

of Pembina, Nече, Walhalla, Maida, Hannah, Sarles, and Hansboro in North Dakota, ACE will be the mandatory truck cargo information transmission system as of January 25, 2007.

Subsequently, ACE will continue to be phased in as the mandatory EDI system, at the ports identified below in the sequential order of the group in which they are listed. As mandatory ACE is phased in at these remaining ports, CBP will provide 90 days' notice through publication in the **Federal Register** prior to requiring the use of ACE for the transmission of advance electronic truck cargo information at a particular group of ports.

The remaining ports at which the mandatory use of ACE will continue to be phased in are divided into 5 groups, listed in sequential order, as follows:

1. All ports of entry in the states of Michigan, Texas, California, New Mexico, and New York.
2. All ports of entry in the states of Vermont and Alaska.
3. All ports in the states of Maine, Idaho, and Montana.
4. All remaining ports in the state of North Dakota (those not identified as having a specific compliance date).
5. All ports in the state of Minnesota.

Dated: October 23, 2006.

Deborah J. Spero,

Acting Commissioner, Customs and Border Protection.

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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 418

RIN 0960-AG11

Medicare Part B Income-Related Monthly Adjustment Amount

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: We are adding to our regulations a new subpart, Medicare Part B Income-Related Monthly Adjustment Amount, to contain the rules we will follow for Medicare Part B income-related monthly adjustment amount determinations. The monthly adjustment amount represents the amount of decrease in the Medicare Part B premium subsidy, i.e. the amount of the Federal Government's contribution to the Federal Supplementary Medical Insurance (SMI) Trust Fund. This new subpart implements section 811 of the Medicare Prescription Drug, Improvement, and Modernization Act of

2003 (the Medicare Modernization Act or MMA) and contains the rules for determining when, based on income, a monthly adjustment amount will be added to a Medicare Part B beneficiary's standard monthly premium. These final rules describe: What the new subpart is about; what information we will use to determine whether you will pay an income-related monthly adjustment amount and the amount of the adjustment when applicable; when we will consider a major life-changing event that results in a significant reduction in your modified adjusted gross income; and how you can appeal our determination about your income-related monthly adjustment amount.

DATES: These final rules are effective December 26, 2006.

FOR FURTHER INFORMATION CONTACT:

Craig Streett, Team Leader, Office of Income Security Programs, Social Security Administration, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, 410-965-9793 or TTY 1-800-966-5609, for information about this **Federal Register** document. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

Statutory Provisions

Section 811 of the MMA (Pub. L. 108-173), which was enacted into law on December 8, 2003, added subsection (i) to section 1839 of the Social Security Act (the Act), and established a Medicare Part B premium subsidy reduction (referred to in these final rules as "the income-related monthly adjustment amount") effective January 1, 2007, which will be added to the standard monthly Medicare Part B premium amount for certain beneficiaries. Section 1839(i) of the Act was subsequently amended by section 5111 of the Deficit Reduction Act of 2005, Public Law 109-171. The Centers for Medicare & Medicaid Services (CMS), in the Department of Health and Human Services (HHS), has overall responsibility for determining the annual Medicare Part B standard monthly premium amounts and premium increases for late enrollment or reenrollment. CMS regulations at 42 CFR part 408 describe the rules that

CMS uses to determine those amounts. As explained in these final rules, we are responsible only for making initial determinations and reconsidered determinations about income-related monthly adjustment amounts. Any subsequent levels of appeal will be provided by HHS under its regulations at 42 CFR part 405.

Section 702(a)(5) of the Act allows us to make the rules and regulations necessary or appropriate to carry out the functions of SSA. Other provisions in section 811 of the MMA provide us with additional specific authorization to make rules and regulations to determine the income-related monthly adjustment amount. For example, sections 1839(i)(4)(B) and (i)(4)(C)(ii)(II) of the Act authorize us to promulgate regulations necessary for our determinations about income-related monthly adjustment amounts. Section 1839 of the Act requires the Secretary of HHS to determine annually the Medicare Part B standard monthly premium amount. Section 1839 of the Act also authorizes the Secretary of HHS to establish a premium increase for late enrollment and for reenrollment under certain circumstances and provides for a limitation on increases in the Medicare Part B standard monthly premium for some beneficiaries.

The new section 1839(i) requires us to determine the income-related monthly adjustment amount for Medicare beneficiaries with modified adjusted gross income above an established threshold. The income-related monthly adjustment amount is added to the Medicare Part B standard monthly premium and any applicable premium increase for late enrollment or reenrollment. The MMA provides that in 2007 the modified adjusted gross income threshold is \$80,000 for individuals who file their Federal income taxes with a filing status of single, married filing separately, head of household, or qualifying widow(er) with dependent child and \$160,000 for married individuals who file a joint tax return. Section 811(c)(1) of the MMA enacted a new section 6103(1)(20) of the Internal Revenue Code authorizing the Internal Revenue Service (IRS) to provide certain income information to us to use in determining the income-related monthly adjustment amount. The MMA requires that the threshold amount be adjusted yearly based on the Consumer Price Index.

Section 811(b)(1)(C) of the MMA also amended section 1839(f) of the Act, so that the limitation on increases in the Medicare Part B standard monthly premium for some beneficiaries will not apply to beneficiaries who are

responsible for an income-related monthly adjustment amount.

Background

Medicare Part B is a voluntary program which provides medical insurance coverage for medical and health services such as physician services, diagnostic services, and medical supplies. Medicare Part B beneficiaries are responsible for deductibles, co-insurance and monthly premiums towards the cost of covered services. CMS promulgates rules and regulations concerning the Medicare program.

The Medicare Part B standard monthly premium is set by CMS so that it covers approximately 25 percent of the Medicare Part B program costs. Certain beneficiaries may also pay an increased premium for late enrollment in Medicare Part B or for reenrollment after a period without coverage. Approximately 75 percent of the full cost of Medicare Part B is subsidized by the Federal Government by contributions to the Federal Supplementary Medical Insurance Trust Fund. In addition, for certain beneficiaries whose premiums are deducted from other payable Social Security (or railroad retirement) benefit amounts that they receive, the yearly adjustment to the premium amount cannot be raised more than the amount of the cost-of-living adjustment for those other benefits.

Starting in January 2007, the Medicare Part B premium subsidy will be reduced for an estimated 4 to 5 percent of the approximately 40 million Medicare Part B beneficiaries. Beneficiaries who had modified adjusted gross income above the threshold level set in the MMA in the tax year 2 years prior to the year for which we make a determination about whether they must pay an income-related monthly adjustment amount (the effective year) will receive a reduced Federal subsidy of their Medicare Part B premium. The reduction of the Federal premium subsidy will result in beneficiaries with modified adjusted gross income above the threshold paying more of the cost of their Medicare Part B benefits through an income-related monthly adjustment amount that will be added to the Medicare Part B standard monthly premium plus any applicable premium increase for late enrollment or reenrollment.

How This Will Affect You

Your modified adjusted gross income is your adjusted gross income, as defined at 26 U.S.C. 62 and in related regulations, plus certain other forms of

income that may be excluded from adjusted gross income for the purpose of determining the amount of Federal income tax that you must pay. The MMA as amended by the Deficit Reduction Act provides that the payment of the full amount of the income-related monthly adjustment amount will be phased in starting in 2007 and will be completed in 2009. If you must pay an income-related monthly adjustment amount, you will not be eligible for the limitation on Medicare Part B standard monthly premium increase beyond the amount of your Social Security (or tier 1 railroad retirement) cost-of-living adjustments, as described in 42 CFR 408.20.

If you are a Medicare beneficiary prior to January 1, 2007 and you will be required to pay an income-related monthly adjustment amount in 2007, we will notify you by sending you a letter at the end of 2006 about the additional amount of your premium and any related changes in the amount of your Social Security monthly benefits or other payments (railroad retirement or Civil Service annuity payments) from which your premiums will be withheld. If you enroll in Medicare Part B after January 1, 2007, your initial Medicare Part B premium may not include an income-related monthly adjustment amount. If we subsequently determine that you must pay an income-related monthly adjustment amount for your Medicare Part B coverage, you will be notified shortly after you enroll in Medicare Part B, and you will be responsible for your income-related monthly adjustment amount for all months after December 2006 for which you were enrolled in and entitled to Medicare Part B. If you are a Medicare beneficiary during 2007 or after, we will notify you prior to the start of each year if you must pay an income-related monthly adjustment amount in that year.

How We Determine Your Income-Related Monthly Adjustment Amount

The amount of your modified adjusted gross income will determine if you are to pay an income-related monthly adjustment. Section 1839(i)(2) of the Act establishes the threshold for modified adjusted gross income used to determine if you are to pay an income-related monthly adjustment amount. In 2007, the modified adjusted gross income threshold amount is \$80,000 for individuals who file their Federal income tax return with a filing status of single, married filing separately, head of household, or qualifying widow(er) with dependent child, and \$160,000 for

individuals who file a joint income tax return with their spouse.

Section 1839(i)(4) of the Act requires us to request information about your modified adjusted gross income from IRS in the Department of the Treasury and to use this information to determine if you must pay an income-related monthly adjustment amount. We will specify the tax year involved in our information request. We will request that IRS send us Federal income tax return information about your modified adjusted gross income for the tax year which is 2 years before the effective year. If modified adjusted gross income information is not available from IRS for the tax year 2 years before the effective year of our determination, IRS will send us your modified adjusted gross income information for the tax year 3 years before the effective year if it exceeds the threshold. We will use information for the tax year 3 years prior to determine whether you must pay an income-related monthly adjustment amount only until we obtain information for the tax year 2 years prior. When we use such information to make a determination, we will make retroactive corrections that will apply to all months that you paid an incorrect income-related monthly adjustment amount.

If we use information from IRS for the tax year 3 years before the effective year of our determination, you may request that we use information that you provide for the tax year 2 years before that year. In some cases, you may pay a higher premium based on your 2-year information. However, providing that information to us rather than having us receive information from IRS at a later date will help you avoid an extensive retroactive correction. In order for us to make an initial determination based on such a request, you must provide your retained copy of your Federal income tax return for that year, a copy that you request from IRS, or an IRS transcript of your return. If you provide your retained copy, we will also verify this information with IRS.

If we receive information from IRS about your modified adjusted gross income for a tax year for which you did not file a tax return that shows that you had income that year that exceeded the established threshold, we will make a determination about your income-related monthly adjustment amount for that year. We will apply the highest applicable percentage adjustment based on that information, as required by statute. If IRS provides information to us that indicates a change in your modified adjusted gross income for a prior tax year, we will use this information to establish corrections for the appropriate

effective years regardless of when we receive such information. We are consulting with IRS to develop processes for the transmission of modified adjusted gross income information for situations involving those who do not file income tax returns and for changes in information that IRS provides.

The Sliding Scale Formula and How It Applies to You

Section 1839(i)(3) prescribes a sliding scale formula that CMS will use to establish annually four income-related monthly adjustment amounts beginning in 2007. The calculation of the income-related monthly adjustment amount reduces a beneficiary's Medicare Part B premium subsidy using specified percentages. The amount of this premium subsidy reduction is the income-related monthly adjustment amount. To determine each income-related monthly adjustment amount, CMS will use the unsubsidized Medicare Part B premium (approximately four times the Medicare Part B standard monthly premium) and multiply it by a specified percentage. The percentage used in the calculation changes as the amount of modified adjusted gross income increases the income-related monthly adjustment amount.

