Single source drug means a covered outpatient drug that is produced or distributed under an original NDA approved by the FDA, including a drug product marketed by any cross-licensed producers or distributors operating under the NDA. It also includes a covered outpatient drug approved under a biological license application, PLA, ELA, or ADA.

States means the 50 States and the District of Columbia.

[72 FR 39239, July 17, 2007, as amended at 73 FR 13788, Mar. 14, 2008]

§447.504 Determination of AMP.

(a) *AMP* means, with respect to a covered outpatient drug of a manufacturer (including those sold under an NDA approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act (FFDCA)) for a calendar quarter, the average price paid to the manufacturer for the drug in the United States by wholesalers for drugs distributed to the retail pharmacy class of trade. AMP shall be determined without regard to customary prompt pay discounts extended to wholesalers. AMP shall be calculated to include all sales and associated discounts and other price concessions provided by the manufacturer for drugs distributed to the retail pharmacy class of trade unless the sale, discount, or other price concession is specifically excluded by statute or regulation or is provided to an entity specifically excluded by statute or regulation.

(b) *Average unit price* means a manufacturer's quarterly sales included in AMP less all required adjustments divided by the total units sold and included in AMP by the manufacturer in a quarter.

(c) *Customary prompt pay discount* means any discount off the purchase price of a drug routinely offered by the manufacturer to a wholesaler for prompt payment of purchased drugs within a specified timeframe and consistent with customary business practices for payment.

(d) *Net sales* means quarterly gross sales revenue less cash discounts allowed, except customary prompt pay discounts extended to wholesalers, and all other price reductions (other than rebates under section 1927 of the Act or price reductions specifically excluded by statute or regulation) which reduce the amount received by the manufacturer.

(e) *Retail pharmacy class of trade* means any independent pharmacy, chain pharmacy, mail order pharmacy, or other outlet that purchases drugs from a manufacturer, wholesaler, distributor, or other licensed entity and subsequently sells or provides the drugs to the general public.

(f) *Wholesaler* means any entity (including those entities in the retail pharmacy class of trade) to which the manufacturer sells the covered outpatient drugs, but that does not relabel or repackage the covered outpatient drug.

(g) *Sales, rebates, discounts, or other price concessions included in AMP.* Except with respect to those sales identified in paragraph (h) of this section, AMP for covered outpatient drugs shall include the following sales and associated rebates, discounts, or other price concessions—

(1) Sales to wholesalers, except for those sales that can be identified with adequate documentation as being subsequently sold to any of the excluded entities as specified in paragraph (h) of this section;

(2) Sales to other manufacturers who act as wholesalers and do not repackage/relabel under the purchaser's NDC, including private labeling agreements;

(3) Direct and indirect sales to hospitals, where the drug is used in the outpatient pharmacy, except those sales that cannot be identified with adequate documentation as being used in the outpatient pharmacy for outpatient use (for example hospital outpatient department, clinic, or affiliated entity);

(4) Sales at nominal prices to any entity except a covered entity described in section 340B(a)(4) of the Public Health Service Act (PHSA), an intermediate care facility for the mentally retarded (ICF/MR) providing services as set forth in §440.150 of this chapter, or a State-owned or operated nursing facility providing services as set forth in §440.155 of this chapter;

(5) Sales to retail pharmacies including discounts or other price concessions that adjust prices either directly

or indirectly on sales of drugs to the retail pharmacy class of trade;

(6) Sales including discounts, rebates, or other price concessions provided to pharmacy benefit managers (PBMs) for their mail order pharmacy purchases;

(7) Sales directly to patients;

(8) Sales to outpatient facilities (for example, clinics, surgical centers, ambulatory care centers, dialysis centers, and mental health centers);

(9) Sales to mail order pharmacies;

(10) Sales to home infusion providers;

(11) Sales to specialty pharmacies;

(12) Sales to home health care providers;

(13) Sales to physicians;

(14) Rebates, discounts, or other price concessions (other than rebates under section 1927 of the Act or as otherwise specified in the statute or regulations) associated with sales of drugs provided to the retail pharmacy class of trade; and

(15) Sales of drugs reimbursed by third party payers including the Medicare Part D Program, a Medicare Advantage prescription drug plan (MA–PD), a Qualified Retiree Prescription Drug Plan under section 1860D–22(a)(2) of the Act, State Children's Health Insurance Program (SCHIP), State pharmaceutical assistance programs (SPAPs), health maintenance organizations (HMOs) (including managed care organizations (MCOs)) that do not purchase or take possession of drugs, TRICARE Retail Pharmacy Program (TRRx), and Medicaid Programs that are associated with sales of drugs provided to the retail pharmacy class of trade (except for rebates under section 1927 of the Act or as otherwise specified in the statute or regulations).

