globulin 6 CC inj		K2		$71.18
J1520	Gamma globulin 7 CC inj		K2		$82.99
J1530	Gamma globulin 8 CC inj		K2		$94.89
J1540	Gamma globulin 9 CC inj		K2		$106.78
J1550	Gamma globulin 10 CC inj		K2		$118.61
J1560	Gamma globulin > 10 CC inj		K2		$118.61
J1561	Gamunex injection		K2		$34.14
J1562	Vivaglobin, inj		K2		$6.94
J1565	RSV-ivig		K2		$15.87
J1566	Immune globulin, powder		K2		$28.68
J1568	Octagam injection		K2		$35.18
J1569	Gammagard liquid injection		K2		$34.35
J1570	Ganciclovir sodium injection		N1		
J1571	Hepagam b im injection		K2		$43.92
J1572	Flebogamma injection		K2		$35.02
J1573	Hepagam b intravenous, inj		K2		$43.92

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J1580	Garamycin gentamicin inj		N1		
J1590	Gatifloxacin injection		N1		
J1595	Injection glatiramer acetate		K2		$63.46
J1600	Gold sodium thiomaleate inj		N1		
J1610	Glucagon hydrochloride/1 MG		K2		$71.40
J1620	Gonadorelin hydroch/ 100 mcg		K2		$176.89
J1626	Granisetron hcl injection		K2		$4.25
J1630	Haloperidol injection		N1		
J1631	Haloperidol decanoate inj		N1		
J1640	Hemin, 1 mg		K2		$7.45
J1642	Inj heparin sodium per 10 u		N1		
J1644	Inj heparin sodium per 1000u		N1		
J1645	Dalteparin sodium		N1		
J1650	Inj enoxaparin sodium		N1		
J1652	Fondaparinux sodium		K2		$6.03
J1655	Tinzaparin sodium injection		N1		
J1670	Tetanus immune globulin inj		K2		$134.95
J1700	Hydrocortisone acetate inj		N1		
J1710	Hydrocortisone sodium ph inj		N1		
J1720	Hydrocortisone sodium succ i		N1		
J1730	Diazoxide injection		K2		$112.16
J1740	Ibandronate sodium injection		K2		$137.65
J1742	Ibutilide fumarate injection		K2		$364.11
J1743	Idursulfase injection		K2		$450.71
J1745	Infliximab injection		K2		$56.00
J1750	Inj iron dextran	NI	K2		$11.59
J1751	Iron dextran 165 injection	CH	D5		
J1752	Iron dextran 267 injection	CH	D5		
J1756	Iron sucrose injection		K2		$0.36
J1785	Injection imiglucerase /unit		K2		$3.96
J1790	Droperidol injection		N1		
J1800	Propranolol injection		N1		
J1815	Insulin injection		N1		
J1817	Insulin for insulin pump use		N1		
J1830	Interferon beta-1b / .25 MG		K2		$107.92
J1835	Itraconazole injection		K2		$36.84
J1840	Kanamycin sulfate 500 MG inj		N1		
J1850	Kanamycin sulfate 75 MG inj		N1		
J1885	Ketorolac tromethamine inj		N1		
J1890	Cephalothin sodium injection		N1		
J1930	Lanreotide injection	NI	K2		$26.21
J1931	Laronidase injection		K2		$24.14

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J1940	Furosemide injection		N1		
J1945	Lepirudin		K2		$173.32
J1950	Leuprolide acetate /3.75 MG		K2		$435.72
J1953	Levetiracetam injection	NI	K2		$0.41
J1956	Levofloxacin injection		N1		
J1960	Levorphanol tartrate inj		N1		
J1980	Hyoscyamine sulfate inj		N1		
J1990	Chlordiazepoxide injection		N1		
J2001	Lidocaine injection		N1		
J2010	Lincomycin injection		N1		
J2020	Linezolid injection		K2		$28.18
J2060	Lorazepam injection		N1		
J2150	Mannitol injection		N1		
J2170	Mecasermin injection	CH	N1		
J2175	Meperidine hydrochl /100 MG		N1		
J2180	Meperidine/promethazine inj		N1		
J2185	Meropenem		N1		
J2210	Methylergonovin maleate inj		N1		
J2248	Micafungin sodium injection		K2		$1.24
J2250	Inj midazolam hydrochloride		N1		
J2260	Inj milrinone lactate / 5 MG		N1		
J2270	Morphine sulfate injection		N1		
J2271	Morphine so4 injection 100mg		N1		
J2275	Morphine sulfate injection		N1		
J2278	Ziconotide injection		K2		$6.37
J2280	Inj, moxifloxacin 100 mg		N1		
J2300	Inj nalbuphine hydrochloride		N1		
J2310	Inj naloxone hydrochloride		N1		
J2315	Naltrexone, depot form		K2		$1.85
J2320	Nandrolone decanoate 50 MG		N1		
J2321	Nandrolone decanoate 100 MG		N1		
J2322	Nandrolone decanoate 200 MG		N1		
J2323	Natalizumab injection		K2		$7.44
J2325	Nesiritide injection		K2		$33.91
J2353	Octreotide injection, depot		K2		$101.89
J2354	Octreotide inj, non-depot		N1		
J2355	Oprelvekin injection		K2		$242.00
J2357	Omalizumab injection		K2		$17.79
J2360	Orphenadrine injection		N1		
J2370	Phenylephrine hcl injection		N1		
J2400	Chloroprocaine hcl injection		N1		
J2405	Ondansetron hcl injection		K2		$0.19

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J2410	Oxymorphone hcl injection		N1		
J2425	Palifermin injection		K2		$11.18
J2430	Pamidronate disodium /30 MG		K2		$28.68
J2440	Papaverin hcl injection		N1		
J2460	Oxytetracycline injection	CH	K2		$165.50
J2469	Palonosetron hcl		K2		$16.13
J2501	Paricalcitol		N1		
J2503	Pegaptanib sodium injection		K2		$1,002.76
J2504	Pegademase bovine, 25 iu		K2		$221.87
J2505	Injection, pegfilgrastim 6mg		K2		$2,155.11
J2510	Penicillin g procaine inj		N1		
J2513	Pentastarch 10% solution		K2		$158.76
J2515	Pentobarbital sodium inj	CH	K2		$7.78
J2540	Penicillin g potassium inj		N1		
J2543	Piperacillin/tazobactam		N1		
J2550	Promethazine hcl injection		N1		
J2560	Phenobarbital sodium inj		N1		
J2590	Oxytocin injection		N1		
J2597	Inj desmopressin acetate		N1		
J2650	Prednisolone acetate inj		N1		
J2670	Totazoline hcl injection		N1		
J2675	Inj progesterone per 50 MG		N1		
J2680	Fluphenazine decanoate 25 MG		N1		
J2690	Procainamide hcl injection		N1		
J2700	Oxacillin sodium injeciton		N1		
J2710	Neostigmine methylslfte inj		N1		
J2720	Inj protamine sulfate/10 MG		N1		
J2724	Protein c concentrate		K2		$11.96
J2725	Inj protirelin per 250 mcg		N1		
J2730	Pralidoxime chloride inj		K2		$83.55
J2760	Phentolaine mesylate inj		N1		
J2765	Metoclopramide hcl injection		N1		
J2770	Quinupristin/dalfopristin		K2		$137.14
J2778	Ranibizumab injection		K2		$402.31
J2780	Ranitidine hydrochloride inj		N1		
J2783	Rasburicase		K2		$152.34
J2785	Regadenoson injection	NI	K2		$214.49
J2788	Rho d immune globulin 50 mcg		K2		$26.36
J2790	Rho d immune globulin inj		K2		$82.95
J2791	Rhophylac injection		K2		$5.15
J2792	Rho(D) immune globulin h, sd		K2		$16.49
J2794	Risperidone, long acting		K2		$4.86

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J2795	Ropivacaine HCl injection		N1		
J2800	Methocarbamol injection		N1		
J2805	Sincalide injection	CH	K2		$60.01
J2810	Inj theophylline per 40 MG		N1		
J2820	Sargramostim injection		K2		$25.76
J2850	Inj secretin synthetic human		K2		$19.93
J2910	Aurothioglucose injeciton		N1		
J2916	Na ferric gluconate complex		N1		
J2920	Methylprednisolone injection		N1		
J2930	Methylprednisolone injection		N1		
J2940	Somatrem injection		K2		$43.99
J2941	Somatropin injection		K2		$49.82
J2950	Promazine hcl injection		N1		
J2993	Reteplase injection		K2		$828.27
J2995	Inj streptokinase /250000 IU		K2		$78.00
J2997	Alteplase recombinant		K2		$32.26
J3000	Streptomycin injection		N1		
J3010	Fentanyl citrate injeciton		N1		
J3030	Sumatriptan succinate / 6 MG		K2		$71.21
J3070	Pentazocine injection		N1		
J3100	Tenecteplase injection	CH	D5		
J3101	Tenecteplase injection	NI	K2		$1,929.45
J3105	Terbutaline sulfate inj		N1		
J3120	Testosterone enanthate inj		N1		
J3130	Testosterone enanthate inj		N1		
J3140	Testosterone suspension inj		N1		
J3150	Testosteron propionate inj		N1		
J3230	Chlorpromazine hcl injection		N1		
J3240	Thyrotropin injection		K2		$961.31
J3243	Tigecycline injection		K2		$1.09
J3246	Tirofiban HCl		K2		$7.18
J3250	Trimethobenzamide hcl inj		N1		
J3260	Tobramycin sulfate injection		N1		
J3265	Injection torsemide 10 mg/ml		N1		
J3280	Thiethylperazine maleate inj		N1		
J3285	Treprostinil injection		K2		$55.95
J3300	Triamcinolone A inj PRS-free	NI	N1		
J3301	Triamcinolone acet inj NOS		N1		
J3302	Triamcinolone diacetate inj		N1		
J3303	Triamcinolone hexacetonl inj		N1		
J3305	Inj trimetrexate glucoronate		K2		$146.89
J3310	Perphenazine injeciton		N1		

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ADDENDUM BB.--FINAL ASC COVERED ANCILLARY SERVICES INTEGRAL TO COVERED SURGICAL PROCEDURES FOR CY 2009 (INCLUDING ANCILLARY SERVICES FOR WHICH PAYMENT IS PACKAGED)

HCPCS Code	Short Descriptor	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
J3315	Triptorelin pamoate		K2		$149.61
J3320	Spectinomycn di-hcl inj		N1		
J3350	Urea injection		K2		$73.95
J3355	Urofollitropin, 75 iu		K2		$50.03
J3360	Diazepam injection		N1		
J3364	Urokinase 5000 IU injection		N1		
J3365	Urokinase 250,000 IU inj		K2		$449.09
J3370	Vancomycin hcl injection		N1		
J3396	Verteporfin injection		K2		$9.15
J3400	Triflupromazine hcl inj	CH	K2		$20.51
J3410	Hydroxyzine hcl injection		N1		
J3411	Thiamine hcl 100 mg		N1		
J3415	Pyridoxine hcl 100 mg		N1		
J3420	Vitamin b12 injection		N1		
J3430	Vitamin k phytonadione inj		N1		
J3465	Injection, voriconazole		K2		$5.19
J3470	Hyaluronidase injection		N1		
J3471	Ovine, up to 999 USP units		N1		
J3472	Ovine, 1000 USP units		K2		$130.62
J3473	Hyaluronidase recombinant		K2		$0.48
J3475	Inj magnesium sulfate		N1		
J3480	Inj potassium chloride		N1		
J3485	Zidovudine		N1		
J3486	Ziprasidone mesylate		N1		
J3487	Zoledronic acid		K2		$210.02
J3488	Reclast injection		K2		$216.61
J3490	Drugs unclassified injection		N1		
J3530	Nasal vaccine inhalation		N1		
J3590	Unclassified biologics		N1		
J7030	Normal saline solution infus		N1		
J7040	Normal saline solution infus		N1		
J7042	5% dextrose/normal saline		N1		
J7050	Normal saline solution infus		N1		
J7060	5% dextrose/water		N1		
J7070	D5w infusion		N1		
J7100	Dextran 40 infusion		N1		
J7110	Dextran 75 infusion		N1		
J7120	Ringers lactate infusion		N1		
J7130	Hypertonic saline solution		N1		
J7186	Antihemophilic viii/VWF comp	NI	K2		$0.81
J7187	Humate-P, inj		K2		$0.86
J7189	Factor viia		K2		$1.21

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ADDENDUM BB.--FINAL ASC COVERED ANCILLARY SERVICES INTEGRAL TO COVERED SURGICAL PROCEDURES FOR CY 2009 (INCLUDING ANCILLARY SERVICES FOR WHICH PAYMENT IS PACKAGED)

HCPCS Code	Short Descriptor	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
J7190	Factor viii		K2		$0.81
J7191	Factor VIII (porcine)	CH	K2		$0.98
J7192	Factor viii recombinant		K2		$1.06
J7193	Factor IX non-recombinant		K2		$0.88
J7194	Factor ix complex		K2		$0.80
J7195	Factor IX recombinant		K2		$1.05
J7197	Antithrombin iii injection	CH	N1		
J7198	Anti-inhibitor		K2		$1.46
J7308	Aminolevulinic acid hcl top		K2		$115.29
J7310	Ganciclovir long act implant		K2		$16,640.00
J7311	Fluocinolone acetonide implt		K2		$18,980.00
J7321	Hyalgan/supartz inj per dose		K2		$97.02
J7322	Synvisc inj per dose		K2		$181.29
J7323	Euflexxa inj per dose		K2		$107.54
J7324	Orthovisc inj per dose		K2		$176.11
J7340	Metabolic active D/E tissue	CH	D5		
J7341	Non-human, metabolic tissue	CH	D5		
J7342	Metabolically active tissue	CH	D5		
J7343	Nonmetabolic act d/e tissue	CH	D5		
J7344	Nonmetabolic active tissue	CH	D5		
J7346	Injectable human tissue	CH	D5		
J7347	Integra matrix tissue	CH	D5		
J7348	Tissuemend tissue	CH	D5		
J7349	Primatrix tissue	CH	D5		
J7500	Azathioprine oral 50mg		N1		
J7501	Azathioprine parenteral		K2		$89.27
J7502	Cyclosporine oral 100 mg		K2		$3.61
J7504	Lymphocyte immune globulin		K2		$431.18
J7505	Monoclonal antibodies		K2		$1,083.34
J7506	Prednisone oral		N1		
J7507	Tacrolimus oral per 1 MG		K2		$3.82
J7509	Methylprednisolone oral		N1		
J7510	Prednisolone oral per 5 mg		N1		
J7511	Antithymocyte globuln rabbit		K2		$365.31
J7513	Daclizumab, parenteral		K2		$338.05
J7515	Cyclosporine oral 25 mg		N1		
J7516	Cyclosporin parenteral 250mg	CH	K2		$19.01
J7517	Mycophenolate mofetil oral		K2		$3.09
J7518	Mycophenolic acid		K2		$2.56
J7520	Sirolimus, oral		K2		$8.24
J7525	Tacrolimus injection		K2		$136.97
J7599	Immunosuppressive drug noc		N1		

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ADDENDUM BB.–FINAL ASC COVERED ANCILLARY SERVICES INTEGRAL TO COVERED SURGICAL PROCEDURES FOR CY 2009 (INCLUDING ANCILLARY SERVICES FOR WHICH PAYMENT IS PACKAGED)

HCPCS Code	Short Descriptor	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
J7674	Methacholine chloride, neb		N1		
J7799	Non-inhalation drug for DME		N1		
J8501	Oral aprepitant		K2		$5.24
J8510	Oral busulfan		K2		$2.74
J8520	Capecitabine, oral, 150 mg		K2		$4.82
J8521	Capecitabine, oral, 500 mg		K2		$16.04
J8530	Cyclophosphamide oral 25 MG		N1		
J8540	Oral dexamethasone		N1		
J8560	Etoposide oral 50 MG		K2		$28.79
J8597	Antiemetic drug oral NOS		N1		
J8600	Melphalan oral 2 MG	CH	N1		
J8610	Methotrexate oral 2.5 MG		N1		
J8650	Nabilone oral		K2		$16.64
J8700	Temozolomide		K2		$8.09
J8705	Topotecan oral	NI	K2		$68.58
J9000	Doxorubicin hcl injection		N1		
J9001	Doxorubicin hcl liposome inj		K2		$421.41
J9010	Alemtuzumab injection		K2		$540.84
J9015	Aldesleukin injection		K2		$792.77
J9017	Arsenic trioxide injection		K2		$33.88
J9020	Asparaginase injection		K2		$56.97
J9025	Azacitidine injection		K2		$4.50
J9027	Clofarabine injection		K2		$113.61
J9031	Bcg live intravesical vac		K2		$112.33
J9033	Bendamustine injection	NI	K2		$18.70
J9035	Bevacizumab injection		K2		$56.29
J9040	Bleomycin sulfate injection	CH	N1		
J9041	Bortezomib injection		K2		$34.68
J9045	Carboplatin injection	CH	N1		
J9050	Carmustine injection		K2		$161.32
J9055	Cetuximab injection		K2		$48.82
J9060	Cisplatin 10 MG injection		N1		
J9062	Cisplatin 50 MG injection		N1		
J9065	Inj cladribine per 1 MG		K2		$28.79
J9070	Cyclophosphamide 100 MG inj		N1		
J9080	Cyclophosphamide 200 MG inj		N1		
J9090	Cyclophosphamide 500 MG inj		N1		
J9091	Cyclophosphamide 1.0 grm inj		N1		
J9092	Cyclophosphamide 2.0 grm inj		N1		
J9093	Cyclophosphamide lyophilized		N1		
J9094	Cyclophosphamide lyophilized		N1		
J9095	Cyclophosphamide lyophilized		N1		

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ADDENDUM BB.--FINAL ASC COVERED ANCILLARY SERVICES INTEGRAL TO COVERED SURGICAL PROCEDURES FOR CY 2009 (INCLUDING ANCILLARY SERVICES FOR WHICH PAYMENT IS PACKAGED)					
HCPCS Code	Short Descriptor	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
J9096	Cyclophosphamide lyophilized		N1		
J9097	Cyclophosphamide lyophilized		N1		
J9098	Cytarabine liposome inj		K2		$439.71
J9100	Cytarabine hcl 100 MG inj		N1		
J9110	Cytarabine hcl 500 MG inj		N1		
J9120	Dactinomycin injection		K2		$486.26
J9130	Dacarbazine 100 mg inj		N1		
J9140	Dacarbazine 200 MG inj		N1		
J9150	Daunorubicin injection		K2		$16.58
J9151	Daunorubicin citrate inj		K2		$55.04
J9160	Denileukin diftitox inj		K2		$1,405.27
J9165	Diethylstilbestrol injection	CH	K2		$78.08
J9170	Docetaxel injection		K2		$328.32
J9175	Elliotts b solution per ml		N1		
J9178	Inj, epirubicin hcl, 2 mg		K2		$5.34
J9181	Etoposide injection		N1		
J9182	Etoposide 100 MG inj	CH	D5		
J9185	Fludarabine phosphate inj		K2		$217.03
J9190	Fluorouracil injection		N1		
J9200	Floxuridine injection		K2		$49.58
J9201	Gemcitabine hcl injection		K2		$132.54
J9202	Goserelin acetate implant		K2		$185.87
J9206	Irinotecan injection		K2		$36.30
J9207	Ixabepilone injection	NI	K2		$65.15
J9208	Ifosfomide injection		K2		$33.16
J9209	Mesna injection		K2		$6.83
J9211	Idarubicin hcl injection		K2		$230.09
J9212	Interferon alfacon-1 inj	CH	N1		
J9213	Interferon alfa-2a inj		K2		$39.76
J9214	Interferon alfa-2b inj		K2		$14.45
J9215	Interferon alfa-n3 inj		K2		$17.89
J9216	Interferon gamma 1-b inj		K2		$345.15
J9217	Leuprolide acetate suspnsion		K2		$169.68
J9218	Leuprolide acetate injeciton		K2		$6.56
J9219	Leuprolide acetate implant		K2		$1,661.45
J9225	Vantas implant		K2		$1,430.40
J9226	Supprelin LA implant		K2		$14,609.22
J9230	Mechlorethamine hcl inj		K2		$141.96
J9245	Inj melphalan hydrochl 50 MG		K2		$1,593.94
J9250	Methotrexate sodium inj		N1		
J9260	Methotrexate sodium inj		N1		
J9261	Nelarabine injection		K2		$96.09

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HCPCS Code	Short Descriptor	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
J9263	Oxaliplatin		K2		$9.38
J9264	Paclitaxel protein bound		K2		$8.63
J9265	Paclitaxel injection		K2		$10.83
J9266	Pegaspargase injection		K2		$2,569.13
J9268	Pentostatin injection		K2		$1,592.03
J9270	Plicamycin (mithramycin) inj		K2		$77.49
J9280	Mitomycin 5 MG inj		K2		$15.56
J9290	Mitomycin 20 MG inj		K2		$62.25
J9291	Mitomycin 40 MG inj		K2		$124.50
J9293	Mitoxantrone hydrochl / 5 MG		K2		$85.55
J9300	Gemtuzumab ozogamicin inj		K2		$2,448.21
J9303	Panitumumab injection		K2		$80.93
J9305	Pemetrexed injection		K2		$46.40
J9310	Rituximab injection		K2		$524.58
J9320	Streptozocin injection		K2		$193.00
J9330	Temsirolimus injection	NI	K2		$47.90
J9340	Thiotepa injection		K2		$92.76
J9350	Topotecan injection		K2		$913.11
J9355	Trastuzumab injection		K2		$60.33
J9357	Valrubicin injection		K2		$384.38
J9360	Vinblastine sulfate inj		N1		
J9370	Vincristine sulfate 1 MG inj		N1		
J9375	Vincristine sulfate 2 MG inj		N1		
J9380	Vincristine sulfate 5 MG inj		N1		
J9390	Vinorelbine tartrate inj		K2		$16.26
J9395	Injection, Fulvestrant		K2		$79.70
J9600	Porfimer sodium injection		K2		$2,490.53
J9999	Chemotherapy drug		N1		
L8600	Implant breast silicone/eq		N1		
L8603	Collagen imp urinary 2.5 ml		N1		
L8604	Dextranomer/hyaluronic acid	NI	N1		
L8606	Synthetic implnt urinary 1ml		N1		
L8609	Artificial cornea		N1		
L8610	Ocular implant		N1		
L8612	Aqueous shunt prosthesis		N1		
L8613	Ossicular implant		N1		
L8614	Cochlear device		N1		
L8630	Metacarpophalangeal implant		N1		
L8631	MCP joint repl 2 pc or more		N1		
L8641	Metatarsal joint implant		N1		
L8642	Hallux implant		N1		
L8658	Interphalangeal joint spacer		N1		

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HCPCS Code	Short Descriptor	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
L8659	Interphalangeal joint repl		N1		
L8670	Vascular graft, synthetic		N1		
L8682	Implt neurostim radiofq rec		N1		
L8690	Aud osseo dev, int/ext comp	CH	N1		
L8699	Prosthetic implant NOS		N1		
P9041	Albumin (human),5%, 50ml		K2		$19.12
P9045	Albumin (human), 5%, 250 ml		K2		$70.02
P9046	Albumin (human), 25%, 20 ml		K2		$24.67
P9047	Albumin (human), 25%, 50ml		K2		$69.22
Q0163	Diphenhydramine HCl 50mg		N1		
Q0164	Prochlorperazine maleate 5mg		N1		
Q0166	Granisetron hcl 1 mg oral		K2		$17.54
Q0167	Dronabinol 2.5mg oral		N1		
Q0169	Promethazine HCl 12.5mg oral		N1		
Q0171	Chlorpromazine HCl 10mg oral		N1		
Q0173	Trimethobenzamide HCl 250mg		N1		
Q0174	Thiethylperazine maleate10mg		N1		
Q0175	Perphenazine 4mg oral		N1		
Q0177	Hydroxyzine pamoate 25mg		N1		
Q0179	Ondansetron hcl 8 mg oral		K2		$3.86
Q0180	Dolasetron mesylate oral		K2		$56.00
Q0515	Sermorelin acetate injection		K2		$1.71
Q1003	Ntiol category 3		L6		$50.00
Q2004	Bladder calculi irrig sol		N1		
Q2009	Fosphenytoin, 50 mg	CH	N1		
Q2017	Teniposide, 50 mg		K2		$297.01
Q3025	IM inj interferon beta 1-a		K2		$143.90
Q4096	VWF complex, NOS	CH	D5		
Q4097	Inj IVIG Privigen 500 mg	CH	D5		
Q4098	Inj iron dextran	CH	D5		
Q4100	Skin substitute, NOS	NI	N1		
Q4101	Apligraf skin sub	NI	K2		$30.92
Q4102	Oasis wound matrix skin sub	NI	K2		$4.00
Q4103	Oasis burn matrix skin sub	NI	K2		$4.00
Q4104	Integra BMWD skin sub	NI	K2		$11.13
Q4105	Integra DRT skin sub	NI	K2		$11.13
Q4106	Dermagraft skin sub	NI	K2		$37.76
Q4107	Graftjacket skin sub	NI	K2		$86.03
Q4108	Integra matrix skin sub	NI	K2		$16.83
Q4109	Tissuemend skin sub	NI	N1		
Q4110	Primatrix skin sub	NI	K2		$34.41
Q4112	Cymetra allograft	NI	K2		$376.03

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HCPCS Code	Short Descriptor	Comment Indicator	Payment Indicator	CY 2009 Second Year Transition Payment Weight	CY 2009 Second Year Transition Payment
Q4113	Graftjacket express allograft	NI	K2		$376.03
Q4114	Integra flowable wound matri	NI	K2		$875.21
Q9951	LOCM >= 400 mg/ml iodine,1ml		N1		
Q9953	Inj Fe-based MR contrast,1ml		N1		
Q9954	Oral MR contrast, 100 ml		N1		
Q9955	Inj perflexane lip micros,ml		N1		
Q9956	Inj octafluoropropane mic,ml		N1		
Q9957	Inj perflutren lip micros,ml		N1		
Q9958	HOCM <=149 mg/ml iodine, 1ml		N1		
Q9959	HOCM 150-199mg/ml iodine,1ml		N1		
Q9960	HOCM 200-249mg/ml iodine,1ml		N1		
Q9961	HOCM 250-299mg/ml iodine,1ml		N1		
Q9962	HOCM 300-349mg/ml iodine,1ml		N1		
Q9963	HOCM 350-399mg/ml iodine,1ml		N1		
Q9964	HOCM>= 400mg/ml iodine, 1ml		N1		
Q9965	LOCM 100-199mg/ml iodine,1ml		N1		
Q9966	LOCM 200-299mg/ml iodine,1ml		N1		
Q9967	LOCM 300-399mg/ml iodine,1ml		N1		
V2630	Anter chamber intraocul lens		N1		
V2631	Iris support intraoclr lens		N1		
V2632	Post chmbr intraocular lens		N1		
V2785	Corneal tissue processing		F4		
V2790	Amniotic membrane		N1		

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ADDENDUM D1.--FINAL OPPS PAYMENT STATUS INDICATORS FOR CY 2009

ADDENDUM D1.--FINAL OPPS PAYMENT STATUS INDICATORS FOR CY 2009		
Indicator	**Item/Code/Service**	**OPPS Payment Status**
A	Services furnished to a hospital outpatient that are paid under a fee schedule or payment system other than OPPS, for example: • Ambulance Services • Clinical Diagnostic Laboratory Services • Non-Implantable Prosthetic and Orthotic Devices • EPO for ESRD Patients • Physical, Occupational, and Speech Therapy • Routine Dialysis Services for ESRD Patients Provided in a Certified Dialysis Unit of a Hospital • Diagnostic Mammography • Screening Mammography	Not paid under OPPS. Paid by fiscal intermediaries/MACs under a fee schedule or payment system other than OPPS. Not subject to deductible or coinsurance. Not subject to deductible.
B	Codes that are not recognized by OPPS when submitted on an outpatient hospital Part B bill type (12x and 13x).	Not paid under OPPS. • May be paid by fiscal intermediaries/MACs when submitted on a different bill type, for example, 75x (CORF), but not paid under OPPS. • An alternate code that is recognized by OPPS when submitted on an outpatient hospital Part B bill type (12x and 13x) may be available.
C	Inpatient Procedures	Not paid under OPPS. Admit patient. Bill as inpatient.

ADDENDUM D1.--FINAL OPPS PAYMENT STATUS INDICATORS FOR CY 2009		
Indicator	**Item/Code/Service**	**OPPS Payment Status**
D	Discontinued Codes	Not paid under OPPS or any other Medicare payment system.
E	Items, Codes, and Services: • That are not covered by any Medicare outpatient benefit based on statutory exclusion. • That are not covered by any Medicare outpatient benefit for reasons other than statutory exclusion. • That are not recognized by Medicare for outpatient claims but for which an alternate code for the same item or service may be available. • For which separate payment is not provided on outpatient claims.	Not paid by Medicare when submitted on outpatient claims (any outpatient bill type).
F	Corneal Tissue Acquisition; Certain CRNA Services and Hepatitis B Vaccines	Not paid under OPPS. Paid at reasonable cost.
G	Pass-Through Drugs and Biologicals	Paid under OPPS; separate APC payment includes pass-through amount.
H	(1) Pass-Through Device Categories (2) Therapeutic Radiopharmaceuticals	(1) Separate cost-based pass-through payment; not subject to copayment. (2) Separate cost-based nonpass-through payment; subject to copayment.
K	(1) Nonpass-Through Drugs and Biologicals	(1) Paid under OPPS; separate APC payment.
L	Influenza Vaccine; Pneumococcal Pneumonia Vaccine	Not paid under OPPS. Paid at reasonable cost; not subject to deductible or coinsurance.
M	Items and Services Not Billable to the Fiscal Intermediary/MAC	Not paid under OPPS.
N	Items and Services Packaged into APC Rates	Paid under OPPS; payment is packaged into payment for other services, including outliers. Therefore, there is no separate APC payment.
P	Partial Hospitalization	Paid under OPPS; per diem APC payment.

ADDENDUM D1.--FINAL OPPS PAYMENT STATUS INDICATORS FOR CY 2009		
Indicator	**Item/Code/Service**	**OPPS Payment Status**
Q1	STVX-Packaged Codes	Paid under OPPS; Addendum B displays APC assignments when services are separately payable. (1) Packaged APC payment if billed on the same date of service as a HCPCS code assigned status indicator "S," "T," "V," or "X." (2) In all other circumstances, payment is made through a separate APC payment.
Q2	T-Packaged Codes	Paid under OPPS; Addendum B displays APC assignments when services are separately payable. (1) Packaged APC payment if billed on the same date of service as a HCPCS code assigned status indicator "T." (2) In all other circumstances, payment is made through a separate APC payment.
Q3	Codes That May Be Paid Through a Composite APC	Paid under OPPS; Addendum B displays APC assignments when services are separately payable. Addendum M displays composite APC assignments when codes are paid through a composite APC. (1) Composite APC payment based on OPPS composite-specific payment criteria. Payment is packaged into a single payment for specific combinations of service. (2) In all other circumstances, payment is made through a separate APC payment or packaged into payment for other services.
R	Blood and Blood Products	Paid under OPPS; separate APC payment.
S	Significant Procedure, Not Discounted when Multiple	Paid under OPPS; separate APC payment.
T	Significant Procedure, Multiple Reduction Applies	Paid under OPPS; separate APC payment.
U	Brachytherapy Sources	Paid under OPPS; separate APC payment.
V	Clinic or Emergency Department Visit	Paid under OPPS; separate APC payment.
X	Ancillary Services	Paid under OPPS; separate APC payment.

ADDENDUM D1.--FINAL OPPS PAYMENT STATUS INDICATORS FOR CY 2009		
Indicator	**Item/Code/Service**	**OPPS Payment Status**
Y	Non-Implantable Durable Medical Equipment	Not paid under OPPS. All institutional providers other than home health agencies bill to DMERC.

ADDENDUM DD1.--FINAL ASC PAYMENT INDICATORS FOR CY 2009

ADDENDUM DD1.--FINAL ASC PAYMENT INDICATORS FOR CY 2009	
Payment Indicator	**Payment Indicator Definition**
A2	Surgical procedure on ASC list in CY 2007; payment based on OPPS relative payment weight.
D5	Deleted/discontinued code; no payment made.
F4	Corneal tissue acquisition, hepatitis B vaccine; paid at reasonable cost.
G2	Non office-based surgical procedure added in CY 2008 or later; payment based on OPPS relative payment weight.
H7	Brachytherapy source paid separately when provided integral to a surgical procedure on ASC list; payment contractor-priced.
H8	Device-intensive procedure on ASC list in CY 2007; paid at adjusted rate.
J7	OPPS pass-through device paid separately when provided integral to a surgical procedure on ASC list; payment contractor-priced.
J8	Device-intensive procedure added to ASC list in CY 2008 or later; paid at adjusted rate.
K2	Drugs and biologicals paid separately when provided integral to a surgical procedure on ASC list; payment based on OPPS rate.
K7	Unclassified drugs and biologicals; payment contractor-priced.
L1	Influenza vaccine; pneumococcal vaccine. Packaged item/service; no separate payment made.
L6	New Technology Intraocular Lens (NTIOL); special payment.
N1	Packaged service/item; no separate payment made.
P2	Office-based surgical procedure added to ASC list in CY 2008 or later with MPFS nonfacility PE RVUs; payment based on OPPS relative payment weight.
P3	Office-based surgical procedure added to ASC list in CY 2008 or later with MPFS nonfacility PE RVUs; payment based on MPFS nonfacility PE RVUs.
R2	Office-based surgical procedure added to ASC list in CY 2008 or later without MPFS nonfacility PE RVUs; payment based on OPPS relative payment weight.
Z2	Radiology service paid separately when provided integral to a surgical procedure on ASC list; payment based on OPPS relative payment weight.
Z3	Radiology service paid separately when provided integral to a surgical procedure on ASC list; payment based on MPFS nonfacility PE RVUs.

ADDENDUM D2.--FINAL OPPS COMMENT INDICATORS FOR CY 2009

Comment Indicator	Descriptor
NI	New code, interim APC assignment; comments will be accepted on the interim APC assignment for the new code.
CH	Active HCPCS code in current year and next calendar year, status indicator and/or APC assignment has changed; or active HCPCS code that will be discontinued at the end of the current calendar year.

ADDENDUM DD2.--FINAL ASC COMMENT INDICATORS FOR CY 2009

Comment Indicator	Descriptor
CH	Active HCPCS code in current year and next calendar year, payment indicator assignment has changed; or active HCPCS code that is newly recognized as payable in ASC; or active HCPCS code that is discontinued at the end of the current calendar year.
NI	New code, interim payment indicator assignment; comments will be accepted on the interim payment assignment for the new code.

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
00176	Anesth, pharyngeal surgery	C	
00192	Anesth, facial bone surgery	C	
00211	Anesth, cran surg, hemotoma	C	NI
00214	Anesth, skull drainage	C	
00215	Anesth, skull repair/fract	C	
00452	Anesth, surgery of shoulder	C	
00474	Anesth, surgery of rib(s)	C	
00524	Anesth, chest drainage	C	
00540	Anesth, chest surgery	C	
00542	Anesth, release of lung	C	
00546	Anesth, lung,chest wall surg	C	
00560	Anesth, heart surg w/o pump	C	
00561	Anesth, heart surg < age 1	C	
00562	Anesth hrt surg w/pmp age 1+	C	
00567	Anesth, cabg w/pump	C	NI
00580	Anesth, heart/lung transplnt	C	
00604	Anesth, sitting procedure	C	
00622	Anesth, removal of nerves	C	
00632	Anesth, removal of nerves	C	
00670	Anesth, spine, cord surgery	C	
00792	Anesth, hemorr/excise liver	C	
00794	Anesth, pancreas removal	C	
00796	Anesth, for liver transplant	C	
00802	Anesth, fat layer removal	C	
00844	Anesth, pelvis surgery	C	
00846	Anesth, hysterectomy	C	
00848	Anesth, pelvic organ surg	C	
00864	Anesth, removal of bladder	C	
00865	Anesth, removal of prostate	C	
00866	Anesth, removal of adrenal	C	
00868	Anesth, kidney transplant	C	
00882	Anesth, major vein ligation	C	
00904	Anesth, perineal surgery	C	
00908	Anesth, removal of prostate	C	
00932	Anesth, amputation of penis	C	
00934	Anesth, penis, nodes removal	C	
00936	Anesth, penis, nodes removal	C	
00944	Anesth, vaginal hysterectomy	C	
01140	Anesth, amputation at pelvis	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
01150	Anesth, pelvic tumor surgery	C	
01212	Anesth, hip disarticulation	C	
01214	Anesth, hip arthroplasty	C	
01232	Anesth, amputation of femur	C	
01234	Anesth, radical femur surg	C	
01272	Anesth, femoral artery surg	C	
01274	Anesth, femoral embolectomy	C	
01402	Anesth, knee arthroplasty	C	
01404	Anesth, amputation at knee	C	
01442	Anesth, knee artery surg	C	
01444	Anesth, knee artery repair	C	
01486	Anesth, ankle replacement	C	
01502	Anesth, lwr leg embolectomy	C	
01632	Anesth, surgery of shoulder	C	
01634	Anesth, shoulder joint amput	C	
01636	Anesth, forequarter amput	C	
01638	Anesth, shoulder replacement	C	
01652	Anesth, shoulder vessel surg	C	
01654	Anesth, shoulder vessel surg	C	
01656	Anesth, arm-leg vessel surg	C	
01756	Anesth, radical humerus surg	C	
01990	Support for organ donor	C	
11004	Debride genitalia & perineum	C	
11005	Debride abdom wall	C	
11006	Debride genit/per/abdom wall	C	
11008	Remove mesh from abd wall	C	
15756	Free myo/skin flap microvasc	C	
15757	Free skin flap, microvasc	C	
15758	Free fascial flap, microvasc	C	
16036	Escharotomy; add'l incision	C	
19271	Revision of chest wall	C	
19272	Extensive chest wall surgery	C	
19305	Mast, radical	C	
19306	Mast, rad, urban type	C	
19361	Breast reconstr w/lat flap	C	
19364	Breast reconstruction	C	
19367	Breast reconstruction	C	
19368	Breast reconstruction	C	
19369	Breast reconstruction	C	
20661	Application of head brace	C	
20664	Halo brace application	C	
20802	Replantation, arm, complete	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
20805	Replant forearm, complete	C	
20808	Replantation hand, complete	C	
20816	Replantation digit, complete	C	
20824	Replantation thumb, complete	C	
20827	Replantation thumb, complete	C	
20838	Replantation foot, complete	C	
20930	Sp bone algrft morsel add-on	C	
20931	Sp bone algrft struct add-on	C	
20936	Sp bone agrft local add-on	C	
20937	Sp bone agrft morsel add-on	C	
20938	Sp bone agrft struct add-on	C	
20955	Fibula bone graft, microvasc	C	
20956	Iliac bone graft, microvasc	C	
20957	Mt bone graft, microvasc	C	
20962	Other bone graft, microvasc	C	
20969	Bone/skin graft, microvasc	C	
20970	Bone/skin graft, iliac crest	C	
21045	Extensive jaw surgery	C	
21141	Reconstruct midface, lefort	C	
21142	Reconstruct midface, lefort	C	
21143	Reconstruct midface, lefort	C	
21145	Reconstruct midface, lefort	C	
21146	Reconstruct midface, lefort	C	
21147	Reconstruct midface, lefort	C	
21151	Reconstruct midface, lefort	C	
21154	Reconstruct midface, lefort	C	
21155	Reconstruct midface, lefort	C	
21159	Reconstruct midface, lefort	C	
21160	Reconstruct midface, lefort	C	
21179	Reconstruct entire forehead	C	
21180	Reconstruct entire forehead	C	
21182	Reconstruct cranial bone	C	
21183	Reconstruct cranial bone	C	
21184	Reconstruct cranial bone	C	
21188	Reconstruction of midface	C	
21193	Reconst lwr jaw w/o graft	C	
21194	Reconst lwr jaw w/graft	C	
21196	Reconst lwr jaw w/fixation	C	
21247	Reconstruct lower jaw bone	C	
21255	Reconstruct lower jaw bone	C	
21256	Reconstruction of orbit	C	
21268	Revise eye sockets	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
21343	Treatment of sinus fracture	C	
21344	Treatment of sinus fracture	C	
21346	Treat nose/jaw fracture	C	
21347	Treat nose/jaw fracture	C	
21348	Treat nose/jaw fracture	C	
21366	Treat cheek bone fracture	C	
21395	Treat eye socket fracture	C	
21422	Treat mouth roof fracture	C	
21423	Treat mouth roof fracture	C	
21431	Treat craniofacial fracture	C	
21432	Treat craniofacial fracture	C	
21433	Treat craniofacial fracture	C	
21435	Treat craniofacial fracture	C	
21436	Treat craniofacial fracture	C	
21510	Drainage of bone lesion	C	
21615	Removal of rib	C	
21616	Removal of rib and nerves	C	
21620	Partial removal of sternum	C	
21627	Sternal debridement	C	
21630	Extensive sternum surgery	C	
21632	Extensive sternum surgery	C	
21705	Revision of neck muscle/rib	C	
21740	Reconstruction of sternum	C	
21750	Repair of sternum separation	C	
21810	Treatment of rib fracture(s)	C	
21825	Treat sternum fracture	C	
22010	I&d, p-spine, c/t/cerv-thor	C	
22015	I&d, p-spine, l/s/ls	C	
22110	Remove part of neck vertebra	C	
22112	Remove part, thorax vertebra	C	
22114	Remove part, lumbar vertebra	C	
22116	Remove extra spine segment	C	
22206	Cut spine 3 col, thor	C	
22207	Cut spine 3 col, lumb	C	
22208	Cut spine 3 col, addl seg	C	
22210	Revision of neck spine	C	
22212	Revision of thorax spine	C	
22214	Revision of lumbar spine	C	
22216	Revise, extra spine segment	C	
22220	Revision of neck spine	C	
22224	Revision of lumbar spine	C	
22226	Revise, extra spine segment	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
22318	Treat odontoid fx w/o graft	C	
22319	Treat odontoid fx w/graft	C	
22325	Treat spine fracture	C	
22326	Treat neck spine fracture	C	
22327	Treat thorax spine fracture	C	
22328	Treat each add spine fx	C	
22532	Lat thorax spine fusion	C	
22533	Lat lumbar spine fusion	C	
22534	Lat thor/lumb, add'l seg	C	
22548	Neck spine fusion	C	
22554	Neck spine fusion	C	
22556	Thorax spine fusion	C	
22558	Lumbar spine fusion	C	
22585	Additional spinal fusion	C	
22590	Spine & skull spinal fusion	C	
22595	Neck spinal fusion	C	
22600	Neck spine fusion	C	
22610	Thorax spine fusion	C	
22630	Lumbar spine fusion	C	
22632	Spine fusion, extra segment	C	
22800	Fusion of spine	C	
22802	Fusion of spine	C	
22804	Fusion of spine	C	
22808	Fusion of spine	C	
22810	Fusion of spine	C	
22812	Fusion of spine	C	
22818	Kyphectomy, 1-2 segments	C	
22819	Kyphectomy, 3 or more	C	
22830	Exploration of spinal fusion	C	
22840	Insert spine fixation device	C	
22841	Insert spine fixation device	C	
22842	Insert spine fixation device	C	
22843	Insert spine fixation device	C	
22844	Insert spine fixation device	C	
22845	Insert spine fixation device	C	
22846	Insert spine fixation device	C	
22847	Insert spine fixation device	C	
22848	Insert pelv fixation device	C	
22849	Reinsert spinal fixation	C	
22850	Remove spine fixation device	C	
22852	Remove spine fixation device	C	
22855	Remove spine fixation device	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
22856	Cerv artific diskectomy	C	NI
22857	Lumbar artif diskectomy	C	
22861	Revise cerv artific disc	C	NI
22862	Revise lumbar artif disc	C	
22864	Remove cerv artif disc	C	NI
22865	Remove lumb artif disc	C	
23200	Removal of collar bone	C	
23210	Removal of shoulder blade	C	
23220	Partial removal of humerus	C	
23221	Partial removal of humerus	C	
23222	Partial removal of humerus	C	
23332	Remove shoulder foreign body	C	
23472	Reconstruct shoulder joint	C	
23900	Amputation of arm & girdle	C	
23920	Amputation at shoulder joint	C	
24900	Amputation of upper arm	C	
24920	Amputation of upper arm	C	
24930	Amputation follow-up surgery	C	
24931	Amputate upper arm & implant	C	
24940	Revision of upper arm	C	
25900	Amputation of forearm	C	
25905	Amputation of forearm	C	
25909	Amputation follow-up surgery	C	
25915	Amputation of forearm	C	
25920	Amputate hand at wrist	C	
25924	Amputation follow-up surgery	C	
25927	Amputation of hand	C	
26551	Great toe-hand transfer	C	
26553	Single transfer, toe-hand	C	
26554	Double transfer, toe-hand	C	
26556	Toe joint transfer	C	
26992	Drainage of bone lesion	C	
27005	Incision of hip tendon	C	
27025	Incision of hip/thigh fascia	C	
27030	Drainage of hip joint	C	
27036	Excision of hip joint/muscle	C	
27054	Removal of hip joint lining	C	
27070	Partial removal of hip bone	C	
27071	Partial removal of hip bone	C	
27075	Extensive hip surgery	C	
27076	Extensive hip surgery	C	
27077	Extensive hip surgery	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
27078	Extensive hip surgery	C	
27079	Extensive hip surgery	C	
27090	Removal of hip prosthesis	C	
27091	Removal of hip prosthesis	C	
27120	Reconstruction of hip socket	C	
27122	Reconstruction of hip socket	C	
27125	Partial hip replacement	C	
27130	Total hip arthroplasty	C	
27132	Total hip arthroplasty	C	
27134	Revise hip joint replacement	C	
27137	Revise hip joint replacement	C	
27138	Revise hip joint replacement	C	
27140	Transplant femur ridge	C	
27146	Incision of hip bone	C	
27147	Revision of hip bone	C	
27151	Incision of hip bones	C	
27156	Revision of hip bones	C	
27158	Revision of pelvis	C	
27161	Incision of neck of femur	C	
27165	Incision/fixation of femur	C	
27170	Repair/graft femur head/neck	C	
27175	Treat slipped epiphysis	C	
27176	Treat slipped epiphysis	C	
27177	Treat slipped epiphysis	C	
27178	Treat slipped epiphysis	C	
27179	Revise head/neck of femur	C	
27181	Treat slipped epiphysis	C	
27185	Revision of femur epiphysis	C	
27187	Reinforce hip bones	C	
27222	Treat hip socket fracture	C	
27226	Treat hip wall fracture	C	
27227	Treat hip fracture(s)	C	
27228	Treat hip fracture(s)	C	
27232	Treat thigh fracture	C	
27236	Treat thigh fracture	C	
27240	Treat thigh fracture	C	
27244	Treat thigh fracture	C	
27245	Treat thigh fracture	C	
27248	Treat thigh fracture	C	
27253	Treat hip dislocation	C	
27254	Treat hip dislocation	C	
27258	Treat hip dislocation	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
27259	Treat hip dislocation	C	
27268	Cltx thigh fx w/mnpj	C	
27269	Optx thigh fx	C	
27280	Fusion of sacroiliac joint	C	
27282	Fusion of pubic bones	C	
27284	Fusion of hip joint	C	
27286	Fusion of hip joint	C	
27290	Amputation of leg at hip	C	
27295	Amputation of leg at hip	C	
27303	Drainage of bone lesion	C	
27365	Extensive leg surgery	C	
27445	Revision of knee joint	C	
27447	Total knee arthroplasty	C	
27448	Incision of thigh	C	
27450	Incision of thigh	C	
27454	Realignment of thigh bone	C	
27455	Realignment of knee	C	
27457	Realignment of knee	C	
27465	Shortening of thigh bone	C	
27466	Lengthening of thigh bone	C	
27468	Shorten/lengthen thighs	C	
27470	Repair of thigh	C	
27472	Repair/graft of thigh	C	
27477	Surgery to stop leg growth	C	
27485	Surgery to stop leg growth	C	
27486	Revise/replace knee joint	C	
27487	Revise/replace knee joint	C	
27488	Removal of knee prosthesis	C	
27495	Reinforce thigh	C	
27506	Treatment of thigh fracture	C	
27507	Treatment of thigh fracture	C	
27511	Treatment of thigh fracture	C	
27513	Treatment of thigh fracture	C	
27514	Treatment of thigh fracture	C	
27519	Treat thigh fx growth plate	C	
27535	Treat knee fracture	C	
27536	Treat knee fracture	C	
27540	Treat knee fracture	C	
27556	Treat knee dislocation	C	
27557	Treat knee dislocation	C	
27558	Treat knee dislocation	C	
27580	Fusion of knee	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
27590	Amputate leg at thigh	C	
27591	Amputate leg at thigh	C	
27592	Amputate leg at thigh	C	
27596	Amputation follow-up surgery	C	
27598	Amputate lower leg at knee	C	
27645	Extensive lower leg surgery	C	
27646	Extensive lower leg surgery	C	
27702	Reconstruct ankle joint	C	
27703	Reconstruction, ankle joint	C	
27712	Realignment of lower leg	C	
27715	Revision of lower leg	C	
27724	Repair/graft of tibia	C	
27725	Repair of lower leg	C	
27727	Repair of lower leg	C	
27880	Amputation of lower leg	C	
27881	Amputation of lower leg	C	
27882	Amputation of lower leg	C	
27886	Amputation follow-up surgery	C	
27888	Amputation of foot at ankle	C	
28800	Amputation of midfoot	C	
28805	Amputation thru metatarsal	C	
31225	Removal of upper jaw	C	
31230	Removal of upper jaw	C	
31290	Nasal/sinus endoscopy, surg	C	
31291	Nasal/sinus endoscopy, surg	C	
31360	Removal of larynx	C	
31365	Removal of larynx	C	
31367	Partial removal of larynx	C	
31368	Partial removal of larynx	C	
31370	Partial removal of larynx	C	
31375	Partial removal of larynx	C	
31380	Partial removal of larynx	C	
31382	Partial removal of larynx	C	
31390	Removal of larynx & pharynx	C	
31395	Reconstruct larynx & pharynx	C	
31584	Treat larynx fracture	C	
31587	Revision of larynx	C	
31725	Clearance of airways	C	
31760	Repair of windpipe	C	
31766	Reconstruction of windpipe	C	
31770	Repair/graft of bronchus	C	
31775	Reconstruct bronchus	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
31780	Reconstruct windpipe	C	
31781	Reconstruct windpipe	C	
31786	Remove windpipe lesion	C	
31800	Repair of windpipe injury	C	
31805	Repair of windpipe injury	C	
32035	Exploration of chest	C	
32036	Exploration of chest	C	
32095	Biopsy through chest wall	C	
32100	Exploration/biopsy of chest	C	
32110	Explore/repair chest	C	
32120	Re-exploration of chest	C	
32124	Explore chest free adhesions	C	
32140	Removal of lung lesion(s)	C	
32141	Remove/treat lung lesions	C	
32150	Removal of lung lesion(s)	C	
32151	Remove lung foreign body	C	
32160	Open chest heart massage	C	
32200	Drain, open, lung lesion	C	
32215	Treat chest lining	C	
32220	Release of lung	C	
32225	Partial release of lung	C	
32310	Removal of chest lining	C	
32320	Free/remove chest lining	C	
32402	Open biopsy chest lining	C	
32440	Removal of lung	C	
32442	Sleeve pneumonectomy	C	
32445	Removal of lung	C	
32480	Partial removal of lung	C	
32482	Bilobectomy	C	
32484	Segmentectomy	C	
32486	Sleeve lobectomy	C	
32488	Completion pneumonectomy	C	
32491	Lung volume reduction	C	
32500	Partial removal of lung	C	
32501	Repair bronchus add-on	C	
32503	Resect apical lung tumor	C	
32504	Resect apical lung tum/chest	C	
32540	Removal of lung lesion	C	
32650	Thoracoscopy, surgical	C	
32651	Thoracoscopy, surgical	C	
32652	Thoracoscopy, surgical	C	
32653	Thoracoscopy, surgical	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
32654	Thoracoscopy, surgical	C	
32655	Thoracoscopy, surgical	C	
32656	Thoracoscopy, surgical	C	
32657	Thoracoscopy, surgical	C	
32658	Thoracoscopy, surgical	C	
32659	Thoracoscopy, surgical	C	
32660	Thoracoscopy, surgical	C	
32661	Thoracoscopy, surgical	C	
32662	Thoracoscopy, surgical	C	
32663	Thoracoscopy, surgical	C	
32664	Thoracoscopy, surgical	C	
32665	Thoracoscopy, surgical	C	
32800	Repair lung hernia	C	
32810	Close chest after drainage	C	
32815	Close bronchial fistula	C	
32820	Reconstruct injured chest	C	
32850	Donor pneumonectomy	C	
32851	Lung transplant, single	C	
32852	Lung transplant with bypass	C	
32853	Lung transplant, double	C	
32854	Lung transplant with bypass	C	
32855	Prepare donor lung, single	C	
32856	Prepare donor lung, double	C	
32900	Removal of rib(s)	C	
32905	Revise & repair chest wall	C	
32906	Revise & repair chest wall	C	
32940	Revision of lung	C	
32997	Total lung lavage	C	
33015	Incision of heart sac	C	
33020	Incision of heart sac	C	
33025	Incision of heart sac	C	
33030	Partial removal of heart sac	C	
33031	Partial removal of heart sac	C	
33050	Removal of heart sac lesion	C	
33120	Removal of heart lesion	C	
33130	Removal of heart lesion	C	
33140	Heart revascularize (tmr)	C	
33141	Heart tmr w/other procedure	C	
33202	Insert epicard eltrd, open	C	
33203	Insert epicard eltrd, endo	C	
33236	Remove electrode/thoracotomy	C	
33237	Remove electrode/thoracotomy	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
33238	Remove electrode/thoracotomy	C	
33243	Remove eltrd/thoracotomy	C	
33250	Ablate heart dysrhythm focus	C	
33251	Ablate heart dysrhythm focus	C	
33254	Ablate atria, lmtd	C	
33255	Ablate atria w/o bypass, ext	C	
33256	Ablate atria w/bypass, exten	C	
33257	Ablate atria, lmtd, add-on	C	
33258	Ablate atria, x10sv, add-on	C	
33259	Ablate atria w/bypass add-on	C	
33261	Ablate heart dysrhythm focus	C	
33265	Ablate atria, lmtd, endo	C	
33266	Ablate atria, x10sv, endo	C	
33300	Repair of heart wound	C	
33305	Repair of heart wound	C	
33310	Exploratory heart surgery	C	
33315	Exploratory heart surgery	C	
33320	Repair major blood vessel(s)	C	
33321	Repair major vessel	C	
33322	Repair major blood vessel(s)	C	
33330	Insert major vessel graft	C	
33332	Insert major vessel graft	C	
33335	Insert major vessel graft	C	
33400	Repair of aortic valve	C	
33401	Valvuloplasty, open	C	
33403	Valvuloplasty, w/cp bypass	C	
33404	Prepare heart-aorta conduit	C	
33405	Replacement of aortic valve	C	
33406	Replacement of aortic valve	C	
33410	Replacement of aortic valve	C	
33411	Replacement of aortic valve	C	
33412	Replacement of aortic valve	C	
33413	Replacement of aortic valve	C	
33414	Repair of aortic valve	C	
33415	Revision, subvalvular tissue	C	
33416	Revise ventricle muscle	C	
33417	Repair of aortic valve	C	
33420	Revision of mitral valve	C	
33422	Revision of mitral valve	C	
33425	Repair of mitral valve	C	
33426	Repair of mitral valve	C	
33427	Repair of mitral valve	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
33430	Replacement of mitral valve	C	
33460	Revision of tricuspid valve	C	
33463	Valvuloplasty, tricuspid	C	
33464	Valvuloplasty, tricuspid	C	
33465	Replace tricuspid valve	C	
33468	Revision of tricuspid valve	C	
33470	Revision of pulmonary valve	C	
33471	Valvotomy, pulmonary valve	C	
33472	Revision of pulmonary valve	C	
33474	Revision of pulmonary valve	C	
33475	Replacement, pulmonary valve	C	
33476	Revision of heart chamber	C	
33478	Revision of heart chamber	C	
33496	Repair, prosth valve clot	C	
33500	Repair heart vessel fistula	C	
33501	Repair heart vessel fistula	C	
33502	Coronary artery correction	C	
33503	Coronary artery graft	C	
33504	Coronary artery graft	C	
33505	Repair artery w/tunnel	C	
33506	Repair artery, translocation	C	
33507	Repair art, intramural	C	
33510	CABG, vein, single	C	
33511	CABG, vein, two	C	
33512	CABG, vein, three	C	
33513	CABG, vein, four	C	
33514	CABG, vein, five	C	
33516	Cabg, vein, six or more	C	
33517	CABG, artery-vein, single	C	
33518	CABG, artery-vein, two	C	
33519	CABG, artery-vein, three	C	
33521	CABG, artery-vein, four	C	
33522	CABG, artery-vein, five	C	
33523	Cabg, art-vein, six or more	C	
33530	Coronary artery, bypass/reop	C	
33533	CABG, arterial, single	C	
33534	CABG, arterial, two	C	
33535	CABG, arterial, three	C	
33536	Cabg, arterial, four or more	C	
33542	Removal of heart lesion	C	
33545	Repair of heart damage	C	
33548	Restore/remodel, ventricle	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
33572	Open coronary endarterectomy	C	
33600	Closure of valve	C	
33602	Closure of valve	C	
33606	Anastomosis/artery-aorta	C	
33608	Repair anomaly w/conduit	C	
33610	Repair by enlargement	C	
33611	Repair double ventricle	C	
33612	Repair double ventricle	C	
33615	Repair, modified fontan	C	
33617	Repair single ventricle	C	
33619	Repair single ventricle	C	
33641	Repair heart septum defect	C	
33645	Revision of heart veins	C	
33647	Repair heart septum defects	C	
33660	Repair of heart defects	C	
33665	Repair of heart defects	C	
33670	Repair of heart chambers	C	
33675	Close mult vsd	C	
33676	Close mult vsd w/resection	C	
33677	Cl mult vsd w/rem pul band	C	
33681	Repair heart septum defect	C	
33684	Repair heart septum defect	C	
33688	Repair heart septum defect	C	
33690	Reinforce pulmonary artery	C	
33692	Repair of heart defects	C	
33694	Repair of heart defects	C	
33697	Repair of heart defects	C	
33702	Repair of heart defects	C	
33710	Repair of heart defects	C	
33720	Repair of heart defect	C	
33722	Repair of heart defect	C	
33724	Repair venous anomaly	C	
33726	Repair pul venous stenosis	C	
33730	Repair heart-vein defect(s)	C	
33732	Repair heart-vein defect	C	
33735	Revision of heart chamber	C	
33736	Revision of heart chamber	C	
33737	Revision of heart chamber	C	
33750	Major vessel shunt	C	
33755	Major vessel shunt	C	
33762	Major vessel shunt	C	
33764	Major vessel shunt & graft	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
33766	Major vessel shunt	C	
33767	Major vessel shunt	C	
33768	Cavopulmonary shunting	C	
33770	Repair great vessels defect	C	
33771	Repair great vessels defect	C	
33774	Repair great vessels defect	C	
33775	Repair great vessels defect	C	
33776	Repair great vessels defect	C	
33777	Repair great vessels defect	C	
33778	Repair great vessels defect	C	
33779	Repair great vessels defect	C	
33780	Repair great vessels defect	C	
33781	Repair great vessels defect	C	
33786	Repair arterial trunk	C	
33788	Revision of pulmonary artery	C	
33800	Aortic suspension	C	
33802	Repair vessel defect	C	
33803	Repair vessel defect	C	
33813	Repair septal defect	C	
33814	Repair septal defect	C	
33820	Revise major vessel	C	
33822	Revise major vessel	C	
33824	Revise major vessel	C	
33840	Remove aorta constriction	C	
33845	Remove aorta constriction	C	
33851	Remove aorta constriction	C	
33852	Repair septal defect	C	
33853	Repair septal defect	C	
33860	Ascending aortic graft	C	
33861	Ascending aortic graft	C	
33863	Ascending aortic graft	C	
33864	Ascending aortic graft	C	
33870	Transverse aortic arch graft	C	
33875	Thoracic aortic graft	C	
33877	Thoracoabdominal graft	C	
33880	Endovasc taa repr incl subcl	C	
33881	Endovasc taa repr w/o subcl	C	
33883	Insert endovasc prosth, taa	C	
33884	Endovasc prosth, taa, add-on	C	
33886	Endovasc prosth, delayed	C	
33889	Artery transpose/endovas taa	C	
33891	Car-car bp grft/endovas taa	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
33910	Remove lung artery emboli	C	
33915	Remove lung artery emboli	C	
33916	Surgery of great vessel	C	
33917	Repair pulmonary artery	C	
33920	Repair pulmonary atresia	C	
33922	Transect pulmonary artery	C	
33924	Remove pulmonary shunt	C	
33925	Rpr pul art unifocal w/o cpb	C	
33926	Repr pul art, unifocal w/cpb	C	
33930	Removal of donor heart/lung	C	
33933	Prepare donor heart/lung	C	
33935	Transplantation, heart/lung	C	
33940	Removal of donor heart	C	
33944	Prepare donor heart	C	
33945	Transplantation of heart	C	
33960	External circulation assist	C	
33961	External circulation assist	C	
33967	Insert ia percut device	C	
33968	Remove aortic assist device	C	
33970	Aortic circulation assist	C	
33971	Aortic circulation assist	C	
33973	Insert balloon device	C	
33974	Remove intra-aortic balloon	C	
33975	Implant ventricular device	C	
33976	Implant ventricular device	C	
33977	Remove ventricular device	C	
33978	Remove ventricular device	C	
33979	Insert intracorporeal device	C	
33980	Remove intracorporeal device	C	
34001	Removal of artery clot	C	
34051	Removal of artery clot	C	
34151	Removal of artery clot	C	
34401	Removal of vein clot	C	
34451	Removal of vein clot	C	
34502	Reconstruct vena cava	C	
34800	Endovas aaa repr w/sm tube	C	
34802	Endovas aaa repr w/2-p part	C	
34803	Endovas aaa repr w/3-p part	C	
34804	Endovas aaa repr w/1-p part	C	
34805	Endovas aaa repr w/long tube	C	
34806	Aneurysm press sensor add-on	C	
34808	Endovas iliac a device addon	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
34812	Xpose for endoprosth, femorl	C	
34813	Femoral endovas graft add-on	C	
34820	Xpose for endoprosth, iliac	C	
34825	Endovasc extend prosth, init	C	
34826	Endovasc exten prosth, add'l	C	
34830	Open aortic tube prosth repr	C	
34831	Open aortoiliac prosth repr	C	
34832	Open aortofemor prosth repr	C	
34833	Xpose for endoprosth, iliac	C	
34834	Xpose, endoprosth, brachial	C	
34900	Endovasc iliac repr w/graft	C	
35001	Repair defect of artery	C	
35002	Repair artery rupture, neck	C	
35005	Repair defect of artery	C	
35013	Repair artery rupture, arm	C	
35021	Repair defect of artery	C	
35022	Repair artery rupture, chest	C	
35045	Repair defect of arm artery	C	
35081	Repair defect of artery	C	
35082	Repair artery rupture, aorta	C	
35091	Repair defect of artery	C	
35092	Repair artery rupture, aorta	C	
35102	Repair defect of artery	C	
35103	Repair artery rupture, groin	C	
35111	Repair defect of artery	C	
35112	Repair artery rupture,spleen	C	
35121	Repair defect of artery	C	
35122	Repair artery rupture, belly	C	
35131	Repair defect of artery	C	
35132	Repair artery rupture, groin	C	
35141	Repair defect of artery	C	
35142	Repair artery rupture, thigh	C	
35151	Repair defect of artery	C	
35152	Repair artery rupture, knee	C	
35182	Repair blood vessel lesion	C	
35189	Repair blood vessel lesion	C	
35211	Repair blood vessel lesion	C	
35216	Repair blood vessel lesion	C	
35221	Repair blood vessel lesion	C	
35241	Repair blood vessel lesion	C	
35246	Repair blood vessel lesion	C	
35251	Repair blood vessel lesion	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
35271	Repair blood vessel lesion	C	
35276	Repair blood vessel lesion	C	
35281	Repair blood vessel lesion	C	
35301	Rechanneling of artery	C	
35302	Rechanneling of artery	C	
35303	Rechanneling of artery	C	
35304	Rechanneling of artery	C	
35305	Rechanneling of artery	C	
35306	Rechanneling of artery	C	
35311	Rechanneling of artery	C	
35331	Rechanneling of artery	C	
35341	Rechanneling of artery	C	
35351	Rechanneling of artery	C	
35355	Rechanneling of artery	C	
35361	Rechanneling of artery	C	
35363	Rechanneling of artery	C	
35371	Rechanneling of artery	C	
35372	Rechanneling of artery	C	
35390	Reoperation, carotid add-on	C	
35400	Angioscopy	C	
35450	Repair arterial blockage	C	
35452	Repair arterial blockage	C	
35454	Repair arterial blockage	C	
35456	Repair arterial blockage	C	
35480	Atherectomy, open	C	
35481	Atherectomy, open	C	
35482	Atherectomy, open	C	
35483	Atherectomy, open	C	
35501	Artery bypass graft	C	
35506	Artery bypass graft	C	
35508	Artery bypass graft	C	
35509	Artery bypass graft	C	
35510	Artery bypass graft	C	
35511	Artery bypass graft	C	
35512	Artery bypass graft	C	
35515	Artery bypass graft	C	
35516	Artery bypass graft	C	
35518	Artery bypass graft	C	
35521	Artery bypass graft	C	
35522	Artery bypass graft	C	
35523	Artery bypass graft	C	
35525	Artery bypass graft	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
35526	Artery bypass graft	C	
35531	Artery bypass graft	C	
35533	Artery bypass graft	C	
35535	Artery bypass graft	C	NI
35536	Artery bypass graft	C	
35537	Artery bypass graft	C	
35538	Artery bypass graft	C	
35539	Artery bypass graft	C	
35540	Artery bypass graft	C	
35548	Artery bypass graft	C	
35549	Artery bypass graft	C	
35551	Artery bypass graft	C	
35556	Artery bypass graft	C	
35558	Artery bypass graft	C	
35560	Artery bypass graft	C	
35563	Artery bypass graft	C	
35565	Artery bypass graft	C	
35566	Artery bypass graft	C	
35570	Artery bypass graft	C	NI
35571	Artery bypass graft	C	
35583	Vein bypass graft	C	
35585	Vein bypass graft	C	
35587	Vein bypass graft	C	
35600	Harvest art for cabg add-on	C	
35601	Artery bypass graft	C	
35606	Artery bypass graft	C	
35612	Artery bypass graft	C	
35616	Artery bypass graft	C	
35621	Artery bypass graft	C	
35623	Bypass graft, not vein	C	
35626	Artery bypass graft	C	
35631	Artery bypass graft	C	
35632	Artery bypass graft	C	NI
35633	Artery bypass graft	C	NI
35634	Artery bypass graft	C	NI
35636	Artery bypass graft	C	
35637	Artery bypass graft	C	
35638	Artery bypass graft	C	
35642	Artery bypass graft	C	
35645	Artery bypass graft	C	
35646	Artery bypass graft	C	
35647	Artery bypass graft	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
35650	Artery bypass graft	C	
35651	Artery bypass graft	C	
35654	Artery bypass graft	C	
35656	Artery bypass graft	C	
35661	Artery bypass graft	C	
35663	Artery bypass graft	C	
35665	Artery bypass graft	C	
35666	Artery bypass graft	C	
35671	Artery bypass graft	C	
35681	Composite bypass graft	C	
35682	Composite bypass graft	C	
35683	Composite bypass graft	C	
35691	Arterial transposition	C	
35693	Arterial transposition	C	
35694	Arterial transposition	C	
35695	Arterial transposition	C	
35697	Reimplant artery each	C	
35700	Reoperation, bypass graft	C	
35701	Exploration, carotid artery	C	
35721	Exploration, femoral artery	C	
35741	Exploration popliteal artery	C	
35800	Explore neck vessels	C	
35820	Explore chest vessels	C	
35840	Explore abdominal vessels	C	
35870	Repair vessel graft defect	C	
35901	Excision, graft, neck	C	
35905	Excision, graft, thorax	C	
35907	Excision, graft, abdomen	C	
36660	Insertion catheter, artery	C	
36822	Insertion of cannula(s)	C	
36823	Insertion of cannula(s)	C	
37140	Revision of circulation	C	
37145	Revision of circulation	C	
37160	Revision of circulation	C	
37180	Revision of circulation	C	
37181	Splice spleen/kidney veins	C	
37182	Insert hepatic shunt (tips)	C	
37215	Transcath stent, cca w/eps	C	
37616	Ligation of chest artery	C	
37617	Ligation of abdomen artery	C	
37618	Ligation of extremity artery	C	
37660	Revision of major vein	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
37788	Revascularization, penis	C	
38100	Removal of spleen, total	C	
38101	Removal of spleen, partial	C	
38102	Removal of spleen, total	C	
38115	Repair of ruptured spleen	C	
38380	Thoracic duct procedure	C	
38381	Thoracic duct procedure	C	
38382	Thoracic duct procedure	C	
38562	Removal, pelvic lymph nodes	C	
38564	Removal, abdomen lymph nodes	C	
38724	Removal of lymph nodes, neck	C	
38746	Remove thoracic lymph nodes	C	
38747	Remove abdominal lymph nodes	C	
38765	Remove groin lymph nodes	C	
38770	Remove pelvis lymph nodes	C	
38780	Remove abdomen lymph nodes	C	
39000	Exploration of chest	C	
39010	Exploration of chest	C	
39200	Removal chest lesion	C	
39220	Removal chest lesion	C	
39499	Chest procedure	C	
39501	Repair diaphragm laceration	C	
39502	Repair paraesophageal hernia	C	
39503	Repair of diaphragm hernia	C	
39520	Repair of diaphragm hernia	C	
39530	Repair of diaphragm hernia	C	
39531	Repair of diaphragm hernia	C	
39540	Repair of diaphragm hernia	C	
39541	Repair of diaphragm hernia	C	
39545	Revision of diaphragm	C	
39560	Resect diaphragm, simple	C	
39561	Resect diaphragm, complex	C	
39599	Diaphragm surgery procedure	C	
41130	Partial removal of tongue	C	
41135	Tongue and neck surgery	C	
41140	Removal of tongue	C	
41145	Tongue removal, neck surgery	C	
41150	Tongue, mouth, jaw surgery	C	
41153	Tongue, mouth, neck surgery	C	
41155	Tongue, jaw, & neck surgery	C	
42426	Excise parotid gland/lesion	C	
42845	Extensive surgery of throat	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
42894	Revision of pharyngeal walls	C	
42953	Repair throat, esophagus	C	
42961	Control throat bleeding	C	
42971	Control nose/throat bleeding	C	
43045	Incision of esophagus	C	
43100	Excision of esophagus lesion	C	
43101	Excision of esophagus lesion	C	
43107	Removal of esophagus	C	
43108	Removal of esophagus	C	
43112	Removal of esophagus	C	
43113	Removal of esophagus	C	
43116	Partial removal of esophagus	C	
43117	Partial removal of esophagus	C	
43118	Partial removal of esophagus	C	
43121	Partial removal of esophagus	C	
43122	Partial removal of esophagus	C	
43123	Partial removal of esophagus	C	
43124	Removal of esophagus	C	
43135	Removal of esophagus pouch	C	
43279	Lap myotomy, heller	C	NI
43300	Repair of esophagus	C	
43305	Repair esophagus and fistula	C	
43310	Repair of esophagus	C	
43312	Repair esophagus and fistula	C	
43313	Esophagoplasty congenital	C	
43314	Tracheo-esophagoplasty cong	C	
43320	Fuse esophagus & stomach	C	
43324	Revise esophagus & stomach	C	
43325	Revise esophagus & stomach	C	
43326	Revise esophagus & stomach	C	
43330	Repair of esophagus	C	
43331	Repair of esophagus	C	
43340	Fuse esophagus & intestine	C	
43341	Fuse esophagus & intestine	C	
43350	Surgical opening, esophagus	C	
43351	Surgical opening, esophagus	C	
43352	Surgical opening, esophagus	C	
43360	Gastrointestinal repair	C	
43361	Gastrointestinal repair	C	
43400	Ligate esophagus veins	C	
43401	Esophagus surgery for veins	C	
43405	Ligate/staple esophagus	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
43410	Repair esophagus wound	C	
43415	Repair esophagus wound	C	
43425	Repair esophagus opening	C	
43460	Pressure treatment esophagus	C	
43496	Free jejunum flap, microvasc	C	
43500	Surgical opening of stomach	C	
43501	Surgical repair of stomach	C	
43502	Surgical repair of stomach	C	
43520	Incision of pyloric muscle	C	
43605	Biopsy of stomach	C	
43610	Excision of stomach lesion	C	
43611	Excision of stomach lesion	C	
43620	Removal of stomach	C	
43621	Removal of stomach	C	
43622	Removal of stomach	C	
43631	Removal of stomach, partial	C	
43632	Removal of stomach, partial	C	
43633	Removal of stomach, partial	C	
43634	Removal of stomach, partial	C	
43635	Removal of stomach, partial	C	
43640	Vagotomy & pylorus repair	C	
43641	Vagotomy & pylorus repair	C	
43644	Lap gastric bypass/roux-en-y	C	
43645	Lap gastr bypass incl smll i	C	
43770	Lap place gastr adj device	C	
43771	Lap revise gastr adj device	C	
43772	Lap rmvl gastr adj device	C	
43773	Lap replace gastr adj device	C	
43774	Lap rmvl gastr adj all parts	C	
43800	Reconstruction of pylorus	C	
43810	Fusion of stomach and bowel	C	
43820	Fusion of stomach and bowel	C	
43825	Fusion of stomach and bowel	C	
43832	Place gastrostomy tube	C	
43840	Repair of stomach lesion	C	
43843	Gastroplasty w/o v-band	C	
43845	Gastroplasty duodenal switch	C	
43846	Gastric bypass for obesity	C	
43847	Gastric bypass incl small i	C	
43848	Revision gastroplasty	C	
43850	Revise stomach-bowel fusion	C	
43855	Revise stomach-bowel fusion	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
43860	Revise stomach-bowel fusion	C	
43865	Revise stomach-bowel fusion	C	
43880	Repair stomach-bowel fistula	C	
43881	Impl/redo electrd, antrum	C	
43882	Revise/remove electrd antrum	C	
44005	Freeing of bowel adhesion	C	
44010	Incision of small bowel	C	
44015	Insert needle cath bowel	C	
44020	Explore small intestine	C	
44021	Decompress small bowel	C	
44025	Incision of large bowel	C	
44050	Reduce bowel obstruction	C	
44055	Correct malrotation of bowel	C	
44110	Excise intestine lesion(s)	C	
44111	Excision of bowel lesion(s)	C	
44120	Removal of small intestine	C	
44121	Removal of small intestine	C	
44125	Removal of small intestine	C	
44126	Enterectomy w/o taper, cong	C	
44127	Enterectomy w/taper, cong	C	
44128	Enterectomy cong, add-on	C	
44130	Bowel to bowel fusion	C	
44132	Enterectomy, cadaver donor	C	
44133	Enterectomy, live donor	C	
44135	Intestine transplnt, cadaver	C	
44136	Intestine transplant, live	C	
44137	Remove intestinal allograft	C	
44139	Mobilization of colon	C	
44140	Partial removal of colon	C	
44141	Partial removal of colon	C	
44143	Partial removal of colon	C	
44144	Partial removal of colon	C	
44145	Partial removal of colon	C	
44146	Partial removal of colon	C	
44147	Partial removal of colon	C	
44150	Removal of colon	C	
44151	Removal of colon/ileostomy	C	
44155	Removal of colon/ileostomy	C	
44156	Removal of colon/ileostomy	C	
44157	Colectomy w/ileoanal anast	C	
44158	Colectomy w/neo-rectum pouch	C	
44160	Removal of colon	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
44187	Lap, ileo/jejuno-stomy	C	
44188	Lap, colostomy	C	
44202	Lap, enterectomy	C	
44203	Lap resect s/intestine, addl	C	
44204	Laparo partial colectomy	C	
44205	Lap colectomy part w/ileum	C	
44210	Laparo total proctocolectomy	C	
44211	Lap colectomy w/proctectomy	C	
44212	Laparo total proctocolectomy	C	
44227	Lap, close enterostomy	C	
44300	Open bowel to skin	C	
44310	Ileostomy/jejunostomy	C	
44314	Revision of ileostomy	C	
44316	Devise bowel pouch	C	
44320	Colostomy	C	
44322	Colostomy with biopsies	C	
44345	Revision of colostomy	C	
44346	Revision of colostomy	C	
44602	Suture, small intestine	C	
44603	Suture, small intestine	C	
44604	Suture, large intestine	C	
44605	Repair of bowel lesion	C	
44615	Intestinal stricturoplasty	C	
44620	Repair bowel opening	C	
44625	Repair bowel opening	C	
44626	Repair bowel opening	C	
44640	Repair bowel-skin fistula	C	
44650	Repair bowel fistula	C	
44660	Repair bowel-bladder fistula	C	
44661	Repair bowel-bladder fistula	C	
44680	Surgical revision, intestine	C	
44700	Suspend bowel w/prosthesis	C	
44715	Prepare donor intestine	C	
44720	Prep donor intestine/venous	C	
44721	Prep donor intestine/artery	C	
44800	Excision of bowel pouch	C	
44820	Excision of mesentery lesion	C	
44850	Repair of mesentery	C	
44899	Bowel surgery procedure	C	
44900	Drain app abscess, open	C	
44950	Appendectomy	C	
44955	Appendectomy add-on	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
44960	Appendectomy	C	
45110	Removal of rectum	C	
45111	Partial removal of rectum	C	
45112	Removal of rectum	C	
45113	Partial proctectomy	C	
45114	Partial removal of rectum	C	
45116	Partial removal of rectum	C	
45119	Remove rectum w/reservoir	C	
45120	Removal of rectum	C	
45121	Removal of rectum and colon	C	
45123	Partial proctectomy	C	
45126	Pelvic exenteration	C	
45130	Excision of rectal prolapse	C	
45135	Excision of rectal prolapse	C	
45136	Excise ileoanal reservior	C	
45395	Lap, removal of rectum	C	
45397	Lap, remove rectum w/pouch	C	
45400	Laparoscopic proc	C	
45402	Lap proctopexy w/sig resect	C	
45540	Correct rectal prolapse	C	
45550	Repair rectum/remove sigmoid	C	
45562	Exploration/repair of rectum	C	
45563	Exploration/repair of rectum	C	
45800	Repair rect/bladder fistula	C	
45805	Repair fistula w/colostomy	C	
45820	Repair rectourethral fistula	C	
45825	Repair fistula w/colostomy	C	
46705	Repair of anal stricture	C	
46710	Repr per/vag pouch sngl proc	C	
46712	Repr per/vag pouch dbl proc	C	
46715	Rep perf anoper fistu	C	
46716	Rep perf anoper/vestib fistu	C	
46730	Construction of absent anus	C	
46735	Construction of absent anus	C	
46740	Construction of absent anus	C	
46742	Repair of imperforated anus	C	
46744	Repair of cloacal anomaly	C	
46746	Repair of cloacal anomaly	C	
46748	Repair of cloacal anomaly	C	
46751	Repair of anal sphincter	C	
47010	Open drainage, liver lesion	C	
47015	Inject/aspirate liver cyst	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
47100	Wedge biopsy of liver	C	
47120	Partial removal of liver	C	
47122	Extensive removal of liver	C	
47125	Partial removal of liver	C	
47130	Partial removal of liver	C	
47133	Removal of donor liver	C	
47135	Transplantation of liver	C	
47136	Transplantation of liver	C	
47140	Partial removal, donor liver	C	
47141	Partial removal, donor liver	C	
47142	Partial removal, donor liver	C	
47143	Prep donor liver, whole	C	
47144	Prep donor liver, 3-segment	C	
47145	Prep donor liver, lobe split	C	
47146	Prep donor liver/venous	C	
47147	Prep donor liver/arterial	C	
47300	Surgery for liver lesion	C	
47350	Repair liver wound	C	
47360	Repair liver wound	C	
47361	Repair liver wound	C	
47362	Repair liver wound	C	
47380	Open ablate liver tumor rf	C	
47381	Open ablate liver tumor cryo	C	
47400	Incision of liver duct	C	
47420	Incision of bile duct	C	
47425	Incision of bile duct	C	
47460	Incise bile duct sphincter	C	
47480	Incision of gallbladder	C	
47550	Bile duct endoscopy add-on	C	
47570	Laparo cholecystoenterostomy	C	
47600	Removal of gallbladder	C	
47605	Removal of gallbladder	C	
47610	Removal of gallbladder	C	
47612	Removal of gallbladder	C	
47620	Removal of gallbladder	C	
47700	Exploration of bile ducts	C	
47701	Bile duct revision	C	
47711	Excision of bile duct tumor	C	
47712	Excision of bile duct tumor	C	
47715	Excision of bile duct cyst	C	
47720	Fuse gallbladder & bowel	C	
47721	Fuse upper gi structures	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
47740	Fuse gallbladder & bowel	C	
47741	Fuse gallbladder & bowel	C	
47760	Fuse bile ducts and bowel	C	
47765	Fuse liver ducts & bowel	C	
47780	Fuse bile ducts and bowel	C	
47785	Fuse bile ducts and bowel	C	
47800	Reconstruction of bile ducts	C	
47801	Placement, bile duct support	C	
47802	Fuse liver duct & intestine	C	
47900	Suture bile duct injury	C	
48000	Drainage of abdomen	C	
48001	Placement of drain, pancreas	C	
48020	Removal of pancreatic stone	C	
48100	Biopsy of pancreas, open	C	
48105	Resect/debride pancreas	C	
48120	Removal of pancreas lesion	C	
48140	Partial removal of pancreas	C	
48145	Partial removal of pancreas	C	
48146	Pancreatectomy	C	
48148	Removal of pancreatic duct	C	
48150	Partial removal of pancreas	C	
48152	Pancreatectomy	C	
48153	Pancreatectomy	C	
48154	Pancreatectomy	C	
48155	Removal of pancreas	C	
48400	Injection, intraop add-on	C	
48500	Surgery of pancreatic cyst	C	
48510	Drain pancreatic pseudocyst	C	
48520	Fuse pancreas cyst and bowel	C	
48540	Fuse pancreas cyst and bowel	C	
48545	Pancreatorrhaphy	C	
48547	Duodenal exclusion	C	
48548	Fuse pancreas and bowel	C	
48551	Prep donor pancreas	C	
48552	Prep donor pancreas/venous	C	
48554	Transpl allograft pancreas	C	
48556	Removal, allograft pancreas	C	
49000	Exploration of abdomen	C	
49002	Reopening of abdomen	C	
49010	Exploration behind abdomen	C	
49020	Drain abdominal abscess	C	
49040	Drain, open, abdom abscess	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
49060	Drain, open, retrop abscess	C	
49062	Drain to peritoneal cavity	C	
49203	Exc abd tum 5 cm or less	C	
49204	Exc abd tum over 5 cm	C	
49205	Exc abd tum over 10 cm	C	
49215	Excise sacral spine tumor	C	
49220	Multiple surgery, abdomen	C	
49255	Removal of omentum	C	
49425	Insert abdomen-venous drain	C	
49428	Ligation of shunt	C	
49605	Repair umbilical lesion	C	
49606	Repair umbilical lesion	C	
49610	Repair umbilical lesion	C	
49611	Repair umbilical lesion	C	
49900	Repair of abdominal wall	C	
49904	Omental flap, extra-abdom	C	
49905	Omental flap, intra-abdom	C	
49906	Free omental flap, microvasc	C	
50010	Exploration of kidney	C	
50040	Drainage of kidney	C	
50045	Exploration of kidney	C	
50060	Removal of kidney stone	C	
50065	Incision of kidney	C	
50070	Incision of kidney	C	
50075	Removal of kidney stone	C	
50100	Revise kidney blood vessels	C	
50120	Exploration of kidney	C	
50125	Explore and drain kidney	C	
50130	Removal of kidney stone	C	
50135	Exploration of kidney	C	
50205	Biopsy of kidney	C	
50220	Remove kidney, open	C	
50225	Removal kidney open, complex	C	
50230	Removal kidney open, radical	C	
50234	Removal of kidney & ureter	C	
50236	Removal of kidney & ureter	C	
50240	Partial removal of kidney	C	
50250	Cryoablate renal mass open	C	
50280	Removal of kidney lesion	C	
50290	Removal of kidney lesion	C	
50300	Remove cadaver donor kidney	C	
50320	Remove kidney, living donor	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
50323	Prep cadaver renal allograft	C	
50325	Prep donor renal graft	C	
50327	Prep renal graft/venous	C	
50328	Prep renal graft/arterial	C	
50329	Prep renal graft/ureteral	C	
50340	Removal of kidney	C	
50360	Transplantation of kidney	C	
50365	Transplantation of kidney	C	
50370	Remove transplanted kidney	C	
50380	Reimplantation of kidney	C	
50400	Revision of kidney/ureter	C	
50405	Revision of kidney/ureter	C	
50500	Repair of kidney wound	C	
50520	Close kidney-skin fistula	C	
50525	Repair renal-abdomen fistula	C	
50526	Repair renal-abdomen fistula	C	
50540	Revision of horseshoe kidney	C	
50545	Laparo radical nephrectomy	C	
50546	Laparoscopic nephrectomy	C	
50547	Laparo removal donor kidney	C	
50548	Laparo remove w/ureter	C	
50600	Exploration of ureter	C	
50605	Insert ureteral support	C	
50610	Removal of ureter stone	C	
50620	Removal of ureter stone	C	
50630	Removal of ureter stone	C	
50650	Removal of ureter	C	
50660	Removal of ureter	C	
50700	Revision of ureter	C	
50715	Release of ureter	C	
50722	Release of ureter	C	
50725	Release/revise ureter	C	
50728	Revise ureter	C	
50740	Fusion of ureter & kidney	C	
50750	Fusion of ureter & kidney	C	
50760	Fusion of ureters	C	
50770	Splicing of ureters	C	
50780	Reimplant ureter in bladder	C	
50782	Reimplant ureter in bladder	C	
50783	Reimplant ureter in bladder	C	
50785	Reimplant ureter in bladder	C	
50800	Implant ureter in bowel	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
50810	Fusion of ureter & bowel	C	
50815	Urine shunt to intestine	C	
50820	Construct bowel bladder	C	
50825	Construct bowel bladder	C	
50830	Revise urine flow	C	
50840	Replace ureter by bowel	C	
50845	Appendico-vesicostomy	C	
50860	Transplant ureter to skin	C	
50900	Repair of ureter	C	
50920	Closure ureter/skin fistula	C	
50930	Closure ureter/bowel fistula	C	
50940	Release of ureter	C	
51060	Removal of ureter stone	C	
51525	Removal of bladder lesion	C	
51530	Removal of bladder lesion	C	
51550	Partial removal of bladder	C	
51555	Partial removal of bladder	C	
51565	Revise bladder & ureter(s)	C	
51570	Removal of bladder	C	
51575	Removal of bladder & nodes	C	
51580	Remove bladder/revise tract	C	
51585	Removal of bladder & nodes	C	
51590	Remove bladder/revise tract	C	
51595	Remove bladder/revise tract	C	
51596	Remove bladder/create pouch	C	
51597	Removal of pelvic structures	C	
51800	Revision of bladder/urethra	C	
51820	Revision of urinary tract	C	
51840	Attach bladder/urethra	C	
51841	Attach bladder/urethra	C	
51865	Repair of bladder wound	C	
51900	Repair bladder/vagina lesion	C	
51920	Close bladder-uterus fistula	C	
51925	Hysterectomy/bladder repair	C	
51940	Correction of bladder defect	C	
51960	Revision of bladder & bowel	C	
51980	Construct bladder opening	C	
53415	Reconstruction of urethra	C	
53448	Remov/replc ur sphinctr comp	C	
54125	Removal of penis	C	
54130	Remove penis & nodes	C	
54135	Remove penis & nodes	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
54390	Repair penis and bladder	C	
54411	Remov/replc penis pros, comp	C	
54417	Remv/replc penis pros, compl	C	
54430	Revision of penis	C	
54650	Orchiopexy (Fowler-Stephens)	C	
55605	Incise sperm duct pouch	C	
55650	Remove sperm duct pouch	C	
55801	Removal of prostate	C	
55810	Extensive prostate surgery	C	
55812	Extensive prostate surgery	C	
55815	Extensive prostate surgery	C	
55821	Removal of prostate	C	
55831	Removal of prostate	C	
55840	Extensive prostate surgery	C	
55842	Extensive prostate surgery	C	
55845	Extensive prostate surgery	C	
55862	Extensive prostate surgery	C	
55865	Extensive prostate surgery	C	
55866	Laparo radical prostatectomy	C	
56630	Extensive vulva surgery	C	
56631	Extensive vulva surgery	C	
56632	Extensive vulva surgery	C	
56633	Extensive vulva surgery	C	
56634	Extensive vulva surgery	C	
56637	Extensive vulva surgery	C	
56640	Extensive vulva surgery	C	
57110	Remove vagina wall, complete	C	
57111	Remove vagina tissue, compl	C	
57112	Vaginectomy w/nodes, compl	C	
57270	Repair of bowel pouch	C	
57280	Suspension of vagina	C	
57296	Revise vag graft, open abd	C	
57305	Repair rectum-vagina fistula	C	
57307	Fistula repair & colostomy	C	
57308	Fistula repair, transperine	C	
57311	Repair urethrovaginal lesion	C	
57531	Removal of cervix, radical	C	
57540	Removal of residual cervix	C	
57545	Remove cervix/repair pelvis	C	
58140	Myomectomy abdom method	C	
58146	Myomectomy abdom complex	C	
58150	Total hysterectomy	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
58152	Total hysterectomy	C	
58180	Partial hysterectomy	C	
58200	Extensive hysterectomy	C	
58210	Extensive hysterectomy	C	
58240	Removal of pelvis contents	C	
58267	Vag hyst w/urinary repair	C	
58275	Hysterectomy/revise vagina	C	
58280	Hysterectomy/revise vagina	C	
58285	Extensive hysterectomy	C	
58293	Vag hyst w/uro repair, compl	C	
58400	Suspension of uterus	C	
58410	Suspension of uterus	C	
58520	Repair of ruptured uterus	C	
58540	Revision of uterus	C	
58548	Lap radical hyst	C	
58605	Division of fallopian tube	C	
58611	Ligate oviduct(s) add-on	C	
58700	Removal of fallopian tube	C	
58720	Removal of ovary/tube(s)	C	
58740	Adhesiolysis tube, ovary	C	
58750	Repair oviduct	C	
58752	Revise ovarian tube(s)	C	
58760	Fimbrioplasty	C	
58822	Drain ovary abscess, percut	C	
58825	Transposition, ovary(s)	C	
58940	Removal of ovary(s)	C	
58943	Removal of ovary(s)	C	
58950	Resect ovarian malignancy	C	
58951	Resect ovarian malignancy	C	
58952	Resect ovarian malignancy	C	
58953	Tah, rad dissect for debulk	C	
58954	Tah rad debulk/lymph remove	C	
58956	Bso, omentectomy w/tah	C	
58957	Resect recurrent gyn mal	C	
58958	Resect recur gyn mal w/lym	C	
58960	Exploration of abdomen	C	
59120	Treat ectopic pregnancy	C	
59121	Treat ectopic pregnancy	C	
59130	Treat ectopic pregnancy	C	
59135	Treat ectopic pregnancy	C	
59136	Treat ectopic pregnancy	C	
59140	Treat ectopic pregnancy	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
59325	Revision of cervix	C	
59350	Repair of uterus	C	
59514	Cesarean delivery only	C	
59525	Remove uterus after cesarean	C	
59620	Attempted vbac delivery only	C	
59830	Treat uterus infection	C	
59850	Abortion	C	
59851	Abortion	C	
59852	Abortion	C	
59855	Abortion	C	
59856	Abortion	C	
59857	Abortion	C	
60254	Extensive thyroid surgery	C	
60270	Removal of thyroid	C	
60505	Explore parathyroid glands	C	
60521	Removal of thymus gland	C	
60522	Removal of thymus gland	C	
60540	Explore adrenal gland	C	
60545	Explore adrenal gland	C	
60600	Remove carotid body lesion	C	
60605	Remove carotid body lesion	C	
60650	Laparoscopy adrenalectomy	C	
61105	Twist drill hole	C	
61107	Drill skull for implantation	C	
61108	Drill skull for drainage	C	
61120	Burr hole for puncture	C	
61140	Pierce skull for biopsy	C	
61150	Pierce skull for drainage	C	
61151	Pierce skull for drainage	C	
61154	Pierce skull & remove clot	C	
61156	Pierce skull for drainage	C	
61210	Pierce skull, implant device	C	
61250	Pierce skull & explore	C	
61253	Pierce skull & explore	C	
61304	Open skull for exploration	C	
61305	Open skull for exploration	C	
61312	Open skull for drainage	C	
61313	Open skull for drainage	C	
61314	Open skull for drainage	C	
61315	Open skull for drainage	C	
61316	Implt cran bone flap to abdo	C	
61320	Open skull for drainage	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
61321	Open skull for drainage	C	
61322	Decompressive craniotomy	C	
61323	Decompressive lobectomy	C	
61332	Explore/biopsy eye socket	C	
61333	Explore orbit/remove lesion	C	
61340	Subtemporal decompression	C	
61343	Incise skull (press relief)	C	
61345	Relieve cranial pressure	C	
61440	Incise skull for surgery	C	
61450	Incise skull for surgery	C	
61458	Incise skull for brain wound	C	
61460	Incise skull for surgery	C	
61470	Incise skull for surgery	C	
61480	Incise skull for surgery	C	
61490	Incise skull for surgery	C	
61500	Removal of skull lesion	C	
61501	Remove infected skull bone	C	
61510	Removal of brain lesion	C	
61512	Remove brain lining lesion	C	
61514	Removal of brain abscess	C	
61516	Removal of brain lesion	C	
61517	Implt brain chemotx add-on	C	
61518	Removal of brain lesion	C	
61519	Remove brain lining lesion	C	
61520	Removal of brain lesion	C	
61521	Removal of brain lesion	C	
61522	Removal of brain abscess	C	
61524	Removal of brain lesion	C	
61526	Removal of brain lesion	C	
61530	Removal of brain lesion	C	
61531	Implant brain electrodes	C	
61533	Implant brain electrodes	C	
61534	Removal of brain lesion	C	
61535	Remove brain electrodes	C	
61536	Removal of brain lesion	C	
61537	Removal of brain tissue	C	
61538	Removal of brain tissue	C	
61539	Removal of brain tissue	C	
61540	Removal of brain tissue	C	
61541	Incision of brain tissue	C	
61542	Removal of brain tissue	C	
61543	Removal of brain tissue	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
61544	Remove & treat brain lesion	C	
61545	Excision of brain tumor	C	
61546	Removal of pituitary gland	C	
61548	Removal of pituitary gland	C	
61550	Release of skull seams	C	
61552	Release of skull seams	C	
61556	Incise skull/sutures	C	
61557	Incise skull/sutures	C	
61558	Excision of skull/sutures	C	
61559	Excision of skull/sutures	C	
61563	Excision of skull tumor	C	
61564	Excision of skull tumor	C	
61566	Removal of brain tissue	C	
61567	Incision of brain tissue	C	
61570	Remove foreign body, brain	C	
61571	Incise skull for brain wound	C	
61575	Skull base/brainstem surgery	C	
61576	Skull base/brainstem surgery	C	
61580	Craniofacial approach, skull	C	
61581	Craniofacial approach, skull	C	
61582	Craniofacial approach, skull	C	
61583	Craniofacial approach, skull	C	
61584	Orbitocranial approach/skull	C	
61585	Orbitocranial approach/skull	C	
61586	Resect nasopharynx, skull	C	
61590	Infratemporal approach/skull	C	
61591	Infratemporal approach/skull	C	
61592	Orbitocranial approach/skull	C	
61595	Transtemporal approach/skull	C	
61596	Transcochlear approach/skull	C	
61597	Transcondylar approach/skull	C	
61598	Transpetrosal approach/skull	C	
61600	Resect/excise cranial lesion	C	
61601	Resect/excise cranial lesion	C	
61605	Resect/excise cranial lesion	C	
61606	Resect/excise cranial lesion	C	
61607	Resect/excise cranial lesion	C	
61608	Resect/excise cranial lesion	C	
61609	Transect artery, sinus	C	
61610	Transect artery, sinus	C	
61611	Transect artery, sinus	C	
61612	Transect artery, sinus	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
61613	Remove aneurysm, sinus	C	
61615	Resect/excise lesion, skull	C	
61616	Resect/excise lesion, skull	C	
61618	Repair dura	C	
61619	Repair dura	C	
61624	Transcath occlusion, cns	C	
61630	Intracranial angioplasty	C	
61635	Intracran angioplsty w/stent	C	
61680	Intracranial vessel surgery	C	
61682	Intracranial vessel surgery	C	
61684	Intracranial vessel surgery	C	
61686	Intracranial vessel surgery	C	
61690	Intracranial vessel surgery	C	
61692	Intracranial vessel surgery	C	
61697	Brain aneurysm repr, complx	C	
61698	Brain aneurysm repr, complx	C	
61700	Brain aneurysm repr, simple	C	
61702	Inner skull vessel surgery	C	
61703	Clamp neck artery	C	
61705	Revise circulation to head	C	
61708	Revise circulation to head	C	
61710	Revise circulation to head	C	
61711	Fusion of skull arteries	C	
61735	Incise skull/brain surgery	C	
61750	Incise skull/brain biopsy	C	
61751	Brain biopsy w/ct/mr guide	C	
61760	Implant brain electrodes	C	
61850	Implant neuroelectrodes	C	CH
61860	Implant neuroelectrodes	C	
61863	Implant neuroelectrode	C	
61864	Implant neuroelectrde, addl	C	
61867	Implant neuroelectrode	C	
61868	Implant neuroelectrde, add'l	C	
61870	Implant neuroelectrodes	C	
61875	Implant neuroelectrodes	C	
62005	Treat skull fracture	C	
62010	Treatment of head injury	C	
62100	Repair brain fluid leakage	C	
62115	Reduction of skull defect	C	
62116	Reduction of skull defect	C	
62117	Reduction of skull defect	C	
62120	Repair skull cavity lesion	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
62121	Incise skull repair	C	
62140	Repair of skull defect	C	
62141	Repair of skull defect	C	
62142	Remove skull plate/flap	C	
62143	Replace skull plate/flap	C	
62145	Repair of skull & brain	C	
62146	Repair of skull with graft	C	
62147	Repair of skull with graft	C	
62148	Retr bone flap to fix skull	C	
62161	Dissect brain w/scope	C	
62162	Remove colloid cyst w/scope	C	
62163	Neuroendoscopy w/fb removal	C	
62164	Remove brain tumor w/scope	C	
62165	Remove pituit tumor w/scope	C	
62180	Establish brain cavity shunt	C	
62190	Establish brain cavity shunt	C	
62192	Establish brain cavity shunt	C	
62200	Establish brain cavity shunt	C	
62201	Brain cavity shunt w/scope	C	
62220	Establish brain cavity shunt	C	
62223	Establish brain cavity shunt	C	
62256	Remove brain cavity shunt	C	
62258	Replace brain cavity shunt	C	
63043	Laminotomy, add'l cervical	C	
63044	Laminotomy, add'l lumbar	C	
63050	Cervical laminoplasty	C	
63051	C-laminoplasty w/graft/plate	C	
63076	Neck spine disk surgery	C	
63077	Spine disk surgery, thorax	C	
63078	Spine disk surgery, thorax	C	
63081	Removal of vertebral body	C	
63082	Remove vertebral body add-on	C	
63085	Removal of vertebral body	C	
63086	Remove vertebral body add-on	C	
63087	Removal of vertebral body	C	
63088	Remove vertebral body add-on	C	
63090	Removal of vertebral body	C	
63091	Remove vertebral body add-on	C	
63101	Removal of vertebral body	C	
63102	Removal of vertebral body	C	
63103	Remove vertebral body add-on	C	
63170	Incise spinal cord tract(s)	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
63172	Drainage of spinal cyst	C	
63173	Drainage of spinal cyst	C	
63180	Revise spinal cord ligaments	C	
63182	Revise spinal cord ligaments	C	
63185	Incise spinal column/nerves	C	
63190	Incise spinal column/nerves	C	
63191	Incise spinal column/nerves	C	
63194	Incise spinal column & cord	C	
63195	Incise spinal column & cord	C	
63196	Incise spinal column & cord	C	
63197	Incise spinal column & cord	C	
63198	Incise spinal column & cord	C	
63199	Incise spinal column & cord	C	
63200	Release of spinal cord	C	
63250	Revise spinal cord vessels	C	
63251	Revise spinal cord vessels	C	
63252	Revise spinal cord vessels	C	
63265	Excise intraspinal lesion	C	
63266	Excise intraspinal lesion	C	
63267	Excise intraspinal lesion	C	
63268	Excise intraspinal lesion	C	
63270	Excise intraspinal lesion	C	
63271	Excise intraspinal lesion	C	
63272	Excise intraspinal lesion	C	
63273	Excise intraspinal lesion	C	
63275	Biopsy/excise spinal tumor	C	
63276	Biopsy/excise spinal tumor	C	
63277	Biopsy/excise spinal tumor	C	
63278	Biopsy/excise spinal tumor	C	
63280	Biopsy/excise spinal tumor	C	
63281	Biopsy/excise spinal tumor	C	
63282	Biopsy/excise spinal tumor	C	
63283	Biopsy/excise spinal tumor	C	
63285	Biopsy/excise spinal tumor	C	
63286	Biopsy/excise spinal tumor	C	
63287	Biopsy/excise spinal tumor	C	
63290	Biopsy/excise spinal tumor	C	
63295	Repair of laminectomy defect	C	
63300	Removal of vertebral body	C	
63301	Removal of vertebral body	C	
63302	Removal of vertebral body	C	
63303	Removal of vertebral body	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
63304	Removal of vertebral body	C	
63305	Removal of vertebral body	C	
63306	Removal of vertebral body	C	
63307	Removal of vertebral body	C	
63308	Remove vertebral body add-on	C	
63700	Repair of spinal herniation	C	
63702	Repair of spinal herniation	C	
63704	Repair of spinal herniation	C	
63706	Repair of spinal herniation	C	
63707	Repair spinal fluid leakage	C	
63709	Repair spinal fluid leakage	C	
63710	Graft repair of spine defect	C	
63740	Install spinal shunt	C	
64752	Incision of vagus nerve	C	
64755	Incision of stomach nerves	C	
64760	Incision of vagus nerve	C	
64809	Remove sympathetic nerves	C	
64818	Remove sympathetic nerves	C	
64866	Fusion of facial/other nerve	C	
64868	Fusion of facial/other nerve	C	
65273	Repair of eye wound	C	
69155	Extensive ear/neck surgery	C	
69535	Remove part of temporal bone	C	
69554	Remove ear lesion	C	
69950	Incise inner ear nerve	C	
75900	Intravascular cath exchange	C	
75952	Endovasc repair abdom aorta	C	
75953	Abdom aneurysm endovas rpr	C	
75954	Iliac aneurysm endovas rpr	C	
75956	Xray, endovasc thor ao repr	C	
75957	Xray, endovasc thor ao repr	C	
75958	Xray, place prox ext thor ao	C	
75959	Xray, place dist ext thor ao	C	
92970	Cardioassist, internal	C	
92971	Cardioassist, external	C	
92975	Dissolve clot, heart vessel	C	
92992	Revision of heart chamber	C	
92993	Revision of heart chamber	C	
99190	Special pump services	C	
99191	Special pump services	C	
99192	Special pump services	C	
99251	Inpatient consultation	C	