We will use your modified adjusted gross income and your Federal income tax filing status (e.g., single, married filing jointly, married filing separately) to determine whether you must pay an income-related monthly adjustment amount, and if so, what your income-related monthly adjustment amount will be. Section 1839(i)(3)(C) provides the modified adjusted gross income ranges. The range amounts for individuals who are married filing jointly are double the range amounts for single income tax filers. IRS recognizes three additional filing statuses: head of household, qualifying widow(er) and married filing separately. If you file as a head of household or as a qualifying widow(er), we will apply the modified adjusted gross income range applicable to individuals who file their Federal income tax return with a filing status of single. Section 1839(i)(3)(C)(iii) provides a different rule for determining the income-related monthly adjustment amount for individuals who file their Federal income tax return with a filing status of married filing separately and who lived with their spouse at any time during the year. For these individuals, we subtract the threshold amount as described in section 1839(i)(2)(A) established for single income tax filers for that calendar year from the modified

adjusted gross income ranges for individuals with a tax filing status of single. For 2007, this results in the following two ranges for married filing separately: (1) \$80,000 to less than or equal to \$120,000 and (2) More than \$120,000. Individuals affected by section 1839(i)(3)(C)(iii) will pay either the third or fourth range of income-related monthly adjustment amount as described in section 1839(i)(3)(C)(i) as modified by 1839(i)(3)(B).

Starting in 2007 for calendar year 2008, and annually thereafter for each following calendar year, CMS will publish the annual modified adjusted gross income ranges and income-related monthly adjustment amounts that are associated with each range. We will use this published information to determine which amount applies to you based on your tax filing status in the tax year we are using to determine your income-related monthly adjustment amount.

If you filed an amended tax return for the tax year we used to make a determination of your income-related monthly adjustment amount, you may request that we use your amended tax return for that year. You must provide us with proof that you filed an amended tax return with IRS, including your retained copy of the amended tax return and a letter from IRS verifying receipt of the return or an IRS transcript of your amended tax return. If you believe that IRS provided incorrect modified adjusted gross income information and we used that information to determine your income-related monthly adjustment amount, you may request that we make a new income-related monthly adjustment amount determination. You must provide proof of the error in the IRS data and evidence of your actual modified adjusted gross income, such as a copy of the return that you obtain from IRS. When we use information from your amended or corrected Federal income tax return to make a determination, we will make retroactive adjustments that will apply to all months that you paid an incorrect income-related monthly adjustment amount.

Phase-In and Inflation Adjustment of the Income-Related Monthly Adjustment Amount

Section 1839(i)(3)(B) requires the amount of the full income-related monthly adjustment to be phased in over a 3-year period beginning in 2007. The effect is that from 2007 through 2009 the amount of the income-related monthly adjustment amount will increase, because the subsidy will decrease. The percentage will change each year so that the income-related

monthly adjustment amount will gradually increase, until the full amount is phased in starting in 2009. In 2007, you will pay 33 percent of the income-related monthly adjustment amount, and in 2008, you will pay 67 percent of the income-related monthly adjustment amount. In 2009, you will pay the full income-related monthly adjustment amount for your tax filing status and modified adjusted gross income.

Beginning in 2008, section 1839(i)(5) of the Act requires an annual inflation adjustment for the threshold amount and the amounts used in the modified adjusted gross income ranges. The adjustment will be based on the percentage increase in the Consumer Price Index for all urban consumers and rounding the result to the nearest \$1,000. CMS will calculate and publish these amounts annually.

Changes in Your Modified Adjusted Gross Income

Section 1839(i)(4)(C) of the Act requires us to establish procedures in consultation with the Secretary of the Treasury for determining your modified adjusted gross income for a tax year more recent than the information ordinarily provided by IRS. The statute states that we will grant your request to use a more recent tax year to determine your income-related monthly adjustment amount only when:

- You experience a major life-changing event;
- That major life-changing event results in a significant reduction in your modified adjusted gross income;
- You request that we use a more recent tax year's modified adjusted gross income; and
- You provide evidence of the event and the reduction in your modified adjusted gross income.

These final rules describe the standards that you must meet in order for us to use a more recent tax year's modified adjusted gross income to determine whether you must pay an income-related monthly adjustment amount and what your income-related monthly adjustment amount will be. In these final rules we define qualifying major life-changing events and what is a significant reduction in your modified adjusted gross income. We also specify the evidence we will require of major life-changing events and the resulting reduction in your modified adjusted gross income.

Section 1839(i)(4)(C)(ii)(II) specifies that major life-changing events include marriage, divorce, and death of a spouse. Under that section, we have discretion to include in regulations additional major life-changing events

that would allow us to grant your request that we use information from a more recent tax year to determine your income-related monthly adjustment amount. In these rules we establish the following categories of qualifying major life-changing events:

- Death of a spouse;
- Marriage;
- Marriage ended by divorce or annulment;
- Partial or full work stoppage;
- Loss of income from income-producing property when the loss is not at your direction, for example, loss of income from real property due to a natural disaster in a Presidentially or Governorially-declared disaster area, or due to arson, or destruction of livestock or crops; and
- Reduction or loss of income from an insured pension plan due to termination or reorganization of the pension plan, or a scheduled cessation of your pension benefits.

We have included these additional categories of major life-changing events because we recognize that these events may cause a significant reduction in your modified adjusted gross income. We will include losses in pension income from an insured pension plan that occur due to events outside of your control, such as underfunding that results in a termination of the plan, but not due to your choices about funding an employee-directed pension plan. The statute authorizes us to define as major life-changing events circumstances that affect your income, not circumstances that affect only your expenses.

We define a significant reduction in your modified adjusted gross income as any change that results in a reduction or elimination of your income-related monthly adjustment amount. Therefore, a significant reduction in your modified adjusted gross income is any change that lowers your income below the threshold amount or lowers the modified adjusted gross income range in which your income falls. Section 1839(i)(4)(C)(ii) provides that we may grant your request to use a more recent tax year's modified adjusted gross income to determine your income-related monthly adjustment amount only if you provide us with a copy of a filed Federal income tax return or equivalent document. These final rules define the evidence that we will consider to be equivalent to a copy of a filed Federal income tax return.

When we make an income-related monthly adjustment amount determination based on your request due to a qualifying major life-changing event, the determination will generally be effective on January 1 of the calendar

year for which we make the determination. If you enrolled in Medicare Part B after January 1 of the year for which we make an income-related monthly adjustment amount determination based on your request due to a major life-changing event, the determination will be effective the month of your Medicare Part B enrollment.

When we make an income-related monthly adjustment amount determination following a major life-changing event using your more recent tax year's modified adjusted gross income, we will continue trying to get IRS data for that tax year. When we receive modified adjusted gross income information from IRS for that tax year, we will use the information from IRS to determine the correct income-related monthly adjustment amount for the year or years for which we used information that you provided, and we will make retroactive adjustments, if necessary. Retroactive adjustments will apply to all months for which you paid an incorrect income-related monthly adjustment amount.

If You Disagree With Our Determination of Your Income-Related Monthly Adjustment Amount

We will decide whether you must pay an income-related monthly adjustment, and the amount of any adjustment, based on information we receive from IRS or you. We will send you a notice of our initial determination of your income-related monthly adjustment amount and the basis for our determination. The notice will explain that, if you disagree with our determination, you may request that we reconsider it within 60 days after the date you receive notice of our initial determination. The notice will also explain that you may request a new initial determination, rather than a reconsideration, if you believe the information we used in our initial determination was correct, but you want us to use different information about your modified adjusted gross income.

For purposes of this subpart, in making initial determinations and reconsiderations, we will use the rules for the administrative review process that we use for determinations of your rights regarding nonmedical issues under title II of the Act. However, in order to expedite the processing of requests for reconsideration under these final rules, we have also provided in these rules that we may accept requests for reconsideration that are filed by electronic or other means that we determine to be appropriate, other than a request in writing, as our title II

regulations provide. If you are dissatisfied with our reconsidered determination, you may request further review, including a hearing before an administrative law judge (ALJ) from the Office of Medicare Hearings and Appeals (OMHA) at HHS, review by the Medicare Appeals Council (MAC), and judicial review, consistent with the CMS regulations at 42 CFR part 405. As part of your request for an ALJ hearing or MAC review, you will be required to provide your consent for us to release your relevant tax return information to OMHA or the MAC for the purposes of adjudicating any appeal of the amount of an income-related adjustment to the Part B premium subsidy and for any judicial review of that appeal.

We are establishing a new procedure, a request for a new initial determination, that you may use when you do not dispute the accuracy of the determination we made based on the modified adjusted gross income information provided by IRS, but you want us to use different information. You may provide evidence of your modified adjusted gross income for a more recent tax year than the information provided by IRS when you have had a major life-changing event that significantly reduces your income or when IRS has provided modified adjusted gross income information from 3 years prior to the premium effective year and you supply your retained copy of your Federal income tax return for the tax year 2 years prior. You may also request that we make a new initial determination when you have amended your Federal income tax return or when you can furnish proof that IRS has provided incorrect information about your modified adjusted gross income for the year that we used to determine your income-related monthly adjustment amount.

We are establishing this alternative procedure in view of the nature of the information that we are required by the MMA to use in making determinations regarding the income-related monthly adjustment amount. We anticipate that the use of this new procedure will allow us to make timely adjustments when you have updated information about your modified adjusted gross income, or when you can prove the IRS information we used is incorrect. This process does not affect your right to appeal an initial determination that we make about your income-related monthly adjustment amount, but allows you to choose an alternative of requesting that we use other information to make a new initial determination.

Explanation of Subpart B

We are adding a new subpart B, Medicare Part B Income-Related Monthly Adjustment Amount, to part 418 of chapter III of title 20 of the Code of Federal Regulations. Subpart B contains the rules that we will use to determine when you will be required to pay an income-related monthly adjustment amount in addition to your Medicare Part B standard monthly premium plus any applicable premium increase for late enrollment or reenrollment. Following is a description of each section for subpart B.

Introduction, General Provisions, and Definitions

- Section 418.1001 describes what subpart B is about, lists the groups of sections in the subpart, and the subject of each group.
- Section 418.1005 explains that the purpose of the income-related monthly adjustment amount is to reduce the premium subsidy of the Medicare Part B program, i.e., the amount of the Federal Government's contribution to the Federal Supplementary Medical Insurance Trust Fund for certain beneficiaries. It also explains how the income-related monthly adjustment amount will be administered.
- Section 418.1010 contains definitions of terms used throughout this subpart.

Determination of the Income-Related Monthly Adjustment Amount

- Section 418.1101 explains what the income-related monthly adjustment amount is and when it is applied.
- Section 418.1105 defines the modified adjusted gross income threshold and what the modified adjusted gross income threshold amounts will be in the year 2007. It also describes how threshold amounts will change in later years.
- Section 418.1110 describes the effective date of our initial determination about the income-related monthly adjustment amount.
- Section 418.1115 defines modified adjusted gross income ranges and explains how we will use them and your tax filing status to determine the amount of your income-related monthly adjustment amount when applicable, and what effect Federal income tax filing status has on the ranges.
- Section 418.1120 explains how we will determine your income-related monthly adjustment amount.
- Section 418.1125 explains how the income-related monthly adjustment amount will affect your total Medicare Part B premium.

- Section 418.1130 explains how we will phase in the full applicable income-related monthly adjustment amounts.

- Section 418.1135 describes what modified adjusted gross income information we will use to determine your income-related monthly adjustment amount.

- Section 418.1140 describes what will happen if the modified adjusted gross income that we later receive from IRS is different from the information that we previously used to make a determination of your income-related monthly adjustment amount.

