

Medicare Part B premium would receive the benefit of this reduction under this rule. If a beneficiary is paying the premium, he or she would pay a lower premium. If another entity pays the premium, they would receive the savings.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule would impose no direct requirement costs on State and local governments, would not preempt State law, or have any Federalism implications. Participation is strictly voluntary.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget. This final rule is not a major rule as defined at 5 U.S.C. 804(2).

#### V. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. The notice of proposed rulemaking can be waived, however, if an agency finds good cause that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest, and it incorporates a statement of the finding and its reasons in the rule issued.

Publishing a proposed rule is unnecessary in this instance, as this final rule only makes conforming changes to the regulations to implement sections of the BIPA in which the Congress allowed no discretion as to the actions to be taken and the times in which they must be completed. These changes were enacted by the Congress, and would be in effect on the date mandated by the legislation without regard to whether they are reflected in conforming changes to the regulation text, since a statute controls over a regulation. In this final rule we merely have revised the regulation text to reflect these new statutory provisions. The BIPA provisions have been incorporated virtually verbatim, with no interpretation necessary. We do not believe that publishing a notice of proposed rulemaking is necessary, nor would it be practicable given that a number of the provisions have already

taken effect consistent with the effective dates established under the BIPA.

#### List of Subjects in 42 CFR Part 408

Medicare.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV, part 408 as set forth below:

#### PART 408—PREMIUMS FOR SUPPLEMENTAL MEDICAL INSURANCE

■ 1. The authority citation for part 408 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

#### Subpart B—Amount of Monthly Premiums

■ 2. Section 408.21 is added to read as follows:

##### § 408.21 Reduction in Medicare Part B premium as an additional benefit under Medicare+Choice plans.

(a) *Basis for reduction in Part B premium.* Beginning January 1, 2003 an M+C organization may elect to receive a reduction in its payments under § 422.250(a)(1) of this chapter if—

(1) 80 percent of the payment reduction is applied to reduce the standard Medicare Part B premiums of its Medicare enrollees.

(2) The Medicare Part B premium is reduced monthly and is offered to all Medicare enrollees in a specific plan benefit package.

(b) *Administrative requirements for the Part B premium reduction.* (1) The Medicare Part B premium reduction cannot be greater than the standard premium amount determined for the year, under section 1839(a)(3) of the Act. However, it may be less.

(2) The Medicare Part B premium reduction must be a multiple of 10 cents.

(3) The Medicare Part B premium reduction is applied regardless of who pays or collects the Part B premium on behalf of the beneficiary.

(4) The Medicare Part B premium can never be less than zero and will never result in a payment to a beneficiary for a specific month.

(c) *Beneficiary eligibility.* In order for a beneficiary to be eligible for the Medicare Part B premium reduction, the beneficiary must be enrolled in an M+C plan that offers the Medicare Part B premium reduction as an additional benefit.

(d) *Notifications.* After determining the Medicare Part B premium reduction amount for each eligible beneficiary, CMS will—

(1) Transmit this information to the Social Security Administration, Railroad Retirement Board, or the Office of Personnel Management, as appropriate, which will adjust the benefit check amounts as appropriate and notify the beneficiaries of their new benefit amount.

(2) Notify states and formal groups and direct billed beneficiaries of their reduced premium amounts in the regular monthly billing process.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 6, 2003.

**Thomas A. Scully,**  
*Administrator, Centers for Medicare & Medicaid Services.*

Approved: July 28, 2003.

**Tommy G. Thompson,**  
*Secretary.*

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## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

#### 43 CFR Part 4

RIN 1090-AA92

#### Special Rules Applicable to Surface Coal Mining Hearings and Appeals

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Office of Hearings and Appeals is publishing a final rule that revises an existing regulation allocating the burden of proof in a proceeding under the Surface Mining Control and Reclamation Act of 1977.

**EFFECTIVE DATE:** December 29, 2003.

**FOR FURTHER INFORMATION CONTACT:** Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203, telephone 703–235–3750. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On March 20, 2003, the Office of Hearings and Appeals (OHA) published for comment a petition for rulemaking that it had received from the National Mining Association (NMA). 68 FR 13657–13661 (Mar. 20, 2003). On the basis of the decision of the U.S. Supreme Court in *Director, Office of*