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
99252	Inpatient consultation	C	
99253	Inpatient consultation	C	
99254	Inpatient consultation	C	
99255	Inpatient consultation	C	
99356	Prolonged service, inpatient	C	
99357	Prolonged service, inpatient	C	
99462	Sbsq nb em per day, hosp	C	NI
99468	Neonate crit care, initial	C	NI
99469	Neonate crit care, subsq	C	NI
99471	Ped critical care, initial	C	NI
99472	Ped critical care, subsq	C	NI
99475	Ped crit care age 2-5, init	C	NI
99476	Ped crit care age 2-5, subsq	C	NI
99477	Init day hosp neonate care	C	
99478	Ic, lbw inf < 1500 gm subsq	C	NI
99479	Ic lbw inf 1500-2500 g subsq	C	NI
99480	Ic inf pbw 2501-5000 g subsq	C	NI
0048T	Implant ventricular device	C	
0050T	Removal circulation assist	C	
0051T	Implant total heart system	C	
0052T	Replace component heart syst	C	
0053T	Replace component heart syst	C	
0075T	Perq stent/chest vert art	C	
0076T	S&i stent/chest vert art	C	
0077T	Cereb therm perfusion probe	C	
0078T	Endovasc aort repr w/device	C	
0079T	Endovasc visc extnsn repr	C	
0080T	Endovasc aort repr rad s&i	C	
0081T	Endovasc visc extnsn s&i	C	
0092T	Artific disc addl	C	
0095T	Artific diskectomy addl	C	
0098T	Rev artific disc addl	C	
0157T	Open impl gast curve electrd	C	
0158T	Open remv gast curve electrd	C	
0163T	Lumb artif diskectomy addl	C	
0164T	Remove lumb artif disc addl	C	
0165T	Revise lumb artif disc addl	C	
0166T	Tcath vsd close w/o bypass	C	
0167T	Tcath vsd close w bypass	C	
0169T	Place stereo cath brain	C	
0184T	Exc rectal tumor endoscopic	C	
0195T	Arthrod presac interbody	C	NI

ADDENDUM E.--HCPCS CODES THAT ARE PAID ONLY AS INPATIENT PROCEDURES FOR CY 2009			
HCPCS Code	Short Descriptor	SI	CI
0196T	Arthrod presac interbody eac	C	NI
G0341	Percutaneous islet celltrans	C	
G0342	Laparoscopy islet cell trans	C	
G0343	Laparotomy islet cell transp	C	
G0406	Telhealth inpt consult 15min	C	NI
G0407	Telheath inpt consult 25min	C	NI
G0408	Telhealth inpt consult 35mins	C	NI
G0412	Open tx iliac spine uni/bil	C	NI
G0414	Pelvic ring fx treat int fix	C	NI
G0415	Open tx post pelvic fxcture	C	NI

ADDENDUM L.--OUT-MIGRATION ADJUSTMENT

ADDENDUM L.--OUT-MIGRATION ADJUSTMENT				
Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County	County Code
010005	*	0.0296	MARSHALL	01470
010008		0.0174	CRENSHAW	01200
010010	*	0.0296	MARSHALL	01470
010012	*	0.0186	DE KALB	01240
010015		0.0046	CLARKE	01120
010021		0.0052	DALE	01220
010022	*	0.1128	CHEROKEE	01090
010027		0.0026	COFFEE	01150
010029	*	0.0289	LEE	01400
010032		0.0325	RANDOLPH	01550
010035	*	0.0254	CULLMAN	01210
010038		0.0047	CALHOUN	01070
010040		0.0061	ETOWAH	01270
010045		0.0222	FAYETTE	01280
010046		0.0061	ETOWAH	01270
010047		0.0127	BUTLER	01060
010049		0.0026	COFFEE	01150
010052	*	0.0103	TALLAPOOSA	01610
010059	*	0.0071	LAWRENCE	01390
010061	*	0.0542	JACKSON	01350
010065	*	0.0103	TALLAPOOSA	01610
010078		0.0047	CALHOUN	01070
010083	*	0.0134	BALDWIN	01010
010091		0.0046	CLARKE	01120
010100	*	0.0134	BALDWIN	01010

ADDENDUM L.--OUT-MIGRATION ADJUSTMENT				
Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County	County Code
010101	*	0.0211	TALLADEGA	01600
010109		0.0405	PICKENS	01530
010110		0.0215	BULLOCK	01050
010125		0.0476	WINSTON	01660
010128		0.0046	CLARKE	01120
010129		0.0134	BALDWIN	01010
010138		0.0066	SUMTER	01590
010143	*	0.0254	CULLMAN	01210
010146		0.0047	CALHOUN	01070
010150	*	0.0127	BUTLER	01060
010158	*	0.0023	FRANKLIN	01290
010164	*	0.0211	TALLADEGA	01600
012011		0.0047	CALHOUN	01070
013027		0.0134	BALDWIN	01010
013032		0.0061	ETOWAH	01270
014006		0.0061	ETOWAH	01270
030067		0.0298	LAPAZ	03055
040014	*	0.0199	WHITE	04720
040019	*	0.0258	ST. FRANCIS	04610
040039	*	0.0172	GREENE	04270
040047		0.0117	RANDOLPH	04600
040067		0.0007	COLUMBIA	04130
040071	*	0.0149	JEFFERSON	04340
040076	*	0.1	HOT SPRING	04290
040081		0.0357	PIKE	04540
042007		0.0149	JEFFERSON	04340
043034		0.0036	CHICOT	04080
050002		0.001	ALAMEDA	05000
050007		0.0146	SAN MATEO	05510
050009		0.018	NAPA	05380
050013		0.018	NAPA	05380
050014	*	0.0139	AMADOR	05020
050042	*	0.0162	TEHAMA	05620
050043		0.001	ALAMEDA	05000
050069		0.0013	ORANGE	05400
050070		0.0146	SAN MATEO	05510
050073	*	0.0171	SOLANO	05580
050075		0.001	ALAMEDA	05000
050084		0.0132	SAN JOAQUIN	05490
050089		0.0011	SAN BERNARDINO	05460
050090		0.0058	SONOMA	05590
050099		0.0011	SAN BERNARDINO	05460
050101	*	0.0171	SOLANO	05580

ADDENDUM L.--OUT-MIGRATION ADJUSTMENT				
Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County	County Code
050113		0.0146	SAN MATEO	05510
050118	*	0.0132	SAN JOAQUIN	05490
050122		0.0132	SAN JOAQUIN	05490
050129		0.0011	SAN BERNARDINO	05460
050133	*	0.0178	YUBA	05680
050136		0.0058	SONOMA	05590
050140		0.0011	SAN BERNARDINO	05460
050150	*	0.0342	NEVADA	05390
050167		0.0132	SAN JOAQUIN	05490
050168		0.0013	ORANGE	05400
050173		0.0013	ORANGE	05400
050174		0.0058	SONOMA	05590
050193		0.0013	ORANGE	05400
050194		0.0052	SANTA CRUZ	05540
050195		0.001	ALAMEDA	05000
050197	*	0.0146	SAN MATEO	05510
050211		0.001	ALAMEDA	05000
050224		0.0013	ORANGE	05400
050226		0.0013	ORANGE	05400
050230		0.0013	ORANGE	05400
050242		0.0052	SANTA CRUZ	05540
050245		0.0011	SAN BERNARDINO	05460
050264		0.001	ALAMEDA	05000
050272		0.0011	SAN BERNARDINO	05460
050279		0.0011	SAN BERNARDINO	05460
050283		0.001	ALAMEDA	05000
050289		0.0146	SAN MATEO	05510
050291		0.0058	SONOMA	05590
050298		0.0011	SAN BERNARDINO	05460
050300		0.0011	SAN BERNARDINO	05460
050305		0.001	ALAMEDA	05000
050313		0.0132	SAN JOAQUIN	05490
050320		0.001	ALAMEDA	05000
050325		0.0033	TUOLUMNE	05650
050327		0.0011	SAN BERNARDINO	05460
050335	*	0.0033	TUOLUMNE	05650
050336		0.0132	SAN JOAQUIN	05490
050348		0.0013	ORANGE	05400
050366		0.0015	CALAVERAS	05040
050367	*	0.0171	SOLANO	05580
050385		0.0058	SONOMA	05590
050426		0.0013	ORANGE	05400
050444		0.0233	MERCED	05340

ADDENDUM L.--OUT-MIGRATION ADJUSTMENT				
Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County	County Code
050476	*	0.0278	LAKE	05160
050488		0.001	ALAMEDA	05000
050512		0.001	ALAMEDA	05000
050517		0.0011	SAN BERNARDINO	05460
050526		0.0013	ORANGE	05400
050528	*	0.0233	MERCED	05340
050541	*	0.0146	SAN MATEO	05510
050543		0.0013	ORANGE	05400
050547		0.0058	SONOMA	05590
050548		0.0013	ORANGE	05400
050551		0.0013	ORANGE	05400
050567		0.0013	ORANGE	05400
050570		0.0013	ORANGE	05400
050580		0.0013	ORANGE	05400
050584		0.0011	SAN BERNARDINO	05460
050586		0.0011	SAN BERNARDINO	05460
050589		0.0013	ORANGE	05400
050603		0.0013	ORANGE	05400
050609		0.0013	ORANGE	05400
050618	*	0.0011	SAN BERNARDINO	05460
050667		0.018	NAPA	05380
050678		0.0013	ORANGE	05400
050680	*	0.0171	SOLANO	05580
050690		0.0058	SONOMA	05590
050693		0.0013	ORANGE	05400
050714		0.0052	SANTA CRUZ	05540
050720		0.0013	ORANGE	05400
050744		0.0013	ORANGE	05400
050745		0.0013	ORANGE	05400
050746		0.0013	ORANGE	05400
050747		0.0013	ORANGE	05400
050748		0.0132	SAN JOAQUIN	05490
050754		0.0146	SAN MATEO	05510
050758		0.0011	SAN BERNARDINO	05460
052034		0.0010	ALAMEDA	05000
052035		0.0013	ORANGE	05400
052037		0.0011	SAN BERNARDINO	05460
052039		0.0013	ORANGE	05400
052040		0.0011	SAN BERNARDINO	05460
053034		0.0013	ORANGE	05400
053037		0.0011	SAN BERNARDINO	05460
053301		0.0010	ALAMEDA	05000
053304		0.0013	ORANGE	05400

ADDENDUM L.--OUT-MIGRATION ADJUSTMENT				
Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County	County Code
053306		0.0013	ORANGE	05400
053308		0.0013	ORANGE	05400
054003		0.0146	SAN MATEO	05510
054074		0.0171	SOLANO	05580
054093		0.0011	SAN BERNARDINO	05460
054110		0.0010	ALAMEDA	05000
054111		0.0011	SAN BERNARDINO	05460
054122		0.0180	NAPA	05380
054123		0.0132	SAN JOAQUIN	05490
054135		0.0013	ORANGE	05400
054141		0.0171	SOLANO	05580
060001	*	0.0042	WELD	06610
060003	*	0.0069	BOULDER	06060
060010		0.0153	LARIMER	06340
060027	*	0.0069	BOULDER	06060
060030		0.0153	LARIMER	06340
060103	*	0.0069	BOULDER	06060
060116	*	0.0069	BOULDER	06060
060119		0.0153	LARIMER	06340
063033		0.0042	WELD	06610
064007		0.0069	BOULDER	06060
064016		0.0153	LARIMER	06340
070006	*	0.0045	FAIRFIELD	07000
070010		0.0045	FAIRFIELD	07000
070018	*	0.0045	FAIRFIELD	07000
070028		0.0045	FAIRFIELD	07000
070033		0.0045	FAIRFIELD	07000
070034	*	0.0045	FAIRFIELD	07000
074000		0.0045	FAIRFIELD	07000
074012		0.0045	FAIRFIELD	07000
074014		0.0045	FAIRFIELD	07000
080001	*	0.0044	NEW CASTLE	08010
080003	*	0.0044	NEW CASTLE	08010
082000		0.0044	NEW CASTLE	08010
083300		0.0044	NEW CASTLE	08010
084001		0.0044	NEW CASTLE	08010
084002		0.0044	NEW CASTLE	08010
084003		0.0044	NEW CASTLE	08010
090001	*	0.0033	THE DISTRICT	09000
090003		0.0033	THE DISTRICT	09000
090004	*	0.0033	THE DISTRICT	09000
090005		0.0033	THE DISTRICT	09000
090006		0.0033	THE DISTRICT	09000

ADDENDUM L.--OUT-MIGRATION ADJUSTMENT				
Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County	County Code
090008		0.0033	THE DISTRICT	09000
090011	*	0.0033	THE DISTRICT	09000
092002		0.0033	THE DISTRICT	09000
092003		0.0033	THE DISTRICT	09000
093025		0.0033	THE DISTRICT	09000
093300		0.0033	THE DISTRICT	09000
094001		0.0033	THE DISTRICT	09000
094004		0.0033	THE DISTRICT	09000
100014	*	0.0047	VOLUSIA	10630
100017	*	0.0047	VOLUSIA	10630
100045	*	0.0047	VOLUSIA	10630
100047	*	0.0028	CHARLOTTE	10070
100068	*	0.0047	VOLUSIA	10630
100072	*	0.0047	VOLUSIA	10630
100077	*	0.0028	CHARLOTTE	10070
100081	*	0.0022	WALTON	10650
100118	*	0.0177	FLAGLER	10170
100232	*	0.0054	PUTNAM	10530
100236	*	0.0028	CHARLOTTE	10070
100252	*	0.0151	OKEECHOBEE	10460
100290		0.0338	SUMTER	10590
100292	*	0.0022	WALTON	10650
110023	*	0.0416	GORDON	11500
110029	*	0.0052	HALL	11550
110040	*	0.1455	JACKSON	11610
110041	*	0.0623	HABERSHAM	11540
110100		0.079	JEFFERSON	11620
110101		0.0067	COOK	11311
110142		0.0185	EVANS	11441
110146	*	0.0805	CAMDEN	11170
110150	*	0.0227	BALDWIN	11030
110187	*	0.0643	LUMPKIN	11701
110189	*	0.0066	FANNIN	11450
110190		0.0241	MACON	11710
110205		0.0507	GILMER	11471
114018		0.0227	BALDWIN	11030
130003	*	0.0235	NEZ PERCE	13340
130024		0.0675	BONNER	13080
130049	*	0.0319	KOOTENAI	13270
130066		0.0319	KOOTENAI	13270
130067	*	0.0725	BINGHAM	13050
132001		0.0319	KOOTENAI	13270
134010		0.0725	BINGHAM	13050

ADDENDUM L.--OUT-MIGRATION ADJUSTMENT				
Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County	County Code
140001		0.0369	FULTON	14370
140026		0.0315	LA SALLE	14580
140043	*	0.0056	WHITESIDE	14988
140058	*	0.0126	MORGAN	14770
140110	*	0.0315	LA SALLE	14580
140116		0.0014	MC HENRY	14640
140160	*	0.0332	STEPHENSON	14970
140161		0.0168	LIVINGSTON	14610
140167	*	0.0632	IROQUOIS	14460
140176		0.0014	MC HENRY	14640
140234		0.0315	LA SALLE	14580
150006	*	0.0113	LA PORTE	15450
150015	*	0.0113	LA PORTE	15450
150022		0.0158	MONTGOMERY	15530
150030	*	0.0192	HENRY	15320
150072		0.0105	CASS	15080
150076	*	0.0215	MARSHALL	15490
150088	*	0.0111	MADISON	15470
150091	*	0.005	HUNTINGTON	15340
150102	*	0.0108	STARKE	15740
150113	*	0.0111	MADISON	15470
150133	*	0.0193	KOSCIUSKO	15420
150146	*	0.0319	NOBLE	15560
153040		0.0215	MARSHALL	15490
154014		0.0193	KOSCIUSKO	15420
154035		0.0105	CASS	15080
154047		0.0215	MARSHALL	15490
160013		0.0179	MUSCATINE	16690
160030		0.0013	STORY	16840
160032		0.0235	JASPER	16490
160080		0.0066	CLINTON	16220
170137	*	0.0421	DOUGLAS	17220
170150		0.0166	COWLEY	17170
180012	*	0.008	HARDIN	18460
180017	*	0.0035	BARREN	18040
180049	*	0.0488	MADISON	18750
180064		0.0314	MONTGOMERY	18860
180066	*	0.0439	LOGAN	18700
180070		0.024	GRAYSON	18420
180079		0.0259	HARRISON	18480
183028		0.0080	HARDIN	18460
184012		0.0080	HARDIN	18460
190003	*	0.0085	IBERIA	19220

ADDENDUM L.--OUT-MIGRATION ADJUSTMENT				
Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County	County Code
190015	*	0.0243	TANGIPAHOA	19520
190017	*	0.0187	ST. LANDRY	19480
190034		0.0189	VERMILION	19560
190044		0.0261	ACADIA	19000
190050		0.0044	BEAUREGARD	19050
190053		0.0101	JEFFRSON DAVIS	19260
190054		0.0085	IBERIA	19220
190078		0.0187	ST. LANDRY	19480
190086	*	0.0061	LINCOLN	19300
190088	*	0.0387	WEBSTER	19590
190099		0.0189	AVOYELLES	19040
190106	*	0.0102	ALLEN	19010
190116		0.0085	MOREHOUSE	19330
190133		0.0102	ALLEN	19010
190140		0.0035	FRANKLIN	19200
190144	*	0.0387	WEBSTER	19590
190145		0.009	LA SALLE	19290
190184	*	0.0075	CALDWELL	19100
190190		0.0075	CALDWELL	19100
190191	*	0.0187	ST. LANDRY	19480
190246		0.0075	CALDWELL	19100
190257	*	0.0061	LINCOLN	19300
190277		0.0387	WEBSTER	19590
192022		0.0061	LINCOLN	19300
192026		0.0387	WEBSTER	19590
192034		0.0187	ST. LANDRY	19480
192036		0.0243	TANGIPAHOA	19520
192040		0.0243	TANGIPAHOA	19520
192050		0.0261	ACADIA	19000
193036		0.0187	ST. LANDRY	19480
193044		0.0243	TANGIPAHOA	19520
193047		0.0189	VERMILION	19560
193049		0.0189	VERMILION	19560
193055		0.0075	CALDWELL	19100
193058		0.0085	MOREHOUSE	19330
193063		0.0243	TANGIPAHOA	19520
193067		0.0101	JEFFRSON DAVIS	19260
193068		0.0243	TANGIPAHOA	19520
193069		0.0085	MOREHOUSE	19330
193073		0.0187	ST. LANDRY	19480
193079		0.0243	TANGIPAHOA	19520
193081		0.0261	ACADIA	19000
193088		0.0261	ACADIA	19000

ADDENDUM L.--OUT-MIGRATION ADJUSTMENT				
Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County	County Code
193091		0.0085	IBERIA	19220
194047		0.0387	WEBSTER	19590
194065		0.0061	LINCOLN	19300
194075		0.0101	JEFFRSON DAVIS	19260
194077		0.0061	LINCOLN	19300
194081		0.0044	BEAUREGARD	19050
194082		0.0101	JEFFRSON DAVIS	19260
194083		0.0085	MOREHOUSE	19330
194085		0.0261	ACADIA	19000
194087		0.0061	LINCOLN	19300
194091		0.0243	TANGIPAHOA	19520
194092		0.0035	FRANKLIN	19200
200024	*	0.0094	ANDROSCOGGIN	20000
200032		0.0367	OXFORD	20080
200034	*	0.0094	ANDROSCOGGIN	20000
200050	*	0.0227	HANCOCK	20040
210001		0.0187	WASHINGTON	21210
210023		0.0079	ANNE ARUNDEL	21010
210028		0.0383	ST. MARYS	21180
210043		0.0079	ANNE ARUNDEL	21010
210061		0.0188	WORCESTER	21230
212002		0.0187	WASHINGTON	21210
214001		0.0079	ANNE ARUNDEL	21010
214003		0.0187	WASHINGTON	21210
214015		0.0188	WORCESTER	21230
220001	*	0.0072	WORCESTER	22170
220002		0.0271	MIDDLESEX	22090
220010	*	0.0355	ESSEX	22040
220011		0.0271	MIDDLESEX	22090
220019	*	0.0072	WORCESTER	22170
220025	*	0.0072	WORCESTER	22170
220029	*	0.0355	ESSEX	22040
220033	*	0.0355	ESSEX	22040
220035	*	0.0355	ESSEX	22040
220049		0.0271	MIDDLESEX	22090
220058	*	0.0072	WORCESTER	22170
220062	*	0.0072	WORCESTER	22170
220063		0.0271	MIDDLESEX	22090
220070		0.0271	MIDDLESEX	22090
220080	*	0.0355	ESSEX	22040
220082		0.0271	MIDDLESEX	22090
220084		0.0271	MIDDLESEX	22090
220090	*	0.0072	WORCESTER	22170

ADDENDUM L.--OUT-MIGRATION ADJUSTMENT				
Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County	County Code
220095	*	0.0072	WORCESTER	22170
220098		0.0271	MIDDLESEX	22090
220101		0.0271	MIDDLESEX	22090
220105		0.0271	MIDDLESEX	22090
220163	*	0.0072	WORCESTER	22170
220171		0.0271	MIDDLESEX	22090
220174	*	0.0355	ESSEX	22040
220176	*	0.0072	WORCESTER	22170
222000		0.0271	MIDDLESEX	22090
222003		0.0271	MIDDLESEX	22090
222024		0.0271	MIDDLESEX	22090
222026		0.0355	ESSEX	22040
222044		0.0355	ESSEX	22040
222047		0.0355	ESSEX	22040
222048		0.0072	WORCESTER	22170
223026		0.0271	MIDDLESEX	22090
223028		0.0355	ESSEX	22040
223029		0.0072	WORCESTER	22170
223033		0.0072	WORCESTER	22170
224007		0.0271	MIDDLESEX	22090
224026		0.0072	WORCESTER	22170
224032		0.0072	WORCESTER	22170
224033		0.0355	ESSEX	22040
224038		0.0271	MIDDLESEX	22090
230003	*	0.022	OTTAWA	23690
230005		0.0473	LENAWEE	23450
230013	*	0.0025	OAKLAND	23620
230015		0.0295	ST. JOSEPH	23740
230019	*	0.0025	OAKLAND	23620
230021	*	0.0101	BERRIEN	23100
230022	*	0.0212	BRANCH	23110
230029	*	0.0025	OAKLAND	23620
230035	*	0.0095	MONTCALM	23580
230037	*	0.021	HILLSDALE	23290
230047	*	0.0021	MACOMB	23490
230069	*	0.021	LIVINGSTON	23460
230071	*	0.0025	OAKLAND	23620
230072	*	0.022	OTTAWA	23690
230075		0.0047	CALHOUN	23120
230078	*	0.0101	BERRIEN	23100
230092	*	0.0223	JACKSON	23370
230093		0.0058	MECOSTA	23530
230096	*	0.0295	ST. JOSEPH	23740

ADDENDUM L.--OUT-MIGRATION ADJUSTMENT				
Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County	County Code
230099	*	0.0231	MONROE	23570
230121	*	0.0678	SHIAWASSEE	23770
230130	*	0.0025	OAKLAND	23620
230151	*	0.0025	OAKLAND	23620
230174	*	0.022	OTTAWA	23690
230195	*	0.0021	MACOMB	23490
230204	*	0.0021	MACOMB	23490
230207	*	0.0025	OAKLAND	23620
230208	*	0.0095	MONTCALM	23580
230217		0.0047	CALHOUN	23120
230222	*	0.0035	MIDLAND	23550
230223	*	0.0025	OAKLAND	23620
230227	*	0.0021	MACOMB	23490
230254	*	0.0025	OAKLAND	23620
230257	*	0.0021	MACOMB	23490
230264	*	0.0021	MACOMB	23490
230269	*	0.0025	OAKLAND	23620
230277	*	0.0025	OAKLAND	23620
230279	*	0.021	LIVINGSTON	23460
230301	*	0.0025	OAKLAND	23620
232023		0.0021	MACOMB	23490
232025		0.0101	BERRIEN	23100
232028		0.0047	CALHOUN	23120
232030		0.0025	OAKLAND	23620
232034		0.0435	ALLEGAN	23020
232036		0.0223	JACKSON	23370
233025		0.0047	CALHOUN	23120
233028		0.0025	OAKLAND	23620
233031		0.0021	MACOMB	23490
234011		0.0025	OAKLAND	23620
234021		0.0021	MACOMB	23490
234023		0.0025	OAKLAND	23620
234024		0.0021	MACOMB	23490
234025		0.0276	TUSCOLA	23780
234037		0.0047	CALHOUN	23120
234039		0.0021	MACOMB	23490
240018		0.0805	GOODHUE	24240
240044		0.0625	WINONA	24840
240064	*	0.0134	ITASCA	24300
240069	*	0.0267	STEELE	24730
240071	*	0.0385	RICE	24650
240117		0.0527	MOWER	24490
240211		0.0812	PINE	24570

ADDENDUM L.--OUT-MIGRATION ADJUSTMENT				
Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County	County Code
250023	*	0.0541	PEARL RIVER	25540
250040	*	0.0021	JACKSON	25290
250117	*	0.0541	PEARL RIVER	25540
250128		0.0446	PANOLA	25530
250162		0.0014	HANCOCK	25220
252011		0.0446	PANOLA	25530
260059		0.0077	LACLEDE	26520
260064		0.0089	AUDRAIN	26030
260097		0.03	JOHNSON	26500
260116		0.0087	ST. FRANCOIS	26930
260163		0.0087	ST. FRANCOIS	26930
264005		0.0087	ST. FRANCOIS	26930
264027		0.0087	CEDAR	26190
280077		0.008	DODGE	28260
280123		0.0123	GAGE	28330
290002	*	0.0277	LYON	29090
300011	*	0.0049	HILLSBOROUGH	30050
300012	*	0.0049	HILLSBOROUGH	30050
300017	*	0.0075	ROCKINGHAM	30070
300020	*	0.0049	HILLSBOROUGH	30050
300023	*	0.0075	ROCKINGHAM	30070
300029	*	0.0075	ROCKINGHAM	30070
300034	*	0.0049	HILLSBOROUGH	30050
303026		0.0075	ROCKINGHAM	30070
304001		0.0075	ROCKINGHAM	30070
310002	*	0.0268	ESSEX	31200
310009	*	0.0268	ESSEX	31200
310015	*	0.0199	MORRIS	31300
310017	*	0.0199	MORRIS	31300
310018	*	0.0268	ESSEX	31200
310038	*	0.0209	MIDDLESEX	31270
310039	*	0.0209	MIDDLESEX	31270
310050	*	0.0199	MORRIS	31300
310054	*	0.0268	ESSEX	31200
310070	*	0.0209	MIDDLESEX	31270
310076	*	0.0268	ESSEX	31200
310083	*	0.0268	ESSEX	31200
310093	*	0.0268	ESSEX	31200
310096	*	0.0268	ESSEX	31200
310108	*	0.0209	MIDDLESEX	31270
310119	*	0.0268	ESSEX	31200
312018		0.0209	MIDDLESEX	31270
312020		0.0199	MORRIS	31300

ADDENDUM L.--OUT-MIGRATION ADJUSTMENT				
Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County	County Code
313025		0.0268	ESSEX	31200
313300		0.0209	MIDDLESEX	31270
314010		0.0268	ESSEX	31200
314011		0.0209	MIDDLESEX	31270
314016		0.0199	MORRIS	31300
314020		0.0268	ESSEX	31200
320003	*	0.048	SAN MIGUEL	32230
320011		0.0337	RIO ARRIBA	32190
320018		0.0024	DONA ANA	32060
320085		0.0024	DONA ANA	32060
322001		0.0480	SAN MIGUEL	32230
323025		0.0480	SAN MIGUEL	32230
323032		0.0024	DONA ANA	32060
324007		0.0024	DONA ANA	32060
324009		0.0024	DONA ANA	32060
324010		0.0024	DONA ANA	32060
324011		0.0337	RIO ARRIBA	32190
324012		0.0024	DONA ANA	32060
330004	*	0.0633	ULSTER	33740
330008	*	0.0126	WYOMING	33900
330010		0.0067	MONTGOMERY	33380
330027		0.0123	NASSAU	33400
330033		0.0223	CHENANGO	33080
330047		0.0067	MONTGOMERY	33380
330073	*	0.0151	GENESEE	33290
330094	*	0.0503	COLUMBIA	33200
330103	*	0.0131	CATTARAUGUS	33040
330106	*	0.0123	NASSAU	33400
330126	*	0.0642	ORANGE	33540
330132		0.0131	CATTARAUGUS	33040
330135	*	0.0642	ORANGE	33540
330144		0.0056	STEUBEN	33690
330151		0.0056	STEUBEN	33690
330167		0.0123	NASSAU	33400
330175		0.026	CORTLAND	33210
330181		0.0123	NASSAU	33400
330182		0.0123	NASSAU	33400
330191	*	0.0017	WARREN	33750
330198		0.0123	NASSAU	33400
330205	*	0.0642	ORANGE	33540
330224	*	0.0633	ULSTER	33740
330225		0.0123	NASSAU	33400
330235	*	0.0306	CAYUGA	33050

ADDENDUM L.--OUT-MIGRATION ADJUSTMENT				
Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County	County Code
330259		0.0123	NASSAU	33400
330264	*	0.0642	ORANGE	33540
330276		0.0036	FULTON	33280
330277	*	0.0056	STEUBEN	33690
330331		0.0123	NASSAU	33400
330332		0.0123	NASSAU	33400
330372		0.0123	NASSAU	33400
330386	*	0.0745	SULLIVAN	33710
334017		0.0642	ORANGE	33540
334061		0.0642	ORANGE	33540
340020		0.0156	LEE	34520
340021	*	0.0162	CLEVELAND	34220
340024		0.0177	SAMPSON	34810
340027	*	0.0128	LENOIR	34530
340037		0.0162	CLEVELAND	34220
340038		0.0253	BEAUFORT	34060
340039	*	0.0101	IREDELL	34480
340068	*	0.0087	COLUMBUS	34230
340069	*	0.0015	WAKE	34910
340070	*	0.0395	ALAMANCE	34000
340071	*	0.0226	HARNETT	34420
340073	*	0.0015	WAKE	34910
340085	*	0.025	DAVIDSON	34280
340096	*	0.025	DAVIDSON	34280
340104		0.0162	CLEVELAND	34220
340114	*	0.0015	WAKE	34910
340126	*	0.01	WILSON	34970
340129	*	0.0101	IREDELL	34480
340133		0.026	MARTIN	34580
340138	*	0.0015	WAKE	34910
340144	*	0.0101	IREDELL	34480
340145	*	0.0336	LINCOLN	34540
340151		0.0052	HALIFAX	34410
340173	*	0.0015	WAKE	34910
344011		0.0015	WAKE	34910
344014		0.0015	WAKE	34910
360002		0.0141	ASHLAND	36020
360010	*	0.0074	TUSCARAWAS	36800
360013	*	0.0135	SHELBY	36760
360025	*	0.0077	ERIE	36220
360036	*	0.0126	WAYNE	36860
360040		0.0387	KNOX	36430
360044		0.0127	DARKE	36190

ADDENDUM L.--OUT-MIGRATION ADJUSTMENT				
Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County	County Code
360065	*	0.0075	HURON	36400
360070		0.0005	STARK	36770
360071		0.0035	VAN WERT	36820
360084		0.0005	STARK	36770
360086	*	0.0186	CLARK	36110
360096	*	0.0071	COLUMBIANA	36140
360100		0.0005	STARK	36770
360107	*	0.0119	SANDUSKY	36730
360125	*	0.0133	ASHTABULA	36030
360131		0.0005	STARK	36770
360151		0.0005	STARK	36770
360156		0.0119	SANDUSKY	36730
360175	*	0.0183	CLINTON	36130
360185	*	0.0071	COLUMBIANA	36140
360187	*	0.0186	CLARK	36110
360245	*	0.0133	ASHTABULA	36030
362007		0.0119	SANDUSKY	36730
362016		0.0005	STARK	36770
362032		0.0005	STARK	36770
364031		0.0005	STARK	36770
364040		0.0186	CLARK	36110
370014	*	0.0361	BRYAN	37060
370015	*	0.0366	MAYES	37480
370023		0.009	STEPHENS	37680
370065		0.0096	CRAIG	37170
370072		0.0258	LATIMER	37380
370083		0.0051	PUSHMATAHA	37630
370100		0.01	CHOCTAW	37110
370149	*	0.0302	POTTAWATOMIE	37620
370156		0.0121	GARVIN	37240
370169		0.0163	MCINTOSH	37450
370172		0.0258	LATIMER	37380
370214		0.0121	GARVIN	37240
372017		0.0100	CHOCTAW	37110
372019		0.0302	POTTAWATOMIE	37620
373032		0.0100	CHOCTAW	37110
380022	*	0.0067	LINN	38210
384011		0.0107	UMATILLA	38290
390008		0.006	LAWRENCE	39450
390016	*	0.006	LAWRENCE	39450
390030	*	0.0284	SCHUYLKILL	39650
390031	*	0.0284	SCHUYLKILL	39650
390044	*	0.0191	BERKS	39110

ADDENDUM L.--OUT-MIGRATION ADJUSTMENT				
Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County	County Code
390052		0.0047	CLEARFIELD	39230
390056		0.0036	HUNTINGDON	39380
390065	*	0.0532	ADAMS	39000
390066	*	0.0372	LEBANON	39460
390079	*	0.0003	BRADFORD	39130
390086	*	0.0047	CLEARFIELD	39230
390096	*	0.0191	BERKS	39110
390110	*	0.0003	CAMBRIA	39160
390113	*	0.0053	CRAWFORD	39260
390117		0.0002	BEDFORD	39100
390122		0.0053	CRAWFORD	39260
390125		0.0022	WAYNE	39760
390130	*	0.0003	CAMBRIA	39160
390138	*	0.0218	FRANKLIN	39350
390146		0.0022	WARREN	39740
390150		0.0031	GREENE	39370
390151	*	0.0218	FRANKLIN	39350
390162	*	0.0217	NORTHAMPTON	39590
390183	*	0.0284	SCHUYLKILL	39650
390201		0.117	MONROE	39550
390236		0.0003	BRADFORD	39130
390313	*	0.0284	SCHUYLKILL	39650
390316		0.0191	BERKS	39110
392030		0.0532	ADAMS	39000
392031		0.0003	CAMBRIA	39160
392034		0.0217	NORTHAMPTON	39590
393026		0.0191	BERKS	39110
393050		0.0217	NORTHAMPTON	39590
394014		0.0191	BERKS	39110
394016		0.0022	WARREN	39740
394020		0.0372	LEBANON	39460
420002		0.0001	YORK	42450
420007	*	0.0027	SPARTANBURG	42410
420009	*	0.0113	OCONEE	42360
420019		0.0158	CHESTER	42110
420020	*	0.0008	GEORGETOWN	42210
420027		0.0108	ANDERSON	42030
420030	*	0.0069	COLLETON	42140
420036	*	0.0064	LANCASTER	42280
420039	*	0.011	UNION	42430
420043		0.0157	CHEROKEE	42100
420053		0.0035	NEWBERRY	42350
420054		0.0002	MARLBORO	42340

ADDENDUM L.--OUT-MIGRATION ADJUSTMENT				
Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County	County Code
420062	*	0.0109	CHESTERFIELD	42120
420068	*	0.0027	ORANGEBURG	42370
420069	*	0.0052	CLARENDON	42130
420070	*	0.0051	SUMTER	42420
420082		0.0002	AIKEN	42010
420083	*	0.0027	SPARTANBURG	42410
420098	*	0.0008	GEORGETOWN	42210
422004		0.0027	SPARTANBURG	42410
423028		0.0001	YORK	42450
423029		0.0108	ANDERSON	42030
424011		0.0108	ANDERSON	42030
430008	*	0.0535	BROOKINGS	43050
430048	*	0.0129	LAWRENCE	43400
430094		0.0129	LAWRENCE	43400
440007		0.0219	COFFEE	44150
440008	*	0.0449	HENDERSON	44380
440012		0.0009	SULLIVAN	44810
440016		0.0144	CARROLL	44080
440017		0.0009	SULLIVAN	44810
440024	*	0.023	BRADLEY	44050
440025	*	0.0009	GREENE	44290
440031		0.0019	ROANE	44720
440033		0.0027	CAMPBELL	44060
440035	*	0.0301	MONTGOMERY	44620
440047		0.0338	GIBSON	44260
440050		0.0009	GREENE	44290
440051		0.0082	MC NAIRY	44540
440057		0.0021	CLAIBORNE	44120
440060	*	0.0338	GIBSON	44260
440070		0.0109	DECATUR	44190
440081		0.0052	SEVIER	44770
440084		0.0025	MONROE	44610
440109		0.007	HARDIN	44350
440115		0.0338	GIBSON	44260
440137		0.0738	BEDFORD	44010
440144	*	0.0219	COFFEE	44150
440148	*	0.0296	DE KALB	44200
440174		0.0312	HAYWOOD	44370
440176		0.0009	SULLIVAN	44810
440180		0.0027	CAMPBELL	44060
440181		0.0365	HARDEMAN	44340
440182		0.0144	CARROLL	44080
440185	*	0.023	BRADLEY	44050

ADDENDUM L.--OUT-MIGRATION ADJUSTMENT				
Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County	County Code
442016		0.0009	SULLIVAN	44810
443027		0.0009	SULLIVAN	44810
444008		0.0365	HARDEMAN	44340
450032		0.0254	HARRISON	45620
450039	*	0.0024	TARRANT	45910
450052	*	0.0276	BOSQUE	45160
450059		0.0075	COMAL	45320
450064	*	0.0024	TARRANT	45910
450087	*	0.0024	TARRANT	45910
450090		0.065	COOKE	45340
450099	*	0.0145	GRAY	45563
450135	*	0.0024	TARRANT	45910
450137	*	0.0024	TARRANT	45910
450144		0.0559	ANDREWS	45010
450163		0.0054	KLEBERG	45743
450192		0.0271	HILL	45651
450194		0.0213	CHEROKEE	45281
450210		0.0151	PANOLA	45842
450224	*	0.0195	WOOD	45974
450236		0.0389	HOPKINS	45654
450270		0.0271	HILL	45651
450283	*	0.0653	VAN ZANDT	45947
450324	*	0.0132	GRAYSON	45564
450347	*	0.037	WALKER	45949
450348	*	0.0059	FALLS	45500
450370		0.0235	COLORADO	45312
450389	*	0.0618	HENDERSON	45640
450393	*	0.0132	GRAYSON	45564
450395	*	0.0441	POLK	45850
450419	*	0.0024	TARRANT	45910
450438		0.0235	COLORADO	45312
450451		0.0536	SOMERVELL	45893
450460		0.0053	TYLER	45942
450469	*	0.0132	GRAYSON	45564
450497		0.0375	MONTAGUE	45800
450539		0.0067	HALE	45582
450547	*	0.0195	WOOD	45974
450563	*	0.0024	TARRANT	45910
450565	*	0.0509	PALO PINTO	45841
450573		0.0126	JASPER	45690
450596	*	0.0743	HOOD	45653
450615		0.0033	CASS	45260
450639	*	0.0024	TARRANT	45910

ADDENDUM L.--OUT-MIGRATION ADJUSTMENT				
Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County	County Code
450641		0.0375	MONTAGUE	45800
450672	*	0.0024	TARRANT	45910
450675	*	0.0024	TARRANT	45910
450677	*	0.0024	TARRANT	45910
450698		0.0127	LAMB	45751
450747	*	0.0126	ANDERSON	45000
450755		0.0276	HOCKLEY	45652
450770	*	0.0182	MILAM	45795
450779	*	0.0024	TARRANT	45910
450813	*	0.0126	ANDERSON	45000
450838		0.0126	JASPER	45690
450872	*	0.0024	TARRANT	45910
450880	*	0.0024	TARRANT	45910
450884		0.0049	UPSHUR	45943
450886	*	0.0024	TARRANT	45910
450888		0.0024	TARRANT	45910
452018		0.0024	TARRANT	45910
452019		0.0024	TARRANT	45910
452028		0.0024	TARRANT	45910
452041		0.0132	GRAYSON	45564
452088		0.0024	TARRANT	45910
452099		0.0024	TARRANT	45910
453040		0.0024	TARRANT	45910
453041		0.0024	TARRANT	45910
453042		0.0024	TARRANT	45910
453089		0.0126	ANDERSON	45000
453094		0.0024	TARRANT	45910
453300		0.0024	TARRANT	45910
453303		0.0024	TARRANT	45910
454009		0.0213	CHEROKEE	45281
454012		0.0024	TARRANT	45910
454019		0.0024	TARRANT	45910
454051		0.0024	TARRANT	45910
454052		0.0024	TARRANT	45910
454061		0.0024	TARRANT	45910
454072		0.0024	TARRANT	45910
454086		0.0024	TARRANT	45910
454101		0.0067	HALE	45582
460017		0.0383	BOX ELDER	46010
460039	*	0.0383	BOX ELDER	46010
490019	*	0.1088	CULPEPER	49230
490084		0.0187	ESSEX	49280
490110		0.0185	MONTGOMERY	49600

ADDENDUM L.--OUT-MIGRATION ADJUSTMENT				
Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County	County Code
500003	*	0.0166	SKAGIT	50280
500007	*	0.0166	SKAGIT	50280
500019		0.0131	LEWIS	50200
500039	*	0.0094	KITSAP	50170
500041		0.002	COWLITZ	50070
510012		0.0124	MASON	51260
510018	*	0.0188	JACKSON	51170
510047	*	0.0269	MARION	51240
520028	*	0.0286	GREEN	52220
520035		0.0076	SHEBOYGAN	52580
520044		0.0076	SHEBOYGAN	52580
520057		0.0193	SAUK	52550
520059	*	0.0195	RACINE	52500
520071	*	0.0161	JEFFERSON	52270
520076	*	0.0146	DODGE	52130
520095		0.0193	SAUK	52550
520096	*	0.0195	RACINE	52500
520102	*	0.0242	WALWORTH	52630
520116	*	0.0161	JEFFERSON	52270
522005		0.0195	RACINE	52500
523026		0.0195	RACINE	52500
524020		0.0193	SAUK	52550
524021		0.0242	WALWORTH	52630
524022		0.0146	DODGE	52130
670015		0.0024	TARRANT	45910
670023		0.0024	TARRANT	45910
673026		0.0075	COMAL	45320

ADDENDUM M.--HCPCS CODES FOR ASSIGNMENT TO COMPOSITE APCs FOR CY 2009

ADDENDUM M.--HCPCS CODES FOR ASSIGNMENT TO COMPOSITE APCs FOR CY 2009					
HCPCS Code	Short Descriptor	CI	SI	Single Code APC Assignment	Composite APC Assignment
90801	Psy dx interview		Q3	0323	0034
90802	Intac psy dx interview		Q3	0323	0034
90804	Psytx, office, 20-30 min		Q3	0322	0034
90805	Psytx, off, 20-30 min w/e&m		Q3	0322	0034
90806	Psytx, off, 45-50 min		Q3	0323	0034

ADDENDUM M.--HCPCS CODES FOR ASSIGNMENT TO COMPOSITE APCs FOR CY 2009					
HCPCS Code	Short Descriptor	CI	SI	Single Code APC Assignment	Composite APC Assignment
90807	Psytx, off, 45-50 min w/e&m		Q3	0323	0034
90808	Psytx, office, 75-80 min		Q3	0323	0034
90809	Psytx, off, 75-80, w/e&m		Q3	0323	0034
90810	Intac psytx, off, 20-30 min		Q3	0322	0034
90811	Intac psytx, 20-30, w/e&m		Q3	0322	0034
90812	Intac psytx, off, 45-50 min		Q3	0323	0034
90813	Intac psytx, 45-50 min w/e&m		Q3	0323	0034
90814	Intac psytx, off, 75-80 min		Q3	0323	0034
90815	Intac psytx, 75-80 w/e&m		Q3	0323	0034
90845	Psychoanalysis		Q3	0323	0034
90846	Family psytx w/o patient		Q3	0324	0034
90847	Family psytx w/patient		Q3	0324	0034
90849	Multiple family group psytx		Q3	0325	0034
90853	Group psychotherapy		Q3	0325	0034
90857	Intac group psytx		Q3	0325	0034
90862	Medication management		Q3	0606	0034
90865	Narcosynthesis		Q3	0323	0034
90880	Hypnotherapy		Q3	0323	0034
90899	Psychiatric service/therapy		Q3	0322	0034
96101	Psycho testing by psych/phys		Q3	0382	0034
96102	Psycho testing by technician		Q3	0382	0034
96103	Psycho testing admin by comp		Q3	0373	0034
96110	Developmental test, lim		Q3	0373	0034
96111	Developmental test, extend		Q3	0382	0034
96116	Neurobehavioral status exam		Q3	0382	0034
96118	Neuropsych tst by psych/phys		Q3	0382	0034
96119	Neuropsych testing by tec		Q3	0382	0034
96120	Neuropsych tst admin w/comp		Q3	0373	0034
96150	Assess hlth/behave, init		Q3	0432	0034
96151	Assess hlth/behave, subseq		Q3	0432	0034
96152	Intervene hlth/behave, indiv		Q3	0432	0034
96153	Intervene hlth/behave, group		Q3	0432	0034
96154	Interv hlth/behav, fam w/pt		Q3	0432	0034
M0064	Visit for drug monitoring		Q3	0606	0034
93619	Electrophysiology evaluation		Q3	0085	8000
93620	Electrophysiology evaluation		Q3	0085	8000
93650	Ablate heart dysrhythm focus		Q3	0085	8000
93651	Ablate heart dysrhythm focus		Q3	0086	8000
93652	Ablate heart dysrhythm focus		Q3	0086	8000
55875	Transperi needle place, pros		Q3	0163	8001
77778	Apply interstit radiat compl		Q3	0651	8001
99205	Office/outpatient visit, new		Q3	0608	8002

ADDENDUM M.--HCPCS CODES FOR ASSIGNMENT TO COMPOSITE APCs FOR CY 2009					
HCPCS Code	Short Descriptor	CI	SI	Single Code APC Assignment	Composite APC Assignment
99215	Office/outpatient visit, est		Q3	0607	8002
G0379	Direct admit hospital observ		Q3	0604	8002
99284	Emergency dept visit		Q3	0615	8003
99285	Emergency dept visit		Q3	0616	8003
99291	Critical care, first hour		Q3	0617	8003
G0384	Lev 5 hosp type B ED visit	CH	Q3	0616	8003
76604	Us exam, chest	CH	Q3	0265	8004
76700	Us exam, abdom, complete	CH	Q3	0266	8004
76705	Echo exam of abdomen	CH	Q3	0266	8004
76770	Us exam abdo back wall, comp	CH	Q3	0266	8004
76775	Us exam abdo back wall, lim	CH	Q3	0266	8004
76776	Us exam k transpl w/doppler	CH	Q3	0266	8004
76831	Echo exam, uterus	CH	Q3	0267	8004
76856	Us exam, pelvic, complete	CH	Q3	0266	8004
76857	Us exam, pelvic, limited	CH	Q3	0265	8004
76870	Us exam, scrotum	CH	Q3	0266	8004
70450	Ct head/brain w/o dye	CH	Q3	0332	8005 or 8006
70480	Ct orbit/ear/fossa w/o dye	CH	Q3	0332	8005 or 8006
70486	Ct maxillofacial w/o dye	CH	Q3	0332	8005 or 8006
70490	Ct soft tissue neck w/o dye	CH	Q3	0332	8005 or 8006
71250	Ct thorax w/o dye	CH	Q3	0332	8005 or 8006
72125	Ct neck spine w/o dye	CH	Q3	0332	8005 or 8006
72128	Ct chest spine w/o dye	CH	Q3	0332	8005 or 8006
72131	Ct lumbar spine w/o dye	CH	Q3	0332	8005 or 8006
72192	Ct pelvis w/o dye	CH	Q3	0332	8005 or 8006
73200	Ct upper extremity w/o dye	CH	Q3	0332	8005 or 8006
73700	Ct lower extremity w/o dye	CH	Q3	0332	8005 or 8006
74150	Ct abdomen w/o dye	CH	Q3	0332	8005 or 8006
0067T	Ct colonography;dx	CH	Q3	0332	8005 or 8006
70460	Ct head/brain w/dye	CH	Q3	0283	8006
70470	Ct head/brain w/o & w/dye	CH	Q3	0333	8006
70481	Ct orbit/ear/fossa w/dye	CH	Q3	0283	8006
70482	Ct orbit/ear/fossa w/o&w/dye	CH	Q3	0333	8006
70487	Ct maxillofacial w/dye	CH	Q3	0283	8006
70488	Ct maxillofacial w/o & w/dye	CH	Q3	0333	8006
70491	Ct soft tissue neck w/dye	CH	Q3	0283	8006
70492	Ct sft tsue nck w/o & w/dye	CH	Q3	0333	8006
70496	Ct angiography, head	CH	Q3	0662	8006
70498	Ct angiography, neck	CH	Q3	0662	8006
71260	Ct thorax w/dye	CH	Q3	0283	8006
71270	Ct thorax w/o & w/dye	CH	Q3	0333	8006

ADDENDUM M.--HCPCS CODES FOR ASSIGNMENT TO COMPOSITE APCs FOR CY 2009					
HCPCS Code	Short Descriptor	CI	SI	Single Code APC Assignment	Composite APC Assignment
71275	Ct angiography, chest	CH	Q3	0662	8006
72126	Ct neck spine w/dye	CH	Q3	0283	8006
72127	Ct neck spine w/o & w/dye	CH	Q3	0333	8006
72129	Ct chest spine w/dye	CH	Q3	0283	8006
72130	Ct chest spine w/o & w/dye	CH	Q3	0333	8006
72132	Ct lumbar spine w/dye	CH	Q3	0283	8006
72133	Ct lumbar spine w/o & w/dye	CH	Q3	0333	8006
72191	Ct angiograph pelv w/o&w/dye	CH	Q3	0662	8006
72193	Ct pelvis w/dye	CH	Q3	0283	8006
72194	Ct pelvis w/o & w/dye	CH	Q3	0333	8006
73201	Ct upper extremity w/dye	CH	Q3	0283	8006
73202	Ct uppr extremity w/o&w/dye	CH	Q3	0333	8006
73206	Ct angio upr extrm w/o&w/dye	CH	Q3	0662	8006
73701	Ct lower extremity w/dye	CH	Q3	0283	8006
73702	Ct lwr extremity w/o&w/dye	CH	Q3	0333	8006
73706	Ct angio lwr extr w/o&w/dye	CH	Q3	0662	8006
74160	Ct abdomen w/dye	CH	Q3	0283	8006
74170	Ct abdomen w/o & w/dye	CH	Q3	0333	8006
74175	Ct angio abdom w/o & w/dye	CH	Q3	0662	8006
75635	Ct angio abdominal arteries	CH	Q3	0662	8006
70336	Magnetic image, jaw joint	CH	Q3	0336	8007 or 8008
70540	Mri orbit/face/neck w/o dye	CH	Q3	0336	8007 or 8008
70544	Mr angiography head w/o dye	CH	Q3	0336	8007 or 8008
70547	Mr angiography neck w/o dye	CH	Q3	0336	8007 or 8008
70551	Mri brain w/o dye	CH	Q3	0336	8007 or 8008
70554	Fmri brain by tech	CH	Q3	0336	8007 or 8008
71550	Mri chest w/o dye	CH	Q3	0336	8007 or 8008
72141	Mri neck spine w/o dye	CH	Q3	0336	8007 or 8008
72146	Mri chest spine w/o dye	CH	Q3	0336	8007 or 8008
72148	Mri lumbar spine w/o dye	CH	Q3	0336	8007 or 8008
72195	Mri pelvis w/o dye	CH	Q3	0336	8007 or 8008
73218	Mri upper extremity w/o dye	CH	Q3	0336	8007 or 8008
73221	Mri joint upr extrem w/o dye	CH	Q3	0336	8007 or 8008
73718	Mri lower extremity w/o dye	CH	Q3	0336	8007 or 8008
73721	Mri jnt of lwr extre w/o dye	CH	Q3	0336	8007 or 8008
74181	Mri abdomen w/o dye	CH	Q3	0336	8007 or 8008
75557	Cardiac mri for morph	CH	Q3	0336	8007 or 8008
75559	Cardiac mri w/stress img	CH	Q3	0336	8007 or 8008
C8901	MRA w/o cont, abd	CH	Q3	0336	8007 or 8008
C8904	MRI w/o cont, breast, uni	CH	Q3	0336	8007 or 8008
C8907	MRI w/o cont, breast, bi	CH	Q3	0336	8007 or 8008
C8910	MRA w/o cont, chest	CH	Q3	0336	8007 or 8008

ADDENDUM M.--HCPCS CODES FOR ASSIGNMENT TO COMPOSITE APCs FOR CY 2009					
HCPCS Code	Short Descriptor	CI	SI	Single Code APC Assignment	Composite APC Assignment
C8913	MRA w/o cont, lwr ext	CH	Q3	0336	8007 or 8008
C8919	MRA w/o cont, pelvis	CH	Q3	0336	8007 or 8008
70542	Mri orbit/face/neck w/dye	CH	Q3	0284	8008
70543	Mri orbt/fac/nck w/o & w/dye	CH	Q3	0337	8008
70545	Mr angiography head w/dye	CH	Q3	0284	8008
70546	Mr angiograph head w/o&w/dye	CH	Q3	0337	8008
70548	Mr angiography neck w/dye	CH	Q3	0284	8008
70549	Mr angiograph neck w/o&w/dye	CH	Q3	0337	8008
70552	Mri brain w/dye	CH	Q3	0284	8008
70553	Mri brain w/o & w/dye	CH	Q3	0337	8008
71551	Mri chest w/dye	CH	Q3	0284	8008
71552	Mri chest w/o & w/dye	CH	Q3	0337	8008
72142	Mri neck spine w/dye	CH	Q3	0284	8008
72147	Mri chest spine w/dye	CH	Q3	0284	8008
72149	Mri lumbar spine w/dye	CH	Q3	0284	8008
72156	Mri neck spine w/o & w/dye	CH	Q3	0337	8008
72157	Mri chest spine w/o & w/dye	CH	Q3	0337	8008
72158	Mri lumbar spine w/o & w/dye	CH	Q3	0337	8008
72196	Mri pelvis w/dye	CH	Q3	0284	8008
72197	Mri pelvis w/o & w/dye	CH	Q3	0337	8008
73219	Mri upper extremity w/dye	CH	Q3	0284	8008
73220	Mri uppr extremity w/o&w/dye	CH	Q3	0337	8008
73222	Mri joint upr extrem w/dye	CH	Q3	0284	8008
73223	Mri joint upr extr w/o&w/dye	CH	Q3	0337	8008
73719	Mri lower extremity w/dye	CH	Q3	0284	8008
73720	Mri lwr extremity w/o&w/dye	CH	Q3	0337	8008
73722	Mri joint of lwr extr w/dye	CH	Q3	0284	8008
73723	Mri joint lwr extr w/o&w/dye	CH	Q3	0337	8008
74182	Mri abdomen w/dye	CH	Q3	0284	8008
74183	Mri abdomen w/o & w/dye	CH	Q3	0337	8008
75561	Cardiac mri for morph w/dye	CH	Q3	0337	8008
75563	Card mri w/stress img & dye	CH	Q3	0337	8008
C8900	MRA w/cont, abd	CH	Q3	0284	8008
C8902	MRA w/o fol w/cont, abd	CH	Q3	0337	8008
C8903	MRI w/cont, breast, uni	CH	Q3	0284	8008
C8905	MRI w/o fol w/cont, brst, un	CH	Q3	0337	8008
C8906	MRI w/cont, breast, bi	CH	Q3	0284	8008
C8908	MRI w/o fol w/cont, breast,	CH	Q3	0337	8008
C8909	MRA w/cont, chest	CH	Q3	0284	8008
C8911	MRA w/o fol w/cont, chest	CH	Q3	0337	8008

ADDENDUM M.--HCPCS CODES FOR ASSIGNMENT TO COMPOSITE APCs FOR CY 2009					
HCPCS Code	Short Descriptor	CI	SI	Single Code APC Assignment	Composite APC Assignment
C8912	MRA w/cont, lwr ext	CH	Q3	0284	8008
C8914	MRA w/o fol w/cont, lwr ext	CH	Q3	0337	8008
C8918	MRA w/cont, pelvis	CH	Q3	0284	8008
C8920	MRA w/o fol w/cont, pelvis	CH	Q3	0337	8008

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Federal Register

Tuesday,
November 18, 2008

Part III

Federal Reserve System

12 CFR Part 233

Department of the Treasury

31 CFR Part 132

Prohibition on Funding of Unlawful Internet Gambling; Final Rules

FEDERAL RESERVE SYSTEM

12 CFR Part 233

[Regulation GG; Docket No. R–1298]

DEPARTMENT OF THE TREASURY

31 CFR Part 132

RIN 1505–AB78

Prohibition on Funding of Unlawful Internet Gambling

AGENCIES: Board of Governors of the Federal Reserve System and Departmental Offices, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document is published jointly by the Departmental Offices of the Department of the Treasury (the ''Treasury'') and the Board of Governors of the Federal Reserve System (the ''Board'') (collectively, the ''Agencies'') to adopt a final rule to implement applicable provisions of the Unlawful Internet Gambling Enforcement Act of 2006 (the ''Act''). The final rule sets out definitions for terms used in the regulation; designates payment systems that could be used by participants in connection with, or to facilitate, a restricted transaction; exempts certain participants in certain designated payment systems from the requirement of the regulation; requires the participants performing non-exempt functions in a designated payment system to establish and implement policies and procedures reasonably designed to prevent or prohibit restricted transactions, such as by identifying and blocking such transactions; provides non-exclusive examples of policies and procedures for non-exempt participants in each designated payment system; and sets out the regulatory enforcement framework. In developing this rule, the Agencies have consulted with the Department of Justice, as required by the Act, and have taken into consideration all comments received on the proposed rule issued in October 2007.

DATES: Final rule is effective January 19, 2009. The incorporation by reference of the publication listed in the final rule is approved by the Director of the Federal Register as of January 19, 2009. However, compliance by non-exempt participants in designated payment systems is not required until December 1, 2009.

FOR FURTHER INFORMATION CONTACT:

Board: Christopher W. Clubb, Senior Counsel (202/452–3904), Legal Division; Jeffrey S. Yeganeh, Manager, or Joseph Baressi, Financial Services Project Leader (202/452–3959), Division of Reserve Bank Operations and Payment Systems; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

Treasury: Charles Klingman, Director, Office of Critical Infrastructure Protection and Compliance Policy; or Steven D. Laughton, Senior Counsel, Office of the Assistant General Counsel (Banking & Finance), 202/622–9209.

SUPPLEMENTARY INFORMATION:

I. Background

Unlawful Internet Gambling Enforcement Act

The Act prohibits any person engaged in the business of betting or wagering (as defined in the Act) from knowingly accepting payments in connection with the participation of another person in unlawful Internet gambling. Such transactions are termed ''restricted transactions.'' The Act generally defines ''unlawful Internet gambling'' as placing, receiving, or otherwise knowingly transmitting a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made. The Act states that its provisions should not be construed to alter, limit, or extend any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.[1] The Act does not spell out which activities are legal and which are illegal, but rather relies on the underlying substantive Federal and State laws.[2]

The Act requires the Agencies (in consultation with the U.S. Attorney General) to designate payment systems that could be utilized in connection with or to facilitate restricted transactions. Such a designation makes the payment system, and financial transaction providers participating in the system, subject to the requirements of the regulations. The Act further requires the Agencies (in consultation with the U.S. Attorney General) to prescribe regulations requiring designated payment systems and financial transaction providers participating in each designated payment system to establish policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions. The regulations must identify types of policies and procedures that would be deemed to be reasonably designed to achieve this objective, including non-exclusive examples. The Act also requires the Agencies to exempt certain restricted transactions or designated payment systems from any requirement imposed by the regulations if the Agencies jointly determine that it is not reasonably practical to identify and block, or otherwise prevent or prohibit the acceptance of, such transactions.

Overview of the Proposed Rule

In October 2007, the Agencies jointly issued, and requested public comment on, a Notice of Proposed Rulemaking (''NPRM'') to implement the Act.[3] The proposed rule provided definitions of terms used in the regulation, many of which followed or referred to definitions set out in the Act or other existing regulatory or statutory definitions. The proposed rule did not attempt to further define gambling-related terms because the Act itself does not specify which gambling activities are legal or illegal and relies on prohibitions contained in statutes that are not under the jurisdiction of the Agencies. Application of some of the terms used in the Act may depend significantly on the facts of specific transactions such that general regulatory definitions would not be appropriate.

The proposed rule designated the following payment systems as payment systems that could be used in connection with unlawful Internet gambling transactions restricted by the Act: Automated clearing house systems; card systems; check collection systems; money transmitting businesses; and wire transfer systems. The proposed rule required participants in these designated payment systems to establish and implement written policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit transactions in connection with unlawful Internet gambling.

The proposed rule also exempted from the requirements to establish such policies and procedures all participants in the automated clearing house systems, check collection systems, and wire transfer systems, except for the participant that possesses the customer relationship with the Internet gambling business (and certain participants that receive certain cross-border transactions from, or send certain such transactions to, foreign payment service providers) because the Agencies believed that it was not reasonably practical for those participants to identify and block, or otherwise prevent or prohibit, unlawful

[1] 31 U.S.C. 5361(b).

[2] *See* H. Rep. No. 109–412 (pt. 1) p. 10.

[3] 72 FR 56680 (Oct. 4, 2007).

Internet gambling transactions restricted by the Act. The Agencies intended that the participant with the customer relationship with the Internet gambling business would have the responsibility in the ACH systems, check collection systems, or wire transfer systems to prevent or prohibit restricted transactions from being credited to the account of the gambling business through that particular payment system.

Finally, the proposed rule described types of policies and procedures that non-exempt participants in each type of designated payment system could adopt in order to comply with the Act and included non-exclusive examples of policies and procedures that would be deemed to be reasonably designed to prevent or prohibit restricted transactions. The non-exclusive examples included special procedures for cross-border transactions in ACH systems, check collection systems, and wire transfer systems.

The Agencies requested comment on all aspects of the proposed rule, as well as detailed questions regarding specific aspects of the rule within each section.

Overview of Public Comments

The Agencies received comments from about 225 members of the public, including approximately 125 consumers, 40 depository institutions and associations thereof, 20 gambling-related entities, 10 public-policy advocacy groups, 10 payment system operators and money transmitters, and 20 others, including Federal agencies and members of Congress.[4] In addition to the following overview, specific comments are discussed in more detail in the portions of the section-by-section analysis that describe particular provisions.

Comments related to the Act. About 65 commenters directly addressed the Act itself. Of these, approximately 35 commenters, almost all consumers, expressed disapproval of the Act. Consumers generally thought that the Act represents an inappropriate governmental intrusion into the personal choices that individuals make and that the government should not devote resources attempting to prevent Internet gambling. A portion of these commenters further noted that the government might wish to legalize, regulate, and tax Internet gambling, thereby helping provide appropriate safeguards and protections for consumers while also potentially increasing the government's revenues. Conversely, about 20 commenters, about evenly split between consumers and public-policy advocacy groups, expressed support for the Act on the grounds that gambling causes harm. These commenters noted that gambling via the Internet is of particular concern because it is anonymous and can be done within the home at any time of day or night. Additionally, about 10 commenters expressed concern that the Act will exacerbate the U.S.'s difficulties with the World Trade Organization (WTO) related to Internet gambling, and suggested that the Agencies refrain from implementing the Act until the related WTO matter is resolved.[5] The Agencies believe that these comments relate to the public policy issue of the merits of the Act itself and are outside the rulemaking process. The Agencies' duty is to carry out their responsibilities to promulgate implementing regulations required by the Act and that is the focus of this rulemaking.

Comments related to the proposed rule. About 20 commenters, almost all of them depository institutions and associations of depository institutions, noted that notwithstanding the Agencies' efforts to craft a reasonable rule, the proposed regulation would be unduly burdensome and would result in compliance costs greater than any offsetting societal benefit. Several of these commenters stated that the rule would adversely affect the competitiveness of the U.S. payments system, and that the Agencies should be cognizant of the potential for the Act and similar laws to cumulatively cause capital flight and erode the U.S. dollar's status as the world's reserve currency. More broadly, these commenters also questioned whether the payments system is the appropriate mechanism by which to enforce prohibitions on Internet gambling. Some of these commenters argued that the responsibility for enforcing gambling laws should lie with Federal and State law enforcement authorities and that, operationally, the preferable way to prevent unlawful Internet gambling may be for the government to work with telecommunications providers to impede gambling Web sites' access to the Internet.

About 50 commenters, primarily consumers and gambling-related entities, expressed concern regarding the rule's applicability to poker and similar games. These commenters referred to the definition of ''bet or wager,'' and argued that poker is a game predominantly of skill and should be excluded from the scope of the definition.

About 30 commenters, primarily depository institutions and associations thereof, as well as a few members of Congress and gambling-related entities, expressed concern regarding the proposed rule's definition of ''unlawful Internet gambling.'' Banks stated that the definition's lack of specificity would result in higher costs associated with complying with the rule. Some members of Congress and gambling-related interests found the vagueness of the definition to be so problematic as to raise free-speech, fundamental-fairness, and Administrative Procedure Act concerns.

About 40 commenters responded to the Agencies' request for comment on whether to incorporate within the rule a list of unlawful Internet gambling businesses. About 35 commenters of various types—depository institutions and associations thereof, payment system operators and money transmitters, as well as public-policy groups—expressed support for such a list, generally on the grounds that it would reduce the cost of complying with the rule, but some of these commenters noted that the list might not prevent restricted transactions. About five commenters, all of which were payment system participants or associations thereof, opposed a list on the grounds that it would not be effective.

II. Final Rule

Overview

After carefully considering the comments, the Agencies have adopted a final rule to implement the Act. In accordance with the Act, the Agencies have consulted with the Department of Justice during the development of the final rule. The Agencies also conducted further outreach to gather information on the issues raised in the public comments.

The final rule shares some fundamental characteristics with the approach presented in the proposed rule. First, for example, the final rule retains the focus on a due diligence process in establishing and maintaining a commercial customer relationship as the core policy and procedure that the participants in designated payment systems other than card systems can choose to prevent or prohibit restricted transactions. As noted in the proposal, card systems are the only designated payment systems that use a merchant and transaction coding framework that

[4] The comment letters and conference call summaries cited herein are available on the Board's public Web site at: *http://www.federalreserve.gov/generalinfo/foia/index.cfm?doc_id=R%2D1298&doc_ver=1.*

[5] *See, e.g.*, comment letter from David S. Orkin (Dec. 2, 2007) p. 1.

permits participants to identify and block, during processing, transactions with indicia of being restricted transactions. The other designated payment systems could choose to conduct due diligence in account-opening procedures designed to ensure that the commercial customer does not originate or receive restricted transactions through the customer relationship. The final rule also continues to place the responsibility for such due diligence on the participant that is establishing or maintaining the customer relationship with the commercial customer. In response to comments on the proposed rule, as discussed in more detail below, a new subsection ____.6(b) of the final rule provides additional guidance on due diligence steps participants can take for commercial customers to have reasonably designed policies and procedures to prevent or prohibit restricted transactions.

The Act requires the Agencies to provide non-exclusive examples of reasonably designed policies and procedures to prevent restricted transactions, rather than establishing an absolute prohibition on processing any restricted transactions. The Agencies recognize the challenge that participants in designated payments systems will face in trying to prevent restricted transactions without unduly burdening their processing of lawful transactions, which make up the vast majority of payments processed. The Agencies believe that flexible, risk-based due diligence procedures at account opening, such as those set out in the final rule, present the best option for balancing these two interests.

Similar to the proposed rule, the final rule does not contemplate that the Agencies, other government agencies, or any other entity will establish or publish a list of businesses known to be involved in unlawful Internet gambling. Although the Act does not require creation of a list of unlawful Internet gambling businesses, some commenters have suggested that the Agencies should create such a list and make it available to designated payment systems and their participants in order to permit them to block payments destined to those entities.[6]

After carefully considering the public comments on this issue, the Agencies have concluded that such a list would not be effective or efficient. The first step in including a business on such a list would be to ensure that the particular business was, in fact, engaged in activities deemed to be unlawful Internet gambling under the Act. The Act, however, does not set out the precise activities that are covered by the term, but refers to activities that are unlawful under other Federal or State gambling laws for such determinations. Creating such a list would require the Agencies to formally interpret those laws that are written and enforced by other entities, such as State legislatures and law enforcement agencies. Accordingly, interpretations by the Agencies in these areas may not be determinative in defining the Act's legal coverage and could set up conflicts or confusion with interpretations by the entities that actually enforce those laws. In addition, the Agencies do not believe that a list of businesses that engage in unlawful Internet gambling would necessarily be effective or efficient in preventing unlawful activity because the payment transactions would not necessarily be made payable to the business's listed name.[7] Even where the business's listed name is used on the transaction, some payment systems do not process the transaction based on the payee name.[8] Also, to the extent that Internet gambling businesses can change their payments information with relative ease and speed, such a list would be outdated quickly. Finally, the Agencies believe that appropriate due diligence conducted by participants opening accounts would be the most effective method for preventing unlawful Internet gambling businesses from gaining access to the payment system directly through U.S. accounts. The suggested due diligence procedures discussed in this final rule are designed to target that relationship.

Moreover, the Act already provides for a course of action if government entities are aware of an unlawful Internet gambling Web site. The Act provides a procedure pursuant to which the U.S. Attorney General, State attorneys general, or other appropriate State officials may institute proceedings to have an unlawful Internet gambling Web site removed by the interactive computer service that provides access to that Web site.[9] Accordingly, if government entities are aware of an unlawful Internet gambling Web site, the procedure provided by the Act for denying access to the Web site in its entirety could be used, rather than permitting access to the unlawful Internet gambling Web site to continue without interruption, while relying on the designated payment systems and their participants to block every transaction destined for the Internet gambling business operating the Web site.

Finally, the final rule, like the proposed rule, does not define ''unlawful Internet gambling'' beyond the Act's definition. Numerous commenters addressed the implementation and compliance problems created by the Act's definition of ''unlawful Internet gambling'' and requested that the Agencies provide greater clarity regarding this term.[10] The Agencies carefully considered these comments, as well as the challenges of creating a regulatory definition of a term encompassing the various Federal and State laws affecting Internet gambling. After consulting with the Department of Justice and representatives from the offices of several State attorneys general regarding this issue, the Agencies have determined that a single, regulatory definition of ''unlawful Internet gambling'' would not be practical.[11] The Act's definition of ''unlawful Internet gambling'' relies on underlying Federal and State gambling laws. The States have taken different approaches to the regulation of gambling within their jurisdictions and the structure of State gambling law varies widely, as do the activities that are permitted in each State. Accordingly, the underlying patchwork legal framework does not lend itself to a single regulatory definition of ''unlawful Internet gambling.'' The Agencies have attempted to address the payments industry's desire for more certainty that would result from a precise regulatory definition of ''unlawful Internet gambling'' through the due diligence guidance provided in ____.6(b). The suggested due diligence process relies on State regulation of Internet gambling and imposes the burden of proof of legality of Internet gambling activities on the gambling business, rather than the designated payment systems and their participants.

As discussed in detail below, the Agencies have modified the rules in various respects in response to the

[6] *See, e.g.*, comment letter from Members of Congress of the United States (Sen. Kyl *et al.*) (Dec. 12, 2007) (hereinafter ''Kyl letter'') p. 2. *See also* H. Rep. No. 109–412, Part 1, p. 11.

[7] *See, e.g.*, comment letter from MoneyGram Int'l (Dec. 11, 2007) (herein ''neyGram letter'') p.3 (Internet gambling Web sites may direct payments to an individual, rather than the business's corporate name, and change these names frequently).

[8] For example, the automated processing equipment used to clear checks does not read the payee line on a typical consumer check.

[9] 31 U.S.C. 5365(c).

[10] *See, e.g.*, comment letter from the American Bankers Association (Dec. 12, 2007) (hereinafter ''ABA letter''), pp. 5–6.

[11] *See* summary of conference call with representatives of various State Attorneys General (call date July 9, 2008) p. 1.

comments received. Identical sets of the final rules are being adopted by the Board, to be published in Title 12 of the Code of Federal Regulations, and by the Treasury, to be published in Title 31 of the Code of Federal Regulations.[12] The section numbers used in the analysis below have not changed from the proposed rule, but the subsection numbers may have changed because subsections have been added, deleted, or rearranged in response to public comments.

Effective Date

In the NPRM, the Agencies proposed that the final rule should take effect six months after the joint final rule was published, and requested comment on whether this period was reasonable. Some commenters, representing members of Congress, sports leagues, or gambling-related entities, suggested that six months was either an adequate implementation period or was too long. One or more of these commenters stated that they did not understand why participants would not be able to implement the final rule promptly, expressed concern about the harm a delayed effective date would have on certain gambling interests, and referenced the statutory deadline for the promulgation of a rule.[13] Most commenters representing the financial industry suggested that this period was insufficient for financial transaction providers to develop and implement the necessary policies and procedures. In designated payment systems with operators, such as the ACH systems and the card systems, commenters were concerned that participants would have to wait until the operators developed and announced their policies and procedures before developing their own policies and procedures.[14] These commenters suggested various periods for an adequate implementation period, ranging from 12 months to 24 months.

The Agencies have reviewed these comments and the concerns expressed about a delayed effective date, as well as the reasons given for the need for additional time. In response, the Agencies have decided to make the final rule effective approximately 60 days from the date of publication of the final rule in the **Federal Register**, and to establish a compliance date approximately 12 months from publication of the final rule.[15]

Given the changes in the non-exclusive examples of policies and procedures which, if followed, would result in a reduction of compliance burden from the proposed rule to the final rule, the Agencies believe that non-exempt participants in designated payment systems certainly should not require more than 12 months to design and implement the necessary policies and procedures.[16] The Agencies also believe, however, that the commenters have adequately demonstrated that six months may not be sufficient time for complying with the final rule. Accordingly, the final rule includes a compliance date of December 1, 2009, approximately 12 months from the date of publication of the final rule in the **Federal Register**.

Section-by-Section Analysis

§ ____.1 Authority, Purpose, and Incorporation by Reference

The Agencies did not receive any comments that explicitly requested changes to this section; however, the final rule does include three changes. First, subsection ____.1(a) has been revised to clarify that the final rule, consistent with the Act, is not intended to affect or interpret the interaction between existing Federal or State statutes, such as the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 *et seq.*) (IHA), and other Federal statutes. Specifically, as set out in subsection ____.1(a), the Act states that none of its provisions shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.[17] In addition, the Act states that its provisions are not intended to change the existing relationship between the IHA and other Federal statutes in effect on October 13, 2006, the date of the Act's enactment, and are not intended to resolve any existing disagreements over how to interpret the relationship between the IHA and other Federal statutes.[18] The final rule is intended to be consistent with these provisions and should not be construed to affect or interpret the interaction between the various underlying Federal and State statutes or Tribal-State compacts.

Second, a new subsection ____.1(c) has been added and states that requirements for the collection of information in the final rule have been approved under the Paperwork Reduction Act for the Department of the Treasury by the Office of Management and Budget (OMB) and by the Board pursuant to authority delegated to the Board by OMB. Finally, the reference to the automated clearing house rules incorporated by reference into the final rule has been updated to reflect the 2008 rules published by the National Automated Clearing House Association (NACHA). For purposes of this final rule, there are no material differences between the 2008 NACHA rules and the 2007 NACHA rules that were incorporated by reference in the proposed rule. The Agencies will continue to update the reference to new rules issued by NACHA as appropriate if there are changes in the rules that are material to application of the final rule.

§ ____.2 Definitions

In general. In response to comments, the final rule contains several new or modified defined terms. As an initial matter, lead-in language for the entirety of § ____.2 was added to clarify that the definitions set out in the final rule are intended for use only with respect to the final rule and are not intended to be used in other contexts.

§ ____.2(a) Actual knowledge. The proposed rule included examples of remedial actions that a non-exempt participant could choose to take if it ''becomes aware'' that a commercial customer received restricted transactions through the participant's facilities or a foreign counterparty ''is found to have'' processed restricted transactions through the participant's facilities. Commenters objected to these terms as too vague to provide a basis for compliance programs and suggested that they should be replaced with more precise terms that could be implemented by compliance personnel and examined by regulators.[19] In

[12] The final rules adopted by the Board and the Treasury within their respective titles of the Code of Federal Regulations (12 CFR Part 233 for the Board and 31 CFR Part 132 for the Treasury) are identically numbered from § ____.1 to § ____.7. For ease of reference, the single set of final rules adopted by each Agency is referred to in this release as Section ____, excluding title and part designations. A similar format is used to refer to the single set of proposed rules issued by the Agencies.

[13] *See, e.g.*, Kyl letter, *supra* note 6, at 2.

[14] *See, e.g.*, comment letter from The Clearing House Assoc. LLC and its affiliates, The Clearing House Payments Co. LLC (Dec. 12, 2007) (hereinafter ''The Clearing House letter'') p. 14.

[15] The ''effective date'' is the date that the regulation affects or is added to the Code of Federal Regulations. The ''compliance date'' is the date that regulated entities must be in compliance with the regulation. National Archives and Records Administration, *Federal Register Document Drafting Handbook,* pp. 2–10 and 2–11 (Oct. 1998 rev.).

[16] For example, the Agencies believe that the shifting of the burden of establishing whether an Internet gambling business is engaged in restricted transactions from the financial transaction providers to the Internet gambling businesses will minimize burden for participants.

[17] 31 U.S.C. 5361(b).

[18] 31 U.S.C. 5362(10)(D)(iii).

[19] *See, e.g.*, comment letter from Wells Fargo & Company (Dec. 12, 2007) (hereinafter ''Wells Fargo letter''), pp. 15–16.

response to these comments, a new definition for the term ''actual knowledge'' was added for use in the remedial action provisions of § ____.6. As described in more detail below, the Agencies revised the remedial action examples to include an ''actual knowledge'' standard similar to what some commenters suggested.[20] As used in the final rule, the term ''actual knowledge'' includes information regarding a particular transaction or commercial customer that is known by or brought to the attention of compliance personnel of the participant responsible for that transaction or customer (which may be below officer level) or any officer of the participant. The Agencies expect that an employee at the officer level of a participant should be responsible for forwarding the information to the proper personnel within the organization.

§ ____.2(c) Bet or wager. The proposed rule contained a definition of the term ''bet or wager'' which followed the definition for that term contained in the Act.[21] Specifically, the proposed rule defined the term, in pertinent part, to mean the staking or risking by any person of something of value upon the outcome of, among other things, ''a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome.'' [22] Similar to the Act, the proposed rule did not define gambling-related terms such as ''game subject to chance.'' The Agencies explained in the proposed rule that it was their preliminary view that issues regarding the scope of gambling-related terms should be resolved by reference to the underlying substantive State and Federal gambling laws and not by a general regulatory definition. The Agencies received about 40 comments related to the meaning of the term ''game subject to chance.''

Commenters requested that the Agencies clarify that Congress did not intend for the Act to block lawful gaming transactions such as skill games, that the definition of ''unlawful Internet gambling'' does not include skill games, and that the system designed to stop the flow of funds to unlawful Internet gambling operations does not include businesses operating skill games on the Internet.[23] Commenters also suggested application of a dominant factor test as a means of distinguishing a skill game from a game subject to chance.[24] Commenters asserted that, under the dominant factor test, a game whose outcome is determined predominantly by chance would be a game subject to chance, and a game whose outcome is determined predominantly by skill would be a skill game not covered by the Act or the regulation.[25] Commenters also stated that ''subject to chance'' is meant to cover games like roulette or slots where persons bet against the ''house'' and success is determined entirely by chance as opposed to games where individuals compete against one another with success over time being determined by skill.[26] Commenters also asserted that poker is a game of skill and not of chance.[27] Other commenters asserted that games like traditional poker and bridge are games subject to chance based on the ''luck of the draw'' via the random shuffling and dealing of cards.[28] These commenters asserted that unlike traditional poker and bridge, games like duplicate poker and duplicate bridge are skill games, because the luck of the draw is completely eliminated.

The Agencies believe that the characterization of each of the activities discussed above depends on the specific facts and circumstances. As noted above, the Agencies believe that questions regarding what constitutes unlawful Internet gambling should be resolved pursuant to the applicable Federal and State gambling laws. While there may be some games or contests conducted over the Internet that are not ''games subject to chance'' and, thus, not subject to the Act and the final rule, the Agencies believe that such issues are more appropriately resolved pursuant to the various underlying gambling laws than with a single regulatory definition.

The Agencies note, however, that a careful reading of the statutory language of the Act may be instructive in discerning Congressional intent regarding what constitutes a ''game subject to chance.'' The Act defines the term ''bet or wager'' as including a ''game subject to chance.'' [29] However, the Act also defines the term ''bet or wager'' as including the purchase of a chance or opportunity to win a lottery or other prize (which opportunity to win is *predominantly* subject to chance).'' [30] The fact that Congress used ''subject to chance'' in one paragraph and ''predominantly subject to chance'' in the next paragraph in the same subsection suggests that Congress intended the element of chance in ''game subject to chance'' to be less than predominant. The Agencies believe that if Congress had intended chance to be the predominant factor in determining the outcome of a ''game subject to chance,'' Congress would have inserted the word ''predominantly'' as it did subsequently in the same section. Therefore, even if chance is not the predominant factor in the outcome of a game, but was still a significant factor, the game could still be deemed to be a ''game subject to chance'' under a plain reading of the Act.

One commenter suggested that the Agencies consider developing a procedural mechanism by which Internet gambling businesses may apply for and obtain a certification from the Agencies that the Internet gambling businesses are engaged in lawful Internet gambling under applicable Federal and/or State law.[31] The Agencies have decided against implementing such a certification process. Instead, the nonexclusive policies and procedures contained in the final rule and discussed further below provide for an analogous procedural mechanism whereby the responsibility of determining which gambling activities are lawful is retained with the authorities enforcing the underlying gambling laws. Specifically, participants in designated payment systems may choose to follow the due diligence process in § ____.6(b) of the final rule's non-exclusive examples whereby they can rely on licenses issued by the appropriate gambling authorities as evidence that a commercial customer's Internet gambling activities are lawful. If a commercial customer does not have such a license, the participant may request that the unlicensed Internet gambling business provide a reasoned legal opinion that it does not engage in restricted transactions. If a participant has questions or concerns regarding the reasoned legal opinion, it should verify (or have the commercial customer verify) the conclusions presented in the reasoned legal opinion with the appropriate licensing authority.

§ ____.2(d) Block. A new definition for the term ''block'' was added to the final

[20] *Id.* at 21–22.

[21] 31 U.S.C. 5362(1).

[22] NPRM, 72 FR at 56695.

[23] *See e.g.*, comment letter from the Interactive Skill Games Association (Dec. 12, 2007), pp. 1 and 3.

[24] *See e.g.*, comment letter from the Poker Players Alliance (Dec. 12, 2007) (hereinafter ''PPA letter''), p. 2.

[25] Id.

[26] *See e.g.*, comment letter from Daniel W. Johnson (Oct. 16, 2007), p. 1.

[27] *See e.g.*, PPA letter, *supra* note 24, at 2.

[28] *See e.g.*, comment letter from Nelson Mullins Riley & Scarborough LLP (Dec. 12, 2007) (hereinafter ''Nelson Mullins letter'') pp. 2–3.

[29] 31 U.S.C. 5362(1)(A).

[30] 31 U.S.C. 5362(1)(B) (emphasis added).

[31] Nelson Mullins letter, *supra* note 28, at 2 and 6.

rule in response to comments that suggested that there was confusion among participants over the meaning of the term.[32] This term is used in the Act and the proposed rule imported it from the statutory language. As defined in the final rule, the term ''block'' means to reject a transaction before or during processing and is not intended to require freezing the funds. The funds would remain in or be returned to the original account and could be accessed by the accountholder for other purposes.

§ ____.2(f) Card system. The final rule includes revisions to the definition of ''card system'' included in the proposed rule in response to a comment that requested that the definition be clarified to cover both a card system model in which the merchant acquirer, the card network, and the card issuer are separate entities, as well as a model in which one company (such as American Express) owns the card processing network and is responsible for two or more major functions involved in issuing cards and acquiring merchants to accept the cards.[33] The NPRM discussed both card system models and the proposed rule made no distinction between the two.[34] In order to remove any ambiguity, the final rule clarifies that both models are covered by the term ''card system'' in the final rule.

§ ____.2(i) Commercial customer. A new definition for the term ''commercial customer'' was added to the final rule in response to comments that suggested that the final rule should clarify that the regulation was focused on due diligence procedures relating to commercial customers, rather than consumer accounts.[35] As noted above, other than for payment systems with a transaction coding functionality, the Agencies are suggesting that the efforts of participants in designated payment systems be focused on preventing restricted transactions primarily through due diligence on commercial customers. The Agencies have revised the provisions of the regulation to provide more clarity on this point. To facilitate this, a definition of the term ''commercial customer'' was added to the final rule.

§ ____.2(o) Foreign banking office. A new definition of the term ''foreign banking office'' was included in the final rule for use in the remedial action provisions in § ____.6 for cross-border transactions. The definition clarifies that a foreign office of a U.S. bank and a non-U.S. office of a foreign banking organization are both considered a ''foreign banking office'' for purposes of the final rule. The non-exclusive examples of reasonably designed policies and procedures include special provisions with respect to transactions and relationships between a U.S. office of a participant in a designated payment system and a foreign banking office. The new term for ''foreign banking office'' was included to facilitate those provisions.

§ ____.2(r) Internet gambling business. The final rule includes a new definition of the term ''Internet gambling business'' to facilitate use of the expanded example of due diligence of commercial customers. (Under the due diligence example, a participant would assess the risk of a customer being engaged in an ''Internet gambling business'' and would take certain steps based on that assessment.) The term contains elements of the Act's definition of the term ''unlawful Internet gambling,'' but includes both lawful and unlawful activities. The new term excludes the customary activities of a financial transaction provider, or any interactive computer service or telecommunications service, similar to the Act's exclusions from the term ''business of betting or wagering.''

§ ____.2(v) Operator. Some commenters requested clarification of the exemptions and responsibilities of different participants in a payment system under the examples of reasonably designed policies and procedures to prevent restricted transactions.[36] The final rule defines the term ''operator'' of a designated payment system to mean an entity that provides centralized clearing and delivery services between participants in the designated payment system and maintains the operational framework for the system and includes an ACH operator as defined in the NACHA rules. This definition works in conjunction with the clarifying changes to the exemptions and revisions, discussed below. For example, the operator of a money transmitting business is responsible for establishing the policies and procedures, while in an ACH system, the operator is generally granted an exemption.

§ ____.2(x) Reasoned legal opinion. The final rule includes a new definition for the term ''reasoned legal opinion'' to facilitate use of the expanded due diligence guidance that has been added to § ____.6(b). As explained in more detail below, in certain situations, a participant may ask a commercial customer for a ''reasoned legal opinion'' that its Internet gambling business does not involve restricted transactions. The Agencies added this term to provide more guidance on the type of legal opinion that would be considered adequate. The definition is based in part on the American Bar Association standards for a legal opinion.[37]

§ ____.2(y) Restricted transaction. Several commenters asked the Agencies to clarify that the definition of ''restricted transaction'' would not apply to funds going to a consumer (i.e., a gambler), as opposed to funds going to a commercial customer (i.e., an Internet gambling business).[38] The Act defines ''restricted transaction'' in § 5362(7) as ''any transaction * * * which the recipient is prohibited from accepting under section 5363.'' In turn, § 5363 provides that ''[n]o person engaged in the business of betting or wagering may knowingly accept'' a payment ''in connection with the participation of another person in unlawful Internet gambling.'' Under the final rule, the term ''restricted transaction'' would not include funds going to a gambler, and would only include funds going to an Internet gambling business.

§ ____.2(aa) Third party processor. A new definition for the term ''third party processor'' was added to the final rule in response to comments that suggested the final rule should clarify the responsibilities of processors under the Act.[39] The new definition clarifies that a processor with a direct customer relationship with the originator of a debit transfer transaction or the receiver of a credit transfer transaction, and which acts as an intermediary between the originator (or receiver) and the depository institution is a ''third party processor'' and covered by the regulation. A processor providing back-office support to a depository institution is not covered by the final rule, but the depository institution should ensure that such a processor complies with the depository institution's policies. The term ''third party processor'' has also been added to the definition of ''participant in a designated payment system'' and, as discussed in § ____.6, ''third party processors'' are responsible for establishing reasonably designed

[32] *See, e.g.*, The Clearing House letter, supra note 14, at 13.

[33] *See, e.g.*, comment letter from Bank of America (Dec. 12, 2007) pp. 2–3.

[34] NPRM, 72 FR 56680, 56684 n.10.

[35] *See, e.g.*, comment letter from Howrey, LLP, on behalf of The Money Services Round Table (Dec. 6, 2007) (hereinafter ''TMSRT letter'') pp. 5–6.

[36] *See, e.g.*, ABA letter, supra note 10, at 3–4.

[37] *See* ''Third-Party Legal Opinion Report, Including the Legal Opinion Accord, of the Section of Business Law,'' American Bar Association, 47 Bus. Law. 167 (1991).

[38] *See, e.g.*, comment letter from the National Automated Clearing House Association (Dec. 13, 2007) (hereinafter ''NACHA letter''), p. 2.

[39] *See, e.g.*, comment letter from U.S. Central Federal Credit Union (Dec. 6, 2007) p. 3.

policies and procedures in certain circumstances.

§ ____.3 Designated Payment Systems

The final rule's list of designated payment systems subject to the regulation differs from the list presented in the proposed rule only with respect to the designation for money transmitting businesses. The proposed rule included the definitions of ''money transmitting business'' and ''money transmitting service'' set out in the Act. The proposed rule designated ''money transmitting businesses'' as payment systems subject to the regulation. Commenters noted that, as defined in the Act, ''money transmitting business'' included check cashers, currency exchangers or entities which issue or redeem money orders or travelers checks.[40] For purposes of the Act, the Agencies do not believe that entities should be brought under the final rule's designation of ''money transmitting business'' and become subject to the final rule's provisions solely by virtue of engaging in check cashing, currency exchange, or the issuance or redemption of money orders, travelers' checks, and other similar instruments. Such activities could not be used for Internet gambling on an efficient basis. Accordingly, in order to address this comment, the Agencies revised the designation to read money transmitting businesses solely to the extent that they ''engage in the transmission of funds, which does not include check cashing, currency exchange, or the issuance or redemption of money orders, travelers' checks, and other similar instruments.'' Entities that would be included in the statutory term ''money transmitting business'' solely by virtue of engaging in check cashing, currency exchange, or the issuance or redemption of money orders, travelers' checks, and other similar instruments, but without engaging in the transmission of funds, would not be a participant in a designated payment system under the final rule.

After reviewing comments and conducting further outreach, the Agencies have also revised the designation to include only those money transmitting businesses that engage in the transmission of funds and permit customers to initiate money transmission transactions remotely from a location other than a physical office of the money transmitting business.[41] Money transmitting businesses that require senders to come to a physical office location to initiate transactions would not be attractive payment arrangements through which Internet businesses, including Internet gambling businesses, could obtain payments from the general public. The Agencies do not believe that such arrangements could reasonably be used for Internet gambling on a scale that would be useful or efficient for the Internet gambling business due to their lack of broad public accessibility. The Agencies believe that money transmitting businesses that do not permit remote initiation of transactions, such as through a website, are primarily focused on serving a narrow population or geographic area, such as would be the case in arrangements where a particular population in the United States is sending money to relatives in their home country.

A few commenters cited ''900-number'' payment schemes, and, while not providing any information regarding how these schemes work, requested that the Agencies look into them and ensure they are covered by the regulation as appropriate.[42] The Agencies have researched these schemes and believe that the schemes would fit the Act's and rule's definition of a money transmitting business if located within the United States. Operators of the 900-number schemes appear to use either a card payment or an ACH debit to obtain funds from the payor (the caller) and, separately, to use either a check or an ACH credit to send funds to the payee (the merchant that subscribes to the 900-number service, i.e., the entity receiving the 900-number call). The model appears analogous to that employed by PayPal (which identifies itself as a money transmitting service, and has obtained numerous Federal and State licenses in that regard), except that the operator of the 900-number scheme uses the phone network instead of the Internet for communications purposes, and uses phone numbers instead of email addresses to identify payors and payees using the system. Accordingly, such schemes located in the United States would be included in the money transmitting business designated payment system set forth in § ____.3(d) of the rule, and non-exempt participants in these systems, such as the operator, would be expected to adopt policies and procedures reasonably designed to prevent or prohibit restricted transactions if located in the United States.

§ ____.4 Exemptions

In general. Under the proposed rule, in designated payment systems other than card systems, the primary responsibility for establishing reasonably designed policies and procedures to prevent restricted transactions was placed on the participant that established and maintained the customer relationship with the commercial recipient of the funds (i.e., the Internet gambling business). The proposed rule provided exemptions for other specified participants in the ACH, check clearing, and wire transfer systems. Commenters noted that, while listing the exempt participants in each designated payment system may be the functional equivalent of exempting all participants except for the participant with the customer relationship with the Internet gambling business, it could define the exempt participants too narrowly.[43] In a payment transaction, there may be numerous intermediary servicers that do not have access to information on the commercial recipient and should be exempted. In addition, as commenters noted, as payment systems evolve, new intermediary participants could enter the transaction stream, but not be exempted because they were not specifically listed in § ____.4. Commenters recommended reworking the text of § ____.4 to make it clear that all participants in designated payment systems are exempt, except for the participant that possesses the customer relationship with the Internet gambling business. In response to these comments, § ____.4 has been revised to exempt every participant in a designated payment system, except the participants that have specific responsibilities in the non-exclusive examples in § ____.6, which, in most cases, will be the participant with the relationship with the commercial customer.[44] Various participants would

[40] *E.g.,* TMSRT letter, *supra* note 35, at 2; *see also* Wells Fargo letter, *supra* note 19, at 24–25.

[41] *See* summary of conference call with The National Money Transmitters Assoc. (call date June 3, 2008) (hereinafter ''NMTA call summary''), p. 1.

[42] *See, e.g.*, comment letter from the National Football League, Major League Baseball, National Basketball Association, National Hockey League, and National Collegiate Athletic Association (Dec. 12, 2007) (hereinafter ''NFL letter''), p. 5.

[43] *See, e.g.,* ABA letter, *supra* note 10, at 3.

[44] Some commenters suggested that even an exempt participant should be required to block a transaction in cases where the participant has actual knowledge that it is a restricted transaction. *E.g.,* NFL letter, *supra* note 42, at 5. In an automated payment system, it is unclear how an exempt participant would have actual knowledge that a particular transaction is a restricted transaction while in process. In addition, the final rule expressly states that it does not modify any requirement imposed on a participant by other applicable law or regulation to file a suspicious activity report to the appropriate authorities. If any participant suspects that a customer is processing illegal transactions, including restricted transactions, through the participant's facilities, the

have responsibilities under the non-exclusive examples for card systems in § ____.6 if card systems and their participants choose to adopt them.

§ ____.4(a), (b), and (d) Exemptions for ACH, check, and wire systems. Some commenters suggested that the final rule should provide a blanket exemption for ACH, check collection, and wire transfer systems in their entirety because these systems, unlike card systems, do not have the functionality necessary to code transactions and merchants.[45] While such an approach would certainly reduce the burden of the rule, it would substantially undermine the efficacy of the rule and the Act. Moreover, the final rule's non-exclusive examples for ACH, check collection, and wire transfer systems do not contemplate that non-exempt participants would identify individual transactions as restricted transactions. Rather, the final rule's non-exclusive examples contemplate that a participant would conduct risk-based due diligence of commercial customers at account opening, and when it has actual knowledge that a commercial customer is engaged in an Internet gambling business, to determine the risk the commercial customer presents of engaging in restricted transactions.[46] The Agencies believe that this approach is reasonably practical for non-exempt participants in the ACH, check collection, and wire transfer systems and, accordingly, that a blanket exemption for these systems in their entirety would not be appropriate under the Act.

Some commenters suggested exempting all U.S. participants processing cross-border transactions, because these participants do not have a direct customer relationship with Internet gambling businesses located abroad.[47] The final rule exempts U.S. participants processing outbound cross-border credit transactions (*i.e.*, ACH credits and wire transfers) because there are no reasonably practical steps that a U.S. participant could take to prevent their consumer customers from sending restricted transactions cross-border.[48] Specifically, the automated systems associated with ACH credit and wire transfers do not typically include information that would allow U.S. participants to identify and block restricted transactions. The Agencies also considered a process described in the NPRM that would involve customers describing the nature of the transaction and/or stating whether the transaction involves Internet gambling. However, the Agencies determined that such a process would be unduly burdensome for U.S. participants with little corresponding benefit because U.S. customers may mischaracterize the nature of the transaction and the participant would generally be unable to determine whether the customer's characterization of the transaction is accurate. As discussed in greater detail below, however, the final rule does not exempt U.S. participants receiving cross-border debit transactions (*i.e.*, ACH debits and check collections). Also, there are no exemptions for cross-border transactions in card systems.

Exemptions for certain card systems. One commenter suggested that the final rule should exempt gift cards entirely from the regulation and exempt stored-value cards or, at a minimum, exempt stored value cards below a threshold amount.[49] The commenter stated that such cards have not previously been subject to government regulation and such card systems do not have policies and procedures in place to track or limit the type of use of the card by the purchaser.[50] The commenter also stated that the burden of imposing a new regulation on entities acting as a card system operator, a merchant acquirer, or a card issuer is likely to be substantial. The Agencies considered this comment, but determined that the concerns were addressed by the final rule. The final rule's non-exclusive examples for card systems are based on coding frameworks that have already been instituted by the operators of the major ''open'' card systems, such as Visa, MasterCard, and American Express. If a card system is a ''closed loop'' system, the cards can only be used at the merchants belonging to the ''closed loop'' system. So long as Internet gambling businesses cannot accept these cards, the burden of this rule would be minimal, although the non-exempt participants in these systems would still have to comply with the rule's requirement to have reasonably designed policies and procedures in place. Accordingly, the Agencies determined that a blanket exemption for stored value products and gift cards was not appropriate.

Another commenter questioned the application of the proposed rule to co-branded cards, where a depository institution issues the card, but a non-depository institution, such as a securities firm, has its name on the card.[51] According to the commenter, the cards are usually issued to customers of the non-depository institution, but, in some co-branded card arrangements, the non-depository institution may assist the card issuer in certain aspects of the program, such as performing sub-accounting, issuing statements and providing authorization services, under a servicing contract with the card issuer. The commenter argued that a securities firm should not be regarded as a participant in the card system simply because its name appears on the card or the securities firm provides services to the card issuer in support of the program. The Agencies believe that the final rule's non-exclusive examples for card systems address these types of situations. The non-exclusive examples for card systems contemplate the implementation of a code system, such as transaction codes and merchant/business category codes to accompany the authorization request for a transaction. The code system should provide the operational functionality to enable the card system operator or the card issuer to reasonably identify and deny authorization for a transaction that the coding procedure indicates may be a restricted transaction.

With respect to the commenter's question regarding the responsibilities of the co-branding securities firm under the non-exclusive examples for card systems in § ____.6, the answer would depend on the facts presented. If the

participant should file a suspicious activity report with the appropriate authorities.

[45] *E.g.,* comment letter from Manufacturers and Traders Trust Co. (M&T Bank) (Dec. 11, 2007) (hereinafter ''M&T Bank letter''), p. 4. Some commenters similarly suggested that ACH, check collection, and wire transfer systems should not be listed as designated payment systems for similar reasons. See, *e.g.*, Wells Fargo letter, supra note 19, at 7.

[46] One commenter acknowledged that a bank could perhaps identify customers engaged in illegal Internet gambling by conducting enhanced due diligence at account opening, but stated that having to conduct enhanced due diligence at each account opening would be a significant burden on banks and customers alike. *See* comment letter from Compass Bank (Dec. 6, 2007), pp. 4–5.

[47] *See e.g.*, ABA letter, *supra* note 10 at 4.

[48] The final rule does not exempt the operator of a money transmitting business with respect to cross-border transactions, another form of credit transaction, because the operator of the system typically signs up commercial customers and can perform due diligence on those customers.

[49] *See* comment letter from Alston & Bird LLP (Dec. 12, 2007) (hereinafter ''Alston & Bird letter''), pp. 14–17.

[50] The commenter also questions whether the proposed rule required issuers, seller, and redeemers of gift cards to have reasonably designed policies and procedures to prevent restricted transactions. *Id.* at 15. As explained above, the only participants in card systems that are contemplated by the final rule's non-exclusive examples to have policies and procedures are the operator, card issuer, third-party processor, and merchant acquirer. Retailers that may sell pre-paid gift cards or stored value products of other issuers, such as grocery stores or convenience stores that sell gift cards for book stores, are not participants in a designated payment system, as defined by the final rule, and thus are not covered by the final rule.

[51] Comment letter from the Securities Industry and Financial Markets Association (Dec. 12, 2007), pp. 3–4.

card issuing bank receives the transaction authorization request with the required codes, it should implement its policies and procedures to deny authorization for a transaction with codes that indicate it may be a restricted transaction, without any involvement by the non-depository institution with its name on the card. If the card issuing bank has contracted with the co-branding non-depository institution to process authorization requests, the card issuing bank is responsible for ensuring that the co-branding non-depository institution is properly following the card issuing bank's policies and procedures regarding restricted transactions.

§ ____.4(c) Money transmitting business. The proposed rule did not contain any exemptions for participants in a money transmitting business. Commenters suggested that ''send'' agents of money transmitting businesses should be exempted from the rule's requirements because, like the originating institution in an ACH credit or a wire transfer, the ''send'' agent does not have a direct relationship with the commercial customer receiving the funds transmission and would not be in a position to collect information to identify restricted transactions.[52] In response to these comments, the Agencies have determined to exempt all send agents in a money transmitting business. In fact, the final rule includes an exemption for all participants in a money transmitting business, except for the operator. If an entity acted as both a send agent and the operator in a money transmitting business, the entity would not be exempted from the final rule by virtue of acting as the operator.