- Section 418.1145 describes how we will determine the income-related monthly adjustment amount if IRS does not provide your modified adjusted gross income information.

- Section 418.1150 describes when we will use a copy of your amended Federal income tax return filed with IRS to determine the income-related monthly adjustment amount and what proof is necessary to show that you filed a tax return with IRS.

Determinations Using a More Recent Tax Year's Modified Adjusted Gross Income

- Section 418.1201 explains when we will use modified adjusted gross income information for a more recent tax year to determine your income-related monthly adjustment amount.

- Section 418.1205 describes what is considered a major life-changing event that would justify using information from a more recent tax year.

- Section 418.1210 explains what is not considered a major life-changing event that would justify using information from a more recent tax year.

- Section 418.1215 explains what is a significant reduction in your income for the purpose of these rules.

- Section 418.1220 explains what is not a significant reduction in your income for the purpose of these rules.

- Section 418.1225 explains which more recent tax years we may use to determine whether you must pay an income-related monthly adjustment amount and the amount of that adjustment.

- Section 418.1230 explains the effective date of our income-related monthly adjustment amount determination based on your request to use a more recent tax year.

- Section 418.1235 explains when we will stop using your modified adjusted gross income from a more recent tax year for income-related monthly adjustment amount determinations.

- Section 418.1240 explains what you should do if your modified adjusted

gross income for the more recent tax year changes.

- Section 418.1245 explains what will happen if you notify us of a change in your modified adjusted gross income for the more recent tax year.

- Section 418.1250 explains what evidence you will need to support your request for us to use a more recent tax year to determine your income-related monthly adjustment amount.

- Section 418.1255 describes what evidence of a major life-changing event you will need to provide to support your request to use a more recent tax year.

- Section 418.1260 describes the types of evidence of a major life-changing event that we will not accept.

- Section 418.1265 describes what evidence of a significant reduction in your modified adjusted gross income you will need to provide to support your request to use a more recent tax year.

- Section 418.1270 explains what evidence we will not accept of a significant reduction in your modified adjusted gross income.

Determinations and the Administrative Review Process

- Section 418.1301 explains what is an initial determination regarding your income-related monthly adjustment, and provides examples of determinations that are initial determinations for purposes of these rules.

- Section 418.1305 explains that administrative actions that are not initial determinations are not subject to the administrative review process.

- Section 418.1310 explains when you may request that we make a new initial determination.

- Section 418.1315 explains how we will notify you when we make an initial determination, and what information the notice will contain.

- Section 418.1320 explains the effect of the initial determination.

- Section 418.1325 explains when you may request a reconsideration.

- Section 418.1330 explains what will happen if you request a reconsideration because you believe that IRS information we used to make an initial determination about your income-related monthly adjustment amount is incorrect.

- Section 418.1335 explains what to do if you believe our initial determination is based on incorrect modified adjusted gross income information.

- Section 418.1340 tells you the rules for the administrative review process.

- Section 418.1345 tells you the rules we will use to decide if reopening a

prior initial or reconsidered determination made by us is appropriate.

- Section 418.1350 explains that the HHS rules will apply for review of a reconsidered determination or ALJ decision.

- Section 418.1355 explains that the rules for reopening a prior decision made by an ALJ of the OMHA or by the MAC will follow the HHS rules governing reopening.

Public Comments

On March 3, 2006, we published proposed rules in the **Federal Register** at 71 FR 10926 and provided a 60-day period for interested persons to comment. We received comments from three organizations and four individuals. We have condensed, summarized or paraphrased the comments in the following discussion to facilitate comprehension of the issues. We have tried to present all views accurately and address carefully all of the issues raised by the commenters that are within the scope of the proposed rules.

In our proposed rules, we invited but received no comments on the issue of individuals for whom the IRS cannot supply income tax return information. The statute requires that we issue regulations that “provide for the treatment of the premium adjustment with respect to such individual[s]” when we have information that such individuals have income that exceeds the threshold. Consistent with the requirements of § 1839(i)(4)(B)(iii) of the Act, we have added § 418.1135(f) to these rules to clarify that if, after a premium effective year, we receive information from IRS that such an individual had modified adjusted gross income above the applicable threshold, we will apply the highest income-related adjustment percentage to such individual as required by the statute. When we receive such information, we will retroactively correct Medicare premiums for any affected effective year(s), as required by statute.

Introduction, General Provisions and Definitions

Comment: Four commenters expressed concerns over the concept that some higher income Medicare beneficiaries should receive a reduction in the Federal subsidy of their Medicare Part B premiums.

Response: The provision to reduce the amount of the subsidy based on your income levels was specifically legislated by Congress. Our responsibility is to implement section 811 of the MMA through these regulations in a manner

consistent with the requirements of this law.

Comment: One commenter found the proposed rules confusing.

Response: We have reorganized the rules and changed some of the captions and wording of the regulation text in order to improve the clarity of the regulation.

We changed the order of §§ 418.1110 through 418.1120 by moving the section about the effective date of our initial determination so that it precedes the section that describes how we make our initial determination of your income-related monthly adjustment amount. This change provides a more logical progression of concepts related to income-related monthly adjustment amount determinations.

We renumbered the sections related to a determination using a more recent tax year’s modified adjusted gross income because we created two new sections (§§ 418.1215 and 418.1220) to clarify what is a significant reduction in modified adjusted gross income. In the proposed regulation, the definition of a significant reduction in modified adjusted gross income was in § 418.1201(b). We have left that definition intact, but added further clarification in the new sections.

Comment: Several commenters raised concerns about confusion that may arise regarding the administrative review process.

Response: We agree with the comments and have added §§ 418.1340 and 418.1345 which clarify that we will apply our rules for administrative review by SSA and reopening of our determinations. Sections 418.1350 and 418.1355 clarify that HHS will apply its rules for administrative review and reopenings by ALJs from OMHA and by the MAC.

Comment: One commenter suggested that we define what we mean by “significant reduction” in income resulting from a major life-changing event. It was also requested that we add more information to the final rules about what evidence of life-changing events we will require, and how we will establish a causal link between the major life-changing event and the significant reduction in income.

Response: We agree with this suggestion and have added new sections to the regulations that explain what does and does not constitute a significant reduction in income resulting from a major life-changing event. Section 418.1215 defines a significant reduction in modified adjusted gross income, and § 418.1220 explains that we will not consider a reduction in income to be significant if

it does not affect the amount of income-related monthly adjustment you must pay.

Section 418.1250 states that we will ask for evidence of the major life-changing event and how that event significantly reduced your modified adjusted gross income. We have also added explanations of what major life-changing event evidence we will not accept and what modified adjusted gross income information we will not accept. Section 418.1260 describes the types of evidence of major life-changing events that we will not accept, and § 418.1270 describes the types of modified adjusted gross income evidence we will not accept.

In § 418.1265(b) we expanded our description of the evidence that we will accept of reductions in your modified adjusted gross income. The revision clarifies that we will accept a copy of your filed Federal income tax return for a more recent taxable year. If you have amended your tax return for the more recent taxable year, you should provide a copy of the amended tax return. Finally, if you filed a tax return for the more recent taxable year, but have proof from IRS of a correction of your tax return information, you should provide evidence of the correction.

Comment: One commenter expressed concerns about privacy issues surrounding the modified adjusted gross income data that we will obtain from IRS.

Response: Section 811 of the MMA created a new provision of the Internal Revenue Code that authorizes IRS to disclose modified adjusted gross income information to us for the specific purpose of determining income-related monthly adjustments to Medicare Part B premiums. We have worked with the IRS under existing protocols and within the specifications of section 811 and other legislation to limit the information that IRS discloses to us and the information that we will supply to IRS for this purpose. The data exchange will be conducted in accordance with the provisions of section 1106 of the Act (42 U.S.C. 1306), the Privacy Act (5 U.S.C. 552a), and section 6103 of the Internal Revenue Code (26 U.S.C. 6103) to ensure safeguarding of any personally identifiable information that is exchanged. We added a statement in § 418.1350 to clarify that we will not disclose information that we have about your tax information for the purpose of a hearing with an ALJ, MAC review, or judicial review unless you authorize us to do so, and the IRS confirms that the authorization meets all legal requirements.

Comment: One commenter said that the regulations should address beneficiary education activities to inform the public about their appeal rights and how the different agencies involved will coordinate those activities.

Response: After careful consideration, we decided that including education plans in the final regulations would not be appropriate. We are working on the best methods to provide initial and continuing information to the public that explains their appeal rights and other information that the public may need and are coordinating our efforts with CMS. We will include information in notifications that we will send to affected beneficiaries and through other vehicles, such as Fact Sheets and Web page information published by both agencies.

Comment: One commenter addressed concerns about the timing of notifications to beneficiaries about income-related monthly adjustments to Medicare Part B premiums, suggesting that such notices be issued by October 31. The commenter also encouraged us to provide detailed information in those notifications.

Response: As we explained earlier in this preamble, generally we will use 2-year old modified adjusted gross income information from IRS to determine whether you are required to pay an income-related monthly adjustment amount. Section 811 of the MMA gives IRS until October 15 to provide us with 2-year old tax data to use in determining your adjustment amount for the next year. If we do not receive the information by October 15, the law allows us to use 3-year old data. Because we must wait until after October 15 to obtain the required information, it is not possible for us to process the data from IRS and issue notices by the suggested date.

We will send notices that will explain the basis of our decision and what you should do if you disagree with our decision or have better information than we do (such as a copy of a filed 2-year old tax return when we used 3-year old information to set a premium adjustment). The notices will provide information about which year's income tax return information we used to make our determination, and what information IRS gave us about your tax filing status and modified adjusted gross income for that year. The notices will also explain what you may do if there has been a major life-changing event(s) resulting in a significant reduction in income since the year we used to set your Medicare Part B premium.

Comment: One commenter urged us to publish the annual, updated modified adjusted gross income ranges at the same time as the Medicare Part B premium changes and for CMS to include projected amounts for a 5- to 10-year period in its Annual Trustees Report.

Response: We do not determine the annual modified adjusted gross income ranges, nor do we determine the standard Medicare Part B premium. CMS will determine the ranges annually as it does the standard Medicare Part B premium. We will include this information on our Web site <http://www.socialsecurity.gov> as it becomes available to us. We have shared with CMS the suggestion to include projected modified adjusted gross income ranges in CMS's Annual Trustees Report.

Determination of the Income-Related Monthly Adjustment Amount

Comment: Two commenters expressed concern about using information from IRS for a past period. One of those comments focused on the use of IRS information from more than 2 years before the year for which the Medicare Part B premiums will be effective. That commenter expressed hope that IRS would be able to provide appropriate electronic information about beneficiaries' modified adjusted gross income from the tax year 2 years before the premium year well in advance of October 15 each year. The other comment expressed a generalized concern about the coordination of data transfers between Federal agencies.

Response: Based on our discussions with IRS, we expect that the overwhelming majority of income tax returns from the tax year 2 years before the premium year will be processed and in electronic format by October 15 of each year. Although many taxpayers request filing extensions, almost all file a tax return by October 15. The language of the statute dictates the October 15 date and provides an exception for the temporary use of 3-year old data when 2-year old information is not available. We are working with IRS to minimize the temporary use of older data, and to ensure accurate data exchanges.

Determinations Using a More Recent Tax Year's Modified Adjusted Gross Income

Comment: Two commenters addressed the possibility of job loss or retirement affecting income in the past year while we use 2- or 3-year-old information from IRS.

