Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on March 7, 2003.

Issued in Kansas City, Missouri, on January 8, 2003.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–676 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–27]

Establishment of Class D Airspace; Shaw AFB, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Shaw AFB, SC. Shaw Radar Approach Control (RAPCON) is closed daily from 0330 UTC to 1100 UTC. Shaw AFB Airport Traffic Control Tower (ATCT) is open continuously. Therefore, when the RAPCON is closed Class D airspace must be established for the ATCT. Class D surface area airspace is required when the control tower is open to contain Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to and including 2,700 feet MSL within a 4.4-mile radius of the airport.

EFFECTIVE DATE: 0901 UTC, March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On December 2, 2002, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class D airspace at Shaw AFB, SC, (67 FR 71507). Class D airspace designations for airspace areas extending upward from the surface of the earth are published in Paragraph 5000 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace at Shaw AFB, SC.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO SC D Shaw AFB, SC [New]

Shaw AFB, SC

(Lat. 33°58′23″ N, long. 80°28′22″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.4-mile radius of the Shaw AFB, excluding that airspace contained within Restricted Area R–6002 when it is in use. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, GA, on January 7, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–1315 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2575

RIN 1210–AA95

Final Rule Relating to Adjustment of Civil Monetary Penalties

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final rule that adjusts the civil monetary penalties under title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), pursuant to the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act), as amended by the Debt Collection Improvement Act of 1996 (Act). The Act amended the 1990 Act to require generally the adjustment of civil monetary penalties for inflation no later than 180 days after the enactment of the Act, and at least once every four years thereafter, in accordance with the guidelines specified in the 1990 Act, as amended. The final rule affects employee benefit plans, plan administrators, plan sponsors, fiduciaries of employee benefit plans, plan participants and beneficiaries, and other persons subject to the civil monetary penalties under title I of ERISA.

DATES: This final rule is effective on March 24, 2003, and applies only to violations occurring after March 24, 2003.

FOR FURTHER INFORMATION CONTACT: Eric A. Raps, Office of Regulations and

Interpretations, Pension and Welfare Benefits Administration, (202) 219–8515. This is not a toll free number.

SUPPLEMENTARY INFORMATION: Section 31001(s) of the Debt Collection Improvement Act of 1996 (Act), Pub. L. 104–134, 110 Stat. 1321–373, amended section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act), Pub. L. 101–410, 104 Stat. 890, to require, with certain exceptions, by a regulation published in the **Federal Register**, that each civil monetary penalty (CMP) be adjusted once every four years in accordance with guidelines specified in the amendment. The Act specifies that any such increase in a CMP shall apply only to violations that occur after the date the increase takes effect. The term ''civil monetary penalty'' is defined in the 1990 Act to mean any penalty, fine or other sanction that is for a specific monetary amount as provided by Federal law; or has a maximum amount provided for by Federal law; and is assessed or enforced by an agency pursuant to Federal law; and is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

Only CMPs that are specified by statute or regulation in dollar amounts are adjusted under the 1990 Act, as amended. CMPs that are specified as percentages are not adjusted. The first adjustment to the CMPs under title I of ERISA was published in the **Federal Register** on July 29, 1997 (62 FR 40696), for incorporation into subpart E of part 2570 of chapter XXV of title 29 of the Code of Federal Regulations (CFR). These regulatory provisions were redesignated and transferred to subpart A of part 2575 of chapter XXV of title 29 of the CFR on August 3, 1999. *See* 64 FR 42246.

The table set forth below, entitled ''Inflation Adjustment of Civil Monetary Penalties Under Title I of ERISA—2003'' (table) contains a list of civil penalties under title I of ERISA for which a determination must be made as to whether an inflation adjustment is mandated by the 1990 Act, as amended. The statutory citations for each of the CMPs under title I of ERISA that are subject to adjustment are set forth in columns (A) and (B) of the table.[1] Column (C) briefly describes the nature of the violations associated with these citations. Column (D) of the table indicates the dollar amount of each CMP to be adjusted, and column (E) sets forth the year that each penalty was established by law or last adjusted. Columns (F), (G), (H), (I), and (J) contain the intermediate results of applying the series of steps mandated by the 1990 Act, as amended. Reference should be made to column (K) of the table to determine the effect of the dollar amounts of the final penalty adjustments by the rule contained in this document pursuant to the requirements of the 1990 Act, as amended.

