expressed by comments, the public health protection in those jurisdictions would be diminished, not enhanced.

A few comments urged that, rather than preempt more stringent State or local requirements, FDA should leave them intact. In that case, exemptions from preemption would not be required. Section 521 of the act clearly states that State or local restrictions that are ''different from'' or ''in addition to'' FDA restrictions are preempted. However, FDA will continue to consider applications for exemptions from preemption for more stringent State or local requirements that provide greater public health protection without imposing significant burdens on interstate commerce.

One comment urged FDA to refrain from issuing general determinations concerning whether a certain type of State or local requirement is preempted. Specifically, the comment disagreed with FDA's using as an example of a narrower restriction in the proposed rule State or local laws that hold retailers to a standard lower than strict liability for selling cigarettes or smokeless tobacco to persons under 18. This comment argued that, while as a general rule *Medtronic* holds that narrower State or local laws are not preempted under section 521(a) of the act, FDA should accept evidence that a specific State or local requirement, although narrower, is nonetheless ''different'' from the FDA requirement and preempted under the act.

FDA believes that it is important to provide States and localities with examples of how to apply the agency's interpretation of the scope of preemption under section 521 of the act, especially because the agency refined its interpretation of *Medtronic*. By providing an example FDA intends to assist States and localities in determining whether they need to apply for an exemption. FDA agrees with the comment that the agency must determine whether a particular requirement is preempted on a case-by-case basis considering, among other factors, the statutory, regulatory or other language, any judicial or administrative interpretations, and any information regarding implementation or enforcement of the requirement. Therefore, FDA remains open to receiving specific information regarding a particular State or local requirement and would consider the information in determining whether the requirement were preempted under section 521(a) of the act.

Several comments suggested that FDA preempt certain types of requirements, including State laws that hold retailers to a standard lower than strict liability for illegally selling tobacco products to minors, and State laws that prohibit using minors to aid in the inspection of tobacco retailers[3]. Comments argued that these types of requirements should be preempted because they frustrate the purpose of the tobacco rule by making it difficult for FDA to enforce the Federal requirements.

First, FDA continues to believe that under *Medtronic* State or local requirements holding retailers liable for knowingly or negligently selling cigarettes or smokeless tobacco to persons under age 18 are not preempted. As explained in the proposal (62 FR 7390 at 7391), State or local statutes that require proving a retailer's negligence or knowledge in an underage sale are similar to counterpart Federal requirements holding retailers strictly liable for illegally selling cigarettes or smokeless tobacco to minors, but they are narrower in scope than the tobacco rule's prohibition of sales to persons under age 18 and therefore are not preempted. Second, because FDA does not have before it a positive enactment to consider, the agency declines to issue an opinion on the preemptive effect of section 521 of the act on the types of requirements that prohibit the use of minors in inspections. Without a specific State or local enactment before the agency, including any legislative, administrative, judicial or enforcement history, the agency cannot determine the effect of either section 521(a) of the act or more general principles of Federal preemption.

Therefore, in response to applications received, FDA is granting exemptions from Federal preemption for certain State requirements in Alabama, Alaska, and Utah relating to cigarettes or smokeless tobacco.

List of Subjects in 21 CFR Part 808

Intergovernmental relations, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 808 is amended as follows:

[3] To ensure that retailers are complying with the tobacco rule and refusing to sell cigarettes or smokeless tobacco to persons under age 18, FDA will conduct compliance checks, wherein an adolescent, accompanied by a State commissioned officer, will attempt to purchase cigarettes or smokeless tobacco.

PART 808—EXEMPTIONS FROM FEDERAL PREEMPTION OF STATE AND LOCAL MEDICAL DEVICE REQUIREMENTS

1. The authority citation for 21 CFR part 808 continues to read as follows:

Authority: 21 U.S.C. 360j, 360k, 371.

2. Section 808.51 is added to subpart C to read as follows:

§ 808.51 Alabama.

To the extent that the age restriction on the sale, barter, and exchange of cigarettes and smokeless tobacco found in Alabama Code, section 13A–12–3, is preempted under section 521(a) of the act, the Food and Drug Administration has exempted it from preemption under section 521(b) of the act.