Response: Reduction of work or work stoppage can be a major life-changing event for purposes of determining the

income-related monthly adjustment amount. If you experience a significant reduction of income because of work reduction or stoppage, the final rules provide that you may request that we use information that you provide about your income for a more recent tax year to determine your income-related monthly adjustment amount. If you report a major life-changing event that significantly reduces your income, we will use that information to determine if an income-related monthly adjustment amount is applicable. When we determine that you have paid too much for your Medicare Part B premium, we will follow current processing procedures to refund excess amounts of Medicare Part B premiums that have been paid. If a Medicare beneficiary pays premiums through another Federal agency, we will convey the information that the agency needs to refund excess Medicare Part B premiums that have been paid.

Comment: One commenter thought that the impairment-related work expenses deduction from income for the disabled in other Social Security programs should be extended to the income-related monthly adjustments to Medicare Part B premiums.

Response: We have not adopted the comment. The statute clearly defines the method for determining whether an income-related monthly adjustment is applicable and the amount of such adjustment. The MMA requires us to use only the modified adjusted gross income as defined in section 1839(i)(4) of the Act and does not provide any authority for us to consider an individual's expenses or net income.

Comment: One commenter suggested that the list of significant life-changing events should be flexible. Another commenter suggested that the list of significant life-changing events should be expanded to include decreases in dividend income and requested clarification on whether interest income from financial securities (such as stocks and bonds) is considered the same as dividend income. The latter commenter also expressed concerns about the burden of documenting life-changing events, such as divorce that occurred several years earlier.

Response: We have given careful consideration to these comments but decided not to expand the list of significant life-changing events to include decreases in dividend income and loss of income from financial securities. The current list of significant life-changing events includes major events that have a direct and potentially permanent effect on an individual's income. Reductions in income that are

unrelated to major life-changing events are not contemplated in the statute. Decreases in dividend income and loss of income from financial securities are not "events" but rather fluctuations in the financial markets and should not be considered as part of the list of events with a potentially permanent effect on income. Similarly, making the list more flexible would run counter to the statutory requirement that major life-changing events be "specified in regulations."

When you have experienced a significant life-changing event, we will provide assistance to you when documentation is needed as we routinely do for Social Security claimants and beneficiaries. To the extent possible, when you need a document such as a divorce decree and do not know how to obtain it, we will provide the appropriate address and associated information so that you can secure it. Further, it is unlikely that a divorce that occurred several years ago will have caused a significant reduction in income in a more recent tax year.

Determinations and the Administrative Review Process

Comment: One commenter expressed concern about the process that we will use to make corrections of amounts of Part B premiums charged after we have decided that use of a more recent taxable year is appropriate when there has been a significant reduction in income because of a major life-changing event.

Response: The commenter asked about the process for making premium adjustments. When a beneficiary reports a major life-changing event and new information about his income in a more recent tax year that we use to make a new initial determination of the income-related monthly adjustment amount, we will follow current processing procedures to refund excess Medicare Part B premiums that have been paid. If a Medicare beneficiary pays premiums through another Federal agency, we will convey the information that agency needs to process an appropriate correction for the beneficiary.

Comment: One commenter asked for clarification of what is not subject to appeal, and when our rules and HHS rules will apply. The commenter also expressed concerns about the complexity of the administrative review process which spans two Federal agencies.

Response: We are responsible for reconsiderations of initial determinations made by us. Reconsiderations are the first step in the appeal process, and our rules are used

for reconsiderations. When an individual is dissatisfied with our reconsideration determination, he may request a hearing before an ALJ. Section 931 of the MMA transferred responsibility for the functions of the ALJs responsible for hearing cases under title XVIII of the Act to HHS. HHS established regulations for Medicare appeals in 42 CFR part 405. Hearings related to income-related monthly adjustment amounts are hearings under title XVIII and are the responsibility of HHS. We have clarified this information in the regulations. Our regulations also explain what is and is not an initial determination for purposes of administrative review.

We agree with the concern that the commenter expressed about the complexity of the administrative review process for these cases. We have simplified our process for requesting a reconsidered determination of our decision about an income-related monthly adjustment amount. If you want us to reconsider our determination about your income-related monthly Medicare Part B premium adjustment, you will be able to request a reconsideration without requesting it in writing.

Comment: A commenter suggested that we should give beneficiaries more than 60 days after receipt of the notice of our initial determination to seek a reconsideration or a new determination because of likely confusion in the initial year or two of implementation.

Response: Our experience in administering the title II program has been that a 60-day period to file an appeal is reasonable. If you request your reconsideration later, we will follow our current rules in 20 CFR 404.911 to evaluate whether you have a good reason for us to extend the 60-day period, such as illness or a death in your immediate family.

A request for a new initial determination is not an appeal and is not tied to the 60-day period to file an appeal. A major life-changing event such as death of a spouse or divorce can happen any time during a year and may result in a significant reduction in income for that year or a subsequent year. If you have experienced a significant reduction in income because of a major life-changing event, you may request a new determination at any time during the year that the significant reduction in income has occurred. Further, if that reduction follows a major life-changing event in the last 3 months of the year, you may report the event and request a new initial determination within the first 3 months of the next year and we will determine

if premiums should be adjusted for the preceding year.

In the proposed rule, we established a 60-day time limit for requesting a new initial determination based on a beneficiary correction of IRS information that we used to make an initial determination about the income-related monthly adjustment amount. After considering this comment, we eliminated the requirement that a beneficiary make a request for a new initial determination within 60 days following receipt of our notice of an income-related monthly adjustment amount when he believes that the IRS information we used is incorrect. Section 418.1310(a)(3) of the final rule states that an individual who believes that the IRS information we used in making an initial determination of the income-related monthly adjustment amount is incorrect may request a new initial determination at any time after he receives a notice from us about the determination.

Other Changes

In response to these comments and our further review of the structure and format of the proposed rule, we have restructured these regulations slightly. In this final rule, we have moved some sections and added new sections. We provide explanations below of the changes that were not explained under the "Public Comments" section of the preamble. These changes are consistent with the policies outlined in the proposed regulations and are intended to clarify and further explain the procedures that we will apply to compute the amount of any income-related monthly adjustment to the Medicare Part B premium.

In § 418.1010(a), we have added definitions for the Medicare Appeals Council (MAC), the Office of Medicare Hearings and Appeals (OMHA), and the Department of Health and Human Services (HHS). We added a definition of the term "Tax Year" to § 418.1010(b). In § 418.1205(c), we clarified that a marriage may end either through divorce or annulment.

We also added sections clarifying that we will apply our rules for the reconsideration of initial determinations that we have made, and HHS rules will apply for administrative review by the OMHA and the MAC. We have added language clarifying the process we will follow when a beneficiary who filed a Federal income tax return as Married Filing Separately informs us that the spouses lived apart throughout the year. In a new paragraph (e) in § 418.1140, we explain that if you request that we review your income-related premium

adjustment for this reason, we will require you to attest that you lived apart from your spouse throughout the tax year we are using to set your premium, and to provide address information for your spouse and yourself for that year.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for an “economically significant” regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were reviewed by OMB. We have also determined that these final rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258. In addition, these are major rules under the Congressional Review Act in 5 U.S.C. 801–808.

These final rules provide the implementing rules for the income-related premium calculation enacted as part of MMA. The legislative provision is expected to result in an overall savings to the Medicare Part B account in the SMI Trust Fund of roughly \$7.7 billion over the period of fiscal years 2007–2011. The changes in this final rule from the notice of proposed rulemaking (NPRM) are not expected to affect the cost/savings projections for this rule. The following chart shows the estimated total savings in millions for each program year.

| Fiscal year | Total savings |
|-----------------------|---------------|
| 2007 | \$490 |
| 2008 | 1,180 |
| 2009 | 1,860 |
| 2010 | 2,060 |
| 2011 | 2,150 |
| Total 2007–2011 | 7,740 |

In addition, the process of determining the additional premiums will result in an increase in administrative expenses incurred by us in the amount of \$200 million over that same 5-year period.

Accounting Statement

As required by OMB Circular A–4 (available at <http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf>), in the following table (Table 1) we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these final rules. This table provides our best estimate of the increase in premium payments as a result of the changes to

the Part B program presented in these final rules. All expenditures are classified as transfers to the SMI Trust Fund.

TABLE 1.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED SAVINGS

[In millions]

| Category | Transfers |
|---------------------------------|---|
| Annualized Monetized Transfers. | \$1,370. |
| From Whom to Whom?. | Certain High-Income Medicare Part B Beneficiaries to the Medicare SMI Trust Fund. |

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities as they affect individuals only. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required for these final rules.

Paperwork Reduction Act

These final rules contain information collection requirements that require Office of Management and Budget clearance under the Paperwork Reduction Act of 1995 (PRA). As per PRA stipulations, we have submitted a clearance request to OMB for approval. Upon approval from OMB, we will publish a **Federal Register** notice indicating the OMB number and expiration date.

We published an NPRM on March 3, 2006 at 71 FR 10926. In the NPRM, we solicited comments under the PRA on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology.

Of the multiple comments the public submitted on these rules, only one pertained to the issues listed above. Specifically, one commenter expressed concerns about the burden of documenting life-changing events. However, the MMA states that when beneficiaries request that we use their income information about a more recent tax year, the reduction in modified adjusted gross income must be caused by a verifiable life-changing event. Therefore, we must ask Medicare beneficiaries to provide proof of the event.

One section containing a public reporting requirement, § 418.1140(e), is

included in these final rules but was not included in the NPRM. This section states that spouses who have been living in separate homes for the past year must provide written certification, or attestation, that they have been living separately. This requirement was included here and not in the NPRM because at the time we published the NPRM, we were still investigating ways that we could confirm this living arrangement from agency data. However, this section will not impact the public burden reported in the NPRM, since the only additional requirement for respondents is to certify that their address is separate from their spouse’s, and certifications are not generally covered by the PRA as per OMB rules in 5 CFR 1320.3(h)(1).

(Catalog of Federal Domestic Assistance Program Nos. 93.773, Medicare—Hospital Insurance and 93.774, Medicare—Supplementary Medical Insurance Program)

List of Subjects in 20 CFR Part 418

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Medicare subsidies.

Dated: October 13, 2006.

Jo Anne B. Barnhart,
Commissioner of Social Security.

■ For the reasons set out in the preamble, we are adding a new subpart B to part 418 of chapter III of title 20 of the Code of Federal Regulations as follows:

PART 418—[AMENDED]

Subpart B—Medicare Part B Income-Related Monthly Adjustment Amount Introduction, General Provisions, and Definitions

- Sec.
- 418.1001 What is this subpart about?
- 418.1005 Purpose and administration.
- 418.1010 Definitions.

Determination of the Income-Related Monthly Adjustment Amount

- 418.1101 What is the income-related monthly adjustment amount?
- 418.1105 What is the threshold?
- 418.1110 What is the effective date of our initial determination about your income-related monthly adjustment amount?
- 418.1115 What are the modified adjusted gross income ranges?
- 418.1120 How do we determine your income-related monthly adjustment amount?
- 418.1125 How will the income-related monthly adjustment amount affect your total Medicare Part B premium?
- 418.1130 How will we phase in the income-related monthly adjustment amount?

- 418.1135 What modified adjusted gross income information will we use to determine your income-related monthly adjustment amount?
- 418.1140 What will happen if the modified adjusted gross income information from IRS is different from the modified adjusted gross income information we used to determine your income-related monthly adjustment amount?
- 418.1145 How do we determine your income-related monthly adjustment amount if IRS does not provide information about your modified adjusted gross income?
- 418.1150 When will we use your amended tax return filed with IRS?