INFLATION ADJUSTMENT OF CIVIL MONETARY PENALTIES UNDER TITLE I OF ERISA—2003

(A) U.S. Code Citation	(B) ERISA Title I Section	(C) Nature of Violation	(D) Penalty Amount to be Adjusted	(E) Year Penalty Last Set or Adjusted	(F) CPI–U for Col. E year	(G) Penalty After Raw Adjustment = Col. D × (538.9*/Col F)	(H) Unrounded Penalty Increase	(I) Round to the Nearest	(J) Rounded Penalty Increase	(K) New Penalty Amount = Col. (D) + Col. (J)
29 U.S.C. 1059(b)	209(b)	Failure to furnish or maintain records.	$11 per employee.	1997	480.2	12.34	1.34	$10	$0	$11 per employee.
29 U.S.C. 1132(c)(1)(A).	502(c)(1)(A)	Failure to notify plan participants of group health plan benefits under COBRA.	Up to $110 a day.	1997	480.2	123.45	13.45	100	0	Up to $110 a day.
		Failure to notify participants and beneficiaries of asset transfer.	Up to $110 a day.	1997	480.2	123.45	13.45	100	0	Up to $110 a day.
29 U.S.C. 1132(c)(1)(B).	502(c)(1)(B)	Refusal to provide required information in a timely manner.	Up to $110 a day.	1997	480.2	123.45	13.45	100	0	Up to $110 a day.
29 U.S.C. 1132(c)(2).	502(c)(2)	Failure or refusal to file an annual report.	Up to $1,100 a day.	1997	480.2	1,234.46	134.46	1,000	0	Up to $1,100 a day.
29 U.S.C. 1132(c)(3).	502(c)(3)	Failure to notify certain participants and beneficiaries of a failure to meet minimum funding requirements.	Up to $110 a day.	1997	480.2	123.45	13.45	100	0	Up to $110 a day.
		Failure to notify certain persons of a transfer of excess pension assets to health account.	Up to $110 a day.	1997	480.2	123.45	13.45	100	0	Up to $110 a day.

[1] The section 502(c)(7) civil penalty, that was added to title I of ERISA by the Sarbanes-Oxley Act of 2002 (Pub. L. 107–204, 116 Stat. 745), is not included in the Table. Under this provision, the Secretary may assess a civil penalty of up to $100 a day from the date of the plan administrator's failure or refusal to provide notice to a participant or beneficiary in accordance with ERISA section 101(i). The methodology of the 1990 Act, as amended, could not result in a cost-of-living adjustment for CMPs enacted in 2002, for purposes of this final rule, by virtue of how the adjustment is calculated. *See* the discussion following the table, including footnote 2.

INFLATION ADJUSTMENT OF CIVIL MONETARY PENALTIES UNDER TITLE I OF ERISA—2003—Continued

(A) U.S. Code Citation	(B) ERISA Title I Section	(C) Nature of Violation	(D) Penalty Amount to be Adjusted	(E) Year Penalty Last Set or Adjusted	(F) CPI–U for Col. E year	(G) Penalty After Raw Adjustment = Col. D × (538.9*/Col F)	(H) Unrounded Penalty Increase	(I) Round to the Nearest	(J) Rounded Penalty Increase	(K) New Penalty Amount = Col. (D) + Col. (J)
29 U.S.C. 1132(c)(5).	502(c)(5)	Failure or refusal to file information required under section 101(g).	Up to $1,000 a day.	1996	469.5	1,147.82	147.82	100	100	Up to $1,100 a day.
29 U.S.C. 1132(c)(6).	502(c)(6)	Failure to furnish documents under section 104(a)(6) upon request.	Up to $100 a day.	1997	480.2	112.22	12.22	10	10	Up to $110 a day.
			But not >$1,000 per request.	1997	480.2	1,122.24	122.24	100	100	But not >$1,100 per request.