3. Section 808.52 is added to subpart C to read as follows:

§ 808.52 Alaska.

To the extent that the age restriction on the sale and exchange of cigarettes and smokeless tobacco found in Alaska Statutes, sections 11.76.100(a), is preempted under section 521(a) of the act, the Food and Drug Administration has exempted it from preemption under section 521(b) of the act.

4. Section 808.94 is added to subpart C to read as follows:

§ 808.94 Utah.

To the extent that the age restriction on sales of cigarettes and smokeless tobacco found in the Utah Code Annotated, section 76–10–104, is preempted under section 521(a) of the act, the Food and Drug Administration has exempted it from preemption under section 521(b) of the act.

Dated: November 18, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–31213 Filed 11–26–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 723, 724, 845, and 846

RIN 1029–AB90

Implementation of the Debt Collection Improvement Act of 1996

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: This rule implements the Federal Civil Monetary Penalty Inflation

Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, by adjusting for inflation, certain civil money penalties authorized by the Surface Mining Control and Reclamation Act of 1977.

EFFECTIVE DATE: November 28, 1997.

FOR FURTHER INFORMATION CONTACT: Andy DeVito, Office of Surface Mining Reclamation and Enforcement, Room 117, South Interior Building, 1951 Constitution Avenue, NW, Washington, DC 20240; Telephone (202) 208–2701. E-Mail/Internet: adevito@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Debt Collection Improvement Act of 1996

In an effort to maintain the deterrent effect of civil money penalties (CMPs) and promote compliance with the law, the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (the Act) (Pub. L. 101–410) was amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) to require Federal agencies to regularly adjust certain CMPs for inflation. As amended, the Act requires each agency to make an initial inflationary adjustment for all applicable CMPs, and to make further adjustments at least once every four years thereafter.

Under the amended Act, the inflation adjustment for a CMP is determined by increasing the CMP by the amount of the cost-of-living adjustment which is defined as the percentage of each CMP by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment, exceeds the CPI for the month of June of the calendar year in which the amount of the CMP was last set or adjusted. The amended Act further stipulates that any resulting increases in a CMP due to the calculated inflation adjustments (1) Should apply only to violations that occur after the date the increase takes effect, and (2) should not exceed 10 percent of the penalty indicated.

B. Civil Money Penalties Affected By This Adjustment

Section 518 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, authorizes the Secretary of the Interior to assess CMPs for violations of SMCRA. The regulations of the Office of Surface Mining Reclamation and Enforcement (OSM) implementing the CMP provisions of section 518 of SMCRA are located in 30 CFR 723.14, 723.15, 724.14, 845.14, 845.15, and 846.14. Sections 723.14 and 723.15 were promulgated on September 4, 1980 (45 FR 58783), sections 845.14 and 845.15 on August 16, 1982 (47 FR 35640), and sections 724.14 and 846.14 on February 8, 1988 (53 FR 3664). The CMPs have not been adjusted since the regulations were first issued. Since the cost-of-living adjustment described above would exceed 10 percent of the CMP, the adjustments being made to the CMPs by this rule are being limited to a 10 percent increase as directed by section 7 of the amended Act.

II. Procedural Matters

A. Effect in Federal Program States and on Indian Lands

The rule will apply through cross-referencing to the following Federal program states: California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. The Federal programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947, respectively. The rule also applies through cross-referencing to Indian lands under the Federal program for Indian lands as provided in 30 CFR 750.

B. Effect on State Programs

Section 518(i) of SMCRA and 30 CFR 840.13(a) require that the civil penalty provisions of each State program contain penalties which are ''no less stringent than'' those set forth in SMCRA. Following promulgation of the final rule, OSM will evaluate State programs approved under section 503 of SMCRA to determine any changes in those programs that will be necessary. When OSM determines that a particular State program provision should be amended in order to be made no less stringent than the revised Federal regulations, the particular States will be notified in accordance with the provisions of 30 CFR 732.17.