Determinations Using a More Recent Tax Year's Modified Adjusted Gross Income

- 418.1201 When will we determine your income-related monthly adjustment amount based on the modified adjusted gross income information that you provide for a more recent tax year?
- 418.1205 What is a major life-changing event?
- 418.1210 What is not a major life-changing event?
- 418.1215 What is a significant reduction in your income?
- 418.1220 What is not a significant reduction in your income?
- 418.1225 Which more recent tax year will we use?
- 418.1230 What is the effective date of an income-related monthly adjustment amount initial determination that is based on a more recent tax year?
- 418.1235 When will we stop using your more recent tax year's modified adjusted gross income to determine your income-related monthly adjustment amount?
- 418.1240 Should you notify us if the information you gave us about your modified adjusted gross income for the more recent tax year changes?
- 418.1245 What will happen if you notify us that your modified adjusted gross income for the more recent tax year changes?
- 418.1250 What evidence will you need to support your request that we use a more recent tax year?
- 418.1255 What kind of major life-changing event evidence will you need to support your request for us to use a more recent tax year?
- 418.1260 What major life-changing event evidence will we not accept?
- 418.1265 What kind of significant modified adjusted gross income reduction evidence will you need to support your request?
- 418.1270 What modified adjusted gross income evidence will we not accept?

Determinations and the Administrative Review Process

- 418.1301 What is an initial determination regarding your income-related monthly adjustment amount?
- 418.1305 What is not an initial determination regarding your income-related monthly adjustment amount?

- 418.1310 When may you request that we make a new initial determination?
- 418.1315 How will we notify you and what information will we provide about our initial determination?
- 418.1320 What is the effect of an initial determination?
- 418.1325 When may you request a reconsideration?
- 418.1330 Can you request a reconsideration when you believe the IRS information we used is incorrect?
- 418.1335 What should you do if our initial determination is based on modified adjusted gross income information you believe to be incorrect?
- 418.1340 What are the rules for our administrative review process?
- 418.1345 Is reopening of an initial or reconsidered determination made by us ever appropriate?
- 418.1350 What are the rules for review of a reconsidered determination or administrative law judge decision?
- 418.1355 What are the rules for reopening a decision by an administrative law judge of the Office of Medicare Hearings and Appeals (OMHA) or by the Medicare Appeals Council (MAC)?

Subpart B—Medicare Part B Income-Related Monthly Adjustment Amount

Authority: Secs. 702(a)(5) and 1839(i) of the Social Security Act (42 U.S.C. 902(a)(5) and 1395r(i)).

Introduction, General Provisions, and Definitions

§ 418.1001 What is this subpart about?

This subpart relates to section 1839(i) of the Social Security Act (the Act), as added by section 811 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173). Section 1839(i) establishes an income-related monthly adjustment to the Medicare Part B premium. Beneficiaries enrolled in Medicare Part B who have modified adjusted gross income over a threshold amount established in the statute will pay an income-related monthly adjustment amount in addition to the Medicare Part B standard monthly premium and any applicable premium increases as described in 42 CFR 408.20. The regulations in this subpart explain how we decide whether you are required to pay an income-related monthly adjustment amount, and if you are, the amount of your adjustment. The rules are divided into the following groups of sections:

(a) Sections 418.1001 through 418.1010 contain the introduction, a statement of the general purpose of the income-related monthly adjustment amount, general provisions that apply to the income-related monthly adjustment amount, and definitions of terms that we use in this subpart.

(b) Sections 418.1101 through 418.1150 describe what information about your modified adjusted gross income we will use to determine if you are required to pay an income-related monthly adjustment amount. In these sections, we also describe how the income-related monthly adjustment amount will affect your total Medicare Part B premium. These sections also explain how the income-related monthly adjustment amount will be phased in from calendar year 2007 through calendar year 2009.

(c) Sections 418.1201 through 418.1270 contain an explanation of the standards that you must meet for us to grant your request to use modified adjusted gross income information that you provide for a more recent tax year rather than the information described in paragraph (b) of this section. These sections explain when we may consider such a request, and the evidence that you will be required to provide. These sections also explain when income-related monthly adjustment amount determinations based on information you provide will be effective, and how long they will remain in effect.

Additionally, these sections describe how retroactive adjustments of the income-related monthly adjustment amount will be made based on information you provide, updated information you provide, and information we later receive from the Internal Revenue Service (IRS).

(d) Sections 418.1301 through 418.1355 contain the rules that we will apply when you disagree with our determination regarding your income-related monthly adjustment amount. These sections explain your appeal rights and the circumstances under which you may request that we make a new initial determination of your income-related monthly adjustment amount.

§ 418.1005 Purpose and administration.

(a) The purpose of the income-related monthly adjustment amount is to reduce the Federal subsidy of the Medicare Part B program for beneficiaries with modified adjusted gross income above an established threshold. These beneficiaries will pay a greater share of actual program costs. Medicare Part B premiums paid by beneficiaries cover approximately 25 percent of total Medicare Part B program costs and the remaining 75 percent of program costs are subsidized by the Federal Government's contributions to the Federal Supplementary Medical Insurance Trust Fund. The reduction in the Medicare Part B premium subsidy results in an increase in the total

amount that affected beneficiaries pay for Medicare Part B coverage. A beneficiary with modified adjusted gross income above the threshold amount will pay:

(1) The Medicare Part B standard monthly premium; plus

(2) Any applicable increase in the standard monthly premium for late enrollment or reenrollment; plus

(3) An income-related monthly adjustment amount.

(b) The Centers for Medicare & Medicaid Services (CMS) in the Department of Health and Human Services (HHS) publishes the Medicare Part B standard monthly premium each year. CMS also establishes rules for entitlement to a nonstandard premium, as well as premium penalties for late enrollment or reenrollment (42 CFR 408.20 through 408.27).

(c) We use information that we get from IRS to determine if beneficiaries who are enrolled in Medicare Part B are required to pay an income-related monthly adjustment amount. We also change income-related monthly adjustment amount determinations using information provided by a beneficiary under certain circumstances. In addition, we notify beneficiaries when the social security benefit amounts they receive will change based on our income-related monthly adjustment amount determination.

§ 418.1010 Definitions.

(a) *Terms relating to the Act and regulations.* For the purposes of this subpart:

(1) *Administrator* means the Administrator of the Centers for Medicare & Medicaid Services (CMS) in HHS.

(2) *CMS* means the Centers for Medicare & Medicaid Services in HHS.

(3) *Commissioner* means the Commissioner of Social Security.

(4) *HHS* means the Department of Health and Human Services which oversees the Centers for Medicare & Medicaid Services, the Office of Medicare Hearings and Appeals (OMHA) and the Medicare Appeals Council (MAC).

(5) *IRS* means the Internal Revenue Service in the Department of the Treasury.

(6) *MAC* means the Medicare Appeals Council in HHS.

(7) *OMHA* means the Office of Medicare Hearings and Appeals in HHS.

(8) *Section* means a section of the regulations in this part unless the context indicates otherwise.

(9) *The Act* means the Social Security Act, as amended.

(10) *Title* means a title of the Act.

(11) *We, our, or us* means the Social Security Administration (SSA).

(b) *Miscellaneous.* For the purposes of this subpart:

(1) *Amended tax return* means a Federal income tax return for which an amended tax return using the required IRS form(s) has been filed by an individual or couple and accepted by IRS.

(2) *Effective year* means the calendar year for which we make an income-related monthly adjustment amount determination.

(3) *Federal premium subsidy* is the portion of the full cost of providing Medicare Part B coverage that is paid by the Federal Government through transfers into the Federal Supplementary Medical Insurance Trust Fund.

(4) *Income-related monthly adjustment amount* is an additional amount of premium that you will pay for Medicare Part B coverage if you have income above the threshold. The amount of your income-related monthly adjustment amount is based on your modified adjusted gross income.

(5) *Medicare Part B standard monthly premium* means the monthly Medicare Part B premium amount which is set annually by CMS, according to regulations in 42 CFR 408.20 through 408.27.

(6) *Modified adjusted gross income* is your adjusted gross income as defined by the Internal Revenue Code, plus the following forms of tax-exempt income:

(i) Tax-exempt interest income;

(ii) Income from United States savings bonds used to pay higher education tuition and fees;

(iii) Foreign earned income;

(iv) Income derived from sources within Guam, American Samoa, or the Northern Mariana Islands; and

(v) Income from sources within Puerto Rico.

(7) *Modified adjusted gross income ranges* are the groupings of modified adjusted gross income above the threshold. There are four ranges for most individuals, based on their tax filing status. There are two ranges for those with a tax filing status of married, filing separately, who also lived with their spouse for part of the year. The dollar amounts of the modified adjusted gross income ranges are specified in § 418.1115.

(8) *Non-standard premium* means a Medicare Part B premium that some beneficiaries pay for Medicare Part B, rather than the standard premium. The rules for applying a non-standard premium are in 42 CFR 408.20(e). The non-standard premium does not apply to beneficiaries who must pay an

income-related monthly adjustment amount.

(9) *Premium* is a payment that an enrolled beneficiary pays for Medicare Part B coverage. The rules that CMS uses to annually establish the premium amount are found in 42 CFR 408.20 through 408.27.

(10) *Representative* means, for the purposes of the initial determination and reconsidered determination, an individual as defined in § 404.1703 of this chapter, and for purposes of an ALJ hearing or review by the MAC, an individual as defined in 42 CFR 405.910.

(11) *Tax filing status* means the filing status shown on your individual income tax return. It may be single, married filing jointly, married filing separately, head of household, or qualifying widow(er) with dependent child.

(12) *Tax year* means the year for which your Federal income tax return has been filed or will be filed with the IRS.

(13) *Threshold* means a modified adjusted gross income amount above which the beneficiary will have to pay an income-related monthly adjustment amount described in paragraph (b)(4) of this section. The dollar amount of the threshold is specified in § 418.1105.

(14) *You or your* means the person or representative of the person who is subject to the income-related monthly adjustment amount.

Determination of the Income-Related Monthly Adjustment Amount

§ 418.1101 What is the income-related monthly adjustment amount?

(a) The income-related monthly adjustment amount is an amount that you will pay in addition to the Medicare Part B standard monthly premium plus any applicable increase in that premium as described in 42 CFR 408.22 for your Medicare Part B coverage when your modified adjusted gross income is above the threshold described in § 418.1105.

(b) Your income-related monthly adjustment amount is based on your applicable modified adjusted gross income as described in § 418.1115 and your tax filing status.

(c) We will determine your income-related monthly adjustment amount using the method described in §§ 418.1120 and 418.1130.

§ 418.1105 What is the threshold?

(a) The threshold is a level of modified adjusted gross income above which the beneficiary will have to pay the income-related monthly adjustment amount.

(b) In 2007, the modified adjusted gross income threshold is \$80,000 for

individuals with a Federal income tax filing status of single, married filing separately, head of household, and qualifying widow(er) with dependent child. The threshold is \$160,000 for individuals with a Federal income tax filing status of married filing jointly.

(c) Starting at the end of calendar year 2007 and each year thereafter, the threshold amounts for the following year will be set by CMS by increasing the preceding year's threshold amount by the percentage increase in the Consumer Price Index rounded to the nearest \$1,000. CMS will publish the threshold amounts annually in September in the **Federal Register**. Published threshold amounts will be effective January 1 of the next calendar year, for the full calendar year.