§ ____.5 Policies and Procedures Required

§ ____.5 Section title. In the proposed rule, the title of § ____.5 was ''Processing of restricted transactions prohibited.'' One commenter suggested that the title of § ____.5 in the proposed rule be revised to more accurately reflect what the section actually does.[53] In fact, the requirement in § ____.5 is to establish and implement reasonably designed policies and procedures to identify and block or otherwise prevent or prohibit restricted transactions, rather than impose a strict liability standard. The title of § ____.5 in the final rule has been revised accordingly to read ''Policies and procedures required.''

§ ____.5(b) Reliance on system policies and procedures. The proposed rule incorporated the Act's provisions permitting a participant in a designated payment system to comply with the Act's requirement to establish policies and procedures by relying on and complying with the policies and procedures of the designated payment system if the system's policies and procedures complied with the requirements of the regulation. This would likely be applicable to operator-driven systems, such as card systems. The Act does not indicate how a participant is to determine whether a system's policies and procedures comply with the regulation, and yet, makes such a determination a requirement for compliance under this provision. Commenters noted the significant problems and burden that would be imposed on participants in determining whether a system's policies and procedures complied with the regulation in order to rely on them.[54]

In response to these comments and to provide participants with a bright-line standard for knowing when they could rely on this provision for compliance with the regulation, the Agencies revised the rule to expressly permit participants in a designated payment system to rely on a written statement or notice by the operator of the designated payment system to its participants that states that the operator has designed or structured its policies and procedures to comply with the regulation. Such a statement or notice will be deemed to provide a justifiable basis for the participant to assume that the system's policies and procedures comply with the requirements of the final rule, unless and until the participant is notified otherwise by the Federal agency that has enforcement authority over that participant under § ____.7. The Agencies anticipate that such a statement or notice will provide a common understanding for all parties (i.e., the system operator, the other participants, and the regulator) that the Federal functional regulators will review the operator's policies and procedures and that the participants, many of which may be small businesses, will not be criticized by the regulators if they comply with the operator's policies and procedures, even though the regulators may subsequently deem the operator's policies and procedures to be deficient. If, upon review, the regulators determine that the operator's policies and procedures are deficient under the regulation, the Agencies expect that the regulators will work with the operator to correct the deficiency. If the operator is unable or unwilling to correct the deficiency, the Agencies expect that the regulators or the system operator would notify the participants that they can no longer rely on the operator's policies and procedures.

§ ____.5(d) Liability protection. As noted in the NPRM, the proposed rule imported the Act's provisions protecting persons from liability for identifying and blocking, preventing or prohibiting the acceptance of its products or services in connection with a transaction, or otherwise refusing to honor a transaction if (i) the transaction is a restricted transaction, (ii) such person reasonably believed the transaction to be a restricted transaction, or (iii) the person is a participant in a designated payment system and prevented the transaction in reliance on the policies and procedures of a designated payment system, in an effort to comply with the regulation. Some commenters suggested that the final rule expand these provisions to provide protection from liability in specific scenarios.[55] The Agencies considered these comments, but do not believe that expanding the liability protections in the regulation is appropriate. The Act's liability protection provisions address liability to a counterparty that may arise under other statutes (such as State commercial laws) from the failure of a participant in a designated payment system to complete a transaction. The Agencies do not believe that the Act authorizes them to expand or modify, by regulation, the scope of the protection from liability that the Act itself provides with respect to these other statutes.[56] The liability protection provisions in the final rule are limited to application of the final rule. The scope of the Act's liability protection with respect to other statutes should be determined by the entities that enforce those statutes. Accordingly, the final rule retains the scope of the liability protection provisions from the proposed rule.

§ ____.5(e) Overblocking. The Act requires that the Agencies ensure that transactions in connection with any

[52] *See, e.g.*, TMSRT letter, *supra* note 35, at 3.

[53] *See, e.g.*, comment letter from MasterCard Worldwide (Dec. 12, 2007) (hereinafter ''MasterCard letter'') p. 2.

[54] *See, e.g.*, comment letter from the Office of the Comptroller of the Currency (Dec. 12, 2007) (hereinafter ''Comptroller letter'') pp. 2–3.

[55] *See, e.g.*, comment letter from First Data Corporation (Dec. 12, 2007) p. 3.

[56] A commenter also requested that the Agencies include the Act's liability protection provisions verbatim from the statutory language. *See* MasterCard letter, *supra* note 53, at 3. The commenter was unclear as to whether the liability protection in the proposed rule matched the breadth of content of the Act's provision. As noted above, the Agencies intended to import the Act's liability protections from the Act and only modified the language for grammatical purposes to insert into the regulation.

activity excluded from the Act's definition of ''unlawful Internet gambling'' are not blocked or otherwise prevented or prohibited by the prescribed regulations (the ''overblocking provision'').[57] As noted in the NPRM, the proposed rule implemented this provision by making clear that nothing in the regulation requires or is intended to suggest that participants should block or otherwise prevent or prohibit any transaction in connection with any activity that is excluded from the definition of ''unlawful Internet gambling'' in the Act. In the NPRM, the Agencies noted that they believed that the Act does not provide the Agencies with the authority to require designated payment systems or participants therein to process any gambling transactions if the system or participant decides for business reasons not to process such transactions.

Some commenters agreed with the Agencies' approach to the overblocking provision presented in the proposed rule.[58] One commenter noted that any regulation that would require participants in designated payment systems to process certain types of transactions would ''significantly alter the business practices of many financial transaction providers—including the issuers of significant numbers of payment cards who currently routinely decline authorization for all transactions on U.S.-issued cards coded as Internet gambling transactions.'' [59] Conversely, some commenters representing gambling interests argued that the final rule should clarify that transactions related to interstate pari-mutuel wagering are not unlawful and need not be blocked.[60] Some commenters suggested that the final rule should require designated payment systems to create a new merchant category code specifically for gambling transactions that are not prohibited by the Act.[61]

The Agencies continue to believe that the Act does not provide them with the authority to require designated payment systems or participants therein to engage in any particular line of business or process any particular transactions.[62] While card system operators certainly may create new merchant category codes that are useful for specific transactions and industries, that is a business decision that those operators must make. Accordingly, the Agencies continue to believe that the proposed rule's language adequately addressed the Act's overblocking provision and that language has been retained in the final rule.

§ ____.5(g) U.S. offices. Some commenters requested that the Agencies clarify that the scope of any final rule is limited to United States offices of participants in designated payment systems.[63] The Agencies believe that the Act's restrictions apply only to transactions that are unlawful under applicable U.S. Federal or State law. The Act's definition of ''unlawful Internet gambling'' clearly states that it refers to a bet or wager that ''is unlawful under any applicable Federal or State law in the State or Tribal land in which the bet or wager is initiated, received, or otherwise made.'' [64] Transactions that are wholly outside the United States (i.e., when all parties and financial transaction providers to the transaction are outside the United States) would not violate such laws. As discussed below, while the Agencies expect U.S. participants to implement policies and procedures for certain cross-border transactions, the responsibility for implementing those policies and procedures would fall on the U.S. institution that handles the cross-border transaction. In order to provide the clarification requested by the comments, the final rule includes a new § ____.5(g) that states that the regulation's requirement to establish and implement reasonably designed policies and procedures applies only to the U.S. offices of participants in designated payment systems.

§ ____.6 Non-Exclusive Examples

Several commenters suggested that the final rule should clarify the Agencies' intent that the non-exclusive examples provided in the proposed rule were focused on relationships with commercial customers and not with respect to consumer accounts.[65] The Agencies recognize the problems with designing and implementing procedures focused on consumer accounts. For example, except for card systems, a participant would generally not know the purpose of a consumer transaction and often the payee information on a transaction, such as a check, is not in automated form. In response to the comments requesting clarification on this point, as a general matter, the non-exclusive examples in § ____.6 have been revised to make it clear in each instance that the policies and procedures to be implemented to prevent restricted transactions are with respect to commercial customer accounts only.

§ ____.6(b) Due diligence. As noted above and in the NPRM, most designated payment systems do not use formats that would permit participants to identify and block restricted transactions during payment processing.[66] Accordingly, the proposed rule adopted the approach of using flexible, risk-based due diligence in the participants' account-opening and account-maintenance procedures for commercial customers to reduce the risk that the commercial customer would originate or receive restricted transactions through its commercial relationship with the participant. The proposed rule also suggested that participants could include as a term of a commercial customer agreement that the customer may not engage in restricted transactions.

Commenters raised several issues regarding these provisions. Commenters expressed concern that the guidance provided was not detailed enough.[67] Commenters requested that the flexible risk-based due diligence approach described in the preamble to the NPRM be included in the final rule to facilitate participant compliance.[68] Commenters also expressed concerns with including a term in a commercial customer agreement prohibiting restricted transactions because the commercial customer may not have the information necessary to determine whether a transaction is a restricted transaction. These commenters stated that revising millions of commercial customer agreements to include such a provision would be burdensome and

[57] 31 U.S.C. 5364(b)(4).

[58] *See, e.g.,* comment letter from Visa U.S.A. Inc. (Dec. 12, 2007) (hereinafter ''Visa letter'') p. 3; *see also* ABA letter, *supra* note 10, at 5.

[59] *See* MasterCard letter, *supra* note 53, at 4.

[60] *See, e.g.,* comment letter from American Greyhound Racing, Inc. (Nov. 26, 2007), p. 2.

[61] *See, e.g.,* comment letter from the National Thoroughbred Racing Association (Dec. 11, 2007), p. 2.

[62] A principle of statutory construction is that a statute ought to be construed so that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant. As noted above, § 5364(b)(4) of the Act directs the Agencies to ensure that transactions excluded from the Act's definition of ''unlawful Internet gambling'' are not blocked or otherwise prevented or prohibited ''by the prescribed regulations.'' To interpret that provision as a requirement that designated payment systems and participants therein must process all transactions excluded from the definition of ''unlawful Internet gambling,'' even though they have made business decisions not to process such transactions, would render the words ''by the prescribed regulations'' meaningless.

[63] *See, e.g.,* Visa letter, *supra* note 58, at 4.

[64] 31 U.S.C. 5362(10).

[65] *See, e.g.,* ABA letter, *supra* note 10, at 4.

[66] *See, e.g.,* Wells Fargo letter, *supra* note 19, at 8.

[67] *See, e.g.,* comment letter from Branch Banking and Trust Company (Dec. 12, 2007) (hereinafter ''BB&T letter''), p. 2.

[68] *See, e.g.,* comment letter from the Independent Community Bankers of America (Dec. 12, 2007) (hereinafter ''ICBA letter''), p. 8.

impractical.[69] Commenters suggested that commercial customers engaged in an Internet gambling business should demonstrate to their financial transaction providers that the commercial customers are not engaged in unlawful Internet gambling in order to shift the burden of distinguishing lawful from unlawful Internet gambling from the financial transaction providers to the Internet gambling businesses.[70]

In order to provide more guidance on the due diligence procedures that the Agencies would deem reasonably designed, the final rule includes a new § ____.6(b) that sets out a specific process that a non-exempt participant could choose to follow to conduct adequate due diligence of commercial customers with respect to the risk of unlawful Internet gambling. The non-exclusive examples for each designated payment system include a reference to the general due diligence provisions in this new section. The Agencies also believe that this due diligence process will help alleviate some of the concerns regarding the Act's definition of ''unlawful Internet gambling.'' While the process set out in § ____.6(b) may still require some judgment on the part of participants opening new accounts for commercial customers, the process would leave the primary responsibility for determining what is lawful and unlawful gambling activity with the State gambling commissions and other gambling licensing authorities.

As noted in the NPRM, the Agencies anticipate that participants could choose to use a flexible, risk-based approach in their due diligence procedures in that the level of due diligence performed would match the level of risk posed by the commercial customer, and new § ____.6(b) includes specific references to this type of approach. In addition, the most efficient way for participants to implement the due diligence procedures would be to incorporate them into existing account-opening due diligence procedures (such as those required of depository institutions under Federal banking agencies' anti-money laundering compliance program requirements).[71]

As set out in new § ____.6(b), the participant could choose to conduct due diligence at account opening and determine the risk of a commercial customer engaging in an Internet gambling business. The participant should have a basic understanding of a new commercial customer's business, based on normal account-opening procedures. The vast majority of commercial customers will not have any involvement in an Internet gambling business. If, based on its initial due diligence, the participant determines that the prospective commercial customer presents only a minimal risk of engaging in an Internet gambling business, the participant could open the account for the commercial customer without further action under § ____.6(b).

One commenter suggested that the Agencies consider whether there are low-risk relationships for which due diligence would not be necessary.[72] New subsection ____.6(b)(4) states that a participant may deem the following commercial customers as presenting a minimal risk of engaging in an Internet gambling business without further investigation: (i) Entities that are directly supervised by the Federal functional regulators that are responsible for enforcing the Act; and (ii) agencies, departments, or divisions of the Federal government or a State government. With respect to supervised entities, the Federal functional regulators already review the activities of such entities and additional due diligence by participants in designated payment systems would be redundant.[73] With respect to the activities of the Federal or State governments, participants should be able to assume that their activities are lawful.

Depository institutions that are non-exempt participants in designated payment systems and have commercial customers that are money transmitting businesses should apply their due diligence procedures to those customers. However, under the final rule, the money transmitting businesses would themselves be responsible for implementing their own policies and procedures with respect to their commercial customers. The depository institutions providing financial transaction services to the money transmitting businesses would not be responsible for assessing the risk that the money transmitting business's commercial customers engage in an Internet gambling business.

Under § ____.6(b), the Agencies contemplate that a U.S. participant establishing a correspondent account for a foreign respondent would conduct appropriate, risk-based due diligence on the foreign respondent as a commercial customer to determine the risk the foreign respondent presents of engaging in an Internet gambling business. The Agencies expect that a participant would likely choose to incorporate such due diligence in its normal correspondent account opening procedures.[74] For the purposes of the final rule, the Agencies would not expect U.S. participants to conduct due diligence on its foreign respondent's commercial customers. If a U.S. participant obtained actual knowledge that a foreign respondent's commercial customer processed restricted transaction through the U.S. participant's facilities, the Agencies expect that the U.S. participant would follow the applicable procedures for cross-border transactions discussed below.

If the commercial customer's description of its business or other factors cause the participant to suspect that it may present more than a minimal risk of engaging in an Internet gambling business (for example, the commercial customer offers games or contests over the Internet), the participant should ask for further documentation from the commercial customer. Certification from the commercial customer that it does not engage in an Internet gambling business would address factual questions regarding the commercial customer's business. If the commercial customer engages in an Internet gambling business, the participant should obtain further documentation to show that the Internet gambling business is lawful. The non-exclusive policies and procedures also provide for a participant to obtain a written commitment from a commercial customer to notify the participant of any changes in its legal authority to engage in its Internet gambling business. If a commercial customer has a license that expressly authorizes the customer to engage in the Internet gambling business issued by the appropriate State or Tribal authority, the participant should be able to rely on that State agency's ability to implement its own gambling laws in a manner that does not violate the law of another State or Federal law.

If the commercial customer does not have such a license, the Agencies expect that the participant would obtain from the commercial customer a reasoned legal opinion by the customer's counsel that demonstrates that the commercial customer's Internet gambling business does not involve restricted transactions. If a participant has questions regarding

[69] *See, e.g.,* MasterCard letter, *supra* note 53, at 6.

[70] *See* NFL letter, *supra* note 42, at 3; *see also* undated comment letter from Members of Congress of the United States (Rep. Pitts *et al.*) p. 1.

[71] *See, e.g.,* 12 CFR 208.63.

[72] *See* Comptroller letter, *supra* note 54, at 2.

[73] For a general discussion in this regard, see the comment letter from The Depository Trust & Clearing Corporation (Dec. 10, 2007).

[74] Many U.S. institutions are already required to conduct due diligence of foreign financial institutions pursuant to Section 312 of the USA PATRIOT Act. 31 U.S.C. 5318(i); 31 CFR 103.176.

the permissibility of a commercial customer's activities, the participant should consult with (or have the commercial customer obtain confirmation from) the applicable licensing authority.[75] In addition, the suggested due diligence process in § ____.6(b) includes a third-party certification that the commercial customer's systems for engaging in the Internet gambling business are reasonably designed to ensure that the commercial customer's Internet gambling business will remain within the licensed or otherwise lawful limits, including with respect to age and location verification.

The Agencies expect that this provision will not only provide additional guidance to participants on an adequate due diligence process, but also will permit the entities that license gambling activities to retain the primary responsibility for determining which activities are permissible under U.S. law. The Agencies have designed the example of due diligence procedures to enable designated payment systems and their participants to rely on government licensing and enforcement agencies to determine whether a commercial customer's Internet gambling activities are lawful rather than trying to make that determination themselves. The designated payment systems and their participants should, however, obtain appropriate documentation from those entities regarding the legality of the Internet gambling activities of its prospective commercial customers.

The final rule retains the concept that participants in designated payment systems could communicate to their commercial customers that restricted transactions are prohibited. However, rather than suggesting that the only way to accomplish this goal is to include such a prohibition in the commercial customer agreement, the final rule provides that a participant could notify all of its commercial customers that restricted transactions are prohibited through a term in the commercial customer agreement, a simple notice sent to the customer, or through some other method.

§ ____.6(d) and (f) Monitoring the Internet. As an example of reasonably designed policies and procedures for card systems and money transmitting businesses, the proposed rule included monitoring the Internet to detect unauthorized use of the relevant designated payment system, including its trademarks.[76] The Agencies' intent with this example was to incorporate the existing practice of some participants in designated payment systems to proactively search (or retain a contractor to search) the Internet for unauthorized use of their trademarks, including by Internet gambling Web sites.[77] When unauthorized use of a trademark was discovered, the payment system or participant could choose to take steps to seek its removal from the gambling Web site, including legal action if available.

While some payment industry commenters recognized the value of monitoring the Internet for abuse of trademarks, they also reported that reasonable efforts to protect their trademarks are not always successful.[78] In addition, payment industry commenters objected to the proposed rule converting the right to protect a trademark ''into an obligation under the Act.'' [79] Commenters noted that legal action to protect trademarks can be costly and ultimately unsuccessful and criticized the proposed rule because it implied that such action was required.[80] The Agencies believe that monitoring the Internet for unauthorized use of a payment system's trademark by Internet gambling businesses is a good practice and can be useful in preventing restricted transactions. However, the Agencies agree that designated payment systems and their participants should make a business decision on whether to pursue this activity and how to respond to discovered unauthorized use of their trademarks. Accordingly, in order to avoid confusion, the Agencies have deleted from the final rule the language regarding monitoring the Internet for unauthorized use of trademarks of designated payment systems or non-exempt participants. Of course, the examples in the rule are non-exclusive, and a system or participant may choose to include trademark monitoring in its policies and procedures where appropriate.

§ ____.6(c), (d) and (f) Fines. In the non-exclusive examples of reasonably designed policies and procedures for ACH systems, card systems, and money transmitting businesses, the proposed rule included the imposition of fines if the participant becomes aware that restricted transactions had been processed. The Agencies' intent in including this provision was to suggest imposing fines on participants that violated system rules regarding unlawful Internet gambling.[81] The proposed rule did not, however, adequately explain the specific functions that should be carried out by specific participants in a system, including how fines should be imposed.

The lack of specificity caused some confusion among commenters who suggested that the provision be dropped or that the terminology be revised.[82] In the final rule, as a general matter, the Agencies have attempted to provide greater clarity to the specific procedures in the non-exclusive examples that are intended to apply to particular parties in the designated payment system. With respect to fines, the Agencies have deleted this provision from the final rule as potentially confusing, given the different relationships between parties within each designated payment system. As the examples in the rule are non-exclusive, a system or participant may choose to include fines in its policies and procedures where appropriate.

§ ____.6(d) Card system examples. The proposed rule included as part of its non-exclusive examples of reasonably designed policies and procedures for card systems due diligence in establishing commercial customer accounts designed to ensure that the merchant will not receive restricted transaction through the card system, similar to provisions included in the non-exclusive examples for the other designated payment systems. The proposed rule's card system examples also included establishing transaction codes and merchant/business category codes that accompany the authorization request for a transaction and creating the operational functionality to enable the card system or the card user to identify and deny authorization for a restricted transaction. One card system commenter suggested that card systems

[75] The receipt of a reasoned legal opinion pursuant to a due diligence process under § .____6(b) is solely for purposes of compliance with implementing regulations under the Act and does not necessarily constitute compliance with, or provide protection from liability under, any other applicable Federal or State laws.

[76] Monitoring the Internet for unauthorized use of a trademark is distinct from monitoring and analyzing payment patterns to detect suspicious patterns of payments to a recipient. Monitoring and analyzing payment patterns continues to be included in the non-exclusive examples for card systems and money transmitting businesses.

[77] *See, e.g.,* MoneyGram letter, *supra* note 7, at 2.

[78] *Id.*

[79] *See* comment letter from PayPal (Dec. 12, 2007), p. 2; *see also* MasterCard letter, *supra* note 53, at 8.

[80] *See* PayPal letter, *supra* note 79, at 2 and MasterCard letter, *supra* note 53, at 8. None of the rule's examples of reasonably designed policies and procedures are ''required.'' As noted in § ____.6(a) of both the proposed rule and the final rule, the examples provided in § ____.6 are non-exclusive and designated payment systems and participants therein are permitted to design and implement policies and procedures that may be different than the examples.

[81] *See, e.g.,* National Automated Clearing House Association, 2007 ACH Rules, Operating Rules Appendix XI (The National System of Fines).

[82] *See, e.g.,* The Clearing House letter, *supra* note 14, at 11.

should be permitted to comply with the Act through the use of either due diligence on merchants or coding to identify and block restricted transactions, but not necessarily both.[83] The commenter cited the language of the Act that specifically identifies policies and procedures that allow a designated payment system and its participants ''to identify restricted transactions by means of codes in authorization messages or by other means'' and to block such transactions, as one of the acceptable ways that a payment system can comply with the Act.[84]

The Agencies expect that a coding system to identify and block restricted transactions will be the method of choice for the vast majority of card system participants to comply with the Act. In addition, the Agencies note that most Internet gambling businesses that use card systems for funding do so through non-U.S. merchant acquirers that are not subject to the Act or the final rule and likely would not conduct due diligence regarding Internet gambling on their merchants. However, the final rule retains a due diligence example for closed loop card systems in the United States where the card can only be used for a single merchant or a limited group of identified merchants, such as merchants operating in a particular shopping mall. Section ____.6(d) includes both the coding and due diligence examples for card systems as alternatives and contemplates that a card system and its participants could adopt either approach. Moreover, it is important to note that the examples in § ____.6 are non-exclusive and a card system could adopt policies and procedures other than the coding and due diligence examples presented and still comply with the final rule's requirement to adopt reasonably designed policies and procedures to prevent or prohibit restricted transactions.

In addition, some commenters suggested that the final rule's non-exclusive examples should include a provision by which credit card companies would create a particular merchant category code that would be limited to those types of Internet gambling that are specifically excluded from the definition of the term ''unlawful Internet gambling'' in § ____.2(cc)—intrastate transactions, intratribal transactions, and any activity that may be allowed under the Interstate Horseracing Act.[85] While card system operators may choose to create new codes for such transactions, the Agencies believe that the establishment of codes for particular merchant transactions is a business decision for the card system operators and their participants. Accordingly, the final rule does not specify the establishment of such codes in the coding example for card systems.

§ ____.6(c) and (e) Cross-border transactions. For the reasons discussed in the NPRM and above, the Agencies believe that it is very difficult, if not impossible, for a participant in the designated payment systems (other than card systems) to identify restricted transactions while they are being processed. As a result, the Agencies determined that the most efficient way to implement the Act for the systems other than card systems was through adequate due diligence by participants when opening accounts for commercial customers to reduce the risk that a commercial customer will introduce restricted transactions into the payment system in the first place.

With respect to cross-border transactions, however, the institution that opens the account for an Internet gambling business likely will be located outside the United States and not be subject to the Act. Accordingly, no U.S. participant would be able to conduct due diligence at account opening for the foreign commercial customer. The proposed rule provided examples of special procedures for participants in ACH, check collection, and wire transfer systems that received cross-border transactions from foreign counterparties, such as including as a term in its agreement with a foreign counterparty a requirement that the foreign counterparty have reasonably designed policies and procedures in place to ensure that the commercial relationship would not be used to process restricted transactions.[86]

Commenters objected to the cross-border examples in the proposed rule on numerous grounds.[87] Some commenters stated that including a term in agreements with foreign banks regarding restricted transactions was not practicable because it was unrealistic to expect foreign institutions to be willing or able to make specific representations with respect to restricted transactions, given the uncertain definition of ''unlawful Internet gambling.''[88] In addition, commenters noted that the foreign correspondent with which the U.S. participant has a contractual relationship may itself be a correspondent several steps removed from the institution that has the customer relationship with the Internet gambling business and that it would be unrealistic to expect a provision in the cross-border agreement would be able to prevent restricted transactions.[89] Commenters suggested that cross-border transactions conducted through correspondent relationships be entirely exempt from the regulation, or that notice to customers that the relevant payment system may not be used to engage in restricted transactions should be deemed a reasonably designed policy and procedure.[90]

The comment letters illustrated many of the challenges in identifying and preventing particular types of transactions in the modern, global payment system. The Agencies agree that, with the complex framework of gambling laws in the United States, institutions in other countries will not reasonably be able to determine which transactions are unlawful under applicable U.S. law. Moreover, given the numerous intermediaries involved with a typical cross-border payment transaction, there will likely be many cases where the foreign correspondent from which a U.S. participant receives a cross-border debit transaction does not have a customer relationship with the Internet gambling business.

In response to the comments on the various cross-border transaction provisions, the Agencies have made revisions to the cross-border provisions in the final rule. First, the final rule contains non-exclusive examples with respect only to cross-border debit transactions (i.e., ACH debits and check collections) because there are no reasonably practical steps that a foreign counterparty could take to prevent a U.S. institution from sending a restricted transaction to the foreign counterparty, short of severing the relationship altogether. Second, the final rule contemplates that if a U.S. participant is notified by a U.S. government entity (such as its regulator or law enforcement) that it has been sent cross-border restricted transactions by a

[83] *See* Visa letter, *supra* note 58, at 2.

[84] *See* 31 U.S.C. 5364(a).

[85] *See, e.g.*, comment letter from the American Horse Council (Dec. 12, 2007), pp. 3–4; *see also* comment letter from the North American Association of State & Provincial Lotteries (Dec. 11, 2007), p 3.

[86] The Agencies do not believe that special cross-border procedures are necessary for card systems, which generally have the same coding system for transactions regardless of where they are initiated.

[87] *See, e.g.*, ABA letter, *supra* note 10, at 7.

[88] *See, e.g.*, The Clearing House letter, *supra* note 14, at 9.

[89] *See, e.g.*, ABA letter, *supra* note 10, at 8.

[90] *Id.; see also* The Clearing House letter, *supra* note 14, at 9.

particular foreign respondent, the participant would be expected to notify its foreign respondent of the restricted transaction.[91] The Agencies have included a model notice in the appendix to the regulation.

§ ____.6 Remedial Action

Commenters urged the Agencies to provide more detailed guidance as to when non-exempt participants should take remedial action against their commercial customers for processing restricted transactions. These commenters stated that the proposed rule gave no specifics about what types of penalties are appropriate under particular circumstances.[92] The Agencies considered these comments and determined that a non-exempt participant's decision on when to deny a commercial customer access to a particular payment system or when to close the account of such customer for processing restricted transactions is fact-specific and a matter of business judgment. As a result, the final rule does not contain thresholds specifying when it would be appropriate to take certain types of remedial action. When restricted transactions are discovered, the Agencies expect that a participant's regulator will review the remedial actions taken by the participant and come to a judgment as to whether the participant took appropriate action under the circumstances.

§ ____.7 Regulatory Enforcement

The proposed rule essentially reiterated the regulatory enforcement framework from the Act. Some commenters urged that the financial regulators develop a uniform approach for enforcing the rule.[93] The Act does not modify the statutory enforcement mechanisms of the agencies charged with enforcing the Act with respect to the institutions that are within their jurisdiction. The Federal agencies charged with regulatory enforcement authority for the final rule have different enforcement authorities and use different regulatory tools for fulfilling their supervisory responsibilities, so the Agencies do not believe that it is appropriate to mandate a particular uniform regulatory enforcement approach in the final rule. Moreover, the Board expects that examiner guidance will be developed among the Federal depository institution regulatory agencies responsible for enforcing the final rule, however, that process would occur separately from this rulemaking.

Another commenter noted that the Act's regulatory enforcement framework reflected in the proposed rule would subject money service businesses (MSBs) to the jurisdiction of two different agencies—the Federal Trade Commission for enforcement of the Act and the Internal Revenue Service, which elsewhere has been delegated authority to examine for compliance with the Bank Secrecy Act (BSA).[94] The commenter suggested that the Agencies could determine that MSBs should be subject to the authority of only one regulator. The Agencies do not believe that the Act provides the Agencies with the authority to modify the regulatory authority of Federal agencies pursuant to the Act or any other statute.

After considering the public comments received on the proposed rule, the Agencies have not modified § ____.7 from the proposed rule, other than technical conforming changes.

III. Administrative Law Matters

A. Executive Order 12866

It has been determined that this regulation is an economically significant regulatory action as defined in section 3(f)(1) of E.O. 12866, as amended. Accordingly, this final rule has been reviewed by the Office of Management and Budget. The reasons for this determination are explained in more detail in the Small Business Regulatory Enforcement Fairness Act Section B. The Regulatory Assessment prepared by the Treasury for this regulation is provided below.

1. Description of Need for the Regulatory Action

The rulemaking is required by the Act, the applicable provisions of which are designed to interdict the flow of funds from gamblers to unlawful Internet gambling businesses. To accomplish this, the Act requires the Agencies, in consultation with the U.S. Attorney General, to jointly prescribe regulations requiring designated payment systems (and their participants) to establish policies and procedures that are reasonably designed to identify and block or otherwise prevent or prohibit unlawful Internet gambling transactions restricted by the Act.

In accordance with the Act, section 3 of the final rule designates five payment systems that could be used in connection with, or to facilitate, unlawful Internet gambling transactions. The five designated payment systems are the same payment systems designated in the proposed rule, except that the Agencies have narrowed the designation of money transmitting businesses to cover only those money transmitting businesses that permit their customers to initiate fund transfers remotely from a location other than a physical office of the money transmitting business. As explained above, the Agencies' view is that money transmitting businesses that do not permit their customers to initiate remote funds transfers, such as through a Web site, could not reasonably be used for Internet gambling because of the lack of broad public accessibility. The Agencies believe that the narrowing of the money transmitting business designation will significantly reduce the number of money transmitting businesses affected by the final rule. The Agencies estimated in the proposed rule that the number of money transmitting businesses affected would be 253,208. The Agencies estimate that the number of money transmitting businesses affected by the final rule with the narrower designation and with the exemption described below will be 16, resulting in an estimated reduction of 253,192 money transmitting businesses affected by the final rule.

In accordance with the Act, section 5 of the final rule requires designated payment systems and participants in those designated payment systems to establish and implement written policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit unlawful Internet gambling transactions restricted by the Act. In accordance with the Act, section 4 of the final rule exempts certain participants in designated payment systems from the requirement to establish and implement policies and procedures, because the Agencies believe that it is not reasonably practical for those participants to identify and block or otherwise prevent or prohibit unlawful Internet gambling transactions restricted by the Act. As explained earlier, the Agencies have expanded the exemptions in the final rule. For example, the proposed rule did not contain any exemptions for money transmitting businesses. At least one commenter recommended that the Agencies exempt ''send'' agents of

[91] The Agencies expect that the notice would contain enough detail (including identifying intermediaries) to permit the U.S. participant to describe the transaction's path to its foreign counterparty.

[92] *See e.g.*, NFL letter, *supra* note 42, at 4; *see also* comment letter from Christian Coalition of America (Dec. 7, 2007), p.2.

[93] *See, e.g.*, comment letter from Credit Union National Association (Dec. 12, 2007) p. 5; *see also* comment letter from The Financial Services Roundtable and BITS (Dec. 12, 2007), pp. 6–7.

[94] *See* Alston & Bird letter, *supra* note 49, at 23. *See also,* 31 CFR 103.56(b)(8) where the regulations of the Financial Crimes Enforcement Network (''FinCEN'') clarify the examination authority of the IRS.

money transmitting businesses by analogizing such ''send'' agents to the originating depository institutions for ACH credit and wire transfers which the Agencies exempted in the proposed rule. The final rule exempts all participants in money transmitting businesses, including ''send'' agents, except for the operator. In accordance with the Act, section 6 of the final rule contains a ''safe harbor'' provision by including non-exclusive examples of policies and procedures which would be deemed to be reasonably designed to identify and block or otherwise prevent or prohibit unlawful Internet gambling transactions restricted by the Act.

2. Assessment of Potential Benefits and Costs

a. Potential Benefits

Congress determined that Internet gambling is a growing cause of debt collection problems for insured depository institutions and the consumer credit industry.[95] Further, Congress determined that there is a need for new mechanisms for enforcing Internet gambling laws because traditional law enforcement mechanisms are often inadequate for enforcing gambling prohibitions or regulations on the Internet, especially where such gambling crosses State or national borders.[96] Section 5 of the final rule addresses this by requiring participants in designated payment systems, which include insured depository institutions and other participants in the consumer credit industry, to establish and implement reasonably designed policies and procedures to identify and block or otherwise prevent or prohibit unlawful Internet gambling transactions in order to stop the flow of funds to unlawful Internet gambling businesses. This funds flow interdiction is designed not only to inhibit the accumulation of consumer debt but also to reduce debt collection problems for insured depository institutions and the consumer credit industry. Treasury believes that the reduction of debt collection problems through the final rule's funds flow interdiction process will yield important benefits for insured depository institutions and consumers given the recent turmoil in the financial markets that is causing liquidity problems for insured depository institutions and constraining the availability of consumer credit. Moreover, the final rule carries out the Act's goal of implementing new mechanisms for enforcing Internet gambling laws. The final rule will likely provide other benefits. Specifically, the final rule could restrict excesses related to unlawful Internet gambling by underage or compulsive gamblers.

b. Potential Costs

Treasury believes that the costs of implementing the Act and the final rule are lower than they would be if the Act and the final rule were to require a prescriptive, one-size-fits-all approach with regard to regulated entities. First, section 5 of the final rule provides that a financial transaction provider shall be considered to be in compliance with the regulation if it relies on and complies with the written policies and procedures of the designated payment system of which it is a participant. This means that the regulated entities will not be required to establish their own policies and procedures but can instead follow the policies and procedures of the designated payment system, thereby resulting in lower costs. Based on public comments received, the Agencies have made it easier for regulated entities to choose to follow the policies and procedures of a designated payment system. Specifically, the proposed rule incorporated the Act's provision permitting regulated entities to rely on the policies and procedures of a designated payment system if the system's policies and procedures comply with the requirements of the regulation. In their comments, regulated entities expressed concern about the significant burden that would be imposed on them in determining whether a designated payment system's policies and procedures complied with the regulation, particularly when the payment system has thousands of participants and no single participant has any significant leverage with the payment system.[97] In order to eliminate this burden and the associated costs, the final rule specifically states that regulated entities may rely on and treat as conclusive evidence a written statement or notice from a designated payment system that the system's policies and procedures comply with the final rule, unless such regulated entities are specifically notified otherwise by the appropriate Federal agency.

Second, with regard to regulated entities that choose to establish their own policies and procedures, sections 5 and 6 of the final rule provide maximum flexibility. Specifically, the final rule contains neither design standards (such as requiring the use of a specific technology) nor performance standards but instead requires, consistent with the Act, that the policies and procedures be ''reasonably designed'' to identify and block or otherwise prevent or prohibit unlawful Internet gambling. In addition, the final rule expressly authorizes each regulated entity to design and implement policies and procedures that are ''tailored to its business,'' which will enable it to craft policies and procedures based on individual circumstances. The flexibility the final rule affords regulated entities that establish their own policies and procedures should result in lower costs than if the final rule took a prescriptive one-size-fits-all approach.

Third, the ''safe harbor'' provision, with its nonexclusive examples of policies and procedures deemed to be ''reasonably designed,'' provides regulated entities with specific guidance on how to structure the policies and procedures required by the Act and the final rule. As a result, costs associated with formulating policies and procedures should be lower because the safe harbor provision provides guidance on how to so structure the policies and procedures. The Agencies also revised the nonexclusive due diligence examples contained in section 6 of the final rule to reduce potential costs for regulated entities. Specifically, the proposed rule contained nonexclusive due diligence examples which generally placed the burden of distinguishing lawful versus unlawful Internet gambling on regulated entities. As noted earlier, public commenters suggested that commercial customers engaged in an Internet gambling business should demonstrate to their financial transaction providers that the commercial customers are not engaged in unlawful Internet gambling in order to shift the burden of distinguishing lawful versus unlawful Internet gambling from regulated entities to the Internet gambling businesses. Based on these comments, the Agencies revised the nonexclusive due diligence examples contained in the final rule by shifting the burden of distinguishing lawful versus unlawful Internet gambling from regulated entities to the Internet gambling businesses. Treasury believes that this shifting of the burden will result in lower costs for regulated entities that choose to follow the final rule's nonexclusive due diligence examples.

Treasury received two comments expressing concern that the Regulatory Assessment in the proposed rule only addressed the potential recordkeeping

[95] 31 U.S.C. 5361(a)(3).

[96] 31 U.S.C. 5361(a)(4).

[97] *See e.g.*, comment letter from The Huntington National Bank (Dec. 12, 2007) p. 3.

costs on regulated entities but did not include an analysis of the full potential costs to participants to establish and implement the policies and procedures, including legal, management and operational costs.[98] In the proposed rule, Treasury explained that it did not have sufficient information to quantify reliably the costs of developing specific policies and procedures, and it solicited information and comment on any costs or compliance requirements. Because the final rule provides maximum flexibility to regulated entities that establish their own policies and procedures by allowing them to tailor their policies and procedures to their business, including the use of different policies and procedures with respect to different business lines or different parts of the organization, Treasury does not have sufficient information to quantify reliably the costs of developing and implementing specific policies and procedures.

It is estimated that the recordkeeping burden for regulated entities will be approximately one million hours in order to develop and establish the policies and procedures required by the Act and this final rule. Using a reasonable estimate of average wages to monetize the opportunity cost of this time, which is explained in more detail in the Paperwork Reduction Act section below, yields a combined recordkeeping burden of approximately $88.5 million. We estimate this potential impact will be born during the first year this rule is in effect, in anticipation of the compliance date 12 months after publication of the final rule. In addition, it is estimated that the recordkeeping requirement required by the Act and the final rule will take approximately 8 hours per recordkeeper per year to maintain the policies and procedures required by this rulemaking. It is estimated that the total annual cost to regulated entities to maintain the policies and procedures will be approximately $3,337,200.[99]

3. Interference With State, Local, and Tribal Governments

The Act does not alter State, local or Tribal gaming law.[100] The Act exempts from the definition of the term ''unlawful Internet gambling,'' intrastate, intratribal, and intertribal transactions.[101] Because the final rule does not alter these defined terms, it avoids undue interference with State, local, and tribal governments in the exercise of governmental functions. In addition, the final rule's non-exclusive due diligence examples contained in § ____.6 accord deference to State and Tribal authorities. Specifically, the final rule's due diligence examples provide that a regulated entity may accept as evidence of a commercial customer's legal authority to engage in an Internet gambling business, a license issued by an appropriate State or Tribal authority that expressly allows the regulated entity's commercial customer to engage in the Internet gambling business.

B. Small Business Regulatory Enforcement Fairness Act of 1996

As discussed elsewhere, the total recordkeeping costs alone imposed on regulated entities exceed $88.5 million. Treasury does not have adequate information to quantify the impact of other compliance requirements, such as the implementation of any due diligence policies and procedures for commercial customers during the first year of this rule. These unquantified costs that are necessary to meet compliance obligations include burdens related to management, clerical, technical, training, auditing, and legal expertise that are necessary to implement the policies and procedures set forth in this final rule. Therefore, Treasury believes it is reasonable to assume the total compliance costs of this final rule will exceed $100 million in the first year. Considering the final rule's quantified and unquantified costs, and the fact that costs are likely to constitute a major increase in costs for an individual industry (depository institutions), it is a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996.

C. Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4; 2 U.S.C. 1532)

Treasury has concluded this rule does not contain a Federal mandate that may result in the expenditure by State, local and Tribal governments, in aggregate, or by the private sector, of $100 million or more (adjusted for inflation) in any one year. The threshold after adjustment for inflation is $130 million, using the most current (2007) Implicit Price Deflator for the Gross Domestic Product. However, Treasury believes the analyses provided in the Executive Order, Regulatory Flexibility Act, and Paperwork Reduction Act sections provide the analysis required by the Unfunded Mandates Reform Act.

D. Final Regulatory Flexibility Analysis

An initial regulatory flexibility analysis (IRFA) was included in the NPRM in accordance with the Regulatory Flexibility Act (RFA).[102] In the IRFA, the Agencies specifically solicited comment, including from small entities, on whether the proposed rule would have a significant economic impact on a substantial number of small entities. No small entities submitted comments regarding quantification of their projected costs. The Agencies expect this rule to affect a number of small entities; however, the direct cost this rule imposes does not appear to have a significant economic impact on a substantial number of small entities, within the meaning of the RFA. Specifically, as discussed below, the proposed rule estimated that approximately 253,368 small entities would be subject to the rule. The Agencies estimate that the number of small entities subject to the final rule will be approximately 12,267 or less than five percent of the total number of small entities estimated in the proposed rule. The Agencies thus believe that the final rule will not affect a substantial number of small entities. Moreover, as noted below, in response to public comments on the proposed rule and on the IRFA, the Agencies have made a number of changes in the final rule that will reduce its economic impact. Even though this rule does not appear to have a significant economic impact on a substantial number of small entities, the Agencies have not formally certified the rule as not having a ''significant economic impact on a substantial number of small entities,'' as provided under section 605(b) of the RFA. Instead, the Agencies have prepared a Final Regulatory Flexibility Analysis as described in the RFA, 5 U.S.C. 604.[103]

The RFA requires each FRFA to contain:

- A succinct statement of the need for, and objectives of, the rule;
- A summary of the significant issues raised by the public comments in response to

[98] *See e.g.*, comment letter from the California and Nevada Credit Union Leagues (Dec. 12, 2007) p.4.

[99] This estimate is based on an estimate of 16,686 recordkeepers. The hourly cost of the individual who would be responsible for maintaining the policies and procedures is estimated to be $25 per hour (which is an average based on data contained in the U.S. Department of Labor, Bureau of Labor Statistics' occupational employment statistics for office and administrative support occupations, dated May 2007).

[100] Specifically, the Act defines the term ''unlawful Internet gambling'' as a bet or wager, which involves at least in part the use of the Internet, where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made. 31 U.S.C. 5362(10)(A).

[101] 31 U.S.C. 5362(10)(B) and (C).

[102] 5 U.S.C. 601 *et seq.*

[103] When promulgating a final rule, the RFA requires agencies to prepare a FRFA unless the agency finds that the final rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C. 604(a) and 605(b).

the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

- A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
- A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
- A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.[104]

1. Statement of the Need for, and Objectives of, the Final Rule

The Agencies jointly are adopting this final rule to implement the Act, as required by the Act. As noted above, the Act prohibits any person in the business of betting or wagering (as defined in the Act) from knowingly accepting payments in connection with the participation of another person in unlawful Internet gambling. The Act requires the Agencies jointly (in consultation with the U.S. Attorney General) to designate payment systems that could be used in connection with, or to facilitate, restricted transactions and to prescribe regulations requiring designated payment systems, and financial transaction providers participating in each designated payment system, to establish policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions.[105] The final rule sets out necessary definitions, designates payment systems that could be used in connection with restricted transactions, exempts participants performing certain functions in designated payment systems from the requirement imposed by the final rule, provides nonexclusive examples of policies and procedures reasonably designed to identify and block, or otherwise prevent and prohibit, restricted transactions, and reiterates the enforcement regime set out in the Act for designated payment systems and non-exempt participants therein. The Agencies believe that the final rule implements Congress's requirement that the Agencies prescribe regulations that carry out the purposes of the Act and provide guidance to designated payment systems and participants therein with respect to policies and procedures reasonably designed to identify and block, or otherwise prevent or prohibit, transactions in connection with unlawful Internet gambling.

2. Significant Issues Raised by Comments in Response to the IRFA

The Agencies have carefully considered the comment letters received in response to the proposed rule. The preamble above provides a general overview of the comments and the preamble's section-by-section analysis discusses the significant issues raised by the comments. The following is a summary of significant issues raised by commenters regarding the IRFA. The Agencies also have considered the comments received from small entities and associations that represent such small entities, even though the comments did not specifically refer to the RFA.

The Agencies received several comments directly related to the IRFA, including from the Office of Advocacy (Advocacy) of the U.S. Small Business Administration.[106] The most common concern expressed in these comments was that the IRFA did not provide sufficient information about the nature of the impact of the proposed rule on small entities or that the burdens were not adequately estimated. Advocacy stated that, while it appreciated the fact that the Agencies may need to obtain information on the impact on small entities and commended the Agencies for soliciting additional information from the public, it was concerned that the Agencies were not providing all available information. Advocacy referenced the Board's ''Supporting Statement for Recordkeeping Requirements'' (Supporting Statement) associated with the proposed rule that was submitted to the Office of Management and Budget and published on the Board's website. The Supporting Statement included an estimate of the proposed rule's total recordkeeping cost to the public of just under $20 million. The Supporting Statement was created in compliance with the Paperwork Reduction Act (PRA), which requires a specific, objectively supported estimate of burden.[107] Conversely, the RFA authorizes agencies to provide general descriptive statements of the effects of a proposed rule, in lieu of a quantifiable or numerical description, if quantification is not practicable or reliable.[108] The Agencies stated in the NPRM that they did not have sufficient information to quantify reliably the effects the Act and the proposed rule would have on small entities. The Agencies specifically requested public comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule and the extent to which those costs, requirements, or changes are in addition to, or different from, those arising from the application of the Act generally.[109] Because of the different standards contained in the PRA and the RFA and the differing types of costs assessed under these two statutes, the Agencies did not believe that Board's PRA estimates constituted a useful proxy for purposes of the RFA. Accordingly, to avoid confusion by providing inappropriate data, the Agencies did not include the Board's PRA cost estimates in the IRFA.

Advocacy also expressed concern that the Agencies did not put forward a meaningful discussion of alternatives to the proposed rule. The only actual requirement in the proposed rule, which is mandated by the Act, was that all non-exempt participants in designated payment systems establish and implement policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions.[110] The proposed rule made clear that the examples of reasonably designed policies and procedures set out in § ____.6 are non-exclusive and that a participant in a designated payment system may design and use other policies and procedures that are specific to its business and may use different policies and procedures with respect to different types of restricted transactions. With respect to the non-exclusive examples provided in § ____.6 of the proposed rule, the NPRM went into considerable detail describing how the Agencies anticipated that such policies and procedures would operate, including risk-based due diligence at account opening and remedial actions if a participant discovered that a customer

[104] 5 U.S.C. 604(a).

[105] 31 U.S.C. 5364(a).

[106] *E.g.*, comment letters were received from the Office of Advocacy of the U.S. Small Business Administration (Dec. 12, 2007) (hereinafter ''Advocacy letter''); the Center for Regulatory Effectiveness (Nov. 15, 2007) (hereinafter ''CRE letter'');, M&T Bank, *supra* note 45; TMSRT, *supra* note 35; Alston & Bird, *supra* note 49;, and J. Schmit, an individual (Dec. 8, 2007).

[107] 44 U.S.C. 3506(c)(1)(A)(iv) and 5 CFR 1320.8(a)(4).

[108] 5 U.S.C. 607.

[109] NPRM, 72 FR at 56693.

[110] This requirement is set out in § ____.5(a) of the proposed rule and is required by section 5364(a) of the Act.

processed restricted transactions through the participant's facilities.

The NPRM went into detail in discussing alternatives considered and the reasoning behind the alternatives selected for the proposed rule, particularly with respect to exemptions for certain participants in designated payment systems and non-exclusive examples of procedures for each designated payment system. For example, the NPRM discussed alternatives that the Agencies included in the proposed rule (such as due diligence at account opening, remedial action, and transaction coding), and alternatives that the Agencies considered but rejected for the proposed rule (such as a list of unlawful Internet gambling businesses). With respect to small entities, the Agencies considered exempting all small entities from coverage of the rule.[111] As noted in the IRFA, the Agencies proposed that the requirements in the proposed rule be applicable to all entities subject to the Act, as implemented, regardless of their size because an exemption for small entities would significantly diminish the usefulness of the policies and procedures required by the Act by permitting unlawful Internet gambling operations to evade the requirements by using small financial transaction providers.[112]

The Agencies also considered as a significant alternative the use of performance rather than design standards and the simplification of compliance requirements.[113] As noted in the NPRM, the proposed rule was designed to provide maximum flexibility. The Act does not contain specific performance (much less design) standards, but instead requires that the policies and procedures be ''reasonably designed'' to prevent or prohibit unlawful Internet gambling. The proposed rule preserved this flexibility. In addition, the proposed rule simplified compliance requirements by expressly authorizing each regulated entity to use policies and procedures that are ''specific to its business'' to enable it to efficiently tailor its policies and procedures to its needs.[114]

The IRFA referred back to the extensive discussion of alternatives in the NPRM when it stated that ''other than as noted above'' the Agencies were unaware of any significant alternatives to the proposed rule. Accordingly, the Agencies believe that the IRFA addressed this requirement of the RFA.

Advocacy also suggested that the Agencies had not identified Federal rules that duplicate, overlap, or conflict with the proposed rule, as required by the RFA. The IRFA expressly stated that the Agencies had not identified any Federal rules that duplicated, overlapped, or conflicted with the proposed rule. As with all other aspects of the proposed rule, the Agencies sought public comment regarding whether any commenter believed there were any Federal rules that duplicated, overlapped, or conflicted with the proposed rule. Advocacy apparently interpreted these statements as an attempt by the Agencies to shift the obligation for identifying such rules to small entities. The Agencies intended its statement to mean that the Agencies had researched the issue and found no Federal rules that duplicated, overlapped, or conflicted with the proposed rule. Accordingly, the Agencies believe that the IRFA addressed this requirement of the RFA.

Advocacy also suggested that the Agencies consider (i) exempting small money transmitters from the proposed rule and (ii) exempting the send agents in a money transmitting business. As noted above in the section-by-section analysis, other commenters raised similar issues and the Agencies have made revisions in the final rule to address these concerns, including exempting all send agents in a money transmitting business. However, the Agencies decided against exempting all small money transmitting businesses. Specifically, the Agencies do not believe that the Act's standard for granting exemptions would be met with regard to such a wholesale exemption, and such wholesale exemption would substantially undermine the purpose of the Act by allowing unlawful Internet gambling businesses to evade the restrictions contained in the Act and the final rule by using small money transmitting businesses.[115]

Advocacy recommended that the Agencies prepare a revised initial regulatory flexibility analysis to address its concerns. The Agencies believe that the IRFA met the requirements of the RFA and a revised initial regulatory flexibility analysis is not warranted. In addition, after considering this and other comments, the Agencies determined that the issues raised by Advocacy have been addressed in the final rule or would not be resolved by an additional initial regulatory flexibility analysis.

One commenter suggested that the Agencies extend the comment period to allow the Agencies to gather additional information on the impact the proposed rule would have on regulated small entities, including through use of the procedures described in the RFA, which includes direct notification of interested small entities.[116] The commenter stated that an extension of the comment period is warranted because many small money transmitting businesses may not be part of a trade association that is familiar with the federal regulatory process and may not use English as their primary language, so they are in particular need of outreach. In the NPRM, the Agencies stated that they anticipated contacting trade groups representing participants that qualify as small entities and encouraging them to provide comments during the comment period in order to ascertain the costs imposed on regulated small entities. Within a week of publication of the proposed rule in the **Federal Register**, Board staff sent electronic notices to money transmitter associations in over a dozen States, including New York, New Jersey, California, Illinois, Georgia, Florida, Washington, Colorado and Ohio, notifying them of the issuance of the proposed rule and encouraging the associations to provide comments on all aspects of the proposed rule, but, in particular, the costs that may be imposed on small entities. A commenter, which received one of the electronic notices and which represents small- and medium-sized money transmitters, suggested that send agents in money transmitting businesses should be exempted and noted that these send agents ''are predominantly small entities.''[117] As noted above, the Agencies exempted send agents from the requirement of the final rule. In addition, under the final rule, the only non-exempt participants in a money transmitting business are the operators that permit customers to initiate

[111] *See* 5 U.S.C. 603(c)(4).

[112] NPRM, 72 FR at 56693.

[113] *See* 5 U.S.C. 603(c)(2) and (3).

[114] Treasury noted in its discussion of Executive Order 12866 in the NPRM that providing this flexibility for regulated entities by allowing them to tailor their policies and procedures to their individual circumstances should result in lower costs than if the Act and the proposed rule took a prescriptive one-size-fits-all approach. NPRM, 72 FR at 56692.

[115] *See* 31 U.S.C. 5364(b)(3). As noted above, the final rule does, however, include a revised designation for money transmitting businesses as including only those money transmitting businesses that engage in the transmission of funds and permit customers to initiate money transmission transactions remotely from a location other than a physical office of the money transmitting business (such as through the Internet). The Agencies believe that this designation revised along functional lines, rather than by size, may also exclude a significant number of small money transmitting businesses.

[116] *See* CRE letter, *supra* note 106, at 5–6. The RFA section can be found at 5 U.S.C. 609.

[117] *See* TMSRT letter, *supra* note 35 at 3–4.

transmission of funds transactions remotely from a location other than a physical office of the money transmitting business. The Agencies believe that the public comment period was sufficient and that further extension of the comment period is not warranted.

One commenter stated that the Agencies should determine how many small entities will be affected by the rule in connection with their participation in card systems, particularly gift card and stored-value card systems.[118] The number of small entities involved with card systems that would be subject to the final rule is estimated below, but the Agencies do not believe that attempting to break out the number of small entities involved specifically with gift cards or stored value cards is relevant to the analysis.[119]

Based on information the Agencies had regarding the size of the entities that commented, the Agencies have identified only one comment letter received from a depository institution that qualifies as a ''small entity'' under regulations promulgated by the U.S. Small Business Administration (SBA).[120] The Agencies also received comment letters from several trade associations whose membership could include small entities affected by the rule.[121] These comments raised issues generally similar to those discussed above in the section-by-section analysis, such as defining gambling-related terms, providing guidance on adequate due diligence, creating a list of unlawful Internet gambling businesses, and the burden of modifying customer agreements.

3. Description and estimate of classes of small entities affected by the final rule

The majority of small non-exempt participants in the five designated payment systems (ACH systems, card systems, check collection systems, money transmitting businesses, and wire transfer systems) that would be affected by the rule are depository institutions. Pursuant to the SBA size standards defining small entities, a commercial bank, savings association, or credit union is considered a ''small entity'' if it has assets of $175 million or less.[122] Based on call report data for June 30, 2008, the Agencies estimate that 4,564 small banks (out of a total of 7,699 banks), 412 small savings associations (out of a total of 829), and 7,281 small credit unions (out of a total of 8,136), for a total of 12,257 small depository institutions, will be directly affected by the final rule.[123]

Under the same SBA regulation, small money transmitting businesses are those with assets of $7.0 million or less. Based in part on information obtained from a Government Accountability Office report, the Agencies estimate that there are approximately 253,208 money transmitting businesses in the United States,[124] and that 240,547 are small entities as defined above.[125] Section ____.3(d) of the final rule states that only those money transmitting businesses that (1) engage in the transmission of funds, which does not include check cashing, currency exchange, or the issuance or redemption of money orders, travelers' checks, and other similar instruments; and (2) permit customers to initiate transmission of funds remotely from a location other than a physical office of the money transmitting business, would be subject to the rule. Moreover, § ____.4(c) of the rule exempts all participants in such a money transmitting business, except for the operator of the system.[126] Accordingly, only money transmitting business operators that permit customers to initiate transactions remotely must establish and implement written policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions.

Based on consultations with representatives of the money transmitting industry, the Agencies believe that most small money transmitting business operators do not permit customers to initiate transmissions of funds remotely from a location other than a physical office of the money transmitting business.[127] Moreover, those operators that do permit customers to initiate transactions remotely—for example Western Union, MoneyGram, and PayPal—generally have asset sizes that are above the ''small entity'' definition under the SBA regulations. As a result, the Agencies estimate that of the estimated 240,547 small money transmitting businesses, no more than 10 consist of operators that permit customers to initiate transmission of funds transactions remotely. The Agencies thus estimate that only 10 small money transmitting business operators will be affected by the final rule.

The Agencies thus estimate that approximately 12,267 small entities will be subject to the final rule. When compared to the estimate contained in the proposed rule of 253,368 small entities, the Agencies believe that under the final rule approximately 241,101 fewer small entities will have to comply with the final rule.

4. Recordkeeping, Reporting and Other Compliance Requirements

The extent to which small entities will be affected by the final rule depends on several variables, including

[118] *See* Alston & Bird letter, *supra* note 49, at 22–23.

[119] Card systems basically operate the same way for purposes of the Act and the rule, regardless of whether the particular card involved is a credit card, debit card, pre-paid card, or stored-value product. With respect to implementing the final rule's non-exclusive examples for card systems, the relevant entities are the card system operator, merchant acquirer bank, and the card issuer bank. Retailers that may sell pre-paid gift cards or stored-value products, such as grocery stores or convenience stores, are not participants in a designated payment system, as defined by the final rule, and thus are not covered by the final rule.

[120] Comment letter from First National Bank of Morgan (Nov. 30, 2007), which questioned the public policy of imposing burden on participants in designated payment systems to prevent Internet gambling when other forms of gambling are permitted, such as State lotteries and casinos. The SBA size standards to define small business concerns in credit intermediation and related activities are located at 13 CFR 121.201 (subsector 522).

[121] *E.g.*, ICBA letter, *supra* note 67; comment letter from the Consumer Bankers Assoc. (Dec. 12, 2007) (hereinafter ''CBA letter'').

[122] 13 CFR 121.201.

[123] Call report data include information submitted by depository institutions on the following forms: Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC Form 031) and Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only (FFIEC Form 041), Thrift Financial Report (OTS Form 1313), and NCUA Call Report (NCUA Form 5300).

[124] U.S. Government Accountability Office, ''Bank Secrecy Act: FinCEN and IRS Need to Improve and Better Coordinate Compliance and Data Management Efforts,'' GAO–07–212 (Dec. 2006). The Agencies note that this report took information from multiple studies, some of which focused on the number of ''money services businesses'' subject to FinCEN regulation. The term ''money services business,'' by virtue of thresholds and other criteria in FinCEN's definition, applies to a different scope of entities than does the statutory term ''money transmitting business.'' *See* 31 CFR 103.11(uu).

[125] The estimate of 240,547 small money transmitting businesses is the same estimate that is contained in the NPRM. The Agencies expressly solicited comment in the NPRM on the number of small entities to which the proposed rule would apply. The Agencies did not receive any comments during the comment period disputing the Agencies' specific estimates and providing an explanation of why the estimates were being disputed.

[126] The proposed rule designated money transmitting businesses as a payment system subject to the rule and did not provide any exemptions for participants in a money transmitting business.

[127] *See* summary of conference call with the National Money Transmitters Association (call date June 3, 2007) (hereinafter ''NMTA call summary'') p.1. (''The business of most smaller [money transmitter organizations] is person-to-person remittances. Furthermore, most smaller MTOs do not allow Internet-initiated transactions—a customer is usually required to visit an agent location in person in order to perform a transaction.'')

which designated payment systems they participate in, the composition of their customer base, and whether the entities are able to rely on policies and procedures established and implemented by the designated payment system. The final rule (as mandated by the Act) requires all non-exempt participants to establish and implement written policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions. The final rule contains non-exclusive examples of reasonably designed policies and procedures for participants in each designated payment system; however, the final rule expressly permits non-exempt participants to design and implement policies and procedures tailored to their business that may be different than the examples provided in the final rule.

The Agencies believe that most small entities participating in ACH systems, card systems, check collection systems and wire transfer systems will be small depository institutions, including credit unions. If a small depository institution chooses to follow the final rule's non-exclusive examples for ACH, check collection, and wire transfer systems set out in § ____.6, they should develop policies and procedures for conducting due diligence of commercial customers to determine the risk the commercial customer presents of engaging in an Internet gambling business. The due diligence examples in the final rule also suggest that non-exempt participants notify all commercial customers, through the account agreement or other means available, that restricted transactions are prohibited from being processed through the account or relationship. Developing such conforming policies and procedures would likely require input from legal counsel and management familiar with the small entity's existing account-opening, account maintenance and due diligence procedures. The small entity's senior management also would likely need to be involved in developing the policies and procedures to ensure they are compatible with the company's business plans.

In addition to policies and procedures for due diligence, the final rule's non-exclusive examples also suggest including remedial action procedures to be followed in situations where the participant has actual knowledge that a commercial customer has processed restricted transactions through the participant's facilities. Developing such procedures would likely require input from legal counsel and compliance personnel to integrate these procedures into the institution's existing compliance program.

After the policies and procedures are designed and in place, the Agencies anticipate that the actual implementation burden would be shifted more toward the management, clerical, and technical functions of the institution that would be interfacing directly with the commercial customers. Training in the new policies and procedures would be necessary for customer relations staff. In addition, involvement of audit and compliance personnel would be necessary for audit and testing of the new policies and procedures. Legal counsel, management, and compliance personnel may be required to address issues that arise with commercial customers that due diligence indicates may be engaged in an Internet gambling business.

The Agencies anticipate that a depository institution that qualifies as a small entity and participates in ACH, check, and wire-transfer systems would be able to establish and implement the same due diligence policies and procedures for commercial customers across all three of those systems for purposes of the final rule. The institution will not need to establish and implement separate policies and procedures for each of these designated payment systems. Additionally, credit unions, which constitute the majority of depository institutions that qualify as small entities, generally have few, if any, commercial customers because of the nature of their business. The final rule's due diligence examples only apply to commercial customers, so an institution with few or no commercial customer accounts would have relatively minimal implementation burden. Further, even if a depository institution that qualifies as a small entity does have such customers, the vast majority of commercial customers will not present more than a minimal risk of engaging in an Internet gambling business, so the due diligence burden would be minimal.

A small entity that participates in a card system and chooses to follow the card system examples in the final rule should largely be able to rely on the policies and procedures established by the operator of the card system, such as Visa or MasterCard.[128] In general, such small depository institutions will rely on the transaction coding of the card system to determine whether to authorize or deny authorization for a transaction that the card system's coding procedure indicates may be a restricted transaction. Many small depository institutions had already made the business decision, prior to the Act and this rule's effective date, to implement these processes, such that this rule may impose only minimal additional burden in this respect. Moreover, a small depository institution may agree to have the card system operator or a third-party processor make transaction authorization decisions on its behalf as its agent. Following the card system example in the final rule may require a small entity participant to seek input from legal counsel and technical personnel familiar with the coding framework and transaction authorization process used by the card system in which the small entity participates, although, based on comments received, the Agencies believe that many card issuing banks and card systems already have such procedures in place.[129]

Small entities in money transmitting businesses would, to a large extent, be ''send'' or ''receive'' agents that participate in systems operated by Western Union, MoneyGram, or similar entities. The final rule provides exemptions for all participants in a money transmitting business, except for the operator. The Agencies anticipate that these exemptions will completely eliminate the burden for such small entities. In addition, the final rule extends only to those money transmitting business operators that permit customers to initiate money transmission transactions remotely from a location other than a physical location of the money transmitting business. As noted earlier, the National Money Transmitters Association (NMTA), a trade association representing small- to medium-sized money transmitting organizations, indicated that most smaller money transmitting organizations do not allow Internet-initiated transactions and require a customer to visit an agent location in person in order to initiate a transaction.[130]

For those few small money transmitting business operators subject to the final rule which choose to follow the final rule's examples, the operator would need to design and implement policies and procedures for conducting due diligence on its commercial

[128] The Agencies have added a new § ____.5(c) to the rule stating that a participant in a designated payment system, such as a small depository institution participating in a card system, may rely on a written statement or notice by the operator of that system that the system's policies and procedures comply with the requirements of this rule.

[129] *See, e.g.*, MasterCard letter, *supra* note 53, at 3.

[130] NMTA call summary, *supra* note 41, at 1.

customers at the establishment of the account or relationship similar to the due diligence described above for ACH, check collection, and wire transfer systems. The final rule's examples also suggest that the operator notify all commercial customers, through the account agreement or other means available, that restricted transactions are prohibited from being processed through the account or relationship. Developing such conforming policies and procedures would likely require input from legal counsel and management as described above for ACH, check collection, and wire transfer systems. Implementation of due diligence and remedial action policies and procedures would also require input from legal counsel, management, technical, audit, and compliance personnel similar to that required for the ACH, check collection, and wire transfer systems.

In addition, the final rule's money transmitting business examples suggest that an operator's policies and procedures should include procedures regarding ongoing monitoring or testing to detect potential restricted transactions, such as monitoring and analyzing payment patterns to detect suspicious payment volumes to any recipient. Such procedures would likely be facilitated by technical expertise and software from an outside vendor; however, the final rule's examples do not require using a vendor. In fact, the NMTA indicated that the smallest money transmitting organizations are sometimes the best at spotting anomalous transactions, even without computers. The NMTA stated that such businesses keep detailed records and tend to know all of their customers, and thus can quickly spot anomalous transactions.[131]

5. Steps Taken To Minimize the Economic Impact on Small Entities

As discussed in the preamble to this final rule, the Agencies considered many approaches to minimize the burden of the rule on non-exempt participants, including small entities, while carrying out the mandates of the Act. Consistent with the Act, the final rule has been designed for maximum flexibility with respect to non-exempt participants, including small entities. First, the final rule only requires non-exempt participants to establish and implement reasonably designed policies and procedures. The final rule does not prescribe any design standards (such as requiring the use of a specific technology) or performance standards for such policies and procedures. Second, the examples of reasonably designed policies and procedures provided in § ____.6 of the final rule are non-exclusive and non-prescriptive. Specifically, a non-exempt participant, including a small entity, is permitted to design and implement policies and procedures tailored to its business that may be different than the examples provided in the final rule. Participants may also tailor different policies and procedures with respect to different business lines or different parts of its organization. Third, the Agencies have made a number of changes in the final rule in response to public comments on the proposed rule in order to reduce the burden the Act and the rule impose on payment system participants, including small entities.

The proposed rule designated money transmitting businesses as a payment system subject to the rule and did not provide any exemptions for particular participants in a money transmitting business. Commenters suggested that the Agencies consider exempting small money transmitters or, at a minimum, send agents of money transmitting businesses from the rule.[132] In addition, commenters suggested that the designation of money transmitting businesses in the proposed rule was too broad and included entities that were not intended to be included by the Act.[133] As discussed above, the final rule's listing of money transmitting businesses as a designated payment system subject to the rule has been narrowed to include only those money transmitting businesses that (1) engage in the transmission of funds, which does not include check cashing, currency exchange, or the issuance or redemption of money orders, travelers' checks, and other similar instruments; and (2) permit customers to initiate transmission of funds remotely from a location other than a physical office of the money transmitting business. Based on comments from the NMTA, these changes would exclude most small money transmitting businesses. Moreover, the final rule provides an exemption for all participants in a designated money transmitting business except for the operator. As noted above, the Agencies believe that almost all of the estimated 240,547 small participants in money transmitting businesses are participants other than operators. Accordingly, these small entities will not be affected by the rule.

The proposed rule reiterated the Act's provision that permits participants in a designated payment system to comply with the rule's requirement to establish and implement reasonably designed policies and procedures by relying on and complying with the policies and procedures of the designated payment system if, among other things, such policies and procedures complied with the requirements of the proposed rule. Commenters expressed concern, however, with the value of this provision if a participant was unsure whether the designated payment system's policies and procedures complied with the rule and the Act.[134] This issue would be particularly relevant to small entities that would be more likely to be participants in a designated payment system than an operator and would be more likely to take advantage of this authority to rely on the system's policies and procedures, rather than incurring the cost of designing and implementing their own policies and procedures. The Agencies addressed this concern in the final rule by permitting a participant to rely on the policies and procedures of its designated payment system if the operator of that system has stated to its participants that the operator has designed or structured the system's policies and procedures to comply with the requirements of the final rule, unless the participant is notified otherwise by its Federal functional regulator or, in the case of participants that are not directly supervised by a Federal functional regulator, the Federal Trade Commission.

The proposed rule's non-exclusive examples also indicated that non-exempt participants in designated payment systems should conduct due diligence in ''establishing or maintaining'' a commercial customer relationship to ensure that the customer does not process restricted transactions. Commenters noted the significant burden that would be imposed by reviewing all of an institution's existing commercial customer accounts to ensure that they did not process restricted transactions.[135] The final rule's examples for ACH, check collection, and wire transfer systems recommends that non-exempt participants conduct due diligence at the establishment of the commercial account or relationship. If a non-exempt participant has actual knowledge that an existing commercial customer engages in an Internet gambling business, the final rule's non-exclusive policies and

[131] NMTA call summary, *supra* note 41, at 1–2.

[132] *E.g.* Advocacy letter, *supra* note 106 at 4; *see also* TMSRT letter, *supra* note 35 at 3–4.

[133] *E.g.*, TMSRT letter, *supra* note 35 at 2.

[134] *E.g.*, CBA letter, *supra* note 121, at 4.

[135] *E.g.*, BB&T letter, *supra* note 67, at 2.

procedures suggest that the participant conduct due diligence on that customer similar to what is contemplated for new customers. Commenters also suggested that the final rule provide more guidance on the due diligence that would be deemed sufficient.[136] In response to these comments, the final rule provides detailed steps that a participant can choose to take to conduct reasonable risk-based due diligence as contemplated by the final rule's examples.

The proposed rule's designated payment system examples also suggested including as a term of commercial customer agreements that the customer may not engage in restricted transactions through the participant's facilities. Numerous commenters stated that such a requirement to modify existing agreements would be unduly burdensome.[137] In addition, commenters noted that typical customer agreements already include a prohibition against unlawful transactions, so modifying the agreement to specifically include restricted transactions in this prohibition would be unnecessary.[138] Based on the comments, the final rule does not contemplate that non-exempt participants in designated payment systems will modify their account agreements with existing commercial customers, but instead contemplates that participants will notify commercial customers that the participant's facilities may not be used to process restricted transactions. Such notification could be accomplished through a term in the commercial customer agreements, through a notice sent to the customer, or through some other method.

The NPRM also set forth a proposed effective date for the final rule of six months after its publication. Many commenters stated that this was insufficient time to implement the rule. A longer period would be particularly relevant for small entities because they would most likely be participants in a designated payment system, rather than an operator. Commenters stated that designated payment systems must first develop their policies and procedures before participants will be able to conform their policies and procedures.[139] As explained above in the preamble, the Agencies have established a compliance date for the final rule 12 months from its publication. This longer period will give small entities more time to establish and implement policies and procedures reasonably designed to identify and block or otherwise prevent restricted transactions, and may thereby reduce small entities' costs of complying with the rule.

Commenters also recommended some significant alternatives to approaches adopted in the proposed rule that the Agencies have not adopted in the final rule. Some of these suggestions may have reduced the burden imposed by the rule on some small entities, but were rejected by the Agencies for factual, policy, or legal reasons. For example, the final rule does not contemplate that any government entity will create, publish, and maintain a list of unlawful Internet gambling businesses. Several commenters indicated that such a list would assist financial institutions in identifying Internet gambling operations.[140] After carefully considering this issue, including the numerous comments both for and against such a list, for the reasons discussed at length above, the Agencies have concluded that such a list would not be effective or efficient. In addition, the final rule's non-exclusive due diligence policies and procedures shift the burden of distinguishing lawful from unlawful Internet gambling from participants in designated payment systems to the Internet gambling businesses.

Some commenters also suggested that the Agencies exempt from the rule all participants in the ACH, check, and wire-transfer systems or exclude such systems from the list of designated payment systems.[141] While such an approach would reduce the burden of the rule on small depository institutions, it would also substantially undermine the efficacy of the rule. Section 5364(b)(3) of the Act states that the Agencies shall exempt certain restricted transactions or designated payment systems from the rule if the Agencies jointly find that it is not reasonably practical to identify and block or otherwise prevent or prohibit restricted transactions. The Agencies believe that it is reasonably practical for participants in designated payment systems, including small entities, to implement certain policies and procedures, such as those contained in § ____.6 of the final rule, that will constitute policies and procedures reasonably designed to prevent or prohibit restricted transactions. Accordingly, the Agencies have determined that blanket exemptions for the ACH, check, and wire-transfer systems would not be appropriate given the standard for an exemption set forth in section 5364(b)(3) of the Act.

E. Paperwork Reduction Act Analysis

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the final rule. The collection of information contained in the Treasury's final rule has been reviewed and approved by OMB in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). The Agencies may not conduct or sponsor, and an organization is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers are 1505–0204 for the Treasury and 7100–0317 for the Board.

The collection of information that is required by this final rulemaking is found in sections 5 and 6. This collection of information is required by section 802 of the Act, which requires the Agencies to prescribe joint regulations requiring each designated payment system, and all participants in such systems, to identify and block or otherwise prevent or prohibit restricted transactions through the establishment of policies and procedures reasonably designed to prevent or prohibit restricted transactions. The final rule implements this requirement by requiring all non-exempt participants in designated payment systems to establish and implement written policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions.

The recordkeepers are businesses or other for-profit and not-for-profit organizations that include depository institutions (commercial banks, savings associations, and credit unions), third-party processors, and card system operators, and money transmitting business operators. The final rule does not include a specific time period for record retention; however, non-exempt participants would be required to maintain the policies and procedures for a particular designated payment system as long as they participate in that system.

The Agencies collectively received seven comment letters (from a law firm, a depository institution, a member of Congress, an individual, a government agency, and two business/trade

[136] *See, e.g.*, comment letter from the State Dept. Federal Credit Union (Dec. 13, 2007) p. 2.

[137] *See, e.g.*, comment letter from the Electronic Check Clearing House Organization (Dec. 10, 2007) p. 3.

[138] *See, e.g.*, The Clearing House letter, *supra* note 14, at 9.

[139] *See, e.g.*, NACHA letter, *supra* note 38, at 5.

[140] *E.g.*, Wells Fargo letter, *supra* note 19, at 23–24.

[141] *See, e.g.*, M&T Bank letter, *supra* note 45, at 4.

associations) that addressed the paperwork issues. Five comment letters specifically addressed the burden estimates, one letter stated that the Agencies could provide more rigorous burden estimates, and one letter questioned the Board's monetized cost to the public as provided in its OMB Supporting Statement posted on the Board's public Web site. Broadly, all commenters stated that the paperwork burden estimates were too low; therefore, the Agencies have substantially increased the burden estimates.

Additionally, some of these commenters stated that the Agencies did not adequately identify the number of entities that would incur paperwork burden under the rule.[142] The Agencies continue to believe that their methodology for estimating the number of regulated entities is generally accurate. The Board's and Treasury's burden estimates (as provided in each Agency's OMB supporting statements for this rulemaking) each reflect only about half of the rulemaking's burden on regulated entities. The Agencies have agreed to split equally the total number of recordkeepers not subject to examination and supervision by either the Board or the Treasury's Office of the Comptroller of the Currency and Office of Thrift Supervision.

The final rule provides exemptions for all participants in a money transmitting business, except for the operator. Small entities in money transmitting businesses would, to a large extent, be send or receive agents that participate in systems operated by Western Union, MoneyGram, or similar entities. Accordingly, they are exempt from the final rule and are not included in the estimated number of recordkeepers below. Also, the Agencies clarified in the final rule that money transmitting businesses are subject to the rule solely to the extent they engage in the transmission of funds, which does not include check cashing, currency exchange, or the issuance or redemption of money orders, travelers' checks, and other similar instruments. This change would reduce the number of money transmitting businesses that are subject to the recordkeeping requirements. Also, in the final rule, the Agencies clarified that the requirement to establish and implement written policies and procedures applies only to U.S. offices of participants in designated payment systems.

Depository institutions are the primary non-exempt participants for the ACH, card, check collection, and wire transfer systems subject to the rule. Accordingly, non-exempt depository institutions in such designated payment systems would be subject to the recordkeeping requirement of establishing and implementing written policies and procedures reasonably designed to prevent or prohibit restricted transactions to the extent that they participate in such systems.

Respondent burden:

For the purpose of estimating burden and accounting for it with OMB, the total number of depository institutions listed for each Agency includes the number of entities regulated by the Agency and half of the remaining depository institutions and third-party processors. Each Agency is also accounting for the burden for half of the card system operators and money transmitting business operators to which the Agencies estimate the final rule applies.

Federal Reserve:

Estimated number of recordkeepers: 3,459 commercial banks, 4,068 credit unions, 3 card system operators, and 8 money transmitting business operators.

Estimated average annual burden hours per recordkeeper: One-time burden 100 hours for commercial banks and card system operators, 20 hours for credit unions, and 120 hours for money transmitting business operators. Ongoing annual burden of 8 hours per recordkeeper.

Estimated frequency: Annually.

Estimated total annual recordkeeping burden: One-time burden, 428,520 hours and ongoing burden, 60,304 hours.

Treasury:

Estimated number of recordkeepers: 4,240 commercial banks, 829 savings associations, 4,068 credit unions, 3 card system operators, and 8 money transmitting business operators.

Estimated average annual burden hours per recordkeeper: One-time burden of 100 hours for commercial banks, savings associations and card system operators; 20 hours for credit unions; and 120 hours for money transmitting business operators. Ongoing annual burden of 8 hours per recordkeeper.

Estimated frequency: Annually.

Estimated total annual recordkeeping burden: One-time burden, 589,520 hours and ongoing burden, 73,184 hours.

Based on these estimates, the PRA burden for regulated entities is approximately one million hours:

	Number of recordkeepers	Number of hours spent (one-time burden)	
Treasury	9,148	[143] varies	589,520
Federal Reserve	7,538	[144] varies	428,520
Total PRA Burden Hours for All Regulated Entities			1,018,040

The one-time burden imposed by the Act requires non-exempt participants to establish policies and procedures. The Agencies estimate that this initial burden will average 100 hours per commercial bank, savings association, and card system operator, 20 hours per credit union, and 120 hours per money transmitting business operator. The Agencies also estimate that the ongoing burden of maintaining the policies and

[142] One commenter expressed concern specifically regarding the number of entities involved in stored value cards and gift cards that would be subject to the rule's recordkeeping requirements. *See* Alston & Bird letter, *supra* note 49, at 23 With respect to implementing the final rule's non-exclusive examples for card systems, the relevant entities are the card system operators, merchant acquirers, and the card issuers. Retailers, such as grocery stores or convenience stores, are not participants in a designated payment system, as defined by the final rule, by virtue of their selling pre-paid gift cards or stored value products and thus are not covered by the final rule.

[143] The one-time burden hours for the 4,240 commercial banks, 829 savings associations, and 3 card system operators is 100 hours each. The one-time burden for 4,068 credit unions is 20 hours each. The one-time burden for 8 money transmitting business operators is 120 hours each.

[144] The one-time burden hours for the 3,459 commercial banks and 3 card system operators is 100 hours each. The one-time burden for 4,068 credit unions is 20 hours each. The one-time burden for 8 money transmitting business operators is 120 hours each.

procedures once they are established will be 8 hours per recordkeeper.

The Agencies further estimate (as provided in each Agency's OMB Supporting Statement) the total start-up cost for the banking, card system, and money transmitting industries to be $88,518,578.[145]

The total estimated recordkeeping cost for all regulated entities is over $88.5 million:

Total PRA burden hours	1,018,040
Average adjusted rate of avg. wage for record-keeping	$86.95
Total PRA Cost to Regulated Entities	$88,518,578

Because the records would be maintained at the institutions and notices are not provided to the Agencies, no issue of confidentiality under the Freedom of Information Act arises. The Agencies have a continuing interest in the public's opinion of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden may be sent to: Office of Critical Infrastructure Protection and Compliance Policy, Department of the Treasury, Main Treasury Building, Room 1327, 1500 Pennsylvania Avenue, NW., Washington, DC 20220 ; Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (1505–0204 for Treasury or 7100–0317 for the Board), Washington, DC 20503.

F. Plain Language

Each Federal banking agency, such as the Board, is required to use plain language in all proposed and final rulemakings published after January 1, 2000. 12 U.S.C. 4809. In addition, in 1998, the President issued a memorandum directing each agency in the Executive branch, such as Treasury, to use plain language for all new proposed and final rulemaking documents issued on or after January 1, 1999. The Agencies have sought to present the final rule, to the extent possible, in a simple and straightforward manner.

[145] Total cost to the banking, card system, and money transmitting industries was estimated using the following formula. Percent of staff time, multiplied by annual burden hours, multiplied by hourly rate: 20% Clerical @ $25, 25% Managerial or Technical @ $55, 25% Senior Management @ $100, and 30% Legal Counsel @ $144. Hourly rate estimates for each occupational group are averages using data from the Bureau of Labor and Statistics, *Occupational Employment and Wages*, news release.

IV. Statutory Authority

Pursuant to the authority set out in the Act and particularly section 802 (codified at 31 U.S.C. 5361 *et seq.*), the Board amends Chapter II of Title 12 of the Code of Federal Regulations and the Treasury amends Chapter I of Title 31 of the Code of Federal Regulations by adding the common rules set out below.

V. Text of Final Rules

List of Subjects

12 CFR Part 233

Banks, Banking, Electronic funds transfers, Incorporation by reference, Internet gambling, Payments, Recordkeeping.

31 CFR Part 132

Banks, Banking, Electronic funds transfers, Incorporation by reference, Internet gambling, Payments, Recordkeeping.

Federal Reserve System

Authority and Issuance

■ For the reasons set forth in the preamble, the Board amends Title 12, Chapter II of the Code of Federal Regulations by adding a new part 233 as set forth under Common Rules at the end of this document:

PART 233—PROHIBITION ON FUNDING OF UNLAWFUL INTERNET GAMBLING (REGULATION GG)

Sec.
233.1 Authority, purpose, and incorporation by reference.
233.2 Definitions.
233.3 Designated payment systems.
233.4 Exemptions.
233.5 Policies and procedures required.
233.6 Non-exclusive examples of policies and procedures.
233.7 Regulatory enforcement.
Appendix A to Part 233—Model Notice

Authority: 31 U.S.C. 5364.

Department of the Treasury

Authority and Issuance

■ For the reasons set forth in the preamble, Treasury amends Title 31, Chapter I of the Code of Federal Regulations by adding a new part 132 as set forth under Common Rules at the end of this document:

PART 132—PROHIBITION ON FUNDING OF UNLAWFUL INTERNET GAMBLING

Sec.
132.1 Authority, purpose, and incorporation by reference.
132.2 Definitions.
132.3 Designated payment systems.
132.4 Exemptions.
132.5 Policies and procedures required.
132.6 Non-exclusive examples of policies and procedures.
132.7 Regulatory enforcement.
Appendix A to Part 132—Model Notice

Authority: 31 U.S.C. 321 and 5364.

Common Rules

The common rules added by the Board as part 233 of Title 12, Chapter II of the Code of Federal Regulations and by Treasury as part 132 of Title 31, Chapter I of the Code of Federal Regulations follow:

§ ____.1 Authority, purpose, collection of information, and incorporation by reference.

(a) *Authority.* This part is issued jointly by the Board of Governors of the Federal Reserve System (Board) and the Secretary of the Department of the Treasury (Treasury) under section 802 of the Unlawful Internet Gambling Enforcement Act of 2006 (Act) (enacted as Title VIII of the Security and Accountability For Every Port Act of 2006, Pub. L. No. 109–347, 120 Stat. 1884, and codified at 31 U.S.C. 5361–5367). The Act states that none of its provisions shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States. *See* 31 U.S.C. 5361(b). In addition, the Act states that its provisions are not intended to change which activities related to horseracing may or may not be allowed under Federal law, are not intended to change the existing relationship between the Interstate Horseracing Act of 1978 (IHA) (15 U.S.C. 3001 *et seq.*) and other Federal statutes in effect on October 13, 2006, the date of the Act's enactment, and are not intended to resolve any existing disagreements over how to interpret the relationship between the IHA and other Federal statutes. *See* 31 U.S.C. 5362(10)(D)(iii). This part is intended to be consistent with these provisions.

(b) *Purpose.* The purpose of this part is to issue implementing regulations as required by the Act. The part sets out necessary definitions, designates payment systems subject to the requirements of this part, exempts certain participants in designated payment systems from certain requirements of this part, provides nonexclusive examples of policies and procedures reasonably designed to identify and block, or otherwise prevent and prohibit, restricted transactions, and sets out the Federal entities that have exclusive regulatory enforcement authority with respect to the designated

payments systems and non-exempt participants therein.

(c) *Collection of information.* The Office of Management and Budget (OMB) has approved the collection of information requirements in this part for the Department of the Treasury and assigned OMB control number 1505–0204. The Board has approved the collection of information requirements in this part under the authority delegated to the Board by OMB, and assigned OMB control number 7100–0317.

(d) *Incorporation by reference—relevant definitions from ACH rules.*

(1) This part incorporates by reference the relevant definitions of ACH terms as published in the ''2008 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network'' (the ''ACH Rules''). The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the ''2008 ACH Rules'' are available from the National Automated Clearing House Association, Suite 100, 13450 Sunrise Valley Drive, Herndon, Virginia 20171, *http://nacha.org*, (703) 561–1100. Copies also are available for public inspection at the Department of Treasury Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, and the National Archives and Records Administration (NARA). Before visiting the Treasury library, you must call (202) 622–0990 for an appointment. For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html 20002.*

(2) Any amendment to definitions of the relevant ACH terms in the ACH Rules shall not apply to this part unless the Treasury and the Board jointly accept such amendment by publishing notice of acceptance of the amendment to this part in the **Federal Register**. An amendment to the definition of a relevant ACH term in the ACH Rules that is accepted by the Treasury and the Board shall apply to this part on the effective date of the rulemaking specified by the Treasury and the Board in the joint **Federal Register** notice expressly accepting such amendment.

§ ____.2 Definitions.

The following definitions apply solely for purposes of this part:

(a) *Actual knowledge* with respect to a transaction or commercial customer means when a particular fact with respect to that transaction or commercial customer is known by or brought to the attention of:

(1) An individual in the organization responsible for the organization's compliance function with respect to that transaction or commercial customer; or

(2) An officer of the organization.

(b) *Automated clearing house system* or *ACH system* means a funds transfer system, primarily governed by the ACH Rules, which provides for the clearing and settlement of batched electronic entries for participating financial institutions. When referring to ACH systems, the terms in this regulation (such as ''originating depository financial institution,'' ''operator,'' ''originating gateway operator,'' ''receiving depository financial institution,'' ''receiving gateway operator,'' and ''third-party sender'') are defined as those terms are defined in the ACH Rules.

(c) *Bet or wager:*

(1) Means the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome;

(2) Includes the purchase of a chance or opportunity to win a lottery or other prize (which opportunity to win is predominantly subject to chance);

(3) Includes any scheme of a type described in 28 U.S.C. 3702;

(4) Includes any instructions or information pertaining to the establishment or movement of funds by the bettor or customer in, to, or from an account with the business of betting or wagering (which does not include the activities of a financial transaction provider, or any interactive computer service or telecommunications service); and

(5) Does not include—

(i) Any activity governed by the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)) for the purchase or sale of securities (as that term is defined in section 3(a)(10) of that act (15 U.S.C. 78c(a)(10));

(ii) Any transaction conducted on or subject to the rules of a registered entity or exempt board of trade under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(iii) Any over-the-counter derivative instrument;

(iv) Any other transaction that—

(A) Is excluded or exempt from regulation under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); or

(B) Is exempt from State gaming or bucket shop laws under section 12(e) of the Commodity Exchange Act (7 U.S.C. 16(e)) or section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a));

(v) Any contract of indemnity or guarantee;

(vi) Any contract for insurance;

(vii) Any deposit or other transaction with an insured depository institution;

(viii) Participation in any game or contest in which participants do not stake or risk anything of value other than—

(A) Personal efforts of the participants in playing the game or contest or obtaining access to the Internet; or

(B) Points or credits that the sponsor of the game or contest provides to participants free of charge and that can be used or redeemed only for participation in games or contests offered by the sponsor; or

(ix) Participation in any fantasy or simulation sports game or educational game or contest in which (if the game or contest involves a team or teams) no fantasy or simulation sports team is based on the current membership of an actual team that is a member of an amateur or professional sports organization (as those terms are defined in 28 U.S.C. 3701) and that meets the following conditions:

(A) All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants.

(B) All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals (athletes in the case of sports events) in multiple real-world sporting or other events.

(C) No winning outcome is based—

(1) On the score, point-spread, or any performance or performances of any single real-world team or any combination of such teams, or

(2) Solely on any single performance of an individual athlete in any single real-world sporting or other event.

(d) *Block* means to reject a particular transaction before or during processing, but it does not require freezing or otherwise prohibiting subsequent transfers or transactions regarding the proceeds or account.

(e) *Card issuer* means any person who issues a credit card, debit card, pre-paid card, or stored value card, or the agent of such person with respect to such card.

(f) *Card system* means a system for authorizing, clearing and settling transactions in which credit cards, debit cards, pre-paid cards, or stored value cards (such cards being issued or authorized by the operator of the system), are used to purchase goods or services or to obtain a cash advance. The term includes systems both in which the merchant acquirer, card issuer, and system operator are separate entities and in which more than one of these roles are performed by the same entity.

(g) *Check clearing house* means an association of banks or other payors that regularly exchange checks for collection or return.

(h) *Check collection system* means an interbank system for collecting, presenting, returning, and settling for checks or intrabank system for settling for checks deposited in and drawn on the same bank. When referring to check collection systems, the terms in this regulation (such as ''paying bank,'' ''collecting bank,'' ''depositary bank,'' ''returning bank,'' and ''check'') are defined as those terms are defined in 12 CFR 229.2. For purposes of this part, ''check'' also includes an electronic representation of a check that a bank agrees to handle as a check.

(i) *Commercial customer* means a person that is not a consumer and that contracts with a non-exempt participant in a designated payment system to receive, or otherwise accesses, payment transaction services through that non-exempt participant.

(j) *Consumer* means a natural person.

(k) *Designated payment system* means a system listed in § ____.3.

(l) *Electronic fund transfer* has the same meaning given the term in section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693a), except that such term includes transfers that would otherwise be excluded under section 903(6)(E) of that act (15 U.S.C. 1693a(6)(E)), and includes any funds transfer covered by Article 4A of the Uniform Commercial Code, as in effect in any State.

(m) *Financial institutio*n means a State or national bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person that, directly or indirectly, holds an account belonging to a consumer. The term does not include a casino, sports book, or other business at or through which bets or wagers may be placed or received.

(n) *Financial transaction provider* means a creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local payment network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or a participant in such network, or other participant in a designated payment system.

(o) *Foreign banking office* means:

(1) Any non-U.S. office of a financial institution; and

(2) Any non-U.S. office of a foreign bank as described in 12 U.S.C. 3101(7).

(p) *Interactive computer service* means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(q) *Internet* means the international computer network of interoperable packet switched data networks.

(r) *Internet gambling business* means the business of placing, receiving or otherwise knowingly transmitting a bet or wager by any means which involves the use, at least in part, of the Internet, but does not include the performance of the customary activities of a financial transaction provider, or any interactive computer service or telecommunications service.

(s) *Intrastate transaction* means placing, receiving, or otherwise transmitting a bet or wager where—

(1) The bet or wager is initiated and received or otherwise made exclusively within a single State;

(2) The bet or wager and the method by which the bet or wager is initiated and received or otherwise made is expressly authorized by and placed in accordance with the laws of such State, and the State law or regulations include—

(i) Age and location verification requirements reasonably designed to block access to minors and persons located out of such State; and

(ii) Appropriate data security standards to prevent unauthorized access by any person whose age and current location has not been verified in accordance with such State's law or regulations; and

(3) The bet or wager does not violate any provision of—

(i) The Interstate Horseracing Act of 1978 (15 U.S.C. 3001 *et seq.*);

(ii) 28 U.S.C. chapter 178 (professional and amateur sports protection);

(iii) The Gambling Devices Transportation Act (15 U.S.C. 1171 *et seq.*); or

(iv) The Indian Gaming Regulatory Act (25 U.S.C. 2701 *et seq.*).

(t) *Intratribal transaction* means placing, receiving or otherwise transmitting a bet or wager where—

(1) The bet or wager is initiated and received or otherwise made exclusively—

(i) Within the Indian lands of a single Indian tribe (as such terms are defined under the Indian Gaming Regulatory Act (25 U.S.C. 2703)); or

(ii) Between the Indian lands of two or more Indian tribes to the extent that intertribal gaming is authorized by the Indian Gaming Regulatory Act (25 U.S.C. 2701 *et seq.*);

(2) The bet or wager and the method by which the bet or wager is initiated and received or otherwise made is expressly authorized by and complies with the requirements of—

(i) The applicable tribal ordinance or resolution approved by the Chairman of the National Indian Gaming Commission; and

(ii) With respect to class III gaming, the applicable Tribal-State compact;

(3) The applicable tribal ordinance or resolution or Tribal-State compact includes—

(i) Age and location verification requirements reasonably designed to block access to minors and persons located out of the applicable Tribal lands; and

(ii) Appropriate data security standards to prevent unauthorized access by any person whose age and current location has not been verified in accordance with the applicable tribal ordinance or resolution or Tribal-State Compact; and

(4) The bet or wager does not violate any provision of—

(i) The Interstate Horseracing Act of 1978 (15 U.S.C. 3001 *et seq.*);

(ii) 28 U.S.C. chapter 178 (professional and amateur sports protection);

(iii) The Gambling Devices Transportation Act (15 U.S.C. 1171 *et seq.*); or

(iv) The Indian Gaming Regulatory Act (25 U.S.C. 2701 *et seq.*).

(u) *Money transmitting business* has the meaning given the term in 31 U.S.C. 5330(d)(1) (determined without regard to any regulations prescribed by the Secretary of the Treasury thereunder).

(v) *Operator* of a designated payment system means an entity that provides centralized clearing and delivery services between participants in the designated payment system and maintains the operational framework for the system. In the case of an automated clearinghouse system, the term ''operator'' has the same meaning as provided in the ACH Rules.

(w) *Participant in a designated payment system* means an operator of a designated payment system, a financial transaction provider that is a member of, or has contracted for financial transaction services with, or is otherwise participating in, a designated payment system, or a third-party processor. This term does not include a customer of the financial transaction provider, unless the customer is also a financial transaction provider otherwise participating in the designated payment system on its own behalf.

(x) *Reasoned legal opinion* means a written expression of professional judgment by a State-licensed attorney that addresses the facts of a particular client's business and the legality of the client's provision of its services to relevant customers in the relevant jurisdictions under applicable federal and State law, and, in the case of intratribal transactions, applicable tribal ordinances, tribal resolutions, and Tribal-State compacts. A written legal opinion will not be considered ''reasoned'' if it does nothing more than recite the facts and express a conclusion.

(y) *Restricted transaction* means any of the following transactions or transmittals involving any credit, funds, instrument, or proceeds that the Act prohibits any person engaged in the business of betting or wagering (which does not include the activities of a financial transaction provider, or any interactive computer service or telecommunications service) from knowingly accepting, in connection with the participation of another person in unlawful Internet gambling—

(1) Credit, or the proceeds of credit, extended to or on behalf of such other person (including credit extended through the use of a credit card);

(2) An electronic fund transfer, or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of such other person; or

(3) Any check, draft, or similar instrument that is drawn by or on behalf of such other person and is drawn on or payable at or through any financial institution.

(z) *State* means any State of the United States, the District of Columbia, or any commonwealth, territory, or other possession of the United States, including the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the Virgin Islands.

(aa) *Third-party processor* means a service provider that—

(1) In the case of a debit transaction payment, such as an ACH debit entry or card system transaction, has a direct relationship with the commercial customer that is initiating the debit transfer transaction and acts as an intermediary between the commercial customer and the first depository institution to handle the transaction;

(2) In the case of a credit transaction payment, such as an ACH credit entry, has a direct relationship with the commercial customer that is to receive the proceeds of the credit transfer and acts as an intermediary between the commercial customer and the last depository institution to handle the transaction; and

(3) In the case of a cross-border ACH debit or check collection transaction, is the first service provider located within the United States to receive the ACH debit instructions or check for collection.

(bb) *Unlawful Internet gambling* means to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made. The term does not include placing, receiving, or otherwise transmitting a bet or wager that is excluded from the definition of this term by the Act as an intrastate transaction or an intra-tribal transaction, and does not include any activity that is allowed under the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 *et seq.*; *see* § ____.1(a)). The intermediate routing of electronic data shall not determine the location or locations in which a bet or wager is initiated, received, or otherwise made.

(cc) *Wire transfer system* means a system through which an unconditional order to a bank to pay a fixed or determinable amount of money to a beneficiary upon receipt, or on a day stated in the order, is transmitted by electronic or other means through the network, between banks, or on the books of a bank. When referring to wire transfer systems, the terms in this regulation (such as ''bank,'' ''originator's bank,'' ''beneficiary's bank,'' and ''intermediary bank'') are defined as those terms are defined in 12 CFR part 210, appendix B.

§ ____.3 Designated payment systems.

The following payment systems could be used by participants in connection with, or to facilitate, a restricted transaction:

(a) Automated clearing house systems;

(b) Card systems;

(c) Check collection systems;

(d) Money transmitting businesses solely to the extent they

(1) Engage in the transmission of funds, which does not include check cashing, currency exchange, or the issuance or redemption of money orders, travelers' checks, and other similar instruments; and

(2) Permit customers to initiate transmission of funds transactions remotely from a location other than a physical office of the money transmitting business; and

(e) Wire transfer systems.

§ ____.4 Exemptions.

(a) *Automated clearing house systems.* The participants processing a particular transaction through an automated clearing house system are exempt from this regulation's requirements for establishing written policies and procedures reasonably designed to prevent or prohibit restricted transactions with respect to that transaction, except for—

(1) The receiving depository financial institution and any third-party processor receiving the transaction on behalf of the receiver in an ACH credit transaction;

(2) The originating depository financial institution and any third-party processor initiating the transaction on behalf of the originator in an ACH debit transaction; and

(3) The receiving gateway operator and any third-party processor that receives instructions for an ACH debit transaction directly from a foreign sender (which could include a foreign banking office, a foreign third-party processor, or a foreign originating gateway operator).

(b) *Check collection systems.* The participants in a particular check collection through a check collection system are exempt from this regulation's requirements for establishing written policies and procedures reasonably designed to prevent or prohibit restricted transactions with respect to that check collection, except for the depositary bank.

(c) *Money transmitting businesses.* The participants in a money transmitting business are exempt from this regulation's requirements for establishing written policies and procedures reasonably designed to prevent or prohibit restricted transactions, except for the operator.

(d) *Wire transfer systems.* The participants in a particular wire transfer through a wire transfer system are exempt from this regulation's requirements for establishing written

policies and procedures reasonably designed to prevent or prohibit restricted transactions with respect to that transaction, except for the beneficiary's bank.

§ ____.5 Policies and procedures required.

(a) All non-exempt participants in designated payment systems shall establish and implement written policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions.

(b) A non-exempt financial transaction provider participant in a designated payment system shall be considered to be in compliance with the requirements of paragraph (a) of this section if—

(1) It relies on and complies with the written policies and procedures of the designated payment system that are reasonably designed to—

(i) Identify and block restricted transactions; or

(ii) Otherwise prevent or prohibit the acceptance of the products or services of the designated payment system or participant in connection with restricted transactions; and

(2) Such policies and procedures of the designated payment system comply with the requirements of this part.

(c) For purposes of paragraph (b)(2) in this section, a participant in a designated payment system may rely on a written statement or notice by the operator of that designated payment system to its participants that states that the operator has designed or structured the system's policies and procedures for identifying and blocking or otherwise preventing or prohibiting restricted transactions to comply with the requirements of this part as conclusive evidence that the system's policies and procedures comply with the requirements of this part, unless the participant is notified otherwise by its Federal functional regulator or, in the case of participants that are not directly supervised by a Federal functional regulator, the Federal Trade Commission.

(d) As provided in the Act, a person that identifies and blocks a transaction, prevents or prohibits the acceptance of its products or services in connection with a transaction, or otherwise refuses to honor a transaction, shall not be liable to any party for such action if—

(1) The transaction is a restricted transaction;

(2) Such person reasonably believes the transaction to be a restricted transaction; or

(3) The person is a participant in a designated payment system and blocks or otherwise prevents the transaction in reliance on the policies and procedures of the designated payment system in an effort to comply with this regulation.

(e) Nothing in this part requires or is intended to suggest that designated payment systems or participants therein must or should block or otherwise prevent or prohibit any transaction in connection with any activity that is excluded from the definition of ''unlawful Internet gambling'' in the Act as an intrastate transaction, an intratribal transaction, or a transaction in connection with any activity that is allowed under the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 *et seq.; see* § ____.1(a)).

(f) Nothing in this part modifies any requirement imposed on a participant by other applicable law or regulation to file a suspicious activity report to the appropriate authorities.

(g) The requirement of this part to establish and implement written policies and procedures applies only to the U.S. offices of participants in designated payment systems.

§ ____.6 Non-exclusive examples of policies and procedures.

(a) *In general.* The examples of policies and procedures to identify and block or otherwise prevent or prohibit restricted transactions set out in this section are non-exclusive. In establishing and implementing written policies and procedures to identify and block or otherwise prevent or prohibit restricted transactions, a non-exempt participant in a designated payment system is permitted to design and implement policies and procedures tailored to its business that may be different than the examples provided in this section. In addition, non-exempt participants may use different policies and procedures with respect to different business lines or different parts of the organization.

(b) *Due diligence.* If a non-exempt participant in a designated payment system establishes and implements procedures for due diligence of its commercial customer accounts or commercial customer relationships in order to comply, in whole or in part, with the requirements of this regulation, those due diligence procedures will be deemed to be reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions if the procedures include the steps set out in paragraphs (b)(1), (b)(2), and (b)(3) of this section and subject to paragraph (b)(4) of this section.

(1) At the establishment of the account or relationship, the participant conducts due diligence of a commercial customer and its activities commensurate with the participant's judgment of the risk of restricted transactions presented by the customer's business.

(2) Based on its due diligence, the participant makes a determination regarding the risk the commercial customer presents of engaging in an Internet gambling business and follows either paragraph (b)(2)(i) or (b)(2)(ii) of this section.

(i) The participant determines that the commercial customer presents a minimal risk of engaging in an Internet gambling business.

