

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 the 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 the 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 the 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In the event the direct final rule is withdrawn because of significant adverse comments, the Agency can proceed with the rulemaking by addressing the comments received and publishing a final rule.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 direct final rule will be treated as comments regarding the proposed rule. Likewise, significant adverse comments submitted to the proposed rule will be considered as comments to the companion 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 to receptacles. Since the provisions of existing section 18.41(f) do not reflect the latest state-of-the-art technology, mine operators file petitions for modification under Section 101(c) of the Mine Act to take advantage of the technological advancements. Since 1980, there have been approximately 300 petitions filed and granted under Section 101(c) requesting modification to 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 18.41(f) (Plug and receptacle-type connectors) to allow the use of alternate locking devices. The means of securing battery connectors permitted under this proposed rule would allow for the use of padlocks and other equally effective mechanical devices that preclude the inadvertent separation of the battery plug from the receptacle.

In some operations, mine operators encountered difficulties with padlocks in both normal and emergency situations. The use of padlocks requires the maintenance of keys by authorized personnel. Due to the nature of mining operations, padlocks may be filled with mining debris, rendering them difficult or impossible to open with a key. Padlock keys can be misplaced, broken, or bent and may become unusable. This can go unnoticed by the operator until an emergency occurs, when the key may be unavailable or unusable. The removal of a padlock to permit the disconnection of a battery plug in an emergency situation, such as a battery fire, requires a longer period of time and greater effort than the removal of any of the other locking devices permitted in this proposed rule. However, where keys are accessible and padlocks are relatively free from accumulation of dust, padlocks have proven to be effective.

In 1987, to address the problems encountered with the use of padlocks, MSHA issued a policy allowing use of an alternative to padlocks. This policy permits the use of a device that is captive and requires a special tool to disengage and allow separation of the connector. A device is captive when a mechanical connection is made permanent by a locking device that is confined in its mounting location in a manner where, once installed, it cannot be inadvertently removed. The mechanical connection can only be made non-permanent by direct and intervening action using a special tool. A special tool is one that is not normally carried by miners and is used to ensure

that constant pressure is maintained to prevent inadvertent separation of the plug from the receptacle.

Since 1980, mine operators have also been granted permission, through the petition for modification process, to use a spring-loaded locking device. MSHA determined that spring-loaded locking devices provide at least the same measure of protection as padlocks and captive locking devices. These devices maintain constant pressure on the threaded ring or equivalent mechanical fastening to prevent the plug from accidentally disengaging from the receptacle.

For both alternate locking devices, the captive locking device and the spring loaded locking device, a warning tag is also required to alert the user that the connector must not be disengaged under load. Withdrawal of a battery plug from the receptacle while the machine is energized (*i.e.*, under load) can create incendive arcing and sparking that could result in a personal injury, explosion, or fire. The requirement for the warning tag, along with part 48 new task training requirements, provide for appropriate hazard recognition when using alternative locking devices. MSHA is unaware of any adverse incidents involving alternate locking devices.

By issuing this proposed rule, MSHA is responding to the requirements of the Regulatory Flexibility Act and Executive Order 12866 that agencies review their regulations to determine their effectiveness and to implement any changes indicated by the review that will make the regulation more flexible and efficient for stakeholders and small businesses while maintaining needed protections for workers. The amended rule would maintain the protection afforded by the existing standard.

## III. Discussion of Alternative Locking Devices on Mobile Battery-Powered Machines

### A. Paragraph 18.41

Section 18.41 addresses connectors used on battery and non battery-powered machines. Section 18.41(f) specifies requirements for plug and receptacle-type connectors used on mobile battery-powered machines employed in underground gassy mines. This rulemaking proposes to modify paragraph (f) of 30 CFR 18.41 by adding two new provisions allowing the use of devices that provide at least the same measure of protection as that afforded by the existing standards. The Agency recognizes that battery-powered machine designs differ from conventional machine designs