(h) *Sales, rebates, discounts, or other price concessions excluded from AMP.* AMP excludes—

(1) Any prices on or after October 1, 1992, to the Indian Health Service (IHS), the Department of Veterans Affairs (DVA), a State home receiving funds under 38 U.S.C. 1741, the Department of Defense (DoD), the Public Health Service (PHS), or a covered entity described in section 1927(a)(5)(B) of the Act (including inpatient prices charged to hospitals described in section 340B(a)(4)(L) of the PHSA);

(2) Any prices charged under the Federal Supply Schedule (FSS) of the General Services Administration (GSA);

(3) Any depot prices (including TRICARE) and single award contract prices, as defined by the Secretary, of any agency of the Federal Government;

(4) Direct and indirect sales to hospitals, where the drug is used in the inpatient setting or in the outpatient pharmacy for outpatient use where the sales cannot be identified with adequate documentation;

(5) Sales to HMOs (including MCOs, and HMO/MCO-operated pharmacies) that purchase or take possession of drugs;

(6) Sales to long-term care facilities, including nursing facility pharmacies, contract pharmacies for the nursing facility where these sales can be identified with adequate documentation, and other entities where the drugs are dispensed through a nursing facility pharmacy, such as assisted living facilities;

(7) Sales to hospices (inpatient and outpatient);

(8) Sales to veterinarians;

(9) Sales to prisons;

(10) Sales outside the 50 States and the District of Columbia;

(11) Sales to State, county, and municipal entities;

(12) Sales to patient assistance programs;

(13) Sales to wholesalers where the drug is distributed to the non-retail pharmacy class of trade;

(14) Sales to wholesalers or distributors where the drug is relabeled under the wholesalers' or distributors' NDC number;

(15) Manufacturer coupons redeemed by a consumer, agent, pharmacy or another entity acting on behalf of the manufacturer, but only to the extent that the full value of the coupon is passed on to the consumer and the pharmacy, agent, or other entity does not receive any price concession;

(16) Manufacturer vouchers;

(17) Manufacturer-sponsored drug discount card programs;

(18) Free goods, not contingent upon any purchase requirement;

(19) Bona fide service fees;

(20) Customary prompt pay discounts extended to wholesalers;

(21) Returned or replaced goods when accepted or replaced in good faith;

(22) Discounts, rebates, or other price concessions to PBMs, except for their mail order pharmacy's purchases.

(23) Associated rebates, discounts, or other price concessions to third party payers including the Medicare Part D Program, an MA–PD, Qualified Retiree Prescription Drug Plan under section 1860D–22(a)(2) of the Act, SCHIP, SPAPs, HMOs (including MCOs that do not take possession of drugs) the TRICARE Retail Pharmacy Program, and Medicaid Programs; and

(24) Rebates under the national rebate agreement or a CMS-authorized State supplemental rebate agreement paid to State Medicaid Agencies under section 1927 of the Act.

(i) *Further clarification of AMP calculation.* (1) AMP includes cash discounts except customary prompt pay discounts extended to wholesalers, free goods that are contingent on any purchase requirement, volume discounts, chargebacks, incentives, administrative fees, service fees, distribution fees, (except bona fide service fees), and any other rebates, discounts or other price concessions, other than rebates under section 1927 of the Act, which reduce the price received by the manufacturer for drugs distributed to the retail pharmacy class of trade.

(2) Quarterly AMP is calculated as a weighted average of monthly AMPs in the quarter.

(3) The manufacturer must adjust the AMP for a rebate period if cumulative discounts, rebates, or other arrangements subsequently adjust the prices actually realized.

§447.505 Determination of best price.

(a) *Best price* means, with respect to a single source drug or innovator multiple source drug of a manufacturer (including any drug sold under an NDA approved under section 505(c) of the FFDCA), the lowest price available from the manufacturer during the rebate period to any entity in the United States in any pricing structure (including capitated payments), in the same quarter for which the AMP is computed. Best price shall be calculated to include all sales and associated rebates, discounts and other price concessions provided by the manufacturer to any entity unless the sale, discount, or other price concession is specifically excluded by statute or regulation or is provided to an entity specifically excluded by statute or regulation from the rebate calculation.

(b) For purposes of this section, *provider* means a hospital, HMO, including an MCO or entity that treats or provides coverage or services to individuals for illnesses or injuries or provides services or items in the provision of health care.

(c) *Prices included in best price.* Except with respect to those prices identified in paragraph (d) of this section, best price for covered outpatient drugs includes the following prices and associated rebates, discounts, or other price concessions that adjust prices either directly or indirectly—

(1) Prices to wholesalers;

(2) Prices to any retailer, including rebates, discounts or other price concessions that adjust prices either directly or indirectly on sales of drugs;

(3) Prices to providers (for example, hospitals, HMOs/MCOs, physicians, nursing facilities, and home health agencies);

(4) Prices available to non-profit entities;

(5) Prices available to governmental entities within the United States;

(6) Prices of authorized generic drugs, sold by the primary manufacturer in accordance with §447.506(d) of this subpart;

(7) Prices of sales directly to patients;

(8) Prices available to mail order pharmacies;

(9) Prices available to outpatient clinics;

(10) Prices to other manufacturers who act as wholesalers and do not repackage/relabel under the purchaser's NDC, including private labeling agreements; and

(11) Prices to entities that repackage/relabel under the purchaser's NDC, including private labeling agreements, if that entity also is an HMO or other non-excluded entity.

(d) *Prices excluded from best price.* Best price excludes:

(1) Any prices on or after October 1, 1992, charged to the IHS, the DVA, a