(ii) The participant cannot determine that the commercial customer presents a minimal risk of engaging in an Internet gambling business, in which case it obtains the documentation in either paragraph (b)(2)(ii)(A) or (b)(2)(ii)(B) of this section—

(A) Certification from the commercial customer that it does not engage in an Internet gambling business; or

(B) If the commercial customer does engage in an Internet gambling business, each of the following—

(1) Evidence of legal authority to engage in the Internet gambling business, such as—

(i) A copy of the commercial customer's license that expressly authorizes the customer to engage in the Internet gambling business issued by the appropriate State or Tribal authority or, if the commercial customer does not have such a license, a reasoned legal opinion that demonstrates that the commercial customer's Internet gambling business does not involve restricted transactions; and

(ii) A written commitment by the commercial customer to notify the participant of any changes in its legal authority to engage in its Internet gambling business.

(2) A third-party certification that the commercial customer's systems for engaging in the Internet gambling business are reasonably designed to ensure that the commercial customer's Internet gambling business will remain within the licensed or otherwise lawful limits, including with respect to age and location verification.

(3) The participant notifies all of its commercial customers, through provisions in the account or commercial customer relationship agreement or otherwise, that restricted transactions are prohibited from being processed through the account or relationship.

(4) With respect to the determination in paragraph (b)(2)(i) of this section, participants may deem the following commercial customers to present a

minimal risk of engaging in an Internet gambling business—

(i) An entity that is directly supervised by a Federal functional regulator as set out in § ____.7(a); or

(ii) An agency, department, or division of the Federal government or a State government.

(c) *Automated clearing house system examples.*

(1) The policies and procedures of the originating depository financial institution and any third party processor in an ACH debit transaction, and the receiving depository financial institution and any third party processor in an ACH credit transaction, are deemed to be reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions if they—

(i) Address methods to conduct due diligence in establishing a commercial customer account or relationship as set out in § ____.6(b);

(ii) Address methods to conduct due diligence as set out in § ____.6(b)(2)(ii)(B) in the event that the participant has actual knowledge that an existing commercial customer of the participant engages in an Internet gambling business; and

(iii) Include procedures to be followed with respect to a commercial customer if the originating depository financial institution or third-party processor has actual knowledge that its commercial customer has originated restricted transactions as ACH debit transactions or if the receiving depository financial institution or third-party processor has actual knowledge that its commercial customer has received restricted transactions as ACH credit transactions, such as procedures that address—

(A) The circumstances under which the commercial customer should not be allowed to originate ACH debit transactions or receive ACH credit transactions; and

(B) The circumstances under which the account should be closed.

(2) The policies and procedures of a receiving gateway operator and third-party processor that receives instructions to originate an ACH debit transaction directly from a foreign sender are deemed to be reasonably designed to prevent or prohibit restricted transactions if they include procedures to be followed with respect to a foreign sender if the receiving gateway operator or third-party processor has actual knowledge, obtained through notification by a government entity, such as law enforcement or a regulatory agency, that such instructions included instructions for restricted transactions. Such procedures may address sending notification to the foreign sender, such as in the form of the notice contained in appendix A to this part.

(d) *Card system examples.* The policies and procedures of a card system operator, a merchant acquirer, third-party processor, or a card issuer, are deemed to be reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions, if the policies and procedures—

(1) Provide for either—

(i) Methods to conduct due diligence—

(A) In establishing a commercial customer account or relationship as set out in § ____.6(b); and

(B) As set out in § ____.6(b)(2)(ii)(B) in the event that the participant has actual knowledge that an existing commercial customer of the participant engages in an Internet gambling business; or

(ii) Implementation of a code system, such as transaction codes and merchant/business category codes, that are required to accompany the authorization request for a transaction, including—

(A) The operational functionality to enable the card system operator or the card issuer to reasonably identify and deny authorization for a transaction that the coding procedure indicates may be a restricted transaction; and

(B) Procedures for ongoing monitoring or testing by the card system operator to detect potential restricted transactions, including—

(1) Conducting testing to ascertain whether transaction authorization requests are coded correctly; and

(2) Monitoring and analyzing payment patterns to detect suspicious payment volumes from a merchant customer; and

(2) For the card system operator, merchant acquirer, or third-party processor, include procedures to be followed when the participant has actual knowledge that a merchant has received restricted transactions through the card system, such as—

(i) The circumstances under which the access to the card system for the merchant, merchant acquirer, or third-party processor should be denied; and

(ii) The circumstances under which the merchant account should be closed.

(e) *Check collection system examples.*

(1) The policies and procedures of a depositary bank are deemed to be reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions, if they—

(i) Address methods for the depositary bank to conduct due diligence in establishing a commercial customer account or relationship as set out in § ____.6(b);

(ii) Address methods for the depositary bank to conduct due diligence as set out in § ____.6(b)(2)(ii)(B) in the event that the depositary bank has actual knowledge that an existing commercial customer engages in an Internet gambling business; and

(iii) Include procedures to be followed if the depositary bank has actual knowledge that a commercial customer of the depositary bank has deposited checks that are restricted transactions, such as procedures that address—

(A) The circumstances under which check collection services for the customer should be denied; and

(B) The circumstances under which the account should be closed.

(2) The policies and procedures of a depositary bank that receives checks for collection from a foreign banking office are deemed to be reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions if they include procedures to be followed by the depositary bank when it has actual knowledge, obtained through notification by a government entity, such as law enforcement or a regulatory agency, that a foreign banking office has sent checks to the depositary bank that are restricted transactions. Such procedures may address sending notification to the foreign banking office, such as in the form of the notice contained in the appendix to this part.

(f) *Money transmitting business examples.* The policies and procedures of an operator of a money transmitting business are deemed to be reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions if they—

(1) Address methods for the operator to conduct due diligence in establishing a commercial customer relationship as set out in § ____.6(b);

(2) Address methods for the operator to conduct due diligence as set out in § ____.6(b)(2)(ii)(B) in the event that the operator has actual knowledge that an existing commercial customer engages in an Internet gambling business;

(3) Include procedures regarding ongoing monitoring or testing by the operator to detect potential restricted transactions, such as monitoring and analyzing payment patterns to detect suspicious payment volumes to any recipient; and

(4) Include procedures when the operator has actual knowledge that a commercial customer of the operator has received restricted transactions through the money transmitting business, that address—

(i) The circumstances under which money transmitting services should be

denied to that commercial customer; and

(ii) The circumstances under which the commercial customer account should be closed.

(g) *Wire transfer system examples.* The policies and procedures of the beneficiary's bank in a wire transfer are deemed to be reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions if they—

(1) Address methods for the beneficiary's bank to conduct due diligence in establishing a commercial customer account as set out in § ____.6(b);

(2) Address methods for the beneficiary's bank to conduct due diligence as set out in § ____.6(b)(2)(ii)(B) in the event that the beneficiary's bank has actual knowledge that an existing commercial customer of the bank engages in an Internet gambling business;

(3) Include procedures to be followed if the beneficiary's bank obtains actual knowledge that a commercial customer of the bank has received restricted transactions through the wire transfer system, such as procedures that address

(i) The circumstances under which the beneficiary bank should deny wire transfer services to the commercial customer; and

(ii) The circumstances under which the commercial customer account should be closed.

§ ____.7 Regulatory enforcement.

The requirements under this part are subject to the exclusive regulatory enforcement of—

(a) The Federal functional regulators, with respect to the designated payment systems and participants therein that are subject to the respective jurisdiction of such regulators under section 505(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(a)) and section 5g of the Commodity Exchange Act (7 U.S.C. 7b–2); and

(b) The Federal Trade Commission, with respect to designated payment systems and participants therein not otherwise subject to the jurisdiction of any Federal functional regulators (including the Commission) as described in paragraph (a) of this section.

Appendix A to Part ____—Model Notice

[Date]

[Name of foreign sender or foreign banking office]

[Address]

Re: *U.S. Unlawful Internet Gambling Enforcement Act Notice*

Dear [Name of foreign counterparty]:

On [date], U.S. government officials informed us that your institution processed payments through our facilities for Internet gambling transactions restricted by U.S. law on [dates, recipients, and other relevant information if available].

We provide this notice to comply with U.S. Government regulations implementing the Unlawful Internet Gambling Enforcement Act of 2006 (Act), a U.S. federal law. Our policies and procedures established in accordance with those regulations provide that we will notify a foreign counterparty if we learn that the counterparty has processed payments through our facilities for Internet gambling transactions restricted by the Act. This notice ensures that you are aware that we have received information that your institution has processed payments for Internet gambling restricted by the Act.

The Act is codified in subchapter IV, chapter 53, title 31 of the U.S. Code (31 U.S.C. 5361 *et seq.*). Implementing regulations that duplicate one another can be found at part 233 of title 12 of the U.S. Code of Federal Regulations (12 CFR part 233) and part 132 of title 31 of the U.S. Code of Federal Regulations (31 CFR part 132).

By order of the Board of Governors of the Federal Reserve System, November 12, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

Dated: November 10, 2008.

By the Department of the Treasury.

Taiya Smith,

Executive Secretary.

[FR Doc. E8–27181 Filed 11–12–08; 4:15 pm]

BILLING CODE 6210–01–P; 4810–25–P

Federal Register

Tuesday,
November 18, 2008

Part IV

Department of the Interior

Bureau of Land Management
43 CFR Parts 3900, 3910, et al.

Oil Shale Management—General; Final Rules

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3900, 3910, 3920, and 3930

[LLWO–3200000 L13100000.PP0000 L.X.EM OSHL000.241A]

RIN 1004–AD90

Oil Shale Management—General

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is finalizing regulations to set out the policies and procedures for the implementation of a commercial leasing program for the management of federally-owned oil shale and any associated minerals located on Federal lands. The Energy Policy Act of 2005 (EP Act) directs the Secretary of the Interior (Secretary) to: Make public lands available for conducting oil shale research and development activities; Complete a Programmatic Environmental Impact Statement (PEIS) for a commercial leasing program for both oil shale and tar sands resources on the BLM-administered lands in Colorado, Utah, and Wyoming; and Issue regulations establishing a commercial oil shale leasing program.

These final regulations incorporate specific provisions of the Mineral Leasing Act of 1920 (MLA) and the EP Act relating to: Oil shale lease size; Acreage limitations; Rental; and Lease diligence.

These regulations also address the diligent development requirements of the EP Act by establishing work requirements and milestones to ensure diligent development of leases. The rule also provides for other standard components of a BLM mineral leasing program, including lease administration and operations.

DATES: This rule is effective on January 17, 2009.

ADDRESSES: You may send inquiries or suggestions to Director (320), Bureau of Land Management, 1620 L Street, NW., Room 501, Washington, DC 20036, Attention: RIN–AD90.

FOR FURTHER INFORMATION CONTACT: Mitchell Leverette, Chief, Division of Solid Minerals at (202) 452–5088 for issues related to the BLM's commercial oil shale leasing program or Kelly Odom at (202) 452–5028 for regulatory process issues. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. Background
II. Final Rule as Adopted and Response to Comments
III. Procedural Matters

I. Background

These regulations implement the EP Act (42 U.S.C. 15927), which became law on August 8, 2005. Section 369 of the EP Act addresses oil shale development and authorizes the Secretary to establish regulations for a commercial leasing program. The MLA of 1920 (30 U.S.C. 241(a)) provides the authority for the BLM to allow for the exploration, development, and utilization of oil shale resources on the BLM-managed public lands. Additional statutory authorities for these regulations are:

(1) The Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351–359); and

(2) The Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1701 *et seq.*, including 43 U.S.C. 1732).

Oil shale is a fine-grained sedimentary rock containing organic matter from which shale oil may be produced. Oil shale is a marlstone and contains no oil; rather, it contains un-decayed algae called kerogen (not oil). In fact, the word kerogen is a Greek word interpreted to mean ''to produce wax''—''kero'' (wax), ''gen'' to produce. The waxy substance produced from oil shale rock is not the same as conventional crude oil. The kerogen only has a market value as an energy source after it has been refined and converted to synthetic crude oil.

Oil shale is a solid rock and must be mined or treated in place to release the kerogen from the rock. Energy companies and petroleum researchers have, over the past 60 years, developed and tested a variety of technologies on a small scale for recovering shale oil from oil shale and processing it to produce fuels and by-products. Both surface processing and in-situ technologies have been examined. Generally, surface processing consists of three major steps: (1) Oil shale mining and ore preparation; (2) processing of oil shale to produce kerogen oil; and (3) processing kerogen oil to produce refinery feedstock and high-value chemicals. This sequence is illustrated below.

Conversion of Oil Shale to Products (Surface Process)

Resource → Ore Mining → Retorting → Oil Upgrading → Fuel and Chemical Markets

For deeper, thicker deposits, not as amenable to surface- or deep-mining methods, the shale oil can be produced by in-situ technology. In-situ processes minimize or, in the case of true in-situ, eliminate the need for mining and surface processes by heating the resource in its natural depositional setting. This sequence is illustrated below.

Conversion of Oil Shale to Products (True In-Situ Process)

Resource → In-Situ Processing → Oil Upgrading → Fuel and Chemical Markets

The American Association of Petroleum Geologists estimates that the total world oil shale resources contain the equivalent of 2.6 trillion barrels of oil. According to estimates by the U.S. Geological Survey, the United States holds more than 50 percent of the world's oil shale resources.

The largest known deposits of oil shale in the world are located in a 16,000 square mile area in the Green River formation in Colorado, Utah, and Wyoming (underlying the Piceance, Uinta, Green River, and Washakie Basins), which is estimated to contain the equivalent of between 1.5 and 1.8 trillion barrels of oil. Federal lands comprise 72 percent of the total surface of oil shale acreage and 82 percent of the oil shale resources in the Green River formation.

BLM Oil Shale Initiatives Since 1973

In 1973, four leases were issued in the oil shale prototype leasing program. During the 1973–74 oil shale prototype program there were expectations of an economic boom in western Colorado which never materialized. The oil shale industry collapsed on May 2, 1982, commonly referred to as Black Sunday.

In 1983, the BLM established an Oil Shale Task Force to address:

(1) Access to unconventional energy resources (such as oil shale) on public lands;

(2) Impediments to oil shale development on public lands;

(3) Industry interest in research and development and commercial opportunities on public lands; and

(4) Secretarial options to capitalize on these opportunities.

On February 11, 1983, the BLM published a proposed rule for an oil shale leasing program (48 FR 6510). Due to apparent lack of interest in the

development of oil shale, the BLM withdrew the proposed rule, effective September 25, 1985 (50 FR 38867).

In order to be better able to expand and diversify domestic energy production, on November 22, 2004, the BLM published a notice in the **Federal Register** (69 FR 67935) requesting public comments on the potential for oil shale development within the Piceance Creek Basin in Colorado, the Uinta Basin in Utah, and the Green River and Washakie Basins in Wyoming. The **Federal Register** notice also requested comments on a proposed draft oil shale Research, Development, and Demonstration (R, D and D) lease form. Comments received were incorporated, as appropriate, into the final R, D and D lease form.

On June 9, 2005, the BLM published a notice in the **Federal Register** (70 FR 33753), which initiated a R, D and D leasing program by soliciting nominations of 160-acre parcels of public land to be leased in Colorado, Utah, and Wyoming for conducting oil shale recovery technologies. In response to the 19 nominations of parcels received, the BLM issued 6 R, D and D leases—5 in Colorado that were effective January 1, 2007, and an additional R, D and D lease in Utah that was effective on July 1, 2007. Each of the R, D and D leases contain a preference right for conversion to a commercial lease of additional acreage upon demonstration of a successful method of producing oil from shale rock.

One of the purposes of the R, D and D leases, as stated in the notice, was to provide the BLM, state and local governments, and the public with important information that could be utilized as the BLM works with communities, states, and other Federal agencies to develop strategies for managing the environmental effects of production. The R, D and D lease form was published as an attachment (Appendix A) to the June 9, 2005, **Federal Register** notice.

The PEIS and National Environmental Policy Act (NEPA) Compliance

On December 13, 2005, the BLM published in the **Federal Register** a notice of intent (NOI) to prepare a PEIS (70 FR 73791) for oil shale and tar sands resources leasing on lands administered by the BLM in Colorado, Utah, and Wyoming. The NOI alerted the public that the BLM was intending to amend several resource management plans (RMPs) to make lands available for oil shale and tar sands resources leasing in Colorado, Utah, and Wyoming. The NOI also informed the public of the development of the oil shale regulations required by Section 369(d)(2) of the EP Act. The RMPs are BLM planning documents prepared under Section 202 of FLPMA that present guidelines for making resource management decisions.

The draft PEIS evaluated the following RMPs for possible amendment:

(1) Wyoming: Green River, Great Divide, and Kemmerer;

(2) Utah: Price River, San Juan, San Rafael, Henry Mountain, Book Cliffs, and Diamond Mountain; and

(3) Colorado: Grand Junction, White River, and Glenwood Springs.

Although the PEIS covers planning for tar sands, these regulations do not address tar sands leasing since the BLM has regulations in place that address tar sands leasing (see 43 CFR part 3140).

On December 21, 2007, the BLM published the notice of availability (NOA) for the draft PEIS and made the draft PEIS available for public comment (72 FR 72751). On September 5, 2008, the BLM published a NOA announcing the availability of the final PEIS (73 FR 51838). The PEIS is primarily intended to analyze the impacts of land use allocation and not site-specific oil shale leasing. The Record of Decision (ROD) has not yet been signed. The ROD will describe and approve the BLM's proposal to amend 12 RMPs to identify the most geologically prospective public lands in Colorado, Utah, and Wyoming for oil shale and tar sands resources, and to designate certain of these lands as available for application for commercial leasing and future exploration and development of these resources.

Advance Notice of Proposed Rulemaking

The BLM recognized that the creation of the rules governing the development of oil shale would need to address different possible technologies that have different associated impacts and costs. Therefore, to increase public participation and to aid in the development of oil shale regulations, the BLM published in the **Federal Register** an advance notice of proposed rulemaking (ANPR) (71 FR 50378) on August 25, 2006. The ANPR requested public comments on the following five key components of the proposed regulations:

(1) What should be the royalty rate and point of royalty determination?

(2) Should the regulations establish a process for bid adequacy evaluation, i.e., Fair Market Value (FMV) determination, or should the regulations establish a minimum acceptable lease bonus bid?

(3) How should diligent development be determined?

(4) What should be the minimum production requirement?

(5) Should there be provisions for small tract leasing?

On September 26, 2006, the BLM published a **Federal Register** notice reopening the comment period for the ANPR and extending the comment period until October 25, 2006 (71 FR 56085). In response to the ANPR, the BLM received 48 comments.

Comments were received from individuals, public interest groups, and industry representatives. Although the ANPR focused on the 5 areas previously identified, commenters addressed a variety of topics, including whether or not they were supportive of a commercial oil shale leasing program. The BLM considered the ANPR comments in drafting the proposed and final rules.

Listening Sessions With Governor's Representatives From Colorado, Utah, and Wyoming

The BLM, in coordination with the Minerals Management Service (MMS), held three ''listening sessions'' with representatives of the governors of the States of Colorado, Utah, and Wyoming. The BLM and the MMS met with these representatives in Denver, Colorado (December 14, 2006), Salt Lake City, Utah (April 26, 2007), and Cheyenne, Wyoming (August 8, 2007). The purpose of the listening sessions was to provide the governors' representatives the opportunity to share their ideas, issues, and concerns relating to the proposed commercial oil shale leasing regulations.

Section 369(e) of the EP Act requires the Department of the Interior (Department) to consult with the governors of Colorado, Utah, and Wyoming, representatives of local governments, interested Indian tribes, and the public to determine the level of support for conducting oil shale lease sales. The BLM plans to consult with the affected states prior to conducting the first oil shale lease sale, and following publication of this rule.

On July 23, 2008, the BLM published in the **Federal Register** a proposed rule entitled Oil Shale Management—General (73 FR 42926). The comment period on the rule closed on September 22, 2008. The BLM received over 75,000 comment letters on the proposed rule from individuals, Federal and state governments and agencies, interest groups, and industry representatives. Substantive comments on the proposed rule are discussed in this preamble in the section discussions of this rule. If

we received no substantive comment on a particular section of the rule, that section remains as proposed.

II. Final Rule as Adopted and Response to Comments

Part 3900—Oil Shale Management—General

This part contains regulations on the general management of the oil shale program, including discussions of the descriptions and acreage in oil shale leases, qualifications requirements, fees, rentals, royalties, bonds and trust funds, and lease exchanges.

Subpart 3900—Oil Shale Management—Introduction

This subpart establishes competitive oil shale leasing administrative procedures for implementing a commercial oil shale leasing program.

The rule contains specific provisions required by Section 369 of the EP Act. Many of the sections of the rule contain regulatory requirements similar to the regulations in the BLM's existing mineral programs namely, coal, non-energy leasable minerals, and oil and gas. In creating a regulatory framework for the oil shale commercial leasing program, the BLM is adopting certain basic components and processes common to the BLM's leasing programs. Most of the BLM's leasing programs are governed by the MLA. The regulations governing those programs and this program include the following types of provisions: Pre-lease exploration; leasing processes; bonding; operations (including plan of development (POD)); reclamation; and inspection and enforcement.

Section 3900.2 contains the definitions and terms used in these regulations. Many of the terms and definitions found in this section are similar to terms and definitions in the regulations of other BLM mineral leasing programs. Because most of the terms and concepts in this section are well-established, this section of the preamble does not address each of the definitions, but focuses only on definitions for certain terms that directly affect the reader's understanding of the regulatory framework of the oil shale leasing program or that are unique to these regulations.

The BLM removed the definition for ''Director'' in the final rule because the term is not used in the regulatory text.

The term ''commercial quantities'' was discussed in the proposed rule as production of shale oil quantities in accordance with the approved Plan of Development for the proposed project through the research, development, and demonstration activities conducted on the R, D and D lease, based on and at the conclusion of which a reasonable expectation exists that the expanded operation would provide a positive return after all costs of production have been met, including the amortized costs of the capital investment. One commenter stated that the report, *Oil Shale Development in the United States*, (James Bartis, 2005) estimates that the minimum size of a commercial scale operation will likely be over 100,000 barrels per day. The BLM interprets this as a recommendation to define commercial quantities as production of at least 100,000 barrels per day. Another commenter stated that an alternative method of defining commercial quantities would be to set it at no less than 1/2 of 1% of the recoverable resource on the lease. The BLM did not adopt these recommendations because ''commercial quantities'' does not apply to commercial lease production, but is a condition in an R, D and D lease that must be met before an R, D and D lessee can convert the R, D and D acreage and preference acreage to a commercial lease. One commenter expressed the view that the definition in the proposed rule for ''commercial quantities'' was subjective and that the definition should be revised to confirm that an oil shale lessee will only be required to pay royalties once operations convert from the test phase to a commercial operations phase. The definition of ''commercial quantities,'' applies only to the R, D and D leases and mirrors the definition for ''commercial quantities'' that is in the existing R, D and D leases. Provisions in the R, D and D leases also address the payment of royalties, therefore, we have revised the definition for ''commercial quantities'' in the final rule to make it clear that the definition only applies to R, D and D leases. Another commenter stated that there is an inconsistency between the ''commercial quantities'' definition and the ''diligent development'' definition in that section 3927.50 provides that market conditions are not considered a valid reason to waive or suspend the requirements for annual minimum production. As stated previously, the definition for ''commercial quantities'' only applies to R, D and D leases; therefore, there is no connection, or inconsistency, between the definition for ''commercial quantities'' and the diligent development requirements in section 3927.50.

Finally, commenters said that the commercial quantities definition needs to take into account all of the related costs. The term ''commercial quantities'' pertains only to the R, D and D leases. As stated in the commercial quantities definition of this rule, the BLM will evaluate all costs of production, including the amortized costs of the capital investment when determining whether an R, D and D lease should be converted to a commercial lease. We did not revise the definition of commercial quantities as a result of public comment.

One commenter requested that the BLM clarify the definition for ''exploration license'' to indicate that the holder of an exploration license does not have an automatic right to a lease to develop oil shale. We made a change in the final rule to address this concern by making it clear that an exploration license confers no right to a lease to develop oil shale.

One commenter noted the absence of a definition for ''royalty'' and suggested that the BLM describe whether royalty is based on net or gross revenue and the components thereof. Please see the discussion of royalty valuation in subpart 3903 for a response to this comment.

The term ''infrastructure'' means all support structures necessary for the production or development of shale oil. The definition lists examples of the different types of support structures that the BLM considers to be infrastructure. This term is defined in these regulations because it is critical to the BLM's review of lease applications. Infrastructure impacts are a key component of the plan of operations that the BLM will review when undertaking various analyses such as those required by NEPA. Furthermore, the BLM believes that a detailed itemization of examples is necessary since installation of infrastructure is one of the diligent development milestones.

We received several comments discussing the need to modify the definition of the term maximum economic recovery (MER). The commenters pointed out that the oil shale industry is not yet established and therefore there currently are no standard industry operating procedures.

The BLM agrees with the commenter in that, at this time, there is no established oil shale industry. However, the concept of MER is incorporated into many of the BLM's other mineral leasing regulations either as MER or as ultimate maximum recovery. The term specifically means that there is a need to prevent wasting of resources and that there should be requirements to recover the maximum amount of the resource that is technologically and economically possible, without jeopardizing safety considerations.

The commenter also said that the term is used in various sections of the regulations and the phrase ''standard operating procedures'' needs to be clarified. In response to the comment, the BLM believes that even though there is no established oil shale industry and that technology in most cases is still untested, once an industry is established, there will be standard industry procedures that will be evaluated in determining MER taking into account such factors as the differences in technologies, resource characteristics, and geologic conditions. The BLM will also evaluate economics associated with the individual operation, market conditions, and standard operating procedures that are appropriate for the technologies of the established industry. In the future, the BLM will determine additional standard operating procedures that might be adopted for a future oil shale industry.

As a result of the comments submitted on MER, the BLM revised and simplified the definition of maximum economic recovery in the final rule. The revised definition of maximum economic recovery reads as follows: Maximum Economic Recovery (MER) means the prevention of wasting of the resource by recovering the maximum amount of the resource that is technologically and economically possible, without jeopardizing safety considerations.

We received several comments requesting that the BLM add additional definitions in the regulations. Some suggestions included adding to the definition section: Raw oil shale, charred spent oil shale, de-charred oil shale, char, raw shale oil, raw shale gas, hydrotreated shale oil, processed/separated gas, process energy efficiency, energy self sufficient effective resource recovery, minimum environmental impact, and Fischer Assay (FA)/TOSCO Assay. The suggested terms are used to describe various parts and components of shale oil extraction and processing. However, the BLM did not include the terms in the final rule because they are terms that describe processes, components, or items that were not being regulated or were terms that did not need an explanation or definition in the final rules. Some of the terms we consider subsets of other defined terms.

The BLM believes that the comment on including a definition for the term ''spent shale'' is too restrictive, but decided to address the ''waste'' resulting from the mining, in-situ, and retorting operations. Therefore, the BLM added a definition of the term ''mining waste'' because it is more inclusive and could be defined as pertaining to the waste from surface, underground, and in-situ operations and oil shale retorting operations. In the final rule, mining waste is defined as ''All tailings, dumps, deleterious materials or substances produced by mining, retorting, or in-situ operations.'' The term ''mining waste'' is incorporated into both the definitions section 3900.2 and the contents of an operating plan in section 3931.11 of the regulations.

The term ''oil shale'' means a fine-grained sedimentary rock containing:

(1) Organic matter which was derived chiefly from aquatic organisms or waxy spores or pollen grains, which is only slightly soluble in ordinary petroleum solvents, and of which a large proportion is distillable into synthetic petroleum; and

(2) Inorganic matter, which may contain other minerals. This term is applicable to any argillaceous, carbonate, or siliceous sedimentary rock which, through destructive distillation, will yield synthetic petroleum.

The BLM defined the term ''production'' to acknowledge the various technologies associated with operations for extraction of shale oil, shale gas, or shale oil by-products

Section 3900.5 explains the information collection requirements for the rule. The OMB has reviewed and approved the information collection requirements in parts 3900 through 3930 under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0201. The table in paragraph (d) of this section lists the subparts in the rule requiring the information and its title and summarizes the reasons for collecting the information and how the BLM will use the information.

Section 3900.10 identifies which lands are subject to leasing under parts 3900 through 3930. Section 21 of the MLA authorizes the issuance of oil shale leases (30 U.S.C. 241(a)). The final rule expands this section to make it clear that certain National Park Service lands are not available for oil shale leasing. We also added a new paragraph (c) to this section to make it clear that the BLM may not issue oil shale leases on lands within incorporated cities and towns and to be consistent with the MLA (30 U.S.C. 181).

Section 3900.20 addresses the right to appeal BLM decisions issued under these regulations to the Interior Board of Land Appeals (IBLA) under 43 CFR part 4. This section adopts standard appeals language found in the regulations of other BLM mineral programs.

Section 3900.30 contains standard language providing that documents (i.e., applications, statements of qualification, PODs and supporting information, etc.) required by these regulations be filed in the proper BLM office with the required fees. The term ''proper BLM office'' is defined in the definitions section of this rule. Several commenters expressed concern about the release of confidential data or information and requested greater specificity regarding the information that is entitled to confidentiality when it is submitted to the BLM. Section 3900.30(b) of the proposed and final rule references the Freedom of Information Act (FOIA) (5 U.S.C. 552), which includes an exemption for confidential data and for certain geological information. This exemption under the FOIA is the most common standard that the BLM is required to follow concerning proprietary information; other statutory grounds for withholding information might apply in particular circumstances.

Section 3900.40 addresses the multiple use mandate of FLPMA by providing that the BLM's issuance of an exploration license or lease for the development or production of oil shale would not preclude the issuance of other exploration licenses or leases on the same lands for deposits of other minerals or other resource uses. This provision is similar to regulatory provisions in the BLM's other leasing programs, which also promote multiple use of the public lands. One comment suggested that the oil shale lessee should be able to obtain the predominant right to develop the oil shale without competing uses. Another comment suggested that the BLM should reconsider the extent to which it is issuing oil and gas leases in oil shale areas. The BLM must manage the public lands under the principles of multiple use as mandated by FLPMA (43 U.S.C. 1732) (see also 43 CFR 3000.7), therefore, a predominant right should not be considered to have been granted to an oil shale lessee. In the event of unavoidable conflict, the Federal mineral lease for the same lands with the earlier effective date has priority for operations because later lessees have constructive notice of the prior lease, unless the prior lease is specifically subordinated to later-approved uses. Prior to issuing any mineral lease, the BLM considers potential conflicts and the impact on other resources, including mineral resources, and takes measures, including adding lease stipulations, to ensure that resources are not unnecessarily lost or damaged.

Section 3900.50 clarifies the relationship of land use plans and NEPA to the BLM's commercial oil shale leasing program. This section provides that any lease or exploration license issued under these regulations

must be issued under the decisions, terms, and conditions of a comprehensive land use plan. The land use planning process is the key tool used by the BLM to protect resources and designate uses for BLM-administered lands. Compliance with NEPA and land use planning is required before BLM can issue a lease or exploration license.

Section 3900.61 addresses the procedures the BLM will follow concerning consent and consultation where the surface of public land is administered by other Federal agencies outside of the Department and procedures for particular situations where the United States has conveyed title to or transferred control of the surface. Paragraphs (a) and (b) address those procedures that the BLM will follow concerning consent and consultation where the surface of public lands is administered by other agencies outside of the Department. One commenter expressed confusion regarding consent and consultation as they apply to section 3900.61(a), Public lands, and section 3900.61(b), Acquired lands. Under this final rule, in most cases leasing public lands does not require consent from the surface management agency. However, the BLM will consult with the surface management agency prior to leasing. Where acquired lands or National Forest System (NFS) lands are involved, the BLM will obtain consent from the surface management agency prior to leasing.

Paragraph (c) provides procedures an applicant may pursue in challenging a decision issued by a particular agency outside of the Department relating to special stipulations or refusal of consent. A comment requested clarification of the timeframe for filing an appeal with the BLM when a counterpart appeal has been filed with the surface management agency. An appeal to the BLM must be timely filed, as presumably would an appeal to the surface management agency. When appropriate, though, the BLM will issue its decision after the surface management agency renders its decision. Paragraph (d) does not allow the BLM to issue a lease or license on NFS lands without the consent of the Forest Service. Under paragraph (d), the BLM's decision whether to issue the lease or license is based on a determination as to whether the interests of the United States would best be served by issuing the lease or license. The provisions of this section closely mirror BLM regulations for oil and gas, coal, and non-energy leasable minerals. Paragraph (e) provides that the BLM make the final decision as to whether to issue a lease or license in those cases not involving a Federal agency, where the United States has conveyed title to the surface to any state or political subdivision or agency, including a college or any other educational corporation or association, to a charitable or religious corporation or association, or to a private entity. Paragraph (e) has been edited for clarity.

Section 3900.62 addresses situations where the BLM may require lease or exploration license stipulations to protect lands and resources. Stipulations are site specific provisions that the BLM may add to standard lease or license terms prior to issuance for the purpose of protecting Federal resource values and mitigating impacts to other values identified in a NEPA document. Stipulations frequently restrict operations on the lease or permit by limiting surface disturbance for the purpose of mitigating potential impacts to a specific non-mineral resource value. This includes the protection of wildlife, plants, and cultural or other resources. This provision is similar to those found in the BLM's other mineral leasing programs.

Subpart 3901—Land Descriptions and Acreage

Section 3901.10 contains the requirements for land descriptions in applications or documents submitted to the BLM. This section is similar to the regulatory provisions addressing land descriptions found in other BLM leasing programs and establishes consistent standards for land descriptions in applications submitted to the BLM.

Sections 3901.20 and 3901.30 incorporate the provisions of Section 21(a)(4) of the MLA, as amended by Section 369(j)(2) of the EP Act, 30 U.S.C. 241(a)(4), that establish 50,000 acres as the maximum acreage of oil shale leases on public lands that any entity may hold in any one state and that the oil shale lease acreage does not count toward acreage limitations associated with other mineral leases such as oil and gas leases. Another 50,000 acres may be held on acquired lands. Since the provisions in this section relating to maximum acreage holdings are statutory, the BLM does not have the authority to revise the requirements in this section. We received a comment stating that section 3901.20 appears to be in conflict with section 3927.20. We disagree. Section 3901.20 concerns the amount of acreage an entity is allowed to hold, and section 3927.20 concerns how many acres can be in each lease. One comment expressed concern that conceivably one entity could hold as much as 300,000 acres in the three states of Colorado, Utah, and Wyoming, combined, which could result in speculation. It is true that one lessee could potentially hold as much as 300,000 acres, however, we believe that the competitive leasing process requiring FMV bonus payments up front and the diligent development milestones at section 3930.30 will deter speculation. We made no changes to subpart 3901 as a result of this comment.

Subpart 3902—Qualification Requirements

Sections under this subpart detail the various statutory requirements under Section 27 of the MLA relating to who can hold Federal oil shale leases and interests. These regulations mirror many of the qualification provisions of the BLM's other mineral leasing regulations, namely oil and gas (43 CFR subpart 3102), geothermal (43 CFR subpart 3202), coal (43 CFR subpart 3472), and non-energy leasable minerals (43 CFR subpart 3502).

Section 3902.10 enumerates the requirements of the MLA relating to who is authorized to hold leases or interests in leases (30 U.S.C. 181, 352). These requirements have a longstanding statutory and regulatory history and are found in the regulations for the BLM's mineral leasing programs. A commenter requested that BLM clarify section 3902.10(b) that a foreign citizen could hold a majority or controlling share in a domestic corporation. Proposed section 3902.10(b) does not place any limits regarding shareholdings; therefore, we have not revised the final rule as a result of this comment.

Sections 3902.21 and 3902.22 explain the filing procedures for qualification documents, including when and where to file documents. Section 3902.21 also requires that all documentation submitted to the BLM as evidence of qualifications be current, accurate, and complete.

Sections 3902.23 through 3902.29 detail the type of qualifications documentation that the BLM will require from:

(1) Individuals (section 3902.23);

(2) Associations, including partnerships (section 3902.24);

(3) Corporations (section 3902.25);

(4) Guardians or trustees (section 3902.26);

(5) Heirs and devisees (section 3902.27);

(6) Attorneys-in-fact (section 3902.28); and

(7) Other parties in interest (section 3902.29).

The requirements in these sections are similar to the standard requirements of other BLM regulations to show evidence of qualifications to hold a lease under the MLA. We received one comment regarding section 3902.23(b), which stated that acreage holdings are attributed to an individual if that individual holds more than 10 percent of the stock in a corporation, association, or partnership. The commenter thought that this was a low threshold. The 10 percent threshold is set in the Act for all leasable minerals (30 U.S.C. 184(e)(1)). Therefore we made no change to final section 3902.23(b) as a result of this comment.

Subpart 3903—Fees, Rentals, and Royalties

For payments of required rental and royalties, sections 3903.20 and 3903.30 address the acceptable forms of payment (section 3903.20) and where to submit payment for processing or filing fees, rentals, bonus payments, and royalties (section 3903.30). The acceptable forms of payment listed in section 3903.20 mirror the forms of payment accepted in the BLM's other mineral leasing regulations.

Section 3903.40 incorporates the requirement of Section 369(j) of the EP Act that the annual rental rate for an oil shale lease is $2.00 per acre. One comment stated that the EP Act must be revised so that the rental rate is coupled to resource thickness, overburden depth, and quality of oil, etc. Since the statute sets the rental rate, the BLM has no discretion to revise it. A change in the EP Act is beyond the scope of this rulemaking. Another comment we received brought to our attention that there is no due date for rental payments. We revised final section 3903.40 to reflect that rental payments are due on or before the lease anniversary date. The lease anniversary date is the anniversary of the effective date of the lease (see section 3927.40). We also revised section 3903.40(b) to make it clear that there is only one notice sent by BLM demanding payment of late rentals.

Section 3903.51 addresses the minimal annual production requirement that applies to every lease. It also discusses payments in lieu of production beginning with the 10th lease year. The BLM determines the amount required for payment in lieu of annual production, but in no case will it be less than $4 per acre. Payments in lieu of production are not unique to this rule. They are a requirement of other BLM mineral leasing regulations and the BLM believes they provide an incentive to maintain production.

Setting the payment in lieu of production at no less than $4 per acre is an adequate payment to the Federal Government to justify allowing the lessee to continue holding a lease absent production, but should not be so high as to cause the lessee to relinquish the lease. A payment in lieu of production of $4 per acre for the maximum lease size of 5,760 acres equals a payment of $23,040 per year.

In response to the ANPR, the BLM received comments expressing various ideas concerning minimum production amounts and requirements. The comments are summarized as follows:

(1) Minimum production should be 1,000 barrels a day;

(2) Minimum production should be based on the viability of the operation;

(3) Minimum production levels should be based on resource potential and production levels identified in the POD;

(4) Minimum royalties should be assessed at the end of the primary term;

(5) Minimum production should be based on a percentage of the projected resource base; and

(6) There should not be a minimum production requirement.

We agree with several of the commenters' suggestions. The suggestions to base minimum production on the approved POD and the specifics of the operation were incorporated into sections 3930.30(c) and 3930.30(d). The suggestions related to defining the minimum production on a percentage of the resource base were not incorporated into the rule because of the difficulties associated with defining the recoverable resource, the variables associated with the different development technologies, and the differing kerogen content of the shales. We consider the suggestion that identified 1,000 barrels a day as the correct minimum production requirement too inflexible a standard because it does not allow for differences in shale quality and differences in extraction technology.

Section 3903.52—Royalty Rates on Oil Shale Production

Section 3903.52 establishes a royalty rate for all products that are sold from or transported off of the lease area. The BLM recognizes that encouraging oil shale development presents some unique challenges compared to BLM's traditional role in managing conventional oil and gas operations. We received a wide range of comments presenting alternative royalty approaches on both the proposed rule and the ANPR, and we address those comments below. In the proposed rule we narrowed the range of options based on the ANPR comments and did not settle on a single royalty rate. Instead, we presented two royalty rate alternatives in the proposed rule (as outlined later in this section), and requested public comment on those specific alternatives. In addition, the rule considered a third alternative, a sliding scale royalty rate based on market prices for competing products, and we sought public comment on the appropriate parameters for the sliding scale royalty rate.

The EP Act (Section 369(o)) directs the agency to establish royalties and other payments for oil shale leases that ''shall

(1) Encourage development of the oil shale and tar sands resources; and

(2) Ensure a fair return to the United States.''

The market demand for oil shale resources based on the price of competing sources (e.g., crude oil) of similar end products is expected to provide the primary incentive for future oil shale development. Additional encouragement for development may be provided through the royalty terms employed for oil shale relative to conventional oil and gas royalty terms, but we recognize that such incentives must be balanced against the objective of providing a fair return to the United States for these resources. Through the ANPR process, the BLM initially examined a wide range of royalty options, including:

(1) 12.5 percent royalty rate on the first marketable product;

(2) 12.5 percent royalty rate on the value of the mined oil shale rock, as proposed in 1983;

(3) 8 percent royalty rate on products sold for 10 years with optional increases of 1 percent per year up to a maximum of 12.5 percent, similar to the rates established by the State of Utah in 1980;

(4) Initial 2 percent royalty to encourage production and a 5 percent maximum upon establishment of infrastructure;

(5) Sliding scale royalty rate tied to timeframes up to a maximum of 12.5 percent;

(6) Sliding scale royalty rate tied to production amounts up to a maximum of 12.5 percent;

(7) Sliding scale royalty rate with royalty rates tied to the price of crude oil;

(8) Royalty rate of 1 percent of gross profit before payout and royalty rate of 25 percent net profit after payout—(Canadian oil sands model);

(9) Royalty based on cents per ton as proposed in the 1973 oil shale prototype program; and

(10) Royalty based on British Thermal Unit (Btu) content as compared to crude oil.

In evaluating an appropriate royalty rate system for oil shale that meets the EP Act's dual objectives of encouraging development and ensuring a fair return to the government, the BLM also reviewed other Federal royalty rates for Federal minerals set by statute and regulations administered by Department bureaus, and royalty rates applied to oil shale production in other countries.

The royalty rates for other Federal energy minerals vary. Specifically, current royalty rates for Federal energy minerals under Department leasing programs include:

(1) Onshore oil and gas (12.5 percent);

(2) Offshore oil and gas (16.67 percent), Gulf of Mexico Region (18.75 percent);

(3) Underground coal (8 percent);

(4) Surface coal (12.5 percent); and

(5) Geothermal (for new leases: 1.75 percent for the first 10 years and 3.5 percent thereafter. For leases issued prior to the EP Act, 10 percent on net proceeds after deductions).

All of these programs allow for royalty rate relief under certain circumstances (30 U.S.C. 241 and 209).

The BLM also looked at royalty applications for oil shale and similar unconventional fuels in other countries, including:

(1) For oil sands, Canada applies a royalty rate of 1 percent of the gross revenue before payout (before companies have recouped investment costs) with a 25 percent net profit royalty rate applied after payout;

(2) Australia has a 10 percent gross royalty on the value of the shale oil produced;

(3) Brazil applies a 3 percent gross royalty rate;

(4) Estonia does not have a royalty; and

(5) No information on a royalty rate for shale oil produced in China was available.

It should be noted that Canada produces oil from oil sands, not oil shale. The oil in the sands is the same as crude oil, but dispersed in sand. Extraction and processing is more expensive than for conventional crude oil production, but less expensive than is anticipated for oil shale.

Australian operations are using the Alberta Taciuk Process, which is the same type of technology currently used by the Oil Shale Exploration Company (OSEC) in Utah. Despite their 10 percent royalty rate, the Australian oil shale project (the Stuart Project) was heavily subsidized by the Australian government through other means (tax incentives). Even the government subsidies could not sustain oil shale operations in Australia. The last three operators went into bankruptcy after brief operations. Suncor, the founder of the Stuart Project and a successful developer of the Canadian tar sands, exited the Australian oil shale business after losing approximately one hundred million dollars.[1] For its Utah demonstration project, OSEC is also expected to test the Petrosix horizontal retort process, which is currently being used by Petrobras, Brazil, for oil shale operations.

Australia and Brazil are the only other countries known to be producing, or to have produced, oil shale using the same technologies as in the United States. Oil shale developmental efforts in China and Estonia are owned by their respective governments. Because no other country has yet achieved successful commercial oil shale operations and because of the wide variety of oversight and revenue structures employed in each country, the BLM's review of these systems did not identify a useful model for a royalty system to be used for oil shale development on Federal lands in the United States.

In the ANPR, the BLM solicited public input on the royalty rate and point of royalty determination. The BLM's purpose for requesting comments was to solicit ideas on these royalty issues for a resource that has little or no history of commercial development.

There were approximately thirty-one entities that provided comments through the ANPR process that were specific to royalty rate and royalty point of determination. The comments suggested royalty rates that ranged from a royalty rate of zero to a royalty rate of 12.5 percent. Of the royalty-related comments, three suggested that the royalty be set at 12.5 percent, the same rate as in BLM's oil and gas program, while some comments described a 12.5 percent royalty rate as unreasonable. It is contemplated that the primary products produced from oil shale will compete directly with those from onshore oil and gas production, which has a 12.5 percent royalty rate. However, the BLM recognizes that the nature of potential oil shale operations differs from that of conventional oil and gas operations and that these differences may suggest the need for a royalty system other than the traditional flat rate of 12.5 percent used for conventional onshore oil and gas operations.

[1] Environmental News Service, July 22, 2005, *http://www.ens-newswire.com.*

In determining the royalty rate for oil shale, it should be noted that there is a significant difference between oil shale mineral deposits and a conventional crude oil reservoir. As discussed in the ''Background'' section of this preamble, oil shale is a marlstone that contains no oil, but kerogen, that needs to be refined and converted to synthetic crude oil.

Currently, proposed processes to extract kerogen from an oil shale deposit are considerably different, as well as labor and capital intensive. Oil shale is a solid rock that must be mined or treated in place to release the kerogen. Two of these processes are discussed in the ''Background'' section of this preamble.

We received a wide range of comments on the appropriate royalty rate as a result of the ANPR. Seven of the comments recommended that a ''very low royalty rate'' be established until after companies have recouped the costs of their investments (debt service and capital investment). Many among the seven recommended that a 1 percent royalty rate be the starting point, and they used the Alberta oil sands royalty scheme as an example. As discussed above, the BLM looked at royalty applications for oil shale and similar unconventional fuels in other countries. The Alberta tar sand model presents two challenges. First, because of the continual infusion of capital to acquire new equipment, the payout point is being reached only after many years of operation. Secondly, because of the complexity of determining when payout may occur, such a royalty scheme requires a more robust and costly administrative process to guard against manipulation; those costs would reduce the net return to the United States. Therefore, the BLM considered the investment payout scheme as inconsistent with the premise of ''a fair return'' to the United States as mandated in EP Act.

Three of the ANPR comments recommended that ''royalties must be high enough'' to support local communities and infrastructure; however, these comments did not provide specific royalty rates. Oil shale royalties are not designated for community and infrastructure support, but by statute are required to be split between the Federal Treasury and the states (30 U.S.C. 191). Presumably states could choose to direct a portion of the royalty revenues they receive to local community and infrastructure support, but that would be a state choice, and for the purpose of this rulemaking, these comments were not considered because they assume a use of royalty revenues not available under current law.

Three comments suggested that royalties should not be charged on hydrocarbons unavoidably lost or used on the lease for the benefit of the lease, but did not directly address the royalty rate issue.

One comment suggested the royalty be ''based on the material as it exists naturally in the land, and as it is removed from the land.'' This comment seems to suggest that royalty should be based on mined raw shale. While the BLM acknowledges the inherent differences between an oil shale deposit and other deposits from which similar products can be produced, this suggestion was not considered because there is no known value for raw oil shale since there is no oil shale industry or an established market for raw oil shale. However, it should be noted that in 1983 the BLM proposed a rule to establish a royalty rate equivalent to 12.5 percent of the value of oil shale after mining or resource extraction and before processing, as determined by the BLM. The 1983 proposed rule was published on February 11, 1983 (48 FR 6510). The 1983 proposed rule provided that ''the derivation methodology for this value shall be announced prior to the solicitation of bids.'' The proposed rule further stated that ''the royalty rate shall, to the extent practicable, not be levied on any value added by the production process after the point of resource extraction.'' It would be unreasonable to adopt such a proposal today, due to the changes in extraction methodology (in situ versus ex situ). It would also be challenging to develop a fair and transparent process to calculate the royalty equivalent in today's economic environment, and no values were assigned to the mined or unprocessed rock and tonnage in the 1983 proposed rule. As noted, the 1983 proposed rule deferred the determination of those parameters to a later date.

In addition to ANPR comments received on royalty rates, the BLM considered an initial 2 percent royalty to encourage production and a maximum 5 percent rate upon establishment of infrastructure. This method recognized the high costs involved in producing shale oil. However, we did not adopt this approach because of the difficulty involved in determining when necessary infrastructure is in place.

In the proposed rule the BLM also considered an 8 percent royalty rate established by the State of Utah for state oil shale leases. It was determined that this rate represents the historic base royalty rate for solid fuel minerals on the State of Utah School and Institutional Trust Lands Administration lands—including asphaltic sands, uranium, and coal. To date, several oil shale leases issued by the State of Utah are in the infancy stages of research and development. These leases were issued with an initial royalty rate of 5 percent for the first 5 years after production begins. The royalty rate may increase by 1 percent per year to 12½ percent.

After examining the basis for setting rates, as suggested in the ANPR comments, the BLM determined that an initial flat 12.5 percent royalty rate for all future production may not allow oil shale to become competitive with traditional oil and gas development and therefore could be viewed as inconsistent with the requirements of EP Act.

Royalty Rate Alternatives Proposed for Further Consideration

As noted previously, we did not propose a single royalty system. Based on the information the BLM reviewed, and considering the unique challenge of trying to set a royalty rate on oil shale production in light of the many uncertainties regarding the economics and technology of a potential future oil shale industry, we presented different royalty rate alternatives in the proposed rule:

1. A flat 5 percent royalty rate; and
2. A 5 percent royalty rate on a specific volume of initial production beginning within a prescribed timeframe, with a 12.5 percent rate applied thereafter.

In addition, we sought comment on the appropriate parameters for a third option: A two or three tiered sliding scale royalty based on the market price of competing products (e.g., crude oil and natural gas). A further explanation of each of these proposals is presented below.

Proposed Option 1. Flat 5 percent royalty.

Although mitigated somewhat by the much greater geographic concentration of oil shale resources, there is a significant difference between the energy value of oil shale and crude oil. On a per-pound basis, very high quality oil shale rock generates 4,300 Btu, coal generates an average of 10,600 Btu, while crude oil generates 19,000 Btu. Even wood has more heating capacity than oil shale rock, generating an average of 6,500 Btu. Applying the relative Btu value of oil shale to crude oil would result in a 2.6 percent royalty for oil shale. Using the same comparison to the royalty rate for underground coal would result in a 3.2 percent royalty rate for oil shale. In other words, it would require almost 5 times as much oil shale to produce the Btu value of crude oil and more than 2 times as much oil shale to produce the equivalent Btu value of coal.

The BLM looked at royalty rates on leases issued under Interior's 1973 Prototype Leasing Program. The prototype leases provided for royalties of $.12 per ton for oil shale with a quality of 30 gallons of oil per ton (30 g/t) with the addition of $.01 for every increase in gallon per ton of oil shale. In 1973, the average price of a barrel of oil was $3.89. At $.24 per ton of 42 g/t or one barrel/ton of oil shale, the royalty per barrel of oil would have been 5 percent. This rate is similar to the rate derived by comparing production costs to royalty rates as recommended by the proposed regulations.

The BLM also estimated what royalty rates for shale oil might be, based on comparisons of production costs for similar products. The cost of removing oil from shale rock is currently estimated to be two to three times higher than the current cost of producing conventional crude oil from onshore operations. The current published estimated production cost for shale oil ranges from about $37.75–$65.21 a barrel. Current unpublished estimates are in the $75–$90 range. The production cost for conventional onshore crude is approximately $19.50 a barrel. [2] The table below compares the estimated cost of shale oil production for different technologies with the estimated cost of current onshore United States conventional oil production. The table also estimates what royalty rates for oil shale production might be for the different production methods compared to a 12.5 percent royalty rate for conventional oil production, adjusted to account for differences in production costs.

[2] Energy Information Administration, Crude Oil Production, dated July 3, 2008. *http://www.eia.doe.gov/neic/infosheets/crudeproduction.html* and *http://www.eia.doe.gov/emeu/perfpro/tab_12.htm*. The production cost at the time of analysis was approximately $19.50 per barrel.

Technology	Estimated shale oil production costs per barrel	Royalty calculation based on difference in production cost of a barrel of conventional oil versus shale oil	Adjusted royalty for shale oil (percent)
Surface mining	$44.24	$19.50/$44.24 = 44.07% × 12.5% = 5.51%	5.5
Underground mining	54.00	$19.50/$54 = 36.11% × 12.5% = 4.51%	4.5
Fracturing and heating in place	65.21	$19.50/$65.21 = 29.90% × 12.5% = 3.74%	3.75
Heating only in place	37.75	$19.50/$37.75 = 51.65% × 12.5% = 6.46%	6.5

Adjusting royalty rates based on higher anticipated production costs for oil from oil shale is not a new concept and is similar to the situation in the coal program where underground coal operations compete with surface coal operations, which have lower production costs. Congress addressed this disparity in production costs by allowing for different royalty rates for coal mined underground versus coal mined at the surface.

Therefore, one alternative that considers the decreased energy content and increased production costs, while encouraging production and ensuring an appropriate return to the government is to set a flat royalty rate of 5%. This alternative assumes that oil shale will continue to be more expensive to produce for many years when compared to new conventional oil.

Proposed Option 2. A 5 percent royalty on initial production, with 12.5 percent thereafter.

As stated in the proposed rule, this alternative would have provided a reduced royalty rate of 5% as a temporary incentive for early production of oil shale (similar to royalty incentives offered to spur initial Outer Continental Shelf (OCS) deepwater production), but with the standard 12.5% onshore oil and gas royalty rate applying to all oil shale production after a set timeframe and a set amount of production has taken place. Like the other royalty options, this option would have required oil shale lessees to pay royalties on the amount or value of all products of oil shale that are sold from or transported off of the lease. The proposal established that the standard royalty rate for the products of oil shale is 12.5 percent of the amount or value of production. However, under this option, for leases that begin production of oil shale within 12 years after the issuance of the first oil shale commercial lease, the royalty rate would have been 5 percent of the amount or value of production on the first 30 million barrels of oil equivalent (BOE) produced.

The advantage of this alternative over a flat 5% royalty (Option 1) is that it provides a better return to taxpayers on later production if oil prices remain high and oil shale production becomes competitive with new conventional oil projects. At $60 a barrel, this would amount to roughly $1.8 billion in production per lease at the lower 5% royalty rate, providing roughly a $135 million in savings to the lessee compared to using the standard onshore oil and gas royalty rate of 12.5%.

One potential downside to this alternative is that offering royalty incentives without regard to oil prices increases the likelihood that, if oil prices remain high, the government will sacrifice revenue without affecting actual oil shale development. For example, at $120 a barrel, the savings would be worth $270 million to the lessee, even though oil shale operations would be more profitable than at oil prices of $60 a barrel.

Therefore, in the proposed rule we requested comment on whether the temporary 5% royalty on initial production should also be conditioned on crude oil and natural gas prices (similar to OCS deepwater royalty incentives) and if so, what oil and gas price level would trigger payment at the higher 12.5% rate if prices exceeded the threshold. We also requested comments on the 12 year timeframe for reduced royalty.

Proposed Option 3. Sliding scale royalty based on the market price of oil.

Two comments on the ANPR suggested a sliding scale royalty format. One comment specifically suggested a sliding scale royalty scheme based on a royalty schedule that varies with the price of conventional crude, as follows:

At $10 per barrel of conventional crude, the royalty rate should be zero;

At $15 per barrel, royalty should be 0.25 percent and should increase by 0.25 percent for every $5 per barrel increase up to $35 per barrel;

At $40 per barrel, the royalty rate should be 2 percent and should increase by 0.5 percent for every $5 per barrel increase in the price of conventional crude oil until the price of conventional crude reaches $100 per barrel; and

At $100 per barrel, royalty rate should be 8 percent and should remain at 8 percent at prices above $100 per barrel.

Another ANPR comment suggested two approaches to calculating royalty. The first part of the comment suggested that a simple way to accomplish royalty rates would be to index the value of barrels of oil equivalent to some percentage of the New York Mercantile Exchange (NYMEX) futures (for instance, a 30 day average front month) prices. The commenter suggested that the index should be some fraction of the price, such as 50 to 65 percent. In the second part of the comment, the commenter suggested that, as an alternative to indexing, the BLM uses a sliding royalty rate that is calculated on the difference between product price and the highest-cost production in the industry. The commenter cautioned that ''there need to be provisions that deferred portions of the royalty do not reduce mineral lease payments to the States, if an escalating royalty rate is used.''

The BLM, in consultation with the MMS, evaluated these variable royalty options, but decided that as presented, they would be highly complex, and therefore, cumbersome to administer. With price volatility in the crude oil market, an intricate sliding scale royalty scheme could make enforcing compliance very difficult for the MMS. In addition, there is uncertainty about the types of products that would be derived from oil shale refining. Royalties based on oil shale quality would also be difficult for the BLM to administer when attempting to verify production quantities. For instance, if oil shale is extracted in an underground heating system, it would be extremely difficult for the BLM to determine how much oil or other product came from a particular volume or area of in-place oil shale.

While the BLM and MMS are concerned about the complexity of administering some of the sliding scale royalty proposals, we recognize that there is some merit to the sliding scale concept, and in a simpler form, a sliding scale royalty may prove useful in meeting the dual goals of encouraging production and ensuring a fair return to taxpayers from future oil shale development.

One of the concerns that has been expressed regarding oil shale development is that potential oil shale

developers may be reluctant to make the large upfront investments required for commercial operations if they believe there is a chance that crude oil prices might drop in the future below the point at which oil shale production would be profitable (i.e., competitive with new conventional oil production). A sliding scale royalty system could allow the government to at least partially mitigate this development risk by providing for a lower royalty rate if crude oil prices fall below a certain price threshold. The basic concept is that in return for the government accepting a greater share of the price risk that an operator faces when prices are low (in the form of a lower royalty), the government would receive a greater share of the rewards (through a higher royalty) when prices are high.

At the time of the proposed rule the BLM had not yet decided on the specific parameters of a sliding scale royalty system, but considered a simplified, two-or three-tiered system based on the current royalty rates already in effect for conventional fuel minerals and with a 5 percent royalty rate (Option 1) representing the first tier. The proposed rule explained that the applicable royalty rate would be determined based on market prices of competing products (e.g., crude oil and natural gas) over a certain time period and that if prices remain below a certain point during the applicable period, the royalty rate on oil shale products would be 5 percent for that period. If prices are above that range for the period, a higher royalty would be charged. In a three-tiered system, a third royalty rate would apply if prices rise above a second price threshold during the applicable period.

In the proposed rule the BLM sought comment on the specific parameters that could be applied to a sliding scale royalty system. More specifically, the BLM asked for feedback on the following questions:

1. Should a sliding scale system include two or three tiers? Assuming a 5 percent royalty for the first tier, what would be appropriate royalty rates for the second and/or third tiers?

2. What are appropriate price thresholds to apply to each tier? Should the thresholds be fixed (in real dollar terms), or should they float relative to a published index?

3. Should the sliding scale apply to all products, or should nonfuel products pay a traditional flat rate?

4. Are there other ways to simplify a sliding scale royalty to reduce the administrative costs for BLM, MMS, and producers?

As explained in the proposed rule, under a sliding scale system, if prices fall below the lower range, producers would have a ''safety net'' in the form of the lower 5% royalty rate. Whether or not the lower royalty kicks in at some point, simply having it in place provides some added certainty for investors that would help encourage oil shale production. In return for this ''safety net'' that conventional oil and gas producers do not enjoy, oil shale producers would be required to pay a higher royalty rate(s) when crude oil and/or natural gas prices are high (and where oil shale is expected to be substantially more profitable).

There are a couple of advantages of this alternative. It reduces the risk for oil shale operators that oil prices might fall below the point that continued oil shale production would be economic. However, it also ensures an improved return to the government if prices remain within one of the higher expected ranges at which oil shale may be profitable. One disadvantage is that taxpayers accept a greater risk of lower returns if prices fall and remain well below the lowest threshold. However, with the lowest royalty rate step set at 5 percent, this risk is no greater than under a flat 5 percent royalty system (proposed Option 1).

Other Royalty Issues

The BLM also received 5 ANPR comments specific to the royalty point of determination. Two of the comments suggested that royalty should be determined ''at the point at which the oil product exits a process facility in a marketable state.'' One comment suggested that ''the point of royalty determination be at the earliest point of liquid or gaseous product marketability.'' Another comment suggested that ''the oil produced should be measured at the point at which the oil product exits a processing facility in a marketable state.'' The last comment did not provide a specific suggestion; rather, it stated that the BLM ''must set the royalty rate and point of royalty determination with reference to the economic cost of emissions that would be created from developing, and then burning, the oil shale resource.'' After a careful evaluation of these comments and consultation with the MMS, we have concluded that the royalty would be assessed on all products of oil shale that are sold from or transported off of the lease. This point of royalty determination is similar to points of royalty determination for other Interior Department minerals programs.

Currently, there is no oil shale industry and the oil shale extractive technology is still in its rudimentary stages; as such, commercial shale oil production does not exist anywhere in the world. As research and development of oil shale technology progresses, the BLM will have adequate time to reexamine and readjust royalty rates for oil shale production, either up or down. In the proposed rule we asked for specific comment on the time necessary to develop an oil shale industry.

The proposed rule requested comments on what future royalty valuation regulations need to contain. In particular, the Department asked for comments on the potential types of oil shale products, the most equitable and practical point and method to determine the value on which to apply the royalty rate, and whether there are or should be opportunities to determine value by market proxy or indices. The Department solicited comments on alternative approaches to valuation and royalty rates.

Several commenters suggested the royalty be based on the material as it exists naturally in the land, and as it is removed from the land. One commenter stated that royalties should be assessed at the first point of sale. Another commenter recommended that the point of sale of the synthetic crude should be the point of price determination. Likewise, other commenters stated that the Department should determine royalties after processing or manufacturing.

We received one comment that said that the BLM should charge royalty on production that is used on the lease. The comment is based upon one commenter's estimate that about ⅓ of the product is likely to be natural gas and that it would attempt to use natural gas to heat the shale in subsequent development. One commenter stated that making this royalty-free- short-changes the public.

One commenter stated that lease production used on or for the benefit of the lease should not be subject to royalty. The commenter urged that products of oil shale that are transported off-lease for use in a facility in the general area to develop resources on the lease should be viewed as use of that product on the lease.

The ''point of royalty measurement'' and the ''point of royalty determination'' are two different concepts. The point of royalty measurement concerns the volume upon which royalty is assessed and is where the particular mineral product is measured for royalty purposes. For oil and gas leases, royalty is due on ''all'' oil or gas removed or sold from the leases except for oil or gas unavoidably lost as determined by BLM or used on or for the benefit of the lease (see, e.g.,

30 CFR part 202, subparts C and D). For coal, royalty is due on ''[all coal (except coal unavoidably lost as determined by BLM under 43 CFR part 3400) . * * * This includes coal used, sold, or otherwise disposed of by the lessee on or off the lease'' (30 CFR 206.153(a)]. Generally, the BLM determines where the product is measured for onshore minerals and MMS for offshore minerals.

The point of royalty determination is generally the point at which value is assessed and is not a specified fixed point under any existing rules. Under the MLA, the Secretary is required to establish a royalty rate on the amount or value of the production removed or sold from the lease (30 U.S.C. 226(b)(1)(A))(see also the Outer Continental Shelf Lands Act, 43 U.S.C. 1337(a)(1)(A)). The Department has consistently interpreted this phrase to mean that royalties may be determined at a point off of the lease (see, e.g., *Amoco Production Co.* v. *Watson*, 410 F.3d 722, 729 (D.C. Cir. 2005), cert. denied in relevant part sub nom. *BP America Co.* v. *Watson*, 547 U.S. 1068 2006). The Department then allows certain applicable transportation and processing deductions from that off-lease royalty value, to arrive at a value for ''the production removed or sold from the lease.''

With respect to the first comment that the royalty should be assessed on the oil shale as it exists in situ, this comment seems to suggest that the point of royalty determination be based on mined raw shale. While the Department acknowledges the inherent differences between an oil shale deposit and other deposits from which similar products can be produced, the Department did not consider this suggestion because there is no known value for raw oil shale, there being no established market for raw oil shale. Similarly, the Department is not in the position to definitively state that the point of royalty determination should be on processed or manufactured products. As many of the commenters acknowledged, there is not enough information at this date to determine how products will be extracted, nor is there enough information on the products that will result from extraction or how those products will be marketed.

It would be premature to fix the point of royalty determination at the lease or at the tailgate of a processing plant at this time. Therefore, the Department is retaining the point of royalty determination it proposed in this final rule as being on all products that are sold from or transported off of the lease area.

With respect to royalty-free use of fuel on the lease, as discussed above, for decades the Department's valuation rules have not assessed royalties on fuel used for the benefit of the lease. However, until the Department has more information on the extraction processes involved, it is premature to determine whether the Department will assess royalty on fuel used on the lease.

One commenter stated that if net royalty is being considered, the definition of royalty basis should be revenue from sales of hydrocarbon products, less transportation costs, all direct operating costs (mining and extraction) and administration costs, together with a deduction for the capital costs of assets employed based on Internal Revenue Service amortization methods.

One commenter recommended that the Department define the term ''royalty,'' indicate whether royalty is based on net or gross revenue, and specify the components thereof.

One commenter stated that MMS's valuation of the products from oil shale will be significantly less than the market price of the final refined products because MMS will allow manufacturing/processing allowances.

One commenter stated that kerogen is worthless unless processed. The monetary value of kerogen is tied to the net proceeds between the market price of products and production costs and the technical and economic effectiveness of the process. The commenter also stated that a royalty and bonus process should be replaced with a competitive annual payment from the lessee to the Federal Government based on the value of the kerogen in the ground and net proceeds (time varying market price of products minus time varying production cost). One commenter believes that royalty should be assessed on the first sale.

Several commenters stated that MMS should propose valuation regulations concurrently with these BLM regulations to give potential oil shale lessees certainty, which will in turn ''encourage development.''

This final rule establishes a royalty rate for Federal oil shale leases; however, the Department is not proposing corresponding MMS valuation regulations at this time. Because the oil shale industry is still in the research and development phase, it would be speculative to predict whether the industry as it matures will predominantly sell from the leases it mines solid oil shale, shale oil, synthetic petroleum, shale gas, natural gas, or products in several different forms or stages of processing. It is also difficult to predict whether or when multi-buyer/multi-seller markets will develop that would provide FMV pricing for products of oil shale.

The comment that kerogen is worthless unless processed and, thus royalty should be based on a market price minus production costs, asks the Federal Government to share in production costs. Thus, and many of the comments regarding valuation and the point of royalty determination discussed above, suggest that MMS should abandon the marketable condition rule and share in production costs with the lessee. While it is premature to address this comment directly in this rule, it is important to note that the Department generally does not share in the costs of production or the costs of placing production in marketable condition for minerals produced from Federal leases.

The MMS will promulgate royalty valuation regulations before oil shale leases are required to begin paying production royalties under this rule. As stated in the proposed rule, to the extent possible, the MMS will ensure that any oil shale valuation regulation is consistent with other valuation regulations and will incorporate principles of simplicity, early certainty, and reduced administrative costs in the oil shale valuation regulations it promulgates. In addition, the MMS will consider the comments submitted to the BLM proposed rulemaking when formulating oil shale valuation regulations.

For example, the MMS could promulgate regulations similar to the current Federal oil valuation regulation to value crude oil produced from oil shale. Under such regulation, the value of oil sold at arm's-length would be based on gross proceeds less allowable costs of transporting oil to the point of sale. The value of oil not sold at arm's-length would be based on a market index price or the affiliate's arm's-length resale price. In both arm's-length and non-arm's-length situations, the regulations provide for adjustments for location, quality, and transportation allowances. Further, lessees also can petition for alternate valuation agreements that are situation specific when regulatory provisions do not apply. The regulations promulgated here, however, do not address those valuation issues.

The Federal Government does not typically require payment of royalties on potentially valuable minerals or inorganic matter that are not sold or transported off the lease for commercial purposes. Those materials would be considered waste, and would be subject to management and reclamation

requirements as provided in the lease or in an approved POD.

One commenter suggested that non-fuel products should pay a 12.5% royalty rate. Another commenter suggested that different minerals produced may require different royalties. Several commenters recommended that there be no royalties on spent oil shale. One commenter stated that royalties should not be assessed on by-products such as sulfur removed from the gas stream to meet air quality requirements and sold, whether at a loss or a profit. The commenter said that items transported off of the lease for recycling or disposal should not be considered products or by-products. Consistent with current Department policy, by-products that are not sold or bartered, including produced water, CO_2, ammonia, etc., are not royalty-bearing. The BLM and the lessee must take measures to minimize damage or loss of resource by-products and other resources on the lease.

Finally, one commenter stated that royalty should only apply to all fuel products and that by-products should be royalty free. The final rule establishes a royalty for all products that are sold or transported off the lease. The royalty rate for by-products will be the same, except for those commodities whose rates are already established under the mineral leasing laws or regulations. Title 30 U.S.C. 241(4), states that ''For the privilege of mining, extracting, and disposing of the oil and other minerals covered by the lease under this section the lessee shall pay to the United States such royalty. * * *'' The Secretary has the discretion to reduce the royalty rate for all products produced from the lease to encourage use or the disposal of a product stream. The BLM will apply the same royalty rate for all oil shale products sold or transported off of the lease area.

In the economic analysis for this rule, the BLM analyzed the royalty implications of a range of royalty rates. Specifically, the BLM conducted a simulation-based analysis to estimate the revenue, profit, and royalty implication of a production scenario [3] using three discount rates (7 percent, 3 percent, and 20 percent), three world crude oil price projections (Energy Information Administration's (EIA) 2007 reference, high, and low price projections [4]), and six different royalty rates (1 percent, 3 percent, 5 percent, 7 percent, 9 percent, and 12.5 percent). The likelihood of a company, in the face of numerous technological challenges, having the incentive to develop Federal oil shale reserves and experiencing economic success will depend on a number of factors. However, because the simulated scenario analysis is based on a given production scenario and set production costs, the analysis did not assist in determining the project(s) economic viability due to the royalty rate applied. The analysis did, however, clearly identify world oil prices as a critical variable determining a project's economic viability. Under the EIA's low price projections, which project oil prices to be below $36 per barrel through 2030, all operations are assumed to be uneconomic based on the set production costs used in the analysis of the rule.

Public Comments on the Proposed Royalty Rates

The BLM received many royalty-related comments. Few provided substantial data or rationale for justifying a particular royalty rate. Many commenters suggested variable-scale or sliding-scale royalty schemes albeit in various forms (1–3%, 1–5%, 0–6%, 2–12.5%, 5–16.67%). The industry submitted the majority of the comments that stated that the flat 5% royalty rate was too high and that it provided no incentive to encourage oil shale development.

One commenter provided information on a new oil sands royalty framework proposed in the Alberta Legislative Assembly in the fall of 2008. Under the new framework, the ''base rate is 1% of gross revenue, and increases for every dollar that oil is priced above $55 a barrel, to a maximum of 9% when oil is $120 or higher.'' The commenter also stated ''there are currently 89 active oil sands projects in the province, of which 39 are in post-payout and 50 in pre-payout.'' In the proposed rule preamble, the BLM incorrectly stated that ''operators have never reached the payout point due to the continued capital expenditures in new equipment. The same commenter also requested the BLM refer to oil sands operators as ''Alberta operators'' rather than ''Canadian operators.'' We appreciate these corrections.

Other comments on the proposed rule's royalty alternatives are summarized as follows:

(1) Several commenters suggested that the royalty rate for oil shale should start at 1%;

(2) A few commenters agreed with a flat 5% royalty rate;

(3) A few commenters suggested a 3% royalty rate;

(4) Some commenters suggested an 8% royalty rate;

(5) A few commenters agreed with a royalty scheme in which the rate starts at 5% and increases to 12.5%;

(6) A few commenters agreed with a sliding scale royalty rate, but proposed varying modifications;

(7) Some commenters suggested a 1% royalty rate, with several commenters suggesting a 1% rate for the first 10 years of production and an increase to 3% thereafter;

(8) A few commenters suggested a 1% royalty rate to be increased to 5%;

(9) A few commenters suggested a flat 12.5% royalty rate;

(10) A small number of commenters suggested a sliding scale scheme of 2–12.5%; 0–12.5%; and

(11) The majority of the commenters did not suggest a specific royalty rate.

The BLM addresses these comments in 4 groups:

(1) Flat royalty rate of less than 5%;

(2) Flat royalty rate equal to or greater than 5%;

(3) Sliding scale royalty rate of 1–5%; and

(4) Sliding scale royalty rate of 0–12.5%.

Flat Royalty Rate Less Than 5%

The commenters who advocated a flat royalty rate of less than 5% stated that the proposed royalty rates do not take into account the differences between the economics for oil shale production versus crude oil production. They stated that no adjustment was made for the difference in the amount of capital investment required between conventional oil and oil shale operations. They suggested that the production royalty rate should be reduced to 3% until the first plant on each lease is fully amortized in a minimum timeframe of 10 years. One commenter stated that ''the 5% fixed royalty rate is too high,'' and that ''U.S. oil shale resources have no value if they are uneconomic to produce.'' The BLM considered the comments and decided not to adopt the suggested 3% flat royalty rate or any rate below 5%. The BLM did not adopt the lower rates because the BLM's analysis of comparable production costs in the proposed rule indicated that the proposed rate of 5% better reflects the differences between the economics for oil shale production versus crude oil

[3] *America's Strategic Unconventional Fuels Resources, Volume III Resource and Technology Profiles*, Task Force on Strategic Unconventional Fuels, September 2007, page III–17, Table III–4. Potential Oil Shale Development Schedule—Base Case, (*http://www.unconventionalfuels.org*).

[4] Department of Energy, Energy Information Administration, Annual Energy Outlook 2007, Report #: DOE/EIA–0383(2007), February 2007.

production. The commenters who advocated the suggested royalty rate of 3% did not provide sufficient data to support their analysis.

One comment offered a new royalty rate scheme as an alternative if the BLM disapproves their suggested royalty rate of 1–3%. The commenter suggested that ''royalty should reflect the fact that the extracted oil shale has no economic value of its own. It contains kerogen, which must be processed to produce a low-quality shale oil.'' The commenter also suggested that royalty should be based on a mathematical computation which would incorporate FA, the NYMEX, the price of conventional crude oil, and a royalty rate of 3%. The commenter suggested that the royalty payment for a ton of (underground) mined and processed oil shale should be assessed according to the following formula: (FA/42) × (Current NYMEX/ $100/BBL) of the oil shale that is produced for conversion into shale oil multiplied by a selected index reflecting the value of the shale oil. In essence the formula converts the FA into barrels (42 gallons per barrel), multiplies FA by the ratio of NYMEX and a fixed bench mark price of $100 per barrel of conventional crude oil.

After careful consideration, the BLM did not adopt the comment because the suggested formula assigns too little a value to oil shale products, lacks the potential to yield a fair return to the taxpayers, and would be very complex and expensive for MMS to administer.

A commenter also stated that royalty ''should not be so high as to stifle the emergence of a new domestic energy industry.'' The BLM shares this concern and took steps to ensure that the initial royalty rate for oil shale production will encourage oil shale development consistent with the requirements of EP Act. The commenter went on to state that ''increasing production costs, and massive R, D & D costs, and many taxes, all argue for a royalty rate well below 5%,'' and therefore, the royalty regime should be simple, transparent, and easy to administer. The final rule establishes a flat, easy to administer 5 percent royalty rate for the first 5 years of commercial production and a transparent, simple to understand escalating rate of 1 percent after year 5 until it reaches a level comparable to the royalty rate on conventional crude oil (12½%). This royalty system should provide some royalty relief during the first years of capital intensive production activities.

Flat Royalty Rate Equal to or Greater Than 5%

The commenters who advocated a flat royalty rate equal to or greater than 5% stated that since the processes that will be used to develop oil shale are similar to the processes used to develop other solid minerals, the royalty rate for oil shale should be the same. The commenters who suggested a flat royalty rate greater than 5% asserted that the State of Utah has a royalty rate of 8% for asphaltic sands, uranium, and coal. Other commenters stated that ''if royalty will be set, it should be 12.5%'' because the ''current royalty rate for conventional oil and gas is 12.5%.''

The BLM did not adopt the suggestions of this group of commenters who advocated a flat royalty rate greater than 5%. First, an 8% royalty rate is not an accurate depiction of the royalty structure in Utah. The royalty rate for oil shale development in Utah begins at 5%, may increase annually after the first five years, and ultimately reaches 12½% at some point. The practical implications of the Utah royalty regime is also undetermined since, no production has occurred on any Utah State lease. Second, the BLM is concerned that an initial 12½% royalty rate may be a disincentive to oil shale development because it will discourage the much-needed capital investment in the industry.

The BLM believes that the Utah royalty system is worthy of consideration and provides a comparable domestic royalty rate for oil shale development. If oil shale development succeeds on State lands in Utah, a similar Federal royalty system would appear to meet EP Act's objectives of encouraging development and providing a fair return to taxpayers. In the final rule, the BLM has chosen to adopt a royalty rate similar to Utah's by establishing an initial royalty rate of 5% during the first five years of production. Following five years of successful production, the rate will rise yearly by 1 percent until it reaches a level comparable to the royalty rate on onshore conventional crude oil. This will ensure that over the long-term the taxpayers are guaranteed a fair return, as required by EP Act, should oil shale development be economically viable.

Sliding Scale Royalty Rate of 1–5%

The commenters who advocated a sliding scale royalty rate of 1–5% stated that a 12½% royalty rate is too high. These commenters suggested that the oil shale industry is fundamentally a mineral extraction industry and should be viewed as such when establishing royalties. These commenters stated that the projects, related development, and operating costs associated with oil shale development are typical of mineral extraction industries (i.e., trona and potash). The commenters believe that due to the similarity of oil shale to other mineral extraction industries, the BLM should adopt a royalty rate of 1% of the producer's net return at the point of sale of the synthetic crude oil shale for the first 10 years of production. After 10 years, they suggested re-evaluating ''the 1% rate to see if 3% net royalty would be appropriate with a transition step-up period of a 1% increase every 5 years to impose the 3% net rate after a 10 year transition period.'' One commenter stated that if BLM adopts option 2 a 5% percent royalty on initial production with 12.5% thereafter that ''there should be a floor at which royalties and annual minimum royalties are automatically suspended if WTI falls below $80'' a barrel. The BLM reviewed the above suggestions and decided not to adopt them because while they seek to encourage development, they are difficult as well as costly to administer. Based on the BLM's analysis of comparable Btu values and production costs, we also do not believe rates lower than 5 percent represent a fair return to the United States. The BLM agrees with the commenters that a 12.5% royalty rate is too high if adopted as an initial rate. Also, the BLM did not adopt the suggestion that asks for a royalty rate of 1% on the producer's net return at the point of sale of the synthetic crude oil shale for the first 10 years of production ''due to the similarity of oil shale to other mineral extraction industries.'' First, experience shows that there is no similarity between oil shale extraction and the other extractive industries (trona and potash) cited by the commenter. Second, the estimated resource value of oil shale far exceeds the combined values of trona and potash. Given the economic potential of oil shale, it would be difficult to ensure a fair return to taxpayers if the royalty rate is set at 1% of net revenue.

Another commenter stated that the ''5 % royalty rate for option 1 and the 5% and 12.5% rates for option 2 are too high for a frontier resource.'' The same commenter further stated that unlike coal or oil and gas, the government is providing access to a solid ore, and that the investor is responsible for adding value by recovering and converting the kerogen in the ore to oil. The commenter suggested setting a royalty rate of 1% for the first 6 years, and 5% thereafter with assurance from the government that the higher royalty rate

of 5% would be implemented at a later date. The commenter added that ''royalties should be suspended if the NYMEX crude oil prices fall below, say $60.''

One commenter suggested that a better alternative would be a 1% royalty rate for the first 10 years, followed by 3% royalty thereafter, and concluded that ''Alberta established a similar approach and has been successful.'' This commenter stated that ''if royalties are too high during the development phase, the startup costs will be too prohibitive and the resources won't be developed.''

The BLM agrees that the oil shale industry is subject to high start-up costs and that the resources would not be developed without an economically viable technology. This technology could not be developed if costs become prohibitive. After careful consideration, the BLM does not agree with the idea of a starting royalty at 1% rate. The BLM's comparison of Btu values and production costs show a 1 percent rate to be too low. States and local governments share in Federal royalties and may view the lower rate (1% royalty rate) as not providing the revenue necessary to cover related infrastructure concerns and local community impact concerns. Furthermore, a royalty rate based on a sliding scale tied to NYMEX would be subject to frequent fluctuations thereby making it cumbersome and difficult for the MMS to administer.

Sliding Scale Royalty Rate of 0–16.67%

Some commenters advocated sliding scale royalty schemes ranging from 0% to 16.67%. One commenter specifically suggested that ''reduced royalty rates should be conditioned on prices similar to OCS deepwater royalty incentives,'' and stated that ''there is no basis for a 12-year timeframe based on a reduced royalty rate that is not price sensitive.'' Instead the commenter suggested that the royalty rate should be tied directly to NYMEX, and there should be no fixed timeframe. The same commenter gave an example that if NYMEX is below $60 a barrel the rate would be 5%, but when it exceeds $60 a barrel, it would be 12.5%. In the proposed rule, the suggestion for a reduced royalty rate for production that occurs within 12 years of the issuance of the first oil shale lease was meant to encourage speedy development, while providing some royalty relief during the costly up front years of development. However, the BLM did not adopt this provision in the final rule. The BLM also did not adopt the suggestion to tie the royalty to NYMEX prices because to do so would make royalty rates impracticable as well as cumbersome and costly for the BLM and MMS to administer. On the other hand, a 16.67% royalty rate will not encourage development, and without development, there will be no fair return to the taxpayers. To address comments that support a 16.67 percent royalty rate comparable to offshore rates, available information shows that shale oil production costs are much higher than costs of producing conventional crude oil. Yet, the maximum royalty rate for onshore oil and gas production is 12.5%. Given the cost differential, it would be a disincentive to production to set a higher royalty rate (16.67%) for a product that is costlier to produce.

Another commenter suggested another alternative that would set the initial royalty rate at 2% or 2.5%, which would ''increase to 12.5% once 30 million barrels of oil equivalent have been produced.'' Then, the commenter concluded by stating ''do not adopt a sliding scale since there are too many unknowns that could thwart development.'' The BLM did not adopt this proposal because the initial 2% royalty rate is too low to ensure a fair return considering the available information on comparable resource values and production costs. The BLM has no information to determine whether the production of 30 million barrels of oil equivalent is relevant when establishing a higher rate. The final rule provides for an increasing royalty of 1 percent per year that is based on time, rather than on production.

Another commenter stated that ''it is difficult to comment with any confidence on the merits of various royalty rates without also knowing the parameters the lessor will use to value production from the lease, particularly for a mineral resource that have [sic] never been commercially produced and sold.'' The commenter also stated that royalty ''should not be so high as to stifle the emergence of a new domestic energy industry.'' As stated previously, the MMS will address valuation issues in a future rulemaking, but will apply royalty to the amount or value of production. The BLM agrees with the commenter that the royalty rate should not be so high as to stifle the emergence of a new industry. This comment is consistent with a requirement of the EP Act that royalty be set in a manner that encourages development.

One comment stated that Option 2 (base of 12.5% with a reduction to 5% for the first million barrels of oil equivalent of any lease that begins production within 12 years) is ill conceived. This commenter suggested the following two sliding scale options based on the following set of assumptions:

Commenter's price-trigger option: First 5 years, rate is 0% with no adjustment based on price thresholds. After the first 5 years, the base rate is 1%; provided that the average daily closing NYMEX price for the calendar year exceeds $150 a barrel. The rate would increase to 3%; provided further that the average daily NYMEX closing price for the year exceeds $200 a barrel, the rate for production for that calendar year would be 5%. All prices would be indexed to 2008 levels.

Commenter's production-trigger option: A 1% rate for the first 60 million BOE operating within the first 20 years of the lease; a 3% rate for the following 60 million BOE within the first 20 years of the lease; and a 5% rate for any volume of production above the 120 million BOE within the first 20 years of the lease. These production triggers would be subject to the same price thresholds outlined in the price trigger option above. Therefore, if crude prices exceed the prescribed levels, the rate would increase by 2 or 4% respectively.

The commenter's options above are based on the assumptions that:

(1) MMS valuation of the products from oil shale will be significantly less than the market price of the final refined products because MMS will account for manufacturing/processing allowances;

(2) Lease production used on or for the benefit of the lease will not be subject to royalty; and

(3) Royalties should not be assessed on by-products such as sulfur removed from the gas stream to meet air quality requirements and sold whether at a loss or a profit. Items transported off of the lease for recycling or disposal would not be considered products or by-products. These, including produced water, CO_2, ammonia, etc., would not be royalty-bearing.

The BLM considered and opted not to use this sliding scale option because the initial rates are too low (less than 5%) and such royalty schemes are not simple, transparent, or particularly easy to administer. The BLM also found no justification or rationale to support the price or production trigger thresholds. In addition, a zero percent royalty for the first 5 years of production would not provide a fair return to the United States.

Other General Comments

Commenters stated that it was important that royalty rates be consistent across ownerships in order to prevent oil shale development from

concentrating on land with a lesser royalty rate. We agree with this comment. However, it must be recognized that, other than the State of Utah, there are no domestic royalty ''rates'' that apply to oil shale production. They also suggested that the BLM should adjust the royalty rate more frequently than the 20 year period in the proposed rule. The BLM cannot adjust lease royalty rates more frequently because the MLA authorizes the re-adjustment of royalty rates only after the initial 20 year term of a lease and every 20 years thereafter. The BLM can, however, change the regulatory royalty rate at any time should information become available that suggest the Federal rate is not comparable to rates on private or state lands. The new rates would apply to any lease issued or readjusted thereafter.

Another commenter stated that the BLM based the rates in the rule on estimated production costs, but provided no support for the cost estimates that it used in the calculation. The production costs used in the proposed rule's calculations were obtained from the Strategic Unconventional Fuels Report (*America's Strategic Unconventional Fuels, Volume III*) prepared for Congress and the President. The Task Force that published those production costs was established by Congress under Section 369 of the EP Act.

The same commenter suggested that the BLM defer the royalty rate determination until it has reliable information on the costs, recovery rate of technologies to be used on a lease, and the value of the product produced. The BLM disagrees with this suggestion because establishing a royalty rate early in the life of the oil shale industry provides the oil shale industry with the level of certainty necessary to obtain the capital investment required for oil shale development.

Equally significant, delaying the establishment of a royalty regime until ''reliable information on the costs, recovery rate of technologies to be used on a lease, and the value of the product produced'' would not attract investment for oil shale development. The royalty rate is also a part of fair market value received by the United States and could affect bonus bids offered for leases. These comments appear to be inconsistent with Section 369 of the EP Act, which requires the Secretary to establish royalty rates in a manner that encourages development and ensures a fair return to the United States.

Other comments were placed in the form of questions or general statements. Some of these questions/statements include:

(1) Why is ''complexity'' inconsistent with ''fair return?'';

(2) ''Any process that heats with electricity should be banned;'' and

(3) ''There's one way to find out if 12.5% is too high. Put parcels up for bid based on 12.5% royalty and see if there are any takers.''

The BLM examined the ''complexity'' issue and disagrees because, in practice, ''complexity'' can be inconsistent with ''fair return.'' The more complex the system, the more expensive and inefficient it is to administer and audit. A simple royalty regime promotes certainty and reduces the administrative costs (audit, compliance and reporting costs) better than a complex royalty scheme. The BLM did not agree with the comment which suggested banning any process that uses electricity to heat/produce oil shale, because the commenter failed to provide any scientific data or rationale to support their idea. All resource production requires energy. The BLM also believes that putting oil shale ''up for bid based on 12.5% royalty and see if there are any takers'' is an unnecessary expense or gamble. Such an option would not provide the certainty that industry seeks and could discourage the investment that is needed now to potentially make oil shale economically competitive in the future.

One commenter asserted ''specifically, the MLA says that the royalty is to be ''not less than 12.5% in amount or value of the production removed or sold from the lease.'' The BLM examined and disagrees with the assertion because the MLA does not establish a royalty rate for oil shale nor require that oil shale royalty be set at par with that of oil and gas. Instead, the EP Act directs the Secretary to establish a royalty rate for oil shale for the dual purposes of encouraging production and ensuring fair return to the United States. The BLM agrees that there is merit in eventually reaching royalty rate parity with that of onshore oil and gas, as reflected in the royalty system chosen for these final regulations. As noted elsewhere in this preamble, the BLM believes that an initial lower royalty rate on oil shale would be beneficial in spurring investment in developing the resource, consistent with the EP Act's direction.

Another commenter suggested that no Federal royalty should be payable on spent shale, even if revenues are generated from the spent shale. This will encourage development of economic uses of spent shale and minimize onsite disposal costs. The BLM examined this comment and affirms its position that royalty is payable on products and by-products of oil shale produced and sold/removed from the lease. So, if in the future spent shale becomes a valuable product, the appropriate royalty will apply at that time.

Oil Shale Production Royalties

After careful consideration of the public comments discussed in this rule, the BLM determined that a royalty system similar to that of the State of Utah is best suited to meet the dual requirements of the EP Act to encourage production and to ensure a fair return to the United States. In the final rule, the production royalty for oil shale will have an initial rate of 5% through the first five years of commercial production and increase by 1% annually beginning in the sixth year of production until a maximum rate of 12.5% is reached in the 13th year. By establishing an initial royalty rate of 5% during the first five years of production, we are encouraging development as mandated by EP Act. Based on our analysis, this initial rate (1) reflects the production cost disparity between shale oil and crude oil production, (2) addresses the high start up costs associated with new infrastructure required for developing, refining, and transporting oil shale products, and (3) could promote higher bonus bids to defray socioeconomic impacts to states and counties. Following five years of successful production, the rate will eventually rise to a level comparable to the royalty rate on conventional crude oil. This will help to ensure that over the term of the lease the United States is guaranteed a fair return, as required by EP Act, should oil shale development be economically successful. A more certain royalty scheme, independent of the NYMEX indices, will lower administrative costs (lower audit, compliance and reporting cost) relative to a variable royalty rate tied to NYMEX.

In summary, a low initial rate should encourage development and production during the early years when costs are high. As the technology becomes more efficient and cost effective the royalty rates will increase. If the costs to produce oil shale do not decrease, and operations become uneconomic, or marginally economic, royalty rate relief is available under section 3903.54.

Whenever the Secretary determines it necessary to promote development or finds that the lease cannot be successfully operated under its terms, the Secretary may waive, suspend, or reduce the rental, or reduce the royalty, but not advance royalty, on an entire

leasehold, or on any deposit, tract, or portion thereof, except that in no case can the royalty rate be reduced to zero percent. A lessee must apply for any of these benefits. As mentioned previously, the royalty rates can also be changed by regulation should future information indicate the need. Leases issued or readjusted after a regulatory change in the rate will be subject to the new rate. The MLA provides for readjustment of the royalty rate at the end of the 20th lease year and each 20 year period thereafter (see 30 U.S.C. 241).

Section 3903.53 requires the filing of documentation of all overriding royalties associated with a lease and requires that the filing must occur within 90 days after the date of execution of the assignment. This section is similar to that of the BLM's other mineral leasing programs. A comment on the proposed rule pointed out that we do not define ''overriding royalties.'' Section 3903.53 of the final rule has been revised to clarify that an overriding royalty is a payment out of production to an entity other than the United States.

Section 3903.54 contains the requirements for filing an application for waiver, suspension, or reduction of rental or payments in lieu of production, or a reduction in royalty, or waiver of royalty in the first 5 years of the lease. As with the BLM's other mineral leasing programs, this section is intended to encourage the maximum ultimate recovery of the mineral(s) under lease. The proposed rule's preamble erroneously mentioned a cost recovery fee that was not in the regulation text for the proposed rule. Therefore, in the final rule there is no cost recovery fee for this section. One comment indicated that there is some confusion regarding the distinction between a suspension or reduction in rental or royalty and a waiver of royalty. The authority for a suspension, waiver, or reduction of rental or a reduction in royalty is 30 U.S.C. 209 and applies to numerous minerals under the MLA including, but not limited to, coal, oil, gas, and oil shale. The authority for a waiver of the rental and royalty for the first 5 years under an oil shale lease is 30 U.S.C. 241 and only applies to oil shale.

Section 3903.60 provides that late payments or underpayment charges are assessed under MMS regulations at 30 CFR 218.202.

Subpart 3904—Bonds and Trust Funds

Sections in this subpart address the requirements associated with bonding and trust funds, including the:

(1) Types of bonds the BLM requires and when bonds would be required (section 3904.10);

(2) When and where bonds would be filed (sections 3904.11 and 3904.12);

(3) Acceptable types of bonds (section 3904.13);

(4) Individual lease, exploration license, and reclamation bonds (section 3904.14);

(5) Amount of bond coverage (section 3904.15);

(6) Default (section 3904.20); and

(7) Long-term water treatment trust funds (section 3904.40).

Since all of the BLM's mineral leasing programs require bonds, the requirements in subpart 3904 are similar to the regulatory provisions in the BLM's other mineral leasing programs. The bonding requirements in this rule are similar to the bonding requirements under the BLM's mining law program in that both programs require that bonds cover the full cost of reclamation and allow for the use of long-term trust funds as a mechanism to address potential long-term water issues.

Bonding ensures performance at a cost up to the bond amount in the event of default by a lessee or licensee. This subpart requires two types of bonds; a lease or exploration license bond and a reclamation bond. This subpart also explains that reclamation bonds will be required to be in an amount sufficient to cover the entire cost of reclamation of the disturbed areas as if they were to be performed by a contracted third party.

Section 3904.10 provides that prior to lease or exploration license issuance, the BLM requires a lease or exploration license bond for each lease or exploration license to cover all liabilities on a lease, except reclamation, and all liabilities on a license. One commenter requested an explanation of what liabilities the lease bond covers. A lease bond covers the lessee's compliance with the terms and conditions of the lease and will be calculated to cover payments for rental, minimum or production royalty, outstanding bonus bid payments, and assessments. The bond also could be used to cover any other payments required of the lessee that are associated with noncompliance with the terms and conditions of the lease. The bond will be executed by the lessee and will cover all record title owners, operating rights owners, operators, and any person who conducts operations on or is responsible for making payments under a lease or license. This section also requires the lessee or operator to file a reclamation bond to cover all costs the BLM estimates necessary to cover reclamation on a lease.

Section 3904.11 requires the prospective licensee, lessee, or operator to file a lease bond prior to issuance of a lease, file a reclamation bond prior to approval of a POD, and file an exploration bond prior to exploration license issuance. This section is similar to other BLM bonding regulations as it would require the filing of a bond before liabilities may accrue. We received a comment requesting a revision to section 3904.11 clarifying when a lease bond is filed. Section 3925.10 of the rule provides that the successful bidder will submit a bond as a condition of lease issuance. Therefore, no change is made to section 3904.11 in the final rule. A commenter requested that the regulation provide that bonds be ''a condition of'' issuance of licenses or leases, or of approval of PODs. We did not change the section because proof of bond coverage is a pre-condition to issuance or approval of those documents. We revised this section in the final rule to make it clear that submission of a bond is a condition precedent of the approvals mentioned in the section.

Section 3904.12 requires that a copy of the bond with original signatures be filed in the proper BLM office, and section 3904.13 describes the different types of bonds that the BLM will accept.

Section 3904.13 addresses the types of personal and surety bonds the BLM will accept. Personal bonds are limited to pledges of cash, cashier's checks, certified checks, or U.S. Treasury bonds. The BLM state offices have available for public review a Treasury Department list of qualified sureties for bonds. We received several comments requesting that the types of personal bonds that will be accepted should be expanded. We believe that the number and types of bonds available to lessees and licensees are varied enough to provide flexibility and accessibility to all holders.

Section 3904.14 provides that the BLM will establish bond amounts on a case-by-case basis, and sets the minimum lease bond amount at $25,000. One comment expressed concern that $25,000 is an inadequate minimum bond amount. The actual bond amount for a lease, as opposed to the minimum bond amount, will be calculated each year to cover the rental payments, minimum royalty, outstanding bonus payments, assessments, if applicable, and other payments that are due for the lease. The minimum lease bond amount, established by the regulations, however, is greater than that required in other BLM mineral leasing programs. The BLM chose this higher minimum bond amount to insure coverage of

unpredictable lease liabilities due to the unknown nature of future oil shale development and the likelihood of large, outstanding bonus bid payments. In addition to the lease bond, the reclamation bond amount and the bond amount for a license will be calculated to cover actual reclamation costs.

Reclamation and exploration bond amounts will be established to cover the costs of reclamation as if it were to be performed by a contracted third party. Past oil shale operations have required extensive reclamation, and this has demonstrated the need to have a reclamation bond that covers the full cost of reclamation. By requiring that the bond equal the estimated costs of having a third party perform the reclamation, the BLM anticipates that the cost of reclamation will be covered.

This section also provides that the BLM may enter into agreements with states to accept a state-approved reclamation bond to satisfy the BLM's reclamation requirements and protect the BLM, to the extent the bond is adequate to cover all the operator's liabilities on Federal, state, and private lands. This avoids duplicate procedures and the inconvenience and cost of filing separate bonds with both the state and the BLM. Such agreements were recommended by state representatives at the BLM listening sessions and are also addressed in regulatory provisions of other BLM mineral leasing programs. We received a comment suggesting that this section should provide for the establishment of an escrow account or trust fund as an option to replace bonding as a method of insuring reclamation. With the exception of special circumstances, as outlined in section 3904.40 of this rule, the BLM believes that requiring escrow accounts or trust funds would impose unnecessary costs on lessees as well as additional administrative costs to the BLM while offering no advantage to ensure that funds will be available in case the lessee or licensee cannot meet reclamation obligations. Although these rules will not specifically provide for escrow accounts or trust funds, as suggested by the commenter, state approved reclamation rules may allow for them. In these cases, and where the BLM has an agreement with the state, the BLM will indirectly accept escrow accounts and trust funds, but the state will be responsible for managing them.

Section 3904.15 explains that the BLM may increase or decrease the bond amount if it determines that a change in coverage is warranted to cover the costs and obligations of complying with the requirements of the lease or license and these regulations. This section also explains that the BLM will not decrease the bond amount below the minimum established in section 3904.14(a). This section requires the lessee or operator to submit a revised estimate of the reclamation costs to the BLM every three years after reclamation bond approval. If the current bond does not cover the revised estimate of the reclamation costs, the lessee or operator would be required to increase the reclamation bond amount to meet or exceed the revised cost estimate. This section is consistent with the bonding regulations that currently exist for other BLM minerals programs. A commenter requested a revision to section 3904.15 to require the BLM to audit cost estimates provided by lessees or operators under this section. In the final rule we revised section 3904.15 to state that the BLM will verify the cost estimates provided by the lessee or operator. A commenter proposed changes to provide for incremental bonding. We did not revise the rule because this section allows the BLM to increase or decrease bond amounts as the need for coverage changes. This allows for incremental bonding where appropriate.

Section 3904.20 describes what actions the BLM will take in the event of a default payment from a lease, exploration, or reclamation bond to cover nonpayment of any obligations that were not met. It also requires the bond to be restored to the pre-default level. This section is similar to sections in the other BLM mineral regulations regarding default.

Section 3904.21 allows the termination of the period of liability of a bond. The BLM will not consent to the termination of the period of liability under a bond unless an acceptable replacement bond has been filed. Termination of the period of liability of a bond ends the period during which obligations continue to accrue, but does not relieve the surety of the responsibility for obligations that accrued during the period of liability. We received a comment that the proposed rule contains no provisions regarding bond release procedures. We agree that explicit bond release provisions will promote the availability of bonds without endangering the environment. Therefore, in the final rule we added new paragraphs (c), (d), and (e) to section 3904.21 to allow for bond releases. Paragraph (c) provides that a lease bond will be released when the BLM determines that all lease obligations accruing during the period of liability have been fulfilled. No time frame for release has been set, because it can take some time to complete any necessary audits to verify that all the required obligations have been met. Paragraph (d) provides that a reclamation bond or license bond will be released when the BLM determines that the reclamation obligations arising within the period of liability have been met and that the reclamation has succeeded to the BLM's satisfaction. The time necessary to verify the success of reclamation activities may differ according to such local factors as drought or native plant communities that are difficult to establish.

We note that section 3904.14(c) provides that the BLM may enter into agreements with states to accept a state reclamation bond to cover the BLM's reclamation bonding requirements, in which case the state bond release procedures would be applicable.

A commenter recommended that termination of the period of liability of a bond should relieve the surety of liability for obligations that accrued during the period of liability. We disagree because we distinguish termination of the period of liability (the surety is no longer accruing obligations) from release of the bond (the surety no longer has liability under the bond). We do not believe that all potential sureties for replacement bonds would be willing to accept liability for activities that occurred before the replacement bond is issued. Nonetheless, in the event that there are such sureties, in the final rule we added a new paragraph (e) that allows release of bonds when the BLM accepts a replacement bond that expressly assumes all liabilities that arose under the period of liability of the original bond. The replacement bond must meet the requirements under section 3904.13, and the BLM may require that the replacement bond be for a different amount under section 3904.13.

Section 3904.40 establishes trust funds or other funding mechanisms to ensure the continuation of long-term treatment to achieve water quality standards and for other long-term, post-mining maintenance requirements. Experience in other mineral programs has shown the need for a mechanism to ensure the long-term treatment of water. This provision is similar to regulations in the BLM's mining law program under 43 CFR 3809.552 and is designed to address similar long-term water protection issues. In determining whether a trust fund will be required, the BLM will consider the following factors:

(1) The anticipated post-mining obligations (PMO) that are identified in the environmental document and/or approved POD;

(2) Whether there is a reasonable degree of certainty that the treatment will be required based on accepted scientific evidence and/or models;

(3) The determination that the financial responsibility for those obligations rests with the operator; and

(4) Whether it is feasible, practical, or desirable to require separate or expanded reclamation bonds for those anticipated long-term PMOs.

The determination that a trust fund is needed and the amount needed in the fund may be made during review of the proposed POD or later as a result of further inspections or reviews of the operations.

We received one comment stating that we should require a bond to assure water quality restoration. We believe the bonding provisions in this section, as well as the requirement for full reclamation bonding, address the commenter's concerns.

Subpart 3905—Lease Exchanges

This subpart allows the BLM to approve oil shale lease exchanges.

Section 3905.10 explains that the BLM will approve a lease exchange if it would facilitate the recovery of oil shale and it would consolidate mineral interests into manageable areas. It also states that oil shale lease exchanges are governed by the regulations under 43 CFR part 2200. Section 206 of FLPMA authorizes exchanges of interests in Federal lands for non-Federal lands (43 U.S.C. 1716).

Part 3910—Oil Shale Exploration Licenses

The regulations in this part address exploration licenses. An exploration license allows a licensee to enter the Federal land covered by the license and explore for minerals, but it does not authorize the licensee to extract any minerals, except for experimental or demonstration purposes.