*The value of the CPI–U average for all U.S. cities in June 2002 using 1967 as the base year was 538.9.

Specifically, the 1990 Act, as amended, provides that the required inflation adjustment shall be determined by increasing the maximum CMP amount or the range of maximum and minimum CMP amounts, as applicable, for each CMP by a cost-of-living adjustment (COLA). The term ''cost-of-living adjustment'' is defined in the Act as the percentage for 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 such CMP was last set or adjusted by law. The term ''Consumer Price Index'' is defined in the 1990 Act, as amended, to mean the Consumer Price Index for All-Urban Consumers published by the U.S. Department of Labor.

Accordingly, to calculate the COLA it is necessary to divide the CPI for June of the calendar year preceding the adjustment [2] by the CPI for June of the calendar year in which the CMP was last set by law or adjusted for inflation. In order to calculate the raw inflation adjustment, it is necessary to multiply the penalty amount to be adjusted by the relevant COLA. *See* column (G) of the table. The subtraction of the penalty amount to be adjusted from this product yields the unrounded penalty increase. *See* column (H) of the table.

Section 5 of the 1990 Act, as amended, sets forth the manner in which inflation adjustments must be rounded. Specifically, any increase in the maximum CMP or the range of maximum and minimum CMPs, as applicable, must be rounded to the nearest:

(1) Multiple of $10 in the case of penalties less than or equal to $100;

(2) Multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) Multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

(4) Multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

(5) Multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(6) Multiple of $25,000 in the case of penalties greater than $200,000.

These amounts are determined for each penalty according to these rules and appear in column (I) of the table.

Once the penalty increase has been rounded in accordance with the procedures set forth in the 1990 Act, as amended (*see* column (J) of the table) the rounded increase must be added to the penalty to be adjusted to determine the revised penalty amounts. *See* column (K) of the table.

Upon application of the COLA rules previously described, and as reflected in the table set forth above, the following CMPs under title I of ERISA are affected:

(1) The CMP of up to $1,000 a day set by ERISA section 502(c)(5) for the failure or refusal on the part of a person to file the information required to be filed pursuant to ERISA section 101(g) is adjusted to $1,100 a day; and

(2) The CMP of up to $100 a day but in no event in excess of $1,000 per request set by ERISA section 502(c)(6) for the failure on the part of the plan administrator to furnish the material requested by the Secretary under ERISA section 104(a)(6) is adjusted to $110 a day but in no event in excess of $1,100 per request.[3]

In view of the foregoing, the final rule contained in this document amends subpart A of part 2575 (''Adjustment of Civil Penalties under ERISA Title I'') of title 29 of the Code of Federal Regulations (CFR) by adding the two new regulations on the adjustment for inflation of the civil monetary penalties discussed above.

Notice and Public Comment

As a general matter, the Administrative Procedure Act (APA) requires rulemakings to be published in the **Federal Register** and also mandates that an opportunity for comments be provided when an agency promulgates regulations. Section 553(b)(3)(B) of the APA exempts certain rules or agency procedures from the notice and comment requirements when an agency finds for good cause that notice and public comment are impracticable, unnecessary, or contrary to the public interest. The Department finds for good cause that notice and comment on the two CMP adjustments is unnecessary pursuant to section 553(b)(3)(B) of the APA. The Department, in this final rule is merely implementing the specific statutory methodology, prescribed by

[2] The Pension and Welfare Benefits Administration has determined for purposes of title I of ERISA that the year of adjustment is the year during which the applicability date of the final rule first applies. Because the applicability date applies to violations occurring after March 24, 2003, the year of adjustment is 2003. Accordingly, the CPI for June 2002 (*i.e.*, the CPI for the year prior to the adjustment) is used for this calculation and its value is 538.9 using the 1967-year as the base year.