§ 418.1110 What is the effective date of our initial determination about your income-related monthly adjustment amount?

(a) Generally, an income-related monthly adjustment amount will be effective for all months that you are enrolled in Medicare Part B during the year for which we determine you must pay an income-related monthly adjustment amount. We will follow the rules in 42 CFR part 408, subpart C, regarding premium collections to withhold your income-related monthly adjustment amount from a benefit payment or to determine if you will be billed directly.

(b) When we have used modified adjusted gross income information from IRS for the tax year 3 years prior to the effective year to determine your income-related monthly adjustment amount and modified adjusted gross income information for the tax year 2 years prior later becomes available from IRS, we will review the new information to determine if we should revise our initial determination. If we revise our initial determination, the effective date of the new initial determination will be January 1 of the effective year, or the first month you were enrolled or reenrolled in Medicare Part B if later than January.

(c) When we use your amended tax return, as described in § 418.1150, the effective date will be January 1 of the year(s) that is affected, or the first month in that year that you were enrolled or reenrolled in Medicare Part B if later than January.

Example: You are enrolled in Medicare Part B throughout 2011. We use your 2009 modified adjusted gross income as reported to us by IRS to determine your 2011 income-related monthly adjustment amount. In 2012 you submit to us a copy of your 2009 amended tax return that you filed with IRS. The modified adjusted gross income reported

on your 2009 amended tax return is significantly less than originally reported to IRS. We use the modified adjusted gross income that was reported on your 2009 amended tax return to determine your income-related monthly adjustment amount. That income-related monthly adjustment amount is effective January 1, 2011. We will retroactively adjust for any differences between the amount paid in 2011 and the amount that should have been paid based on the amended tax return.

(d) When we use evidence that you provide which proves that the IRS modified adjusted gross income information we used is incorrect, as described in § 418.1335, the effective date will be January of the year(s) that is affected or the first month in that year that you were enrolled or reenrolled in Medicare Part B if later than January.

(e) When we use information from a more recent tax year that you provide due to a major life-changing event, as described in § 418.1201, the effective date is described in § 418.1230.

§ 418.1115 What are the modified adjusted gross income ranges?

(a) The 2007 modified adjusted gross income ranges for each Federal tax filing category are listed in paragraphs (b), (c) and (d) of this section. We will use your modified adjusted gross income amount together with your tax filing status to determine the amount of your income-related monthly adjustment.

(b) In 2007, the modified adjusted gross income ranges for individuals with a Federal tax filing status of single, head of household, qualifying widow(er) with dependent child, and married filing separately when the individual has lived apart from his/her spouse for the entire tax year for the year we use to make our income-related monthly adjustment amount determination are as follows:

(1) Greater than \$80,000 and less than or equal to \$100,000;

(2) Greater than \$100,000 and less than or equal to \$150,000;

(3) Greater than \$150,000 and less than or equal to \$200,000; and

(4) Greater than \$200,000.

(c) In 2007, the modified adjusted gross income ranges for individuals who are married and filed a joint tax return for the tax year we use to make the income-related monthly adjustment amount determination are as follows:

(1) Greater than \$160,000 and less than or equal to \$200,000;

(2) Greater than \$200,000 and less than or equal to \$300,000;

(3) Greater than \$300,000 and less than or equal to \$400,000; and

(4) Greater than \$400,000.

(d) In 2007, the modified adjusted gross income ranges for married

individuals who file a separate return and have lived with their spouse at any time during the tax year we use to make the income-related monthly adjustment amount determination are as follows:

(1) Greater than \$80,000 and less than or equal to \$120,000; and

(2) Greater than \$120,000.

(e) CMS will annually revise the modified adjusted gross income ranges and publish them in the **Federal Register** starting in September of 2007 for 2008. Each year thereafter, all modified adjusted gross income range amounts will be set by CMS by increasing the preceding year's modified adjusted gross income range amounts by any percentage increase in the Consumer Price Index rounded to the nearest \$1,000, and CMS will publish the amounts for the following year in September of each year.

§ 418.1120 How do we determine your income-related monthly adjustment amount?

(a) We will determine your income-related monthly adjustment amount using your tax filing status and modified adjusted gross income.

(b) *Tables of applicable percentage.* The tables in paragraphs (b)(1) through (b)(3) of this section contain the modified adjusted gross income ranges for 2007 in the column on the left in each table. The middle column in each table shows the percentage of the unsubsidized Medicare Part B premium that will be paid by individuals with modified adjusted gross income that falls within each of the ranges. The column on the right in each table shows the percentage of the Medicare Part B premium that will be subsidized by contributions from the Federal Government. Based on your tax filing status for the tax year we use to make a determination about your income-related monthly adjustment amount, we will determine which table is applicable to you. We will use your modified adjusted gross income to determine which income-related monthly adjustment amount to apply to you. The dollar amount of income-related monthly adjustment for each range will be set annually as described in paragraph (c) of this section. The modified adjusted gross income ranges will be adjusted annually as described in § 418.1115(e).

(1) *General table of applicable percentages.* If your filing status for your Federal income taxes for the tax year we use is single; head of household; qualifying widow(er) with dependent child; or married filing separately and you lived apart from your spouse for the entire tax year, we will use the general

table of applicable percentages. When your modified adjusted gross income for the year we use is in the range listed in the left column in the following table,

then the Federal Government's Part B premium subsidy of 75 percent is reduced to the percentage listed in the right column. You will pay an amount

based on the percentage listed in the center column.

| Modified adjusted gross income effective in 2007 | Beneficiary premium (percent) | Federal premium subsidy (percent) |
|---|-------------------------------|-----------------------------------|
| More than \$80,000 but less than or equal to \$100,000 | 35 | 65 |
| More than \$100,000 but less than or equal to \$150,000 | 50 | 50 |
| More than \$150,000 but less than or equal to \$200,000 | 65 | 35 |
| More than \$200,000 | 80 | 20 |

(2) *Table of applicable percentages for joint returns.* If your Federal tax filing status is married filing jointly for the tax year we use and your modified adjusted

gross income for that tax year is in the range listed in the left column in the following table, then the Federal Government's Part B premium subsidy

of 75 percent is reduced to the percentage listed in the right column. You will pay an amount based on the percentage listed in the center column.

| Modified adjusted gross income effective in 2007 | Beneficiary premium (percent) | Federal premium subsidy (percent) |
|---|-------------------------------|-----------------------------------|
| More than \$160,000 but less than or equal to \$200,000 | 35 | 65 |
| More than \$200,000 but less than or equal to \$300,000 | 50 | 50 |
| More than \$300,000 but less than or equal to \$400,000 | 65 | 35 |
| More than \$400,000 | 80 | 20 |

(3) *Table of applicable percentages for married individuals filing separate returns.* If your Federal tax filing status for the tax year we use is married filing separately and you lived with your

spouse at some time during that tax year, and your modified adjusted gross income is in the range listed in the left column in the following table, then the Federal Government's Part B premium

subsidy of 75 percent is reduced to the percentage listed in the right column. You will pay an amount based on the percentage listed in the center column.

| Modified adjusted gross income effective in 2007 | Beneficiary premium (percent) | Federal premium subsidy (percent) |
|--|-------------------------------|-----------------------------------|
| More than \$80,000 but less than or equal to \$120,000 | 65 | 35 |
| More than \$120,000 | 80 | 20 |

(c) CMS will annually publish in the **Federal Register** the dollar amounts for the income-related monthly adjustment amount described in paragraph (b) of this section.

§ 418.1125 How will the income-related monthly adjustment amount affect your total Medicare Part B premium?

(a) If you must pay an income-related monthly adjustment amount, your total Medicare Part B premium will be the sum of:

- (1) The Medicare Part B standard monthly premium, determined using the rules in 42 CFR 408.20; plus
- (2) Any applicable increase in the Medicare Part B standard monthly premium as described in 42 CFR 408.22; plus
- (3) Your income-related monthly adjustment amount.

(b) In 2007 and 2008, your income-related monthly adjustment amount you must pay will be adjusted as described in § 418.1130.

(c) The nonstandard Medicare Part B premium amount described in 42 CFR 408.20 does not apply to individuals who must pay an income-related monthly adjustment amount. Such individuals must pay the full Medicare Part B standard monthly premium plus any applicable penalties for late enrollment or reenrollment plus the income-related adjustment.

§ 418.1130 How will we phase in the income-related monthly adjustment amount?

(a) In 2007 and 2008, we will phase in the full amount of the income-related monthly adjustment amount. For the year in the left column you will pay the percentage of the income-related monthly adjustment amount specified in the right column.

| Year | Percentage of the income-related monthly adjustment amount that you will pay |
|------------|--|
| 2007 | 33 |
| 2008 | 67 |

(b) Phase-in of the subsidy reduction will be complete in 2009.

§ 418.1135 What modified adjusted gross income information will we use to determine your income-related monthly adjustment amount?

(a) In general, we will use your modified adjusted gross income provided by IRS for the tax year 2 years prior to the effective year of the income-related monthly adjustment amount determination. Modified adjusted gross income is based on information you provide to IRS when you file your Federal income tax return.

(b) We will use your modified adjusted gross income for the tax year 3

years prior to the effective year of the income-related monthly adjustment amount determination when IRS does not provide the information specified in paragraph (a) of this section. If IRS can provide modified adjusted gross income for the tax year 3 years prior to the income-related monthly adjustment amount effective year, we will temporarily use that information to determine your income-related monthly adjustment amount and make adjustments as described in § 418.1110(b) to all affected income-related monthly adjustment amounts when information for the year specified in paragraph (a) of this section is provided by IRS.

(c) When we have used the information in paragraph (b) of this section, you may provide us with evidence of your modified adjusted gross income for the year in paragraph (a) of this section. You must provide a retained copy of your signed Federal income tax return for that year, if available. If you filed a return for that year, but did not retain a copy, you must request a transcript or a copy of your return from IRS and provide it to us. When we use this evidence, we will later confirm this information with IRS records.

(d) When you meet the conditions specified in § 418.1150 because you have amended your Federal income tax return, or when you believe we have used information provided by IRS which is incorrect, as described in § 418.1335, we will use information that you provide directly to us regarding your modified adjusted gross income.

(e) We may use information that you give us about your modified adjusted gross income for a more recent tax year than those discussed in paragraphs (a) or (b) of this section as described in §§ 418.1201 through 418.1270.

(f) If you fail to file an income tax return for any year after 2004 and IRS informs us that you had modified adjusted gross income above the threshold applicable 2 years after the tax year when you failed to file an income tax return, we will impose the highest income-related adjustment percentage applicable to your income filing status for the effective year. If we later determine that the amount of the income-related monthly adjustment amount imposed was inconsistent with your modified adjusted gross income, we will correct it. The rules in 42 CFR 408.40 through 408.92 will apply to the collection of any retroactive premiums due.

§ 418.1140 What will happen if the modified adjusted gross income information from IRS is different from the modified adjusted gross income information we used to determine your income-related monthly adjustment amount?

In general, we will use modified adjusted gross income information from IRS to determine your income-related monthly adjustment. We will make retroactive adjustments to your income-related monthly adjustment amount as described in paragraphs (a), (b), and (d) of this section.

(a) When we have used modified adjusted gross income from the tax year 3 years prior to the effective year as described in § 418.1135(b), and IRS provides modified adjusted gross income information from the tax year 2 years prior to the effective year, we will use the new information to make an initial determination for the effective year. We will make retroactive adjustments back to January 1 of the effective year, or the first month you were enrolled or reenrolled in Medicare Part B if later than January.