Section 3910.21 authorizes the issuance of oil shale exploration licenses on all Federal lands subject to leasing under section 3900.10, except lands within an existing oil shale lease or in preference right lease areas under the R, D and D program. This type of limitation on which lands the BLM may issue an exploration license is consistent with that of other BLM minerals exploration regulations.

Section 3910.22 makes it clear that the consent and consultation procedures under section 3900.61 that apply to leases also apply to exploration licenses. The BLM will issue licenses under the terms and conditions prescribed by the surface managing agency concerning the use and protection of the nonmineral interests in those lands. Section 3910.22 is similar to regulations for BLM's other mineral leasing programs requiring consent and consultation for exploration licenses.

Section 3910.23 requires the operator to have a lease or license before conducting any exploration activities on Federal lands. This section also allows that under an exploration license, small amounts of material may be removed for testing purposes only; however, any material removed cannot be sold. This is similar to regulations in other BLM mineral programs that recognize that some removal of material is necessary for testing purposes. One comment brought to the BLM's attention a typographical error in section 3910.23 of the proposed rule. The cross-reference to section 3904.41 in the proposed rule is changed to the correct cross-reference, section 3931.40, in the final rule.

Section 3910.31 identifies specific requirements for filing an application for an exploration license. Application requirements under this section include:

(1) Submission of a nonrefundable filing fee;

(2) Description of lands covered by the application;

(3) An exploration plan;

(4) Compliance with maximum acreage limitations for an exploration license; and

(5) Submission of information to prepare a notice of invitation for other parties to participate in exploration.

Mirroring the coal regulations, this section establishes an acreage limit of 25,000 acres as the maximum size allowable for an exploration license. As is the case for other BLM leasing programs that provide for exploration licenses, there is no required application form. The $295 filing fee for an exploration license is based on the filing fee for a coal exploration license at the time the rule was proposed. The BLM anticipates that the time required to process an oil shale exploration license will be similar to that for a coal exploration license, and therefore believes the same filing fee is justified.

We received one comment suggesting that acreage limitations for exploration licenses (25,000 acres) and leases (5,760 acres) should be the same. We disagree with this suggestion. An exploration license only allows a licensee to conduct exploration activities and does not include an entitlement to a lease. Therefore, there is no reason for the acreage limitations for a lease and a license to be the same. Typically, exploration occurs on a broader scale in order to refine and narrow the lease area to the most promising acreage. The applicant may want to explore for more than the 5,760 acres that is allowed in one lease, and the most efficient and economical way to authorize these exploration activities would be through one license and not multiple licenses. Therefore, we believe that the larger maximum acreage figure for licenses is warranted. An additional comment received regarding section 3910.31 questioned the reasoning for allowing exploration on a tract of land that would be almost 5 times larger than the acreage limitation for one lease. There is a precedent in the coal program for the 25,000 maximum acreage amount for exploration licenses. The Federal Coal Leasing Amendments Act amended the MLA to allow for as much as 25,000 acres to be included in a single coal exploration license. If past experience with exploration licenses in the coal program is any indication, it would be rare for most licenses to reach the 25,000 acreage figure because of the expenses associated with conducting exploration activities on such a large scale. The BLM also has the discretion not to approve a license in whole or in part. We did not revise the acreage limitation provision in the final rule.

Section 3910.32 requires the BLM to perform the appropriate NEPA analysis before issuing an exploration license. The section also explains that the BLM will include in an exploration license, terms and conditions to mitigate impacts to the environment, to protect Federal resource values of the area, and to ensure reclamation of the lands disturbed by exploration activities.

Section 3910.40 provides that a licensee must comply with all applicable Federal laws and regulations, the terms and conditions of the license and approved exploration plan, as well as applicable state and local laws not otherwise preempted by Federal laws, such as FLPMA. The final section adds a requirement that licensees and their operators keep the BLM informed of changes in names and addresses. That requirement had been in proposed section 3930.20(c).

Section 3910.41 explains provisions relating to the administration of the exploration license, including the license term, the effective date of an exploration license, conditions for approval, and provisions relating to the modification, relinquishment, and cancellation of an exploration license. Like exploration licenses for other BLM mineral leasing programs, the term of an exploration license is 2 years. The requirements for oil shale exploration licenses are similar to those of other BLM minerals programs. One commenter requested a revision to section 3910.41 that would add a

provision for the BLM to cancel an exploration license in the event significant adverse impacts to the environment occur. We have not revised the section to include such a provision because we believe the regulations address this concern. Prior to issuing an exploration license, the BLM will perform an environmental review under section 3910.32(a) that will identify impacts to the environment. The impacts will be addressed by mitigation measures included as terms and conditions of the license to address any adverse impacts. The BLM can terminate the license if the licensee does not comply with the terms and conditions included in the license or the approved exploration plan (see final sections 3910.32(b), 3910.41, and 3934.30). Under section 3936.20, the BLM will issue notices of noncompliance if a licensee's operations threaten immediate damage to the environment, the deposit, or other resources. If the licensee fails to take corrective action, the BLM can order operations to cease, take actions to terminate the license (section 3934.30), or order the licensee to pay an assessment (section 3936.30). In addition, the BLM may also order activities to cease should health, human safety, resource condition or the environment be threatened. Another comment suggested that exploration licenses should be assignable. We agree and have addressed this comment in subpart 3933.

Section 3910.42 provides that issuance of an exploration license does not preclude the issuance of a Federal oil shale lease for the same area. This section also makes it clear that if an oil shale lease is issued for an area covered by an exploration license, the BLM will cancel the exploration license effective the date of lease issuance. The BLM received a comment requesting that we add a provision that would allow lands to be added to an existing exploration license. Section 3910.31(e) requires that exploration applicants invite others to participate in exploration under a license. Adding lands to an existing license would mean that the amended license could possibly have two sets of participants, two different terms, and two separate exploration plans. The simplest way for an entity desiring to explore lands adjacent to an existing license is to submit a new license application. The final rule does not include a provision to add lands to an existing license.

Section 3910.44 addresses collection and submission of data relating to an exploration license and includes provisions relating to confidentiality of data. This section is similar to provisions in other BLM minerals programs. The final rule states that the BLM will consider data confidential and proprietary until the BLM determines that public access to the data will not damage the competitive position of the licensee or the lands involved have been leased, whichever comes first. Under this rule this means that the data is no longer proprietary, but that does not necessarily mean that the information is public.

Section 3910.50 addresses the issue of surface damage resulting from exploration operations and requires that exploration activities not unreasonably interfere with or endanger any other lawful activity on the same lands or damage any surface improvements on the lands. This is similar to other BLM minerals regulations that address surface use.

Part 3920—Oil Shale Leasing

The foundation for the oil shale leasing program is a competitive leasing process similar to the BLM's coal leasing program. Prior to making areas available for consideration for leasing through a competitive lease sale, there is a two-step process that begins with a call for expressions of leasing interest (section 3921.30), to be followed by a call for applications (section 3921.60) if the BLM determines that there is interest in a competitive lease sale. In addition to contributing to the orderly development of the resource, this process facilitates compliance with NEPA by focusing the analysis on areas in which there is active interest in obtaining a lease.

Subpart 3921—Pre-Sale Activities

The sections under this subpart contain regulatory provisions relating to pre-leasing activities. Many of the sections are similar to existing provisions of other BLM mineral leasing programs, particularly coal.

Section 3921.10 explains that a BLM State Director may request in the **Federal Register** expressions of interest for those areas identified in the land use plan as available for oil shale leasing.

Section 3921.20 clarifies that the appropriate NEPA analysis must be prepared for the proposed leasing area under the Council on Environmental Quality's (CEQ) regulations at 40 CFR parts 1500 through 1508 and Department policies and procedures developed pursuant to NEPA.

We received several comments regarding the NEPA process and the opportunity for public participation and review from Federal, state, and local agencies throughout the process. All NEPA analyses and documentation will be performed in compliance with the CEQ regulations, with public participation being an essential part of the process. Sections 3900.50, 3910.32, and 3921.20 of this rule reinforce the fact that the BLM will comply with NEPA and other appropriate Federal laws and regulations to ensure the protection of the resource and the environment. The BLM also revised section 3931.10(f) to make it explicit that appropriate NEPA analysis is also required before exploration plans or PODs are approved. The BLM's NEPA Handbook (H–1790–1) and Land Use Planning Handbook (H–1601–1) provide extensive guidance regarding the roles of and opportunities for other Federal, state, and local agencies and the public to participate in the BLM's environmental processes. The BLM also affords Federal, state, and local governments the opportunity to participate, as cooperating agencies, during the preparation of environmental impact statements. The BLM, therefore, believes that there are adequate opportunities built into the BLM's NEPA and land use planning process to provide full and meaningful coordination with Federal, state, and local government, as well as opportunities for public participation. In addition, outside the NEPA process, section 3921.40 requires the BLM to notify the appropriate state governor's office, local governments, and interested Indian tribes of the opportunity to provide comments on industry's responses to the call for expression interest and other issues related to oil shale leasing.

Several commenters disagreed with the requirement of multiple NEPA analyses and suggested that the BLM combine the two NEPA analyses. The environmental analysis referenced in section 3900.50 is used to support land use planning decisions of all kinds and will, among other things, determine whether the lands are suitable for leasing oil shale or not. The analysis under section 3921.20 will specifically address the impacts of oil shale leasing, hence the need for information requested in section 3922.20 on the types of oil shale development activities contemplated by potential lessees. In-as-much as the NEPA analysis completed for leasing may not always accurately predict the types of impacts of future oil shale development, additional NEPA analysis will be required before actual development activities occur to ensure that impacts not contemplated, planned, or apparent at the time of leasing are addressed.

With the commercial oil shale industry in the early stages of development, it would be inappropriate to combine the NEPA analysis for leasing and POD stages at this time. At the leasing stage, there may be uncertainties concerning the level, type, and amount of development and therefore, a more narrow decision (leasing only decision) may be made, while at the POD stage, when more specific information is known, the analysis will be more focused on the lessee's proposed development activities. It will include specific technology information, exact mining or surface disturbance acreage, the specific equipment infrastructure, and the exact on-the-ground footprint of the proposed operation. However, it is likely that much of the NEPA analysis and information developed prior to leasing could be used or referenced during subsequent NEPA analysis.

Several commenters stated that the BLM should collaborate with state agencies such as the state's department of natural resources, department of health, and water quality control division and local municipal governments to protect water resources. As stated above, Federal, state, and local governments will be afforded multiple opportunities to participate in the BLM's NEPA and land use planning process. One commenter stated that the BLM should retain authority to withdraw specific tracts from leasing should the results of further NEPA analysis support it. The commenter also stated that the BLM should retain authority to modify lease terms or add protective stipulations to a lease after it has been issued.

The BLM has the authority to not approve the leasing of lands that are identified in a land use planning document as open to application for future commercial leasing, exploration, and development. The BLM will conduct pre-lease NEPA analysis to identify necessary controls to mitigate or eliminate environmental impacts on parcels being considered for leasing. If, as part of the NEPA analysis, the BLM determines that leasing and subsequent development of the oil shale resources would cause significant impacts, the BLM can require the applicant to: (1) Mitigate the impact so that it is no longer significant; or (2) Move the proposed lease location. If neither of these options resolves the anticipated conflicts, the BLM can decide that protection of the resource outweighs the development of the oil shale resources or vice-versa. Once a lease is issued, additional mitigation could be applied based on the further NEPA documentation performed at the POD stage. At the POD stage, site-specific mitigation measures can be developed and applied as conditions of approval. In addition, subpart 3932 of this rule discusses lease modifications and readjustments. Under that subpart, the BLM has the authority to change lease terms, conditions, and stipulations at end of the first 20-year period of the lease and, excepting royalty rates, at the end of each 10-year period thereafter.

Section 3921.30 provides that the notice calling for expressions of leasing interest would be published in the **Federal Register** and in at least one newspaper of general circulation in the affected state. The notice will allow a minimum of 30 days to submit expressions of leasing interest, including a legal land description and other specified information.

Section 3921.40 requires that the BLM notify the appropriate state governor's office, local governments, and interested Indian tribes of their opportunity, after the BLM receives responses to the call for expression of leasing interest, to provide comments regarding the responses and other issues related to oil shale leasing. The BLM included this requirement in the rule in response to discussions at the three listening sessions with the governors' representatives. One commenter recommended that the BLM expand this section to include notification to potentially affected Federal land managers. The BLM does not see the need to include potentially affected Federal agencies at this stage of the process. The CEQ regulations emphasize cooperation with other Federal agencies early in the NEPA process. Any other Federal agency that has ''special expertise'' with respect to any environmental issue, which will be addressed by the NEPA analysis, may participate as a cooperating agency. If an affected Federal agency declines to become a cooperating agency, the agency has the opportunity to provide scoping comments and review and comment on draft EISs and/or associated planning documents that would be developed prior to leasing and approval of PODs.

Section 3921.50 explains that after analyzing expressions of leasing interest, the BLM will determine a geographic area for receiving applications to lease. This section also explains that the BLM may add lands to those areas identified by the public in the expressions of leasing interest. One commenter stated that the BLM should also have the authority to remove lands in an application to lease based on resource protection concerns. As noted above, the BLM already has the authority to make any necessary adjustments to the area under consideration prior to holding the lease sale.

Under section 3921.60, the BLM's call for lease applications will be published in the **Federal Register** and will identify the geographic area available for application under subpart 3922. Under this section, the public will have at least 90 days to submit applications for lease.

Subpart 3922—Application Processing

The sections under this subpart contain regulatory provisions relating to application requirements. These provisions are similar to existing regulations of other BLM mineral leasing programs.

Section 3922.10 requires an applicant nominating a tract for competitive leasing to pay a cost recovery or processing fee that the BLM will determine on a case-by-case basis as described in 43 CFR 3000.11 and as modified by provisions of section 3922.10. The section provides that the applicant who nominates a tract will pay to the BLM the processing costs that the BLM incurs up to the time of publication of the competitive lease sale notice. That fee amount will be in the sale notice. If the applicant is the successful bidder, the applicant would then also pay all processing costs the BLM incurs after the date of the sale notice. Payment of all cost recovery fees is required prior to lease issuance.

If the successful bidder is someone other than the original applicant, the successful bidder will be required to submit an application under section 3922.20 within 30 days after the lease sale and be responsible for paying to the BLM the fee amount included in the sale notice. In such circumstances, the BLM will refund the fees the original applicant paid to the BLM. The successful bidder is also responsible for any processing costs the BLM incurs after the date of the sale notice. If there is no successful bidder, the applicant is responsible for processing costs, and there will be no refund.

With respect to costs incurred relating to the NEPA analysis to support a competitive lease sale, the BLM processing fees noted in the sale notice include, if applicable, the BLM's costs associated with preparation of the NEPA analysis, which may include BLM costs incurred in contracting with a third party to perform the NEPA analysis. In cases where there are several applications that have been filed for the same area, it is likely that the BLM would prepare a single NEPA analysis, which would address issues related to

environmental impacts identified in all applications that were filed in response to the call for applications.

In the case where the successful bidder for a tract is not the original applicant, the successful bidder will be responsible for paying the fee noted in the sale notice and any additional BLM processing costs, including any additional NEPA analysis. For example, in the case where a successful high bidder is not the original applicant and the technology that the successful bidder proposes to use was not previously analyzed in the NEPA analysis, the successful bidder is responsible for paying for the cost of the original NEPA analysis and any additional NEPA analysis that is necessary.

It should be noted that an applicant will not be reimbursed for moneys the applicant (and not the BLM) may pay directly to third persons to perform studies, including any required analyses under NEPA.

Under section 3922.10, the BLM adopted case-by-case processing fees for applications that mirror case-by-case fee requirements applicable to the leasing of coal and non-energy leasable minerals offered through competitive lease sales. The BLM's minerals material sales regulations also contain case-by-case processing fees. Case-by-case fees allow the BLM to recoup its processing costs by charging an applicant the reasonable costs the BLM incurs in processing a particular application. Cost recovery is authorized under the Independent Offices Appropriation Act of 1952, as amended, 31 U.S.C. 9701, which states that Federal agencies should be ''self-sustaining to the extent possible'' and authorizes agency heads to ''prescribe regulations establishing the charge for a service or thing of value provided by the agency.'' The BLM also has specific authority to charge fees for processing applications and other documents relating to public lands, including EISs, under Section 304(b) of FLPMA (43 U.S.C. 1734(b)). Cost recovery policies are explained in Office of Management and Budget Circular A–25 (Revised), entitled ''User Charges.'' The general Federal policy stated in Circular A–25 (Revised) is that a charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.

Additionally, this section states that the BLM will not issue a lease offered by competitive sale without having first received an application from the successful bidder under section 3922.20. Under section 3922.10(b)(5) a successful bidder at a competitive lease sale who was not an applicant must file an application within 30 calendar days after the lease sale.

A commenter noted that although section 3922.10 requires a cost recovery fee for lease nominations, there appears to be no fee required for BLM processing of PODs. The comment further recommended that the BLM charge a cost recovery fee for processing PODs, particularly in light of recently enacted legislation requiring the BLM to assess fees for approval of applications for permits to drill (APDs) on oil and gas leases.

Since the BLM did not propose a cost recovery fee for PODs, we are not adopting the recommendation.

Section 3922.20 identifies specific information that an applicant is required to include in a lease application to enable the BLM to have sufficient information to prepare the appropriate NEPA analysis to evaluate the impacts of proposed leasing. The amount of information requested as part of an oil shale lease application differs from other mineral leasing programs because the methodology for recovering oil shale is not as standardized as it is for more conventional fuels. Although no specific form is required, information the applicant is required to provide includes, but is not limited to:

(1) Proposed extraction method (including personnel requirements, production levels, and transportation methods) and estimate of the maximum surface area to be disturbed at any one time;

(2) Sources and quantities of water to be used and treatment and disposal methods necessary to meet applicable water quality standards;

(3) Air emissions;

(4) Anticipated noise levels from proposed development;

(5) How proposed lease development will comply with all applicable statutes and regulations governing management of chemicals and disposal of waste;

(6) Reasonably foreseeable social, economic, and infrastructure impacts of the proposed development on the surrounding communities and on state and local governments;

(7) Mitigation of impacts on species and habitats; and

(8) Proposed reclamation methods.

Several commenters stated that it may be difficult to provide the detailed level of application information requested in the proposed regulations prior to tract delineation. The commenters are correct in their statements that the specific details of a mining operation may not be completely known, particularly if the lease tracts are ultimately redesigned prior to leasing. The BLM, however, will still need as much specific information as possible on proposed technologies and the potential impacts of these technologies prior to leasing in order to make reasonable assumptions concerning the level and type of commercial oil shale activity likely to occur. The applicant must submit information on its proposed technology, tract location, and potential environmental impacts, so that the BLM, or a third party contractor, will have enough data to analyze the direct, indirect, and cumulative effects should leasing occur and to develop specific mitigation measures or stipulations to eliminate or mitigate adverse effects. Additional NEPA analysis will be required prior to approval of PODs and actual development activities and will benefit from a more detailed leasing analysis.

Another commenter suggested that the BLM add provisions to ensure that prospective licensees and lessees identify the full breadth of potential impacts of operations on activities such as access and power generation, on resources and values of adjacent National Park Service and special status lands, and require them to identify specific measures on how they will avoid such impacts.

Included in the application requirements in the final rule are requests for the type of information the commenter identified. In addition, the scoping process required under NEPA will be used to identify issues and concerns, resources and resource values affected, connected and reasonably foreseeable actions, and reasonable alternatives based on the nature and scope of the proposed action. The scoping process will determine which issues will be analyzed in detail, while simultaneously eliminating issues from further analysis. As a consequence of the NEPA analysis, reasonable alternatives, stipulations, or other mitigation measures will be developed to mitigate or eliminate any adverse environmental impacts of leasing.

Another comment suggested that the BLM require baseline monitoring and monitoring of mine or in-situ construction, operational, and post-operational activities in order to provide accurate information about the effects that commercial development will have on the environment and local communities. The regulations provide the flexibility for the BLM to require monitoring, if necessary, as a condition of exploration plan or POD approval. It is premature, at the rulemaking stage, to determine whether and what types of monitoring might be necessary during the development of oil shale resources;

therefore, we made no change in the rule as a result of this comment.

We received a comment regarding section 3922.20 that disagrees with the requirement to gather information for a lease application at the exploration license phase where anyone can participate. The commenter believes that the gathering of information should occur after a lease issues so that only the lessee knows what the resource information is. While provisions in these regulations allow for exploration on unleased lands under an exploration license, exploration may also occur on a lease without a requirement that the resource information be shared. The information requested in the lease application is needed for the BLM to adequately assess potential environmental impacts as required by NEPA. No regulatory changes were made as result of this comment.

Another comment suggested that in order to address multiple mineral development issues (first in time, first in right), the final rule should contain a provision to require the applicant to include on the maps submitted locations of producing, drilling, and abandoned wells, existing facilities of other lessees, and existing equipment and pipelines related to other mineral development or the BLM undertake to provide the information in advance of any lease sale. While we agree that this information is useful and necessary, this requirement has not been adopted because the BLM typically has this information and will ensure that all parties interested in bidding will have access to it prior to the lease sale.

Another comment concerning section 3922.20 asked that we add to that section wording similar to that in 3926.10(b)(2) for the R,D and D leases requiring the applicant to include a ''description of consultation with the state and local officials to develop a plan for mitigating the socioeconomic impacts of commercial developments on communities, services, and infrastructure.'' The BLM has revised final section 3922.20(c)(11) to require the applicant to include a discussion of the proposed mitigation measures or a plan to mitigate adverse impacts, not only to communities, but to services and infrastructure.

Another commenter requested that the BLM use as a model MMS's 30 CFR 285.102, 285.105, 285.203, 285.610, and 285.626 proposed regulations (see 73 FR 39460). Part 285 is titled ''Alternative Energy and Alternative uses of existing facilities on the Outer Continental Shelf.'' Section 285.102 outlines what MMS' responsibilities are, section 285.105 outlines the responsibilities of the applicant, and section 285.203 outlines who MMS will consult with before issuing a lease. We do not believe that the MMS outer continental shelf regulations meet the objectives of the BLM's oil shale program. This rule addresses consultation and the responsibilities of the applicant to provide sufficient information that the BLM needs to prepare the appropriate NEPA analysis to evaluate the impacts of proposed oil shale leasing and to delineate tracts for leasing.

Section 3922.30 provides that the BLM could request additional information from the applicant, and explains that failure to provide the best available and most accurate information might result in suspension or termination of processing of the application or in a decision to reject the application. The BLM's ability to obtain additional information at this stage is essential to the NEPA analysis to support leasing. Failure to provide the needed information would have a direct impact on the adequacy of the NEPA analysis and therefore could have an adverse impact on the BLM's decision to proceed with a lease sale.

Section 3922.40 makes it clear that the purpose of tract delineation for a competitive lease sale is to provide for the orderly development of the oil shale resource. This section also clarifies that in addition to adding or deleting lands from an area covered by an application, where lands covered by applications overlap, the BLM may delineate those lands that overlap as separate tracts. The BLM may delineate tracts in any area acceptable for further consideration for leasing, regardless of whether it received expressions of interest or applications for those areas. The need to delineate tracts for adequate development of the mineral resource is recognized in all the BLM mineral leasing programs, and provisions similar to this are contained in the other BLM mineral leasing regulations.

Subpart 3923—Minimum Bid

Section 3923.10 implements the policy of the United States under Section 102(a) of FLPMA (43 U.S.C. 1701(a)(9)) that the Federal Government should receive FMV for leasing its minerals. Also, Section 369(o) of the EP Act requires that payments for leases under that section must ensure a fair return to the United States. Under section 3924.10, the BLM sales panel determines if the high bid reflects the FMV of the tract, which we equate to fair return. We anticipate that the sales panel will analyze the bids and make a determination, taking into account the appraisal reports, as explained in greater detail in the preamble to subpart 3924.

The BLM recognizes the difficulty in determining a value for a resource (oil shale) that has tremendous potential, but has not yet been proven to be economic to develop. The risk of setting pre-sale FMVs that are too high and that would discourage development of a commercial leasing program is very real. The BLM is also aware that the oil shale industry is presently in the research and development stage and comparable lease sales might be rare or unavailable when leasing first occurs under these regulations, but this will not always be the case. Competitive lease sales of Federal oil shale leases in the 1970s resulted in bids of $10,000 per acre, or higher, indicating that even though development risks are high, the potential reward is also high. Both the economic and the technological circumstances have changed since the 1970s, including the withdrawal of substantial subsidies, but the vast quantities of oil shale on Federal lands weigh in favor of high minimum bid amounts. For comparison purposes, the coal program has a minimum bid amount of $100 per acre and the oil and gas program has a minimum bid amount of $2 per acre. This section sets a minimum bid of $1,000 per acre.

We received a number of comments on the proposed minimum bid (subpart 3923) and FMV (subpart 3924) provisions. Comments that exclusively address minimum bid issues are discussed below. Comments that address FMV issues on both subparts are discussed under subpart 3924.

A commenter stated that given the FMV requirement, the inclusion of a minimum bid appears to be superfluous and unnecessary. Other commenters suggested that the minimum bonus bid must reflect the true value of the resource. We also received numerous comments stating that the minimum bid was either too high or too low. Commenters suggested that with the $1,000 per acre minimum bid and the vague FMV standards, the BLM could be forced to lease tracts for far less than their true value. Those advocating a higher minimum bid point to the 1970's prototype leases as an indicator of value. We also received comments that the $1,000 per acre minimum bid is an unrealistically high minimum. One commenter pointed out that bids on the tar sand leases issued by Utah's School and Institutional Trust Land Administration ranged from $1.38 per acre to $212.29 per acre. Several other commenters suggest the $100 per acre coal minimum bid or the $2 per acre oil and gas minimum bid are more

reasonable floor values, especially given the infancy of the industry and the Congressional mandate to promote oil shale development. Another commenter pointed out that a $1,000 per acre minimum bid does not account for differences in the potential oil yields. For example, it favors thick deposits over thinner deposits, as it represents a smaller share of the value of the thick deposits. The commenter suggests that this could hinder resource development. The commenter also said that minimum bids should be posted for individual leases at the time of offering or be based on a yield figure such as $0.005 per barrel.

The bonus bid represents one part of the FMV to be received by the Federal Government. Rental, royalties, and other considerations influence FMV. In some instances, the minimum bid may ultimately be determined to represent FMV and the acceptable high bid for the lease. The minimum bid requirement does not ensure that the United States receives FMV for the use of the oil shale resource, but rather establishes a floor to minimize the participation of bidders that are not likely to be serious about developing the oil shale. As discussed in the proposed rule, the BLM will employ a well-established appraisal process to determine each tract's FMV. In the proposed rule, we specifically asked for comments on the appropriateness of the proposed $1,000 per acre minimum bid. As noted above, we received suggestions that the $1,000 per acre bid amount was either too high or too low; however, for the most part we received little information to support those positions. The argument that a per acre minimum favors tracts with thicker seams, in certain instances, is valid. However, the agency has a history of using a simple standardized per acre unit, e.g., $100 per acre for coal leasing, for minimum bids to avoid any confusion that the minimum bid amount equates to the actual tract FMV. Also, it needs to be noted that the prospective lessee is responsible for nominating the prospective lease tracts. To the extent that the minimum bid may actually exceed FMV for certain thin-seam tracts, the prospective lessee will avoid nominating such lands. As such, we have decided to keep the minimum bid at $1,000 per acre.

Subpart 3924—Lease Sale Procedures

Provisions of this subpart identify the process by which tracts of land are made available for competitive lease sale. The BLM will lease oil shale through a competitive bidding leasing procedure that mirrors competitive lease sales procedures currently in place for other solid minerals leasing programs, particularly coal.

Section 3924.5 details the contents of the sale notice that the BLM would publish in the **Federal Register** and newspapers of general circulation in the area of the proposed lease. The purpose of the notice is to alert the public that the BLM will be holding an oil shale lease sale and to provide enough of the details about the proposed lease terms and conditions, lease area, and leasing limitations for the public to make an informed decision whether to participate in the lease sale. This section is similar to other BLM mineral leasing regulations that require notification of the lease sale and is a necessary part of the oil shale leasing program. One commenter thought that section 3924.5 should be revised to require the BLM to provide at least 6 months' advance notice to bidders of a proposed lease sale to allow bidders a realistic opportunity to conduct due diligence. We believe that the public notice requirements associated with the presale environmental review process will provide ample advance notice that a sale is imminent. However, we revised the rule to state that the lease sale will not be held until at least 30 days after the notice of lease sale is posted in the BLM state office. This 30-day notice mirrors the other solid mineral leasing processes such as coal and non-energy leasable minerals.

Section 3924.10 details competitive lease sale procedures, including receipt and opening of sealed bids, submission of one-fifth of the amount of the bonus bid, requirements for future submission of remaining installments of the bonus bid, and post-sale procedures for determining the successful bidder. This section also addresses the actions of the sales panel in determining whether or not to accept the high bid, including a FMV determination. This section is similar to the BLM's competitive leasing regulations for coal and non-energy leasable minerals. The BLM chose to adopt this process because it has been successful in other mineral leasing programs and because we believe this process is appropriate for oil shale leasing. One comment requested an explanation of why the BLM is allowing the successful bidder to pay the balance of the bonus bid on a deferred basis. The bids received in the early 1970s ranged from $9,000 per acre to $41,000 per acre, indicating that future bonus payments could be large. Because of the large dollar amounts that may be associated with future lease sales, the BLM believes it is reasonable to allow the companies to pay the bonus payments in installments. Also, as mentioned previously, the BLM has adopted for the oil shale commercial leasing program some components of the competitive leasing process in place for the coal, which allows for deferred bonus payments, which experience has shown has worked well.

When evaluating the adequacy of a high bid, the sales panel will rely on the appraisal process to estimate the FMV for commercial oil shale leases. An appraisal is an unbiased estimate of the value of property. The appraisal process is a systematic approach to property valuation. It consists of defining data requirements, assembling the best available data, and applying an appropriate appraisal method. The principles of property valuation that the BLM will apply are presented in the ''Uniform Appraisal Standards for Federal Land Acquisitions and in the Appraisal of Real Estate.'' The term ''fair market value'' is defined in the Uniform Appraisal Standards for Federal Land Acquisitions as the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing, but not obligated, to sell to a knowledgeable purchaser who desired, but is not obligated, to buy.

In ascertaining that figure, consideration should be given to all matters that might be brought forward and substantial weight given to bargaining by persons of ordinary prudence. Factors that will affect the market value of an oil shale lease include the lease terms which encompass rental and royalty obligations. The bonus bid for the lease must be equal or greater than the lease FMV.

There are three methodologies generally used in appraising real property: The comparable sales approach, income approach, and replacement cost approach. Normally, the replacement cost approach is not applied to appraisals involving mineral leases and similar property.

In the comparable sales approach, the value of a property is estimated from prior sales of comparable properties. The basis for estimation is that the market would impute value to the subject property in the same manner that it determines the value of comparable competitive properties. When reliable comparable sales data are available, it is generally assumed that the comparable sales approach will provide the best indication of value.

In the income approach, the value assigned to the property is derived from the present worth of future net income benefits. If sufficiently similar sales are not available, the FMV determination

will generally rely on the income approach.

The FMV determination follows a pre-existing valuation standard, which utilizes the circumstances of place, time, the existence of comparable precedents, and the evaluation principles of each involved party. In determining the FMV under this rule, our determination will be based on comparison with identical or similar past, actual, or expected services and goods relating to oil shale. It is the policy of the United States, stated in Section 102(a) of FLPMA (43 U.S.C. 1701(a)(9)) and Section 369(o)(2) of the EP Act, that the United States receive FMV for the issuance of Federal mineral leases.

The BLM proposed to establish oil shale lease FMV using a process similar to that used in the Federal coal leasing program. This process relies on the appraisal process in an attempt to estimate the market value for those leases. As such, the process relies on many of the procedures used in private sector valuations, and where available, will rely on private sector transactions to establish the market value for Federal oil shale leases. The Federal coal leasing program and this rule utilize competitive bidding, specifically sealed bidding, for determining who receives the lease.

In the rule, the BLM is establishing a minimum acceptable bonus bid for Federal oil shale leases. The amount is not a reflection of FMV, but is intended to establish a floor to limit or dissuade nuisance bids. The rule requires a minimum acceptable bonus bid of $1,000 per acre. The BLM requested further comments on the minimum bid proposed.

As per comments on specific values, the rule does not attempt to establish actual FMV for bidding on future Federal oil shale leases. Values received in the 1970s may not be an accurate indicator for future values.

We received a number of comments on the proposed minimum bid (subpart 3923) and FMV (subpart 3924) provisions. Comments that exclusively addressed minimum bid issues are discussed under subpart 3923. Comments that address FMV issues or both subparts are discussed below.

Several commenters suggest that the proposed FMV provision provides unreasonably vague standards and does not establish definitive procedures for determining FMV. Commenters also said that the provisions in the rule for establishing FMV would not help the BLM decide whether or not to accept a bonus bid. As noted in one comment, of the three methodologies, there are no comparable sales, there is no commercial production so there isn't any income, and the replacement cost approach doesn't make sense as an appraisal method for mineral properties. Commenters also observed that the proposed appraisal process requires significant data that is not currently available and that without knowing how the resource will be developed, it is impossible for the BLM to determine FMV. Commenters suggested that the BLM should wait on commercial leasing until the R, D and D program has had a chance to identify and answer the development, technology, and economic questions of oil shale development. One of the benefits of the R, D and D program is that it provides a better understanding of the development technologies and costs; it was suggested that this will enhance the agency's ability to determine FMV.

The regulations call for the use of well-established appraisal procedures and methodologies. The limitations are not with the process, as one commenter stated, but with the available information. The BLM readily acknowledges the difficulty in determining FMV for commercial oil shale leases where there isn't an active industry. We agree with the comments that suggested that with the future success and commercialization of R, D, and D efforts, data will be more readily available to support FMV determinations for future commercial leasing.

We received a comment that the EP Act does not require nor intend for the recovery of FMV. A commenter stated that in the proposed rule the BLM failed to identify any valid statutory authority to impose FMV. We received comments suggesting that the BLM should forego attempting to estimate FMV. We also received a comment suggesting that the BLM should forego the bonus bid requirement altogether. Commenters said that the BLM should let the market determine value, i.e., the highest bidder wins. Another commenter stated that FMV should be equal to a minimum bid of $100 per acre. Other comments suggested that bid acceptance should include demonstrated technology development capability. Commenters wanted the BLM to consider additional factors such as the time it takes to develop a property, resource recovery, recovery of other minerals, and the environmental disturbance associated with oil shale development. Another commenter suggested that in deciding the bid acceptance, the BLM must also consider the large, negative, and long-term impacts (e.g., greenhouse gas emissions) associated with commercial oil shale development.

The BLM is required by Section 102(a) of FLPMA (43 U.S.C. 1701(a)(9)) to receive FMV for mineral leases. Although Section 369(o) of the EP Act uses the term ''fair return,'' we interpret fair return to mean FMV, as required by FLPMA. As mentioned in the proposed rule, FMV is defined in the Uniform Appraisal Standards for Federal Land Acquisitions as the amount in cash, or in terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing, but not obligated, to sell to a knowledgeable purchaser who desired, but is not obligated, to buy. Because FMV is not a precise calculation, but rather an interpretation of the market, under the final rule the BLM will use sales panels to analyze bids. The BLM will also use other factors such as geology, market conditions, mining methods, and industry economics, in making a determination whether the high bid reflects FMV. The BLM will consider all matters that may potentially affect the market value of the lease. The purpose of the bonus bid, however, is to obtain FMV for the United States; it is not to impose an environmental tax. Ultimately, FMV is determined by the market. However, in the absence of competition, the highest bid may not reflect FMV. Many of these comments raise sale and lease specific issues that are beyond the scope of these regulations.

A commenter suggested a specific provision be added to the regulations to allow for the appeal of FMV determinations to the IBLA. Any adversely affected party has the right to appeal any decisions under part 3900 of this rule. Section 3900.20 addresses appeal rights.

A commenter stated that the BLM should determine FMV by the time of the sale. The commenter suggests that establishing FMV after the sale could take months, even years, and that this delay would add to the uncertainty. The BLM generally makes an estimate of FMV based on available data in advance of any sale. This estimate will not be disclosed. However, because of the importance of market transaction information in establishing FMV, the bid acceptance decision will not be made until the sales panel has had an opportunity to review and consider the information from that sale.

Subpart 3925—Award of Lease

Section 3925.10 provides that the lease will ordinarily be awarded to the qualified bidder submitting the highest

bid which meets or exceeds the BLM's estimate of FMV. We revised paragraph (a) of this section to make it consistent with paragraphs (d) and (e) of section 3924.10 in that the winning bid must be equal to or greater than FMV as determined under those provisions. This section also contains requirements for the submission of the necessary lease bond, the first year's rental, any unpaid cost recovery fees, including costs associated with the NEPA analysis, and the bidder's proportionate share of the cost of publication of the sale notice. The provisions in this section are similar to regulations in the BLM's competitive leasing regulations for coal and non-energy leasable minerals. One commenter requested that this section include terms that would: (1) Place potential bidders on notice that a lease can be terminated in the event that vital information has been overlooked or misapplied, including environmental information; and (2) Identify the components of a liquidated damage award in order to avoid protracted litigation and unrealistic expectations on the part of potential lessees in the event a lease must be cancelled for public purpose reasons, like environmental protection. Although we recognize that there are situations beyond a lessee's control that that may require the BLM to cancel a lease, the potential for lease cancellation is no greater in this program than in other BLM mineral leasing programs. As in other leasing programs, there is always the possibility that a lawsuit could be filed by a party that is opposed to lease issuance. It is a risk that a potential lessee assumes in conjunction with participation in the program and the competitive leasing process. To maintain consistency with regulatory provisions in other BLM mineral leasing programs, we are not adopting these recommendations. The BLM believes that potential lessees are aware of the possibility of cancellation and therefore did not include a provision in the final rule putting ''potential bidders on notice'' of this issue. Another commenter stated that the BLM must clear up the confusion between ''nominators,'' ''original applicants,'' and ''applicants.'' Although the terminology ''nominator'' and ''original applicant'' does not appear in this subpart, section 3925.10 refers to ''successful bidder'' and ''applicant.'' The term ''applicant,'' which is first referenced in section 3922.10, pertains to a party who nominates a tract for competitive leasing in response to the BLM's call for expression of leasing interest under section 3921.30 or applies for a tract for competitive leasing under subpart 3922. The term ''original applicant'' applies to a party who submitted an application in response to the call for applications under section 3921.10, and is used to distinguish that party from a party who submits a bid at the time of the competitive lease sale, but did not previously submit an application under subpart 3922. We did not adopt the comment since we believe that the distinction between an applicant and a successful bidder is clear, especially in light of the cross-reference in section 3925.10(e) to section 3922.20 which clarifies who is an applicant.

Subpart 3926—Conversion of Preference Right for Research, Development, and Demonstration Leases

Section 3926.10 provides application procedures or requirements to convert R, D and D leases and preference right acreage to commercial leases. Under this section, a lessee of any R, D and D lease is required to apply for conversion to a commercial lease no later than 90 days after the BLM determines that commencement of production in commercial quantities has occurred. As stated in Section 23 of the R, D and D leases (issued in response to the BLM's call for nominations of parcels for R, D and D leasing 70 FR 33753 and 33754, June 9, 2005), R, D and D lessees can acquire acreage contiguous to the remaining preference right lease area up to a total of 5,120 acres. In order to acquire the contiguous acreage and convert to a commercial lease, the lessee is required to demonstrate to the BLM that the technology tested in the original lease has the ability to produce shale oil in commercial quantities. In addition, the lessee, as required in R, D and D leases, is required to submit to the BLM:

(1) Documentation that there have been commercial quantities of oil shale produced from the lease, including the narrative required by Section 23 of the R, D and D leases;

(2) Documentation that the lessee consulted with state and local officials to develop a plan for mitigating the socioeconomic impacts of commercial development on communities and infrastructure;

(3) A bid payment no less than that specified in section 3923.10 and equal to the FMV of the lease; and

(4) Bonding as required by section 3904.14.

Additionally, the section lists those items that are necessary for the BLM to determine whether to approve an application for conversion.

We received several comments on this section recommending either revisions or the need to clarify specific requirements relating to the application process. Commenters included current R, D and D lessees, some of whom noted in their comments the significance of section 3926.10 and its relationship to Section 23 of the R, D and D leases, which contains requirements for conversion of an R, D and D lease to a commercial lease. Comments relating to section 3926.10 generally focused on the following areas: Definition of commercial quantities; timeframe for filing an application for conversion; documentation of production of oil shale in commercial quantities from an R, D and D lease; consistent use of the same technology in an R, D and D lease as a condition for conversion; bonus payment equivalent to FMV; appeal rights associated with FMV determination; consultation with Federal, state, and local officials; NEPA compliance; the requirement that commercial scale operations be conducted without unacceptable environmental consequences; term of the newly converted lease; and flexibility to exchange preference areas with other commercial oil shale lease sites.

Comments relating to the definition of commercial quantities are addressed in this preamble in the discussion of section 3900.2 Definitions.

Several comments expressed concern with the requirement under section 3926.10(b)(1) that an R, D and D lessee must document to the BLM's satisfaction that it has produced commercial quantities of oil shale from the lease. A commenter stated that an R, D and D lessee should be allowed to obtain the preference lease area without being required to demonstrate that a profit had been made on the oil shale produced exclusively in the 160-acre R, D and D lease area. According to the commenter, if the goal of the R, D and D program is to demonstrate that commercial development of oil shale is feasible, it should not matter that the retort was actually located on nearby or adjacent lands. We disagree. The quality of an oil shale deposit will vary with location and therefore we believe that the location could affect the feasibility of a commercial oil shale project. The requirement in Section 23 of the R, D and D leases to produce in commercial quantities on an R, D and D lease is a key component of the BLM's R, D and D program. As the intent of subpart 3926 is not to establish new or different application requirements for conversion than those listed in Section 23 of R, D and D leases, but rather to be consistent with those provisions in the regulations, we are not eliminating the requirement

for an R, D and D lessee's to produce commercial quantities.

We received one comment stating that the application of the commercial quantities requirement to the conversion process of an R, D and D lease is confusing, thereby creating risk to an R, D and D lessee of inadvertently losing its rights to convert to a commercial lease. Another comment stated that as a practical matter, the lessee will be unable to make the required demonstration until results of the pilot tests are fully evaluated and therefore ''commercial quantities'' is not readily determinable by an R, D and D lessee. The commenter recommended that section 3926.10(b) be revised to require that an application for conversion be filed no later than 90 days after the R, D and D lessee concludes the evaluation of the pilot test. The comment further suggested that in order to assure that the results of the pilot test have been adequately analyzed by the lessee, the final rule should not restrict an R, D and D lessee to a 90-day timeframe for filing an application for conversion and therefore the regulations should include a provision that would allow the BLM and the R, D and D lessee to agree to a later date for filing an application for conversion. We recognize that the determination that an R, D and D lease is producing in commercial quantities entails quantitative analysis. As stated in the preamble discussion relating to the clarification of the definition of the term ''commercial quantities,'' it is the BLM's position that evaluation of data is necessary in order to make a determination whether the lease is capable of producing commercial quantities. However, it is envisioned that the POD for R, D and D leases will contain provisions that will acknowledge this evaluation process and be considered when the lessee determines and the BLM confirms that commercial quantities have been achieved. It is also important that a timely decision to convert occurs once commercial production commences to ensure that R, D and D leases do not inadvertently become de facto commercial leases. We made no revisions to the final rule as a result of this comment.

We received a comment stating that section 3926.10 needs to clarify what action the BLM would take on an application that is not timely filed, since the proposed rule did not address the issue. The requirement to file for conversion within 90 days after commencement of production in commercial quantities is a provision in the R, D and D leases. The consequences for failure of an applicant to comply with the regulations or terms of the R, D and D lease, are stated in the lease and regulations, and include suspension, bond forfeiture, and/or cancellation of the R, D and D lease. The penalty for failure to comply with any of the requirements of section 3926.10 is also a basis for rejection of an application for conversion. The final rule does not adopt this comment.

Several commenters expressed concerns about the provisions of section 3926.10 requiring that an R, D and D lessee submit a one-time payment equal to or greater than FMV or $1000 per acre. A comment urged the BLM to abandon the requirement for payment of the FMV for conversion of an R, D and D lease, in addition to payment of rentals and royalties, as being inconsistent with Congress' express intention in enacting the oil shale provisions of the EP Act and as being beyond the BLM's authority under the MLA. The commenter also recommended that if the final rule does require payment of FMV in conjunction with an application for conversion, that the payment be offset against future royalties from production from the same leasehold. We are not adopting the commenter's recommendations and we re-emphasize the statements in the preamble of the proposed rule (73 FR 42939) that, Section 369(o)(2) of the EP Act requires that payments for leases under that section must ensure a fair return to the Unites States. Furthermore, the proposed rule's preamble pointed out that Section 102(a) of FLPMA (43 U.S.C. 1701(a)(9)) requires that the United States receive FMV for the issuance of Federal mineral leases (73 FR 42940). There is no provision to credit bonus bids against future royalties, as the bonus bid is considered part of FMV and the price a potential lessee would pay for the lease right, in addition to royalties paid on production.

Another comment stated that although it supports the BLM's efforts to choose an appraisal methodology with a rational basis, in the interest of fairness and economics, the final rule needs to make a distinction on the determination of FMV for potential commercial lessees as compared to FMV determinations for R, D and D lessees applying for conversion. In drawing the distinction, the commenter stated that unlike R, D and D lessees, applicants for a commercial lease offered through the competitive leasing process have not incurred the same expenses or risks associated with testing and developing technologies and environmental impacts, and therefore, the FMV for R, D and D lessees needs modifying in order to account for the risk-adjusted investment to date. The comment further stated that if an income-based method is adopted, the net cash flows should include research and development expenses and capital investments incurred by R, D and D lessees prior to conversion, plus risk-adjusted rate of return. In response to this comment, we note that the BLM's process of making FMV determinations for competitive leasing, as well as FMV determinations for conversion of an R, D and D lease to a commercial lease, will take into account the value of the resource, which is a longstanding practice. Costs associated with developing technology and producing in commercial quantities are costs of doing business. As we stated in the preamble of the proposed rule, ''[o]il shale development is characterized by high capital investment and long periods of time between expenditure of capital and the realization of production revenues and return on investment'' (73 FR 42946). While the financial risks associated with proving technologies is greater than that in other BLM mineral leasing programs that have established extraction technologies, the BLM's appraisal process is a systematic approach to property valuation. The FMV determination will be based on comparison with identical or similar past, actual, or expected services and goods relating to oil shale. An R, D and D lessee will also have the advantage of a right to a noncompetitive commercial lease.

We also received a comment stating that there are seemingly inconsistent provisions in the proposed rule and Section 23 of the R, D and D lease relating to the payment of FMV. According to the comment, section 3926.10(c)(2) provides that the bid payment for the lease must meet or exceed FMV, while Section 23(a)(2) of the R, D and D lease requires ''Payment of a bonus based on the Fair Market Value of the lease, to be determined by the lessor through the rulemaking described in subsection (b) or other process for obtaining public input.'' The comment recommended that the words ''or exceeded'' be removed from section 3926.10(c)(2) and stated that if the BLM must determine FMV for the lease in advance of conversion, the lessee would never pay an amount that would exceed that value. We agree that the payment requirement for an R, D and D lessee should not exceed FMV. We are therefore adopting the comment and in section 3926.10(c)(2) and have removed the phrase ''or exceeded'' to be consistent with section 3926.10(b)(3)

and Section 23(a) of the R, D and D leases.

One commenter stated that the BLM will have no way to assess whether the bonus payment is equal to the FMV in the absence of a competitive leasing process for the preference right lease area and that in such a case, the rule is subject to arbitrary application. Another comment stated that, although the proposed rule defined the term FMV, it did not provide any process for determining FMV. The commenter recommended that the bonus bid amount for conversion of an R, D and D lease to a commercial lease be determined through an open and fair process where the BLM and the R, D and D lessee would each select an appraiser, who would then select a third appraiser if the first two appraisers disagree. As acknowledged in the preamble to the proposed rule (73 FR 42939), the BLM recognizes the difficulty in determining a value for oil shale, a resource that has tremendous potential, but has not yet proven to be economic to develop. At the time that applications for conversion of existing R, D and D leases are filed, we anticipate that more information relating to oil shale will be available in a variety of areas, including mining methods, market conditions, etc. Determination of FMV has been a long-established process that exists in many BLM mineral related programs as well as those that are non-mineral related, such as rights-of-way. We recognize that Section 102(a) of FLPMA and Section 369(o) of the EP Act require that the Federal Government receive a fair return. Although the BLM anticipates that R, D and D lessees will play a role in providing data to be used in the appraisal process to determine FMV, the BLM will follow uniform appraisal standards and will not address in this rule the details of agency procedures for determining FMV or minimum acceptable bid values. To do so would ensure that the BLM's minimum bid, or the best estimate of what the bid should be, would never be exceeded during a competitive lease sale.

A comment on FMV determination recommended that section 3926.10 should include a provision to allow appeal of the BLM's FMV determination to the IBLA. Although the section does not include specific language relating to the right of appeal of the FMV determination, section 3900.20 addresses appeals and provides that any party adversely affected by a BLM decision made under parts 3900 and 3910 through 3930 may appeal the decision under 43 CFR part 4. Since section 3900.20 already covers appeals relating to FMV determinations under subpart 3926, we are not adopting this comment.

With respect to the consultation provision of section 3926.10(c)(3), a commenter was concerned that the section did not provide guidance as to the form or result of this consultation. A similar comment stated that it agreed with the requirement in this section that an R, D and D lessee consult with state and local officials to develop a plan for mitigating the socioeconomic impacts of commercial development on the communities and infrastructure, but that the final rule should go on to require the BLM to make a determination that the R, D and D lessee did, in fact consult with state and local officials. Since the particular provision requires ''documentation that the lessee consulted with state and local officials,'' the BLM's review of that documentation will likely result in a determination of whether or not the consultation did, in fact, occur. For this reason, we are not adopting the recommendations made in these comments.

We also received another comment relating to the same consultation provision that recommended that section 3926.10(c) also require consultation with Federal, state, and local officials on environmental impacts. The NEPA analysis that is required prior to the conversion of an R, D and D lease to a commercial lease will address environmental impacts and will provide the opportunity for public participation. We are not adopting the comment.

With respect to NEPA analysis, some commenters stated that the BLM should expand section 3926.10 to clarify that conversion of an R, D and D lease to a commercial lease is preceded by adequate NEPA analysis. The commenters did not believe that the requirement of NEPA analysis was clearly stated in the section. Section 3926.10(a) requires conversion applicants to meet all requirements in parts 3900, 3910, 3920, excepting those provisions related to the competitive leasing process, and 3930, including NEPA analysis and the submission of application information (see final section 3900.50).

With respect to the provision in section 3926.10(c)(5) that the BLM will approve an application for conversion to a commercial lease if the commercial scale operations can be conducted, subject to mitigation measures to be specified in stipulations or regulations, ''without unacceptable environmental consequences,'' a commenter recommended that the BLM apply this standard in a manner that is consistent with guidance set forth in published legal opinions issued by the Solicitor of the Department and decisions of the IBLA. The comment noted that FLPMA requires the Secretary to ''take any action necessary to prevent unnecessary or undue degradation of the lands (43 U.S.C. 1732(b)).'' The comment further noted that based on the Solicitor's Memorandum Opinion, Surface Management Provisions for Hardrock Mining, M–37007 (October 23, 2001) and the IBLA decision, T*he Colorado Environmental Coalition* v. *The Wilderness Society*, 165 IBLA 221 (2005), the FLPMA standard applies to mineral development on public lands, whether the rights to conduct such development are created pursuant to a valid mining claim established under the mining laws or a lease issued under the MLA, and that it does not authorize the BLM to deny an operation on public lands that is proposed to be conducted pursuant to the standards generally applicable to such operations. In noting that ''unacceptable environmental consequences standard'' is also a provision in Section 23 of the R, D and D lease, the comment further stated that the final rule should clarify that the BLM will approve an application to convert an R, D and D lease if the lessee's operations under the proposed conversion lease will be conducted in a manner that complies with applicable law or regulations, prudent management and practice, or reasonable available technology. We adopted the commenter's recommendation to revise section 3926.10(c) as it relates to applicable law or regulation. However, we did not adopt the rest of the commenter's suggestion because the BLM does not regulate management practices or technology choices unless Federal resources are adversely affected.

With respect to the lease term of an R, D and D lease, we received a comment recommending that the term be extended by the time necessary for the BLM to approve an application for conversion and that the final rule should clarify that the lease term for an R, D and D lease is not counted toward the 20-year lease term of a commercial lease, once the R, D and D lease is converted. We are not adopting this comment since we believe that it is clear in the regulations that the lease term of a commercial lease is not dependent upon or connected to the lease term for an R, D and D lease. Furthermore, section 3926.10 does not address either the term of an R, D and D lease or the term of a commercial lease. Once an R, D and D lessee meets the terms and conditions for conversion, the BLM will

issue a commercial lease that will be subject to the regulatory requirements of this final rule, including the lease term.

A commenter made the recommendation that the scope of subpart 3905 Exchanges be expanded to allow R, D and D lessees the opportunity to exchange their preference right acreage with acreage in alternative lease sites. The basis for the recommendation is that R, D and D lease sites and their respective preference areas were designated and granted long before proper site characterization could be conducted and that R, D and D lessees should be rewarded for their contributions rather than ''locking them into'' prematurely designated preference areas. Designation of preference areas has been a key component of the BLM's R, D and D program. In light of the fact that each R, D and D lessee was given the opportunity to designate a preference area, and because upon conversion to a commercial lease there is an opportunity to apply for a lease exchange, we are not adopting the comment in the final rule.

One commenter suggested that the BLM should not approve the development of the same technology on more than one R, D and D lease. The BLM agrees with the commenter that one technology can be used to convert only one lease and not multiple leases. For example, if one entity held multiple R, D and D leases, each approved for the use of a different technology, that entity would not be allowed to perfect the technology to convert one lease and then use that same technology to convert the other leases. That would be contrary to the intent of the program, which is to encourage research, development, and demonstration of oil shale technologies. The BLM will approve a lessee's application to convert the R, D and D lease to a commercial lease and acquire the preference right lease only if the lessee complies with the terms of the lease. The commenter also suggested that a preference right commercial lease should not be granted in association with an R, D and D lease unless the prospective lessee uses the technology that was: (1) Approved in a development plan; and (2) Tested on the associated R, D and D lease. The BLM agrees with the suggestion, because the R, D and D leases are meant to be technology-specific, meaning that a lease is granted for the sole purpose of testing and proving a particular technology, but with the knowledge that the BLM retains the flexibility to approve changes or modifications to proposed technology and the POD.

Another commenter suggested that ''if technology is demonstrated on the BLM RD [lease] that was not proposed in the BLM RDD [lease] application then no conversion is possible, and furthermore that technology not proposed shouldn't have been allowed to be demonstrated on the BLM RDD lease either.'' This commenter further stated ''in order to acquire the contiguous acreage and convert to a commercial lease, the lessee would be required to demonstrate to the BLM that the technology tested on the original lease would have the ability to produce shale oil in commercial quantities.'' The BLM does not agree with the first part of the comment that stated if technology is demonstrated on the BLM R, D and D lease that was not proposed in the R, D and D lease application then no conversion is possible and that technology not proposed shouldn't have been allowed to be demonstrated on the lease. These propositions are inconsistent with the terms of the R, D and D lease. In fact, the BLM believes that the terms of the R, D, and D leases anticipate that changes in the technology or the R, D and D development plan may occur; hence we designated the leases as R, D and D leases. For instance, where a lessee assigns its lease to another entity, under the terms of an R, D and D lease, the assignee may obtain BLM's approval to substitute the research, development, and demonstration of another technology not currently being utilized in the Green River Formation. Furthermore, Section 8 of the lease requires that ''the operator must submit to the authorized officer an exploration, mining plan, or in situ development plan describing in detail the proposed exploration, prospecting, testing, development or mining operations to be conducted'' and states that ''after plan approval, the Lessee must obtain the written approval of the authorized officer for any change in the plan approved under subsection (a).'' Finally, Section 23(a) of the R, D and D lease states ''the Lessee shall apply for conversion of the research, development and demonstration lease to a commercial lease no later than 90 days after the commencement of production in commercial quantities. The Lessee shall have the exclusive right to acquire any or all portions of the preference lease area for inclusion in the commercial lease, up to a total of 5,120 contiguous acres, upon (1) documenting to the satisfaction of the authorized officer that it has produced commercial quantities of shale oil from the lease.'' In other words, the lease terms require the lessees to perfect the technology approved in the R, D and D exploration, mining, or development plan for which the lease was granted in order to obtain the preference right lease acreage to that lease.

The BLM agrees with the commenter that the terms of the lease allow the lease to convert to a commercial lease and acquire the contiguous acreage upon commencement of production in commercial quantities.

Subpart 3927—Lease Terms

Sections in this subpart address lease form, lease size, lease duration, effective date of leases, diligent development, and production.

Section 3927.10 provides that the BLM will issue oil shale leases on a standard form approved by the BLM Director. This section mirrors similar requirements in other BLM mineral leasing regulations.

Section 3927.20 sets the maximum oil shale lease size at 5,760 acres, which is the maximum size authorized under Section 369(j) of the EP Act. The maximum lease size contained in this section is not discretionary since it was established by statute (see Section 369(j) of the EP Act)). One commenter on the proposed rule requested that the maximum size for an R, D and D lease should be increased to 5,760 acres from 5,120 acres to reflect the EP Act. The existing R, D, and D leases were offered prior to passage of the EP Act and contain the maximum lease acreage allowable at the time under the MLA of 5,120 acres. Revising the maximum acreage for an R, D and D lease in the rule would create an inconsistency between the rule and existing R, D and D lease terms. Section 369(j) of EP Act allows the BLM to issue leases up to 5,760 acres, but gives the BLM discretion to issue leases with less acreage, therefore, the BLM has not made this change in the final rule.

In the final rule we revised section 3927.20 by removing the minimum lease size requirement for oil shale leases. Please see the discussion of comments under the Regulatory Flexibility Act discussion in the procedural matters section for this rule for an explanation of the change.

The proposed rule specifically asked for comment on whether or not the final rule should include provisions for the establishment of logical mining units (LMU) for oil shale leases. We received several comments on whether the regulations should provide for LMUs. A commenter recommended that the BLM amend the proposed rule to incorporate provisions for consolidation of leases ''in order to enhance efficiency of development by reducing capital and operating costs while at the same time maximizing recovery of the private

resource which might otherwise go undeveloped.'' Another commenter stated that it believes that there are legal, environmental, and policy reasons for the regulations to promulgate a rule on LMUs, similar to the BLM's coal program, and there is no public policy rationale to defer promulgation. The commenter contended that the preamble discussion of the proposed rule frequently identifies the Federal coal leasing regulations as a model for many of the provisions and that ''in spirit of consistency and governmental alignment,'' it recommends that the BLM adopt the same three preconditions which must be satisfied for lease consolidation: ''single operator, single operation, and continuity.'' Additionally, the commenter noted in the case of an R, D and D lessee holding several leases, if the lessee had the ability to consolidate multiple leases into an LMU type of project, which cumulatively might produce several projects, the surface disturbance at a given time would be minimized. The comment went on to state that additionally, ultimate recovery of the resources should be greater as the single operation could operate up to and across lease boundaries without the constraint of artificial boundary lines, and reclamation of the surface should be more effective and successful. Another comment expressed the viewpoint that it seems premature to incorporate provisions for LMUs when there currently are no standardized extraction methods and no history of production to determine if regulatory provisions are necessary. The comment further stated that there will likely be no need for LMUs if future oil shale development utilizes in situ, or in place technology, but if future development resembles a coal operation in terms of surface mining or subsurface mining, then LMU provisions could be adopted to resemble the coal program. The BLM interprets these comments as a recommendation to establish a mechanism similar to that of a coal LMU. As defined in the coal leasing regulations at 43 CFR 3480.0–5(a)(19), ''Logical mining unit (LMU) means an area of land in which the recoverable coal reserves can be developed in an efficient, economical, and orderly manner as a unit with due regard to conservation of recoverable coal reserves and other resources.'' The BLM supports the establishment of logical mining units that consolidate and make operations more efficient, but we do not understand how oil shale development that does not yet have standardized extraction methods, and may have operations with different diligence requirements, can be effective. It is the BLM's position that establishing a mechanism similar to a LMU is not warranted at this time. After the methods for developing oil shale are better established, if the BLM determines that the creation of a mechanism similar to an LMU is warranted, the BLM would then pursue rulemaking to adopt this recommendation. Therefore, no provisions for the establishment of LMUs are included in the final rule.

Section 3927.30 provides that an oil shale lease will be for a period of 20 years and so long thereafter as the condition of annual minimum production is met. Section 21 of the MLA (30 U.S.C. 241(a)(3)) authorizes issuance of oil shale leases for ''indeterminate periods.'' The BLM chose a 20-year period for the original lease term for ease of administration because Section 21 of the MLA (30 U.S.C. 241(a)(4)) specifies that the royalty rate for leases should be subject to readjustment at the end of each 20-year period. Lease readjustment is common to other BLM mineral leasing programs, including coal and certain non-energy leasable minerals. The final section also contains a requirement that the operator and lessee notify the BLM of changes in names or addresses. That requirement was relocated from section 3936.20(c) of the proposed rule.

Section 3927.40 identifies the effective date of the lease and the process used to determine the effective date of the lease. This section is similar to regulations on the effective dating of leases under the BLM's coal program.

Section 3927.50 requires lessees to meet diligent development milestones and annual minimum production requirements. The BLM considers continued minimum annual production a necessary part of diligent development of the lease. This requires that a company continue to produce the minimum annual requirement or make payments in lieu of production in order to hold the lease. Diligent development is a component of other mineral leasing programs such as coal and oil and gas and is required under Section 369(f) of the EP Act.

Part 3930—Management of Oil Shale Exploration Licenses and Leases

Sections in this part address the requirements for exploration licenses and for leases related to: general performance standards, operations, diligent development milestones, PODs and exploration plans, lease modifications and readjustments, assignments and subleases, relinquishments, cancellations and terminations, production and sale records, and inspection and enforcement.

Sections 3930.10 through 3930.13 explain the performance standards for exploration, development, production, and the preparation and handling of oil shale under Federal leases and licenses. Additional standards may be required at the time of lease issuance and as operations proceed. The BLM used the coal program as basis for many of the performance standards for these sections because of the similarity of the mining and exploration methods and the possible impacts associated with those methods. The performance standards for in situ operations were derived from aspects of the standards used for exploration and standards applicable to the BLM's oil and gas program.

Section 3930.20 establishes the standard operating requirements for the development of an oil shale lease, including requirements concerning the MER of the resource, how to report new geologic information, and the compliance with Federal laws. The section also addresses measures necessary to protect resources, including proper disposal and treatment of solid wastes. These operational requirements are common to other BLM mineral leasing programs.

Section 3930.30 lists the milestones for diligent development of an oil shale lease. The requirement for establishing milestones is in Section 369(f) of the EP Act. The BLM determined that the milestones should be the series of steps necessary for the development of the oil shale. Defining milestones this way is logical because the steps are necessary to begin production and the BLM believes the requirements will encourage development. This section requires a lessee to meet the following five diligent development milestones:

(1) Within 2 years of lease issuance, submit to the BLM a proposed POD which would meet the requirements of subpart 3931;

(2) Within 3 years of lease issuance, submit a final POD;

(3) Within 2 years after the BLM approves the POD, apply for all required permits and licenses;

(4) Before the end of the 7th lease year, begin permitted infrastructure installation, as described by the BLM approved POD; and

(5) Begin production by the end of the 10th lease year.

Each of the milestones in this section is an opportunity for the lessee or operator to fulfill the statutory requirements and provide evidence of

its commitment to diligent development of the resource.

The BLM received several comments indicating the need to recognize that milestones may not be achieved due to time delays that are not within the control of the operator or lessee such as NEPA delays and delays in acquiring permits from the BLM and other agencies. Several comments suggested the need for establishing maximum time limits for government processing of permit applications as a solution to BLM permitting delays. Placing time constraints on the analysis of oil shale permitting may not allow for a thorough, comprehensive, and legally defensible analysis of the application. The suggestion to have an automatic extension of time if the BLM does not meet a processing deadline does not address those instances when other Federal or state agencies are the cause of the delay. Final section 3930.30(b) allows the BLM to grant additional time to complete milestones and therefore, we did not revise the rule to impose time limits for BLM processing.

The BLM received comments questioning the need for milestones, suggesting that deadlines are arbitrary, and that diligence should be established based on good faith efforts. The EP Act specifically required establishing a commercial leasing program that contained milestones. The proposed and final rules incorporate the milestones as part of a diligent development scenario. The requirement for diligent development is not unusual. Other BLM mineral leasing programs such as the coal program have a diligent development component as part of their operating regulations. Diligent development requirements are necessary to encourage development and prevent speculation. The BLM based each milestone on the normal sequence of development that a company would follow to proceed from lease acquisition, through development, to production. The time required to accomplish each milestone is based on the typical development schedules for other minerals and the proposed development schedules that companies submitted as part of the R, D and D nomination process. The BLM rejects the suggestion that diligence be based on good faith efforts. This standard is too vague for a regulatory provision and could cause implementation problems.

The BLM received comments stating that the milestones are too weak and do not result in screening out operators that have no intention of going into production. The BLM's milestones were created to ensure that an operator will be diligently developing the lease. As stated above, the milestones are based on typical development schedules for other minerals and the schedules that companies submitted as part of the R, D and D nomination process, and, therefore, we believe they are reasonable. The BLM believes the payment we may assess for missing a milestone will encourage development and discourage speculation.

One commenter suggested that due to the tight time-frames associated with the milestones, exploration will most likely have to occur prior to nominating an area for leasing under an exploration license. The BLM agrees that most exploration should take place prior to nominating an area for leasing. The regulations do, however, allow the lessee to further explore under an exploration plan or POD once the lease is issued.

Several comments pertained specifically to section 3930.30(a)(4) Milestone 4, which states that before the end of the 7th year after lease issuance, the lessee must begin infrastructure installation, as required by the BLM approved POD; and section 3930.30(a)(5) Milestone 5, which states that before the end of the 10th year after lease issuance, the lessee must begin oil shale production. The commenters were concerned that both milestones are dependent on acquiring needed permits in a timely manner and that action and reviews by regulatory agencies are not under the control of the lessee and may be very time consuming. Section 3930.30(b) recognizes the need to account for delays beyond the control of the operator and provides the BLM the ability to grant additional time to complete each milestone.

The BLM received comments concerning the requirement to begin production prior to the end of the 10th lease year. Some commenters stated that the milestone is unnecessary since, once infrastructure is in place, it is unlikely that a lessee will let a multi-million dollar investment sit idle and therefore the requirement should be deleted. Other commenters suggested that the regulations should allow production to begin at a later date and suggested 15 years after lease issuance, or as an alternative, as soon as practicable. The BLM believes that the requirement to begin production prior to the end of the 10th lease year is necessary to insure that companies will diligently pursue development and will continue to produce once the operation is capable of commercial production. Section 3930.30(b) allows the BLM to grant additional time to complete the milestones, so there is no need to alter the 10th year requirement or use a less prescriptive standard such as ''as soon as practicable.''

The BLM received comments suggesting revision of section 3930.30(a)(4) to acknowledge that delays in permitting may cause delays in infrastructure installation. We addressed the comment by revising section 3930.30(a)(4) to acknowledge that construction of infrastructure may not begin before approved permits have been issued.

The BLM received comments indicating a need to clarify how the impacts of the possible delays would affect each milestone. Although the proposed regulations anticipated the need to account for delays that are beyond the control of the operator and provided a mechanism at section 3930.30(b) to address those delays, the proposed rule was unclear as to how the allowable extensions of time would affect subsequent milestones. Milestones 1 and 2 pertain to the submittals that are under the control of the operator and not dependent on the timing of other agencies decisions. Milestone 3 allows a lessee 2 years to apply for permits, although a prudent operator would likely apply before or immediately after their POD was approved. Milestones 4 and 5 are dependent, to some extent, on timely processing by agencies, and an extension of time applied to milestone 4 would likely force the need to extend the 10 year production deadline in milestone 5. To clarify how the BLM would address this if an application for a milestone 4 extension is approved, section 3930.30(b) is revised to provide that allowable time extensions to meet milestone 4 will extend the requirement to begin production in the 10th lease year by an amount of time equal to the extension granted for milestone 4. We also added a sentence to paragraph (b) to explain that any extension made under this section also extends the requirements for payments in lieu of production and minimum production under paragraphs (c), (d), and (e) of this section.

It should also be noted that under certain conditions the BLM may grant suspensions that toll diligence and other lease requirements (see section 3931.30).

The requirement to maintain production under an approved POD is also in this section. Although it is not a milestone, the BLM will require yearly production as part of the diligent development of the lease. This section also allows payments in lieu of production to meet the requirement of yearly production. Minimum annual production is required starting the 10th

year of the lease unless the lease has been suspended or the BLM has approved an extension of diligence milestone 4. Payment in lieu of production in year 10 of the lease satisfies the milestone requiring production by the end of the 10th year of the lease.

Section 3930.40 identifies the assessments for not achieving the required milestones. The proposed regulation included a civil penalty of $50 per acre per year for each missed milestone. In response to comments, the BLM agrees that there is no specific statutory authority to impose civil penalties for missed milestones. The final rule therefore provides for assessments to serve as liquidated damages for the costs, damages, and delays of income that the BLM would otherwise not have suffered. Under this rule, the BLM will assess $50 per acre for each missed diligence milestone for each year, prorated to daily assessments until the operator or lessee reaches the diligence milestone. The rule thus retains the $50 per acre per year that was in the proposed regulations, but the proration to daily assessments more accurately reflects the BLM's additional costs of administering the lease and the government's increased risk of delays in receiving royalty payments. Larger leases would face larger daily assessments in part because the government's expected royalty receipts are higher from larger leases. The assessments also provide incentives for diligent development of the resource and should discourage speculation.

We received comments indicating that the proposed penalties were not high enough and should mirror the oil and gas regulations, which allow for fines as high as $25,000 per day and also include criminal penalties. There is no statutory authority for the BLM to impose civil or criminal penalties for noncompliance with the regulations. The assessment that the BLM is imposing will serve as non-penal compensation for the BLM's increased costs and expenses of administering the lease, and for loss of timely royalty income caused by the lessee's lack of diligence as demonstrated by failure to meet the milestones.

Subpart 3931—Plans of Development and Exploration Plans

Sections in this subpart provide requirements for submission of a plan of development (POD) (section 3931.10), required contents of a POD (section 3931.11), reclamation of all disturbed areas (section 3931.20), suspending operations and production on a lease (section 3931.30), exploration on a lease prior to POD approval (section 3931.40), information to be included in the exploration plan (section 3931.41), modification of exploration or development plans (section 3931.50), maps of underground and surface mining workings and in situ surface operations (section 3931.60), production reporting (section 3931.70), geologic information (section 3931.80), and boundary pillars and buffer zones (section 3931.100).

Section 3931.10 requires submission of a POD that details all aspects of development of the resource and protection of the environment, including reclamation. It also identifies the need for a similar plan for exploration activities. The POD is a key document that details the specifics of all activities associated with developing or exploring the lease. Section 3931.10(d) has been edited for clarity. The BLM may require additional information or changes to the plan before it can be approved. The BLM may disapprove a plan, in which case it will explain why disapproval was necessary. In response to comments concerned about mitigation of specific impacts of development, we have revised section 3931.10(f) to make it clear that appropriate NEPA analysis is required prior to exploration plan or POD approval.

Section 3931.11 lists and describes the contents of a POD. Some of the contents include a general description of geologic conditions and mineral resources, maps or aerial photography, proposed methods of operation and development, public protection, well completion reports, quantity and quality of the oil shale resources, environmental aspects, reclamation plan, and the method of abandonment of operations. The information in the POD is necessary so that the BLM can review the plan and ensure that operations, production, and reclamation will occur consistent with Federal law and regulation and to ensure the protection of the resource and the environment through appropriate NEPA analysis and resulting mitigation measures. In the final rule we added a new paragraph (d)(11) to section 3931.11 that requires that a description of the methods used to dispose of and control mining waste be included in the statement of the proposed methods of operation and development. In the final rule we also added a definition of the term ''mining waste'' to the definitions section. The reason for revising this section and adding the new definition is discussed in the preamble discussion of the definitions section of this rule.

Section 3931.20 describes the requirements for reclamation of all disturbed areas under a lease or exploration license. This section is similar to requirements in other BLM mineral program regulations for prompt reclamation of disturbed areas. Several commenters expressed concern with the reclamation provision in section 3931.20 (a) of the proposed rule where the BLM states that the operator or lessee must reclaim the disturbed lands to their pre-mining or pre-exploration use or to a BLM-determined higher use. Commenters suggested that ''BLM-determined higher use'' should be removed and another commenter expressed concerns that the provision could require the applicant to perform more expensive reclamation than what would be required to reclaim the disturbed area to pre-mining or pre-exploration levels. The BLM agrees that the phrase is not very specific and could have a negative impact on the lessee or operator. In the final rule we revised section 3931.20(a) to state that the operator or lessee must reclaim the disturbed lands to their pre-mining or pre-exploration use, or to a higher use, as agreed to by the BLM and the lessee.

Section 3931.30 details the requirements for suspending operations and production on a lease. Under this section, if the BLM determined it was in the interest of conservation, it may order or agree to a suspension of operations and production. If the BLM approved the suspension, the lessee or operator would be relieved of the obligation to pay rental, to meet upcoming diligent development milestones, or to meet minimum annual production, including payments in lieu of production. The term of the lease would be extended by the amount of time the lease is suspended. The need to suspend operations is well established and similar provisions are found in other BLM mineral leasing regulations.

Section 3931.40 provides the requirements necessary for the BLM to authorize exploration on an exploration license or on a lease prior to POD approval. Often, exploration is necessary after lease issuance to acquire the geologic information necessary to prepare a POD.

Section 3931.41 lists the information required for an exploration plan. The information required is similar to that required in other BLM mineral programs and is necessary for adequate evaluation of the proposed exploration activities and the measures needed to mitigate environmental impacts in accordance with applicable laws. We received comments suggesting that the rule is inconsistent in that this section requires

information on vegetative cover, but the information is not required for PODs. Information on vegetative cover is usually obtained at the preleasing stage, so it is not usually needed again at the POD stage. The BLM requires information on vegetative cover for exploration plans because it is possible that the exploration is proposed on unleased lands that have never been analyzed for exploration under NEPA. The commenter also asked if the vegetative cover requirement would be used as a reclamation standard. The NEPA analysis that will be completed prior to exploration or development of oil shale will determine what reclamation standards or levels of mitigation related to vegetative cover would be required.

We received several comments suggesting that prospective licensees provide information on potential impacts on National Park Service units. There is no need to require additional information to specifically address National Park Service lands since potential impacts on all lands affected by the exploration will be analyzed and mitigation measures addressed in the required NEPA document that evaluates the proposed action. We made no change to this section as a result of this comment.

Section 3931.50 explains how the operator or lessee may apply for a modification of exploration or development plans to address changing conditions and situations that might develop during the course of normal exploration activities or to correct an oversight. This section also explains that the BLM may, on its own initiative, require modification of a plan. Finally, this section explains that the BLM may approve a partial exploration plan or POD in circumstances where operations are dependent on factors that would not be known until exploration or development progresses. These modification provisions are similar to those in other BLM minerals programs. We received several comments suggesting that the BLM should expand the reasons for modifying exploration or development plans to include ''new information, improved methods, and technology.'' The BLM agrees with the suggestion and in the final rule we revised section 3931.50(a) to include ''new information, improved methods, and new or improved technology'' in the list of reasons that the BLM will consider modification of an exploration plan or POD.

Section 3931.60 contains information relating to the format and certification of required maps of underground and surface mining workings and in situ surface operations. These maps are necessary for the BLM properly to assess the potential impacts associated with exploration and mining.

Section 3931.70 explains the requirements for production reporting, the associated maps and surveys for mining operations, and maps showing the measurement systems for in situ operations. This section requires accurate maps and production reports and explains the requirements for production reporting. These are necessary requirements for the Federal Government to track lease production accurately. We received several comments that indicated that the timeframes for reporting production and exploration were too short and suggested quarterly reporting with submittals no later than the end of the quarter. For comparison purposes, the production reporting period for coal and for oil and gas is monthly. Oil shale production methodology ranges from methods that closely resemble the coal program to methods that are more similar to oil and gas operations. To account for the variance in the methods, we revised the reporting period to more closely align the reporting requirements with those of the coal program. In the final rule, the reporting period is quarterly, with the submittals no later than 30 days after the end of the reporting period.

We received several comments asking for clarification of the requirement to report production of all oil shale products and by-products. The commenter is not clear what products and by-products to which it is referring. The requirement to report production is a requirement of all of BLM's mineral leasing programs. Verification of reported production and sales are necessary components of the royalty collection program. The term ''oil shale products and by products'' means all salable products derived from the mining and retorting or in-situ extraction and processing of oil shale. Potential products or by-products may include oil, gas, sulfur, raw shale, spent shale, CO_2, ammonia, and produced water. At this point in time it is not possible to know all of the possible salable products; however, as required by subpart 3935 of this rule, all products that are produced for sale and all products that are sold must be reported. The intent of production reporting is to ensure that the production volumes of various products and by-products can be accounted for at all points in the production process. For example, an underground oil shale mining operation with a surface retort is required to report under subpart 3935 of these regulations the volume of raw shale that is mined or removed from the mine for further processing. All volumes entering the retort must balance with all volumes mined and reported to the BLM. Additionally, since there most likely will be volumes of various gaseous materials being produced and ultimately sold, these volumes must also be reported. We did not revise this section as a result of these comments.

Section 3931.80 addresses requirements for handling geologic information resulting from exploration activities. Additional requirements related to abandonment operations, well conversions, and blow-out prevention equipment are also addressed in this section. This section contains requirements similar to those in the BLM's oil and gas operations regulations.

Several comments indicated that the timeframes for reporting core hole results were too short and suggested quarterly reporting, with submittals no later than 90 days after the end of the quarter. The BLM agrees that analysis of the cores may take more time than originally estimated and that reporting the results no later than 90 days after the end of the exploration is a more realistic requirement. Therefore, in the final rule we revised section 3931.80 so that it requires that the operator or lessee submit to the BLM records of all core or test holes within 90 calendar days after drilling completion.

Section 3931.100 details the standards for boundary pillars and provisions to protect adjacent lands. This section allows for the recovery of the pillars if the operator provides evidence to the BLM that the recovery activities will not damage the Federal resource or those of the adjacent lands. These provisions are similar to those in the BLM's coal program.

The BLM received comments suggesting that the final rule should state that the boundary pillar provision should only apply to underground mining operations. The BLM agrees with the commenter that boundary pillars should only apply to underground mining. However, the BLM also believes that it is necessary to create buffer zones for in situ operations. Both the boundary pillars and buffer zones are necessary to protect against any unauthorized removal of oil shale resources from Federal lands by surrounding operations without adequate compensation to the taxpayers. Under in situ operations, oil shale formation fractures allow energy and fluid migration, and without the buffer zone, fluid could migrate across lease lines only to be captured by adjacent

operations. Therefore, the BLM has revised final section 3931.100(a) to make it clear that boundary pillars and the buffer zones apply to underground mining and in situ operations, respectively.

Subpart 3932—Lease Modifications and Readjustments

Sections in this subpart provide requirements for lease size modification, (section 3932.10), availability of lands for a lease modification (section 3932.20), terms and conditions of a modified lease (section 3932.30), and the readjustment of lease terms (section 3932.40).

Section 3932.10 provides the requirements for lease size modifications and is similar to sections in the other BLM mineral program regulations. This section explains that the lands in the modified lease must not exceed the acreage limitation in section 3927.20. The section also explains what items are necessary for a complete application, including the filing fee and qualifications statements. One commenter requested that we add a provision to this section requiring NEPA review for modification of a lease. The final rule addresses the NEPA issue at section 3932.20(c). Therefore, the final rule is not revised as a result of this comment.

Section 3932.20 explains the conditions under which the BLM would grant a lease modification, and that the BLM may approve the modification (adding lands to the lease) if there is no competitive interest in the lands. This section explains that before the BLM will approve a modification application, the applicant must pay the FMV (or bonus bid) for the interest to be conveyed. This section also makes it clear that the BLM will not approve a lease modification prior to conducting the appropriate NEPA analysis and receipt of the processing costs.

Section 3932.30 provides that the terms and conditions of any modified lease will be adjusted so that they are consistent with law, regulations, and land use plans applicable at the time the lands are added by the modification. The BLM revised section 3932.30(b) to clarify that the royalty rate of the new lease is the same as that in the lease that is being modified. This change will prevent confusion where lease rates have been readjusted. Bonding and lessee acceptance requirements are also addressed in this section. This section is similar to those in other BLM minerals program regulations.

Section 3932.40 provides that all oil shale leases are subject to readjustment of lease terms, conditions, and stipulations, except royalty rates, at the end of the first 20-year period (the primary term of the lease) and at the end of each 10-year period thereafter. Royalty rates are subject to readjustment at the end of the primary term and every 20 years thereafter. The procedures for the readjustment of the lease are detailed in this section. Under this section, the BLM will provide the lessee with written notification of the readjustment. This section also allows lessees to appeal the readjustment of lease terms. One commenter recommended that the BLM should allow for the adjustment of the lease terms at more frequent intervals than the 20 year statutory period to allow for compensation for unknown production and mining techniques. One commenter recommended that the lease terms remain certain for the life of the lease. Another commenter recommended that the royalty rate adjustment should be subject to the same time periods as other lease terms. One commenter stated that if the royalty rate is adjusted after 20 years, it will create uncertainty and that would discourage investment. One commenter stated that there are no criteria by which a lessee can identify under what conditions or to what extent the lease terms may be adjusted.

The BLM did not revise the final rule as a result of these comments. The MLA (30 U.S.C. 241(a)(4)) only provides the BLM the authority to readjust the royalty rate at the end of the primary term and then every 20 years after that. Readjusted royalty rates will be set at the regulation rate in effect at the time of readjustment. The public will have the opportunity to comment as part of the rulemaking process on any future changes to the royalty rate set by these regulations.

Subpart 3933—Assignments and Subleases

Sections in this subpart address various requirements related to assignments or subleases of record title (section 3933.31) and overriding royalty interests (section 3933.32). This subpart also addresses requirements for:

(1) Assigning or subleasing leases or licenses in whole or part (section 3933.10);

(2) Filing fees (section 3933.20);

(3) Account status and assumption of liability (section 3933.40);

(4) Bonding (sections 3933.51);

(5) Continuing responsibility (section 3933.52);

(6) Effective date (section 3933.60); and

(7) Extensions (section 3933.70).

The sections in this subpart are similar to the regulatory requirements of BLM's other mineral leasing programs.

The BLM received a comment suggesting that exploration licenses be assignable. We agree. Therefore, provisions for assigning licenses are included in this subpart.

Section 3933.10 now provides that all leases may be assigned or subleased, and all exploration licenses may be assigned, in whole or in part to any person, association, or corporation as long as the qualification requirements are met. Section 30 of the MLA requires an assignee to obtain BLM approval for an assignment.

Section 3933.20 requires payment of a $60 non-refundable filing fee for processing an assignment, sublease of record title, or overriding royalty. The filing fee is the same fee required by the coal regulations for filing an assignment. The BLM anticipates that assignment, sublease of record title, or overriding royalty activities associated with an oil shale lease or license will be similar to the same activities in the BLM's coal program, and therefore believes the same filing fee is justified.

Section 3933.31 requires that assignment applications be filed with the BLM within 90 days of the date of final execution of the assignment, and lists what must be included in the assignment application, including the filing fee. This section also explains that the assignment of all interests in a specific portion of a lease or license creates a separate lease or license. We received one comment on this section, which recommended that the section also address standards for assignments of operating rights. We interpret this comment as recommending that the regulations separately list all information that BLM requires in conjunction with an application for approval of an assignment of operating rights. Standards for approval of assignments are already covered by section 3933.31(b), which also requires assignees to meet the qualification standards set forth under subpart 3902. In addition, sections under this subpart that apply to assignments address overriding royalty interest, lease account status, bond coverage, and continuing responsibility of assignors. We are therefore not adopting this comment.

Section 3933.32 explains that overriding royalty interests do not have to be approved by the BLM, but will be required to be filed with the BLM. The filing of overriding royalty interests provides a more complete record of the financial transaction affecting the Federal lease. The BLM has found this

information to be useful in other mineral leasing programs, especially in making rent and royalty reduction determinations.

Section 3933.40 requires that the lease or license account be in good standing before the BLM will process an assignment.

Section 3933.51 requires that assignees have sufficient bond coverage before the BLM will approve the assignment. This is a necessary component of the bonding program and is similar to requirements of other BLM solid mineral leasing programs.

Section 3933.52 addresses the responsibilities, obligations, and liabilities of the assignor and assignee. In addition to stating expressly that an assignor is responsible after an assignment for accrued obligations, this section addresses joint and several liabilities of the lessee and operating rights owner. After the effective date of the sublease, the sublessor and sublessee are jointly and severally liable for the performance of all lease obligations, notwithstanding any term in the sublease to the contrary.

Section 3933.60 explains that the effective date of an assignment and sublease is the first day of the month following the BLM's final approval, or if the assignee requested it in advance, the first day of the month of the approval. This is the customary effective date for an assignment in other BLM leasing programs.

Consistent with other BLM mineral leasing programs, section 3933.70 provides that the BLM's approval of an assignment or sublease does not extend the term or readjustment period of the lease or the term of the license.

Subpart 3934—Relinquishments, Cancellations, and Terminations

Sections in this subpart contain requirements for relinquishments (section 3934.10), termination of leases and cancellation and/or termination of exploration licenses (section 3934.30), written notice of default (section 3934.21), cause and procedures for lease cancellations (section 3934.22), payments due (section 3934.40), and bona fide purchasers (section 3934.50). Sections in this subpart are similar to sections found in regulations for other BLM mineral leasing programs.

Section 3934.10 provides that the record title holder of a lease may relinquish all or part of the lease if the requirements in this section are met. This section also contains provisions for the relinquishment of an exploration license. Prior to relinquishment, the licensee must give any other parties participating in the exploration license an opportunity to take over operations under the exploration license. We received a comment expressing concern that this section allows a record title holder to relinquish a lease without approval from an owner of a working interest in the lease. According to the commenter, this section should be modified to require consent from any owner of any working interest (operating rights) associated with a lease in order to avoid the risk that the lease may be relinquished without its knowledge. With respect to working interests or operating rights, the BLM is not a party to an agreement between a lessee and a party holding a working interest in the lease. Because the contractual agreement is strictly between the lessee and the holder of the working interest, it is not appropriate for the BLM to impose the requirement on the lessee that a holder of a working interest must provide consent. We are therefore not adopting this comment.

Section 3934.21 requires the BLM to notify the lessee or licensee in writing of any default, breach, or cause of forfeiture, and the corrective actions that could be taken to avoid defaulting on the lease terms and lease cancellation.

Section 3934.22 explains the procedure for the BLM to cancel a lease. Section 31 of the MLA requires that lease cancellation take place in the United States District court for the district in which all or part of the lands covered by the lease are located.

Section 3934.30 provides the reasons that the BLM may terminate a license, including:

(1) The BLM issued it in violation of law or regulation;

(2) The licensee is in default of the terms and conditions of the license; and

(3) The licensee has not complied with the exploration plan.

Unlike leases, the BLM may terminate an exploration license administratively.

Section 3934.40 provides that if a lease is canceled or relinquished for any reason, all bonus, rentals, royalties, or minimum royalties paid will be forfeited and any amounts not paid would be immediately payable to the United States.

Section 3934.50 addresses the rights of bona fide purchasers and provides that the BLM will not immediately cancel a lease or an interest in a lease if, at the time of purchase, the purchaser could not reasonably have been aware of a violation of the regulations, legislation, or lease terms.

Subpart 3935—Production and Sale Records

Section 3935.10 addresses books of account. Operators and lessees must maintain accurate records. This section explains what records must be maintained, and that the records must be made available to the BLM during normal business hours.

Subpart 3936—Inspection and Enforcement

Like other BLM minerals inspection and enforcement (I and E) programs, the objective of BLM's oil shale I and E program is to:

(1) Ensure the protection of the resource;

(2) Ensure that Federal oil shale resources are properly developed in a manner that would maximize recovery while minimizing waste; and

(3) Ensure the proper verification of production reported from Federal lands.

The BLM is also responsible for lease inspections to determine compliance with applicable statutes, regulations, orders, notices to lessees, PODs, and lease terms and conditions. These terms and conditions include those related to drilling, production, and other requirements related to lease administration.

This subpart addresses inspection of underground and surface operations and facilities (section 3936.10), issuance of notices of noncompliance and orders (section 3936.20), enforcement of notices of noncompliance and orders (section 3936.30), and appeals (section 3936.40).

Section 3936.10 requires operators or lessees to allow the BLM to inspect underground or surface mining and in situ operations and facilities and exploration operations at any time both to determine compliance with the POD and to verify oil shale production.

Section 3936.20 advises the operator, licensee, or lessee of the procedures the BLM follows when issuing orders and notices of noncompliance. The section also addresses delivery of notices and verbal orders. The proposed section had required lessees and operators to notify the BLM of any change of name or address. That requirement has been moved from section 3936.20(c) to sections 3927.30 for leases, and 3910.40 for licenses.

Section 3936.30 explains the procedures the BLM follows when enforcing notices of noncompliance. This section explains the action the BLM may take in cases of noncompliance, including orders to cease operations and the initiation of lease or license cancellation or

termination procedures. An example of the type of non-compliance that might warrant the BLM issuing a cease operations order will be noncompliance with the BLM-approved POD and refusal to comply with the notice of noncompliance.

Section 3936.40 allows a lessee or operator to appeal BLM decisions under 43 CFR part 4. This section also provides that the BLM decisions and orders remain in full force and effect pending appeal, unless the BLM or the IBLA decides otherwise. Appeals language in this section mirrors regulatory provisions in other BLM minerals programs.

The BLM received several comments questioning the BLM's authority to assess penalties and the need for an opportunity for a hearing regarding an assessed penalty. We agree with the commenter in part. There is no clear statutory authority for civil penalties for noncompliance with the regulations. Accordingly, the final regulations do not provide for penalties. The BLM, however, has authority under Section 31 of the MLA to pursue an action in Federal court to cancel a lease for noncompliance with that Act, the lease, or the regulations (*see* 30 U.S.C. 188). The Department, though, has recognized for many years that lease cancellation is too drastic a remedy in most cases. The same section of that Act allows the BLM to provide for ''appropriate methods for the settlement of disputes or for remedies for breach of specified conditions'' (30 U.S.C. 188(a)). Under that authority, the BLM levies assessments as remedies for acts of non-compliance with oil and gas regulations, leases, permits, notices or orders pursuant to 43 CFR 3163.1.

Assessments as remedies for non-compliance are appropriate as liquidated damages both for the BLM's costs and expenses which would not have been incurred but for the noncompliance, and for the Department's losses, as the lessor for damages to resources and for the loss of the royalties from production that would have commenced sooner but for the noncompliance. See *M. John Kennedy,* 102 IBLA 396, 399–400 (1988) (emphasizing BLM's costs and expenses); 52 FR 5384, ____ (1987) (emphasizing compensation for the lessor).

The BLM received several comments indicating that the proposed penalties were not high enough and indicated that they thought the penalties should mirror the oil and gas regulations which allow for fines as high as $25,000 per day and which could also include criminal penalties. There is not a statutory provision for the BLM to impose civil or criminal penalties for noncompliance with these regulations. The assessment that the BLM is imposing is designed to cover costs and expenses of administering the lease which would not have been incurred but for the noncompliance and to cover threats, if any, to BLM resources. Payment of an assessment, however, does not relieve an operator of the duty to correct a violation.

Accordingly, final section 3936.30(a)(2) has been rewritten to provide for assessments of $500 per day for each non-corrected noncompliance.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

This document is a significant rule and the Office of Management and Budget (OMB) has reviewed this rule under Executive Order 12866. We have made the assessments required by E.O. 12866 and the results are available by writing to the address in the **ADDRESSES** section.

(1) This rule will have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Please see the discussion below.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The rule addresses the issuance and administration of Federal oil shale leases, which by statute is under the jurisdiction of the Department. The BLM worked closely with the MMS in drafting the royalty provisions of this rule, but the rule should have no effect on other agencies.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The rule will not affect any of these except that the rule institutes certain fees (discussed earlier in the preamble to this rule and in the economic and threshold analyses for the rule) in a manner that is consistent with BLM and Departmental policy.

(4) This rule does not raise novel legal or policy issues. As stated earlier in this preamble, the legal and policy issues addressed by this rule are already dealt with in a similar manner in other BLM regulations currently in effect. Therefore, they are not novel.

A commenter suggested that the proposed rule does raise novel legal and policy issues. For example, the leasing, technology, economics, environmental impacts, and legal issues surrounding oil shale development will be novel.

The potential leasing and development of oil shale resources on public lands will present many unique challenges. However, we do not believe there are any unique or novel legal and/or policy issues. As we noted above, the oil shale regulations reflect practices employed in other BLM energy and mineral programs.

Executive Order 12866 requires agencies to assess, where practical, the anticipated costs and benefits of regulatory actions to determine if the regulation is significant. As has been noted above, there is no domestic oil shale industry to help substantiate or form the basis for the projections and assumptions concerning what the future might hold for the leasing and development of oil shale resources on Federal lands. In addition, the assumption is that any significant production of shale oil is not likely to occur for a number of years. The potential events described, if they occur at all, may be in the distant future. Therefore, future costs and benefits must be discounted. The OMB's Circular A–94 states that a real discount rate of 7 percent should be used as a base-case for regulatory analysis. In addition to analyzing the potential future costs and benefits using a 7 percent discount rate, the BLM also used a discount rate of 20 percent to reflect these substantial risks and associated uncertainties in the opportunity costs that would not be reflected in the historic industry average of 7 percent. We also analyzed the future costs and benefits using a 3 percent discount rate.

The regulations have the potential to generate net economic benefits to the United States by allowing for the development of our vast domestic oil shale resources, though there is substantial uncertainty about the magnitude and timing of these benefits. The most substantial direct benefit of this regulatory action is to provide a vehicle for the leasing and development of Federal oil shale resources. Operators will have the opportunity to obtain leases with the right to develop the oil shale and ultimately produce shale oil in an environmentally sound manner. Companies' willingness to take advantage of the leasing and development opportunities provided by this rule will determine the level of production of shale oil, exploration, development and production costs incurred, and conceivably the profits (or losses) to be enjoyed.

The lack of a domestic oil shale industry makes it speculative to project the demand for oil shale leases, the technical capability to develop the resource, and the economics of producing shale oil. Projections that have been prepared vary significantly in not only the potential volume of shale oil that could be produced, but also the assumptions used to generate those projections. The recent report prepared by the Strategic Unconventional Fuels Task Force (Task Force) provided shale oil production projections under three scenarios. For our simulation-based analysis, we focused on the Task Forces' base case as a plausible scenario. This scenario presents a future without any subsidies in the form of tax credits or cost-sharing. The base case production of a half million barrels per day is approximately 182.50 million barrels per year, all from true in-situ projects. The Task Force's base case scenario assumes production commencing in 2015, with full production reached by 2020. In the proposed rule we asked for comment on the uncertainty surrounding the quantity and quality of recoverable oil shale, specifically as it relates to potential production of shale oil. We did not receive any comments specific to the availability and reliability of recoverable reserve data.

The Task Force estimates that resulting production could reduce the cost of oil imports by $0.41 billion per year in 2015 to $4.21 billion per year in 2035. This estimate is based on EIA's 2006 oil price projection. In their report, the Task Force also provides estimates of oil shale development's contribution to Gross Domestic Product (GDP). In the base case, annual direct contributions to GDP for the oil shale industry activity rises from $0.65 billion per year in the early years, to $5.72 billion per year in 2035.

We estimated the revenue, profit, and royalty implication of the Task Force's base case production scenario using three discount rates (7 percent, 3 percent, and 20 percent), three world crude oil price projections (EIA's 2007 reference, high, and low price projections) and 6 different royalty rates (1 percent, 3 percent, 5 percent, 7 percent, 9 percent, and 12.5 percent). The following summarizes the findings based on the 7 percent discount rate and a 5 percent royalty rate. The full range of calculations is presented in the Economic Analysis.

We estimate the value of the forecasted production, using EIA's 2007 reference case assumptions, could be approximately $9.5 billion for 2020, up to $11 billion by 2035. The gross present value, using a 7 percent discount rate, of all shale oil produced for the period of analysis (2007 to 2035) is estimated at about $50 billion. The gross present value of production for the year 2020 is estimated at about $3.9 billion using a 7 percent discount rate. The gross present value of the shale oil produced in 2035 would be approximately $1.7 billion with a 7 percent discount rate.

Oil shale development is characterized by high capital investment and long periods of time between expenditure of capital and the realization of production revenues and return on investment. The Task Force estimated the breakeven price for true in-situ operations at $37.75 per barrel. Using the base case production projection, the cost to produce 182.50 million barrels annually would be almost $6.9 billion. The present value of the production costs for 2020 would be about $2.9 billion using a 7 percent discount rate. For production occurring in 2035, the present value of those production costs would be about $1 billion. For the period of analysis (2007 to 2035), the present value of all production costs is estimated at about $34 billion using a 7 percent discount rate. In the proposed rule we specifically asked for comment on the state of technology necessary to recover or produce oil from shale and the associated production costs.

We received several comments on the data used in the economic analysis. Commenters suggested that some of the data, specifically production cost estimates, are dated and inaccurate. Commenters noted recent production cost estimates in the $75–$90 per barrel range.

We readily acknowledge that the economic analysis does not reflect the latest projections, including production cost estimates. However, when the analysis was prepared we used the most recent published estimates from independent third party sources, e.g., government or academic sources. We also note that when we considered these higher production cost estimates, in conjunction with higher world oil prices, the specific projections changed, but the general findings and conclusions of the analysis did not change.

With the opportunity to lease and ultimately develop Federal oil shale resources, companies would be expected to generate profits from their commercial activities. Using the base case production scenario, cost projection assumptions, and EIA's reference oil price, by the year 2020 lessees/operators could see profits from oil shale development of over $2.6 billion per year, with a net present value of $1 billion with a 7 percent discount rate. For 2035, we estimate the present value of the potential profit could be approximately $670 million using a 7 percent discount rate. The net present value of shale oil produced in the period of analysis (2007 to 2035) is estimated at approximately $16.2 billion.

Using EIA's high crude oil price scenario, calculated profits were substantially high. Total undiscounted profits for the period of analysis were $187 billion, with a present value of $50.6 billion using a 7 percent discount rate. For EIA's low oil price projection all operations are uneconomic regardless of the discount rate and/or royalty rate applied. In addition to these monetary costs and benefits associated with potential oil shale development, there could be varying degrees of environmental and socioeconomic costs and benefits. These potential costs and benefits could affect a wide range of resources, including groundwater quality and quantity, air quality, cultural resources, wildlife habitat, competing land uses, and local employment and infrastructure.

Impacts on livestock grazing activities are generally the result of activities that affect forage levels, of the ability to construct range improvements, and of human disturbance or harassment of livestock within grazing allotments. Using the Task Force's base case scenario of three in-situ operations, with total maximum lease acreage of 17,280, and some highly conservative and simplifying assumptions, there could be a loss of approximately 5,700 animal unit months. However, it is more reasonable to assume that only specific portions of the lease area (5,760 acres) will be disturbed at any one time. It is therefore possible that 3,120 to 4,970 acres within a 5,760-acre lease would remain available for grazing in undeveloped or restored portions of the lease. These figures are based on the assumption for a surface mine with surface retort with a production of 50,000 bbl of shale oil per day (see in section 4.1 and appendix A of the PEIS). The footprint of development ranges from 600–2,000 acres, Table 4.1.1–1 in the PEIS (page 4–4) and with long-term facilities (office buildings, retorts, etc.) covering 100 acres. It was assumed that grazing activities would be precluded on the leases that were undergoing active development, in preparation for future development, undergoing restoration after development, or occupied by long-term surface facilities. The actual figures are discussed in section (4.2.1.3 Grazing Activities, PEIS page 4–20).

Recreational use of BLM-administered lands within the three-state study area (Colorado, Utah, and Wyoming) is varied and dispersed. Impacts on recreation could be considered locally significant if potential oil shale development results in long-term elimination or reduction of recreation opportunities, activities, or experience, or they compromise public health and safety. While recreational use could be possible in undeveloped or restored portions of a lease area, the amount of land that would be available would vary from project to project. As such, the significance of the potential impacts of oil shale development could have on recreational opportunities will depend on the location of potential development and on the nature of the recreational activity precluded from portions of the lease area.

In addition to oil shale, the study area contains a wide range of energy and mineral resources. Mineral resource development conflicts may occur with oil shale development. The issuance of oil shale exploration licenses and leases does not preclude the BLM from issuing licenses and leases for other minerals, if the applicant can demonstrate that the technology to be used would allow recovery of oil shale resources without destroying or preventing the recovery of the other mineral resource. Conflicts among competing resource uses are generally considered and resolved when processing potential leasing actions or evaluating requirements for approval of PODs. In general, stipulations or conditions of approval could be developed to mitigate resource conflicts. It is the BLM's policy to optimize recovery of natural resources in an effort to secure the maximum economic return to the public and energy production, prevent avoidable waste of the public's resources utilizing authority under existing statutes, regulations and lease terms, and honor the rights of lessees, subject to the terms of existing leases and sound principles of resource conservation.

Many multiple use outputs from BLM land are not traded in markets and might not have measurable onsite expenditures associated with them. The absence of market price does not, however, mean an absence of value to society.

In addition to land use conflicts, water consumption is a major concern in the arid intermountain region. Certain types of oil shale development are anticipated to consume large quantities of water. Increasing the demand for water resources in the arid West must be considered a major opportunity cost to society associated with oil shale development and fully analyzed before commercial development is allowed to proceed. Demand for reliable, long-term water supplies to support oil shale development could lead to the conversion of water rights from current uses. While it is not presently known how much surface water will be needed to support future development of an oil shale industry, or the role that groundwater would play in future development, it is likely that additional agricultural water rights could be acquired, but only in compliance with state law. Depending on the locations and magnitude of such acquisitions, there could be a noticeable reduction in local agricultural production and use.

Prospective oil shale developers would need to employ appropriate control technologies to reduce potential air emissions which otherwise could result from construction and operation of surface facilities. In addition to the emissions associated with the operations themselves, extraction of oil from shale could consume immense quantities of electricity. This would necessitate the building of new power plants, which could further contribute air emissions. Impacts on air quality would be limited by applicable local, state, Tribal, and Federal regulations, standards, and implementation plans established under the Clean Air Act and administered by the applicable air quality regulatory agency, with Environmental Protection Agency oversight.