[3] The first adjustment under the Act, as amended, to any CMP may not exceed 10 percent of the penalty being adjusted. This is the first COLA adjustment to the section 502(c)(5) and 502(c)(6) CMPs and the adjustment to each CMP does not exceed the statutory cap. Section 502(c)(5) was added to title I of ERISA by the Health Insurance Portability and Accountability Act of 1996, and section 502(c)(6) was added to title I of ERISA by the Taxpayer Relief Act of 1997.

the 1990 Act, as amended, to determine whether the CMPs under title I of ERISA must be adjusted for inflation. The Department did not exercise discretion as to the calculation of the CMP adjustments and the final rule involves minor technical amendments to part 2575 of title 29 of the CFR for only two CMPs. Accordingly, the regulation is being published as a final rule.

Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of the Executive Order, it has been determined that this action is not ''significant'' and therefore is not subject to review by OMB.

As required by the Act for each civil monetary penalty, the Department has applied the relevant COLA to the penalty amount to be adjusted, rounded the penalty increase as prescribed under the 1990 Act, and added the increase to the unadjusted penalty to determine changes, if any, in the penalty amounts. The recalculation resulted in a small penalty increase of 10 percent to the penalty amounts contained in sections 502(c)(5) and 502(c)(6) of ERISA. No other adjustments are required for civil penalties under ERISA as a result of the recalculation. The amendments implement the statutory adjustment required by the 1990 Act, as amended, and having no impact that is separate from that of the statutory provisions, are not ''significant'' under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires each Federal agency to perform a regulatory flexibility analysis for all rules subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C 551 *et seq.*) unless the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions.

Because this rule is being issued as a final rule without notice and comment under the provision of section 553(b)(3)(B) of the APA, the RFA does not apply and the Department is not required to either certify that the rule will not have a significant impact on a substantial number of small entities or conduct a regulatory flexibility analysis. The Department does not anticipate that this final rule will impose a significant impact on a substantial number of small entities because it is expected to have no impact that is separate from the statutory adjustment required by the 1990 Act, as amended.

Paperwork Reduction Act

This rule is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain a ''collection of information'' as defined in 44 U.S.C. 3502(3).

Congressional Review Act

The final rule is subject to the provisions of the Congressional Review Act (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Controller General for review. The final rule is not a ''major rule'' as that term is defined in 5 U.S.C. 804 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and does not impose an annual burden exceeding $100 million on the private sector.

Executive Order 13132

The Department has reviewed this regulation in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule does not have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain specifically enumerated exceptions not applicable here, that the provisions of titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA.

Statutory Authority

This regulation is adopted pursuant to the authority contained in the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, title III, section 31001(s), 110 Stat. 1321–373), and the authority contained in sections 502(c) and 505 of ERISA, 29 U.S.C. 1132(c) and 1135.

List of Subjects in 29 CFR Part 2575

Administrative practice and procedure, Employee benefit plans, Employee Retirement Income Security Act, Penalties, Pensions, Pension and Welfare Benefits Administration.

Final Rule

In view of the foregoing, subpart A of part 2575 of chapter XXV of title 29 of the Code of Federal Regulations is amended as follows:

PART 2575—[AMENDED]

1. The authority citation for part 2575 is revised to read as follows:

Authority: Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by section 31001(s) of Pub. L. 104–134, 110 Stat. 1321–373; 29 U.S.C. 1059(b), 1132(c) and 1135; Secretary of Labor Order No. 1–87.

2. Amend part 2575 by revising § 2575.100 and adding in the appropriate place §§ 2575.502c–5 and 2575.502c–6 to read as follows:

§ 2575.100 In general.

Section 31001(s) of the Debt Collection Improvement Act of 1996 (the Act, Public Law 104–134, 110 Stat. 1321–373) amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the 1990 Act, Public Law 101–

410, 104 Stat. 890) to require generally that the head of each Federal agency adjust the civil monetary penalties subject to its jurisdiction for inflation within 180 days after enactment of the Act and at least once every four years thereafter.

§ 2575.502c–5 Adjusted civil penalty under section 502(c)(5).

In accordance with the requirements of the 1990 Act, as amended, the maximum amount of the civil monetary penalty established by section 502(c)(5) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), is hereby increased from $1,000 a day to $1,100 a day. This adjusted penalty applies only to violations occurring after March 24, 2003.