C. Administrative Procedure Act

This final rule has been issued without prior public notice or opportunity for public comment. The Administrative Procedure Act (APA) (5 U.S.C. 553) provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. OSM has determined that under 5 U.S.C. 553(b)(3)(B) good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. Specifically, this rulemaking is consistent with the statutory authority set forth in the Debt Collection Improvement Act of 1996. In that Act, Congress required that the agency issue the inflation adjustment amendments contained in this rule and provided no discretion to the agency regarding either their substance or their issuance. These same reasons also provide OSM with good cause under 5 U.S.C. 553(d)(3) of the APA to have the regulation become effective on a date that is less than 30 days after the date of publication in the **Federal Register**.

D. Executive Order 12866

This rule is not considered a significant regulatory action under the provisions of Executive Order 12866. The rule adjusts OSM's CMPs according to the formula contained in the law. OSM has no discretion in making the adjustments. Further, most coal mining operations subject to these regulations do not engage in prohibited activities and practices, and, as a result, OSM believes that the aggregate economic impact of these revised regulations will be minimal, affecting only those who may engage in prohibited behavior in violation of SMCRA. Consequently, the amount of the CMPs assessed under the revised schedule are not expected to exceed the threshold contained in Executive Order 12866 for an economically significant rule.

E. Regulatory Flexibility Act

The Department of the Interior certifies that this proposed revision would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). While some penalties may have an impact on small entities, it is the nature of the violation and not the size of the entity that will result in issuance of a violation notice and the assessment of a CMP. The aggregate economic impact of this rulemaking on small business entities

should be minimal, affecting only those who violate the provisions of SMCRA.

F. Unfunded Mandates Reform Act

For purposes of compliance with the Unfunded Mandates Reform Act of 1995, this rule does not impose any obligations that individually or cumulatively would require an aggregate expenditure of $100 million or more by State, local, and Tribal governments and the private sector in any given year.

G. Federal Paperwork Reduction Act

This rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

H. National Environmental Policy Act

This rule has been reviewed by OSM and it has been determined to be categorically excluded from the requirement to prepare an environmental document under the National Environmental Policy Act of 1969. This determination was made in accordance with the Departmental Manual (516 DM 2, Appendix 1.10).

I. Executive Order 12988 on Civil Justice Reform

The Department of the Interior has determined that this rule meets the requirements of sections (3)(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform (61 FR 4729).

List of Subjects

30 CFR Part 723

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 724

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 845

Administrative practice and procedure, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 846

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

Dated: October 28, 1997.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR parts 723, 724, 845, and 846 are amended as follows.

PART 723—CIVIL PENALTIES

1. The authority citation for Part 723 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, Pub. L. 100–34, Pub. L. 101–410, and Pub. L. 104–134.

2. Section 723.14 is amended by revising the table to read as follows:

§ 723.14 Determination of amount of penalty.

* * * * *

Points	Dollars
1	22
2	44
3	66
4	88
5	110
6	132
7	154
8	176
9	198
10	220
11	242
12	264
13	286
14	308
15	330
16	352
17	374
18	396
19	418
20	440
21	462
22	484
23	506
24	528
25	550
26	660
27	770
28	880
29	990
30	1,100
31	1,210
32	1,320
33	1,430
34	1,540
35	1,650
36	1,760
37	1,870
38	1,980
39	2,090
40	2,200
41	2,310
42	2,420
43	2,530
44	2,640
45	2,750
46	2,860
47	2,970
48	3,080
49	3,190
50	3,300
51	3,410
52	3,520
53	3,630
54	3,740
55	3,850
56	3,960
57	4,070
58	4,180
59	4,290
60	4,400
61	4,510
62	4,620
63	4,730
64	4,840
65	4,950
66	5,060
67	5,170
68	5,280
69	5,390
70	5,500

3. In Section 723.15, paragraph (b) is revised by changing the dollar amount ''$750'' to ''$825.''

PART 724—INDIVIDUAL CIVIL PENALTIES

4. The authority citation for Part 724 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, Pub. L. 100–34, Pub. L. 101–410, and Pub. L. 104–134.

5. Section 724.14 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 724.14 Amount of individual civil penalty.

* * * * *

(b) The penalty shall not exceed $5,500 for each violation. * * *

PART 845—CIVIL PENALTIES

6. The authority citation for Part 845 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, Pub. L. 100–34, Pub. L. 100–202, Pub. L. 100–446, Pub. L. 101–410, and Pub. L. 104–134.