Using the assumption of 3 in-situ projects, solid waste generated would be the drill cuttings and those would be handled as they are for oil and gas, which is to bury them on-site, in compliance with the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and the Hazardous Solid Waste Amendments of 1984 (42 U.S.C. 6901 *et seq*.).

Aquatic habitats include perennial and intermittent streams, springs, and flat-water (lakes and reservoirs) that support fish or other aquatic organisms through at least a portion of the year may experience potential impacts. Impacts to wildlife species that may be associated with any particular project would depend on the specific location of the project and on the plant communities and habitats present at the site.

A total of 210 plant and animal species are either federally (U.S. Fish and Wildlife Service (USFWS) and BLM) or state-listed (Colorado, Utah, and Wyoming) and these species occur or could occur in counties within oil shale basins. In the study areas, 32 species are listed or candidates for listing by the USFWS under the Endangered Species Act (ESA); 78 species are listed as sensitive by the BLM; 24 are listed by the State of Colorado; 33 are listed by the State of Utah; and 121 are listed by the State of Wyoming. Species listed by the USFWS under the ESA have the potential to occur in all oil shale basins. Nothing in the rule changes existing processes and procedures that ensure the protection of listed or proposed species or designated or proposed critical habitat. The rule is an administrative task that does not cause any impact to listed species or critical habitat. The rule does not commit the BLM to a particular course of action or authorize any ground-disturbing activity; it merely allows the BLM to establish a regulatory framework for oil shale leasing and development. A complete evaluation of listed species in the study areas will be made before leasing occurs or project activities begin. Project-specific NEPA assessments, ESA consultations, and coordination with state natural resource agencies will address project specific impacts more thoroughly. These assessments and consultations will result in required actions to avoid or mitigate impacts on protected species.

Oil shale development, in the western states of Colorado, Wyoming, and Utah, requires infrastructure to support industry development and operation, including refining capacity, pipelines, and sources of natural gas and electricity.

The socioeconomic environment potentially affected by the development of oil shale resources includes a region of influence in each state (Colorado, Utah, and Wyoming), consisting of the counties and communities most likely affected by development of oil shale resources. Construction and operation of oil shale facilities could have a major effect on the local communities, with impacts on the economy and the social and demographic make-up of the affected communities. For example, oil shale industry development could result in the addition of thousands of new, high-value, long-term jobs in the construction, manufacturing, mining, production, and refining sectors of the domestic economy. Construction and operations could result in a direct loss of recreation employment in the recreation sectors and indirect effects such as declining recreation employee wage and salary spending and expenditures by the recreation section on materials equipment and services.

The Task Force provided employment projections for their production

scenarios, including their base case. Direct employment could range from 120 to 9,700 personnel in the base case. The total number of petroleum sector jobs (including indirect employment), estimated by the Task Force, ranges from 2,930 employees in 2015 to 20,830 in 2035 for their base case.

The final rule does not authorize any ground disturbing activities and is not an irreversible and irretrievable commitment of resources under NEPA. However, irreversible and irretrievable commitments of resources could occur as a result of future commercial oil shale projects that are authorized, constructed, and operated. The nature and magnitude of these commitments would depend on the specific location of the project development as well as its specific design and operational requirements. The construction of future commercial oil shale projects could result in the consumption of oil shale, sands, gravels, and other geologic resources, as well as fuel, structural steel, and other materials. Water resources could also be consumed during construction, although water use would be temporary and largely limited to on-site concrete mixing and dust abatement activities. The impact on biological resources from future project construction and operation could constitute an irreversible and irretrievable commitment of resources.

We received a comment concerning our statement in the proposed rule that ''the impact on biological resources from future projects construction and operation would not constitute an irreversible and irretrievable commitment of resources.'' The commenter observed that given the unknowns associated with oil shale development, such a statement was not justified.

We agree with the commenter. Future project construction and operations could result in an irreversible and irretrievable commitment of those resources. Such decisions will be subject to future NEPA analysis. However, the establishment of these regulations does not involve any commitment of those resources.

It can be assumed that the potential effects of developing the oil shale resources are likely to be adverse; however, at this point, with the significant unknowns as to what may be developed and how it may be developed, plus where and when development may occur, there is no practical way to quantify the level or degree of the potential environmental and socioeconomic consequences, much less put a monetary value on them.

Before oil shale development could occur, additional project-specific NEPA analyses would be performed at two points in time: (1) Prior to leasing; and (2) Prior to POD approval. These analyses would address environmental impacts of oil shale production including impacts to livestock grazing, recreation uses, energy and mineral resources, socioeconomics, water use, air, aquatic habitat, and wildlife and would be subject to public and agency review and comment.

The Act requires the Secretary to establish royalties, fees, rentals, bonuses, or other payments for oil shale leases that encourage development of the resource, but also ensure a fair return to the government. As a result of any leasing and development, the Federal and state governments will benefit from the revenue generated through the bonuses, rents, and eventually royalties. These bid, rental, and royalty payments are revenue to the public, but a cost to the lessee/operator of obtaining, holding, and producing from the Federal leases. Monetary payments, such as rents, royalties, and bonus bids, from the lessee to the government, do not affect total resources available to society and in the context of a benefit-cost analysis are considered transfer payments.

The bonus is the amount paid by the successful high bidder when a parcel is offered for lease. By statute the parcel must be leased for FMV. The bonus is a part of the FMV paid for the lease and lease resources. At this point in time there is no practical way to generate a meaningful estimate of the potential bonus bids or fair market values for potential lease parcels.

Until the operation starts paying a production royalty, the lessee is required to pay the government a rental. The regulations include a rental rate of $2 per acre. Maximum lease acreage is 5,760 acres for a maximum annual rental payment per lease of $11,520 (constant-dollars) per year until an operation commences shale oil production. Based on the Task Force's base case of three in-situ operations, with total maximum lease acres of 17,280 acres, those three leases could generate a rental income of $34,560 per year.

Producing leases will be required to pay a production royalty. The royalty rate for the products from oil shale leases is 5% of the amount or value of production removed or sold from the lease for the first 5 years of production. The royalty rate will increase by 1% each year starting the 6th year of commercial production to a maximum royalty rate of 12% in the 13th year of commercial production. Using the production projections, EIA reference oil prices, and other assumptions discussed in the economic analysis, royalty payments for the period of the analysis (2007–2035) could have a net present value of $4.4 billion with a 7% discount rate. We also analyzed the Federal revenue implications of alternative royalty rates given constant production and production cost assumptions. These alternative royalty revenue calculations are presented in the economic analysis for the proposed rule.

Beginning in the 10th lease year, for leases that have not commenced production, the lessee is subject to a payment in lieu of production of no less than $4 per acre. For an operation with 5,760 acres under lease and no production by the end of the eleventh lease year, the payment in lieu of production would be $23,040 (constant-dollars) per year. Based on the Task Force's base case of three in-situ operations, with total maximum lease acres of 17,280 acres, should operations on those three leases not commence production, the payment in lieu of production could generate payments to the Federal Government of $69,120 per year.

The regulations require license and lease bonds for exploration licenses and oil shale leases. These bonds are intended to guarantee payments (rents, royalties, and deferred bonuses) the lessee may owe the government. The bond amount will be determined on a case-by-case basis. The minimum lease bond is $25,000. The operator is also obligated to provide the BLM with a reclamation bond. The amount of these bonds will be based on the estimated cost for the government to contract with a third party to reclaim the operation should the operator be unable or unwilling to fulfill its reclamation obligations. The amounts of these reclamation bonds are likely to be quite significant; however, at this point there is no practical way to estimate the amount of these reclamation bonds.

There will be increases in BLM administrative costs associated with the issuance of leases and licenses and review and approval of operational plans. Most of these costs are relatively minor and will be subject to cost recovery that will be paid for by the benefitting party. There will be some BLM actions that will not be subject to cost recovery, including increased costs associated with ongoing inspection and enforcement responsibilities.

There are various costs and benefits associated with the final rule. Some effects are directly tied to the provisions

found in the regulations, such as the royalty rate. Other costs and benefits are tied to companies' ability and willingness to take advantage of the opportunities provided by the leasing regulations. The most significant of these costs and benefits include the value of shale oil that may be produced, the cost to produce the shale oil, and the environmental and socioeconomic consequences of resource development. The present values of the quantified monetary effects are expected to be in excess of the $100 million annual threshold.

We estimate the net present value of the potential monetary costs and benefits considered in this analysis to be approximately $13.6 billion using a 7 percent discount rate, $28.5 billion using a 3 percent discount rate, and $1.8 billion using a 20 percent discount rate. This conclusion is based on the calculated present value of the profit from shale oil produced from our analysis period (2007 to 2035) using EIA's reference oil price.

This conclusion includes one significant caveat. The socioeconomic and environmental costs and benefits associated with oil shale development are likely to be large. As has been noted above, we have no reasonable way to generate meaningful scenarios to quantify the potential impacts for an industry that does not exist or technologies that have not been deployed. As such, the net present value of the benefits of the rule may be significantly larger or smaller than the estimates presented in this analysis.

Small Business Regulatory Enforcement Fairness Act (SBREFA).

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(1) Has an annual effect on the economy of $100 million or more. Please see the discussion of Executive Order 12866, above.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. Should production from Federal oil shale resources occur, it is anticipated that if there is any impact to costs or prices as a result of additional production entering the market, it would be to decrease them.

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. The issuance of Federal oil shale leases and production of oil shale resources from those Federal leases would not lead to adverse effect on any of the above because an increase in products from oil shale would tend to lead to a decrease in prices and potentially lead to increased competition, employment, investment, productivity, and innovation and the increased ability of United States based enterprises to compete with foreign-based enterprises.

National Environmental Policy Act

The BLM has prepared an environmental assessment (EA WO–300–07–009) and has found that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). A detailed statement under NEPA is not required.

The Assistant Secretary for Land and Minerals Management has selected the Proposed Action to amend 43 CFR subtitle B Chapter II, by adding parts 3900, 3910, 3920 and 3930, as discussed in this rule based on the analysis in the EA and the information contained in this preamble. The Assistant Secretary's final decision associated with this rule incorporates the Decision Record for the EA. The BLM has placed the EA and the rationale for the Finding of No Significant Impact/Decision Record on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. We received several comments on the draft EA. Substantive comments are summarized and responses are provided below. As appropriate, the EA was modified based on the comments received.

Comment EA–1: The draft EA was based on a lack of information and incomplete environmental analysis. Without understanding critical issues and options for protecting air and water an informed decision cannot be made. The draft EA does not increase the BLM's understanding of the environmental consequences of commercial development.

The EA is based on the available information. It demonstrates that the BLM understands the critical issues and options and that the BLM has sufficient understanding of the environmental consequences of promulgating the regulations.

The EA contains the prerequisite level of information necessary to make a reasoned choice among the alternatives based on the scope and nature of the proposed action, in this case, the promulgation of a rule. The proposed action is very limited in scope—the establishment of a fixed, largely procedural framework for the administration of an oil shale program, which governs the general manner in which industry and the BLM will operate. Congress mandated the Secretary to publish final regulations establishing a commercial oil shale leasing program. This congressional mandate is the basis for the underlying purpose and need for proposing the specific regulatory alternatives as well as for the decision to be made. Consistent with this purpose and need, for its ''no action'' alternative, the draft EA evaluates an alternative that is not to promulgate regulations, rather than a ''no leasing'' alternative. The EA also objectively evaluates alternatives for a competitive and a preference right leasing program, as well as an alternative, that increases the bonding requirements and fully applies environmental best management practices (BMP).

The EA incorporates by reference information from the ''Environmental Consequences'' discussion from the PEIS, in order to provide the decision maker with additional information on the nature of the effects of possible future development of these resources, if there were to be future commercial leasing of oil shale resources, to allow the Department to make a more informed decision (see Response to Comment EA–2), however, the decision addressed by the EA is whether to promulgate regulations.

The rule, provides for appropriate NEPA analysis for future actions that may have environmental consequences, and outlines specific environmental processes and standards to put the lessee or operator on notice of what is required. For example, a provision at section 3900.50 reinforces the requirement that NEPA documents must be prepared prior to issuance of a lease or exploration license. The environmental analysis will include the consideration of direct, indirect, and cumulative effects of the proposed lease or exploration license issuance, reasonable alternatives, and mitigation measures to protect resources and resource values, as well as what level of development may be anticipated. This specific analysis may include mitigation measures such as BMPs, specific protections, or avoidance to mitigate or eliminate impacts to sensitive species or resources, such as air and water quality.

The EA demonstrates that the BLM has enough information and understanding to establish a regulatory program. The regulations are not a commitment to issue any lease or to approve any POD.

Comment EA–2: The draft EA does not contain any substantive analysis and makes broad conclusory statements, it is impossible to anticipate with any certainty the environmental consequences of development. The draft EA relies on the PEIS for its evaluation of the environmental consequences, and therefore gaps in the PEIS such as no in-depth analysis of direct, indirect, and cumulative impacts or the identification of actions are carried forward to the draft EA, as such, the BLM did not take a ''hard look'' at the environmental consequences of the proposed rule.

The EA takes a hard look at the environmental consequences of oil shale development, even though the regulations being promulgated do not in and of themselves have an impact on the environment. As discussed in Response to Comment EA–1, the scope and nature of the proposed action and alternatives is the establishment of a regulatory framework for an oil shale program. The analysis looks at the effects of the various components, requirements, and processes outlined in the rule's provisions. These rules are primarily procedural and do not commit any resources or authorize any BLM action that would have a direct, indirect, or cumulative impact on the physical, biological, or socioeconomic environment. (*Also, see* Response to Comment EA–8.) Any commitment of resources or approval of exploration, development, or production activities would be based on future decisions made in compliance with the BLM's land use planning and NEPA procedures, as required by the various sections of the rule and is outside the scope of this EA.

Although the EA is only evaluating the impacts of a regulatory framework and is not required to analyze the impacts of commercial development, the EA incorporates by reference information and analyses from the PEIS to provide the decision-maker with additional information and a general understanding of the nature of the environmental consequences that can be expected from future commercial development. Chapter 4 in the PEIS presents an analysis of oil shale technologies and their potential environmental and socioeconomic impacts, as well as potential mitigation measures that may be considered, if warranted, prior to the issuance of a lease.

We disagree that the PEIS contains significant ''gaps'' that could be filled with analysis of available data. To the extent that the comment pertains to portions of the PEIS that are not incorporated by reference in the EA, it is not relevant to this decision.

The PEIS discusses the potential direct, indirect, and cumulative impacts of oil shale development based primarily on BLM professional expertise and experiences with surface-disturbing activities from other types of mineral development (e.g., coal mining, and oil and gas). Because there is no commercial oil shale industry in the United States, there is no data available on what, if any, extraction process will be commercially viable, and thus there is uncertainty about the precise impacts from commercial oil shale development. Nonetheless, based on BLM's experience with other types of mineral development, the types of impacts discussed in the PEIS may occur. Using comparable data from other mineral programs, the BLM determined that there was sufficient information on the nature of the effects for a land use allocation decision, but not sufficient information to support a lease sale. The analysis discloses potential effects associated with leasing and development to provide the decision-maker the available, essential information to make an allocation decision. In view of this limited scope, the PEIS, in particular, in Chapter 6 of that document, fulfills the requirement to take a ''hard look'' at the direct, indirect, and cumulative consequences of the allocation alternatives described in Chapter 2 of the PEIS. The EA was modified to make it clear that it was BLM's intent to incorporate by reference the impact analysis, and not tier to the PEIS.

Comment EA–3: Stating that subsequent NEPA analysis will be required cannot be used to avoid compliance with NEPA.

The EA does not purport to avoid compliance with NEPA by stating that subsequent NEPA analysis will be required. The EA fully assesses and discloses the environmental consequences of the adoption of this rule and other reasonable alternative regulatory approaches and is in full compliance with NEPA. The EA presents sufficient information to the decision-maker to aid in deciding upon the requirements that will govern the leasing of oil shale and the process for review and conditioning of oil shale operations. As stated in the EA, the regulations make no commitment on the part of the BLM to approve any action, grant any permit or issue any lease. The regulations are primarily procedural, establishing a framework in which specific development proposals will be subject to intensive scrutiny and project-specific regulation in the form of conditions of approval, rather than define the specific activities authorized or prohibited or the conditions under which they can occur, except in the broadest terms.

As the EA explains, prior to any leasing or development taking place in accordance with the procedural requirements of the rule, several other decision points will need to be reached. Each of these decision points will involve a new proposed action, which will be subject to appropriate NEPA analysis, and will occur prior to any impacts to the environment. These decision points are land use planning allocations, such as those analyzed in the PEIS on a programmatic level, issuance of exploration licenses, identification of parcels for offering at a lease sale, conversion of the R, D and D leases to commercial leases, and approval of on-the-ground projects or activities. The required analysis of environmental consequences at each of these future decision points, or stages, will be facilitated by the availability at that decision point of more site-specific information, about the exact location, technology and process proposed for the operation, which will allow for that analysis to focus on the issues relevant to the specific proposal. As a consequence, specific measures to mitigate or eliminate impacts identified at that time can be developed.

Comment EA–4: The BLM is performing a piecemeal approach to NEPA compliance by proceeding without an assessment of multiple actions where each may individually have an insignificant environmental impact but which collectively have a substantive effect.

The BLM is not ''piecemealing'' its compliance with NEPA. The BLM is engaged in staged decision making. The unavailability of data regarding the technologies that might become commercially viable in the future and the requirements of the EP Act to adopt regulations for a commercial oil shale leasing program combine to render staged decision making and NEPA analysis for commercial oil shale leasing and development the most effective approach. The appropriate NEPA analysis will accompany each stage of the decision making.

The EA looks at the impacts of this rule. The PEIS analyzes, at a programmatic level, the decision to allow lands to be open to oil shale lease and therefore, examines possible impacts of development of these resources over the planning area. At each decision point, or stage, from leasing to development of individual projects, the scope of the analysis under

NEPA will be consistent with the proposed action contemplated at that decision point. Such analysis would necessarily include, particularly in the cumulative impacts analysis, the past, present, and reasonably foreseeable future actions that are appropriately included in relation to the proposed action presented for analysis at that time. Although there is no available data that could support a non-speculative cumulative effects analysis at this time, such information will start to become available when the industry is ready to commit to technologies and processes to develop oil shale. A more specific analysis of the impact of oil shale activities, including any possible ''collective'' impacts, will be performed, and a Reasonably Foreseeable Development Scenario for oil shale development will be prepared to help focus the analysis. In this way, the BLM will avoid a ''piecemeal'' approach (see Response to Comment EA–3).

Comment EA–5: The draft EA does not provide the detailed analysis or cumulative analysis as required by NEPA analysis.

The EA provides the analysis appropriate for the decision to promulgate the regulations. Given that purpose and need, the discussion of types of impacts from oil shale development is quite detailed, particularly in light of the nascent stage of the industry. In fact, given the largely procedural character of the rule and the speculative character of the environmental impacts from a future regulated industry, one could argue that the proposed action of promulgating the rule is subject to at least one of the Department of the Interior categorical exclusion. As discussed in Response to Comment EA–1, the scope and nature of the proposed action and alternatives is the establishment of a regulatory framework for an oil shale program. The analysis looks at the various components, requirements, and processes outlined in the rule's provisions. These regulations are process-oriented and do not commit any resources or authorize any BLM action that would have a direct, indirect, or cumulative impact on the physical, biological, or socioeconomic environment. As there are no environmental impacts caused by the proposed action or alternatives, it follows that there are no cumulative impacts either. The analysis in the EA is appropriate, for the scope of the proposed action.

Comment EA–6: Does the draft EA look at the elasticity of production under different policy scenarios—to justify this set of policy-driven rules and regulations as the optimum combination of options.

The draft EA did not speculate as to how future production might be different under different regulatory schemes. We have no reason to believe that such differences would affect production levels, which depend more on technological advances, demand, the prices of competing fuels, land use allocation decisions and subsequent site-specific decisions informed by site-specific environmental analysis.

Comment EA–7: The draft EA is so devoid of substance that it cannot be used to meaningfully support any subsequent leasing decision.

As discussed in Response to Comment EA–1, the nature and scope of the proposed action is the establishment of a regulatory framework for an oil shale program and does not commit the BLM to hold a lease sale. That is, this EA is not intended to support any subsequent leasing decision. As explained in the PEIS, the BLM intends to prepare separate NEPA analysis to support any decision to lease, which will be a proposed action entirely separate and apart from that under consideration here, or in the PEIS.

Comment EA–8: The draft EA incorrectly concludes that no significant impacts can result from its current decision, yet the draft rule identifies significant impacts from commercial development, and, all the factors which are used to define ''significantly'' based on intensity have been met; including setting a precedent, controversial proposed action. The decisions made in these regulations (i.e., royalty rates) will have a significant impact on the scope and pace of commercial oil shale development, and therefore will have direct, indirect, and cumulative effects on the physical biological and socioeconomic environment.

No significant impacts result from promulgating the regulations because the Secretary could lease Federal oil shale without the regulations, and similarly could decide not to offer leases after regulations are promulgated; the regulations are not causing any tract to be leased or to be developed. The BLM considered the context and intensity of the consequences of promulgating the regulations, and whether the establishment of the regulations, in of themselves, could significantly affect the environment.

When the factors associated with the intensity or severity of impact are evaluated against the provisions of the regulations, they do not meet the criteria as to the degree to which the rule affects the various resources or historic properties, and the rule does not contribute incrementally to the cumulative effect of other past, present, or reasonably foreseeable Federal or non-Federal actions.

The BLM evaluated the severity of effects associated with the rule. To determine significance, the severity of the effects must be examined in terms of the type, quality, and sensitivity of the resource involved; the location of the proposed project; the duration of the effect (short- or long-term) and other considerations of context. Significance of the effect will vary with the setting of the proposed action and the surrounding area. The rule is primarily procedural and does not commit any resources, authorize any BLM action in a specific location, or result in short- or long-term impact, and therefore the factors and criteria related to intensity are not applicable.

The commenter notes that an EIS is required if the action is considered controversial. The criteria for determining whether controversy makes an action significant is 40 CFR 1508.27(b)(4), which states ''The degree to which the effects on the quality of the human environment are likely to be highly controversial.'' CEQ guidelines require that an EIS be prepared where there is a substantial dispute as to the size, nature, or effect of the ''major'' Federal action. There are no such disputes as to the regulations, which have no effects on the environment, and thus the ''controversial'' criterion does not apply.

A commenter notes that an EIS is required if the action may establish a precedent for future actions with significant effects or represents a decision in principal about a future consideration. The rule is not a decision on any project and therefore does not set a precedent for such decisions in the future, nor establish a custom or practice. The rule contains standards, procedures, or requirements that govern the general manner in which industry and the BLM will operate. It is a set of rules that govern conduct and guide actions but do not commit, on the part of the BLM, to approve or authorize an action or require a specific decision.

The royalty rate may affect the interest in leasing and development, but the rule does not commit the BLM to engage in leasing or approve development. The royalty rate may be one of the factors used in the development of a Reasonably Foreseeable Development Scenario to help focus the NEPA analysis for a future leasing decision. The pace and scope of that oil shale development are issues outside the scope of the rule and its supporting EA. The Secretary retains

discretion to decide whether, when, and where to offer tracts for lease.

Comment EA–9: The NEPA analysis in support of the rule is flawed because the promulgation of the oil shale regulations is a ''major federal action'' and that the draft rule states that significant impacts from commercial development can occur and therefore, the BLM is required to prepare a detailed EIS.

The EA properly concludes that the promulgation of regulations is not a major Federal action significantly affecting the human environment. Whether or not a detailed EIS is required turns on the significance of the effects of the decision before the Secretary, not all of the impacts of commercial oil shale development. The Secretary has long had statutory authority to lease Federal oil shale without any regulations. The promulgation of this largely procedural rule itself will not cause any impacts to the quality of the human environment, much less ''significant'' ones.

Comment EA–10: The BLM inappropriately tiered the draft EA to the PEIS, and therefore the BLM's reliance on the PEIS as the source of information about environmental consequences of the rule is not grounded in law and nor provides a thorough or defensible analysis of specific technologies and associated impacts. The BLM cannot tier its EA to the PEIS.

The comment is accurate that it was inappropriate to describe the EA as tiered to the PEIS. The EA was modified to clarify that it was the BLM's intent to incorporate by reference the impact analysis, and not tier to the PEIS. Tiering is distinct from incorporation by reference. Incorporation by reference allows information presented in one source to be referred to in another source, without the necessity of simply copying out that information. As explained in the draft EA, the EA incorporates by reference information on the environmental consequences of the development of oil shale resource that is presented in the Chapter 4 of the PEIS. This was done to inform the decision-makers as to the possible environmental consequences of developing these resources.

Comment EA–11: The BLM did not publish the draft EA or provide copies of the document to the states of Colorado, Wyoming, and Utah until requested.

There is no legal requirement to publish a draft EA for public comment. Nonetheless, the BLM did notify the public of the availability of the draft EA. The BLM placed the EA on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section of the **Federal Register** Notice for the proposed rule. The BLM invited the public to review these documents and suggested that anyone wishing to submit comments in response to the EA do so in accordance with the Public Comment Procedures section. Although the BLM is under no obligation to provide copies of the document to the States of Colorado, Wyoming, and Utah, of course BLM did provide copies to the state agencies, as it would any other member of the public, upon request.

Comment EA–12: The draft EA failed to analyze the impacts of climate change and take actions to reduce it.

The rule does not authorize or cause any surface disturbing activity and therefore will not cause either the emissions of greenhouse gases (GHG), or any impacts to the climate. The EA incorporates by reference the description of the affected environment from the PEIS which reflects the current condition of resources in the area where oil shale is found, which reflects any effects to date of the climate change phenomenon. It also incorporates the generic impact analysis from Chapter 4 of the PEIS, including a discussion of the possible impacts from development of oil shale resources on air quality, as well as any GHG emissions that may result from this development. The discussion also presents potential mitigation measures that may be considered for use, if warranted, on the basis of project-specific NEPA analysis to be conducted at appropriate decision points.

The EA was modified to make it clear that information concerning climate change was incorporated by reference.

Comment EA–13: Commenter references information or analysis contained in the PEIS and alleges that the BLM has not adequately addressed the impacts of oil shale activities on various resources like climate change, wildlife, fish, and water usage, etc.

The commenter did not specify any information that was not analyzed nor any impacts attributable to the contemplated rulemaking. It is even unclear whether the commenter is referring to the analysis contained or incorporated in the EA. The analysis in and incorporated in the EA is adequate for the purpose of informing the choices in the rulemaking.

Comment EA–14: The BLM incorrectly determined to prepare an EA versus an EIS. Based on the draft EA, it is clear that oil shale development on the public lands will have a significant impact on the environment. Further environmental review is needed, otherwise the finalization of the rule is arbitrary and capricious.

The regulations do not cause any change to the environment, but establish processes for review of proposals to lease and develop oil shale. The Secretary's authority to lease is long-standing and is not dependent upon promulgation of the regulations. Likewise, oil shale development on the public lands is separate from, and was not prior to EP Act dependent upon, the regulations. There is nothing arbitrary or capricious about the regulations or the EA.

The BLM prepared the EA in accordance with CEQ regulations implementing NEPA, and relevant Departmental guidance, in order to determine whether the proposed action of establishing a procedural framework governing a leasing program for the development of oil shale resources may result in significant effects on the quality of the human environment, and to inform the decision maker. As explained in the EA, the establishment of the rule is largely a procedural enterprise, with no environmental effects. It does not represent a decision to authorize such development and therefore such development is not an indirect effect of the action. Accordingly, the significance of impacts of that development does not affect the finding that the rule does not have significant impacts. Even if an EIS were required, the BLM has analyzed the environmental consequences of the commercial development of oil shale on Federal lands at a programmatic level in the PEIS.

Comment EA–15: The BLM failed to consult with the FWS concerning the proposed development impacts on endangered and threatened species in the region and therefore violates the ESA.

The rule does not issue any permit or lease or approve the issuance of any plan of oil shale development. There is no proposed oil shale development associated with the rule. The BLM determined that this rule would have no effect on listed or proposed species, or on designated or proposed critical habitat, under the ESA, and therefore consultation under Section 7 of the ESA is not be required. Moreover, nothing in the rule changes existing processes and procedures that ensure the protection of listed or proposed species or designated or proposed critical habitat. Further compliance with the ESA will occur if and when applications are filed with the BLM.

Comment EA–16: The lack of knowledge of oil shale operations makes it impossible for the BLM to adequately

explain how this industry will not have a significant affect on the environment.

The commenter is confusing the nature and scope of the proposed action for the EA with oil shale industrial development. The EA does not conclude that the development of oil shale will have no significant impact on the environment. The EA, analyzes the environmental consequences of a regulatory framework, which will govern any leasing of oil shale or authorization of operations on Federal lands. However, the EA incorporates by reference Chapter 4 of the PEIS, which presents an analysis of oil shale technologies and their potential environmental and socio-economic impacts, to the extent they can be predicted, as well as potential mitigation measures that may be considered, if warranted, prior to the issuance of a lease. This informs the rulemaking decision on the nature of the effects of possible future development of these resources, if there was future commercial leasing of oil shale resources (*see* Response to Comments EA–1 and EA–2). The analyses need only consider available information and not await all the information needed to support the approval of operations. The impacts of oil shale operations will be analyzed in future NEPA documents as decisions become ripe and the necessary information becomes available. NEPA does not require that the BLM forestall promulgation of regulations until all impacts of commercial oil shale development are known with certainty.

Comment EA–17: Comments on the DPEIS were incorporated by reference to show how oil shale development could not move forward in an ''environmentally sound manner.''

As explained in Response to Comment EA–2, the proposed actions analyzed in the EA and the PEIS are different, and therefore, these analyses are different in scope. The commenter has not explained why these comments need to be addressed in the context of the decision to adopt this rule.

The comments on the PEIS were appropriately addressed in the Final PEIS and are located on pages 4785 to 4846, index number 52766. The EA incorporates by reference the generic analysis that is contained in the Chapter 4 of the FPEIS, as modified based on the comments received.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The RFA establishes an analytical process for determining how public policy goals can best be achieved without erecting barriers to competition, stifling innovation, or imposing undue burdens on small entities. Executive Order 13272 reinforces executive intent that agencies give serious attention to impacts on small entities and develop regulatory alternatives to reduce the regulatory burden on small entities. To meet these requirements, the agency must either conduct a regulatory flexibility analysis or certify that the final rule will not have ''a significant economic impact on a substantial number of small entities.''

Section 369 of the EP Act requires the Department to establish regulations for a commercial oil shale leasing program. Although this rule would only directly affect entities that choose to explore and develop oil shale resources from land administered by the BLM, there is no way to know which firms would hold exploration licenses or leases or operate on Federal lands in the future. The extent to which the rule will have an actual impact on any firm depends on whether the firm would hold exploration licenses or leases or would operate on Federal lands.

Currently, active oil shale research and development on Federal lands is limited to a few firms. Chevron, EGL Resources, Oil Shale Exploration Company, and Shell Oil Company hold R, D and D leases and are the only companies currently conducting operations on Federal oil shale leases. Of the four companies holding R, D and D leases, two are major oil companies and two are small research and development firms.

With implementation of these regulations, technological advances, and favorable market conditions that would support oil shale development, the BLM anticipates an increase in the number of firms involved in oil shale development. However, the number of firms, large or small, involved in oil shale development on Federal lands would likely remain quite limited. Given the likely size of the industry that may eventually be involved in the leasing and development of Federal oil shale resources, it is reasonable to conclude that this rule would not significantly impact a ''substantial number of small entities.''

This rule provides for the leasing and management of oil shale resources on Federal lands. Provisions covered in this rule include exploration license and competitive leasing procedures, requirements and terms, and POD and operational requirements.

To explore on Federal lands, the operator would have to have an exploration license or an oil shale lease. The process to obtain an exploration license is relatively straightforward and does not entail significant fees, e.g., $295 nonrefundable filing fee. Commercial oil shale leases will primarily rely on a process of leasing parcels nominated by industry. The BLM may also choose to offer certain lands for lease. With the exception of R, D and D lease conversions, all leases will be offered competitively. The BLM will not collect an application or nomination fee; however, the successful high bidder will be required to pay certain costs associated with the BLM offering the tract for lease, in addition to the bonus bid. At the time of lease sale, the high bidder will be required to submit a payment of one fifth of the amount of the bonus bid. Leases are also subject to a $2.00 per acre rental.

The terms and conditions for operating under an exploration license or commercial lease are those needed to protect the environment and resource values of the area and to ensure reclamation of the lands disturbed by the activities. Exploration and development plans must be submitted to the BLM for approval. All operations, whether under an exploration license or a commercial oil shale lease, are required to provide the BLM with a license or lease bond. In addition, operators are required to provide the government with a bond to cover the cost of site reclamation and closure.

Production from commercial oil shale leases will be subject to a Federal royalty. A royalty on the amount or value of production removed or sold from the lease applies to commercial production from these leases.

The ability to obtain an exploration license and/or to compete for a commercial oil shale lease is not affected by the size of the company. Exploration licenses require a nominal filing fee ($295 per filing) and have no minimum acreage. Leases have no minimum tract acreage; lease processing costs are paid by the successful bidder; and bonus bids may be deferred over a 5 year period. These aspects of the licensing and leasing procedures allow small entities to better compete for Federal oil shale licenses and leases with larger, well-capitalized companies. As required by the EP Act, all royalties, rentals, bonus bids, and other payments in this rule are to encourage development of the oil shale resources while ensuring a fair return to the

government. The regulatory provisions, including filing fees, rentals, and production royalties, will not have a significant economic impact on lessees or operators, regardless of the firm's size.

Therefore, the BLM has determined that under the RFA this rule does not have a significant economic impact on a substantial number of small entities.

Several commenters suggested that there will be significant hurdles for small entities hoping to participate in the leasing and development of Federal oil shale resources. The commenter suggested that the proposed rule creates high hurdles to entry into the industry. The specific example provided is the combined effect of the minimum bid and the minimum tract size. The $1,000 per acre minimum bid coupled with the 160 acre minimum lease size results in a very onerous sum, in the form of a minimum bonus bid, for small operators. Commenters argued the minimum lease size needs to be no more than 1–2 acres. Other provisions identified as unnecessarily creating large up-front costs included competitive bidding, front-end lease rentals, and lease bonding. A commenter suggested we created the impression that there are no costs to the applicant until the small entity becomes the successful bidder.

We agree with the commenters' suggestion that the combined effect of the minimum bid and minimum lease acreage could be a deterrent to small entities participating in the leasing and development of oil shale resources on Federal lands. Based on the comments received, we have decided to drop the minimum lease acreage requirement from the final rule. Decisions on tract size will be made as part of the tract delineation process. We do not agree with the assertion that the other identified provisions, including the bonus, rental, and bonding requirements, are significant deterrents to small entities. Clearly these are costs in obtaining and holding a Federal oil shale lease; however, they are not burdens created by the regulations, but rather by statute. As for the suggestion that we implied there are no costs except for the successful bidder; that was not our intent. It is important to understand that this is likely to be a high cost industry, including some of the regulatory and statutory requirements. We have attempted to reduce the front-loading impact of those costs.

Commenters also argued that the proposed rule allows large entities to tie up too much of the resource at little cost. They suggest that the penalties for missing diligence milestones are so insignificant that a large operator will be able to tie up significant resources for 20 or more years at a maximum cost of $250 per acre per year. Deferred development for at least ten years and payments in lieu of production were given as other examples of provisions that allow large, well-capitalized entities to hold large tracts of oil shale lands.

Given the technological and economic unknowns associated with oil shale development and the potential for long development timeframes, we intentionally kept the lease-hold costs down to provide an element of stability and certainty for entities, large or small, attempting to develop this vital resource. Large entities may be in a better position to take advantage of these provisions, but we do not view these provisions as a deterrent to small entities.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) the rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector, in the aggregate, of $100 million or more per year; nor does this rule have a significant or unique effect on state, local, or tribal governments. The rule imposes no requirements on any of those entities. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

This rule is a not a government action capable of interfering with constitutionally protected property rights. A takings implication assessment is not required. The rule does not authorize any specific activities that would result in any effects on private property. Therefore, the Department has determined that the rule will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the levels of government. It will not apply to states or local governments or state or local governmental entities. The management of Federal oil shale leases is the responsibility of the Secretary and the BLM. This rule does not alter any lease management or revenue sharing provisions with the states, nor does it impose any costs on the states. Therefore, in accordance with Executive Order 13132, the BLM has determined that this rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM determined that this rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have found that this rule may include policies that have Tribal implications. The rule implements the Federal oil shale leasing and management program, which does not apply on Indian Tribal lands. At present, there are no oil shale leases or agreements on Tribal or allotted Indian lands. If tribes or allottees should ever enter into any leases or agreements with the approval of the Bureau of Indian Affairs, the BLM would then likely be responsible for the approval of any proposed operations on Indian oil shale leases and agreements. In light of this possibility, and because Tribal interests could be implicated in oil shale leasing on Federal lands, the BLM began consultation with potentially affected Tribes on the proposed oil shale regulations, and continued to consult with Tribes during the comment period on the proposed rule.

On July 21, 2008, the BLM sent consultation letters to all Indian Tribal Governments potentially affected by the proposed regulations. In the letter, the BLM offered to meet with any of the Tribal Leaders or their representatives, and offered them the opportunity to comment on the proposed rule during the public comment period. As of October 8, 2008, we received one response to our request in the form of a comment letter. The commenter concluded that the proposed regulations would not affect their Tribal traditional cultural properties or historic properties.

Information Quality Act

In developing this rule, we did not conduct or use a study, experiment or survey requiring peer review under the

Information Quality Act (Section 515 of Pub. L. 106–554).

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, the BLM has determined that this rule is not likely to have a substantial direct effect on the supply, distribution, or use of energy. Executive Order 13211 requires an agency to prepare a Statement of Energy Effects for a rule that is a significant regulatory action under Executive Order 12866 or any successor order and is likely to have a significant adverse effect on the supply, distribution, or use of energy.

As discussed earlier in this preamble, the BLM believes that the rule will likely increase energy production and will not have an adverse effect on the supply, distribution, or use of energy, and therefore has determined that the preparation of a Statement of Energy Effects is not required.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that this rule will not impede facilitating cooperative conservation; takes appropriate account of and considers the interests of persons with ownership or other legally recognized interests in the land or other natural resources; properly accommodates local participation in the Federal decision making process; and provides that the programs, projects, and activities are consistent with protecting public health and safety. The BLM, in coordination with the MMS, held three ''listening sessions'' with representatives of the governors of the states of Colorado, Utah, and Wyoming. The purpose of the ''listening sessions'' was to provide the governor's representatives the opportunity to share their ideas, issues, and concerns relating to the proposed commercial oil shale leasing regulations. Section 369(e) of the EP Act requires that not later than 180 days after the publication of the final regulations, the Secretary (as delegated to the BLM), is to consult with the governors of the states with significant oil shale and tar sands resources on public lands, representatives of local governments in such states, interested Indian tribes, and other interested persons to determine the level of support and interest in the states in the development of oil shale resources. In addition, the regulations contain a section providing for comments from state governors, local governments, and interested Indian tribes prior to offering lands for lease for oil shale. The comment period will occur prior to the BLM's publication of a call for nominations.

Paperwork Reduction Act of 1995 (PRA)

This final rule contains new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), OMB has reviewed and approved the information collection requirements and assigned OMB control number 1004–0201, which expires November 30, 2011.

The title of the new information collection request (ICR) is ''Parts 3900–3930—Oil Shale Management—General.'' This final rule establishes regulations for a commercial leasing oil shale leasing program. The BLM will collect information from individuals, corporations, and associations in order to:

(1) Learn the extent and qualities of the public oil shale resource;

(2) Evaluate the environmental impacts of oil shale leasing and development;

(3) Determine the qualifications of prospective lessees to acquire and hold Federal oil shale leases;

(4) Administer statutes applicable to oil shale mining, production, resource recovery and protection, operations under oil shale leases, and exploration under leases and licenses;

(5) Ensure lessee compliance with applicable statutes, regulations, and lease terms and conditions; and

(6) Ensure that accurate records are kept of all Federal oil shale produced.

Prospectively estimating the annual burden hours for the commercial oil shale program is difficult because the oil shale industry is at the research and development stage where there is a lack of available information and the future technology to be used is uncertain. The burden hour estimates in the following charts were modeled on a previous ICR completed for the Federal coal program, as the information collection associated with that program is somewhat similar to the planned oil shale leasing program. The coal burden hour estimates were adjusted to reflect the differences in the two processes. It is also difficult to make a prospective estimate of the number of annual responses; therefore, the BLM has used one response for each activity as a starting point, except for the number of applications received. We anticipate that we could receive several applications after these regulations go into effect. The BLM estimates that this ICR for the oil shale management program will result in 23 responses totaling 1,794 burden hours (Table 1). The BLM also estimates that there will be processing/cost recovery fees in the amount of $526,652 (Table 2).

We received one public comment that addressed the information collection aspects of the proposed rule. It mainly stated that the PRA requires the BLM to develop a final rule that maximizes the utility and the public benefit of the information collected in lease applications, and went on to say that this requirement dovetails with the requirements in the EP Act that the regulations encourage initial development and sustain diligent development throughout the life of the lease, because initiating and sustaining predictable development are prerequisites for minimizing uncertainty in state and local impact projections. The comment urged that these interconnected principles require that the BLM establish a royalty rate sufficiently low to ensure that development will be initiated and diligently pursued, citing foreign examples where royalties on tar sands were entirely forgiven and successfully encouraged development, and where a 1.8 percent royalty led to a commercially viable oil shale project. We address the royalty rate and the rationale for selecting it the preamble discussion of section 3903.52.

The comment also stated that the information collection clearance package that the BLM submitted to OMB at the time the proposed rule was published contained a premature, and thus invalid, certification that we had complied with the requirements of section 3506(c)(3) of the PRA. The comment stated that we could not make this certification until we had considered public comments submitted on the information collection, and concluded that we need to describe in the supporting material how the BLM would use the two principles discussed in the preceding paragraph that govern royalty determination to ensure that the agency will maximize the utility and public benefit of the information collected.

The certification is made by the Department as part of the routine submission of the information collection to OMB, but the certification is not effective and was never intended to be effective until it is finally approved by OMB. The certification was not premature—the proposed rule could not be submitted to OMB without the certification.

The comment concluded by urging that the OMB Terms of Clearance for the Information Collection Request should

require that the record demonstrating the BLM's compliance with the royalty principles of encouraging and sustaining diligent development be included in the preamble of the final rule. As stated earlier, this information appears elsewhere in this preamble.

See the following tables for burden hours and processing/cost recovery fees by CFR citation:

Burden Breakdown

TABLE 1

Parts 3900–3930 burden activity	Information collected	Hour burden	Average number of annual responses	Average annual burden hours
Subpart 3904—Bonds and Trust Funds				
A prospective lessee or licensee must furnish a bond before a lease or exploration license may be issued or transferred or a POD approved.	*Section 3904.12*—File one copy of the bond form with original signatures in the proper BLM state office. Bonds must be filed on an approved BLM form. The obligor of a personal bond must sign the form. Surety bonds must have the lessee's and the acceptable surety's signature.	1	1	1
The BLM will review the bond and, if adequate as to amount and execution, will accept it in order to indemnify the United States against default on payments due or other performance obligations. The BLM may also adjust the bond amount to reflect changed conditions. The BLM will cancel the bond when all requirements are satisfied.	*Section 3904.14(c)(1)*—Prior to the approval of a POD, in those instances where a state bond will be used to cover all of the BLM's reclamation requirements, evidence verifying that the existing state bond will satisfy all the BLM reclamation bonding requirements must be filed in the proper BLM office. The BLM will use no specific form to collect this information.	1	1	1
Part 3910—Oil Shale Exploration Licenses				
For those lands where no exploration data is available, the lease applicant may apply for an exploration license to conduct exploration on unleased public lands to determine the extent and specific characteristics of the Federal oil shale resource.	*Section 3910.31*—The BLM will use no specific form to collect the information. The applicant will be required to submit the following information: (1) Name and address of applicant(s); ..... (2) A nonrefundable filing fee of $295; ..... (3) A general description of the area to be drilled described by legal land description; and. (4) 3 copies of an exploration plan that includes the exact location of the affected lands, the name, address, and telephone number of the party conducting the exploration activities, a description of the proposed methods and extent of exploration, and reclamation.	24	1	24
The BLM will use the information in the application to: (1) Locate the proposed exploration site; (2) Determine if the lands are subject to entry for exploration; (3) Prepare a notice of invitation to other parties to participate in the exploration; and (4) Ensure the exploration plan is adequate to safeguard resource values, and public and worker health and safety.				
The BLM will use this information from a licensee to determine if it will offer the land area for lease.	*Section 3910.44*—Upon the BLM's request, the licensee must provide copies of all data obtained under the exploration license in the format requested by the BLM. The BLM will consider the data confidential and proprietary until the BLM determines that public access to the data will not damage the competitive position of the licensee or the lands involved have been leased, whichever comes first. Submit all data obtained under the exploration license to the proper BLM office.	8	1	8

TABLE 1—Continued

Parts 3900–3930 burden activity	Information collected	Hour burden	Average number of annual responses	Average annual burden hours
Subpart 3921—Pre-Sale Activities				
Corporations, associations, and individuals may submit expressions of leasing interest for specific areas to assist the applicable BLM State Director in determining whether or not to lease oil shale. The information provided will be used in the consultation with the governor of the affected state and in setting a geographic area for which a call for applications will be requested.	*Section 3921.30*—The BLM will request this information through the publication of a notice in the **Federal Register** and will use no specific form to collect the information. The expression of leasing interest will contain specific information consisting of name and address and area of interest described by legal land description.	4	1	4
Subpart 3922—Application Processing				
Entities interested in leasing the Federal oil shale resource must file an application in a geographic area for which the BLM has issued a "Call for Applications." The information provided by the applicant will be used to evaluate the impacts of issuing a proposed lease on the human environment. Failure to provide the requested additional information may result in suspension or termination of processing of the application or in a decision to deny the application.	*Section 3922.20 and 3922.30*—Lease applications must be filed in the proper BLM state office. No specific form of application is required, but the application must include information necessary to evaluate the impacts of issuing the proposed lease on the human environment, including, but not limited to, the following: (1) Name, address, telephone number of applicant, and a qualification statement, as required by subpart 3902; (2) A delineation of the proposed lease area or areas, the surface ownership (if other than the United States) of those areas, a description of the quality, thickness, and depth of the oil shale and of any other resources the applicant proposes to extract, and environmental data necessary to assess impacts from the proposed development; (3) A description of the proposed extraction method, including personnel requirements, production levels, and transportation methods including: (a) A description of the mining, retorting, or in situ mining or processing technology that the operator would use and whether the proposed development technology is substantially identical to a technology or method currently in use to produce marketable commodities from oil shale deposits; (b) An estimate of the maximum surface area of the lease area that will be disturbed or undergoing reclamation at any one time; (c) A description of the source and quantities of water to be used and of the water treatment and disposal methods necessary to meet applicable water quality standards; (d) A description of the regulated air emissions; (e) A description of the anticipated noise levels from the proposed development; (f) A description of how the proposed lease development would comply with all applicable statutes and regulations governing management of chemicals and disposal of solid waste. If the proposed lease development would include disposal of wastes on the lease site, include a description of measures to be used to prevent the contamination of soil and of surface and ground water;	308	3	924

TABLE 1—Continued

Parts 3900–3930 burden activity	Information collected	Hour burden	Average number of annual responses	Average annual burden hours
	(g) A description of how the proposed lease development would avoid, or, to the extent practicable, mitigate impacts to species or habitats protected by applicable state or Federal law or regulations, and impacts to wildlife habitat management; (h) A description of reasonably foreseeable social, economic, and infrastructure impacts to the surrounding communities, and to state and local governments from the proposed development; (i) A description of the known historical, cultural, or archeological resources within the lease area; (j) A description of infrastructure that would likely be required for the proposed development and alternative locations of those facilities, if applicable; (k) A discussion of proposed measures or plans to mitigate any adverse socio-economic or environmental impacts to local communities, services and infrastructure; (l) A brief description of the reclamation methods that will be used; (m) Any other information that shows that the application meets the requirements of this subpart or that the applicant believes would assist the BLM in analyzing the impacts of the proposed development; and (n) A map, or maps, showing: (i) The topography, physical features, and natural drainage patterns; (ii) Existing roads, vehicular trails, and utility systems; (iii) The location of any proposed exploration operations, including seismic lines and drill holes; (iv) To the extent known, the location of any proposed mining operations and facilities, trenches, access roads, or trails, and supporting facilities including the approximate location and extent of the areas to be used for pits, overburden, and tailings; and (v) The location of water sources or other resources that may be used in the proposed operations and facilities. At any time during processing of the application, or the environmental or similar assessments of the application, the BLM may request additional information from the applicant.			
Subpart 3924—Lease Sale Procedures				
Prospective lessees will be required to submit a bid at a competitive sale in order to be issued a lease.	*Section 3924.10*—The BLM will request the following bid information via the notice of oil shale lease sale: (1) A certified check, cashier's check, bank draft, money order, personal check, or cash for one-fifth of the amount of the bonus; and (2) A qualifications statement signed by the bidder as described in subpart 3902.	8	1	8

TABLE 1—Continued

Parts 3900–3930 burden activity	Information collected	Hour burden	Average number of annual responses	Average annual burden hours
Subpart 3926—Conversion of Preference Right for Research, Demonstration, and Development (R, D and D) Leases				
The lessee of an R, D and D lease may apply for conversion of the R, D and D lease to a commercial lease.	*Section 3926.10(c)*—A lessee of an R, D and D lease identified in subpart 3926 must apply for the conversion of the R, D and D lease to a commercial lease no later than 90 days after the commencement of production in commercial quantities. No specific form of application is required. The application for conversion must be filed in the BLM state office that issued the R, D and D lease. The conversion application must include: (1) Documentation that there has been commercial quantities of oil shale produced from the lease, including the narrative required by section 23 of R, D and D leases; and (2) Documentation that the lessee consulted with state and local officials to develop a plan for mitigating the socioeconomic impacts of commercial development on communities and infrastructure. (3) A bonus payment equal to the FMV of the lease; and (4) Bonding to cover all costs associated with reclamation.	308	1	308
Subpart 3930—Management of Oil Shale Exploration and Leases				
The records, logs, and samples provide information necessary to determine the nature and extent of oil shale resources on Federal lands and to monitor and adjust the extent of the oil shale reserve.	*Section 3930.11(b)*—The operator/lessee must retain for one year all drill and geophysical logs. The operator must also make such logs available for inspection or analysis by the BLM. The BLM may require the operator/lessee to retain representative samples of drill cores for 1 year. The BLM uses no specific form to collect the information.	19	1	19
	Section 3930.20 (b)—The operator must record any new geologic information obtained during mining or in situ development operations regarding any mineral deposits on the lease. The operator must report this new information in a BLM-approved format to the proper BLM office within 90 days of obtaining the information.	19	1	19
Subpart 3931—Plans of Development and Exploration Plans				
The plan of development (POD) must provide for reasonable protection and reclamation of the environment and the protection and diligent development of the oil shale resources in the lease.	*Section 3931.11*—The POD must contain, at a minimum, the following: (a) Names, addresses, and telephone numbers of those responsible for operations to be conducted under the approved plan and to whom notices and orders are to be delivered, names and addresses of Federal oil shale lessees and corresponding Federal lease serial numbers, and names and addresses of surface and mineral owners of record, if other than the United States; (b) A general description of geologic conditions and mineral resources within the area where mining is to be conducted, including appropriate maps;	308	1	308

TABLE 1—Continued

Parts 3900–3930 burden activity	Information collected	Hour burden	Average number of annual responses	Average annual burden hours
	(c) A copy of a suitable map or aerial photograph showing the topography, the area covered by each lease, the name and location of major topographic and cultural features; (d) A statement of proposed methods of operation and development, including the following items as appropriate: (1) A description detailing the extraction technology to be used; (2) The equipment to be used in development and extraction; (3) The proposed access roads; (4) The size, location, and schematics of all structures, facilities, and lined or unlined pits to be built; (5) The stripping ratios, development sequence, and schedule; (6) The number of acres in the Federal lease(s) or license(s) to be affected; (7) Comprehensive well design and procedure for drilling, casing, cementing, testing, stimulation, clean-up, completion, and production, for all drilled well types, including those used for heating, freezing, and disposal; (8) A description of the methods and means of protecting and monitoring all aquifers; (9) Surveyed well location plats or project-wide well location plats; (10) A description of the measurement and handling of produced fluids, including the anticipated production rates and estimated recovery factors; and (11) A description/discussion of the controls that the operator will use to protect the public, including identification of: (i) Essential operations, personnel, and health and safety precautions; (ii) Programs and plans for noxious gas control (hydrogen sulfide, ammonia, etc.); (iii) Well control procedures; (iv) Temporary abandonment procedures; and (v) Plans to address spills, leaks, venting, and flaring; (e) An estimate of the quantity and quality of the oil shale resources; (f) An explanation of how MER of the resource will be achieved for each Federal lease; and (g) Appropriate maps and cross sections showing: (1) Federal lease boundaries and serial numbers; (2) Surface ownership and boundaries; (3) Locations of any existing and abandoned mines and existing oil and gas well (including well bore trajectories) and water well locations, including well bore trajectories; (4) Typical geological structure cross sections; (5) Location of shafts or mining entries, strip pits, waste dumps, retort facilities, and surface facilities; (6) Typical mining or in situ development sequence, with appropriate time-frames;			

TABLE 1—Continued

Parts 3900–3930 burden activity	Information collected	Hour burden	Average number of annual responses	Average annual burden hours
	(h) A narrative addressing the environmental aspects of the proposed mine or in situ operation, including at a minimum, the following: (1) An estimate of the quantity of water to be used and pollutants that may enter any receiving waters; (2) A design for the necessary impoundment, treatment, control, or injection of all produced water, runoff water, and drainage from workings; and (3) A description of measures to be taken to prevent or control fire, soil erosion, subsidence, pollution of surface and ground water, pollution of air, damage to fish or wildlife or other natural resources, and hazards to public health and safety; (i) A reclamation plan and schedule for all Federal lease(s) or exploration license(s) that details all reclamation activities necessary to fulfill the requirements of § 3931.20; (j) The method of abandonment of operations on Federal lease(s) and exploration license(s) proposed to protect the unmined recoverable reserves and other resources, including: (1) The method proposed to fill in, fence, or close all surface openings that are hazardous to people or animals; and (2) For in situ operations, a description of the method and materials to be used to plug all abandoned development or production wells; and (k) Any additional information that the BLM determines is necessary for analysis or approval of the POD.			
The BLM may, in the interest of conservation order or agree to a suspension of operations and production.	*Section 3931.30*—An application by a lessee for suspension of operations and production must be filed in duplicate in the proper BLM office and must set forth why it is in the interest of conservation to suspend operations and production. The BLM will use no specific form to collect this information.	24	1	24
Except for casual use, before conducting any exploration operations on federally-leased or federally-licensed lands, the lessee must submit an exploration plan to the BLM for approval.	*Section 3931.41*—The BLM will use no specific form to collect this information. Exploration plans must contain the following information: (1) The name, address, and telephone number of the applicant, and, if applicable, that of the operator or lessee of record; (2) The name, address, and telephone number of the representative of the applicant who will be present during, and responsible for, conducting exploration; (3) A description of the proposed exploration area, cross-referenced to the map required under section 3931.41, including: (a) Applicable Federal lease and exploration license serial numbers; (b) Surface topography; (c) Geologic, surface water, and other physical features; (d) Vegetative cover; (e) Endangered or threatened species listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) that may be affected by exploration operations;	24	1	24

TABLE 1—Continued

Parts 3900–3930 burden activity	Information collected	Hour burden	Average number of annual responses	Average annual burden hours
	(f) Districts, sites, buildings, structures, or objects listed on, or eligible for listing on, the National Register of Historic Places that may be present in the lease area; and (g) Known cultural or archeological resources located within the proposed exploration area; (4) A description of the methods to be used to conduct oil shale exploration, reclamation, and abandonment of operations, including, but not limited to: (a) The types, sizes, numbers, capacity, and uses of equipment for drilling and blasting and road or other access route construction; (b) Excavated earth-disposal or debris-disposal activities; (c) The proposed method for plugging drill holes; and (d) The estimated size and depth of drill holes, trenches, and test pits; (5) An estimated timetable for conducting and completing each phase of the exploration, drilling, and reclamation; (6) The estimated amounts of oil shale or oil shale products to be removed during exploration, a description of the method to be used to determine those amounts, and the proposed use of the oil shale removed; (7) A description of the measures to be used during exploration for Federal oil shale to comply with the performance standards for exploration (43 CFR 3930.10) and applicable requirements of an approved state program; (8) A map at a scale of 1:24,000 or larger showing the areas of land to be affected by the proposed exploration and reclamation. The map must show: (a) Existing roads, occupied dwellings, and pipelines; (b) The proposed location of trenches, roads, and other access routes and structures to be constructed; (c) Applicable Federal lease and exploration license boundaries; (d) The location of land excavations to be conducted; (e) Oil shale exploratory holes to be drilled or altered; (f) Earth-disposal or debris-disposal areas; (g) Existing bodies of surface water; and (h) Topographic and drainage features; and (9) The name and address of the owner of record of the surface land, if other than the United States. If the surface is owned by a person other than the applicant or if the Federal oil shale is leased to a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation.			

TABLE 1—Continued

Parts 3900–3930 burden activity	Information collected	Hour burden	Average number of annual responses	Average annual burden hours
Approved exploration, mining and in situ development plans may be modified by the operator or lessee to adjust to changed conditions, new information, improved methods, and new or improved technology, or to correct an oversight.	*Section 3931.50*—The BLM will use no specific form to collect this information. The operator or lessee may apply in writing to the BLM for modification of the approved exploration plan or POD to adjust to changed conditions, new information, improved methods, and new or improved technology, or to correct an oversight. To obtain approval of an exploration plan or POD modification, the operator or lessee must submit to the proper BLM office a written statement of the proposed modification and the justification for such modification.	24	1	24
Production of all oil shale products or byproducts must be reported to the BLM on a monthly basis.	*Section 3931.70*—(1) Report production of all oil shale products or by-products to the BLM on a monthly basis. (2) Report all production and royalty information to the MMS under 30 CFR parts 210 and 216. (3) Submit production maps to the proper BLM office at the end of each royalty reporting period or on a schedule determined by the BLM. Show all excavations in each separate bed or deposit on the maps so that the production of minerals for any period can be accurately ascertained. Production maps must also show surface boundaries, lease boundaries, topography, and subsidence resulting from mining activities. (4) For in situ development operations, the lessee or operator must submit a map showing all surface installations including pipelines, meter locations, or other points of measurement necessary for production verification as part of the POD. All maps must be modified as necessary to adequately represent existing operations. (5) Within 30 days after well completion, the lessee or operator must submit to the proper BLM office 2 copies of a completed Form 3160–4, Well Completion or Recompletion Report and Log, limited to information that is applicable to oil shale operations. Well logs may be submitted electronically using a BLM approved electronic format. Describe surface and bottom-hole locations in latitude and longitude.	16	1	16

TABLE 1—Continued

Parts 3900–3930 burden activity	Information collected	Hour burden	Average number of annual responses	Average annual burden hours
Within 30 days after drilling completion the operator or lessee must submit to the BLM a signed copy of records of all core or test holes made on the lands covered by the lease or exploration license.	*Section 3931.80*—Within 30 days after drilling completion, the operator or lessee must submit to the proper BLM office a signed copy of records of all core or test holes made on the lands covered by the lease or exploration license. The records must show the position and direction of the holes on a map. The records must include a log of all strata penetrated and conditions encountered, such as water, gas, or unusual conditions, and copies of analysis of all samples. Provide this information to the proper BLM office in either paper copy or in a BLM-approved electronic format. Within 30 days after creation, the operator or lessee must also submit to the proper BLM office a detailed lithologic log of each test hole and all other in-hole surveys or other logs produced. Upon the BLM's request, the operator or lessee must provide to the BLM splits of core samples and drill cuttings.	16	1	16
Subpart 3932—Lease Modifications and Readjustments				
A lessee may apply for a modification of a lease to include additional Federal lands adjoining those in the lease.	*Section 3932.10(b) and Section 3932.30(c)*—The BLM will use no specific form to collect this information. An application for modification of the lease size must:. (1) Be filed with the proper BLM office; (2) Contain a legal description of the additional lands involved; (3) Contain a justification for the modification; (4) Explain why the modification would be in the best interest of the United States; (5) Include a nonrefundable processing fee that the BLM will determine under 43 CFR 3000.11; and (6) Include a signed qualifications statement consistent with subpart 3902. Before the BLM will approve a lease modification, the lessee must file a written acceptance of the conditions in the modified lease and a written consent of the surety under the bond covering the original lease as modified. The lessee must also submit evidence that the bond has been amended to cover the modified lease.	12	1	12
Subpart 3933—Assignments and Subleases				
Any lease may be assigned or subleased, and any exploration license may be assigned, in whole or in part to any person, association, or corporation that meets the qualification requirements at subpart 3902.	*Section 3933.31*—(1) The BLM will use no specific form to collect this information. File in triplicate at the proper BLM office a separate instrument of assignment for each assignment. File the assignment application within 90 days of the date of final execution of the assignment instrument and with it include: (a) Name and current address of assignee; (b) Interest held by assignor and interest to be assigned; (c) The serial number of the affected lease or license and a description of the lands to be assigned as described in the lease or license; (d) Percentage of overriding royalties retained; and (e) Date and signature of assignor.	10	2	20

TABLE 1—Continued

Parts 3900–3930 burden activity	Information collected	Hour burden	Average number of annual responses	Average annual burden hours
	(2) The assignee must provide a single copy of the request for approval of assignment which must contain a: (a) Statement of qualifications and holdings as required by subpart 3902; (b) Date and signature of assignee; and (c) Nonrefundable filing fee of $60.			
Subpart 3934—Relinquishments, Cancellations, and Terminations				
A lease or exploration license may be surrendered in whole or in part.	*Section 3934.10*—The BLM will use no specific form to collect this information. The record title holder must file a written relinquishment, in triplicate, in the BLM state office having jurisdiction over the lands covered by the relinquishment.	18	1	18
Subpart 3935—Production and Sale Records				
Operators or lessees must maintain production and sale records which must be available for the BLM's examination during regular business hours.	*Section 3935.10*—Operators or lessees must maintain accurate records: (1) Oil shale mined; ..... (2) Oil shale put through the processing plant and retort;. (3) Mineral products produced and sold; (4) Shale oil products, shale gas, and shale oil by-products sold; (5) Relevant quality analyses of oil shale mined or processed and of synthetic petroleum, shale oil or shale oil by-products sold; and (6) Shale oil products and by-products that are consumed on lease for the beneficial use of the lease.	16	1	16
Totals	.....	.....	23	1,794

Based on an average number of actions, we estimate the processing and cost recovery fees as follows:

TABLE 2

Estimated collections from processing and cost recovery case-by-case fees	Estimated number of actions	Processing fee per action	Estimated case-by-case cost recovery fee per action	Total estimated annual collection
Part 3910—Oil Shale Exploration Licenses	1	$295	Not Applicable ...	$295
Subpart 3922—Application Processing	3	Not Applicable ...	$172,323	516,969
The case-by-case processing fee does not include any required studies or analyses that are completed by third party contractors and funded by the applicant. The regulations at 43 CFR 3000.11 provide the regulatory framework for determining the cost recovery value.				
Subpart 3925—Award of Lease	1	$60	Not Applicable ...	60
The successful bidder must submit the necessary lease bond (see subpart 3904), the first year's rental, and the bidder's proportionate share of the cost of publication of the sale notice.				
Subpart 3932—Lease Size Modification	1	Not Applicable ...	$9,208	9,208
Subpart 3933—Assignments and Subleases	2	$60	Not Applicable ...	120
Totals	8	.....	.....	526,652

If you have any questions or comments on any aspect of this information collection, please contact Mitchell Leverette, Chief, Division of Solid Minerals (320), Bureau of Land Management, 1620 L Street, NW., Suite 501, Department of the Interior, Washington DC 20236.

Authors

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List of Subjects

43 CFR Part 3900

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Mineral royalties, Oil shale reserves, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3910

Environmental protection, Exploration licenses, Intergovernmental relations, Oil shale reserves, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3920

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Oil shale reserves, public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3930

Administrative practice and procedure, Environmental protection, Mineral royalties, Oil shale reserves, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

■ Accordingly, for the reasons stated in the preamble and under the authorities stated below, the BLM amends 43 CFR subtitle B Chapter II as follows:

Dated: October 31, 2008.

C. Stephen Allred,

Assistant Secretary, Land and Minerals Management.

■ 1. Add part 3900 to subchapter C to read as follows:

PART 3900—OIL SHALE MANAGEMENT—GENERAL

Subpart 3900—Oil Shale Management—Introduction

Sec.
3900.2 Definitions.
3900.5 Information collection.
3900.10 Lands subject to leasing.
3900.20 Appealing the BLM's decision.
3900.30 Filing documents.
3900.40 Multiple use development of leased or licensed lands.
3900.50 Land use plans and environmental considerations.
3900.61 Federal minerals where the surface is owned or administered by other Federal agencies, by state agencies or charitable organizations, or by private entities.
3900.62 Special requirements to protect the lands and resources.

Subpart 3901—Land Descriptions and Acreage

3901.10 Land descriptions.
3901.20 Acreage limitations.
3901.30 Computing acreage holdings.

Subpart 3902—Qualification Requirements

3902.10 Who may hold leases.
3902.21 Filing of qualification evidence.
3902.22 Where to file.
3902.23 Individuals.
3902.24 Associations, including partnerships.
3902.25 Corporations.
3902.26 Guardians or trustees.
3902.27 Heirs and devisees.
3902.28 Attorneys-in-fact.
3902.29 Other parties in interest.

Subpart 3903—Fees, Rentals, and Royalties

3903.20 Forms of payment.
3903.30 Where to submit payments.
3903.40 Rentals.
3903.51 Minimum production and payments in lieu of production.
3903.52 Production royalties.
3903.53 Overriding royalties.
3903.54 Waiver, suspension, or reduction of rental or payments in lieu of production, or reduction of royalty, or waiver of royalty in the first 5 years of the lease.
3903.60 Late payment or underpayment charges.

Subpart 3904—Bonds and Trust Funds

3904.10 Bonding requirements.
3904.11 When to file bonds.
3904.12 Where to file bonds.
3904.13 Acceptable forms of bonds.
3904.14 Individual lease, exploration license, and reclamation bonds.
3904.15 Amount of bond.
3904.20 Default.
3904.21 Termination of the period of liability and release of bonds.
3904.40 Long-term water treatment trust funds.

Subpart 3905—Lease Exchanges

3905.10 Oil shale lease exchanges.

Authority: 30 U.S.C. 189, 359, and 241(a), 42 U.S.C. 15927, 43 U.S.C. 1732(b) and 1740.

Subpart 3900—Oil Shale Management—Introduction

§ 3900.2 Definitions.

As used in this part and parts 3910 through 3930 of this chapter, the term:

Acquired lands means lands which the United States obtained through purchase, gift, or condemnation, including mineral estates associated with lands previously disposed of under the public land laws, including the mining laws.

Act means the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*).

BLM means the Bureau of Land Management and includes the individual employed by the Bureau of Land Management authorized to perform the duties set forth in this part and parts 3910 through 3930.

Commercial quantities means production of shale oil quantities in accordance with the approved Plan of Development for the proposed project through the research, development, and demonstration activities conducted on the research, development, and demonstration (R, D and D) lease, based on, and at the conclusion of which, there is a reasonable expectation that the expanded operation would provide a positive return after all costs of production have been met, including the amortized costs of the capital investment.

Department means the Department of the Interior.

Diligent development means achieving or completing the prescribed milestones listed in § 3930.30 of this chapter.

Entity means a person, association, or corporation, or any subsidiary, affiliate, corporation, or association controlled by or under common control with such person, association, or corporation.

Exploration means drilling, excavating, and geological, geophysical or geochemical surveying operations designed to obtain detailed data on the physical and chemical characteristics of Federal oil shale and its environment including:

(1) The strata below the Federal oil shale;

(2) The overburden;

(3) The strata immediately above the Federal oil shale; and

(4) The hydrologic conditions associated with the Federal oil shale.

Exploration license means a license issued by the BLM that allows the licensee to explore unleased oil shale deposits to obtain geologic, environmental, and other pertinent data concerning the deposits. An exploration license confers no preference to a lease to develop oil shale.

Exploration plan means a plan prepared in sufficient detail to show the:

(1) Location and type of exploration to be conducted;

(2) Environmental protection procedures to be taken;

(3) Present and proposed roads, if any; and

(4) Reclamation and abandonment procedures to be followed upon completion of operations.

Fair market value (FMV) means the monetary amount for which the oil shale deposit would be leased by a knowledgeable owner willing, but not obligated, to lease to a knowledgeable purchaser who desires, but is not obligated, to lease the oil shale deposit.

Federal lands means any lands or interests in lands, including oil shale interests underlying non-Federal surface, owned by the United States, without reference to how the lands were acquired or what Federal agency administers the lands.

Infrastructure means all support structures necessary for the production or development of shale oil, including, but not limited to:

(1) Offices;
(2) Shops;
(3) Maintenance facilities;
(4) Pipelines;
(5) Roads;
(6) Electrical transmission lines;
(7) Well bores;
(8) Storage tanks;
(9) Ponds;
(10) Monitoring stations;
(11) Processing facilities—retorts; and
(12) Production facilities.

In situ operation means the processing of oil shale in place.

Interest in a lease, application, or bid means any:

(1) Record title interest;
(2) Overriding royalty interest;
(3) Working interest;
(4) Operating rights or option or any agreement covering such an interest; or
(5) Participation or any defined or undefined share in any increments, issues, or profits that may be derived from or that may accrue in any manner from a lease based on or under any agreement or understanding existing when an application was filed or entered into while the lease application or bid is pending.

Kerogen means the solid, organic substance in sedimentary rock that yields oil when it undergoes destructive distillation.

Lease means a Federal lease issued under the mineral leasing laws, which grants the exclusive right to explore for and extract a designated mineral.

Lease bond means the bond or equivalent security given to the Department to assure performance of all obligations associated with all lease terms and conditions.

Maximum economic recovery (MER) means the prevention of wasting of the resource by recovering the maximum amount of the resource that is technologically and economically possible.

Mining waste means all tailings, dumps, deleterious materials, or substances produced by mining, retorting, or in-situ operations.

MMS means the Minerals Management Service.

Oil shale means a fine-grained sedimentary rock containing:

(1) Organic matter which was derived chiefly from aquatic organisms or waxy spores or pollen grains, which is only slightly soluble in ordinary petroleum solvents, and of which a large proportion is distillable into synthetic petroleum; and
(2) Inorganic matter, which may contain other minerals. This term is applicable to any argillaceous, carbonate, or siliceous sedimentary rock which, through destructive distillation, will yield synthetic petroleum.

Permit means any of the required approvals that are issued by Federal, state, or local agencies.

Plan of development (POD) means the plan created for oil shale operations that complies with the requirements of the Act and that details the plans, equipment, methods, and schedules to be used in oil shale development.

Production means:

(1) The extraction of shale oil, shale gas, or shale oil by-products through surface retorting or in situ recovery methods; or
(2) The severing of oil shale rock through surface or underground mining methods.

Proper BLM office means the Bureau of Land Management office having jurisdiction over the lands under application or covered by a lease or exploration license and subject to the regulations in this part and in parts 3910 through 3930 of this chapter (see subpart 1821 of part 1820 of this chapter for a list of BLM state offices).

Public lands means lands, i.e., surface estate, mineral estate, or both, which:

(1) Never left the ownership of the United States, including minerals reserved when the lands were patented;
(2) Were obtained by the United States in exchange for public lands;
(3) Have reverted to the ownership of the United States; or
(4) Were specifically identified by Congress as part of the public domain.

Reclamation means the measures undertaken to bring about the necessary reconditioning of lands or waters affected by exploration, mining, in situ operations, onsite processing operations or waste disposal in a manner which will meet the requirements imposed by the BLM under applicable law.

Reclamation bond means the bond or equivalent security given to the BLM to assure performance of all obligations relating to reclamation of disturbed areas under an exploration license or lease.

Secretary means the Secretary of the Interior.

Shale gas means the gaseous hydrocarbon-bearing products of surface retorting of oil shale or of in situ extraction that is not liquefied into shale oil. In addition to hydrocarbons, shale gas might include other gases such as carbon dioxide, nitrogen, helium, sulfur, other residual or specialty gases, and entrained hydrocarbon liquids.

Shale oil means synthetic petroleum derived from the destructive distillation of oil shale.

Sole party in interest means a party who alone is or will be vested with all legal and equitable rights and responsibilities under a lease, bid, or application for a lease.

Surface management agency means the Federal agency with jurisdiction over the surface of federally-owned lands containing oil shale deposits.

State Director means an employee of the Bureau of Land Management designated as the chief administrative officer of one of the BLM's 12 administrative areas administered by a state office.

Surface retort means the above-ground facility used for the extraction of kerogen by heating mined shale.

Surface retort operation means the extraction of kerogen by heating mined shale in an above-ground facility.

Synthetic petroleum means synthetic crude oil manufactured from shale oil and suitable for use as a refinery feedstock or for petrochemical production.

§ 3900.5 Information collection.

(a) OMB has approved the information collection requirements in parts 3900 through 3930 of this chapter under 44 U.S.C. 3501 *et seq.* The table in paragraph (d) of this section lists the subpart in the rule requiring the information and its title, provides the OMB control number, and summarizes the reasons for collecting the information and how the BLM uses the information.

(b) Respondents are oil shale lessees and operators. The requirement to respond to the information collections in these parts are mandated under the Energy Policy Act of 2005 (EP Act) (42 U.S.C. 15927), the Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351–359), and the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1701 *et seq.,* including 43 U.S.C. 1732).

(c) The Paperwork Reduction Act of 1995 requires us to inform the public

that an agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(d) The BLM is collecting this information for the reasons given in the following table:

43 CFR Parts 3900–3930, General (1004–0201)	Reasons for collecting information and how used
Section 3904.12 Section 3904.14(c)(1)	Prospective lessee or licensee must furnish a bond before a lease or exploration license may be issued or transferred or a plan of development is approved. The BLM will review the bond and, if adequate as to amount and execution, will accept it in order to indemnify the United States against default on payments due or other performance obligations. The BLM may also adjust the bond amount to reflect changed conditions. The BLM will cancel the bond when all requirements are satisfied.
Section 3910.31 Section 3910.44	For those lands where no exploration data is available, the lease applicant may apply for an exploration license to conduct exploration on unleased public lands to determine the extent and specific characteristics of the Federal oil shale resource. The BLM will use the information in the application to: (1) Locate the proposed exploration site; (2) Determine if the lands are subject to entry for exploration; (3) Prepare a notice of invitation to other parties to participate in the exploration; and (4) Ensure the exploration plan is adequate to safeguard resource values, and public and worker health and safety. The BLM will use this information from a licensee to determine if it will offer the land area for lease.
Section 3921.30	Corporations, associations, and individuals may submit expressions of leasing interest for specific areas to assist the applicable BLM State Director in determining whether or not to lease oil shale. The information provided will be used in the consultation with the governor of the affected state and in setting a geographic area for which a call for applications will be requested.
Sections 3922.20 and 3922.30	Entities interested in leasing the Federal oil shale resource must file an application in a geographic area for which the BLM has issued a ''Call for Applications.'' The information provided by the applicant will be used to evaluate the impacts of issuing a proposed lease on the human environment. Failure to provide the requested additional information may result in suspension or termination of processing of the application or in a decision to deny the application.
Section 3924.10	Prospective lessees will be required to submit a bid at a competitive sale in order to be issued a lease.
Section 3926.10(c)	The lessee of an R, D and D lease may apply for conversion of the R, D and D lease to a commercial lease.
Section 3930.11(b) Section 3930.20(b)	The records, logs, and samples provide information necessary to determine the nature and extent of oil shale resources on Federal lands and to monitor and adjust the extent of the oil shale reserve.
Section 3931.11	The POD must provide for reasonable protection and reclamation of the environment and the protection and diligent development of the oil shale resources in the lease.
Section 3931.30	The BLM may, in the interest of Conservation, order or agree to a suspension of operations and production.
Section 3931.41	Except for casual use, before conducting any exploration operations on federally-leased or federally-licensed lands, the lessee must submit an exploration plan to the BLM for approval.
Section 3931.50	Approved exploration, mining and in situ development plans may be modified by the operator or lessee to adjust to changed conditions, new information, improved methods, and new or improved technology, or to correct an oversight.
Section 3931.70	Production of all oil shale products or byproducts must be reported to the BLM on a monthly basis.
Section 3931.80	Within 30 days after drilling completion the operator or lessee must submit to the BLM a signed copy of records of all core or test holes made on the lands covered by the lease or exploration license.
Sections 3932.10(b) and 3932.30(c)	A lessee may apply for a modification of a lease to include additional Federal lands adjoining those in the lease.
Section 3933.31	Any lease may be assigned or subleased, and any exploration license may be assigned, in whole or in part, to any person, association, or corporation that meets the qualification requirements at subpart 3902.
Section 3934.10	A lease or exploration license may be surrendered in whole or in part.
Section 3935.10	Operators or lessees must maintain production and sale records which must be available for the BLM's examination during regular business hours.

§ 3900.10 Lands subject to leasing.

The BLM may issue oil shale leases under this part on all Federal lands except:

(a) Those lands specifically excluded from leasing by the Act;

(b) Lands within the boundaries of any unit of the National Park System, except as expressly authorized by law (Glen Canyon National Recreation Area, Lake Mead National Recreation Area, and the Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area);

(c) Lands within incorporated cities, towns and villages; and

(d) Any other lands withdrawn from leasing.

§ 3900.20 Appealing the BLM's decision.

Any party adversely affected by a BLM decision made under this part or parts 3910 through 3930 of this chapter may appeal the decision under part 4 of

this title. All decisions and orders by the BLM under these parts remain effective pending appeal unless the BLM decides otherwise. A petition for the stay of a decision may be filed with the Interior Board of Land Appeals (IBLA).

§ 3900.30 Filing documents.

(a) All necessary documents must be filed in the proper BLM office. A document is considered filed when the proper BLM office receives it with any required fee.

(b) All information submitted to the BLM under the regulations in this part or parts 3910 through 3930 will be available to the public unless exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552), under part 2 of this title, or unless otherwise provided for by law.

§ 3900.40 Multiple use development of leased or licensed lands.

(a) The granting of an exploration license or lease for the exploration, development, or production of deposits of oil shale does not preclude the BLM from issuing other exploration licenses or leases for the same lands for deposits of other minerals. Each exploration license or lease reserves the right to allow any other uses or to allow disposal of the leased lands if it does not unreasonably interfere with the exploration and mining operations of the lessee. The lessee or the licensee must make all reasonable efforts to avoid interference with other such authorized uses.

(b) Subsequent lessee or licensee will be required to conduct operations in a manner that will not interfere with the established rights of existing lessees or licensees.

(c) When the BLM issues an oil shale lease, it will cancel all oil shale exploration licenses for the leased lands.

§ 3900.50 Land use plans and environmental considerations.

(a) Any lease or exploration license issued under this part or parts 3910 through 3930 of this chapter will be issued in conformance with the decisions, terms, and conditions of a comprehensive land use plan developed under part 1600 of this chapter.

(b) Before a lease or exploration license is issued, the BLM, or the appropriate surface management agency, must comply with the requirements of the National Environmental Policy Act of 1969 (NEPA).

(c) Before the BLM approves a POD, the BLM must comply with NEPA, in cooperation with the surface management agency when possible, if the surface is managed by another Federal agency.

§ 3900.61 Federal minerals where the surface is owned or administered by other Federal agencies, by state agencies or charitable organizations, or by private entities.

(a) *Public lands.* Unless consent is required by law, the BLM will issue a lease or exploration license only after the BLM has consulted with the surface management agency on public lands where the surface is administered by an agency other than the BLM. The BLM will not issue a lease or an exploration license on lands to which the surface managing agency withholds consent required by statute.

(b) *Acquired lands.* The BLM will issue a lease on acquired lands only after receiving written consent from an appropriate official of the surface management agency.

(c) *Lands covered by lease or license.* If a Federal surface management agency outside of the Department has required special stipulations in the lease or license or has refused consent to issue the lease or license, an applicant may pursue the administrative remedies to challenge that decision offered by that particular surface management agency, if any. If the applicant notifies the BLM within 30 calendar days after receiving the BLM's decision that the applicant has requested the surface management agency to review or reconsider its decision, the time for filing an appeal to the IBLA under part 4 of this title is suspended until a decision is reached by such agency.

(d) The BLM will not issue a lease or exploration license on National Forest System Lands without the consent of the Forest Service.

(e) Ownership of surface overlying Federal minerals by states, charitable organizations, or private entities. Where the United States has conveyed title to the surface of lands to any state or political subdivision, agency, or instrumentality thereof, including a college or any other educational corporation or association, to a charitable or religious corporation or association, or to a private entity, the BLM will send such surface owners written notification by certified mail of the application for exploration license or lease. In the written notification, the BLM will give the surface owners a reasonable time, not to exceed 90 calendar days, within which to suggest any lease stipulations necessary for the protection of existing surface improvements or uses and to set forth the facts supporting the necessity of the stipulations, or to file any objections it may have to the issuance of the lease or license. The BLM makes the final decision as to whether to issue the lease or license and on what terms based on a determination as to whether the interests of the United States would best be served by issuing the lease or license with the particular stipulations. This is true even in cases where the party controlling the surface opposes the issuance of a lease or license or wishes to place restrictive stipulations on the lease.

§ 3900.62 Special requirements to protect the lands and resources.

The BLM will specify stipulations in a lease or exploration license to protect the lands and their resources. This may include stipulations required by the surface management agency or recommended by the surface management agency or non-Federal surface owner and accepted by the BLM.

Subpart 3901—Land Descriptions and Acreage

§ 3901.10 Land descriptions.

(a) All lands in an oil shale lease must be described by the legal subdivisions of the public land survey system or if the lands are unsurveyed, the legal description by metes and bounds.

(b) Unsurveyed lands will be surveyed, at the cost of the lease applicant, by a surveyor approved or employed by the BLM.

§ 3901.20 Acreage limitations.

No entity may hold more than 50,000 acres of Federal oil shale leases on public lands and 50,000 acres on acquired lands in any one state. Oil shale lease acreage does not count toward acreage limitations associated with leases for other minerals.

§ 3901.30 Computing acreage holdings.

In computing the maximum acreage an entity may hold under a Federal lease, on either public lands or acquired lands, in any one state, acquired lands and public lands are counted separately. An entity may hold up to the maximum acreage of each at the same time.

Subpart 3902—Qualification Requirements

§ 3902.10 Who may hold leases.

(a) The following entities may hold leases or interests therein:

(1) Citizens of the United States;

(2) Associations (including partnerships and trusts) of such citizens; and

(3) Corporations organized under the laws of the United States or of any state or territory thereof.

(b) Citizens of a foreign country may only hold interest in leases through stock ownership, stock holding, or stock control in such domestic corporations. Foreign citizens may hold stock in United States corporations that hold leases if the Secretary has not determined that laws, customs, or regulations of their country deny similar privileges to citizens or corporations of the United States.

(c) A minor may not hold a lease. A legal guardian or trustee of a minor may hold a lease.

(d) An entity must be in compliance with Section 2(a)(2)(A) of the Act in order to hold a lease. If the BLM erroneously issues a lease to an entity that is in violation of Section 2(a)(2)(A) of the Act, the BLM will void the lease.

§ 3902.21 Filing of qualification evidence.

Applicants must file with the BLM a statement and evidence that the qualification requirements in this subpart are met. These may be filed separately from the lease application, but must be filed in the same office as the application. After the BLM accepts the applicant's qualifications, any additional information may be provided to the same BLM office by referring to the serial number of the record in which the evidence is filed. All changes to the qualifications statement must be in writing. The evidence provided must be current, accurate, and complete.

§ 3902.22 Where to file.

The lease application and qualification evidence must be filed in the proper BLM office (see subpart 1821 of part 1820 of this chapter).

§ 3902.23 Individuals.

Individuals who are applicants must provide to the BLM a signed statement showing:

(a) U.S. citizenship; and

(b) That acreage holdings do not exceed the limits in § 3901.20 of this chapter. This includes holdings through a corporation, association, or partnership in which the individual is the beneficial owner of more than 10 percent of the stock or other instruments of control.

§ 3902.24 Associations, including partnerships.

Associations that are applicants must provide to the BLM:

(a) A signed statement that:

(1) Lists the names, addresses, and citizenship of all members of the association who own or control 10 percent or more of the association or partnership, and certifies that the statement is true;

(2) Lists the names of the members authorized to act on behalf of the association; and

(3) Certifies that the association or partnership's acreage holdings and those of any member under paragraph (a)(1) of this section do not exceed the acreage limits in § 3901.20 of this chapter; and

(b) A copy of the articles of association or the partnership agreement.

§ 3902.25 Corporations.

Corporate officers or authorized attorneys-in-fact who represent applicants must provide to the BLM a signed statement that:

(a) Names the state or territory of incorporation;

(b) Lists the name and citizenship of, and percentage of stock owned, held, or controlled by, any stockholder owning, holding, or controlling more than 10 percent of the stock of the corporation, and certifies that the statement is true;

(c) Lists the names of the officers authorized to act on behalf of the corporation; and

(d) Certifies that the corporation's acreage holdings, and those of any stockholder identified under paragraph (b) of this section, do not exceed the acreage limits in § 3901.20 of this chapter.

§ 3902.26 Guardians or trustees.

Guardians or trustees for a trust, holding on behalf of a beneficiary, who are applicants must provide to the BLM:

(a) A signed statement that:

(1) Provides the beneficiary's citizenship;

(2) Provides the guardian's or trustee's citizenship;

(3) Provides the grantor's citizenship, if the trust is revocable; and

(4) Certifies the acreage holdings of the beneficiary, the guardian, trustee, or grantor, if the trust is revocable, do not exceed the aggregate acreage limitations in § 3901.20 of this chapter; and

(b) A copy of the court order or other document authorizing or creating the trust or guardianship.

§ 3902.27 Heirs and devisees.

If an applicant or successful bidder for a lease dies before the lease is issued:

(a) The BLM will issue the lease to the heirs or devisees, or their guardian, if probate of the estate has been completed or is not required. Before the BLM will recognize the heirs or devisees or their guardian as the record title holders of the lease, they must provide to the proper BLM office:

(1) A certified copy of the will or decree of distribution, or if no will or decree exists, a statement signed by the heirs that they are the only heirs and citing the provisions of the law of the deceased's last domicile showing that no probate is required; and

(2) A statement signed by each of the heirs or devisees with reference to citizenship and holdings as required by § 3902.23 of this chapter. If the heir or devisee is a minor, the guardian or trustee must sign the statement; and

(b) The BLM will issue the lease to the executor or administrator of the estate if probate is required, but is not completed. In this case, the BLM considers the executor or administrator to be the record title holder of the lease. Before the BLM will issue the lease to the executor or administrator, the executor or administrator must provide to the proper BLM office:

(1) Evidence that the person who, as executor or administrator, submits lease and bond forms has authority to act in that capacity and to sign those forms;

(2) A certified list of the heirs or devisees of the deceased; and

(3) A statement signed by each heir or devisee concerning citizenship and holdings, as required by § 3902.23 of this chapter.

§ 3902.28 Attorneys-in-fact.

Attorneys-in-fact must provide to the proper BLM office evidence of the authority to act on behalf of the applicant and a statement of the applicant's qualifications and acreage holdings if it is also empowered to make this statement. Otherwise, the applicant must provide the BLM this information separately.

§ 3902.29 Other parties in interest.

If there is more than one party in interest in an application for a lease, include with the application the names of all other parties who hold or will hold any interest in the application or in the lease. All interested parties who wish to hold an interest in a lease must provide to the BLM the information required by this subpart to qualify to hold a lease interest.

Subpart 3903—Fees, Rentals, and Royalties

§ 3903.20 Forms of payment.

All payments must be by U.S. postal money order or negotiable instrument payable in U.S. currency. In the case of payments made to the MMS, such payments must be made by electronic funds transfer (see 30 CFR part 218 for the MMS's payment procedures).

§ 3903.30 Where to submit payments.

(a) All filing and processing fees, all first-year rentals, and all bonuses for leases issued under this part or parts 3910 through 3930 of this chapter must be paid to the BLM state office that manages the lands covered by the application, lease, or exploration license, unless the BLM designates a different state office. The first one-fifth bonus installment is paid to the appropriate BLM state office. All remaining bonus installment payments are paid to the MMS.

(b) All second-year and subsequent rentals and all other payments for leases are paid to the MMS.

(c) All royalties on producing leases and all payments under leases in their minimum production period are paid to the MMS.

§ 3903.40 Rentals.

(a) The rental rate for oil shale leases is $2.00 per acre, or fraction thereof, payable annually on or before the anniversary date of the lease. Rentals paid for any 1 year are credited against any production royalties accruing for that year.

(b) The BLM will send a notice demanding payment of late rentals. Failure to provide payment within 30 calendar days after notification will result in the BLM taking action to cancel the lease (see § 3934.30 of this chapter).

§ 3903.51 Minimum production and payments in lieu of production.

(a) Each lease must meet its minimum annual production amount of shale oil or make a payment in lieu of production for any particular lease year, beginning with the 10th lease year.

(b) The minimum payment in lieu of annual production is established in the lease and will not be less than $4 per acre or fraction thereof per year, payable in advance. Production royalty payments will be credited to payments in lieu of annual production for that year only.

§ 3903.52 Production royalties.

(a) The lessee must pay royalties on all products of oil shale that are sold from or transported off of the lease.

(b) The royalty rate for the products of oil shale is 5 percent of the amount or value of production for the first 5 years of commercial production. The royalty rate will increase by 1% each year starting the sixth year of commercial production to a maximum royalty rate of 12½% in the thirteenth year of commercial production.

§ 3903.53 Overriding royalties.

The lessee must file documentation of all overriding royalties (payments out of production to an entity other than the United States) associated with the lease in the proper BLM office within 90 calendar days after execution of the assignment of the overriding royalties.

§ 3903.54 Waiver, suspension, or reduction of rental or payments in lieu of production, or reduction of royalty, or waiver of royalty in the first 5 years of the lease.

(a) In order to encourage the maximum economic recovery (MER) of the leased mineral(s), and in the interest of conservation, whenever the BLM determines it is necessary to promote development or finds that leases cannot be successfully operated under the lease terms, the BLM may waive, suspend, or reduce the rental or payment in lieu of production, reduce the rate of royalty, or in the first 5 years of the lease, waive the royalty.

(b) Applications for waivers, suspension or reduction of rentals or payment in lieu of production, reduction in royalty, or waiver of royalty for the first 5 years of the lease must contain the serial number of the lease, the name of the record title holder, the operator or sub-lessee, a description of the lands by legal subdivision, and the following information:

(1) The location of each oil shale mine or operation, and include:

(i) A map showing the extent of the mining or development operations;

(ii) A tabulated statement of the minerals mined and subject to royalty for each month covering a period of not less than 12 months immediately preceding the date of filing of the application; and

(iii) The average production per day mined for each month, and complete information as to why the minimum production was not attained;

(2) Each application must contain:

(i) A detailed statement of expenses and costs of operating the entire lease;

(ii) The income from the sale of any leased products;

(iii) All facts showing whether the mines can be successfully operated under the royalty or rental fixed in the lease; and

(iv) Where the application is for a reduction in royalty, information as to whether royalties or payments out of production are paid to anyone other than the United States, the amounts so paid, and efforts made to reduce those payments;

(3) Any overriding royalties cannot be greater in aggregate than one-half the royalties paid to the United States.

(c) Contact the proper BLM office for detailed information on submitting copies of these applications electronically.

§ 3903.60 Late payment or underpayment charges.

Late payment or underpayment charges will be assessed under MMS regulations at 30 CFR 218.202.

Subpart 3904—Bonds and Trust Funds

§ 3904.10 Bonding requirements.

(a) Prior to issuing a lease or exploration license, the BLM requires exploration license or lease bonds for each lease or exploration license that covers all liabilities, other than reclamation, that may arise under the lease or license. The bond must be executed by the lessee and cover all record title owners, operating rights owners, operators, and any person who conducts operations or is responsible for payments under a lease or license.

(b) Before the BLM will approve a POD, the lessee must provide to the proper BLM office a reclamation bond to cover all costs the BLM estimates will be necessary to cover reclamation.

§ 3904.11 When to file bonds.

File the lease bond before the BLM will issue the lease, file the reclamation bond before the BLM will approve the POD, and file the exploration bond before the BLM will issue the exploration license.

§ 3904.12 Where to file bonds.

File one copy of the bond form with original signatures in the proper BLM state office. Bonds must be filed on an approved BLM form. The obligor of a personal bond must sign the form. Surety bonds must have the lessee's and the acceptable surety's signatures.

§ 3904.13 Acceptable forms of bonds.

(a) The BLM will accept either a personal bond or a surety bond. Personal bonds are pledges of any of the following:

(1) Cash;

(2) Cashier's check;

(3) Certified check; or

(4) Negotiable U.S. Treasury bonds equal in value to the bond amount. Treasury bonds must give the Secretary authority to sell the securities in the case of failure to comply with the conditions and obligations of the exploration license or lease.

(b) Surety bonds must be issued by qualified surety companies approved by the Department of the Treasury. A list of qualified sureties is available at any BLM state office.

§ 3904.14 Individual lease, exploration license, and reclamation bonds.

(a) The BLM will determine individual lease bond amounts on a case-by-case basis. The minimum lease bond amount is $25,000.

(b) The BLM will determine reclamation bond and exploration license bond amounts on a case-by-case basis when it approves a POD or exploration plan. The reclamation or exploration license bond must be sufficient to cover the estimated cost of site reclamation.

(c) The BLM may enter into agreements with states to accept a state reclamation bond to cover the BLM's reclamation bonding requirements if it is adequate to cover both the Federal liabilities and all others for which it stands as security. The BLM may request additional information from the lessee or operator to determine whether the state bond will cover all of the BLM's reclamation requirements.

(1) If a state bond is to be used to satisfy the BLM bonding requirements, evidence verifying that the existing state bond will satisfy all the BLM reclamation bonding requirements must be filed in the proper BLM office.

(2) The BLM will require an additional bond if the BLM determines that the state bond is inadequate to cover all of the potential liabilities for your BLM leases.

§ 3904.15 Amount of bond.

(a) The BLM may increase or decrease the required bond amount if it determines that a change in amount is appropriate to cover the costs and obligations of complying with the requirements of the lease or license and these regulations. The BLM will not decrease the bond amount below the minimum (*see* § 3904.14(a)).

(b) The lessee or operator must submit to the BLM every three years after reclamation bond approval a revised estimate of the reclamation costs. The BLM will verify the revised estimate of the reclamation costs submitted by the lessee or operator. If the current bond does not cover the revised estimate of reclamation costs, the lessee or operator must increase the reclamation bond amount to meet or exceed the revised cost estimate.

§ 3904.20 Default.

(a) The BLM will demand payment from the lease bond to cover nonpayment of any rental or royalty owed or the reclamation or exploration license bond for any reclamation obligations that are not met. The BLM will reduce the bond amount by the amount of the payment made to cover the default.

(b) After any default, the BLM will provide notification of the amount required to restore the bond to the required level. A new bond or an increase in the existing bond to its pre-default level must be provided to the proper BLM office within 6 months of the BLM's written notification that the bond is below its required level. The BLM may accept separate or substitute bonds for each exploration license or lease. The BLM may take action to cancel the lease or exploration license covered by the bond if sufficient additional bond is not provided within the six month time period.

§ 3904.21 Termination of the period of liability and release of bonds.

(a) The BLM will not consent to termination of the period of liability under a bond unless an acceptable replacement bond has been filed.

(b) Terminating the period of liability of a bond ends the period during which obligations continue to accrue, but does not relieve the surety of the responsibility for obligations that accrued during the period of liability.

(c) A lease bond will be released when BLM determines that all lease obligations accruing during the period of liability have been fulfilled.

(d) A reclamation bond or license bond will be released when the BLM determines that the reclamation obligations arising within the period of liability have been met and that the reclamation has succeeded to the BLM's satisfaction.

(e) The BLM will release a bond when it accepts a replacement bond in which the surety expressly assumes liability for all obligations that accrued within the period of liability of the original bond.

§ 3904.40 Long-term water treatment trust funds.

(a) The BLM may require the operator or lessee to establish a trust fund or other funding mechanism to ensure the continuation of long-term treatment to achieve water quality standards and for other long-term, post-mining maintenance requirements. The funding must be adequate to provide for the construction, long-term operation, maintenance, or replacement of any treatment facilities and infrastructure, for as long as the treatment and facilities are needed after mine closure. The BLM may identify the need for a trust fund or other funding mechanism during plan review or later.

(b) In determining whether a trust fund will be required, the BLM will consider the following factors:

(1) The anticipated post-mining obligations (PMO) that are identified in the environmental document or approved POD;

(2) Whether there is a reasonable degree of certainty that the treatment will be required based on accepted scientific evidence or models;

(3) The determination that the financial responsibility for those obligations rests with the operator; and

(4) Whether it is feasible, practical, or desirable to require separate or expanded reclamation bonds for those anticipated long-term PMOs.

Subpart 3905—Lease Exchanges

§ 3905.10 Oil shale lease exchanges.

To facilitate the recovery of oil shale, the BLM may consider land exchanges where appropriate and feasible to consolidate land ownership and mineral interest into manageable areas. Exchanges are covered under part 2200 of this chapter.

■ 2. Add part 3910 to subchapter C to read as follows:

PART 3910—OIL SHALE EXPLORATION LICENSES

Subpart 3910—Exploration Licenses

Sec.

3910.21 Lands subject to exploration.
3910.22 Lands managed by agencies other than the BLM.
3910.23 Requirements for conducting exploration activities.
3910.31 Filing of an application for an exploration license.
3910.32 Environmental analysis.
3910.40 Exploration license requirements.
3910.41 Issuance, modification, relinquishment, and cancellation.
3910.42 Limitations on exploration licenses.
3910.44 Collection and submission of data.
3910.50 Surface use.

Authority: 25 U.S.C. 396(d) and 2107, 30 U.S.C. 241(a), 42 U.S.C. 15927, 43 U.S.C. 1732(b) and 1740.

Subpart 3910—Exploration Licenses

§ 3910.21 Lands subject to exploration.

The BLM may issue oil shale exploration licenses for all Federal lands subject to leasing under § 3900.10 of this chapter, except lands that are in an existing oil shale lease or in preference right leasing areas under the R, D and D program. The BLM may issue exploration licenses for lands in preference right lease areas only to the R, D and D lessee.

§ 3910.22 Lands managed by agencies other than the BLM.

(a) The consent and consultation procedures required by § 3900.61 of this

chapter also apply to exploration license applications.

(b) If exploration activities could affect the adjacent lands under the surface management of a Federal agency other than the BLM, the BLM will consult with that agency before issuing an exploration license.

§ 3910.23 Requirements for conducting exploration activities.

Exploration activities on Federal lands require an exploration license or oil shale lease. Activities on a license or lease without an approved plan of operation must be conducted pursuant to an approved exploration plan under § 3931.40 of this chapter. The licensee may not remove any oil shale for sale, but may remove a reasonable amount of oil shale for analysis and study.

§ 3910.31 Filing of an application for an exploration license.

(a) Applications for exploration licenses must be submitted to the proper BLM office.

(b) No specific form is required. Applications must include:

(1) The name and address of the applicant(s);

(2) A nonrefundable filing fee of $295;

(3) A description of the lands covered by the application according to section, township and range in accordance with the public lands survey system or, if the lands are unsurveyed lands, the legal description by metes and bounds; and

(4) An acceptable electronic format or 3 paper copies of an exploration plan that complies with the requirements of § 3931.41 of this chapter. Contact the proper BLM office for detailed information on submitting copies electronically.

(c) An exploration license application may cover no more than 25,000 acres in a reasonably compact area and entirely within one state. An application for an exploration license covering more than 25,000 acres must include justification for an exception to the normal acreage limitation.

(d) Applicants for exploration licenses are required to invite other parties to participate in exploration under the license on a pro rata cost share basis.

(e) Using information supplied by the applicant, the BLM will prepare a notice of invitation and post the notice in the proper BLM office for 30 calendar days. The applicant will publish the BLM-approved notice once a week for 2 consecutive weeks in at least 1 newspaper of general circulation in the area where the lands covered by the exploration license application are situated. The notification must invite the public to participate in the exploration under the license and contain the name and location of the BLM office in which the application is available for inspection.

(f) If any person wants to participate in the exploration program, the applicant and the BLM must receive written notice from that person within 30 calendar days after the end of the 30-day posting period. A person who wants to participate in the exploration program must:

(1) State in their notification that they are willing to share in the cost of the exploration on a pro-rata share basis; and

(2) Describe any modifications to the exploration program that the BLM should consider.

(g) To avoid duplication of exploration activities in an area, the BLM may:

(1) Require modification of the original exploration plan to accommodate the exploration needs of those seeking to participate; or

(2) Notify those seeking to participate that they should file a separate application for an exploration license.

§ 3910.32 Environmental analysis.

(a) Before the BLM will issue an exploration license, the BLM, in consultation with any affected surface management agency, will perform the appropriate NEPA analysis of the actions contemplated in the application.

(b) For each exploration license, the BLM will include terms and conditions needed to protect the environment and resource values of the area and to ensure reclamation of the lands disturbed by the exploration activities.

§ 3910.40 Exploration license requirements.

The licensee must comply with all applicable Federal, state, and local laws and regulations, the terms and conditions of the license, and the approved exploration plan. The operator or licensee must notify the BLM of any change of address or operator or licensee name.

§ 3910.41 Issuance, modification, relinquishment, and cancellation.

(a) The BLM may:

(1) Issue an exploration license; or

(2) Reject an application for an exploration license based on, but not limited to:

(i) The need for resource information;

(ii) The environmental analysis;

(iii) The completeness of the application; or

(iv) Any combination of these factors.

(b) An exploration license is effective on the date the BLM specifies, which is also the date when exploration activities may begin. An exploration license is valid for a period of up to 2 years after the effective date of the license or as specified in the license.

(c) The BLM-approved exploration plan will be attached and made a part of each exploration license (see subpart 3931 of part 3930 of this chapter).

(d) After consultation with the surface management agency, the BLM may approve modification of the exploration license proposed by the licensee in writing if geologic or other conditions warrant. The BLM will not add lands to the license once it has been issued.

(e) Subject to the continued obligation of the licensee and the surety to comply with the terms and conditions of the exploration license, the exploration plan, and these regulations, a licensee may relinquish an exploration license for any or all of the lands covered by it. A relinquishment must be filed in the BLM state office in which the original application was filed.