§ 2575.502c–6 Adjusted civil penalty under section 502(c)(6).

In accordance with the requirements of the 1990 Act, as amended, the maximum amount of the civil monetary penalty established by section 502(c)(6) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), is hereby increased from $100 a day but in no event in excess of $1,000 per request to $110 a day but in no event in excess of $1,100 per request. This adjusted penalty applies only to violations occurring after March 24, 2003.

Signed in Washington, DC, this 15th day of January, 2003.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 03–1271 Filed 1–21–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 18

RIN 1219–AA98 (Phase 10)

Alternate Locking Devices for Plug and Receptacle-Type Connectors on Mobile Battery-Powered Machines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Direct final rule; request for comments.

SUMMARY: MSHA is revising and updating the existing regulation by allowing the optional use of alternative locking devices for plugs and receptacles to secure battery plugs to receptacles. The rule eliminates the need to file petitions for modification to use this alternative means of securing battery plugs to receptacles.

MSHA is using direct final rulemaking for this action because the Agency expects that there will be no significant adverse comments on the rule. Elsewhere in this issue of the **Federal Register**, MSHA is publishing a companion proposed rule under MSHA's usual procedure for notice and comment rulemaking to provide a procedural framework to finalize the rule in the event the Agency receives significant adverse comments and withdraws this direct final rule. The companion proposed rule and this direct final rule are substantively identical.

DATES: This direct final rule is effective March 10, 2003, unless we receive significant adverse comments by February 21, 2003. If we receive such comments, we will publish a timely withdrawal of this direct final rule and proceed with notice and comment rulemaking.

ADDRESSES: Comments must be clearly identified as such and transmitted either electronically to *comments@msha.gov,* by facsimile to (202) 693–9441, or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939. You may contact MSHA with any format questions. Comments are posted for public viewing at *http://www.msha.gov/currentcomments.htm.*

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director; Office of Standards, Regulations, and Variances, MSHA; phone: (202) 693–9442; facsimile: (202) 693–9441; E-mail: *nichols-marvin@msha.gov.* You can view comments filed on this rulemaking at *http://www.msha.gov/currentcomments.htm.*

SUPPLEMENTARY INFORMATION:

I. Direct Final Rules

Concurrent with this direct final rule, we also are publishing a separate, identical proposed rule in the Proposed Rule section of this **Federal Register**. This duplicate proposed rule will speed notice and comment rulemaking under § 553 of the Administrative Procedure Act should we have to withdraw this direct final rule. All interested parties should comment at this time because we will not initiate an additional comment period.

MSHA has determined that the subject of this rulemaking is suitable for a direct final rule. The Agency believes the actions taken are noncontroversial and therefore does not anticipate receiving any significant adverse comments. If MSHA does not receive significant adverse comments on or before February 21, 2003, the Agency will publish a notice in the **Federal Register** no later than March 10, 2003, confirming the effective date of the direct final rule.

For purposes of this direct final rulemaking, a significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of this direct final rule, MSHA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice and comment process. A comment recommending an addition to the rule will not be considered a significant adverse comment unless the comment states why this rule would be ineffective without the addition. If significant adverse comments are received, the Agency will publish a notice of significant adverse comments in the **Federal Register** withdrawing this direct final rule no later than March 10, 2003.

In the event the direct final rule is withdrawn because of significant adverse comments, the Agency can proceed with the rulemaking by addressing the comments received and publishing a final rule. The comment period for the proposed rule runs concurrently with that of the direct final rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule. Likewise, significant adverse comments submitted to the direct final rule will be considered as comments to the companion proposed rule. The Agency will consider such comments in developing a subsequent final rule.

II. Background Information

Currently, under § 18.41 of Title 30, Code of Federal Regulations, MSHA sets forth design and construction requirements for plug and receptacle-type connectors used with permissible electric equipment approved under part 18. These technical requirements were last revised in March of 1968, which represented the latest advances in battery connector technology considered appropriate for use on mining equipment at that time.

Over the past thirty years, there have been technological improvements to the methods used for securing battery plugs