(b) When we have used the modified adjusted gross income information that you provided for the tax year 2 years prior to the effective year and the modified adjusted gross income information we receive from IRS for that same year is different from the information you provided, we will use the modified adjusted gross income information provided to us by IRS to make a new initial determination. We will make retroactive adjustments back to January 1 of the effective year, or the first month you were enrolled or reenrolled in Medicare Part B if later than January.

(c) When we have used information from your amended Federal tax return that you provide, as explained in § 418.1150, or you provide proof that the information IRS provided to us is incorrect as described in § 418.1335, we will not make any adjustments to your income-related monthly adjustment amount for the effective year or years based on IRS information we receive later from IRS.

(d) When we use modified adjusted gross income information that you provided due to a qualifying life-changing event and we receive different information from IRS, we will use the IRS information to make retroactive corrections to all months in the effective year(s) during which you were enrolled in Medicare Part B, except when paragraph (c) of this section applies.

(e) When we used the table in § 418.1120(b)(3) to determine your income-related monthly adjustment

amount, and you lived apart from your spouse throughout that year, we will ask you for a signed statement or attestation that you lived apart from your spouse throughout that year. We will also ask you to provide information about the addresses of you and your spouse during that year. If you provide a signed statement or attestation that you lived apart from your spouse throughout that year, and information about your respective addresses that year, we will use the table in § 418.1120(b)(1) to determine your income-related monthly adjustment amount.

§ 418.1145 How do we determine your income-related monthly adjustment amount if IRS does not provide information about your modified adjusted gross income?

In general, if we do not receive any information for you from IRS showing that you had modified adjusted gross income above the threshold in the tax year we request, we will not make an income-related monthly adjustment amount determination.

§ 418.1150 When will we use your amended tax return filed with IRS?

You may provide your amended tax return for a tax year we used within 3 calendar years following the close of the tax year for which you filed the amended tax return. You must provide us with your retained copy of your amended U.S. Individual Income Tax Return on the required IRS form and a copy of the IRS letter confirming the amended tax return was filed or a transcript from IRS if they did not send a letter. If you cannot provide your retained copy of the amended tax return, you must obtain a copy of the return from IRS. We will then make any necessary retroactive corrections as defined in § 418.1110(c) to your income-related monthly adjustment amount.

Determinations Using a More Recent Tax Year's Modified Adjusted Gross Income

§ 418.1201 When will we determine your income-related monthly adjustment amount based on the modified adjusted gross income information that you provide for a more recent tax year?

We will use a more recent tax year than the years described in § 418.1135(a) or (b) to reduce or eliminate your income-related monthly adjustment amount when all of the following occur:

(a) You experience a major life-changing event as defined in § 418.1205; and

(b) That major life-changing event results in a significant reduction in your modified adjusted gross income for the year which you request we use and the

next year, if applicable. For purposes of this section, a significant reduction in your modified adjusted gross income is one that results in the decrease or elimination of your income-related monthly adjustment amount; and

(c) You request that we use a more recent tax year's modified adjusted gross income; and

(d) You provide evidence as described in §§ 418.1255 and 418.1265.

§ 418.1205 What is a major life-changing event?

For the purposes of this subpart, we will consider the following to be major life-changing events:

(a) Your spouse dies;

(b) You marry;

(c) Your marriage ends through divorce or annulment;

(d) You or your spouse stop working or reduce the hours you work;

(e) You or your spouse experience a reduction in your income due to a loss of income-producing property, provided that the loss is not at your direction (e.g., due to the sale or transfer of the property). Examples of the type of property loss include, but are not limited to, loss of income from real property within a Presidentially or Gubernatorially-declared disaster area, destruction of livestock or crops by natural disaster or disease, or loss of income from real property due to arson;

(f) You or your spouse experience a reduction in or loss of income from an insured pension plan due to termination or reorganization of the pension plan or a scheduled cessation of pension.

§ 418.1210 What is not a major life-changing event?

We will not consider events other than those described in § 418.1205 to be major life-changing events. Certain types of events are not considered major life-changing events for the purposes of this subpart, such as:

(a) Events that affect your expenses, but not your income; or

(b) Events that result in the loss of dividend income.

§ 418.1215 What is a significant reduction in your income?

For purposes of this subpart, we will consider a reduction in your income to be significant if your modified adjusted gross income decreases; and

(a) The decrease reduces the percentage of the income-related monthly adjustment amount you must pay according to the Table of Applicable Percentages in § 418.1120; or

(b) The decrease reduces your modified adjusted gross income to an amount below the threshold described in § 418.1105 and eliminates any

income-related monthly adjustment amount you must pay.

§ 418.1220 What is not a significant reduction in your income?

For purposes of this subpart, we will not consider a reduction in your income to be significant unless the reduction affects the amount of income-related monthly adjustment you must pay.

§ 418.1225 Which more recent tax year will we use?

We will consider evidence of your modified adjusted gross income that you provide for a tax year that is more recent than the year described in § 418.1135 (a) or (b) when you meet all of the requirements described in § 418.1201. We will always ask you for your retained copy of your filed Federal income tax return for the more recent year you request that we use and will use that information to make an initial determination. If you have not filed your Federal income tax return for the more recent year you request that we use, you must provide us with evidence that is equivalent to a copy of a filed Federal income tax return. Evidence that is equivalent to a copy of a filed Federal income tax return is defined in § 418.1265(c).

§ 418.1230 What is the effective date of an income-related monthly adjustment amount initial determination that is based on a more recent tax year?

(a) When you make your request prior to January 1, 2007, our initial determination is effective on January 1, 2007.

(b) Subject to paragraph (c) of this section, when you make your request during or after 2007 and your modified adjusted gross income for the more recent tax year is significantly reduced as a result of a major life-changing event, our initial determination is generally effective on January 1 of the year in which you make your request. If your first month of enrollment or reenrollment in Medicare Part B is after January of the year for which you make your request, our initial determination is effective on the first day of your Medicare Part B enrollment or reenrollment.

(c) We will make a determination about your income-related monthly adjustment amount for the year preceding the year that you make your request in the limited circumstances explained in § 418.1310(a)(4). When we make a determination for the preceding year, our initial determination is generally effective on January 1 of that year. If your first month of enrollment or reenrollment in Medicare Part B is after January of that year, our initial

determination is effective on the first day of your Medicare Part B enrollment or reenrollment.

(d) When you make your request during or after 2007 and your modified adjusted gross income is significantly reduced beginning in the year following the year in which you make your request as a result of one or more of the events described in § 418.1205(a) through (f), our initial determination is effective on January 1 of the next year.

§ 418.1235 When will we stop using your more recent tax year's modified adjusted gross income to determine your income-related monthly adjustment amount?

We will use your more recent tax year's modified adjusted gross income to determine your income-related monthly adjustment amount effective with the month and year described in § 418.1230 and for each year thereafter until one of the following occurs:

(a) We receive your modified adjusted gross income from IRS for the more recent tax year we used or a later tax year;

(b) Your more recent tax year modified adjusted gross income that we used is for a tax year more than 3 years prior to the income-related monthly adjustment amount effective year;

(c) You request we use a more recent tax year based on another major life-changing event as described in § 418.1201; or

(d) You notify us of a change in your modified adjusted gross income for the more recent tax year we used as described in § 418.1240.

§ 418.1240 Should you notify us if the information you gave us about your modified adjusted gross income for the more recent tax year changes?

If you know that the information you provided to us about the more recent tax year that we used has changed, you should tell us so that we can determine if your income-related monthly adjustment amount should be eliminated or adjusted. We will accept new modified adjusted gross income information at any time after your request until the end of the calendar year following the more recent tax year(s) that we used. For us to make a new initial determination using your new modified adjusted gross income information, you must provide evidence as described in § 418.1265 to support the reduction or increase in your modified adjusted gross income. If you amend your Federal income tax return for the more recent tax year we used, we will use the rules in § 418.1150.

§ 418.1245 What will happen if you notify us that your modified adjusted gross income for the more recent tax year changes?

(a) If you notify us that your modified adjusted gross income for the more recent tax year has changed from what is in our records, we may make a new initial determination for each effective year involved. To make a new initial determination(s) we will take into account:

(1) The new modified adjusted gross income information for the more recent tax year you provide; and

(2) Any modified adjusted gross income information from IRS, as described in § 418.1135, that we have available for each effective year; and

(3) Any modified adjusted gross income information from you, as described in § 418.1135, that we have available for each effective year.

(b) For each new initial determination that results in a change in your income-related monthly adjustment amount, we will make retroactive adjustments that will apply to all enrolled months of the effective year.

(c) We will continue to use a new initial determination described in paragraph (a) of this section to determine additional yearly income-related monthly adjustment amount(s) until an event described in § 418.1235 occurs.

(d) We will make a new determination about your income-related monthly adjustment amount when we receive modified adjusted gross income for the effective year from IRS, as described in § 418.1140(d).

§ 418.1250 What evidence will you need to support your request that we use a more recent tax year?

When you request that we use a more recent tax year to determine your income-related monthly adjustment amount, we will ask for evidence of the major life-changing event and how the event significantly reduced your modified adjusted gross income as described in §§ 418.1255 and 418.1265. Unless we have information in our records that raises a doubt about the evidence, additional evidence documenting the major life-changing event(s) will not be needed.

§ 418.1255 What kind of major life-changing event evidence will you need to support your request for us to use a more recent tax year?

(a) If your spouse died and we do not have evidence of the death in our records, we will require proof of death as described in § 404.720(b) or (c) or § 404.721 of this chapter.

(b) If you marry and we do not have evidence of the marriage in our records, we will require proof of marriage as described in §§ 404.725 through 404.727 of this chapter.

(c) If your marriage ends and we do not have evidence that the marriage has ended in our records, we will require proof that the marriage has ended as described in § 404.728(b) or (c) of this chapter.

(d) If you or your spouse stop working or reduce your work hours, we will require evidence documenting the change in work activity. Examples of acceptable documentation include, but are not limited to, documents we can corroborate such as a signed statement from your employer, proof of the transfer of your business, or your signed statement under penalty of perjury, describing your work separation or a reduction in hours.

(e) If you or your spouse experience a loss of income from income-producing property we will require evidence documenting the loss. Examples of the type of evidence include, but are not limited to, insurance claims or an insurance adjuster's statement.

(f) If you or your spouse experience a reduction in or loss of pension income, we will require evidence documenting the reduction or loss. Examples include, but are not limited to, a statement from the Pension Benefit Guaranty Corporation or your pension fund administrator that explains the reduction or termination of your benefits.

§ 418.1260 What major life-changing event evidence will we not accept?

(a) We will not accept evidence of death that fails to meet the requirements in §§ 404.720 through 404.721 of this chapter.

(b) We will not accept evidence of marriage that fails to meet the requirements in §§ 404.725 through 404.727 of this chapter.

(c) We will not accept evidence that your marriage has ended if the evidence fails to meet the requirements in § 404.728 of this chapter.

(d) We will not accept documents supporting loss of income from income-producing property, or failure of or loss from a defined benefit pension plan unless the documents are original documents or copies from the original source.

(e) We will not accept evidence of work reduction or work stoppage that cannot be substantiated.

§ 418.1265 What kind of significant modified adjusted gross income reduction evidence will you need to support your request?

(a) You must provide evidence that one or more of the major life-changing events described in § 418.1205 resulted in a significant reduction in your modified adjusted gross income for the tax year you request we use.