7. Section 845.14 is amended by revising the table to read as follows:

§ 845.14 Determination of amount of penalty.

* * * * *

Points	Dollars
1	22
2	44
3	66
4	88
5	110
6	132
7	154
8	176
9	198
10	220
11	242
12	264
13	286
14	308
15	330
16	352
17	374
18	396
19	418
20	440
21	462
22	484

Points	Dollars
23	506
24	528
25	550
26	660
27	770
28	880
29	990
30	1,100
31	1,210
32	1,320
33	1,430
34	1,540
35	1,650
36	1,760
37	1,870
38	1,980
39	2,090
40	2,200
41	2,310
42	2,420
43	2,530
44	2,640
45	2,750
46	2,860
47	2,970
48	3,080
49	3,190
50	3,300
51	3,410
52	3,520
53	3,630
54	3,740
55	3,850
56	3,960
57	4,070
58	4,180
59	4,290
60	4,400
61	4,510
62	4,620
63	4,730
64	4,840
65	4,950
66	5,060
67	5,170
68	5,280
69	5,390
70	5,500

8. In Section 845.15, paragraph (b) is revised by changing the dollar amount ''$750'' to ''$825.''

PART 846—INDIVIDUAL CIVIL PENALTIES

9. The authority citation for Part 846 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, Pub. L. 100–34, Pub. L. 101–410, and Pub. L. 104–134.

10. Section 846.14 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 846.14 Amount of individual civil penalty.

* * * * *

(b) The penalty shall not exceed $5,500 for each violation. * * *

[FR Doc. 97–31267 Filed 11–26–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AH73

Loan Guaranty: Electronic Payment of Funding Fee

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the VA loan guaranty regulations to require that all funding fees (including late fees and interest) for VA-guaranteed loans be paid electronically through the Automated Clearing House (ACH) program. The adoption of the ACH program will eliminate lost mail and eliminate data errors resulting from manual recording. Further accounting reconciliation will be reduced. In addition, banking costs will be reduced. This document also corrects a typographical error in the ''Allowable fees and charges: manufactured home unit'' section.

DATES: *Effective date:* January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273–7368.

SUPPLEMENTARY INFORMATION: On May 7, 1997, VA published in the **Federal Register** (62 FR 24872) proposed regulations that would require mortgage lenders to pay all funding fees (including late fees and interest) for VA-guaranteed loans electronically through the ACH program effective January 1, 1998. The regulations provide three methods for making payments through the ACH program and specify the standard information the lender must provide the collection agent when submitting loan guaranty funding fees. Please refer to the May 7, 1997, **Federal Register** for a complete discussion of the proposed amendments.

Public comments were requested on the proposal. The comment period ended July 7, 1997. VA received one comment. The comment supported the proposal. The commenter, the Financial Management Service of the Department of the Treasury, stated ''that the proposed rule change will bring significant cost savings to VA's internal operations and provide cash management savings to the Department of the Treasury.''

Based on the rationale set forth in the proposal and this document, the proposed rule is adopted as a final rule without change.

Paperwork Reduction Act

Information collection and recordkeeping requirements associated with the final rule (38 CFR 36.4232, 36.4254, and 36.4312) have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3520) and have been assigned OMB control number 2900–0474. The information collection subject to this rulemaking concerns the requirement that lenders provide VA information necessary to get set up on the ACH system to pay the funding fee electronically and the existing requirement that lenders provide VA certain standard information when submitting loan guaranty funding fees. Interested parties were invited to submit comments on the collection of information. However, no comments were received regarding the collection of information.

VA is not authorized to impose a penalty on persons for failure to comply with information collection requirements which do not display a current OMB control number, if required.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The rule implements a program that will enhance operations and be cost beneficial for all participating lenders. Lenders will be able to participate by having access to a personal computer, and personal computing is pervasive within the industry. Lenders will also have the option of paying funding fees by calling an operator who will enter the information into the ACH system for them. Funding fees represent actions that have insignificant impact on lenders. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Housing, Individuals with disabilities, Loan programs—housing and community development, Manufactured homes, Reporting and recordkeeping requirements, Veterans.