(f) The BLM may terminate an exploration license for noncompliance with its terms and conditions and part 3900, this part, and parts 3920 and 3930 of this chapter.

§ 3910.42 Limitations on exploration licenses.

(a) The issuance of an exploration license for an area will not preclude the BLM's approval of an exploration license or issuance of a Federal oil shale lease for the same lands.

(b) If an oil shale lease is issued for an area covered by an exploration license, the BLM will terminate the exploration license on the effective date of the lease for those lands that are common to both.

§ 3910.44 Collection and submission of data.

Upon the BLM's request, the licensee must provide copies of all data obtained under the exploration license in the format requested by the BLM. To the extent authorized by the Freedom of Information Act, the BLM will consider the data confidential and proprietary until the BLM determines that public access to the data will not damage the competitive position of the licensee or the lands involved have been leased, whichever comes first. The licensee must submit to the proper BLM office all data obtained under the exploration license.

§ 3910.50 Surface use.

Operations conducted under an exploration license must:

(a) Not unreasonably interfere with or endanger any other lawful activity on the same lands;

(b) Not damage any improvements on the lands; and

(c) Comply with all applicable Federal, state, and local laws and regulations.

■ 3. Add part 3920 to subchapter C to read as follows:

PART 3920—OIL SHALE LEASING

Subpart 3921—Pre-Sale Activities

Sec.
3921.10 Special requirements related to land use planning.
3921.20 Compliance with the National Environmental Policy Act.
3921.30 Call for expression of leasing interest.
3921.40 Comments from governors, local governments, and interested Indian tribes.
3921.50 Determining the geographic area for receiving applications to lease.
3921.60 Call for applications.

Subpart 3922—Application Processing

3922.10 Application processing fee.
3922.20 Application contents.
3922.30 Application—Additional information.
3922.40 Tract delineation.

Subpart 3923—Minimum Bid

3923.10 Minimum bid.

Subpart 3924—Lease Sale Procedures

3924.5 Notice of sale.
3924.10 Lease sale procedures and receipt of bids.

Subpart 3925—Award of Lease

3925.10 Award of lease.

Subpart 3926—Conversion of Preference Right for Research, Development, and Demonstration (R, D and D) Leases

3926.10 Conversion of an R, D and D lease to a commercial lease.

Subpart 3927—Lease Terms

3927.10 Lease form.
3927.20 Lease size.
3927.30 Lease duration and notification requirement.
3927.40 Effective date of leases.
3927.50 Diligent development.

Authority: 30 U.S.C. 241(a), 42 U.S.C. 15927, 43 U.S.C. 1732(b) and 1740.

Subpart 3921—Pre-Sale Activities

§ 3921.10 Special requirements related to land use planning.

The State Director may call for expressions of leasing interest as described in § 3921.30 after areas available for leasing have been identified in a land use plan completed under part 1600 of this chapter.

§ 3921.20 Compliance with the National Environmental Policy Act.

Before the BLM will offer a tract for competitive lease sale under subpart 3924, the BLM must prepare a NEPA analysis of the proposed lease area under 40 CFR parts 1500 through 1508 either separately or in conjunction with a land use planning action.

§ 3921.30 Call for expression of leasing interest.

The State Director may implement the provisions of §§ 3921.40 through 3921.60 after review of any responses received as a result of a call for expression of leasing interest. The BLM notice calling for expressions of leasing interest will:

(a) Be published in the **Federal Register** and in at least 1 newspaper of general circulation in each affected state for 2 consecutive weeks;

(b) Allow no less than 30 calendar days to submit expressions of interest;

(c) Request specific information including the name and address of the respondent and the legal land description of the area of interest;

(d) State that all information submitted under this subpart must be available for public inspection; and

(e) Include a statement indicating that data which is considered proprietary must not be submitted as part of an expression of leasing interest.

§ 3921.40 Comments from governors, local governments, and interested Indian tribes.

After the BLM receives responses to the call for expression of leasing interest, the BLM will notify the appropriate state governor's office, local governments, and interested Indian tribes and allow them an opportunity to provide comments regarding the responses and other issues related to oil shale leasing. The BLM will only consider those comments it receives within 60 calendar days after the notification requesting comments.

§ 3921.50 Determining the geographic area for receiving applications to lease.

After analyzing expressions of leasing interest received under § 3921.30 and complying with the procedures at § 3921.40 of this chapter, the State Director may determine a geographic area for receiving applications to lease. The BLM may also include additional geographic areas available for lease in addition to lands identified in expressions of interest to lease.

§ 3921.60 Call for applications.

If, as a result of the analysis of the expression of leasing interest, the State Director determines that there is interest in having a competitive sale, the State Director may publish a notice in the **Federal Register** requesting applications to lease. The notice will:

(a) Describe the geographic area the BLM determined is available for application under § 3921.50;

(b) Allow no less than 90 calendar days for interested parties to submit applications to the proper BLM office; and

(c) Provide that applications submitted to the BLM must meet the requirements at subpart 3922.

Subpart 3922—Application Processing

§ 3922.10 Application processing fee.

(a) An applicant nominating or applying for a tract for competitive leasing must pay a cost recovery or processing fee that the BLM will determine on a case-by-case basis as described in § 3000.11 of this chapter and as modified by the following provisions.

(b) The cost recovery process for a competitive oil shale lease is as follows:

(1) The applicant nominating the tract for competitive leasing must pay the fee before the BLM will process the application and publish a notice of competitive lease sale;

(2) The BLM will publish a sale notice no later than 30 days before the proposed sale. The BLM will include in the sale notice a statement of the total cost recovery fee paid to the BLM by the applicant, up to 30 calendar days before the sale;

(3) Before the lease is issued:

(i) The successful bidder, if someone other than the applicant, must pay to the BLM the cost recovery amount specified in the sale notice, including the cost of the NEPA analysis; and

(ii) The successful bidder must pay all processing costs the BLM incurs after the date of the sale notice;

(4) If the successful bidder is someone other than the applicant, the BLM will refund to the applicant the amount paid under paragraph (b)(1) of this section;

(5) If there is no successful bidder, the applicant is responsible for all processing fees; and

(6) If the successful bidder is someone other than the applicant, within 30 calendar days after the lease sale, the successful bidder must file an application in accordance with § 3922.20.

§ 3922.20 Application contents.

A lease application must be filed by any party seeking to obtain a lease. Lease applications must be filed in the proper BLM State Office. No specific form of application is required, but the application must include information necessary to evaluate the impacts on the human environment of issuing the proposed lease or leases. Except as

otherwise requested by the BLM, the application must include, but not be limited to, the following:

(a) Name, address, and telephone number of applicant, and a qualification statement, as required by subpart 3902 of this chapter;

(b) A delineation of the proposed lease area or areas, the surface ownership (if other than the United States) of those areas, a description of the quality, thickness, and depth of the oil shale and of any other resources the applicant proposes to extract, and environmental data necessary to assess impacts from the proposed development; and

(c) A description of the proposed extraction method, including personnel requirements, production levels, and transportation methods, including:

(1) A description of the mining, retorting, or in situ mining or processing technology that the operator would use and whether the proposed development technology is substantially identical to a technology or method currently in use to produce marketable commodities from oil shale deposits;

(2) An estimate of the maximum surface area of the lease area that will be disturbed or be undergoing reclamation at any one time;

(3) A description of the source and quantities of water to be used and of the water treatment and disposal methods necessary to meet applicable water quality standards;

(4) A description of the regulated air emissions;

(5) A description of the anticipated noise levels from the proposed development;

(6) A description of how the proposed lease development would comply with all applicable statutes and regulations governing management of chemicals and disposal of solid waste. If the proposed lease development would include disposal of wastes on the lease site, include a description of measures to be used to prevent the contamination of soil and of surface and ground water;

(7) A description of how the proposed lease development would avoid, or, to the extent practicable, mitigate impacts on species or habitats protected by applicable state or Federal law or regulations, and impacts on wildlife habitat management;

(8) A description of reasonably foreseeable social, economic, and infrastructure impacts on the surrounding communities, and on state and local governments from the proposed development;

(9) A description of the known historical, cultural, or archaeological resources within the lease area;

(10) A description of infrastructure that would likely be required for the proposed development and alternative locations of those facilities, if applicable;

(11) A discussion of proposed measures or plans to mitigate any adverse socioeconomic or environmental impacts to local communities, services and infrastructure;

(12) A brief description of the reclamation methods that will be used;

(13) Any other information that shows that the application meets the requirements of this subpart or that the applicant believes would assist the BLM in analyzing the impacts of the proposed development; and

(14) A map, or maps, showing:

(i) The topography, physical features, and natural drainage patterns;

(ii) Existing roads, vehicular trails, and utility systems;

(iii) The location of any proposed exploration operations, including seismic lines and drill holes;

(iv) To the extent known, the location of any proposed mining operations and facilities, trenches, access roads, or trails, and supporting facilities including the approximate location and extent of the areas to be used for pits, overburden, and tailings; and

(v) The location of water sources or other resources that may be used in the proposed operations and facilities.

§ 3922.30 Application—Additional information.

At any time during processing of the application, or the environmental or similar assessments of the application, the BLM may request additional information from the applicant. Failure to provide the best available and most accurate information may result in suspension or termination of processing of the application, or in a decision to deny the application.

§ 3922.40 Tract delineation.

(a) The BLM will delineate tracts for competitive sale to provide for the orderly development of the oil shale resource.

(b) The BLM may delineate more or less lands than were covered by an application for any reason the BLM determines to be in the public interest.

(c) The BLM may delineate tracts in any area acceptable for further consideration for leasing, whether or not expressions of leasing interest or applications have been received for those areas.

(d) Where the BLM receives more than 1 application covering the same lands, the BLM may delineate the lands that overlap as a separate tract.

Subpart 3923—Minimum Bid

§ 3923.10 Minimum bid.

The BLM will not accept any bid that is less than the FMV as determined under § 3924.10(d). In no case may the minimum bid be less than $1,000 per acre.

Subpart 3924—Lease Sale Procedures

§ 3924.5 Notice of sale.

(a) After the BLM complies with subparts 3921and 3922, the BLM may publish a notice of the lease sale in the **Federal Register** containing all information required by paragraph (b) of this section. The BLM will also publish a similar notice of lease sale that complies with this section once a week for 3 consecutive weeks, or such other time deemed appropriate by the BLM, in 1 or more newspapers of general circulation in the county or counties in which the oil shale lands are situated. The notice of the sale will be posted in the appropriate State Office at least 30 days prior to the lease sale.

(b) The notice of sale will:

(1) List the time and place of sale, the bidding method, and the legal land descriptions of the tracts being offered;

(2) Specify where a detailed statement of lease terms, conditions, and stipulations may be obtained;

(3) Specify the royalty rate and the amount of the annual rental;

(4) Specify that, prior to lease issuance, the successful bidder for a particular lease must pay the identified cost recovery amount, including the bidder's proportionate share of the total cost of the NEPA analysis and of publication of the notice; and

(5) Contain such other information as the BLM deems appropriate.

(c) The detailed statement of lease terms, conditions, and stipulations will, at a minimum, contain:

(1) A complete copy of each lease and all lease stipulations to the lease; and

(2) Resource information relevant to the tracts being offered for lease and the minimum production requirement.

§ 3924.10 Lease sale procedures and receipt of bids.

(a) The BLM will accept sealed bids only as specified in the notice of sale and will return to the bidder any sealed bid submitted after the time and date specified in the sale notice. Each sealed bid must include:

(1) A certified check, cashier's check, bank draft, money order, personal check, or cash for one-fifth of the amount of the bonus; and

(2) A qualifications statement signed by the bidder as described in subpart 3902 of this chapter.

(b) At the time specified in the sale notice, the BLM will open and read all bids and announce the highest bid. The BLM will make a record of all bids.

(c) No decision to accept or reject the high bid will be made at the time of sale.

(d) After the sale, the BLM will convene a sales panel to determine:

(1) If the high bid was submitted in compliance with the terms of the notice of sale and these regulations;

(2) If the high bid reflects the FMV of the tract; and

(3) Whether the high bidder is qualified to hold the lease.

(e) The BLM may reject any or all bids regardless of the amount offered, and will not accept any bid that is less than the FMV. The BLM will notify the high bidder whose bid has been rejected in writing and include a statement of reasons for the rejection.

(f) The BLM may offer the lease to the next highest qualified bidder if the successful bidder fails to execute the lease or for any reason is disqualified from receiving the lease.

(g) The balance of the bonus bid is due and payable to the MMS in 4 equal annual installments on each of the first 4 anniversary dates of the lease, unless otherwise specified in the lease.

Subpart 3925—Award of Lease

§ 3925.10 Award of lease.

(a) The lease will be awarded to the highest qualified bidder whose bid meets or exceeds the BLM's estimate of FMV, except as provided in § 3924.10. The BLM will provide the successful bidder 3 copies of the oil shale lease form for execution.

(b) Within 60 calendar days after receipt of the lease forms, the successful bidder must sign all copies and return them to the proper BLM office. The successful bidder must also submit the necessary lease bond (see subpart 3904 of this chapter), the first year's rental, any unpaid cost recovery fees, including costs associated with the NEPA analysis, and the bidder's proportionate share of the cost of publication of the sale notice. The BLM may, upon written request, grant an extension of time to submit the items under this paragraph.

(c) If the successful bidder does not comply with this section, the BLM will not issue the lease and the bidder forfeits the one-fifth bonus payment submitted with the bid.

(d) If the lease cannot be awarded for reasons determined by the BLM to be beyond the control of the successful bidder, the BLM will refund the deposit submitted with the bid.

(e) If the successful bidder was not an applicant under § 3922.20, the successful bidder must submit an application and the BLM may require additional NEPA analysis of the successful bidder's proposed operations.

Subpart 3926—Conversion of Preference Right for Research, Development, and Demonstration (R, D and D) Leases

§ 3926.10 Conversion of an R, D and D lease to a commercial lease.

(a) Applications to convert R, D and D leases, including preference right areas, into commercial leases, are subject to the regulations at parts 3900 and 3910, this part, and part 3930, except for lease sale procedures at subparts 3921 and 3924 and § 3922.40.

(b) A lessee of an R, D and D lease must apply for the conversion of the R, D and D lease to a commercial lease no later than 90 calendar days after the commencement of production in commercial quantities. No specific form of application is required. The application for conversion must be filed in the BLM state office that issued the R, D and D lease. The conversion application must include:

(1) Documentation that there have been commercial quantities of oil shale produced from the lease, including the narrative required by the R, D and D leases;

(2) Documentation that the lessee consulted with state and local officials to develop a plan for mitigating the socioeconomic impacts of commercial development on communities and infrastructure;

(3) A bid payment no less than specified in § 3923.10 and equal to the FMV of the lease; and

(4) Bonding as required by § 3904.14 of this chapter.

(c) The lessee of an R, D and D lease has the exclusive right to acquire any and all portions of the preference right area designated in the R, D and D lease up to a total of 5,120 acres in the lease. The BLM will approve the conversion application, in whole or in part, if it determines that:

(1) There have been commercial quantities of shale oil produced from the lease;

(2) The bid payment for the lease met FMV;

(3) The lessee consulted with state and local officials to develop a plan for mitigating the socioeconomic impacts of commercial development on communities and infrastructure;

(4) The bond is consistent with § 3904.14 of this chapter; and

(5) Commercial scale operations can be conducted, subject to mitigation measures to be specified in stipulations or regulations, in a manner that complies with applicable law and regulation.

(d) The commercial lease must contain terms consistent with the regulations in parts 3900 and 3910 of this chapter, this part, and part 3930 of this chapter, and stipulations developed through appropriate NEPA analysis.

Subpart 3927—Lease Terms

§ 3927.10 Lease form.

Leases are issued on a BLM approved standard form. The BLM may modify those provisions of the standard form that are not required by statute or regulations and may add such additional stipulations and conditions, as appropriate, with notice to bidders in the notice of sale.

§ 3927.20 Lease size.

The maximum size of an oil shale lease is 5,760 acres.

§ 3927.30 Lease duration and notification requirement.

Leases issue for a period of 20 years and continue as long as there is annual minimum production or as long as there are payments in lieu of production (see § 3903.51 of this chapter). The BLM may initiate procedures to cancel a lease under subpart 3934 of this chapter for not maintaining annual minimum production, for not making the payment in lieu of production, or for not complying with the lease terms, including the diligent development milestones (*see* § 3930.30 of this chapter). The operator or lessee must notify the BLM of any change of address or operator or lessee name.

§ 3927.40 Effective date of leases.

Leases are dated and effective the first day of the month following the date the BLM signs it. However, upon receiving a prior written request, the BLM may make the effective date of the lease the first day of the month in which the BLM signs it.

§ 3927.50 Diligent development.

Oil shale lessees must meet:

(a) Diligent development milestones;

(b) Annual minimum production requirements or payments in lieu of production starting the 10th lease year, except when the BLM determines that operations under the lease are interrupted by strikes, the elements, or causes not attributable to the lessee. Market conditions are not considered a valid reason to waive or suspend the requirements for annual minimum production. The BLM will determine the annual production requirements based on the extraction technology to be

used and on the BLM's estimate of the recoverable resources on the lease, expected life of the operation, and other factors.

■ 4. Add part 3930 to subchapter C to read as follows:

PART 3930—MANAGEMENT OF OIL SHALE EXPLORATION AND LEASES

Subpart 3930—Management of Oil Shale Exploration Licenses and Leases

Sec.
3930.10 General performance standards.
3930.11 Performance standards for exploration and in situ operations.
3930.12 Performance standards for underground mining.
3930.13 Performance standards for surface mines.
3930.20 Operations.
3930.30 Diligent development milestones.
3930.40 Assessments for missing diligence milestones.

Subpart 3931—Plans of Development and Exploration Plans

3931.10 Exploration plans and plans of development for mining and in situ operations.
3931.11 Content of plan of development.
3931.20 Reclamation.
3931.30 Suspension of operations and production.
3931.40 Exploration.
3931.41 Content of exploration plan.
3931.50 Exploration plan and plan of development modifications.
3931.60 Maps of underground and surface mine workings and in situ surface operations.
3931.70 Production maps and production reports.
3931.80 Core or test hole samples and cuttings.
3931.100 Boundary pillars and buffer zones.

Subpart 3932—Lease Modifications and Readjustments

3932.10 Lease size modification.
3932.20 Lease modification land availability criteria.
3932.30 Terms and conditions of a modified lease.
3932.40 Readjustment of lease terms.

Subpart 3933—Assignments and Subleases

3933.10 Leases or licenses subject to assignment or sublease.
3933.20 Filing fees.
3933.31 Record title assignments.
3933.32 Overriding royalty interests.
3933.40 Account status.
3933.51 Bond coverage.
3933.52 Continuing responsibility under assignment and sublease.
3933.60 Effective date.
3933.70 Extensions.

Subpart 3934—Relinquishment, Cancellations, and Terminations

3934.10 Relinquishments.
3934.21 Written notice of default.
3934.22 Causes and procedures for lease cancellation.
3934.30 License terminations.
3934.40 Payments due.
3934.50 Bona fide purchasers.

Subpart 3935—Production and Sale Records

3935.10 Accounting records.

Subpart 3936—Inspection and Enforcement

3936.10 Inspection of underground and surface operations and facilities.
3936.20 Issuance of notices of noncompliance and orders.
3936.30 Enforcement of notices of noncompliance and orders.
3936.40 Appeals.

Authority: 25 U.S.C. 396d and 2107, 30 U.S.C. 241(a), 42 U.S.C. 15927, 43 U.S.C. 1732(b), 1733, and 1740.

Subpart 3930—Management of Oil Shale Exploration Licenses and Leases

§ 3930.10 General performance standards.

The operator/lessee must comply with the following performance standards concerning exploration, development, and production:

(a) All operations must be conducted to achieve MER;

(b) Operations must be conducted under an approved POD or exploration plan;

(c) The operator/lessee must diligently develop the lease and must comply with the diligent development milestones and production requirements at § 3930.30;

(d) The operator/lessee must notify the BLM promptly if operations encounter unexpected wells or drill holes that could adversely affect the recovery of shale oil or other minerals producible under an oil shale lease during mining operations, and must not take any action that would disturb such wells or drill holes without the BLM's prior approval;

(e) The operator/lessee must conduct operations to:

(1) Prevent waste and conserve the recoverable oil shale reserves and other resources;

(2) Prevent damage to or degradation of oil shale formations;

(3) Ensure that other resources are protected upon abandonment of operations; and

(f) The operator must save topsoil for use in final reclamation after the reshaping of disturbed areas has been completed.

§ 3930.11 Performance standards for exploration and in situ operations.

The operator/lessee must adhere to the following standards for all exploration and in situ drilling operations:

(a) At the end of exploration operations, all drill holes must be capped with at least 5 feet of cement and plugged with a permanent plugging material that is unaffected by water and hydrocarbon gases and will prevent the migration of gases and water in the drill hole under normal hole pressures. For holes drilled deeper than stripping limits, the operator/lessee, using cement or other suitable plugging material the BLM approves in advance, must plug the hole through the thickness of the oil shale bed(s) or mineral deposit(s) and through aquifers for a distance of at least 50 feet above and below the oil shale bed(s) or mineral deposit(s) and aquifers, or to the bottom of the drill hole. The BLM may approve a lesser cap or plug. Capping and plugging must be managed to prevent water pollution and the mixing of ground and surface waters and to ensure the safety of people, livestock, and wildlife;

(b) The operator/lessee must retain for 1 year all drill and geophysical logs. The operator must also make such logs available for inspection or analysis by the BLM. The BLM may require the operator/lessee to retain representative samples of drill cores for 1 year;

(c) The operator/lessee may, after the BLM's written approval, use drill holes as surveillance wells for the purpose of monitoring the effects of subsequent operations on the quantity, quality, or pressure of ground water or mine gases; and

(d) The operator/lessee may, after written approval from the BLM and the surface owner, convert drill holes to water wells. When granting such approvals, the BLM will include a transfer to the surface owner of responsibility for any liability, including eventual plugging, reclamation, and abandonment.

§ 3930.12 Performance standards for underground mining.

(a) Underground mining operations must be conducted in a manner to prevent the waste of oil shale, to conserve recoverable oil shale reserves, and to protect other resources. The BLM must approve in writing permanent abandonment and operations that render oil shale inaccessible.

(b) The operator/lessee must adopt mining methods that ensure the proper recovery of recoverable oil shale reserves.

(c) Operators/lessees must adopt measures consistent with known technology to prevent or, where the mining method used requires subsidence, control subsidence, maximize mine stability, and maintain the value and use of surface lands. If the POD indicates that pillars will not be removed and controlled subsidence is

not part of the POD, the POD must show that pillars of adequate dimensions will be left for surface stability, considering the thickness and strength of the oil shale beds and the strata above and immediately below the mined interval.

(d) The lessee/operator must have the BLM's approval to temporarily abandon a mine or portions thereof.

(e) The operator/lessee must have the BLM's prior approval to mine any recoverable oil shale reserves or drive any underground workings within 50 feet of any of the outer boundary lines of the federally-leased or federally-licensed land. The BLM may approve operations closer to the boundary after taking into consideration state and Federal environmental laws and regulations.

(f) The lessee/operator must have the BLM's prior approval before drilling any lateral holes within 50 feet of any outside boundary.

(g) Either the operator/lessee or the BLM may initiate the proposal to mine oil shale in a barrier pillar if the oil shale in adjoining lands has been mined out. The lessee/operator of the Federal oil shale must enter into an agreement with the owner of the oil shale in those adjacent lands prior to mining the oil shale remaining in the Federal barrier pillars (which otherwise may be lost).

(h) The BLM must approve final abandonment of a mining area.

§ 3930.13 Performance standards for surface mines.

(a) Pit widths for each oil shale seam must be engineered and designed to eliminate or minimize the amount of oil shale fender to be left as a permanent pillar on the spoil side of the pit.

(b) Considering mine economics and oil shale quality, the amount of oil shale wasted in each pit must be minimal.

(c) The BLM must approve the final abandonment of a mining area.

(d) The BLM must approve the conditions under which surface mines, or portions thereof, will be temporarily abandoned, under the regulations in this part.

(e) The operator/lessee may, in the interest of conservation, mine oil shale up to the Federal lease or license boundary line, provided that the mining:

(1) Complies with existing state and Federal mining, environmental, reclamation, and safety laws and rules; and

(2) Does not conflict with the rights of adjacent surface owners.

(f) The operator must save topsoil for final application after the reshaping of disturbed areas has been completed.

§ 3930.20 Operations.

(a) *Maximum Economic Recovery (MER).* All mining and in situ development and production operations must be conducted in a manner to yield the MER of the oil shale deposits, consistent with the protection and use of other natural resources, the protection and preservation of the environment, including, land, water, and air, and with due regard for the safety of miners and the public. All shafts, main exits, and passageways, and overlying beds or mineral deposits that at a future date may be of economic importance must be protected by adequate pillars in the deposit being worked or by such other means as the BLM approves.

(b) *New geologic information.* The operator must record any new geologic information obtained during mining or in situ development operations regarding any mineral deposits on the lease. The operator must report this new information in a BLM-approved format to the proper BLM office within 90 calendar days after obtaining the information.

(c) *Statutory compliance.* Operators must comply with applicable Federal and state law, including, but not limited to the following:

(1) Clean Air Act (42 U.S.C. 1857 *et seq.*);

(2) Federal Water Pollution Control Act, as amended (30 U.S.C. 1151 *et seq.*);

(3) Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*);

(4) National Historic Preservation Act, as amended (16 U.S.C. 470 *et seq.*);

(5) Archaeological and Historical Preservation Act, as amended (16 U.S.C. 469 *et seq.*);

(6) Archaeological Resources Protection Act, as amended (16 U.S.C. 470aa *et seq.*); and

(7) Native American Graves Protection and Repatriation Act, as amended (25 U.S.C. 3001 *et seq.*).

(d) Resource protection. The following additional resource protection provisions apply to oil shale operations:

(1) Operators must comply with applicable Federal and state standards for the disposal and treatment of solid wastes. All garbage, refuse, or waste must either be removed from the affected lands' or disposed of or treated to minimize, so far as is practicable, their impact on the lands, water, air, and biological resources;

(2) Operators must conduct operations in a manner to prevent adverse impacts to threatened or endangered species and any of their habitat that may be affected by operations.

(3) If the operator encounters any scientifically important paleontological remains or any historical or archaeological site, structure, building, or object on Federal lands, it must immediately notify the BLM. Operators must not, without prior BLM approval, knowingly disturb, alter, damage, or destroy any scientifically important paleontological remains or any historical or archaeological site, structure, building, or object on Federal lands.

§ 3930.30 Diligent development milestones.

(a) Operators must diligently develop the oil shale resources consistent with the terms and conditions of the lease, POD, and these regulations. If the operator does not maintain or comply with diligent development milestones, the BLM may initiate lease cancellation. In order to be considered diligently developing the lease, the lessee/operator must comply with the following diligence milestones:

(1) Milestone 1. Within 2 years of the lease issuance date, submit to the proper BLM office an initial POD that meets the requirements of subpart 3931. The operator must revise the POD following subpart 3931, if the BLM determines that the initial POD is unacceptable;

(2) Milestone 2. Within 3 years of the lease issuance date, submit a final POD. The BLM may, based on circumstances beyond the control of the lessee or operator, or on the complexity of the POD, grant a 1 year extension to the lessee or operator to submit a complete POD;

(3) Milestone 3. Within 2 years after the BLM approves the final POD, apply for all required Federal and state permits and licenses;

(4) Milestone 4. Before the end of the 7th year after lease issuance, begin permitted infrastructure installation, as required by the BLM approved POD; and

(5) Milestone 5. Before the end of the 10th year after lease issuance, begin oil shale production.

(b) Operators may apply for additional time to complete a milestone. The BLM may grant additional time for completing a milestone if the operator provides documentation that shows to the BLM's satisfaction that achieving the milestone by the deadline is not possible for reasons that are beyond the control of the operator. Allowable time extensions to meet milestone 4 will extend the requirement to begin production in the 10th lease year by an amount of time equal to the extension

granted for milestone 4. This extension also extends the requirements for payments in lieu of production and minimum production under paragraphs (c), (d), and (e) of this section.

(c) Operators must maintain minimum annual production every year after the 10th lease year or pay in lieu of production according to the lease terms.

(d) Each lease will provide for minimum production. The minimum production requirement stated in the lease must be met by the end of the 10th lease year and will be based on the BLM's estimate of the extraction technology to be used, the recoverable resources on the lease, expected life of the operation, and other factors the BLM considers.

(e) Each lease will provide for payment in lieu of the minimum production for any particular year starting in the 10th lease year. Payments in lieu of production in year 10 of the lease satisfies Milestone 5 in paragraph (a)(5) of this section.

§ 3930.40 Assessments for missing diligence milestones.

The BLM will assess $50 for each acre in the lease for each missed diligence milestone each year, prorated on a daily basis, until the operator or lessee complies with § 3930.30(a). For example: If the operator does not submit the required POD within the required 2 years after lease issuance (the first milestone), the BLM will assess the operator $50 per acre per year until the milestone is met. If the operator does not meet the second milestone, the BLM will assess the operator an additional $50 per acre per year, resulting in a total assessment of $100 per acre per year. If the operator does not begin production by the end of the initial lease term, or make payments in lieu thereof, the BLM may initiate lease cancellation procedures (see §§ 3934.21 and 3934.22).

Subpart 3931—Plans of Development and Exploration Plans

§ 3931.10 Exploration plans and plans of development for mining and in situ operations.

(a) The POD must provide for reasonable protection and reclamation of the environment and the protection and diligent development of the oil shale resources in the lease.

(b) The operator must submit to the proper BLM office an exploration plan or POD describing in detail the proposed exploration, testing, development, or mining operations to be conducted. Exploration plans or PODs must be consistent with the requirements of the lease or exploration license and protect nonmineral resources and provide for the reclamation of the lands affected by the operations on Federal lease(s) or exploration license(s). All PODs and exploration plans must be submitted to the proper BLM office.

(c) The lessee or operator must submit 3 copies of the POD to the proper BLM office or submit it in an acceptable electronic format. Contact the proper BLM office for detailed information on submitting copies electronically (*see* § 3931.40 for submission of exploration plans).

(d) The BLM will consult with any other Federal, state, or local agencies involved and review the plan. The BLM may require additional information or changes in the plan before approving it. If the BLM denies the plan, it will set forth why it was denied.

(e) All development and exploration activities must comply with the BLM-approved POD or exploration plan.

(f) Activities under §§ 3931.11 and 3931.40, other than casual use, may not begin until appropriate NEPA analysis is completed and the BLM approves an exploration plan or POD.

§ 3931.11 Content of plan of development.

The POD must contain, at a minimum, the following:

(a) Names, addresses, and telephone numbers of those responsible for operations to be conducted under the approved plan and to whom notices and orders are to be delivered, names and addresses of Federal oil shale lessees and corresponding Federal lease serial numbers, and names and addresses of surface and mineral owners of record, if other than the United States;

(b) A general description of geologic conditions and mineral resources within the area where mining is to be conducted, including appropriate maps;

(c) A copy of a suitable map or aerial photograph showing the topography, the area covered by each lease, the name and location of major topographic and cultural features;

(d) A statement of proposed methods of operation and development, including the following items as appropriate:

(1) A description detailing the extraction technology to be used;

(2) The equipment to be used in development and extraction;

(3) The proposed access roads;

(4) The size, location, and schematics of all structures, facilities, and lined or unlined pits to be built;

(5) The stripping ratios, development sequence, and schedule;

(6) The number of acres in the Federal lease(s) or license(s) to be affected;

(7) Comprehensive well design and procedure for drilling, casing, cementing, testing, stimulation, clean-up, completion, and production, for all drilled well types, including those used for heating, freezing, and disposal;

(8) A description of the methods and means to protect and monitor all aquifers;

(9) Surveyed well location plats or project-wide well location plats;

(10) A description of the measurement and handling of produced fluids, including the anticipated production rates and estimated recovery factors;

(11) A description of the methods used to dispose of and control mining waste; and

(12) A description/discussion of the controls that the operator will use to protect the public, including identification of:

(i) Essential operations, personnel, and health and safety precautions;

(ii) Programs and plans for noxious gas control (hydrogen sulfide, ammonia, etc.);

(iii) Well control procedures;

(iv) Temporary abandonment procedures; and

(v) Plans to address spills, leaks, venting, and flaring;

(e) An estimate of the quantity and quality of the oil shale resources;

(f) An explanation of how MER of the resource will be achieved for each Federal lease;

(g) Appropriate maps and cross sections showing:

(1) Federal lease boundaries and serial numbers;

(2) Surface ownership and boundaries;

(3) Locations of any existing and abandoned mines and existing oil and gas well (including well bore trajectories) and water well locations, including well bore trajectories;

(4) Typical geological structure cross sections;

(5) Location of shafts or mining entries, strip pits, waste dumps, retort facilities, and surface facilities;

(6) Typical mining or in situ development sequence, with appropriate time-frames;

(h) A narrative addressing the environmental aspects of the proposed mine or in situ operation, including at a minimum, the following:

(1) An estimate of the quantity of water to be used and pollutants that may enter any receiving waters;

(2) A design for the necessary impoundment, treatment, control, or injection of all produced water, runoff water, and drainage from workings; and

(3) A description of measures to be taken to prevent or control fire, soil

erosion, subsidence, pollution of surface and ground water, pollution of air, damage to fish or wildlife or other natural resources, and hazards to public health and safety;

(i) A reclamation plan and schedule for all Federal lease(s) or exploration license(s) that details all reclamation activities necessary to fulfill the requirements of § 3931.20;

(j) The method of abandonment of operations on Federal lease(s) and exploration license(s) proposed to protect the unmined recoverable reserves and other resources, including:

(1) The method proposed to fill in, fence, or close all surface openings that are hazardous to people or animals; and

(2) For in situ operations, a description of the method and materials to be used to plug all abandoned development or production wells; and

(k) Any additional information that the BLM determines is necessary for analysis or approval of the POD.

§ 3931.20 Reclamation.

(a) The operator or lessee must restore the disturbed lands to their pre-mining or pre-exploration use or to a higher use agreed to by the BLM and the lessee.

(b) The operator must reclaim the area disturbed by taking reasonable measures to prevent or control onsite and offsite damage to lands and resources.

(c) Reclamation includes, but is not limited to:

(1) Measures to control erosion, landslides, and water runoff;

(2) Measures to isolate, remove, or control toxic materials;

(3) Reshaping the area disturbed, application of the topsoil, and re-vegetation of disturbed areas, where reasonably practicable; and

(4) Rehabilitation of fisheries and wildlife habitat.

(d) The operator or lessee must substantially fill in, fence, protect, or close all surface openings, subsidence holes, surface excavations, or workings which are a hazard to people or animals. These protected areas must be maintained in a secure condition during the term of the lease or exploration license. During reclamation, but before abandonment of operations, all openings, including water discharge points, must be closed to the BLM's satisfaction. For in situ operations, all drilled holes must be plugged and abandoned, as required by the approved plan.

(e) The operator or lessee must reclaim or protect surface areas no longer needed for operations as contemporaneously as possible as required by the approved plan.

§ 3931.30 Suspension of operations and production.

(a) The BLM may, in the interest of conservation, agree to a suspension of lease operations and production. Applications by lessees for suspensions of operations and production must be filed in duplicate in the proper BLM office and must explain why it is in the interest of conservation to suspend operations and production.

(b) The BLM may order a suspension of operations and production if the suspension is necessary to protect the resource or the environment:

(1) While the BLM performs necessary environmental studies or analysis;

(2) To ensure that necessary environmental remediation or cleanup is being performed as a result of activity or inactivity on the part of the operator; or

(3) While necessary environmental remediation or cleanup is being performed as a result of unwarranted or unexpected actions.

(c) The term of any lease will be extended by adding thereto any period of suspension of operations and production during such term.

(d) A suspension will take effect on the date the BLM specifies. Rental, upcoming diligent development milestones, and minimum annual production will be suspended:

(1) During any period of suspension of operations and production beginning with the first day of the lease month on which the suspension of operations and production is effective; or

(2) If the suspension of operations and production is effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date.

(e) The suspension of rental and minimum annual production will end on the first day of the lease month in which the suspension ends.

(f) The minimum annual production requirements of a lease will be proportionately reduced for that portion of a lease year for which a suspension of operations and production is directed or granted by the BLM, as would any payments in lieu of production.

§ 3931.40 Exploration.

To conduct exploration operations under an exploration license or on a lease after lease issuance, but prior to approval of the POD, the following rules apply:

(a) Except for casual use, before conducting any exploration operations on federally-leased or federally-licensed lands, the operator or lessee must submit to the proper BLM office for approval 3 copies of the exploration plan or a copy of the plan in an acceptable electronic format. Contact the proper BLM office for detailed information on submitting copies electronically. As used in this paragraph, casual use means activities that do not cause appreciable surface disturbance or damage to lands or other resources and improvements. Casual use does not include use of heavy equipment, explosives, or vehicular movement off established roads and trails.

(b) The exploration activities must be consistent with the requirements of the underlying Federal lease or exploration license, and address protection of recoverable oil shale reserves and other resources and reclamation of the surface of the lands affected by the exploration operations. The exploration plan must meet the requirements of § 3931.20 and must show how reclamation will be an integral part of the proposed operations and that reclamation will progress as contemporaneously as practicable with operations.

§ 3931.41 Content of exploration plan.

Exploration plans must contain the following:

(a) The name, address, and telephone number of the applicant, and, if applicable, that of the operator or lessee of record;

(b) The name, address, and telephone number of the representative of the applicant who will be present during, and responsible for, conducting exploration;

(c) A description of the proposed exploration area, cross-referenced to the map required under paragraph (h) of this section, including:

(1) Applicable Federal lease and exploration license serial numbers;

(2) Surface topography;

(3) Geologic, surface water, and other physical features;

(4) Vegetative cover;

(5) Endangered or threatened species listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) that may be affected by exploration operations;

(6) Districts, sites, buildings, structures, or objects listed on, or eligible for listing on, the National Register of Historic Places that may be present in the lease area; and

(7) Known cultural or archaeological resources located within the proposed exploration area;

(d) A description of the methods to be used to conduct oil shale exploration, reclamation, and abandonment of operations including, but not limited to:

(1) The types, sizes, numbers, capacity, and uses of equipment for drilling and blasting, and road or other access route construction;

(2) Excavated earth-disposal or debris-disposal activities;

(3) The proposed method for plugging drill holes; and

(4) The estimated size and depth of drill holes, trenches, and test pits;

(e) An estimated timetable for conducting and completing each phase of the exploration, drilling, and reclamation;

(f) The estimated amounts of oil shale or oil shale products to be removed during exploration, a description of the method to be used to determine those amounts, and the proposed use of the oil shale or oil shale products removed;

(g) A description of the measures to be used during exploration for Federal oil shale to comply with the performance standards for exploration (§§ 3930.10 and 3930.11);

(h) A map at a scale of 1:24,000 or larger showing the areas of land to be affected by the proposed exploration and reclamation. The map must show:

(1) Existing roads, occupied dwellings, and pipelines;

(2) The proposed location of trenches, roads, and other access routes and structures to be constructed;

(3) Applicable Federal lease and exploration license boundaries;

(4) The location of land excavations to be conducted;

(5) Oil shale exploratory holes to be drilled or altered;

(6) Earth-disposal or debris-disposal areas;

(7) Existing bodies of surface water; and

(8) Topographic and drainage features; and

(i) The name and address of the owner of record of the surface land, if other than the United States. If the surface is owned by a person other than the applicant or if the Federal oil shale is leased to a person other than the applicant, include evidence of authority to enter that land for the purpose of conducting exploration and reclamation.

§ 3931.50 Exploration plan and plan of development modifications.

(a) The operator or lessee may apply in writing to the BLM for modification of the approved exploration plan or POD to adjust to changed conditions, new information, improved methods, and new or improved technology or to correct an oversight. To obtain approval of an exploration plan or POD modification, the operator or lessee must submit to the proper BLM office a written statement of the proposed modification and the justification for such modification.

(b) The BLM may require a modification of the approved exploration plan or POD.

(c) The BLM may approve a partial exploration plan or POD, if circumstances warrant, or if development of an exploration or POD for the entire operation is dependent upon unknown factors that cannot or will not be determined until operations progress. The operator or lessee must not, however, perform any operation not covered in a BLM-approved plan.

§ 3931.60 Maps of underground and surface mine workings and in situ surface operations.

Maps of underground workings and surface operations must be to a scale of 1:24,000 or larger if the BLM requests it. All maps must be appropriately marked with reference to government land marks or lines and elevations with reference to sea level. When required by the BLM, include vertical projections and cross sections in plan views. Maps must be based on accurate surveys and certified by a professional engineer, professional land surveyor, or other professionally qualified person. Accurate copies of such maps must be furnished by the operator to the BLM when and as required. All maps submitted must be in a format acceptable to the BLM. Contact the proper BLM office for information on what is the acceptable format to submit maps.

§ 3931.70 Production maps and production reports.

(a) Report production of all oil shale products or by-products to the BLM on a quarterly basis no later than 30 calendar days after the end of the reporting period.

(b) Report all production and royalty information to the MMS under 30 CFR parts 210 and 216.

(c) Submit production maps to the proper BLM office no later than 30 calendar days after the end of each royalty reporting period or on a schedule determined by the BLM. Show all excavations in each separate bed or deposit on the maps so that the production of minerals for any period can be accurately ascertained. Production maps must also show surface boundaries, lease boundaries, topography, and subsidence resulting from mining activities.

(d) If the lessee or operator does not provide the BLM the maps required by this section, the BLM will employ a licensed mine surveyor to make a survey and maps of the mine, and the cost will be charged to the operator or lessee.

(e) If the BLM believes any map submitted by an operator or lessee is incorrect, the BLM may have a survey performed, and if the survey shows the map submitted by the operator or lessee to be substantially incorrect in whole or in part, the cost of performing the survey and preparing the map will be charged to the operator or lessee.

(f) For in situ development operations, the lessee or operator must submit a map showing all surface installations, including pipelines, meter locations, or other points of measurement necessary for production verification as part of the POD. All maps must be modified as necessary for adequate representation of existing operations.

(g) Within 30 calendar days after well completion, the lessee or operator must submit to the proper BLM office 2 copies of a completed Form 3160–4, Well Completion or Recompletion Report and Log, limited to information that is applicable to oil shale operations. Well logs may be submitted electronically using a BLM-approved electronic format. Describe surface and bottom-hole locations in latitude and longitude.

§ 3931.80 Core or test hole samples and cuttings.

(a) Within 90 calendar days after drilling completion, the operator or lessee must submit to the proper BLM office a signed copy of records of all core or test holes made on the lands covered by the lease or exploration license. The records must show the position and direction of the holes on a map. The records must include a log of all strata penetrated and conditions encountered, such as water, gas, or unusual conditions, and copies of analysis of all samples. Provide this information to the proper BLM office in either paper copy or in a BLM-approved electronic format. Contact the proper BLM office for information on submitting copies electronically. Within 30 calendar days after its creation, the operator or lessee must also submit to the proper the BLM office a detailed lithologic log of each test hole and all other in-hole surveys or other logs produced. Upon the BLM's request, the operator or lessee must provide to the BLM splits of core samples and drill cuttings.

(b) The lessee or operator must abandon surface exploration drill holes for development or holes for exploration to the BLM's satisfaction by cementing or casing or by other methods approved in advance by the BLM. Abandonment must be conducted in a manner to protect the surface and not endanger

any present or future underground or surface operation or any deposit of oil, gas, other mineral substances, or ground water.

(c) Operators may convert drill holes to surveillance wells for the purpose of determining the effect of subsequent operations upon the quantity, quality, or pressure of ground water or mine gases. The BLM may require such conversion or the operator may request that the BLM approve such conversion. Prior to lease or exploration license termination, all surveillance wells must be plugged and abandoned and reclaimed, unless the surface owner assumes responsibility for reclamation of such surveillance wells. The transfer of liability for reclamation will not be considered complete until the BLM approves it in writing.

(d) Drilling equipment must be equipped with blowout control devices suitable for the pressures encountered and acceptable to the BLM.

§ 3931.100 Boundary pillars and buffer zones.

(a) For underground mining operations, all boundary pillars must be at least 50 feet thick, unless otherwise specified in writing by the BLM. Boundary and other main pillars may be mined only with the BLM's prior written consent or on the BLM's order. For in-situ operations, a 50-foot buffer zone from the Federal lease line is required.

(b) If the oil shale on adjacent Federal lands has been worked out beyond any boundary pillar and no hazards exist, the operator or lessee must, on the BLM's written order, mine out and remove all available oil shale in such boundary pillar, both in the lands covered by the lease and in the adjacent Federal lands, when the BLM determines that such oil shale can be mined safely without undue hardship to the operator or lessee.

(c) If the mining rights in adjacent lands are privately owned or controlled, the lessee must have an agreement with the owners of such interests for the extraction of the oil shale in the boundary pillars.

Subpart 3932—Lease Modifications and Readjustments

§ 3932.10 Lease size modification.

(a) A lessee may apply for a modification of a lease to include Federal lands adjacent to those in the lease. The total area of the lease, including the acreage in the modification application and any previously authorized modification, must not exceed the maximum lease size (see § 3927.20).

(b) An application for modification of the lease size must:

(1) Be filed with the proper BLM office;

(2) Contain a legal land description of the additional lands involved;

(3) Contain an explanation of how the modification would meet the criteria in § 3932.20(a) that qualify the lease for modification;

(4) Explain why the modification would be in the best interest of the United States;

(5) Include a nonrefundable processing fee that the BLM will determine under § 3000.11 of this chapter; and

(6) Include a signed qualifications statement consistent with subpart 3902 of this chapter.

§ 3932.20 Lease modification land availability criteria.

(a) The BLM may grant a lease modification if:

(1) There is no competitive interest in the lands covered by the modification application;

(2) The lands covered by the modification application cannot be reasonably developed as part of another independent federally-approved operation;

(3) The modification would be in the public interest; and

(4) The modification does not cause a violation of lease size limitations under § 3927.20 of this chapter or acreage limitations under § 3901.20 of this chapter.

(b) The BLM may approve adding lands covered by the modification application to the existing lease without competitive bidding, but before the BLM will approve adding lands to the lease, the applicant must pay in advance the FMV for the interests to be conveyed.

(c) Before modifying a lease, the BLM will prepare any necessary NEPA analysis covering the proposed lease area under 40 CFR parts 1500 through 1508 and recover the cost of such analysis from the applicant.

§ 3932.30 Terms and conditions of a modified lease.

(a) The terms and conditions of a lease modified under this subpart will be made consistent with the laws, regulations, and land use plans applicable at the time the lands are added by the modification.

(b) The royalty rate for the lands in the modification is the same as for the lease.

(c) Before the BLM will approve a lease modification, the lessee must file a written acceptance of the conditions in the modified lease and a written consent of the surety under the bond covering the original lease as modified. The lessee must also submit evidence that the bond has been amended to cover the modified lease and pay BLM processing costs.

§ 3932.40 Readjustment of lease terms.

(a) Except as provided in paragraph (b) of this section, all leases are subject to readjustment of lease terms, conditions, and stipulations at the end of the first 20-year period (the primary term of the lease) and at the end of each 10-year period thereafter.

(b) Royalty rates will be subject to readjustment at the end of the primary term and every 20 years thereafter.

(c) At least 30 days prior to the expiration of the readjustment period, the BLM will notify the lessee by written decision if any readjustment is to be made and of the proposed readjusted lease terms, including any revised royalty rate.

(d) Readjustments may be appealed. In the case of an appeal, unless the readjustment is stayed by the IBLA or the courts, the lessee must comply with the revised lease terms, including any revised royalty rate, pending the outcome of the appeal.

Subpart 3933—Assignments and Subleases

§ 3933.10 Leases or licenses subject to assignment or sublease.

Any lease may be assigned or subleased and any exploration license may be assigned in whole or in part to any person, association, or corporation that meets the qualification requirements in subpart 3902 of this chapter. The BLM may approve or disapprove assignments and subleases. A licensee proposing to transfer or assign a license must first offer, in writing, to all other participating parties in the license, the opportunity to acquire the license (the right of first refusal).

§ 3933.20 Filing fees.

Each application for assignment or sublease of record title or overriding royalty must include a nonrefundable filing fee of $60. The BLM will not accept any assignment that does not include the filing fee.

§ 3933.31 Record title assignments.

(a) File in triplicate at the proper BLM office a separate instrument of assignment for each assignment. File the assignment application within 90 calendar days after the date of final execution of the assignment instrument and with it include the:

(1) Name and current address of assignee;

(2) Interest held by assignor and interest to be assigned;

(3) Serial number of the affected lease or license and a description of the lands to be assigned as described in the lease or license;

(4) Percentage of overriding royalties retained; and

(5) Dated signature of assignor.

(b) The assignee must provide a single copy of the request for approval of assignment which must contain a:

(1) Statement of qualifications and holdings as required by subpart 3902 of this chapter;

(2) Date and the signature of the assignee; and

(3) Nonrefundable filing fee of $60.

(c) The approval of an assignment of all interests in a specific portion of the lands in a lease or license will create a separate lease or license, which will be given a new serial number.

§ 3933.32 Overriding royalty interests.

File at the proper BLM office, for record purposes only, all overriding royalty interest assignments within 90 calendar days after the date of execution of the assignment.

§ 3933.40 Account status.

The BLM will not approve an assignment unless the lease or license account is in good standing.

§ 3933.51 Bond coverage.

Before the BLM will approve an assignment, the assignee must submit to the proper BLM office a new bond in an amount to be determined by the BLM, or, in lieu thereof, documentation of consent of the surety on the present bond to the substitution of the assignee as principal (see subpart 3904 of this chapter).

§ 3933.52 Continuing responsibility under assignment and sublease.

(a) The assignor and its surety are responsible for the performance of any obligation under the lease or license that accrues prior to the effective date of the BLM's approval of the assignment. After the effective date of the BLM's approval of the assignment, the assignee and its surety are responsible for the performance of all lease or license obligations that accrue after the effective date of the BLM's approval of the assignment, notwithstanding any terms in the assignment to the contrary. If the BLM does not approve the assignment, the purported assignor's obligation to the United States continues as though no assignment had been filed.

(b) After the effective date of approval of a sublease, the sublessor and sublessee are jointly and severally liable for the performance of all lease obligations, notwithstanding any terms in the sublease to the contrary.

§ 3933.60 Effective date.

An assignment or sublease takes effect, so far as the United States is concerned, on the first day of the month following the BLM's final approval, or if the assignee requests it in advance, the first day of the month of the approval.

§ 3933.70 Extensions.

The BLM's approval of an assignment or sublease does not extend the term or the readjustment period of the lease (see § 3932.40) or the term of the exploration license.

Subpart 3934—Relinquishments, Cancellations, and Terminations

§ 3934.10 Relinquishments.

(a) A lease or exploration license or any legal subdivision thereof may be surrendered by the record title holder by filing a written relinquishment, in triplicate, in the BLM State Office having jurisdiction over the lands covered by the relinquishment.

(b) To be relinquished, the lease account must be in good standing and the relinquishment must be considered to be in the public interest.

(c) A relinquishment will take effect on the date the BLM approves it, subject to the:

(1) Continued obligation of the lessee or licensee and surety to make payments of all accrued rentals and royalties;

(2) The proper rehabilitation of the lands to be relinquished to a condition acceptable to the BLM under these regulations;

(3) Terms of the lease or license; and

(4) Approved exploration plan or development plan.

(d) Prior to relinquishment of an exploration license, the licensee must give any other parties participating in activities under the exploration license the opportunity to take over operations under the exploration license. The licensee must provide to the BLM written evidence that the offer was made to all other parties participating in the exploration license.

§ 3934.21 Written notice of default.

The BLM will provide the lessee or licensee written notice of any default, breach, or cause of forfeiture, and provide a time period of 30 calendar days to correct the default, to request an extension of time in which to correct the default, or to submit evidence showing why the BLM is in error and why the lease should not be canceled or exploration license terminated.

§ 3934.22 Causes and procedures for lease cancellation.

(a) The BLM will take appropriate steps in a United States District Court of competent jurisdiction to institute proceedings for the cancellation of the lease if the lessee:

(1) Does not comply with the provisions of the Act as amended and other relevant statutes;

(2) Does not comply with any applicable regulations; or

(3) Defaults in the performance of any of the terms, covenants, and stipulations of the lease, and the BLM does not formally waive the default, breach, or cause of forfeiture.

(b) A waiver of any particular default, breach, or cause of forfeiture will not prevent the cancellation and forfeiture of the lease for any other default, breach, or cause of forfeiture, or for the same cause occurring at any other time.

§ 3934.30 License terminations.

The BLM may terminate an exploration license if:

(a) The BLM issued it in violation of any law or regulation, or if there are substantive factual errors, such as a lack of title;

(b) The licensee does not comply with the terms and conditions of the exploration license; or

(c) The licensee does not comply with the approved exploration plan.

§ 3934.40 Payments due.

If a lease is canceled or relinquished for any reason, all bonus, rentals, royalties, and minimum royalties paid will be forfeited, and any amounts not paid will be immediately payable to the United States.

§ 3934.50 Bona fide purchasers.

The BLM will not cancel a lease or an interest in a lease of a purchaser if at the time of purchase the purchaser was not aware and could not have reasonably determined from the BLM records the existence of a violation of any of the following:

(a) Federal regulatory requirements;

(b) The Act, as amended; or

(c) Lease terms and conditions.

Subpart 3935—Production and Sale Records

§ 3935.10 Accounting records.

(a) Operators or lessees must maintain records that provide an accurate account of, or include all:

(1) Oil shale mined;

(2) Oil shale put through the processing plant and retort;

(3) Mineral products produced and sold;

(4) Shale oil products, shale gas, and shale oil by-products sold; and

(5) Shale oil products and by-products that are consumed on-lease for the beneficial use of the lease.

(b) The records must include relevant quality analyses of oil shale mined or processed and of all products including synthetic petroleum, shale oil, shale gas, and shale oil by-products sold.

(c) Production and sale records must be made available for the BLM's examination during regular business hours.

Subpart 3936—Inspection and Enforcement

§ 3936.10 Inspection of underground and surface operations and facilities.

Operators, licensees, or lessees must allow the BLM, at any time, either day or night, to inspect or investigate underground and surface mining, in situ, or exploration operations to determine compliance with lease or license terms and conditions, compliance with the approved exploration or development plans, and to verify production.

§ 3936.20 Issuance of notices of noncompliance and orders.

(a) If the BLM determines that an operator, licensee, or lessee has not complied with established requirements, the BLM will issue to the operator, licensee, or lessee a notice of noncompliance.

(b) If operations threaten immediate, serious, or irreparable damage to the environment, the mine or deposit being mined, or other valuable mineral deposits or other resources, the BLM will order the cessation of operations and will require the operator, licensee, or lessee to revise the POD or exploration plan.

(c) The operator, licensee, or lessee will be considered to have received all orders or notices of noncompliance and orders that the operator, licensee, or lessee receives by personal delivery or certified mail. The BLM will consider service of any notice of noncompliance or order to have occurred 7 business days after the date the notice or order is mailed. Verbal orders and notices may be given to officials at the mine or exploration site, but the BLM will confirm them in writing within 10 business days.

§ 3936.30 Enforcement of notices of noncompliance and orders.

(a) If the operator, licensee, or lessee does not take action in accordance with the notice of noncompliance, the BLM may issue an order to suspend or cease operations or initiate legal proceedings to cancel the lease or terminate the license under subpart 3934 .

(1) A notice of noncompliance will state how the operator, licensee, or lessee has not complied with established requirements, and will specify the action which must be taken to correct the noncompliance and the time limits within which such action must be taken. The operator, licensee, or lessee must notify the BLM when noncompliance items have been corrected.

(2) If the operator, licensee, or lessee does not comply with the notice of noncompliance or order within the specified time frame, the operator, licensee, or lessee may be ordered to pay an assessment of $500 per day for each incident of noncompliance that is not corrected until the noncompliance is corrected to the BLM's satisfaction.

(3) Noncompliance with the approved exploration or development plan that results in wasted resource may result in the lessee or licensee being assessed royalty at the market value, in addition to the noncompliance assessment.

(b) If the BLM determines that the failure to comply with the exploration or development plan threatens health or human safety or immediate, serious, or irreparable damage to the environment, the mine or the deposit being mined or explored, or other valuable mineral deposits or other resources, the BLM may, either in writing or verbally followed with written confirmation within 5 business days, order the cessation of operations or exploration without prior notice.

§ 3936.40 Appeals.

Notices of noncompliance and orders or decisions issued under the regulations in this part may be appealed as provided in part 4 of this title. All decisions and orders by the BLM under this part remain effective pending appeal unless the BLM decides otherwise. A petition for the stay of a decision may be filed with the IBLA.

[FR Doc. E8–27025 Filed 11–17–08; 8:45 am]

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Part V

Department of the Interior

Mineral Management Service

30 CFR Parts 203 and 260

Royalty Relief—Ultra-Deep Gas Wells and Deep Gas Wells on Leases in the Gulf of Mexico; Extension of Royalty Relief Provisions to Leases Offshore of Alaska; Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 203 and 260

[Docket ID MMS–OMM–2007–0071]

RIN 1010–AD33

Royalty Relief—Ultra-Deep Gas Wells and Deep Gas Wells on Leases in the Gulf of Mexico; Extension of Royalty Relief Provisions to Leases Offshore of Alaska

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This final rule amends existing deep gas royalty relief regulations to reflect statutory changes enacted in the Energy Policy Act of 2005. It provides additional royalty relief for certain ultra-deep wells on Outer Continental Shelf leases in shallow water in the Gulf of Mexico. It extends both the existing and the additional deep gas royalty relief to Outer Continental Shelf leases in deeper water than before. Finally, this final rule applies discretionary royalty relief procedures that have been used by deepwater leases in the Gulf of Mexico to leases offshore of Alaska.

EFFECTIVE DATES: This final rule becomes effective December 18, 2008.

FOR FURTHER INFORMATION CONTACT: Marshall Rose, Chief, Economics Division, at (703) 787–1538.

SUPPLEMENTARY INFORMATION:

A. Background

On May 18, 2007, MMS published a proposed rule in the **Federal Register** (72 FR 28396) to implement Sections 344 and 346 of the Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594, 702 (codified at 42 U.S.C. 15904). This final rule is substantially the same as the proposed rule except for fixing price thresholds used with application-based royalty relief for leases offshore Alaska and for newer deepwater leases in the Gulf of Mexico (GOM), and the ability of operators to temporarily remove drilling rigs in certain cases without forfeiting the original well status of deep wells. Minor editorial or clarifying language changes were also made. The statutorily-mandated royalty relief provisions in this final rule for deep gas wells in the GOM supplement royalty relief that MMS previously included in 30 CFR 203.40–203.48, hereafter referred to as the existing regulations.

Under the existing regulations, MMS offered a temporary royalty relief incentive for deep gas production from GOM leases in less than 200 meters of water that lie wholly west of 87 degrees, 30 minutes West longitude for wells spudded since March 26, 2003.

The incentive in the existing regulations consists of a royalty suspension volume (RSV) for the first qualifying well on a lease for two basic categories of deep gas production: (1) 15 billion cubic feet (BCF) of RSV for a qualifying well with a perforated interval the top of which is between 15,000 and 18,000 feet true vertical depth subsea (TVD SS); or (2) 25 BCF of RSV for a qualifying well completed at least 18,000 feet TVD SS. The existing regulations provide lesser amounts of royalty relief for a deep sidetrack, for a subsequent deeper well on the lease, and for drilling an unsuccessful deep well. All qualified deep wells on the lease that begin production before May 3, 2009, may use the relief provided in the existing regulations, but only for production that occurs during years when the average price of natural gas on the New York Mercantile Exchange (NYMEX) does not exceed the price threshold of $10.15 per million British thermal units (MMBtu), expressed in 2007 dollars.

The supplemental incentive added by this final rule implementing section 344 of the Energy Policy Act is an RSV of 35 BCF for a third well depth category—an ultra-deep well (defined in section 344(a)(3)(A) as wells with a perforated interval the top of which is at least 20,000 feet TVD SS). The final rule provides that this ultra-deep well incentive has no expiration date, applies only if the lease has no prior deep well production, and is subject to a price threshold of $4.55 per MMBtu, expressed in 2007 dollars.

Also, this final rule provides the same incentive for gas produced from a deep well on leases in waters 200 meters or deeper but less than 400 meters deep as the existing regulation provides on leases in less than 200 meters of water, with 2 exceptions:

1. The incentive in 200 to less than 400 meters of water applies to qualified deep wells spudded on or after May 18, 2007, rather than March 26, 2003, and that begin production before May 3, 2013, rather than before May 3, 2009; and

2. The royalty relief in 200 to 400 meters of water applies to production from qualified wells occurring in years when the average NYMEX natural gas price does not exceed a price threshold of $4.55 per MMBTU, rather than $10.15 per MMBTU, expressed in 2007 dollars.

Finally, to implement section 346 of the Energy Policy Act, this final rule utilizes established royalty relief application and evaluation procedures found under §§ 203.60 through 203.80 for any lease offshore Alaska that seeks royalty relief before production on the lease begins. These case-by-case procedures for seeking royalty relief are the same as can be used by a deepwater lease in the GOM that was issued before the Deep Water Royalty Relief Act of 1995 (DWRRA) or after 2000. Prior to this rulemaking, the pre-production royalty relief procedures in §§ 203.60–203.80 did not apply to leases offshore Alaska. Consistent with section 346 of the Energy Policy Act of 2005, the current rulemaking addresses that omission.

B. Comments Leading to Rule Modifications

Eight respondents submitted comments on the proposed rule. Separate letters from Chevron and from the American Petroleum Institute (API), as well as a joint letter from six oil and gas industry associations (National Ocean Industries Association (NOIA), Independent Petroleum Association of America, U.S. Oil & Gas Association, International Association of Drilling Contractors, American Exploration and Production Council, and Natural Gas Supply Association) expressed concerns mostly about various restrictions in the proposed deep and ultra-deep well provisions. A joint letter from five environmental organizations (Northern Alaska Environmental Center (NAEC), Alaska Wilderness League, Natural Resources Defense Council, Pacific Environment, and Resisting Environmental Destruction on Indigenous Lands) and a separate letter from a representative of another environmental organization (Defenders of Wildlife (DoW)) raised a variety of concerns about royalty relief mostly for leases offshore Alaska. A letter from a private citizen (T. Tupper) critiqued some processes and assumptions included in the proposed rule. Finally, a letter from an energy consuming industry organization (Industrial Energy Consumers of America) expressed general support for the added domestic production incentive, while a letter from another private citizen (K. Sellers) voiced general opposition to royalty relief. Copies of all the comments we received are available on our Web site at: *http://www.mms.gov/federalregister/PublicComments/AD33.htm.*

In response to these comments, the final rule substantively changes one provision of the proposed rule. Also, we have clarified some text in the regulations in response to about one-third of the items on a detailed list in the API comments. Further, we have

reorganized parts of the rule by moving provisions from some sections to other sections where they are more appropriately located. These moves do not alter the meaning of the provisions. Finally, we have updated the various base price threshold values from 2006 dollars to 2007 dollars.

The proposed rule explained how the applicable base price thresholds would be determined in the case of a lease offshore Alaska that applies and qualifies for pre-production royalty relief. For a lease issued with royalty relief and price thresholds, those same price thresholds would apply to any additional discretionary relief awarded on a case-by-case basis through the provisions of the proposed rule. For a lease issued without royalty relief and price thresholds, the base price threshold terms in the DWRRA would apply to all royalty relief awarded.

Given the comments received on the proposed rule and further review of our process for evaluating pre-production royalty relief applications, we add flexibility to the price thresholds prescribed in the regulation for leases both offshore Alaska and those in deep water in the GOM issued after 2000. We do this by providing the authority to grant an exception to the price thresholds fixed in § 203.78 in cases where we find a project would not be economic without royalty relief subject to price thresholds above those fixed in the rule. Our process for determining whether development (pre-production) projects or expansion projects need relief requires use of future oil and gas price paths that we specify so as to insure that current oil and gas price expectations are impartially reflected in the evaluation. Should an applicant demonstrate that even at this price path, royalty relief is necessary to transform development of a discovery from an uneconomic to an economic proposition, we may decide that production of the resource with a higher royalty relief price threshold is preferable to stranding the resource.

This exception recognizes that, in many cases, generic price thresholds established in lease terms or for a general category of leases (e.g., all those leases eligible for deep gas or deepwater royalty relief) may be set conservatively to avoid providing excessive relief, since the relief to which the thresholds apply inevitably turns out to be unnecessary for many of those that use it. In those cases, a more parsimonious price threshold properly limits the size of the forgone royalty from those leases that would have been explored and developed without royalty relief. However, it may not be the proper price threshold in specific cases where the individual applicant can demonstrate convincingly that royalty relief is the difference between a prospective profit and loss situation, and thus this relief would directly affect the lessee's decision between development and abandonment of a discovery. In such cases, there is less concern about forgone royalties because it would be presumed that no royalties would be collected without the production that results from providing some initial royalty relief.

We intend to select the price threshold in the case of an exception using the same criteria we do for determining the size of the RSV. That is, we set or raise the oil and gas price thresholds, like we set or raise the RSV, only enough to make development economic on the lease, unit or project that has applied and qualified for royalty relief.

This change responds to comments from both NOIA, *et al.*, and NAEC, *et al.* The concern expressed by NOIA, *et al.*, was that the proposed implementation of section 346 ''stopped in its tracks'' an initial positive reaction to that incentive. While the comment went on to request a step not authorized by the statute, that ultra-deep gas relief be applied to Alaska, it did cause us to look at other ramifications of the provisions applied to Alaska. The proposed base price threshold for certain older leases in Alaska has a greater chance of being exceeded than is the case for the actual price threshold included in newer leases offshore Alaska. These older leases have no royalty relief in their lease terms and so would have been subject, under the proposed rule, to the DWRRA threshold for any newly approved royalty relief. The intent of the proposed rule's provision to implement section 346 was to provide added flexibility to consider, on a case-by-case basis, additional royalty relief for projects that may otherwise prove uneconomic to develop. However, strictly applying the base price threshold to any such relief granted under this provision could have the unintended effect of negating that relief if the project would remain uneconomic at prices above the threshold. The flexibility added by the final rule provision allows for the possibility to apply a different price threshold to relief granted on a case-by-case basis, consistent with the specific circumstances of the project being granted relief.

Further, we observed only a small response to the original deep gas relief in the GOM, which justifies a lower, more restrictive price threshold there to avoid providing excessive royalty relief on production that would occur without that relief. In contrast, the meager Outer Continental Shelf (OCS) production history in Alaska does not provide the same justification for a lower, more restrictive price threshold.

As part of this reconsideration of the Alaska price threshold, we discovered a modification we needed but neglected to propose in § 203.80. That modification authorizes case-by-case applications before production starts for royalty relief in special cases that fall outside our established categorical or formal application-based royalty relief programs from leases offshore Alaska, as well as from leases located wholly west of 87 degrees 30 minutes West longitude in the GOM. This special case royalty relief is available to all leases on the OCS after production begins. Section 346 of the Energy Policy Act of 2005 added leases offshore Alaska to the subset of OCS leases that may seek royalty relief before production begins. Along with this modification, we clarify that our formal royalty relief programs include both the size of the relief (e.g., RSV) we may grant and the conditions (e.g., price threshold) we may impose on use of that relief.

The API provided an extensive list of suggested text clarifications to improve readability and comprehension of the terms under which this royalty relief is available. We have adopted many of those clarifications. Clarifying rule text has been added to: (1) § 203.0 definitions for certified unsuccessful well and ultra-deep short sidetrack; (2) to § 203.2; (3) to section lists at the beginning of the new and revised deep gas and ultra-deep gas sections in subpart B; and (4) to §§ 203.33 and 203.43. Also, we have expanded the explanations in the examples in §§ 203.31, 203.36, 203.41, and 203.43(a) to include not only what the answer is but also why that answer results from the regulation. The API also suggested wording changes in the rule to implement some conceptual changes they favor. Discussion at the end of the next section explains why we did not make these conceptual changes.

During review of the comments on the proposed rule, we discovered a needed technical correction to an existing definition. This technical correction allows temporary removal of a drill rig due to weather (e.g., hurricane) or safety (e.g., unexpected pressure) concerns without sacrificing the well's status as an original well. Provided that drilling resumes within 1 year after drilling was halted due to a weather or safety hazard which we agree justified removing the rig, we will still consider the well an

original well for purposes of royalty relief. The sunset dates in the qualified deep and ultra-deep well definition are still applicable in this situation. We do this to avoid creating a moral hazard of encouraging continued operation with a rig that has been or may be damaged by weather or is unsafe to use with newly revealed geologic conditions for the sake of preserving access to royalty relief. When we are encouraging operators with royalty relief to take a chance in untested horizons and areas, we do not want to penalize prudent operation. This flexibility is more important in the case of ultra-deep wells where the change in a well's designation from original well to sidetrack loses all royalty relief.

Finally, we moved provisions appearing in the proposed rule in § 203.31(c) and § 203.41(d) that describe how to apply the RSV to § 203.33(a) and § 203.43(a), respectively, where other provisions concerning the application of an RSV appear. Also, we rearranged the provisions appearing in § 203.35 to match the chronological order in which these administrative actions that secure the RSV should occur, and clarified requirements for an extension of the deadline for beginning production in both §§ 203.35 and 203.44. These changes do not alter the substance of any of the moved provisions.

C. Comments Not Leading to Rule Modifications

The following discussion is arranged into 10 issue topics for purposes of organizing responses to comments for which no changes in the rule were made. The oil and gas industry letters generally objected to 3 parts of the proposed rule: (1) The price threshold level, (2) a sunset for royalty relief in the 200 to 400 meter water depth, and (3) the ability of only the first deep or ultra-deep well on a lease to earn the RSV. Both the industry and environmental representatives submitted comments on (4) the fiscal cost of the proposed rule. The letters from the environmental organizations also expressed concerns about: (5) the propriety of any royalty relief in Alaska, (6) the analysis accompanying this rule, and (7) the competence of MMS to administer royalty relief provisions. The substantive private citizen letter pointed out possible problems with: (8) price thresholds in connection with royalty in-kind, (9) the rule's information collection provisions, and (10) estimates of the size of the incentive's effect. The next section reviews and responds to the particular comments in each of these categories, as well as the detailed API recommendations not adopted.

1. *Price Threshold Level:* Industry comments on this issue ranged from statements that the proposed price threshold level is too low, that the threshold should be consistent with the one in the existing regulation, that it ought to be even higher than the threshold in the existing regulation, or that setting an appropriate threshold should have no connection to the lack of a sunset date.

The most direct criticism about this issue is reflected in the following quote from Chevron.

> MMS's proposed price threshold of $4.47 per MMBTU is too low and will have the effect of nullifying the stipulated royalty relief incentive * * * the new deep gas royalty relief incentives [will be given] little or no value in making lease acquisition and drilling decisions. The effect of establishing a low price threshold in the proposed rule circumvents Section 344's purpose.

The MMS considered but declined to set a higher price threshold for several reasons. In general, high gas prices provide all the incentive needed for additional production. Moreover, Congress established this gas price threshold for a previous royalty relief program that it mandated for pre-existing deepwater leases in the GOM (DWRRA), albeit when market prices were much lower than now. Given the discretion afforded the Secretary of the Department of the Interior by Congress to engage in this rulemaking, MMS has decided to adopt that previous gas price threshold, concluding that an across-the-board royalty incentive is not necessary inasmuch as current prices are far above historic levels. We note, however, that we believe this new royalty relief provision still has value as a cushion against a possible gas price collapse after drilling decisions have been made.

A variation of this criticism of the proposed level of the gas price threshold is the recommendation to use the same price threshold as set in the existing deep gas regulation:

> * * * our recommendation is that at minimum the existing rule's $9.88 per MMBTU base price threshold (adjusted over time for inflation) be adopted as the applicable price limitation (API).

This argument for consistency is not compelling. The high price threshold in the existing program was adopted in connection with a fixed sunset date, a feature not included in the statute in connection with the ultra-deep well incentive, the most significant part of the new program. Indeed, the existing deep gas incentive will begin to phase out in less than a year. Further, technological capabilities have improved and price-cost margins have increased since the existing regulation was issued. Finally, the lower price threshold coincides with the gas price threshold level set for deepwater leases MMS issued from 2002 to 2004 and since 2007. As such, this level of gas price threshold applies to the large and growing number of deepwater leases issued under that incentive. A deep gas price threshold that matches one used in deepwater will mitigate inconsistency between the deep gas and deepwater relief programs. The enhanced consistency of incentive terms across different leases will reduce confusion in the long run after the existing deep gas program has expired and will reduce the distortion in lease development decisions associated with different likelihoods of realizing royalty relief. Use of this same price threshold for the new ultra-deep gas drilling incentive thereby improves consistency of market terms for gas produced under both of the major long term OCS royalty relief programs that have gas price thresholds.

Related comments advocated an even higher price threshold.

> The price threshold of $4.47/MMBtu * * * is substantially less than the price threshold applicable to royalty suspension volumes under the existing rule * * * rather than raising the threshold to respond to the fact that it costs more for companies to make the investment into these frontier areas than it did before, the MMS has instead gone in the opposite direction by proposing an extremely low threshold (NOIA, et al.).
>
> MMS further justifies the lower price threshold based on the lack of response to deep gas relief to date. The current relief, with a $9.88/mmbtu price threshold, did not result in significant deep drilling because of the high cost and technical risk associated with drilling at these depths. The historical lack of response under the $9.88/mmbtu [threshold] logically argues that an even higher price threshold than $9.88/mmbtu may be necessary to entice lessees to take on the financial and technical risks of ultra-deep drilling (API).

These arguments are not persuasive. The commenters did not provide evidence that drilling costs for ultra-deep wells have gone up as much or more than the price of natural gas. Further, relating price thresholds, under which royalty relief is realized, to cost indexes would tend to reduce normal incentives to resist or avoid increases in drilling costs. Also, matching price thresholds to market conditions would increase the amount of royalty relief or, in other words, the subsidy or transfer from taxpayers to industry at the same time that industry's profits are rising. Finally, the higher price threshold did not cause the lack of response to the

existing deep gas relief. On the contrary, because it was not exceeded and probably not expected to be exceeded, it allowed the full enticement effect of the incentive to occur—yet the incremental drilling results have been small.

A final price threshold issue concerned its connection to a sunset date.

MMS justifies the lower price threshold level based on the lack of a sunset provision. The lack of a sunset provision for ultra-deep drilling is necessary given the immense technical challenge posed by these wells. The need to develop experience and technology will require long lead times, making a sunset provision impractical. The lack of a sunset provision is appropriate for ultra-deep wells and is not a sound reason for a lower price threshold (API).

The price thresholds must be set through economic modeling to establish the price at which lessees no longer need an incentive to drill deep or ultra-deep gas wells. Frustration over the ability to establish a sunset for royalty relief hardly meets that standard and is simply further evidence that, through this proposed rule, the MMS is seeking to undermine Congress' intent to provide new incentives for deep and ultra-deep gas production (NOIA, *et al.*).

In fact, the statutory silence with respect to a sunset date restricts policy flexibility. A sunset would have allowed for automatic ending of a policy, such as was implemented in the existing deep gas incentive regulations, in which a price threshold in conjunction with other program elements beforehand appeared in step with market conditions but then performed poorly. Congress chose, in section 344 of the statute, to set no sunset; but by authorizing the Secretary to limit relief based on market prices, it did impose the responsibility on the Secretary of containing the loss from a policy that has been considerably less effective than anticipated. The price threshold is the only instrument the Secretary has to perform the important task of potentially saving taxpayers hundreds-of-millions of dollars in forgone royalties to lessees with deep gas wells that would have been drilled even without the incentive. Further, long term gas price forecasts change over time, so it is not possible to fix a single optimum gas price threshold for the entire period over which gas may be produced under the ultra-deep gas incentive. If we retained the ability to adjust the price threshold as conditions warrant, we would add uncertainty that undermines the ability of companies to make the long term plans necessary to develop challenging prospects. Therefore, we judge selection of a fixed, if conservative, price threshold that balances an added incentive for ultra-deep drilling with fiscal prudence over the long term to be the best price threshold policy in the absence of a sunset provision and a weak response to existing incentives.

2. *Sunset date in 200 to 400 meters:* This issue received recommendations that a sunset is not required by the statute; that a sunset contravenes the statute; and that, if necessary, a rolling sunset date should be used.

One objector to a sunset provision appealed for a less rigorous interpretation of the statute.

* * * MMS has chosen to adopt the sunset concept in the new implementing proposed royalty relief regulations for 200 to 400 meter water depth to match the current regulations. While adopting the existing regulations is mandated by Congress, a reasonable person could interpret * * * that the Secretary should use the current methodology in determining well depth and completion interval restriction along with relief volume factors as complying with the intent of Congress. The time limitation is not stipulated * * * an argument could be made that the time limitation in the current regulations is not a part of the ''methodology'' the Secretary must use in implementing the application of the existing regulations to leases issued in water depths from 200 to 400 meters (API).

Nevertheless, we consider the sunset to be an essential part of the methodology because it affects the nature of the appropriate relief terms. The sunset forecloses an indefinite duration for what might turn out to be an ineffective or even wasteful policy. Under that protection, the size and breadth (e.g., relief for unsuccessful wells, sidetracks, and subsequent deep wells) of the incentive can be made more enticing than otherwise.

Another objector suggested:

* * * the MMS's proposed May 3, 2013 sunset provision * * * also contravenes Section 344's purpose of encouraging deep gas production. Because of the complexity and expense involved in deep gas exploration, especially where acquisition of new leases is involved, in many cases it will likely take lessees many years to bring new deep gas wells to production. * * * the cost reduction incentive Congress created * * * is negated * * * (Chevron).

The fairly short sunset provision is intended to reward expedited development of deep gas production from this most quickly accessible alternative. Longer term, alternative sources of natural gas such as deepwater fields, LNG imports, and Alaskan reserves have time to develop and reduce the burden on supplies from shallow water leases.

As with the price threshold, commenters recommended a flexible alternative if sunset dates must be used.

* * * we recommend MMS reconsider implementation of the sunset provision by either eliminating it or tying the sunset provision to the commencement of production from a qualifying well. Instead of a specific sunset date (i.e., May 3, 2013) MMS could use five (5) years from the date operations on a qualifying well are completed (API).

Yet, while a floating date, such as 5 years after operations on a qualifying well are completed, may facilitate installation of infrastructure and arrangement of transportation, the starting event is too vague a standard to enforce effectively and efficiently. More importantly, this rolling sunset still leaves an endless program cessation date. Not only is such a formulation likely to be very costly in terms of forgone revenues, but it frustrates the original intent of deep gas royalty relief—to accelerate deep depth drilling.

3. *Relief for only the first ultra-deep well on a lease:* This provision elicited comments about its rationale, the legitimacy for the limits it creates, and the chance that the new rule could provide less relief for a qualified well than would have the existing rule.

One objection to this provision urged a departure from the logic of the existing incentive.

MMS has failed to provide any rationale for its decision to deny granting 35 BCF of royalty relief for a second well on a lease. The agency has chosen instead to unilaterally and arbitrarily thwart Congress' expressed intent to incentivize [sic] ultra-deep production by denying royalty relief for ultra-deep wells on leases with existing deep wells or ultra-deep wells regardless of the situation that exists on the lease (NOIA, et al.).

The rule fails to explain why the existence of a reservoir at 15,000 feet in any way reduces the cost or risk of drilling an ultra-deep well with a target depth of 22,000 feet. Similarly, the rule does not explain why an ultra-deep well producing from a reservoir on the east side of a lease reduces the cost or risk of drilling an ultra-deep well to produce from a different reservoir on the west side of the lease (NOIA, et al.).

This charge fails to acknowledge that the proposed rule continued the same principle found in the existing deep gas relief rule of granting less or no relief to subsequent deep wells on the same lease. The rationale for this principle is that the first deep well on a lease reduces risk by establishing that hydrocarbons exist and are producible from deep depths from the geology found within the relatively small area covered by the lease. Also, production from the first deep well on the lease reduces the cost for subsequent deep wells by financing the acquisition and installation of any necessary production and transportation infrastructure for

deep production in the vicinity of the subsequent well.

Related comments suggest that the rule is more restrictive than it actually is:

> Limiting royalty relief to 'ultra deep' wells that are the first deep gas wells to produce on a lease, however, flouts Section 344's intent by arbitrarily eliminating the cost reduction incentive of royalty relief for an 'ultra deep' well that merely happens not to be the first deep gas well to produce on the lease. * * * we recommend MMS not limit royalty relief to 'ultra deep' gas wells that are the first wells to produce on a lease, but rather allow relief to be applied to new deep gas wells whenever they are drilled on a lease after implementation of the rule (Chevron).

The proposed rule departed from the structure of the existing rule only where the statute provided no other reasonable choice. As the proposed rule explains, language in the statute requires an all-or-none choice, i.e., granting either full relief or no relief to sidetracks and subsequent ultra-deep wells. The MMS chose not to double or more the size of relief for a short sidetrack or for a second well on the lease just because it happens to be an ultra-deep well. Moreover, the commenter's argument ignores the fact that the additional incentive will apply to other qualified wells on the lease. The first deep or ultra-deep well on a lease earns a royalty suspension volume for the lease. If the first deep well is an ultra-deep well, it earns a larger royalty suspension volume than under the existing rule, as directed by Congress. Subsequent deep or ultra-deep wells and shorter sidetracks to deep depths on the lease share that larger relief. Moreover, the decision on the second ultra-deep well is not arbitrary because it follows the pattern of the existing rule. The second well benefits from the presence of the first deep producing well on the lease, and therefore, needs less incentive.

Another comment highlights a quirk resulting from our cautious approach to the all-or-none choice created by the statutory language:

> The proposed rule would in many cases provide less royalty relief than is currently available under the existing rules. The rule would result in wells drilled at greater depths earning the same or less of an incentive or no incentive at all. Additionally, the rule would lead to wells drilled between 200 and 400 meters possibly earning less of an incentive than wells drilled in less than 200 meters. Under the existing rule, a lessee with an existing well drilled to a depth of 15,000 feet would receive an additional 10 BCF of suspension volume for an ultra-deep well drilled on the lease. However, under the proposed rule, for most leases, the lessee will receive no additional royalty suspension volume for drilling a second, ultra-deep well on a lease that already has a well drilled to 15,000 feet (NOIA, et al.).

While technically possible, experience indicates that few if any actual cases will result in a well earning less royalty relief under this rule than under the existing rule. For that peculiar situation to occur, an ultra-deep well would have to be spudded on or after May 18, 2007, and put into production on a lease that already has a well producing from at least 15,000 feet deep. Further, this event must occur on a lease partly or entirely in less than 200 meters of water during the slightly less than 2 years before the expiration of the incentives under the existing deep gas rule on May 3, 2009. The MMS records indicate that only 2 leases have met those conditions during the 4 years after the existing incentive became available on March 26, 2008.

For an ultra-deep well to earn a smaller amount of relief than a deep well completed at a lesser depth (18,000 to 20,000 feet) on a lease, both the ultra-deep and less deep wells would have to be spudded after May 17, 2007, and put into production on a lease that already has a well producing from at least 15,000 feet deep. The MMS records show no case, during the first 4 years after the existing incentive became available, of a well between 18,000 and 20,000 feet deep that was spudded and began production on a lease with a producing well at least 15,000 feet deep. On leases partly or entirely in less than 200 meters of water, this unprecedented event must occur during the slightly less than 2 years between issuance of the proposed rule on May 18, 2007, and prior to expiration of the incentives under the existing deep gas rule on May 3, 2009. On leases in 200 to 400 meters of water, both wells must be spudded and put into production during a longer period, from May 18, 2007 and before May 3, 2013. However, since the 200 to 400 meter water depth interval contains only about 6 percent of the number of active leases as does the 0 to 200 meter water depth interval, the chances of this event occurring in the deeper water interval appear even lower than in the shallower water depth interval.

A very limited number of non-symmetric cases could occur across water depth categories. Leases in 200 to 400 meters of water became eligible on May 18, 2007, to earn the same amount of relief for drilling a deep or ultra-deep well, as would a lease in less than 200 meters of water, with one exception. The exception applies to leases in partly or entirely less than 200 meters of water and issued during 2004 and 2005. These leases have deep gas royalty relief terms from the existing rule explicitly stated in their lease instruments. To earn relief that a lease in 200 to 400 meters of water could not, the exception lease located in 200 meters of water or less and issued in 2004 or 2005 would have to have production from a well at least 15,000 feet deep and then start production from an ultra-deep well, all within the abbreviated period prior to May 3, 2009.

A final criticism in this vein is that it is possible for an ultra-deep well to earn less relief than a deep well completed to a lesser depth:

> In the few instances where the proposed rule would provide an incentive for a deep sidetrack or second well on a lease, the proposed rule is still nonsensical. As an example, if a company drilled a well to 15,000 feet under the old rule and received a suspension volume of 15 BCF, and then drilled a new well under this rule to 18,000 feet, the company would receive an additional 10 BCF. However, if that same company drilled a new well that was deeper, to 20,000 feet, it would not get the additional 10 BCF, but instead would get no suspension volume at all for that well. Hence, the rule is actually a disincentive to drill to deeper depths. This interpretation of the statute runs counter to the will of Congress (NOIA, *et al.*).

As already noted, this particular circumstance has not yet happened over a period twice as long as remains for it to happen. Regardless, the proposed rule is not a disincentive to drill to deeper depths. It provides the full 35 BCF directed by Congress for an ultra-deep well if the drilling activity pioneers production on the lease at deep depth with its unique temperature, pressure, and corrosion conditions. If the ultra-deep well is a subsequent deep well or a short sidetrack, the proposed rule provides no additional relief, but the second or sidetrack ultra-deep well still share any remaining relief available to the lease. The problem is that the statutory language dictates this all-or-none situation by precluding the opportunity to provide relief at a reduced level that is more appropriate for a subsequent ultra-deep well or short sidetrack. Thus, while our rule could have avoided this odd and unlikely situation, the statute would have forced adoption of a much less defensible policy position resulting in the granting of far greater royalty relief than would be warranted.

4. *Fiscal costs of the relief:* This issue drew opposing comments about the loss of Government revenue due to the royalty relief in this rule.

One of the industry comments conveys a false impression that categorical or ''incentive based'' royalty relief may be costless to taxpayers:

Under the 'need' based relief program, lessees must prove that their oil and natural gas related projects require some form of royalty reduction or suspension to make their project economic. * * * 'Incentive' based royalty relief has the purpose of enticing potential lessees to invest in oil and natural gas projects knowing additional financial benefit could be derived should a commercial discovery be made and subsequently oil and/or gas produced. * * * Considering the fact that most leases issued are not drilled, the Federal Government collected significant revenue in the form of bonuses and rentals from these new leases, some of which would probably not have been leased without royalty relief. * * * Congress recognizes the benefits associated with 'incentive' based royalty relief programs by its passage of EPACT [the Energy Policy Act of 2005] (API).

However, categorical royalty relief results in forgone royalty, from deep wells that would have been drilled and produced even without the royalty relief. Thus, such royalty relief is unlikely to be a net revenue generating program for the Federal Government when applied to already existing leases that have no more bonus bid to pay. For new leases, relief largely serves to speed-up leasing by suspending royalties that would have been collected later when the lease would likely be sold after the emergence of better technology, higher prices, or lower costs. Moreover, even though higher bonuses would be expected in the presence of royalty suspensions, we note that bid premiums associated with the categorical relief provided to DWRRA leases proved to be modest at best.

Comments by environmental groups on our proposal to apply discretionary, need based royalty relief procedures in Alaska indicated concern about the high fiscal or administrative costs of such a program:

* * * MMS needs to ensure that it has adequately scrutinized all of the regulation's effects to the public interest both in protecting the environment of the OCS and adjacent coastal environment, and to ensure that the public yields [receives] a fair price for the exploitation of the oil and natural gas resources from federal OCS waters. * * * Please provide the analysis used to determine that there would be 'no negative effect on federal revenue' from this rulemaking. If there is royalty relief granted, those revenues will not come to the federal treasury. * * * Certainly, if MMS must respond to requests for relief for an additional vast area in Alaska encompassed by four different planning areas (at this time), and then must audit and account for the relief granted, it is illogical to assume that MMS will not face costs in implementing this section, and that there would be no economic effect. * * * Would this royalty relief for the Alaska OCS have any implications for revenue distribution from leases in the 8(g) zone? These were not addressed by your proposal (NAEC, *et al.*).

This rule proposes to apply a royalty relief process to offshore Alaska leases that is specifically designed to avoid unnecessary royalty relief. Projects that are forecast to be profitable paying full royalty would not get relief, while those not anticipated to be profitable while paying full royalty are unlikely to proceed to development and production unless some modifications to royalty terms are made. Projects that do not go into production generate no royalty revenue for the Federal treasury. With royalty relief, production in excess of the suspension volume will generate royalty revenue on such projects. Thus, we do not expect negative effects on Federal revenue from our discretionary case-by-case royalty relief program in Alaska.

While MMS may face administrative costs, no net program costs should result since relief applications carry a user-fee designed to cover the cost of review. The MMS determines how much royalty relief, if any, would be needed and would provide only the amount of royalty suspension needed to change an anticipated decision not to develop. Any production beyond that suspension amount promises royalty receipts that would not have materialized otherwise. Finally, the rule will not adversely affect expected section 8(g) revenues, since the process for approving royalty relief seeks to ensure that any production occurring under royalty relief would not have occurred without that relief. Thus, we do not anticipate that any royalty revenues, including those subject to section 8(g), would be lost as a result of this program.

5. *Propriety of Royalty Relief in Alaska:* Comments on this issue question how and even whether royalty relief should be offered in Alaska.

One sentiment seems to underlie many of the comments from both environmental organizations:

Royalty relief is not appropriate for application in Alaskan waters, and the proposed rule provides no adequate description of the proposed scenario for the discretionary application of royalty relief within Alaska OCS Planning Areas: The **Federal Register** Notice for RIN 1010–AD33 * * * includes virtually no detailed discussion of how, where, and under what circumstances Secretarial Discretion will be applied to expand royalty relief into Alaskan waters. * * * It is therefore premature * * * for MMS to be prescribing terms and conditions for royalty relief in these regions (DoW).

This and several related comments reflect confusion about what the proposed rule adds to existing royalty relief for leases offshore Alaska. As it happens, most offshore Alaska leases already have categorical royalty relief under the terms with which they were originally issued. Section 346 of the Energy Policy Act of 2005 gives the owners of other offshore Alaska leases a chance to request relief but MMS will grant relief only on a demonstrated economic need basis. Further, the royalty relief covered by these regulations has been available to offshore Alaska leases since the statute was enacted in 2005. This rule cannot change that fact, but it can and does establish a standardized process for the lessee of a lease offshore Alaska to follow in submitting a complete application for relief. It also explains how MMS will evaluate whether that application would result in approval of some royalty relief.

Related comments do not take into account the existing rigorous qualifying procedures set forth in regulations starting at 30 CFR 203.60 that more fully define the relief process being applied to Alaska by this rule:

MMS procedures for granting Alaska OCS royalty relief appear to be arbitrary and not founded on any economic modeling, or have any specific criteria for Alaska that it will use to base its decisions. * * * No criteria are discussed specific to the Alaska OCS regarding MMS's basis for granting royalty relief on leases. * * * MMS needs to ensure that its decision to grant it [royalty relief] is not arbitrary, and describe the basis upon which it will determine whether or not a project is 'economic' or 'uneconomic' without the relief. What information will the applicant need to provide? There may be unique information needs for the Alaska OCS but MMS does not provide or require these. Why shouldn't the applicant have to provide its assessment of the profit it would take out of the leases with and without the royalty relief requested (NAEC, *et al.*)?

The proposed rule discussed only those parts of the existing regulation that are being changed to include leases offshore Alaska. The other parts of existing regulations that will apply to leases offshore Alaska that seek relief are not being changed by this rule, including those that detail how Secretarial discretion will be exercised, can be found in 30 CFR Part 203. The CFR sections referenced in this rule (see 30 CFR 203.60, 62, 67–70, 73, 76–79) detail the extensive information and profit assessment the applicant needs to provide and the process MMS would use to determine if a project requires relief to be economic. In general, the process for evaluating and granting royalty relief is based on an individual analysis of the proposed project, which allows inclusion of any condition

affecting project economics that is specific to the lease and to Alaska.

6. *Analysis accompanying rule:* Comments in this area emphasize doubts about the adequacy of economic and environmental impact analysis behind the rule.

One line of comments indicates a lack of awareness of the extent of the analysis that was associated with this rulemaking:

> * * *[I]t is incumbent on any proposed rule for expanding royalty relief to include a full and documented economic impact analysis of the expanded royalty relief program being proposed, both in the Gulf of Mexico as well as in Alaskan waters. This economic impact analysis must include a full delineation of the effects of market price on the application of royalty relief in any waters to which it may be applied (DoW).
>
> MMS did not conduct any economic analysis projecting the total loss of potential royalties to the taxpayer nationally, or from the new Alaska OCS royalty holiday. MMS does not make clear in the rule-making the maximum loss of royalties that could occur. * * * MMS did not evaluate whether economic conditions such as the greatly increased price per barrel of oil since 1999 would significantly change the situation now and whether this could lead to substantially increased losses to the public. * * * MMS states that 'this rulemaking raises novel legal or policy issues' (72 FR 28409) yet does not discuss these legal or policy issues in any depth with respect to Alaska (NAEC, *et al.*).

The proposed rule included the full suite of economic analysis required by OMB and under various laws, beginning on page 72 FR 28409. A more extensive analysis of the effects of section 344 in the GOM is referenced in the rule and is available on the MMS Web site at: *http://www.mms.gov/econ/PDFs/2007AddendumDeepGasEA%20_2_.pdf*. Further, the expansion of the royalty relief program implemented by this rule is mandated by statute. In fact, the rule grants no more relief than the statute compels, despite the flexibility of the statute that would allow MMS to offer potentially much greater amounts of relief. The novel policy issues in the proposed rule arise in connection with section 344's expansion of the categorical deep gas royalty relief program in the GOM, not with section 346's inclusion of Alaska leases in a long established pre-production royalty relief process that relies on case-by-case analysis of a project's economic need for relief.

This rule does not mandate any royalty relief be granted in Alaska, nor does it automatically provide relief in specified amounts. Whether relief is granted in Alaska, and how much to grant, would be based on careful evaluation of any complete application. Accordingly, there should be no lost royalties under the proposed rule's implementation of section 346. The process prescribed invokes an evaluation and follow-up procedure that is not intended nor designed to grant royalty relief unless production would not occur otherwise. If no production would have occurred without royalty relief, no royalty would have been generated to lose. Furthermore, the inclusion of price thresholds both in the categorical relief under section 344 and in the process invoked by the rule for section 346 relief will preclude royalty relief at greatly increased prices for oil or gas. It even may result in extra royalties if the promise of potential relief manages to encourage production which would not have occurred otherwise.

Other comments raise an environmental concern with the proposed royalty relief:

> * * * MMS needs to analyze the environmental impacts of this royalty relief in order to determine if the subsidy is in the public interest. For example, if taxpayer help is needed in order for an oil field to be developed in sensitive Alaska waters that threaten subsistence, or endangered species, marine mammals, polar bears, migratory birds, etc., we question that such action is really in the public interest. * * * The royalty relief issue was not evaluated in the Beaufort Sea Sale 186, 195, or 202 Environmental Impact Statements, or the current Chukchi Sea Sale 193 EISs, even though these subsidies may apply to those leases. Therefore, if MMS states that the fields for which it would grant royalty relief would not be developed without the subsidy, it must be anticipating additional oil field development beyond what was described in those environmental reviews, and therefore it cannot grant this relief for those leases due to the lack of this issue being addressed, or alternatively, MMS must provide supplemental environmental review prior to granting any royalty relief for those leases from prior sales in Alaska (NAEC, *et al.*).

These comments do not take into account that the original lease issuance grants the lessee the right to explore and then develop discoveries after full consideration of environmental impacts and any potential threats to local species. Congress decided to supplement this right in section 346 by providing MMS with the authority to consider royalty relief as a means to ''promote development or increased production on * * * non-producing leases * * *'' The relief process implemented by this rulemaking applies to tracts located offshore Alaska that have been issued in previous lease sales or will be issued in future sales. The lease sale process has or will consider the effects of potential exploration and development activity on biological resources in that area. In addition, environmental impact studies cannot predict with certainty the geologic characteristics of specific fields or which ones will be developed. Pre-sale environmental reviews, completed at this early stage of Alaska lease exploration, only estimate the potential size and possible pace of development. Also, MMS provides National Environmental Policy Act analysis on individual development and production plans. Royalty relief does not necessarily affect that estimate significantly for the aggregate of all fields, in part because it is typically the smaller fields that could benefit from relief. The sum of production from smaller fields whose development is made possible by relief is likely to be a small part of the aggregate production estimate for the whole area. Moreover, the royalty relief program envisioned only deals with specific marginal fields after exploration has clarified the characteristics of the subject field, not the whole area.

7. *Competence of MMS to administer royalty relief provisions:* Comments in this area oppose the relief in this rule on the grounds that it may not be managed properly.

Several comments envisage recurrence of a problem recently discovered in another part of the MMS royalty relief program:

> Past errors of management of the royalty relief program provide no basis for expanding the same program based upon the same categories of misassumptions and data gaps (DoW).
>
> There have been major problems with the existing Gulf of Mexico deep-water royalty provisions * * * and the House of Representatives passed an energy bill, H.R. 6 which repealed the EPCA Section 346 * * * This section is very controversial, * * * The Government Accountability Office has raised questions of the financial impact of MMS's deep water royalty relief program * * * However, MMS's draft rulemaking does not explain in detail how the past problems will be avoided by the new regulations, nor how it will avoid new problems by the extension of the program to Alaska (NAEC, *et al.*).

The very source of the problems in the deepwater categorical royalty relief program in the GOM is precluded by the inclusion in this rule of a default price threshold in the changes to the regulations proposed by this rule. The rule applies default price thresholds to royalty relief for all future GOM leases (*see* §§ 203.36, 203.48, 203.78, and 260.122) and explains that this action will eliminate any omission of a price threshold for leases with royalty suspension volumes in future lease sales (*see* 72 FR 28409). Further, the royalty relief process applied to offshore Alaska

leases by this rule is designed to ensure that no unnecessary royalty relief will be granted. This process has been refined through more than 10 years of use, and is applied to existing leases in a case-specific discretionary relief program that is very different from the one for leases in the GOM issued under the DWRRA.

Other comments worry about the way the price threshold would be set:

> MMS needs to describe the price thresholds for all the royalty relief provisions and for Alaska leases specifically, including how it will determine this basis and what the expected results are. Failure to issue regulations or leases with proper price thresholds led to a ''costly mistake and loss of billions in royalties in the Gulf of Mexico, * * * there is no evidence that MMS has adequate systems in place to assure a fair system is in place that does not harm the U.S. taxpayers generally * * * (NAEC, *et al.*).

Price thresholds set in lease documents are chosen at the time of the lease sale and the process by which they are originally set is explained in the associated decision documents. This rule establishes default price thresholds for royalty relief for GOM leases in the regulations, which are applied should the lease documents not specify another price threshold. Moreover, MMS has adopted many new internal control procedures apart from this rule to ensure that the previous error does not occur again. In the past 8 years, it never has. When price thresholds are established as part of the process for evaluating whether an Alaska lease needs royalty relief, the determination of the applicable price threshold will be explained in that decision. In general, that process will include judgments made at the time of the application about projected oil and gas price levels and volatility, development costs, and other factors influencing project profitability.

Another assertion is that this rule is premature:

> * * * The apparent rush by MMS to publish this proposed rule, even as Congress now revisits the issue of royalty relief and its role in denying fair market value to the federal treasury, seems to fly in the face of legislative intent. It would be wholly consistent with present congressional deliberations to abate any final action on this proposed rule until new legislation, now pending, supersedes the 2005 Energy Policy Act and clarifies legislative intent on the issue of royalty relief (DoW).

Ongoing Congressional deliberations do not supersede existing law and any new laws that may be passed will not negate the need for this rule to address the requirements of the Energy Policy Act of 2005. First, there is no assurance repeal will become law. Second, even if section 344 is repealed, this rule still must be promulgated because its terms apply to 605 leases issued in the 2006 and 2007 lease sales plus about 900 issued under lease sales in 2008. Lease documents for those sales include language granting lessees the royalty relief provided by the still effective statute, subject to the implementing MMS rule. This rule sets up the specific terms and conditions on this relief that may not otherwise be enforceable, and at the very least, will remain ambiguous until the final rule is published. It is also worth noting in relation to the stated ''rush by MMS to publish this rule'' that MMS's thorough review and analysis have resulted in issuing a rule more than 2 years after the deadline set by section 344 of the statute in part to ensure the fiscal integrity of the adopted program.

A related comment laments the need to rely on MMS evaluations:

> Unfortunately, due to the proprietary nature of economic information for oil and gas exploration, development, or production projects, it means that even if the MMS does obtain such information, the public will not have access to it to evaluate the fairness or adequacy of MMS's decisions over the royalty holidays that are granted (NAEC, et al.).

Release of proprietary information would violate rights of companies to protection of commercially sensitive information. To compensate, MMS employs objective technical experts, a sophisticated and rigorous analytical approach, and a robust review process to evaluate fully an applicant's economic need for royalty relief. That capability is used to fulfill the OCSLA and DWRRA charge to the Secretary (delegated to MMS) to consider the granting of royalty relief to increase production or promote development of oil and gas resources, while balancing protection of human, coastal, and marine environments, ensuring the public a fair and equitable return on OCS resources and maintaining free enterprise competition.

8. *Incompatibility of price thresholds and royalty in-kind:* One comment raises a possible burden this rule places on leases that pay royalty in-kind (RIK) instead of in-value. That burden has to do with the need to pay back royalty relief in-value after the year because the average gas price exceeded the price threshold.

> * * * The proposed rule and support documents are silent on RIK * * * This places a burden on the lease owner depending on violent fluctuations of the gas market price. This burden is the staffing up or down in order to meet the requirement associated with royalty in value. I suggest a more economic process would be that the MMS take possession of the potential RIK product and market it. Then, based on market price and price threshold, send the proceeds of the RIK to the lease owner or the U.S. Treasury as appropriate. This provides efficiency to both lease owners and MMS (Tupper).

Mr. Tupper's suggestion for resolving the issue of payback of royalties taken in kind is not practical. This is the case because the timing of original RIK collections and sales does not correspond to the timing of when payback is determined and the amounts due are calculated. Regardless, lease owners operating under an RIK arrangement are not likely to have either an administrative or fiscal problem related to payback of RIK royalties. For one thing, MMS generally does not take royalties in kind from deep gas wells because of the uncertainty of whether royalties are due from those wells. In situations where MMS did take royalties in kind from deep gas wells that qualify for a royalty suspension volume, the MMS procedures for valuing payback amounts for royalty taken in kind would be included in an agreement with the operator. Accordingly, if the price threshold is determined by MMS not to have been exceeded on a royalty relief lease after the period for which MMS has taken royalties in kind from that lease, MMS would refund royalties to the operator based on the monthly values MMS received for that production when taken in kind. On the other hand, if the price threshold is determined by MMS to have been exceeded on a royalty relief lease after the period for which MMS has taken royalties in kind from that lease, no payback is necessary and the operator would have met its royalty obligation by delivery of royalties in kind during the period. The MMS decisions on whether or not to take production in kind are based on the economics of each property and whether doing so is favorable to the Government.