(b) The preferred evidence is your retained copy of your filed Federal income tax return, your retained copy of your amended tax return with an IRS letter of receipt of the amended tax return, your copy of proof of a correction of the IRS information we used or a copy of your return or amended or proof of a correction of tax return information that you obtain from IRS for the more recent tax year you request we use.

(c) When a copy of your filed Federal income tax return is not available for the more recent tax year in which your modified adjusted gross income was significantly reduced, we will accept equivalent evidence. Equivalent evidence is the appropriate proof(s) in paragraphs (c)(1), (2) and (3) of this section, plus your signed statement under penalty of perjury that the information you provide is true and correct. When the major life-changing event changes your tax filing status, or the income-related monthly adjustment amount determination could be affected by your tax filing status, you will also be required to sign a statement regarding your intended income tax filing status for the tax year you request we use.

(1) If you experience one or more of the events described in § 418.1205(a), (b), or (c), you must provide evidence as to how the event(s) significantly reduced your modified adjusted gross income. Examples of the type of evidence include, but are not limited to, evidence of your spouse's modified adjusted gross income and/or your modified adjusted gross income for the tax year we use.

(2) If you experienced one or more of the events described in § 418.1205(d), (e) or (f), you must provide evidence of how the event(s) significantly reduced your modified adjusted gross income, such as a statement explaining any modified adjusted gross income changes for the tax year we used, and a copy of your filed Federal income tax return (if you have filed one).

(3) If your spouse experiences one or more of the events described in § 418.1205(d), (e), or (f), you must provide evidence of the resulting significant reduction in your modified adjusted gross income. The evidence

requirements are described in paragraph (c)(2) of this section.

(d) When we use information described in paragraph (c) of this section, we will request that you provide your retained copy of your Federal income tax return for the year we used when you file your taxes. We will use that information to make timely adjustments to your Medicare premium, if necessary. We will later verify the information you provide when we receive information about that tax year from IRS, as described in § 418.1140(d).

§ 418.1270 What modified adjusted gross income evidence will we not accept?

We will not accept a correction or amendment of your income tax return without a letter from IRS acknowledging the change. We will also not accept illegible or unsigned copies of income tax returns or attestations or other statements of income unless they are provided under penalty of perjury.

Determinations and the Administrative Review Process

§ 418.1301 What is an initial determination regarding your income-related monthly adjustment amount?

An initial determination is the determination we make about your income-related monthly adjustment amount that is subject to administrative review. For the purposes of administering the income-related monthly adjustment amount, initial determinations include but are not limited to determinations about:

(a) The amount of your income-related monthly adjustment amount based on information provided by IRS; and

(b) Any change in your income-related monthly adjustment amount based on one of the circumstances listed in § 418.1310(a)(1) through (a)(4).

§ 418.1305 What is not an initial determination regarding your income-related monthly adjustment amount?

Administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative review process as provided by §§ 418.1320 through 418.1325 and §§ 418.1340 through 418.1355, and they are not subject to judicial review. These actions include, but are not limited to, our dismissal of a request for reconsideration as described in § 418.1330 and our dismissal of a request for a new initial determination as described in § 418.1310(d).

§ 418.1310 When may you request that we make a new initial determination?

(a) You may request that we make a new initial determination in the following circumstances:

(1) You provide a copy of your filed Federal income tax return for the tax year 2 years prior to the effective year when IRS has provided information for the tax year 3 years prior to the effective year. You may request a new initial determination beginning with the date you receive a notice from us regarding your income-related monthly adjustment amount until the end of the effective year, with one exception. If you receive the notice during the last 3 months of a calendar year, you may request a new initial determination beginning with the date you receive the notice until March 31 of the following year. We will follow the rules and procedures in §§ 418.1110(b) and 418.1140(b) to make a new initial determination and any necessary retroactive adjustments back to January 1 of the effective year, or the first month you were enrolled in Medicare Part B in the effective year if later than January.

(2) You provide a copy of an amended tax return filed with IRS, as defined in § 418.1010(b)(1). We will use your amended tax return for the same tax year as the year used to determine your income-related monthly adjustment amount. You must request the new initial determination within the timeframe described in § 418.1150.

(3) You provide proof that the tax return information about your modified adjusted gross income or tax filing status IRS gave us is incorrect. We will use proof that you obtain from IRS of a correction of your tax return information for the same tax year instead of the information that was provided to us by IRS, as explained in § 418.1335(a). You may request a new initial determination at any time after you receive a notice from us regarding your income-related monthly adjustment amount if you have such proof. We will use the rules and procedures in § 418.1335.

(4) You have a major life-changing event. You may request a new initial determination based on a major life-changing event when you meet all the requirements described in § 418.1201. You may make such a request at any time during the calendar year in which you experience a significant reduction in your modified adjusted gross income caused by a major life-changing event. When you have a major life-changing event that occurs in the last 3 months of a calendar year and your modified adjusted gross income for that year is significantly reduced as a result of the

event, you may request that we make a new initial determination based on your major life-changing event from the date of the event until March 31 of the next year. We will follow the rules in § 418.1230 when we make a new initial determination based on your major life-changing event.

(b) If a request for a new initial determination based on any of the circumstances in paragraph (a) of this section is made after the time frame provided for each type of listed circumstance, we will review the request under the rules in § 404.911 of this chapter to determine if there is good cause for a late request.

(c) We will notify you of the new initial determination as described in § 418.1315.

(d) We will dismiss your request to make a new initial determination if it does not meet one of the circumstances specified in paragraphs (a)(1) through (a)(4) of this section. Our dismissal of your request for a new initial determination is not an initial determination subject to further administrative or judicial review.

§ 418.1315 How will we notify you and what information will we provide about our initial determination?

(a) We will mail a written notice of all initial determinations to you. The notice of the initial determination will state the important facts and give the reasons for our conclusions. Generally, we will not send a notice if your income-related monthly adjustment amount stops because of your death.

(b) The written notice that we send will tell you:

- (1) What our initial determination is;
- (2) What modified adjusted gross income information we used to make our determination;
- (3) The reason for our determination;
- (4) The effect of the initial determination; and
- (5) Your right to a reconsideration or a new initial determination.

§ 418.1320 What is the effect of an initial determination?

An initial determination is binding unless you request a reconsideration within the time period described in §§ 404.909 and 404.911 of this chapter or we revise the initial determination or issue a new initial determination.

§ 418.1325 When may you request a reconsideration?

If you are dissatisfied with our initial determination about your income-related monthly adjustment amount, you may request that we reconsider it. In addition, a person who shows that his or her rights may be adversely

affected by the initial determination may request a reconsideration. We may accept requests for reconsideration that are filed by electronic or other means that we determine to be appropriate. Subject to the provisions of this section and § 418.1330, when you request a reconsideration, we will use the rules in §§ 404.907 through 404.922 of this chapter.

§ 418.1330 Can you request a reconsideration when you believe that the IRS information we used is incorrect?

If you request a reconsideration solely because you believe that the information that IRS gave us is incorrect, we will dismiss your request for a reconsideration and notify you to obtain proof of a correction from IRS and request a new initial determination (§ 418.1335).

Our dismissal of your request for reconsideration is not an initial determination subject to further administrative or judicial review.

§ 418.1335 What should you do if our initial determination is based on modified adjusted gross income information you believe to be incorrect?

If you believe that IRS or you provided incorrect modified adjusted gross income information to us that we used to determine your income-related monthly adjustment amount, you can request information from us on how to contact IRS regarding the information we used.

(a) If IRS determines that the information it provided is not correct, IRS will provide you with documentation of the error, such as a copy of your Federal income tax return. If you would like us to use the revised or corrected information to determine your income-related monthly adjustment amount, you will need to request that we use that information and provide us with the IRS documentation confirming the error. We will make any necessary retroactive corrections as described in § 418.1110(d) to your income-related monthly adjustment amount.

(b) If you provided information to us about your modified adjusted gross income that we used to determine your income-related monthly adjustment amount, and that information is not correct, you may provide revised or corrected information. We will use the revised or corrected information if it reduces or eliminates your income-related monthly adjustment amount. We will make any necessary retroactive corrections as described in § 418.1110 to your income-related monthly adjustment amount. If you are providing corrected information about a more

recent tax year's modified adjusted gross income that we used due to your major life-changing event, as described in § 418.1240, we will use the rules in § 418.1245 to determine how it will affect your income-related monthly adjustment amount.

§ 418.1340 What are the rules for our administrative review process?

To the extent that they are not inconsistent with the rules in this subpart for making initial determinations and reconsidered determinations, we will use the same rules for the administrative review process that we use for determinations and decisions about your rights regarding non-medical issues under title II of the Act, as described in subpart J of part 404 of this chapter. We will accept oral requests as well as the written requests required in subpart J of part 404 of this chapter for requesting administrative review of our determination. If you are dissatisfied with our reconsidered determination, you may request review in accordance with § 418.1350 for this subpart. A request for a new initial determination, described in § 418.1310, is not the same as a request for reconsideration or further administrative review.

§ 418.1345 Is reopening of an initial or reconsidered determination made by us ever appropriate?

We may reopen an initial or reconsidered determination made by us when the conditions for reopening are met as described in § 404.988 of this chapter. We will use the rules in §§ 404.987 through 404.991a of this chapter when we reopen determinations made by us.

§ 418.1350 What are the rules for review of a reconsidered determination or an administrative law judge decision?

You may request a hearing before an OMHA administrative law judge consistent with HHS' regulations at 42 CFR part 405. You may seek further review of the administrative law judge's decision by requesting MAC review and judicial review in accordance with HHS' regulations. For the purpose of your request for an administrative law judge hearing or MAC review, you will be required to provide your consent for us to release your relevant tax return information to OMHA or the MAC for the purposes of adjudicating any appeal of the amount of an income-related adjustment to the Part B premium subsidy and for any judicial review of that appeal.

§ 418.1355 What are the rules for reopening a decision by an administrative law judge of the Office of Medicare Hearings and Appeals (OMHA) or by the Medicare Appeals Council (MAC)?

The rules in 42 CFR 405.980 through 405.986 govern reopenings of decisions by an administrative law judge of the OMHA and decisions by the MAC. A decision by an administrative law judge of the OMHA may be reopened by the administrative law judge or by the MAC. A decision by the MAC may be reopened only by the MAC.

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DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD-2006-OS-0106]

32 CFR Part 286

DoD Freedom of Information Act Program Regulation

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document removes Subpart D, "For Official Use Only" (FOUO) from 32 CFR part 286, "DoD Freedom of Information Act Program Regulations" and reserves that subpart for future use. Removing this from 32 CFR part 286 will eliminate confusion of the authoritative FOUO guidance and who is the authority on FOUO. This removal will alleviate any further uncertainty, avoid duplication of FOUO guidance, and is considered an administrative action.

DATES: *Effective Date:* November 27, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Fisher, 703-696-4697.

SUPPLEMENTARY INFORMATION: The Under Secretary of Defense (Intelligence) (USD(I)) is responsible for FOUO guidance. This guidance (FOUO) is included in Appendix 3 of DoD 5200.1-R¹ which is the current FOUO guidance for the Department of Defense.

List of Subjects in 32 CFR Part 286

Freedom of information.

PART 286—DOD FREEDOM OF INFORMATION ACT PROGRAM REGULATIONS

■ Accordingly, by the authority of 10 U.S.C. 301, 32 CFR part 286 is amended as follows:

¹ Copies may be obtained at http://www.dtic.mil/whs/directives/corres/pdf/52001r_0197/p52001r.pdf.