9. *Redundant information collection:* A procedural comment suggests MMS is unnecessarily requesting redundant information from OCS operators:

> * * * MMS is already collecting most if not all of the information needed as a routine business * * * the first step [in qualifying for deep gas royalty relief] is to notify the MMS Regional Supervisor for Production and Development of intent to begin drilling operations. The MMS is independently informed of this intent with the submission of the Application for Permit to Drill which is via Form MMS–123 * * * MMS is proposing a new information collection process with significant overlap with the information collection already in place.

* * * The paradigm of the proposed rule is that the lease operator needs to figure out if a well may be eligible for an RSV and then request it. The MMS validates the application and sends a confirmation back to the lease operator. I suggest that the correct approach is that MMS use its existing information collection data stream to determine if an RSV is available under the rules and inform the lease operator that RSV is granted (Tupper).

This suggestion glosses over a subtle but critical aspect of the rule. The categorical relief in this rule is intended to serve as an incentive for a lessee or operator to drill deep and ultra-deep wells. The notification initiating the relief process authenticates that the relief is an ex ante part of the decision to drill, rather than an ex post windfall, which it might be if MMS initiates the process. Also, since companies are already providing most of this information, the administrative burden of making a copy to demonstrate response to a valuable incentive is minimal. Finally, normal lags in the Government's data entry and query process might delay relief and increase the chances that an erroneous collection or avoidable refund step might be launched if the critical wells are not flagged ahead of time by the private sector for relief consideration.

10. *Estimates of the size of the incentive's effect:* One comment faults an assumption made in the analysis behind this rule:

* * * The supporting document *Programmatic Effects of the Deep Gas Incentives in the Energy Policy Act 2005* * * * makes an assumption of a constant reservoir size * * * I believe this assumption is suspect * * * Gas Fields in water depth of 200 meters or less * * * have the following statistical attributes: * * * This surrogate data suggests the size of discovery is declining with time. This is not an arcane statistical issue, but rather key attribute of the effectiveness of the policy. Are the 10 to 12 percent of the wells drilled which the study indicates are associated with royalty relief incentives located in average sized reservoirs or are they located in smaller reservoirs that are only economic with the royalty relief? If the MMS assumption on reservoir size is correct, then around 10 percent of the production is due to the incentive. If the reservoirs are much smaller then the share of production due to incentive will be corresponding smaller. Size does matter (Tupper).

This observation serves to reinforce the validity of the conservative implementation policy adopted in this rule. The estimated 10–12 percent effect on well drilling cited by the commenter is associated with the provision of suspension volumes in the absence of price thresholds. Once price thresholds are introduced, the estimated original effects on drilling (and, equivalently, production) are reduced considerably, and are then estimated to represent one to three percent of the new total deep drilling and production levels, which include both market price and net incentive effects. Thus, our analysis is already very conservative with regard to estimates of programmatic effects attributable to the deep gas royalty relief incentives. Moreover, there are some grounds for support of the constant discovery size assumption even if one focuses on the strict numerical results alone, rather than on their relative magnitudes and policy implications. This is the case because most of the incremental effects estimated for this analysis from royalty relief occur for ultra-deep wells, of which very few have been drilled outside the unique Norphlet trend offshore Alabama. Thus, it may well be that the larger discoveries in the ultra-deep zone apart from the Norphlet trend have yet to be made, in which case the average field size still to be discovered could be greater than postulated in our analysis. In that not unlikely scenario, use of a constant discovery size would mitigate somewhat our underestimate of future incremental effects from the royalty relief incentive.

Miscellaneous issues: A number of technical requests in the API comments indicate misunderstandings about some of the features of this rule. As a result, we will not make the changes requested:

- The request to add limits on the dates when the host leases were issued to the definition of phase 1 ultra-deep well is not generally appropriate since such a well can be located on most existing shallow water leases regardless of when the lease was issued. Other than the relatively few leases excluded by virtue of having been issued with royalty relief under DWRRA (see § 203.40), the only date that matters is when the well was spudded and began producing.
- The request to change the definition to allow a qualified well to be drilled into a reservoir that has been penetrated on an adjacent or other lease neglects a condition unique to the variant of deep gas relief that we granted to leases issued between 2001 and 2003, but discontinued for leases issued later. For leases issued in those years, lease terms authorized relief only for a well drilled into a deep gas reservoir that has not produced on any current lease. Thus, we retain that condition for a qualified deep well on a lease issued between 2001 and 2003.
- The request to cite in § 203.2 those later sections that describe what must be done to demonstrate an expansion or development project is uneconomic under the regulations would only duplicate our citation of the relevant CFR sections in the parentheses at the end of the sentences in the third column of the table.
- The request to specify that a sidetrack measured depth must be 20,000 feet TVD SS would confuse diagonal drilling length with vertical depth subsea.
- The request to add a deeper bound to the water depth range specified in §§ 203.34 and 203.43 misses the fact that no such bound is needed because these two sections deal with situations where the royalty relief in this rule does not apply and deep and ultra-deep gas royalty relief never applies to leases in water deeper than 400 meters.
- The request to add another example of a situation, such as equipment failure justifying a delay in the sunset date is not necessary as those listed are intended to be just illustrations and not an exhaustive list. Other situations than those listed may be a good reason for extending the deadline for production start in individual cases.
- The request to add wording that does not count gas production which is not normally royalty-bearing (fuel gas) against the RSV is not practical. As we explained in the original deep gas rule, MMS collects only production data at the well level (where deep depth wells can be distinguished from shallow depth wells) while royalty-bearing versus royalty-free production is only identified at the lease level where production from all wells on the lease is commingled.
- The request to add text to § 203.69 to distinguish between RS leases and other leases issued after November 28, 2000, is not appropriate because there is a basis to distinguish between them. In particular, there is the possibility that leases may be issued after November 28, 2000, that do not have a royalty suspension, i.e., would not be RS leases.

D. Summary of the Deep Gas Royalty Relief Program in this Rule

The following five tables summarize the deep gas royalty relief incentives adopted in this rule. Each table refers to a different lease type. Abbreviations used in each table include:

BCF	Billion cubic feet.
K	Thousand.
MD	Measured depth (length in thousands of feet).
MMBtu ..	Million British thermal units.
NA	Not applicable.
PT	Price Threshold (2007$ per MMBtu).
RSS	Royalty Suspension Supplement (in BCF).
RSV	Royalty Suspension Volume (in BCF).

ST	Sidetrack.
TVD SS	True Vertical Depth Sub-Sea.

The last two columns of each of the following tables outline the royalty relief that exists in the current regulations and the additional relief adopted under section 344 rulemaking. The first range of numbers in each of these two columns represents the well depth (in feet), the second number represents the associated RSV or RSS granted (in BCF), and the third number represents the applicable price threshold (in $2007/MMBtu).

TABLE 1—TERMS APPLICABLE TO A LEASE WITH NO PREVIOUS PRODUCTION FROM A DEEP OR ULTRA-DEEP WELL, LOCATED IN WATER 0–200 METERS DEEP,

[Issued before 2001 or after 2003 or that Converted to the Royalty Relief Terms in the Existing Rule]

	Well type	Spud date	1st date produced	Depth (feet): RSV [RSS], PT	
				Royalty relief under existing regulations	Additional relief under adopted section 344 rulemaking
A	Well #1: Original well or ST.	Before 3/26/2003	Not Relevant	• None	• NA.
B	Well #1: Original well.	On or after 3/26/2003 and before 5/18/2007.	Before 5/3/2009 ..	• If 15K–18K TVD SS: 15 BCF, $10.15, or. • If ≥ 18K TVD SS: 25 BCF, $10.15.	• NA. • NA.
C	Well #1: ST	.....	.....	• If ≥ 15K TVD SS: 4 BCF+ (0.6 * MD) BCF up to 15 or 25 BCF, $10.15.	• NA.
D	Well #1: Original well.	On or after 5/18/2007.	.....	• If 15K–18K TVD SS: 15 BCF, $10.15[a], or. • If 18K–20K TVD SS: 25 BCF, $10.15[a], or • If ≥ 20K TVD SS: 1st 25 BCF, $10.15[a].	• NA. • NA. • If ≥ 20K TVD SS: Add 10 BCF, $4.55[a].
E	Well #1: ST with MD ≥ 20K ft.	.....	.....	• If ≥ 20K TVD SS: 1st 25 BCF, $10.15[a].	• If ≥ 20K TVD SS: Add 10 BCF, $4.55[a].
F	Well #1: ST with MD < 20K ft.	.....	.....	• If ≥ 15K TVD SS: 4 BCF + (0.6 * MD) BCF up to 15 or 25 BCF, $10.15[a].	• None.
G	Well #1: Original well or ST with MD ≥ 20K ft.	.....	On or after 5/3/2009.	• None	• If ≥ 20K TVD SS: 35 BCF, $4.55[a].
H	Well #1: Original well.	On or after 3/26/2003 and before 5/3/2009.	Never	• If 15K–18K TVD SS: [None], or .. • If ≥ 18K TVD SS: [5 BCF], $10.15[a].	• NA.
I	Well #1: ST with MD ≥ 10K ft.	.....	.....	• If 15K–18K TVD SS: [None], or .. • If ≥ 18K TVD SS: [0.8 BCF + (0.12 * MD) BCF up to 5 BCF], $10.15[a].	• NA.

[a] For wells on leases issued after December 18, 2008, the price threshold will be $4.55/MMBtu (adjusted for inflation after 2007) unless the lease terms prescribe a different price threshold.

For example, suppose an original well (one that does not use an existing wellbore) was drilled to a depth of 23,000 feet TVD SS between September and December 2007 (after the proposed rule was issued), on a lease that has had no production from a well completed at a depth deeper than 15,000 ft TVD SS. If the well starts producing in 2008, Table 1, row D indicates the well earns an RSV of 35 BCF. Further, the first 25 BCF of that RSV is subject to a price threshold of $10.15 per MMBtu (adjusted for inflation after 2007), while the remaining RSV of 10 BCF is subject to a price threshold of $4.55 per MMBtu (adjusted for inflation after 2007). Alternatively, if delays prevent production from starting until July of 2009, Table 1, row G indicates this well still earns an RSV of 35 BCF, but the entire RSV is subject to a price threshold of $4.55 per MMBtu (adjusted for inflation after 2007). If this well were unsuccessful rather than productive, Table 1, row H indicates that it earns an RSS of 5 BCF that is subject to a price threshold of $10.15 per MMBtu (adjusted for inflation after 2007).

TABLE 2—TERMS APPLICABLE TO A LEASE

[With Previous Production from a Deep Well completed between 15,000 and 18,000 feet TVD SS, Located in Water 0–200 Meters Deep, Issued before 2001 or after 2003 or Converted to the Royalty Relief Terms in the Existing Rule]

	Well type	Spud date	1st date produced	Depth (feet): RSV [RSS], PT	
				Royalty relief under existing regulations	Additional relief under adopted section 344 rulemaking
A	Well #2: Original well.	On or after 3/26/2003 and before 5/18/2007.	Before 5/3/2009 ..	• If 15K–18K TVD SS: None, or • If ≥ 18K TVD SS: 10 BCF, $10.15.	• NA.

TABLE 2—TERMS APPLICABLE TO A LEASE—Continued

[With Previous Production from a Deep Well completed between 15,000 and 18,000 feet TVD SS, Located in Water 0–200 Meters Deep, Issued before 2001 or after 2003 or Converted to the Royalty Relief Terms in the Existing Rule]

	Well type	Spud date	1st date produced	Depth (feet): RSV [RSS], PT	
				Royalty relief under existing regulations	Additional relief under adopted section 344 rulemaking
B	Well #2: ST			• If 15K–18K TVD SS: None, or • If ≥ 18K TVD SS: 4 BCF+ (0.6 * MD) BCF up to 10 BCF, $10.15.	• NA.
C	Well #2: Original well.	On or after 5/18/2007.		• If 15K–18K TVD SS: None, or • If 18K–20K TVD SS: 10 BCF, $10.15 [a].	• If ≥ 20K TVD SS: + 10 BCF if lease issued in lease sale held between 1/1/2004 and 12/31/2005 otherwise none, $10.15.
D	Well #2: ST with MD ≥ 20K ft.			• If 15K–18K TVD SS: None, or	• If ≥ 20K TVD SS: + 10 BCF if lease issued in lease sale held between 1/1/2004 and 12/31/2005 otherwise none, $10.15.
E	Well #2: ST with MD < 20K ft.			• If 18K–20K TVD SS: 4 BCF + (0.6 * MD) BCF up to 10 BCF, $10.15 [a].	• If ≥ 20K TVD SS: + 4BCF + (0.6 * MD) BCF if lease issued in lease sale held between 1/1/2004 and 12/31/2005 otherwise none, $10.15.
F	Well #2: Original well or ST.		On or after 5/3/2009.	• None	• None.
G	Well #2: Original well or ST with MD ≥ 10K ft.	On or after 3/26/2003 and before 5/3/2009.	Never	• If 15K–18K TVD SS: [None], or • If ≥ 18K TVD SS: [2 BCF], $10.15 [a].	• NA.

[a] For wells on leases issued after December 18, 2008, the price threshold will be $4.55/MMBtu (adjusted for inflation after 2007) unless the lease terms prescribe a different price threshold.

For example, suppose a sidetrack with a measured depth or length of 7,000 feet is drilled to a depth of 23,000 feet TVD SS beginning in September 2007 (after the proposed rule was issued), and begins production in December 2007 on a lease issued in 1998 that already has production from a well completed at 16,000 feet TVD SS. This well earns no additional RSV because Table 2, row E, last column shows that this 1998 lease is too old to come within the exception proposed for leases issued in lease sales held between January 1, 2004, and December 31, 2005. However, this ultra-deep short sidetrack is a qualified well entitled to share the remaining RSV, if any, earned by the deep well.

TABLE 3—TERMS APPLICABLE TO A LEASE WITH NO PREVIOUS PRODUCTION FROM A DEEP OR ULTRA-DEEP WELL, LOCATED IN WATER BETWEEN 200–400 METERS DEEP

	Well type	Spud date	1st date produced	Depth (feet): RSV [RSS], PT	
				Royalty relief under existing regulations	Additional relief under adopted section 344 rulemaking
A	Well #1: Original well or ST.	Before 5/18/2007	Not Relevant	• None	• None.
B	Well #1: Original well.	On or after 5/18/2007.	Before 5/3/2013		• If 15K–18K TVD SS: 15 BCF, $4.55 [a], or • If 18K–20K TVD SS: 25 BCF, $4.55 [a], or • If ≥ 20K TVD SS: 35 BCF, $4.55 [a].
C	Well #1: ST with MD ≥ 20K ft.				• If 15K–20K TVD SS: 4 BCF + (0.6 * MD) BCF up to 15 or 25 BCF, $4.55 [a], or • If ≥ 20K TVD SS: 35 BCF, $4.55 [a].
D	Well #1: ST with MD < 20K ft.				• If ≥ 15K TVD SS: 4 BCF+ (0.6 * MD) BCF up to 15 or 25 BCF, $4.55 [a].
E	Well #1: Original well.		On or after 5/3/2013.		• If 15K–20K TVD SS: None, or • If ≥ 20K TVD SS: 35 BCF, $4.55 [a].
F	Well #1: ST with MD ≥ 20K ft.				• If 15K–20K TVD SS: None, or • If ≥ 20K TVD SS: 35 BCF, $4.55 [a].
G	Well #1: ST with MD < 20K ft.				• None.

TABLE 3—TERMS APPLICABLE TO A LEASE WITH NO PREVIOUS PRODUCTION FROM A DEEP OR ULTRA-DEEP WELL, LOCATED IN WATER BETWEEN 200–400 METERS DEEP—Continued

	Well type	Spud date	1st date produced	Depth (feet): RSV [RSS], PT	
				Royalty relief under existing regulations	Additional relief under adopted section 344 rulemaking
H	Well #1: Original well.	On or after 5/18/2007 and before 5/3/2013.	Never		• If 15K–18K TVD SS: [None], or • If ≥ 18K TVD SS: [5 BCF], $4.55 [a].
I	Well #1: ST with MD ≥ 10K ft.				• If 15K–18K TVD SS: [None], or • If ≥ 18K TVD SS: [0.8 BCF+ (0.12 * MD) BCF up to 5 BCF], $4.55 [a].

[a] Unless the lease terms of a lease issued after December 18, 2008, prescribe a different price threshold.

For example, suppose a sidetrack with a measured depth or length of 9,000 feet is drilled to a depth of 18,000 feet TVD SS between February and October 2010 (after the proposed rule was issued) on a lease that has had no production from a well completed deeper than 15,000 ft TVD SS. If it starts producing in 2011, Table 3, row D indicates the well earns an RSV of 9.4 BCF subject to a price threshold of $4.55 per MMBtu (adjusted for inflation after 2007). Alternatively, if delays prevent production starting until July of 2013, Table 3, row G indicates this well earns no RSV. If this well were unsuccessful, Table 3, row I indicates that it would not qualify for an RSS because its measured depth is too short.

TABLE 4—TERMS APPLICABLE TO A LEASE WITH PREVIOUS PRODUCTION FROM A DEEP WELL COMPLETED BETWEEN 15,000 AND 18,000 FEET TVD SS, LOCATED IN WATER BETWEEN 200–400 METERS DEEP

	Well type	Spud date	1st date produced	Depth (feet): RSV [RSS], PT	
				Royalty relief under existing regulations	Additional relief under adopted section 344 rulemaking
A	Well #2: Original well.	On or after 5/18/2007 and before 5/3/2013.	Before 5/3/2013	• None	• If 15K–18K TVD SS: None, or • If 18K–20K TVD SS: 10 BCF, $4.55 [a], or • If ≥ 20K TVD SS: None.
B	Well #2: ST				• If 15K–18K TVD SS: None, or • If 18K–20K TVD SS: 4 BCF + (0.6 * MD) BCF up to 10 BCF, $4.55 [a], or • If ≥ 20K TVD SS: None.
C	Well #2: Original well or ST.	On or after 5/18/2007.	On or after 5/3/2013.		• None.
D	Well #2: Original well or ST with MD ≥ 10K ft.	On or after 5/18/2007 and before 5/3/2013.	Never		• If 15K–18K TVD SS: [None], or • If ≥ 18K TVD SS: [2 BCF], $4.55 [a].

[a] Unless the lease terms of a lease issued after December 18, 2008, prescribe a different price threshold.

For example, suppose an original well is drilled to a depth of 19,000 feet TVD SS between June and November 2011 (after the proposed rule was issued) on a lease that already has production from a well completed at 16,000 ft TVD SS. If it starts producing in March 2012, Table 4, row A indicates the well earns an RSV of 10 BCF for the lease. If the prior deep well also earned an RSV, then this 10 BCF is an additional RSV. However, if production is delayed until July 2013, Table 4, row C indicates this deep well earns no additional RSV; nor may any remaining RSV that the prior deep well may have earned be applied to production from this well.

TABLE 5—TERMS APPLICABLE TO A LEASE LOCATED IN WATER 0–200 METERS DEEP, ISSUED FROM 2001 THROUGH 2003 THAT DID NOT CONVERT FROM THE ROYALTY RELIEF TERMS WITH WHICH IT WAS ISSUED

	Well type	Spud date	1st date produced	Depth (feet): RSV [RSS], PT	
				Existing royalty relief in original lease terms	Additional relief under adopted section 344 rulemaking
A	Well #1: Original well or ST.	Before 5/18/ 2007	Within 5 years of lease effective date.	• If ≥ 15K in new reservoir: 20BCF, $4.08 (Sale 178), or. • If ≥ 15K in new reservoir: 20BCF, $5.83 (Sales 180, 182, 184, 185, or 187).	• None.

TABLE 5—TERMS APPLICABLE TO A LEASE LOCATED IN WATER 0–200 METERS DEEP, ISSUED FROM 2001 THROUGH 2003 THAT DID NOT CONVERT FROM THE ROYALTY RELIEF TERMS WITH WHICH IT WAS ISSUED—Continued

	Well type	Spud date	1st date produced	Depth (feet): RSV [RSS], PT	
				Existing royalty relief in original lease terms	Additional relief under adopted section 344 rulemaking
B		On after 5/18/2007.		• If 15K–20K in new reservoir: 20BCF, $4.08 (Sale 178), or • If 15K–20K in new reservoir: 20BCF, $5.83 (Sales 180, 182, 184, 185, or 187), or • If ≥ 20K in new reservoir: 1st 20 BCF, $4.08 (Sale 178) or $5.83 (Sales 180, 182, 184, 185, or 187).	• If 15K–20K TVD SS: None, or • If ≥ 20K TVD SS: Add 15 BCF, $4.55.
C			More than 5 years after lease effective date.	• None	• If 15K–20K TVD SS: None, or • If ≥ 20K in new reservoir: 35BCF, $4.55.

For example, suppose an original well or sidetrack is drilled to a depth of 23,000 feet TVD SS between August 2007 and March 2008 (after the proposed rule was issued) on a lease issued in November 2002. If this well starts producing from a reservoir that has not produced on any current lease, Table 5, row B indicates the well earns an RSV of 35 BCF. Further, the first 20 BCF of that RSV is subject to a price threshold of $5.83 per MMBtu (adjusted for inflation after 2007) while the remaining RSV of 15 BCF is subject to a price threshold of $4.55 per MMBtu (adjusted for inflation after 2007).

Additional information on the structure of the deep gas royalty relief incentives both in existing regulations and in this rule can be found on the MMS Web site at: *http://www.mms.gov/econ/*.

Procedural Matters

Regulatory Planning and Review (Executive Order (E.O.) 12866)

This final rule is a significant rule as determined by the Office of Management and Budget (OMB) and is subject to review under E.O. 12866. We have made the assessments required by E.O. 12866 and the results are:

(1) This final rule will not have an economic effect of $100 million or more in any year.

The added eligibility of leases in water depths from 200 to 400 meters for the deep gas royalty incentive will represent a 12 percent increase in the estimated gas resources that will be eligible for the deep gas incentive, and only a fraction of those resources will actually qualify because the program would sunset in May 2013. Further, existing relief terms already grant leases located partly or entirely in less than 200 meters of water with ultra-deep wells over 70 percent of the relief this rule prescribes (25 BCF increasing to 35 BCF for successful ultra-deep wells). However, because this incentive will have no explicit sunset date, it conceivably could apply to all undiscovered ultra-deep resources.

One of the few areas of significant programmatic discretion MMS has in implementing section 344 is in the choice of the price threshold for RSVs. This rule sets a different and lower price threshold for RSVs earned and used by ultra-deep wells, except to the extent of the royalty relief that an ultra-deep well would earn under the existing rule on leases in existence on the effective date of this final rule. This different price threshold is low enough to cancel relief whose value might otherwise have been over $100 million at current and projected gas prices.

The MMS has updated key parts of the economic analysis done for the original deep gas rule to reflect both higher gas prices and the larger open-ended duration of RSVs for ultra-deep wells. The update estimates the incremental production and net fiscal cost which would result from the added incentives on ultra-deep wells and additional deep wells for a range of price thresholds applied to the anticipated gas market environment. The price threshold adopted in this rule for ultra-deep gas royalty relief is the same as the price threshold used for deepwater royalty relief for leases issued before 2001, after adjusting for inflation ($4.55 per MMBtu in 2007 dollars, to be further adjusted for inflation after 2007). For comparison, MMS estimates that the ultra-deep well and additional deep well incentives required by the Energy Policy Act, together with a reduced price threshold of $4.55 per MMBtu (adjusted for inflation after 2007) would, over the next 15 years, increase deep gas production by 54 BCF instead of by 223 BCF, and reduce the aggregate loss in Federal royalty receipts by $955 million (present value $508 million, or about $34 million in an average year) relative to using the same price threshold as in the existing regulations. Over the next 15 years, we estimate that the adopted price threshold of $4.55 per MMBtu would keep the present value of the aggregate fiscal cost of this rulemaking below $100 million resulting in an average annual fiscal cost of about $7 million, generate a social welfare measure of consumer plus producer surplus of only about $4,200 in present value, and add over 50 billion cubic feet of deep gas production to the domestic energy supply. The full economic analysis for the original deep gas rule, as well as this update, is available at: *http://www.mms.gov/econ*.

As of the beginning of fiscal year 2008, this rule also adds 750 currently active Alaska leases to the roughly 2,700 deepwater leases in the GOM, as well as future leases in both areas, that could apply for an RSV (for both oil and gas) before production or to expand production. Again, section 346 of the Energy Policy Act mandates this expansion of existing authority to consider and possibly grant discretionary royalty relief. So, the provisions in this rule simply provide a framework for a process—by themselves they have no direct economic effect over and above that which may result from the statutory language in section 346.

Historically, we have received less than one application per year in the GOM under the procedure now being extended to leases offshore of Alaska. Those leases that previously have qualified for this form of relief have

avoided an average of $30 million annually in royalties since 1999, an amount that would have been much larger but for price thresholds. Accordingly, the value of the relief that may be granted indirectly by this added rulemaking action may not significantly ease the daunting obstacles to developing offshore Alaska. In any event, the award of royalty relief in this form to leases offshore of Alaska is discretionary, and MMS will only approve relief in the appropriate amount or provide an exception to the established price thresholds if MMS deemed the applicable project uneconomic absent relief. Thus, for these reasons, there will be no negative effect on Federal revenues from this rulemaking.

(2) This final rule will not create any inconsistencies or otherwise interfere with actions by other Federal agencies. Careful review of the lease sale notices, along with stringent leasing policies now in force, ensure that the Federal OCS leasing program, of which royalty relief is only a component, will not conflict with the work of other Federal agencies.

(3) This final rule will not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This final rule raises novel legal or policy issues because it implements a statutory requirement to expand a previously established, but so far disappointing royalty relief program for deep gas in the GOM. The rule also serves to eliminate any recurrence of an unintended policy issue by establishing default price thresholds for all future leases that may be issued with royalty relief incentives. The other part of the rule, which extends a long established but little used discretionary royalty relief authority to leases offshore Alaska, raises no unusual issues because, with the exception of explicit statutory requirements under the DWRRA, programmatically the price thresholds have always been treated as a complementary policy variable to the royalty suspension volumes for dealing with applications of discretionary royalty relief on a case-by-case basis.

Regulatory Flexibility Act

The Department of the Interior certifies that this final rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The provisions of this final rule will not have a significant adverse economic effect on offshore lessees and operators, including those that are classified as small businesses.

This rule expands existing deep gas well production incentives. A detailed analysis of the small business impacts and alternatives for the deep gas provisions established in 2004 were considered and can be found in the economic analysis of the original version of this regulation available at: *http://www.mms.gov/econ*. This rule will not materially alter the findings of that analysis because it will expand by less than 5 percent the set of leases affected, based on the number of existing and potential leases in the interval from entirely deeper than 200 to entirely less than 400 meters of water relative to those in the interval from 0 to partly or entirely less than 200 meters of water that are already covered by the existing rule.

The rule also extends the potential for discretionary royalty relief to 263 OCS leases located offshore Alaska, some of which may qualify as marginally uneconomic. Five of the eight companies involved are ''majors'' and therefore are not small entities. In any single year, MMS is likely to receive only a small number of royalty relief applications, if indeed it receives any at all. That limits the number of entities this rule may affect. In the past, we have received less than one application a year from a candidate set of 2,700 leases in the GOM. Also, because firms initiate applications, they have the ability to avoid adverse effects they foresee. A Regulatory Flexibility Analysis is not required. A Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act

The final rule is not a major rule under 5 U.S.C. 804(2) the Small Business Regulatory Enforcement Fairness Act. This final rule:

a. Will expand coverage of existing royalty relief programs by 15 percent, adding about 800 leases to the set of about 5,000 leases eligible either for (1) the deep gas incentive or (2) to apply for royalty relief before production begins on the lease. These leases represent only a fraction of the leases already eligible for these incentives as a result of earlier rules. The effects of the provisions in this rule will not add substantially to those estimated for the earlier rules because relatively little relief is likely to be granted under the new provisions.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies, or geographic regions. The additional deep gas incentive provisions will not cause an increase in prices and should result in some downward pressure on prices, but its degree and ultimate effect is difficult to anticipate.

c. Will not have significant adverse effects on competition, employment, investment, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Companies eligible for the new royalty relief should produce some more natural gas and earn more income while encountering no negative effects.

Unfunded Mandates Reform Act

This final rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The final rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this final rule does not have significant takings implications. The final rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. As noted above, the deep gas provisions in this rule should have a small effect relative to the proposed rule, which itself may have only a small consequence ($1–$2 million per year) on Gulf Coast states in the form of reduced payments under section 8(g) of the OCSLA. Any relief awarded to offshore Alaska leases will not affect that State's share of OCS revenue because the discretionary royalty relief rules extended by this rule to leases offshore of Alaska are designed to grant relief only when production and thus royalty payments would not otherwise occur.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in E.O. 13175, we have evaluated this final rule and determined that it has no potential effects on federally recognized Indian tribes. There are no Indian or tribal lands in the OCS.

Paperwork Reduction Act

An information collection package was submitted to OMB for review and approval under section 3507(d) of the PRA. The OMB has approved the information collection requirements for this rulemaking and assigned OMB Control Number 1010–0173 (exp. 8/31/10; 3 burden hours). The title of the collection of information for this final rule is ''30 CFR 203, Royalty Relief—Ultra-Deep Gas Wells and Deep Gas Wells on Oil and Gas Leases; Extension of Royalty Relief Provisions to Leases Offshore of Alaska.'' Respondents are those from the approximately 130 Federal oil and gas lessees who may apply for royalty relief. Responses to this collection are required to obtain benefits. The frequency of response is on occasion. The information collection does not include questions of a sensitive nature. The MMS will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2), 30 CFR part 203, ''Does my application have to include all leases in the field?'' and 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.''

We received eight comments due to this rulemaking. Only one commenter brought up information collection redundancy; however, MMS determined that there is no redundancy and that the requirements were new. Therefore, there were no changes in the information collection requirements from the proposed rule to the final rule. When the rule becomes effective, MMS will merge these hours into the primary collection for 30 CFR 203 (OMB Control Number 1010–0071, expiration 12/31/09).

An agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. The public may comment, at any time, on the accuracy of the information collection burden in this rule and may submit any comments to the Department of the Interior; Minerals Management Service; Attention: Regulations and Standards Branch; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

National Environmental Policy Act

We determined this rule is categorically excluded from requirements for analysis under the National Environmental Policy Act and the Department Manual at 516 DM. This rule deals with financial matters and has no direct effect on MMS decisions on oil and gas operations with the potential to affect the environment; hence, an Environmental Impact Statement is not required. Pursuant to Department Manual 516 DM 2.3A (2), section 1.10 of 516 DM 2, Appendix 1 excludes from documentation in an environmental assessment or impact statement ''policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case.'' Section 1.3 of the same appendix clarifies that royalties and audits are considered routine financial transactions that are subject to categorical exclusion from the NEPA process. None of the exceptional circumstances set forth in 516 DM 2 Appendix 2 apply.

Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C § 515, 114 Stat. 2763, 2763A–153–154).

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

List of Subjects

30 CFR Part 203

Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 260

Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: June 19, 2008.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

■ For the reasons stated in the preamble, the Minerals Management Service (MMS) amends 30 CFR Part 203 as follows:

PART 203—RELIEF OR REDUCTION IN ROYALTY RATES

■ 1. The authority citation for part 203 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 9701; 42 U.S.C. 15903–15906; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

■ 2. Section 203.0 is amended by revising the definitions for ''certified unsuccessful well'', ''deep well'', ''development project'', ''expansion project'', ''original well'', ''royalty suspension supplement'' and ''royalty suspension volume''; removing the definition of ''qualified well''; and by adding definitions for ''non-converted lease'', ''phase 1 ultra-deep well'', ''phase 2 ultra-deep well'', ''phase 3 ultra-deep well'', ''qualified deep well'', ''qualified ultra-deep well'', ''qualified wells'', and ''ultra-deep well'' to read as follows:

§ 203.0 What definitions apply to this part?

* * * * *

Certified unsuccessful well means an original well or a sidetrack with a sidetrack measured depth (i.e., length) of at least 10,000 feet, on your lease that:

(1) You begin drilling on or after March 26, 2003, and before May 3, 2009, on a lease that is located in water partly or entirely less than 200 meters deep and that is not a non-converted lease, or on or after May 18, 2007, and before May 3, 2013, on a lease that is located in water entirely more than 200 meters and entirely less than 400 meters deep;

(2) You begin drilling before your lease produces gas or oil from a well with a perforated interval the top of which is at least 18,000 feet true vertical depth subsea (TVD SS), (i.e., below the datum at mean sea level);

(3) You drill to at least 18,000 feet TVD SS with a target reservoir on your lease, identified from seismic and related data, deeper than that depth;

(4) Fails to meet the producibility requirements of 30 CFR part 250, subpart A, and does not produce gas or oil, or meets those producibility requirements and MMS agrees it is not commercially producible; and

(5) For which you have provided the notices and information required under § 203.47.

* * * * *

Deep well means either an original well or a sidetrack with a perforated interval the top of which is at least 15,000 feet TVD SS and less than 20,000 feet TVD SS. A deep well subsequently re-perforated at less than 15,000 feet TVD SS in the same reservoir is still a deep well.

* * * * *

Development project means a project to develop one or more oil or gas reservoirs located on one or more contiguous leases that have had no production (other than test production) before the current application for royalty relief and are either:

(1) Located in a planning area offshore Alaska; or

(2) Located in the GOM in a water depth of at least 200 meters and wholly west of 87 degrees, 30 minutes West longitude, and were issued in a sale held after November 28, 2000.

* * * * *

Expansion project means a project that meets the following requirements:

(1) You must propose the project in a Development and Production Plan, a Development Operations Coordination Document (DOCD), or a Supplement to a DOCD, approved by the Secretary of the Interior after November 28, 1995.

(2) The project must be located on either:

(i) A pre-Act lease in the GOM, or a lease in the GOM issued in a sale held after November 28, 2000, located wholly west of 87 degrees, 30 minutes West longitude; or

(ii) A lease in a planning area offshore Alaska.

(3) On a pre-Act lease in the GOM, the project:

(i) Must significantly increase the ultimate recovery of resources from one or more reservoirs that have not previously produced (extending recovery from reservoirs already in production does not constitute a significant increase); and

(ii) Must involve a substantial capital investment (e.g., fixed-leg platform, subsea template and manifold, tension-leg platform, multiple well project, etc.).

(4) For a lease issued in a planning area offshore Alaska, or in the GOM after November 28, 2000, the project must involve a new well drilled into a reservoir that has not previously produced.

(5) On a lease in the GOM, the project must not include a reservoir the production from which an RSV under §§ 203.30 through 203.36 or §§ 203.40 through 203.48 would be applied.

* * * * *

Non-converted lease means a lease located partly or entirely in water less than 200 meters deep issued in a lease sale held after January 1, 2001, and before January 1, 2004, whose original lease terms provided for an RSV for deep gas production and the lessee has not exercised the option under § 203.49 to replace the lease terms for royalty relief with those in § 203.0 and §§ 203.40 through 203.48.

Original Well means a well that is drilled without utilizing an existing wellbore. An original well includes all sidetracks drilled from the original wellbore either before the drilling rig moves off the well location or after a temporary rig move that MMS agrees was forced by a weather or safety threat and drilling resumes within 1 year. A bypass from an original well (e.g., drilling around material blocking the hole or to straighten crooked holes) is part of the original well.

* * * * *

Phase 1 ultra-deep well means an ultra-deep well on a lease that is located in water partly or entirely less than 200 meters deep for which drilling began before May 18, 2007, and that begins production before May 3, 2009, or that meets the requirements to be a certified unsuccessful well.

Phase 2 ultra-deep well means an ultra-deep well for which drilling began on or after May 18, 2007; and that either meets the requirements to be a certified unsuccessful well or that begins production:

(1) Before the date which is 5 years after the lease issuance date on a non-converted lease; or

(2) Before May 3, 2009, on all other leases located in water partly or entirely less than 200 meters deep; or

(3) Before May 3, 2013, on a lease that is located in water entirely more than 200 meters and entirely less than 400 meters deep.

Phase 3 ultra-deep well means an ultra-deep well for which drilling began on or after May 18, 2007, and that begins production:

(1) On or after the date which is 5 years after the lease issuance date on a non-converted lease; or

(2) On or after May 3, 2009, on all other leases located in water partly or entirely less than 200 meters deep; or

(3) On or after May 3, 2013, on a lease that is located in water entirely more than 200 meters and entirely less than 400 meters deep.

* * * * *

Qualified deep well means:

(1) On a lease that is located in water partly or entirely less than 200 meters deep that is not a non-converted lease, a deep well for which drilling began on or after March 26, 2003, that produces natural gas (other than test production), including gas associated with oil production, before May 3, 2009, and for which you have met the requirements prescribed in § 203.44;

(2) On a non-converted lease, a deep well that produces natural gas (other than test production) before the date which is 5 years after the lease issuance date from a reservoir that has not produced from a deep well on any lease; or

(3) On a lease that is located in water entirely more than 200 meters but entirely less than 400 meters deep, a deep well for which drilling began on or after May 18, 2007, that produces natural gas (other than test production), including gas associated with oil production before May 3, 2013, and for which you have met the requirements prescribed in § 203.44.

Qualified ultra-deep well means:

(1) On a lease that is located in water partly or entirely less than 200 meters deep that is not a non-converted lease, an ultra-deep well for which drilling began on or after March 26, 2003, that produces natural gas (other than test production), including gas associated with oil production, and for which you have met the requirements prescribed in § 203.35 or § 203.44, as applicable; or

(2) On a lease that is located in water entirely more than 200 meters and entirely less than 400 meters deep, or on a non-converted lease, an ultra-deep well for which drilling began on or after May 18, 2007, that produces natural gas (other than test production), including gas associated with oil production, and for which you have met the requirements prescribed in § 203.35.

Qualified well means either a qualified deep well or a qualified ultra-deep well.

* * * * *

Royalty suspension supplement (RSS) means a royalty suspension volume resulting from drilling a certified unsuccessful well that is applied to future natural gas and oil production generated at any drilling depth on, or allocated under an MMS-approved unit agreement to, the same lease.

Royalty suspension volume (RSV) means a volume of production from a lease that is not subject to royalty under the provisions of this part.

* * * * *

Ultra-deep well means either an original well or a sidetrack completed with a perforated interval the top of

which is at least 20,000 feet TVD SS. An ultra-deep well subsequently re-perforated less than 20,000 feet TVD SS in the same reservoir is still an ultra-deep well.

Ultra-deep short sidetrack means an ultra-deep well that is a sidetrack with a sidetrack measured depth (i.e., length) of less than 20,000 feet.

* * * * *

■ 3. In § 203.1, the introductory text and paragraph (b) are revised, and new paragraph (d) is added to read as follows:

§ 203.1 What is MMS's authority to grant royalty relief?

The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1337, as amended by the OCS Deep Water Royalty Relief Act (DWRRA), Public Law 104–58 and the Energy Policy Act of 2005, Public Law 109–058 authorizes us to grant royalty relief in four situations.

* * * * *

(b) Under 43 U.S.C. 1337(a)(3)(B), we may reduce, modify, or eliminate any royalty or net profit share to promote development, increase production, or encourage production of marginal resources on certain leases or categories of leases. This authority is restricted to leases in the GOM that are west of 87 degrees, 30 minutes West longitude, and in the planning areas offshore Alaska.

* * * * *

(d) Under 42 U.S.C. 15904–15905, we may suspend royalties for designated volumes of gas production from deep and ultra-deep wells on a lease if:

(1) Your lease is in shallow water (water less than 400 meters deep) and you produce from an ultra-deep well (top of the perforated interval is at least 20,000 feet TVD SS) or your lease is in waters entirely more than 200 meters and entirely less than 400 meters deep and you produce from a deep well (top of the perforated interval is at least 15,000 feet TVD SS);

(2) Your lease is in the designated area of the GOM (wholly west of 87 degrees, 30 minutes west longitude); and

(3) Your lease is not eligible for deep water royalty relief.

■ 4. In § 203.2, the section heading and paragraphs (b), (d), and (e) are revised, and new paragraphs (f), (g), and (h) are added to read as follows:

§ 203.2 How can I obtain royalty relief?

* * * * *

If you have a lease . . .	And if you . . .	Then we may grant you . . .
* *	* * *	* *
(b) Located in a designated GOM deep water area (i.e., 200 meters or greater) and acquired in a lease sale held before November 28, 1995, or after November 28, 2000.	Propose an expansion project and can demonstrate your project is uneconomic without royalty relief.	A royalty suspension for a minimum production volume plus any additional production large enough to make the project economic (see §§ 203.60 through 203.79).
* *	* * *	* *
(d) Located in a designated GOM deep water area and acquired in a lease sale held after November 28, 2000.	Propose a development project and can demonstrate that the suspension volume, if any, for your lease is not enough to make development economic.	A royalty suspension for a minimum production volume plus any additional volume needed to make your project economic (see §§ 203.60 through 203.79).
(e) Where royalty relief would recover significant additional resources or, offshore Alaska or in certain areas of the GOM, would enable development.	Are not eligible to apply for end-of-life or deep water royalty relief, but show us you meet certain eligibility conditions.	A royalty modification in size, duration, or form that makes your lease or project economic (see § 203.80).
(f) Located in a designated GOM shallow water area and acquired in a lease sale held before January 1, 2001, or after January 1, 2004, or have exercised an option to substitute for royalty relief in your lease terms.	Drill a deep well on a lease that is not eligible for deep water royalty relief and you have not previously produced oil or gas from a deep well or an ultra-deep well.	A royalty suspension for a volume of gas produced from successful deep and ultra-deep wells, or, for certain unsuccessful deep and ultra-deep wells, a smaller royalty suspension for a volume of gas or oil produced by all wells on your lease (see §§ 203.40 through 203.49).
(g) Located in a designated GOM shallow water area.	Drill and produce gas from an ultra-deep well on a lease that is not eligible for deep water royalty relief and you have not previously produced oil or gas from an ultra-deep well.	A royalty suspension for a volume of gas produced from successful ultra-deep and deep wells on your lease (see §§ 203.30 through 203.36).
(h) Located in planning areas offshore Alaska	Propose an expansion project or propose a development project and can demonstrate that the project is uneconomic without relief or that the suspension volume, if any, for your lease is not enough to make development economic.	A royalty suspension for a minimum production volume plus any additional volume needed to make your project economic (see §§ 203.60, 203.62, 203.67 through 203.70, §§ 203.73 and 203.76 through 203.79).

■ 5. A new undesignated center heading and new §§ 203.30 through 203.36 are added to subpart B to read as follows:

Royalty Relief for Drilling Ultra–Deep Wells on Leases Not Subject to Deep Water Royalty Relief

Sec.

203.30 Which leases are eligible for royalty relief as a result of drilling a phase 2 or phase 3 ultra-deep well?
203.31 If I have a qualified phase 2 or qualified phase 3 ultra-deep well, what royalty relief would that well earn for my lease?
203.32 What other requirements or restrictions apply to royalty relief for a qualified phase 2 or phase 3 ultra-deep well?
203.33 To which production do I apply the RSV earned by qualified phase 2 and phase 3 ultra-deep wells on my lease or in my unit?
203.34 To which production may an RSV earned by qualified phase 2 and phase 3 ultra-deep wells on my lease not be applied?
203.35 What administrative steps must I take to use the RSV earned by a qualified phase 2 or phase 3 ultra-deep well?
203.36 Do I keep royalty relief if prices rise significantly?

Royalty Relief for Drilling Ultra–Deep Wells on Leases Not Subject to Deep Water Royalty Relief

§ 203.30 Which leases are eligible for royalty relief as a result of drilling a phase 2 or phase 3 ultra-deep well?

Your lease may receive a royalty suspension volume (RSV) under §§ 203.31 through 203.36 if the lease meets all the requirements of this section.

(a) The lease is located in the GOM wholly west of 87 degrees, 30 minutes West longitude in water depths entirely less than 400 meters deep.

(b) The lease has not produced gas or oil from a deep well or an ultra-deep well, except as provided in § 203.31(b).

(c) If the lease is located entirely in more than 200 meters and entirely less than 400 meters of water, it must either:

(1) Have been issued before November 28, 1995, and not been granted deep water royalty relief under 43 U.S.C. 1337(a)(3)(C), added by section 302 of the Deep Water Royalty Relief Act; or

(2) Have been issued after November 28, 2000, and not been granted deep water royalty relief under §§ 203.60 through 203.79.

§ 203.31 If I have a qualified phase 2 or qualified phase 3 ultra-deep well, what royalty relief would that well earn for my lease?

(a) Subject to the administrative requirements of § 203.35 and the price conditions in § 203.36, your qualified well earns your lease an RSV shown in the following table in billions of cubic feet (BCF) or in thousands of cubic feet (MCF) as prescribed in § 203.33:

If you have a qualified phase 2 or qualified phase 3 ultra-deep well that is:	Then your lease earns an RSV on this volume of gas production:
(1) An original well,	35 BCF.
(2) A sidetrack with a sidetrack measured depth of at least 20,000 feet,	35 BCF.
(3) An ultra-deep short sidetrack that is a phase 2 ultra-deep well,	4 BCF plus 600 MCF times sidetrack measured depth (rounded to the nearest 100 feet) but no more than 25 BCF.
(4) An ultra-deep short sidetrack that is a phase 3 ultra-deep well,	0 BCF.

(b)(1) This paragraph applies if your lease:

(i) Has produced gas or oil from a deep well with a perforated interval the top of which is less than 18,000 feet TVD SS;

(ii) Was issued in a lease sale held between January 1, 2004, and December 31, 2005; and

(iii) The terms of your lease expressly incorporate the provisions of §§ 203.41 through 203.47 as they existed at the time the lease was issued.

(2) Subject to the administrative requirements of § 203.35 and the price conditions in § 203.36, your qualified well earns your lease an RSV shown in the following table in BCF or MCF as prescribed in § 203.33:

If you have a qualified phase 2 ultra-deep well that is . . .	Then your lease earns an RSV on this volume of gas production:
(i) An original well or a sidetrack with a sidetrack measured depth of at least 20,000 feet TVD SS,	10 BCF.
(ii) An ultra-deep short sidetrack,	4 BCF plus 600 MCF times sidetrack measured depth (rounded to the nearest 100 feet) but no more than 10 BCF.

(c) Lessees may request a refund of or recoup royalties paid on production from qualified phase 2 or phase 3 ultra-deep wells that:

(1) Occurs before December 18, 2008 and

(2) Is subject to application of an RSV under either § 203.31 or § 203.41.

(d) The following examples illustrate how this section applies. These examples assume that your lease is located in the GOM west of 87 degrees, 30 minutes West longitude and in water less than 400 meters deep (see § 203.30(a)), has no existing deep or ultra-deep wells and that the price thresholds prescribed in § 203.36 have not been exceeded.

Example 1: In 2008, you drill and begin producing from an ultra-deep well with a perforated interval the top of which is 25,000 feet TVD SS, and your lease has had no prior production from a deep or ultra-deep well. Assuming your lease has no deepwater royalty relief (see § 203.30(c)), your lease is eligible (according to § 203.30(b)) to earn an RSV under § 203.31 because it has not yet produced from a deep well. Your lease earns an RSV of 35 BCF under this section when this well begins producing. According to § 203.31(a), your 25,000 foot well qualifies your lease for this RSV because the well was drilled after the relief authorized here became effective (when the proposed version of this rule was published on May 18, 2007) and produced from an interval that meets the criteria for an ultra-deep well (i.e., is a phase 2 ultra-deep well as defined in § 203.0). Then in 2014, you drill and produce from another ultra-deep well with a perforated interval the top of which is 29,000 feet TVD SS. Your lease earns no additional RSV under this section when this second ultra-deep well produces, because your lease no longer meets the condition in § 203.30(b)) of no production from a deep well. However, any remaining RSV earned by the first ultra-deep well on your lease would be applied to production from both the first and the second ultra-deep wells as prescribed in § 203.33(a)(2), or § 203.33(b)(2) if your lease is part of a unit.

Example 2: In 2005, you spudded and began producing from an ultra-deep well with a perforated interval the top of which is 23,000 feet TVD SS. Your lease earns no RSV under this section from this phase 1 ultra-deep well (as defined in § 203.0) because you spudded the well before the publication date (May 18, 2007) of the proposed rule when royalty relief under § 203.31(a) became effective. However, this ultra-deep well may earn an RSV of 25 BCF for your lease under § 203.41 (that became effective May 3, 2004), if the lease is located in water depths partly or entirely less than 200 meters and has not previously produced from a deep well (§ 203.30(b)).

Example 3: In 2000, you began producing from a deep well with a perforated interval the top of which is 16,000 feet TVD SS and your lease is located in water 100 meters deep. Then in 2008, you drill and produce from a new ultra-deep well with a perforated interval the top of which is 24,000 feet TVD SS. Your lease earns no RSV under either this section or § 203.41 because the 16,000-foot well was drilled before we offered any way to earn an RSV for producing from a deep well (see dates in the definition of qualified well in § 203.0) and because the existence of the 16,000-foot well means the lease is not eligible (see § 203.30(b)) to earn an RSV for the 24,000-foot well. Because the lease existed in the year 2000, it cannot be eligible for the exception to this eligibility condition provided in § 203.31(b).

Example 4: In 2008, you spud and produce from an ultra-deep well with a perforated interval the top of which is 22,000 feet TVD SS, your lease is located in water 300 meters deep, and your lease has had no previous

production from a deep or ultra-deep well. Your lease earns an RSV of 35 BCF under this section when this well begins producing because your lease meets the conditions in § 203.30 and the well fits the definition of a phase 2 ultra-deep well (in § 203.0). Then in 2010, you spud and produce from a deep well with a perforated interval the top of which is 16,000 feet TVD SS. Your 16,000-foot well earns no RSV because it is on a lease that already has a producing well at least 18,000 feet subsea (see § 203.42(a)), but any remaining RSV earned by the ultra-deep well would also be applied to production from the deep well as prescribed in § 203.33(a)(2), or § 203.33(b)(2) if your lease is part of a unit and § 203.43(a)(2), or § 203.43(b)(2) if your lease is part of a unit. However, if the 16,000-foot deep well does not begin production until 2016 (or if your lease were located in water less than 200 meters deep), then the 16,000-foot well would not be a qualified deep well because this well does not begin production within the interval specified in the definition of a qualified well in § 203.0, and the RSV earned by the ultra-deep well would not be applied to production from this (unqualified) deep well.

Example 5: In 2008, you spud a deep well with a perforated interval the top of which is 17,000 feet TVD SS that becomes a qualified well and earns an RSV of 15 BCF under § 203.41 when it begins producing. Then in 2011, you spud an ultra-deep well with a perforated interval the top of which is 26,000 feet TVD SS. Your 26,000-foot well becomes a qualified ultra-deep well because it meets the date and depth conditions in this definition under § 203.0 when it begins producing, but your lease earns no additional RSV under this section or § 203.41 because it is on a lease that already has production from a deep well (see § 203.30(b)). Both the qualified deep well and the qualified ultra-deep well would share your lease's total RSV of 15 BCF in the manner prescribed in §§ 203.33 and 203.43.

Example 6: In 2008, you spud a qualified ultra-deep well that is a sidetrack with a sidetrack measured depth of 21,000 feet and a perforated interval the top of which is 25,000 feet TVD SS. This well meets the definition of an ultra-deep well but is too long to be classified an ultra-deep short sidetrack in § 203.0. If your lease is located in 150 meters of water and has not previously produced from a deep well, your lease earns an RSV of 35 BCF because it was drilled after the effective date for earning this RSV. Further, this RSV applies to gas production from this and any future qualified deep and qualified ultra-deep wells on your lease, as prescribed in § 203.33. The absence of an expiration date for earning an RSV on an ultra-deep well means this long sidetrack well becomes a qualified well whenever it starts production. If your sidetrack has a sidetrack measured depth of 14,000 feet and begins production in March 2009, it earns an RSV of 12.4 BCF under this section because it meets the definitions of a phase 2 ultra-deep well (production begins before the expiration date for the pre-existing relief in its water depth category) and an ultra-deep short sidetrack in § 203.0. However, if it does not begin production until 2010, it earns no RSV because it is too short as a phase 3 ultra-deep well to be a qualified ultra-deep well.

Example 7: Your lease was issued in June 2004 and expressly incorporates the provisions of §§ 203.41 through 203.47 as they existed at that time. In January 2005, you spud a deep well (well no. 1) with a perforated interval the top of which is 16,800 feet TVD SS that becomes a qualified well and earns an RSV of 15 BCF under § 203.41 when it begins producing. Then in February 2008, you spud an ultra-deep well (well no. 2) with a perforated interval the top of which is 22,300 feet that begins producing in November 2008, after well no. 1 has started production. Well no. 2 earns your lease an additional RSV of 10 BCF under paragraph (b) of this section because it begins production in time to be classified as a phase 2 ultra-deep well. If, on the other hand, well no. 2 had begun producing in June 2009, it would earn no additional RSV for the lease because it would be classified as a phase 3 ultra-deep well and thus is not entitled to the exception under paragraph (b) of this section.

§ 203.32 What other requirements or restrictions apply to royalty relief for a qualified phase 2 or phase 3 ultra-deep well?

(a) If a qualified ultra-deep well on your lease is within a unitized portion of your lease, the RSV earned by that well under this section applies only to your lease and not to other leases within the unit or to the unit as a whole.

(b) If your qualified ultra-deep well is a directional well (either an original well or a sidetrack) drilled across a lease line, then either:

(1) The lease with the perforated interval that initially produces earns the RSV or

(2) If the perforated interval crosses a lease line, the lease where the surface of the well is located earns the RSV.

(c) Any RSV earned under § 203.31 is in addition to any royalty suspension supplement (RSS) for your lease under § 203.45 that results from a different wellbore.

(d) If your lease earns an RSV under § 203.31 and later produces from a deep well that is not a qualified well, the RSV is not forfeited or terminated, but you may not apply the RSV earned under § 203.31 to production from the non-qualified well.

(e) You owe minimum royalties or rentals in accordance with your lease terms notwithstanding any RSVs allowed under paragraphs (a) and (b) of § 203.31.

(f) Unused RSVs transfer to a successor lessee and expire with the lease.

§ 203.33 To which production do I apply the RSV earned by qualified phase 2 and phase 3 ultra-deep wells on my lease or in my unit?

(a) You must apply the RSV allowed in § 203.31(a) and (b) to gas volumes produced from qualified wells on or after May 18, 2007, reported on the Oil and Gas Operations Report, Part A (OGOR–A) for your lease under § 216.53. All gas production from qualified wells reported on the OGOR–A, including production not subject to royalty, counts toward the total lease RSV earned by both deep or ultra-deep wells on the lease.

(b) This paragraph applies to any lease with a qualified phase 2 or phase 3 ultra-deep well that is not within an MMS-approved unit. Subject to the price conditions of § 203.36, you must apply the RSV prescribed in § 203.31 as required under the following paragraphs (b)(1) and (b)(2) of this section.

(1) You must apply the RSV to the earliest gas production occurring on and after the later of May 18, 2007, or the date the first qualified phase 2 or phase 3 ultra-deep well that earns your lease the RSV begins production (other than test production).

(2) You must apply the RSV to only gas production from qualified wells on your lease, regardless of their depth, for which you have met the requirements in § 203.35 or § 203.44.

(c) This paragraph applies to any lease with a qualified phase 2 or phase 3 ultra-deep well where all or part of the lease is within an MMS-approved unit. Under the unit agreement, a share of the production from all the qualified wells in the unit participating area would be allocated to your lease each month according to the participating area percentages. Subject to the price conditions of § 203.36, you must apply the RSV prescribed in § 203.31 as follows:

(1) You must apply the RSV to the earliest gas production occurring on and after the later of May 18, 2007, or the date that the first qualified phase 2 or phase 3 ultra-deep well that earns your lease the RSV begins production (other than test production).

(2) You must apply the RSV to only gas production:

(i) From qualified wells on the non-unitized area of your lease, regardless of their depth, for which you have met the requirements in § 203.35 or § 203.44; and

(ii) Allocated to your lease under an MMS-approved unit agreement from qualified wells on unitized areas of your lease and on other leases in participating areas of the unit,

regardless of their depth, for which the requirements in § 203.35 or § 203.44 have been met. The allocated share under paragraph (a)(2)(ii) of this section does not increase the RSV for your lease.

Example: The east half of your lease A is unitized with all of lease B. There is one qualified phase 2 ultra-deep well on the non-unitized portion of lease A that earns lease A an RSV of 35 BCF under § 203.31, one qualified deep well on the unitized portion of lease A (drilled after the ultra-deep well on the non-unitized portion of that lease) and a qualified phase 2 ultra-deep well on lease B that earns lease B a 35 BCF RSV under § 203.31. The participating area percentages allocate 40 percent of production from both of the unit qualified wells to lease A and 60 percent to lease B. If the non-unitized qualified phase 2 ultra-deep well on lease A produces 12 BCF, and the unitized qualified well on lease A produces 18 BCF, and the qualified well on lease B produces 37 BCF, then the production volume from and allocated to lease A to which the lease A RSV applies is 34 BCF [12 + (18 + 37)(0.40)]. The production volume allocated to lease B to which the lease B RSV applies is 33 BCF [(18 + 37)(0.60)]. None of the volumes produced from a well that is not within a unit participating area may be allocated to other leases in the unit.

(d) You must begin paying royalties when the cumulative production of gas from all qualified wells on your lease, or allocated to your lease under paragraph (b) of this section, reaches the applicable RSV allowed under § 203.31 or § 203.41. For the month in which cumulative production reaches this RSV, you owe royalties on the portion of gas production from or allocated to your lease that exceeds the RSV remaining at the beginning of that month.

§ 203.34 To which production may an RSV earned by qualified phase 2 and phase 3 ultra-deep wells on my lease not be applied?

You may not apply an RSV earned under § 203.31:

(a) To production from completions less than 15,000 feet TVD SS, except in cases where the qualified well is re-perforated in the same reservoir previously perforated deeper than 15,000 feet TVD SS;

(b) To production from a deep well or ultra-deep well on any other lease, except as provided in paragraph (c) of § 203.33;

(c) To any liquid hydrocarbon (oil and condensate) volumes; or

(d) To production from a deep well or ultra-deep well that commenced drilling before:

(1) March 26, 2003, on a lease that is located entirely or partly in water less than 200 meters deep; or

(2) May 18, 2007, on a lease that is located entirely in water more than 200 meters deep.

§ 203.35 What administrative steps must I take to use the RSV earned by a qualified phase 2 or phase 3 ultra-deep well?

To use an RSV earned under § 203.31:

(a) You must notify the MMS Regional Supervisor for Production and Development in writing of your intent to begin drilling operations on all your ultra-deep wells.

(b) Before beginning production, you must meet any production measurement requirements that the MMS Regional Supervisor for Production and Development has determined are necessary under 30 CFR Part 250, Subpart L.

(c)(1) Within 30 days of the beginning of production from any wells that would become qualified phase 2 or phase 3 ultra-deep wells by satisfying the requirements of this section:

(i) Provide written notification to the MMS Regional Supervisor for Production and Development that production has begun; and

(ii) Request confirmation of the size of the RSV earned by your lease.

(2) If you produced from a qualified phase 2 or phase 3 ultra-deep well before December 18, 2008, you must provide the information in paragraph (c)(1) of this section no later than January 20, 2009.

(d) If you cannot produce from a well that otherwise meets the criteria for a qualified phase 2 ultra-deep well that is an ultra-deep short sidetrack before May 3, 2009, on a lease that is located entirely or partly in water less than 200 meters deep, or before May 3, 2013, on a lease that is located entirely in water more than 200 meters but less than 400 meters deep, the MMS Regional Supervisor for Production and Development may extend the deadline for beginning production for up to 1 year, based on the circumstances of the particular well involved, if it meets all the following criteria.

(1) The delay occurred after drilling reached the total depth in your well.

(2) Production (other than test production) was expected to begin from the well before May 3, 2009, on a lease that is located entirely or partly in water less than 200 meters deep or before May 3, 2013, on a lease that is located entirely in water more than 200 meters but less than 400 meters deep. You must provide a credible activity schedule with supporting documentation.

(3) The delay in beginning production is for reasons beyond your control, such as adverse weather and accidents which MMS deems were unavoidable.

§ 203.36 Do I keep royalty relief if prices rise significantly?

(a) You must pay royalties on all gas production to which an RSV otherwise would be applied under § 203.33 for any calendar year in which the average daily closing New York Mercantile Exchange (NYMEX) natural gas price exceeds the applicable threshold price shown in the following table.

A price threshold in year 2007 dollars of . . .	Applies to . . .
(1) $10.15 per MMBtu	(i) The first 25 BCF of RSV earned under § 203.31(a) by a phase 2 ultra-deep well on a lease that is located in water partly or entirely less than 200 meters deep issued before December 18, 2008; and (ii) Any RSV earned under § 203.31(b) by a phase 2 ultra-deep well.
(2) $4.55 per MMBtu	(i) Any RSV earned under § 203.31(a) by a phase 3 ultra-deep well unless the lease terms prescribe a different price threshold; (ii) The last 10 BCF of the 35 BCF of RSV earned under § 203.31(a) by a phase 2 ultra-deep well on a lease that is located in water partly or entirely less than 200 meters deep issued before December 18, 2008 and that is not a non-converted lease; (iii) The last 15 BCF of the 35 BCF of RSV earned under § 203.31(a) by a phase 2 ultra-deep well on a non-converted lease; (iv) Any RSV earned under § 203.31(a) by a phase 2 ultra-deep well on a lease in water partly or entirely less than 200 meters deep issued on or after December 18, 2008 unless the lease terms prescribe a different price threshold; and (v) Any RSV earned under § 203.31(a) by a phase 2 ultra-deep well on a lease in water entirely more than 200 meters deep and entirely less than 400 meters deep.

A price threshold in year 2007 dollars of . . .	Applies to . . .
(3) $4.08 per MMBtu	(i) The first 20 BCF of RSV earned by a well that is located on a non-converted lease issued in OCS Lease Sale 178.
(4) $5.83 per MMBtu	(i) The first 20 BCF of RSV earned by a well that is located on a non-converted lease issued in OCS Lease Sales 180, 182, 184, 185, or 187.

(b) For purposes of paragraph (a) of this section, determine the threshold price for any calendar year after 2007 by:

(1) Determining the percentage of change during the year in the Department of Commerce's implicit price deflator for the gross domestic product; and

(2) Adjusting the threshold price for the previous year by that percentage.

(c) The following examples illustrate how this section applies.

Example 1: Assume that a lessee drills and begins producing from a qualified phase 2 ultra-deep well in 2008 on a lease issued in 2004 in less than 200 meters of water that earns the lease an RSV of 35 BCF. Further, assume the well produces a total of 18 BCF by the end of 2009 and in both of those years, the average daily NYMEX closing natural gas price is less than $10.15 (adjusted for inflation after 2007). The lessee does not pay royalty on the 18 BCF because the gas price threshold under paragraph (a)(1) of this section applies to the first 25 BCF of this RSV earned by this phase 2 ultra-deep well. In 2010, the well produces another 13 BCF. In that year, the average daily closing NYMEX natural gas price is greater than $4.55 per MMBtu (adjusted for inflation after 2007), but less than $10.15 per MMBtu (adjusted for inflation after 2007). The first 7 BCF produced in 2010 will exhaust the first 25 BCF (that is subject to the $10.15 threshold) of the 35 BCF RSV that the well earned. The lessee must pay royalty on the remaining 6 BCF produced in 2010, because it is subject to the $4.55 per MMBtu threshold under paragraph (a)(2)(ii) of this section which was exceeded.

Example 2: Assume that a lessee:

(1) Drills and produces from well no.1, a qualified deep well in 2008 to a depth of 15,500 feet TVD SS that earns a 15 BCF RSV for the lease under § 203.41, which would be subject to a price threshold of $10.15 per MMBtu (adjusted for inflation after 2007), meaning the lease is partly or entirely in less than 200 meters of water;

(2) Later in 2008 drills and produces from well no. 2, a second qualified deep well to a depth of 17,000 feet TVD SS that earns no additional RSV (see § 203.41(c)(1)); and

(3) In 2015, drills and produces from well no. 3, a qualified phase 3 ultra-deep well that earns no additional RSV since the lease already has an RSV established by prior deep well production. Further assume that in 2015, the average daily closing NYMEX natural gas price exceeds $4.55 per MMBtu (adjusted for inflation after 2007) but does not exceed $10.15 per MMBtu (adjusted for inflation after 2007). In 2015, any remaining RSV earned by well no. 1 (which would have been applied to production from well nos. 1 and 2 in the intervening years), would be applied to production from all three qualified wells. Because the price threshold applicable to that RSV was not exceeded, the production from all three qualified wells would be royalty-free until the 15 BCF RSV earned by well no. 1 is exhausted.

Example 3: Assume the same initial facts regarding the three wells as in Example 2. Further assume that well no. 1 stopped producing in 2011 after it had produced 8 BCF, and that well no. 2 stopped producing in 2012 after it had produced 5 BCF. Two BCF of the RSV earned by well no. 1 remain. That RSV would be applied to production from well no. 3 until it is exhausted, and the lessee therefore would not pay royalty on those 2 BCF produced in 2015, because the $10.15 per MMBtu (adjusted for inflation after 2007) price threshold is not exceeded. The determination of which price threshold applies to deep gas production depends on when the first qualified well earned the RSV for the lease, not on which wells use the RSV.

Example 4: Assume that in February 2010 a lessee completes and begins producing from an ultra-deep well (at a depth of 21,500 feet TVD SS) on a lease located in 325 meters of water with no prior production from any deep well and no deep water royalty relief. The ultra-deep well would be a phase 2 ultra-deep well (see definition in § 203.0), and would earn the lease an RSV of 35 BCF under §§ 203.30 and 203.31. Further assume that the average daily closing NYMEX natural gas price exceeds $4.55 per MMBtu (adjusted for inflation after 2007) but does not exceed $10.15 per MMBtu (adjusted for inflation after 2007) during 2010. Because the lease is located in more than 200 but less than 400 meters of water, the $4.55 per MMBtu price threshold applies to the whole RSV (see paragraph (a)(2)(v) of this section), and the lessee will owe royalty on all gas produced from the ultra-deep well in 2010.

(d) You must pay any royalty due under this section no later than March 31 of the year following the calendar year for which you owe royalty. If you do not pay by that date, you must pay late payment interest under § 218.54 from April 1 until the date of payment.

(e) Production volumes on which you must pay royalty under this section count as part of your RSV.

■ 6. Revise §§ 203.40 and 203.41 to read as follows:

§ 203.40 Which leases are eligible for royalty relief as a result of drilling a deep well or a phase 1 ultra-deep well?

Your lease may receive an RSV under §§ 203.41 through 203.44, and may receive an RSS under §§ 203.45 through 203.47, if it meets all the requirements of this section.

(a) The lease is located in the GOM wholly west of 87 degrees, 30 minutes West longitude in water depths entirely less than 400 meters deep.

(b) The lease has not produced gas or oil from a well with a perforated interval the top of which is 18,000 feet TVD SS or deeper that commenced drilling either:

(1) Before March 26, 2003, on a lease that is located partly or entirely in water less than 200 meters deep; or

(2) Before May 18, 2007, on a lease that is located in water entirely more than 200 meters and entirely less than 400 meters deep.

(c) In the case of a lease located partly or entirely in water less than 200 meters deep, the lease was issued in a lease sale held either:

(1) Before January 1, 2001;

(2) On or after January 1, 2001, and before January 1, 2004, and, in cases where the original lease terms provided for an RSV for deep gas production, the lessee has exercised the option provided for in § 203.49; or

(3) On or after January 1, 2004, and the lease terms provide for royalty relief under §§ 203.41 through 203.47 of this part. (**Note:** Because the original § 203.41 has been divided into new §§ 203.41 and 203.42 and subsequent sections have been redesignated as §§ 203.43 through 203.48, royalty relief in lease terms for leases issued on or after January 1, 2004, should be read as referring to §§ 203.41 through 203.48.)

(d) If the lease is located entirely in more than 200 meters and less than 400 meters of water, it must either:

(1) Have been issued before November 28, 1995, and not been granted deep water royalty relief under 43 U.S.C. 1337(a)(3)(C), added by section 302 of the Deep Water Royalty Relief Act; or

(2) Have been issued after November 28, 2000, and not been granted deep water royalty relief under §§ 203.60 through 203.79.

§ 203.41 If I have a qualified deep well or a qualified phase 1 ultra-deep well, what royalty relief would my lease earn?

(a) To qualify for a suspension volume under paragraphs (b) or (c) of this section, your lease must meet the

requirements in § 203.40 and the requirements in the following table.

If your lease has not . . .	And if it later . . .	Then your lease . . .
(1) produced gas or oil from any deep well or ultra-deep well,	has a qualified deep well or qualified phase 1 ultra-deep well,.	earns an RSV specified in paragraph (b) of this section.
(2) produced gas or oil from a well with a perforated interval whose top is 18,000 feet TVD SS or deeper,	has a qualified deep well with a perforated interval whose top is 18,000 feet TVD SS or deeper or a qualified phase 1 ultra-deep well,.	earns an RSV specified in paragraph (c) of this section.

(b) If your lease meets the requirements in paragraph (a)(1) of this section, it earns the RSV prescribed in the following table:

If you have a qualified deep well or a qualified phase 1 ultra-deep well that is:	Then your lease earns an RSV on this volume of gas production:
(1) An original well with a perforated interval the top of which is from 15,000 to less than 18,000 feet TVD SS,	15 BCF.
(2) A sidetrack with a perforated interval the top of which is from 15,000 to less than 18,000 feet TVD SS,	4 BCF plus 600 MCF times sidetrack measured depth (rounded to the nearest 100 feet) but no more than 15 BCF.
(3) An original well with a perforated interval the top of which is at least 18,000 feet TVD SS,	25 BCF.
(4) A sidetrack with a perforated interval the top of which is at least 18,000 feet TVD SS,	4 BCF plus 600 MCF times sidetrack measured depth (rounded to the nearest 100 feet) but no more than 25 BCF.

(c) If your lease meets the requirements in paragraph (a)(2) of this section, it earns the RSV prescribed in the following table. The RSV specified in this paragraph is in addition to any RSV your lease already may have earned from a qualified deep well with a perforated interval whose top is from 15,000 feet to less than 18,000 feet TVD SS.

If you have a qualified deep well or a qualified phase 1 ultra-deep well that is . . .	Then you earn an RSV on this amount of gas production:
(1) An original well or a sidetrack with a perforated interval the top of which is from 15,000 to less than 18,000 feet TVD SS,	0 BCF.
(2) An original well with a perforated interval the top of which is 18,000 feet TVD SS or deeper,	10 BCF.
(3) A sidetrack with a perforated interval the top of which is 18,000 feet TVD SS or deeper,	4 BCF plus 600 MCF times sidetrack measured depth (rounded to the nearest 100 feet) but no more than 10 BCF.

(d) Lessees may request a refund of or recoup royalties paid on production from qualified wells on a lease that is located in water entirely deeper than 200 meters but entirely less than 400 meters deep that:

(1) Occurs before December 18, 2008; and

(2) Is subject to application of an RSV under either § 203.31 or § 203.41.

(e) The following examples illustrate how this section applies, assuming your lease meets the location, prior production, and lease issuance conditions in § 203.40 and paragraph (a) of this section:

Example 1: If you have a qualified deep well that is an original well with a perforated interval the top of which is 16,000 feet TVD SS, your lease earns an RSV of 15 BCF under paragraph (b)(1) of this section. This RSV must be applied to gas production from all qualified wells on your lease, as prescribed in §§ 203.43 and 203.48. However, if the top of the perforated interval is 18,500 feet TVD SS, the RSV is 25 BCF according to paragraph (b)(3) of this section.

Example 2: If you have a qualified deep well that is a sidetrack, with a perforated interval the top of which is 16,000 feet TVD SS and a sidetrack measured depth of 6,789 feet, we round the measured depth to 6,800 feet and your lease earns an RSV of 8.08 BCF under paragraph (b)(2) of this section. This RSV would be applied to gas production from all qualified wells on your lease, as prescribed in §§ 203.43 and 203.48.

Example 3: If you have a qualified deep well that is a sidetrack, with a perforated interval the top of which is 16,000 feet TVD SS and a sidetrack measured depth of 19,500 feet, your lease earns an RSV of 15 BCF. This RSV would be applied to gas production from all qualified wells on your lease, as prescribed in §§ 203.43 and 203.48, even though 4 BCF plus 600 MCF per foot of sidetrack measured depth equals 15.7 BCF because paragraph (b)(2) of this section limits the RSV for a sidetrack at the amount an original well to the same depth would earn.

Example 4: If you have drilled and produced a deep well with a perforated interval the top of which is 16,000 feet TVD SS before March 26, 2003 (and the well therefore is not a qualified well and has earned no RSV under this section), and later drill:

(i) A deep well with a perforated interval the top of which is 17,000 feet TVD SS, your lease earns no RSV (see paragraph (c)(1) of this section);

(ii) A qualified deep well that is an original well with a perforated interval the top of which is 19,000 feet TVD SS, your lease earns an RSV of 10 BCF under paragraph (c)(2) of this section. This RSV would be applied to gas production from qualified wells on your lease, as prescribed in §§ 203.43 and 203.48; or

(iii) A qualified deep well that is a sidetrack with a perforated interval the top of which is 19,000 feet TVD SS, that has a sidetrack measured depth of 7,000 feet, your lease earns an RSV of 8.2 BCF under paragraph (c)(3) of this section. This RSV would be applied to gas production from qualified wells on your lease, as prescribed in §§ 203.43 and 203.48.

Example 5: If you have a qualified deep well that is an original well with a perforated interval the top of which is 16,000 feet TVD SS, and later drill a second qualified well that is an original well with a perforated

interval the top of which is 19,000 feet TVD SS, we increase the total RSV for your lease from 15 BCF to 25 BCF under paragraph (c)(2) of this section. We will apply that RSV to gas production from all qualified wells on your lease, as prescribed in §§ 203.43 and 203.48. If the second well has a perforated interval the top of which is 22,000 feet TVD SS (instead of 19,000 feet), the total RSV for your lease would increase to 25 BCF only in 2 situations: (1) If the second well was a phase 1 ultra-deep well, i.e., if drilling began before May 18, 2007, or (2) the exception in § 203.31(b) applies. In both situations, your lease must be partly or entirely in less than 200 meters of water and production must begin on this well before May 3, 2009. If drilling of the second well began on or after May 18, 2007, the second well would be qualified as a phase 2 or phase 3 ultra-deep well and, unless the exception in § 203.31(b) applies, would not earn any additional RSV (as prescribed in § 203.30), so the total RSV for your lease would remain at 15 BCF.

Example 6: If you have a qualified deep well that is a sidetrack, with a perforated interval the top of which is 16,000 feet TVD SS and a sidetrack measured depth of 4,000 feet, and later drill a second qualified well that is a sidetrack, with a perforated interval the top of which is 19,000 feet TVD SS and a sidetrack measured depth of 8,000 feet, we increase the total RSV for your lease from 6.4 BCF [4 + (600 * 4,000)/1,000,000] to 15.2 BCF {6.4 + [4 + (600 * 8,000)/1,000,000)]} under paragraphs (b)(2) and (c)(3) of this section. We would apply that RSV to gas production from all qualified wells on your lease, as prescribed in §§ 203.43 and 203.48. The difference of 8.8 BCF represents the RSV earned by the second sidetrack that has a perforated interval the top of which is deeper than 18,000 feet TVD SS.

■ 7. Sections 203.42 through 203.48 are redesignated as §§ 203.42 through 203.49.

■ 8. Add new § 203.42 to read as follows:

§ 203.42 What conditions and limitations apply to royalty relief for deep wells and phase 1 ultra-deep wells?

The conditions and limitations in the following table apply to royalty relief under § 203.41.

If . . .	Then . . .
(a) Your lease has produced gas or oil from a well with a perforated interval the top of which is 18,000 feet TVD SS or deeper,	your lease cannot earn an RSV under § 203.41 as a result of drilling any subsequent deep wells or phase 1 ultra-deep wells.
(b) You determine RSV under § 203.41 for the first qualified deep well or qualified phase 1 ultra-deep well on your lease (whether an original well or a sidetrack) because you drilled and produced it within the time intervals set forth in the definitions for qualified wells,	that determination establishes the total RSV available for that drilling depth interval on your lease (i.e., either 15,000–18,000 feet TVD SS, or 18,000 feet TVD SS and deeper), regardless of the number of subsequent qualified wells you drill to that depth interval.
(c) A qualified deep well or qualified phase 1 ultra-deep well on your lease is within a unitized portion of your lease,	the RSV earned by that well under § 203.41 applies only to production from qualified wells on or allocated to your lease and not to other leases within the unit.
(d) Your qualified deep well or qualified phase 1 ultra-deep well is a directional well (either an original well or a sidetrack) drilled across a lease line,	the lease with the perforated interval that initially produces earns the RSV. However, if the perforated interval crosses a lease line, the lease where the surface of the well is located earns the RSV.
(e) You earn an RSV under § 203.41,	that RSV is in addition to any RSS for your lease under § 203.45 that results from a different wellbore.
(f) Your lease earns an RSV under § 203.41 and later produces from a well that is not a qualified well,	the RSV is not forfeited or terminated, but you may not apply the RSV under § 203.41 to production from the non-qualified well.
(g) You qualify for an RSV under paragraphs (b) or (c) of § 203.41,	you still owe minimum royalties or rentals in accordance with your lease terms.
(h) You transfer your lease,	unused RSVs transfer to a successor lessee and expire with the lease.

Example to paragraph (b): If your first qualified deep well is a sidetrack with a perforated interval whose top is 16,000 feet TVD SS and earns an RSV of 12.5 BCF, and you later drill a qualified original deep well to 17,000 feet TVD SS, the RSV for your lease remains at 12.5 BCF and does not increase to 15 BCF. However, under paragraph (c) of § 203.41, if you subsequently drill a qualified deep well to a depth of 18,000 feet or greater TVD SS, you may earn an additional RSV.

■ 9. Revise newly redesignated § 203.43 to read as follows:

§ 203.43 To which production do I apply the RSV earned from qualified deep wells or qualified phase 1 ultra-deep wells on my lease?

(a) You must apply the RSV prescribed in § 203.41(b) and (c) to gas volumes produced from qualified wells on or after May 3, 2004, reported on the OGOR–A for your lease under § 216.53, as and to the extent prescribed in §§ 203.43 and 203.48.

(1) Except as provided in paragraph (a)(2) of this section, all gas production from qualified wells reported on the OGOR–A, including production that is not subject to royalty, counts toward the lease RSV.

(2) Production to which an RSS applies under §§ 203.45 and 203.46 does not count toward the lease RSV.

(b) This paragraph applies to any lease with a qualified deep well or qualified phase 1 ultra-deep well when no part of the lease is within an MMS-approved unit. Subject to the price conditions in § 203.48, you must apply the RSV prescribed in § 203.41 as required under the following paragraphs (b)(1) and (b)(2) of this section.

(1) You must apply the RSV to the earliest gas production occurring on and after the later of:

(i) May 3, 2004, for an RSV earned by a qualified deep well or qualified phase 1 ultra-deep well on a lease that is located entirely or partly in water less than 200 meters deep;

(ii) May 18, 2007, for an RSV earned by a qualified deep well on a lease that is located entirely in water more than 200 meters deep; or

(iii) The date that the first qualified well that earns your lease the RSV begins production (other than test production).

(2) You must apply the RSV to only gas production from qualified wells on your lease, regardless of their depth, for which you have met the requirements in § 203.35 or § 203.44.

Example 1: On a lease in water less than 200 meters deep, you began drilling an original deep well with a perforated interval the top of which is 18,200 feet TVD SS in September 2003, that became a qualified deep well in July 2004, when it began producing and using the RSV that it earned. You subsequently drill another original deep well with a perforated interval the top of which is 16,600 feet TVD SS, which becomes a qualified deep well when production begins in August 2008. The first well earned an RSV of 25 BCF (see § 203.41(a)(1) and (b)(3)). You must apply any remaining RSV each month beginning in August 2008 to production from both wells until the 25 BCF RSV is fully utilized according to paragraph

(b)(2) of this section. If the second well had begun production in August 2009, it would not be a qualified deep well because it started production after expiration in May 2009 of the ability to qualify for royalty relief in this water depth, and could not share any of the remaining RSV (see definition of a qualified deep well in § 203.0).

Example 2: On a lease in water between 200 and 400 meters deep, you begin drilling an original deep well with a perforated interval the top of which is 17,100 feet TVD SS in November 2010 that becomes a qualified deep well in June 2011 when it begins producing and using the RSV. You subsequently drill another original deep well with a perforated interval the top of which is 15,300 feet TVD SS which becomes a qualified deep well by beginning production in October 2011 (see definition of a qualified deep well in § 203.0). Only the first well earns an RSV equal to 15 BCF (*see* § 203.41(a) and (b)). You must apply any remaining RSV each month beginning in October 2011 to production from both qualified deep wells until the 15 BCF RSV is fully utilized according to paragraph (b)(2) of this section.

(c) This paragraph applies to any lease with a qualified deep well or qualified phase 1 ultra-deep well when all or part of the lease is within an MMS-approved unit. Under the unit agreement, a share of the production from all the qualified wells in the unit participating area would be allocated to your lease each month according to the participating area percentages. Subject to the price conditions in § 203.48, you must apply the RSV prescribed under § 203.41 as required under the following paragraphs (c)(1) through (c)(3) of this section.

(1) You must apply the RSV to the earliest gas production occurring on and after the later of:

(i) May 3, 2004, for an RSV earned by a qualified well or qualified phase 1 ultra-deep well on a lease that is located entirely or partly in water less than 200 meters deep;

(ii) May 18, 2007, for an RSV earned by a qualified deep well on a lease that is located entirely in water more than 200 meters deep; or

(iii) The date that the first qualified well that earns your lease the RSV begins production (other than test production).

(2) You must apply the RSV to only gas production:

(i) From all qualified wells on the non-unitized area of your lease, regardless of their depth, for which you have met the requirements in § 203.35 or § 203.44; and,

(ii) Allocated to your lease under an MMS-approved unit agreement from qualified wells on unitized areas of your lease and on unitized areas of other leases in the unit, regardless of their depth, for which the requirements in § 203.35 or § 203.44 have been met.

(3) The allocated share under paragraph (c)(2)(ii) of this section does not increase the RSV for your lease. None of the volumes produced from a well that is not within a unit participating area may be allocated to other leases in the unit.

Example: The east half of your lease A is unitized with all of lease B. There is one qualified 19,000-foot TVD SS deep well on the non-unitized portion of lease A, one qualified 18,500-foot TVD SS deep well on the unitized portion of lease A, and a qualified 19,400-foot TVD SS deep well on lease B. The participating area percentages allocate 32 percent of production from both of the unit qualified deep wells to lease A and 68 percent to lease B. If the non-unitized qualified deep well on lease A produces 12 BCF and the unitized qualified deep well on lease A produces 15 BCF, and the qualified deep well on lease B produces 10 BCF, then the production volume from and allocated to lease A to which the lease an RSV applies is 20 BCF [12 + (15 + 10) * (0.32)]. The production volume allocated to lease B to which the lease B RSV applies is 17 BCF [(15 + 10) * (0.68)].

(d) You must begin paying royalties when the cumulative production of gas from all qualified wells on your lease, or allocated to your lease under paragraph (c) of this section, reaches the applicable RSV allowed under § 203.31 or § 203.41. For the month in which cumulative production reaches this RSV, you owe royalties on the portion of gas production that exceeds the RSV remaining at the beginning of that month.

(e) You may not apply the RSV allowed under § 203.41 to:

(1) Production from completions less than 15,000 feet TVD SS, except in cases where the qualified deep well is re-perforated in the same reservoir previously perforated deeper than 15,000 feet TVD SS;

(2) Production from a deep well or phase 1 ultra-deep well on any other lease, except as provided in paragraph (c) of this section;

(3) Any liquid hydrocarbon (oil and condensate) volumes; or

(4) Production from a deep well or phase 1 ultra-deep well that commenced drilling before:

(i) March 26, 2003, on a lease that is located entirely or partly in water less than 200 meters deep, or

(ii) May 18, 2007, on a lease that is located entirely in water more than 200 meters deep.

■ 10. In redesignated § 203.44, paragraphs (a), (d), and (e) are revised to read as follows:

§ 203.44 What administrative steps must I take to use the RSV earned by a qualified deep well or qualified phase 1 ultra-deep well?

(a) You must notify the MMS Regional Supervisor for Production and Development in writing of your intent to begin drilling operations on all deep wells and phase 1 ultra-deep wells; and

* * * * *

(d) You must provide the information in paragraph (b) of this section by January 20, 2009 if you produced before December 18, 2008 from a qualified deep well or qualified phase 1 ultra-deep well on a lease that is located entirely in water more than 200 meters and less than 400 meters deep.

(e) The MMS Regional Supervisor for Production and Development may extend the deadline for beginning production for up to one year for a well that cannot begin production before the applicable date prescribed in the definition of ''qualified deep well'' in § 203.0 if it meets all of the following criteria.

(1) The well otherwise meets the criteria in the definition of a qualified deep well in § 203.0.

(2) The delay in production occurred after reaching total depth in the well.

(3) Production (other than test production) was expected to begin from the well before the applicable deadline in the definition of a qualified deep well in § 203.0. You must provide a credible activity schedule with supporting documentation.

(4) The delay in beginning production is for reasons beyond your control, such as adverse weather and accidents which MMS deems were unavoidable.

■ 11. In redesignated § 203.45, paragraphs (a), (b) and (e) are revised to read as follows:

§ 203.45 If I drill a certified unsuccessful well, what royalty relief will my lease earn?

* * * * *

(a) If you drill a certified unsuccessful well and you satisfy the administrative requirements of § 203.47, subject to the price conditions in § 203.48, your lease earns an RSS shown in the following table. The RSS is shown in billions of cubic feet of gas equivalent (BCFE) or in thousands of cubic feet of gas equivalent (MCFE) and is applicable to oil and gas production as prescribed in § 204.46.

If you have a certified unsuccessful well that is:	Then your lease earns an RSS on this volume of oil and gas production as prescribed in this section and § 203.46:
(1) An original well and your lease has not produced gas or oil from a deep well or an ultra-deep well,	5 BCFE.
(2) A sidetrack (with a sidetrack measured depth of at least 10,000 feet) and your lease has not produced gas or oil from a deep well or an ultra-deep well,	0.8 BCFE plus 120 MCFE times sidetrack measured depth (rounded to the nearest 100 feet) but no more than 5 BCFE.
(3) An original well or a sidetrack (with a sidetrack measured depth of at least 10,000 feet) and your lease has produced gas or oil from a deep well with a perforated interval the top of which is from 15,000 to less than 18,000 feet TVD SS,	2 BCFE.

(b) This paragraph applies to oil and gas volumes you report on the OGOR–A for your lease under § 216.53.

(1) You must apply the RSS prescribed in paragraph (a) of this section, in accordance with the requirements in § 203.46, to all oil and gas produced from the lease:

(i) On or after December 18, 2008, if your lease is located in water more than 200 meters but less than 400 meters deep; or

(ii) On or after May 3, 2004, if your lease is located in water partly or entirely less than 200 meters deep.

(2) Production to which an RSV applies under §§ 203.31 through 203.33 and §§ 203.41 through 203.43 does not count toward the lease RSS. All other production, including production that is not subject to royalty, counts toward the lease RSS.

Example 1: If you drill a certified unsuccessful well that is an original well to a target 19,000 feet TVD SS, your lease earns an RSS of 5 BCFE that would be applied to gas and oil production if your lease has not previously produced from a deep well or an ultra-deep well, or you earn an RSS of 2 BCFE of gas and oil production if your lease has previously produced from a deep well with a perforated interval from 15,000 to less than 18,000 feet TVD SS, as prescribed in § 203.46.

Example 2: If you drill a certified unsuccessful well that is a sidetrack that reaches a target 19,000 feet TVD SS, that has a sidetrack measured depth of 12,545 feet, and your lease has not produced gas or oil from any deep well or ultra-deep well, MMS rounds the sidetrack measured depth to 12,500 feet and your lease earns an RSS of 2.3 BCFE of gas and oil production as prescribed in § 203.45.

* * * * *

(e) If the same wellbore that earns an RSS as a certified unsuccessful well later produces from a perforated interval the top of which is 15,000 feet TVD or deeper and becomes a qualified well, it will be subject to the following conditions:

* * * * *

■ 12. In redesignated § 203.46, paragraphs (a) introductory text, (a)(1), (c), and (e) are revised to read as follows:

§ 203.46 To which production do I apply the RSS from drilling one or two certified unsuccessful wells on my lease?

(a) Subject to the requirements of §§ 203.40, 203.43, 203.45, 203.47, and 203.48, you must apply an RSS in § 203.45 to the earliest oil and gas production:

(1) Occurring on and after the day you file the information under § 204.47(b),

* * * * *

(c) If you have no current production on which to apply the RSS allowed under § 203.45, your RSS applies to the earliest subsequent production of gas and oil from, or allocated under an MMS-approved unit agreement to, your lease.

* * * * *

(e) You may not apply the RSS allowed under § 203.45 to production from any other lease, except for production allocated to your lease from an MMS-approved unit agreement. If your certified unsuccessful well is on a lease subject to an MMS-approved unit agreement, the lessees of other leases in the unit may not apply any portion of the RSS for your lease to production from the other leases in the unit.

* * * * *

■ 13. In redesignated § 203.47, paragraph (c) is revised to read as follows:

§ 203.47 What administrative steps do I take to obtain and use the royalty suspension supplement?

* * * * *

(c) If you commenced drilling a well that otherwise meets the criteria for a certified unsuccessful well on a lease located entirely in more than 200 meters and entirely less than 400 meters of water on or after May 18, 2007, and finished it before December 18, 2008, you must provide the information in paragraph (b) of this section no later than February 17, 2009.

■ 14. Redesignated § 203.48 is revised to read as follows:

§ 203.48 Do I keep royalty relief if prices rise significantly?

(a) You must pay royalties on all gas and oil production for which an RSV or an RSS otherwise would be allowed under §§ 203.40 through 203.47 for any calendar year when the average daily closing NYMEX natural gas price exceeds the applicable threshold price shown in the following table.

For a lease located in water . . .	And issued . . .	the applicable threshold price is . . .
(1) Partly or entirely less than 200 meters deep,	before December 18, 2008,	$10.15 per MMBtu, adjusted annually after calendar year 2007 for inflation.
(2) Partly or entirely less than 200 meters deep,	after December 18, 2008,	$4.55 per MMBtu, adjusted annually after calendar year 2007 for inflation unless the lease terms prescribe a different price threshold.
(3) Entirely more than 200 meters and entirely less than 400 meters deep,	on any date,	$4.55 per MMBtu, adjusted annually after calendar year 2007 for inflation unless the lease terms prescribe a different price threshold.

(b) Determine the threshold price for any calendar year after 2007 by adjusting the threshold price in the previous year by the percentage that the implicit price deflator for the gross domestic product, as published by the Department of Commerce, changed during the calendar year.

(c) You must pay any royalty due under this section no later than March 31 of the year following the calendar year for which you owe royalty. If you do not pay by that date, you must pay late payment interest under § 218.54 from April 1 until the date of payment.

(d) Production volumes on which you must pay royalty under this section count as part of your RSV and RSS.

■ 15. In redesignated § 203.49, the introductory text in paragraph (a) and paragraph (c) are revised to read as follows:

§ 203.49 May I substitute the deep gas drilling provisions in this part for the deep gas royalty relief provided in my lease terms?

(a) You may exercise an option to replace the applicable lease terms for royalty relief related to deep-well drilling with those in § 203.0 and §§ 203.40 through 203.48 if you have a lease issued with royalty relief provisions for deep-well drilling. Such leases:

* * * * *

(c) Once you exercise the option under paragraph (a) of this section, you are subject to all the activity, timing, and administrative requirements pertaining to deep gas royalty relief as specified in §§ 203.40 through 203.48.

* * * * *

■ 16. The undesignated center heading between § 203.56 and § 203.60 is revised to read as follows:

Royalty Relief for Pre-Act Deep Water Leases and for Development and Expansion Projects

■ 17. Revise § 203.60 to read as follows:

§ 203.60 Who may apply for royalty relief on a case-by-case basis in deep water in the Gulf of Mexico or offshore of Alaska?

You may apply for royalty relief under §§ 203.61(b) and 203.62 for an individual lease, unit or project if you:

(a) Hold a pre-Act lease (as defined in § 203.0) that we have assigned to an authorized field (as defined in § 203.0);

(b) Propose an expansion project (as defined in § 203.0); or

(c) Propose a development project (as defined in § 203.0).

■ 18. Revise § 203.62 to read as follows:

§ 203.62 How do I apply for relief?

(a) You must send a complete application and the required fee to the MMS Regional Director for your region.

(b) Your application for royalty relief offshore Alaska or in deep water in the GOM must include an original and two copies (one set of digital information) of:

(1) Administrative information report;

(2) Economic Viability and relief justification report;

(3) G&G report;

(4) Engineering report;

(5) Production report; and

(6) Cost report.

(c) Section 203.82 explains why we are authorized to require these reports.

(d) Sections 203.81, 203.83, and 203.85 through 203.89 describe what these reports must include. The MMS regional office for your region will guide you on the format for the required reports, and we encourage you to contact this office before preparing your application for this guidance.

■ 19. In § 203.69, paragraph (b) is revised, paragraphs (c) through (f) are redesignated as paragraphs (f) through (i), and new paragraphs (c) through (e) are added to read as follows:

§ 203.69 If my application is approved, what royalty relief will I receive?

* * * * *

(b) For development projects, any relief we grant applies only to project wells and replaces the royalty relief, if any, with which we issued your lease.

(c) If your project is economic given the royalty relief with which we issued your lease, we will reject the application.

(d) If the lease has earned or may earn deep gas royalty relief under §§ 203.40 through 203.49 or ultra-deep gas royalty relief under §§ 203.30 through 203.36, we will take the deep gas royalty relief or ultra-deep gas royalty relief into account in determining whether further royalty relief for a development project is necessary for production to be economic.

(e) If neither paragraph (c) nor (d) of this section apply, the *minimum* royalty suspension volumes are as shown in the following table:

For . . .	The minimum royalty suspension volume is . . .	Plus . . .
(1) RS leases in the GOM or leases offshore Alaska,	A volume equal to the combined royalty suspension volumes (or the volume equivalent based on the data in your approved application for other forms of royalty suspension) with which MMS issued the leases participating in the application that have or plan a well into a reservoir identified in the application,	10 percent of the median of the distribution of known recoverable resources upon which MMS based approval of your application from all reservoirs included in the project.
(2) Leases offshore Alaska or other deep water GOM leases issued in sales after November 28, 2000,	A volume equal to 10 percent of the median of the distribution of known recoverable resources upon which MMS based approval of your application from all reservoirs included in the project.	

* * * * * * *

* * * * *

■ 20. In § 203.70, revise the introductory text and paragraph (b) to read as follows:

§ 203.70 What information must I provide after MMS approves relief?

You must submit reports to us as indicated in the following table. Sections 203.81, 203.90, and 203.91 describe what these reports must include. The MMS Regional Office for your region will prescribe the formats.

Required report	When due to MMS	Due date extensions
* *	* *	* * *
(b) Post-production report	Within 120 days after the start of production that is subject to the approved royalty suspension volume.	With acceptable justification from you, the MMS Regional Director for your region may extend the due date up to 30 days.

■ 21. Revise § 203.77 to read as follows:

§ 203.77 May I voluntarily give up relief if conditions change?

Yes, you may voluntarily give up relief by sending a letter to that effect to the MMS Regional office for your region.

■ 22. Revise § 203.78 to read as follows:

§ 203.78 Do I keep relief approved by MMS under §§ 203.60–203.77 for my lease, unit or project if prices rise significantly?

If prices rise above a base price threshold for light sweet crude oil or natural gas, you must pay full royalties on production otherwise subject to royalty relief approved by MMS under §§ 203.60–203.77 for your lease, unit or project as prescribed in this section.

(a) The following table shows the base price threshold for various types of leases, subject to paragraph (b) of this section. Note that, for post-November 2000 deepwater leases in the GOM, price thresholds apply on a lease basis, so different leases on the same development project or expansion project approved for royalty relief may have different price thresholds.

For . . .	The base price threshold is . . .
(1) Pre-Act leases in the GOM,	set by statute.
(2) Post-November 2000 deep water leases in the GOM or leases offshore of Alaska for which the lease or Notice of Sale set a base price threshold,	indicated in your original lease agreement or, if none, those in the Notice of Sale under which your lease was issued.
(3) Post-November 2000 deep water leases in the GOM or leases offshore of Alaska for which the lease or Notice of Sale did not set a base price threshold,	the threshold set by statute for pre-Act leases.

(b) An exception may occur if we determine that the price thresholds in paragraphs (a)(2) or (a)(3) mean the royalty suspension volume set under § 203.69 and in lease terms would provide inadequate encouragement to increase production or development, in which circumstance we could specify a different set of price thresholds on a case-by-case basis.

(c) Suppose your base oil price threshold set under paragraph (a) is $28.00 per barrel, and the daily closing NYMEX light sweet crude oil prices for the previous calendar year exceeds $28.00 per barrel, as adjusted in paragraph (h) of this section. In this case, we retract the royalty relief authorized in this subpart and you must:

(1) Pay royalties on all oil production for the previous year at the lease stipulated royalty rate plus interest (under 30 U.S.C. 1721 and § 218.54 of this chapter) by March 31 of the current calendar year, and

(2) Pay royalties on all your oil production in the current year.

(d) Suppose your base gas price threshold set under paragraph (a) is $3.50 per million British thermal units (Btu), and the daily closing NYMEX light sweet crude oil prices for the previous calendar year exceeds $3.50 per million Btu, as adjusted in paragraph (h) of this section. In this case, we retract the royalty relief authorized in this subpart and you must:

(1) Pay royalties on all gas production for the previous year at the lease stipulated royalty rate plus interest (under 30 U.S.C. 1721 and § 218.54 of this chapter) by March 31 of the current calendar year, and

(2) Pay royalties on all your gas production in the current year.

(e) Production under both paragraphs (c) and (d) of this section counts as part of the royalty-suspension volume.

(f) You are entitled to a refund or credit, with interest, of royalties paid on any production (that counts as part of the royalty-suspension volume):

(1) Of oil if the arithmetic average of the closing prices for the current calendar year is $28.00 per barrel or less, as adjusted in paragraph (h) of this section, and

(2) Of gas if the arithmetic average of the closing natural gas prices for the current calendar year is $3.50 per million Btu or less, as adjusted in paragraph (h) of this section.

(g) You must follow our regulations in part 230 of this chapter for receiving refunds or credits.

(h) We change the prices referred to in paragraphs (c), (d), and (f) of this section periodically. For pre-Act leases, these prices change during each calendar year after 1994 by the percentage that the implicit price deflator for the gross domestic product changed during the preceding calendar year. For post-November 2000 deepwater leases, these prices change as indicated in the lease instrument or in the Notice of Sale under which we issued the lease.

■ 23. In § 203.79, revise the section heading to read as follows:

§ 203.79 How do I appeal MMS's decisions related to royalty relief for a deepwater lease or a development or expansion project?

* * * * *

■ 24. In § 203.80, revise the section heading and introductory text to read as follows:

§ 203.80 When can I get royalty relief if I am not eligible for royalty relief under other sections in the subpart?

We may grant royalty relief when it serves the statutory purposes summarized in § 203.1 and our formal relief programs, including but not limited to the applicable levels of the royalty suspension volumes and price thresholds, provide inadequate encouragement to promote development or increase production. Unless your lease lies offshore of Alaska or wholly west of 87 degrees, 30 minutes West longitude in the GOM, your lease must be producing to qualify for relief. Before you may apply for royalty relief apart from our programs for end-of-life leases or for pre-Act deep water leases and development and expansion projects, we must agree that your lease or project has two or more of the following characteristics:

* * * * *

■ 25. In § 203.81, revise paragraph (b) to read as follows:

§ 203.81 What supplemental reports do royalty relief applications require?

* * * * *

(b) You must certify that all information in your application, fabricator's confirmation and post-production development reports is accurate, complete, and conforms to the most recent content and presentation guidelines available from the MMS Regional office for your region.

* * * * *

■ 26. In § 203.89, revise the section heading to read as follows:

§ 203.89 What is in a cost report?

* * * * *

■ 27. In § 203.90, revise paragraph (b) to read as follows:

§ 203.90 What is in a fabricator's confirmation report?

* * * * *

(b) A letter from the contractor building the system to the MMS Regional Director for your region certifying when construction started on your system; and

* * * * *

PART 260—OUTER CONTINENTAL SHELF OIL AND GAS LEASING

■ 28. The authority citation for part 260 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*.

■ 29. In § 260.121, revise paragraph (b) to read as follows:

§ 260.121 When does a lease issued in a sale held after November 2000 get a royalty suspension?

* * * * *

(b) You may apply for a supplemental royalty suspension for a project under part 203 of this title, if your lease is located:

(1) In the Gulf of Mexico, in water 200 meters or deeper, and wholly west of 87 degrees, 30 minutes West longitude; or

(2) Offshore of Alaska.

* * * * *

■ 30. In § 260.122, remove paragraph (d) and revise paragraph (b)(1) to read as follows:

§ 260.122 How long will a royalty suspension volume be effective for a lease issued in a sale held after November 2000?

* * * * *

(b)(1) Notwithstanding any royalty suspension volume under this subpart, you must pay royalty at the lease stipulated rate on:

(i) Any oil produced for any period stipulated in the lease during which the arithmetic average of the daily closing price on the New York Mercantile Exchange (NYMEX) for light sweet crude oil exceeds the applicable threshold price of $36.39 per barrel, adjusted annually after calendar year 2007 for inflation unless the lease terms prescribe a different price threshold.

(ii) Any natural gas produced for any period stipulated in the lease during which the arithmetic average of the daily closing price on the NYMEX for natural gas exceeds the applicable threshold price of $4.55 per MMBtu, adjusted annually after calendar year 2007 for inflation unless the lease terms prescribe a different price threshold.

(iii) Determine the threshold price for any calendar year after 2007 by adjusting the threshold price in the previous year by the percentage that the implicit price deflator for the gross domestic product, as published by the Department of Commerce, changed during the calendar year.

* * * * *

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To designate the facility of the United States Postal Service located at 7095 Highway 57 in Counce, Tennessee, as the "Pickwick Post Office Building". (Oct. 22, 2008; 122 Stat. 5013)

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