

input through a **Federal Register** notice once it decides to evaluate a particular standard or group of standards for equivalency. Because MSHA is solely responsible for the approval of mining products under the Mine Act, MSHA will retain the ultimate decision on equivalency. No comments on the specific language in § 6.20(b) were received. Therefore, the final language remains unchanged from the revised proposed rule.

Paragraph (c) requires that MSHA publish a listing of all final equivalency determinations in this part 6 and the applicable approval parts. The listing will state whether MSHA accepts the non-MSHA product safety standards in their original form, or will require modifications to demonstrate equivalency. If modifications are required, they will also be provided in the listing. MSHA will notify the public of each equivalency determination and will publish a summary of the basis for its determination in the **Federal Register**. MSHA's Approval and Certification Center will provide complete equivalency determination reports upon request. No comments on the specific language in § 6.20(c) were received. Therefore, the final language remains unchanged from the revised proposed rule.

Paragraph (d) requires that after MSHA has determined that non-MSHA product safety standards are equivalent and has notified the public of such determinations in the **Federal Register**, applicants can seek MSHA product approval based on such non-MSHA product safety standards. No comments on the specific language in § 6.20(d) were received. Therefore, the final language remains unchanged from the revised proposed rule.

The Agency believes that this final rule will encourage a more rapid introduction of mining products embodying new technology with enhanced safety features. In addition, testing and evaluation to "equivalent" standards, that provide at least the same degree of protection to miners as those in the various MSHA product approval regulations could achieve multiple objectives. These include metric conversion, greater compatibility with international standards, and a more competitive posture for U.S. products in the international market.

Section 6.20 provides that MSHA will determine which non-MSHA product safety standards, or groups of standards, are equivalent or can be modified to be equivalent. The decision to perform an equivalency evaluation will be based on MSHA's determination of the overall value of conducting the evaluation. It is

MSHA's intention to base its decision on factors such as the number of potential applications for approval using a particular non-MSHA product safety standard, the number of potential products affected, and its knowledge of the standard and the potential for it being equivalent. MSHA began this process some time ago in order to compare its approval requirements to those of other organizations because of the increasing use of those non-MSHA product safety standards in international trade and because of requests from the public. The equivalency analysis will be conducted by the Agency's Approval and Certification Center using personnel with expertise in the approval requirements involved.

MSHA's equivalency determinations will be based on the objectives of its product approval requirements and the hazards they were designed to address. Section 101(a)(9) of the Mine Act provides that no new standard can reduce the protection afforded miners by an existing standard. For this reason, MSHA must assure that any non-MSHA product safety standard provides at least the same degree of protection for the miners who may use the product approved under that standard. MSHA cannot accept product safety standards, domestic or international, without determining whether they are equivalent or whether some modifications to those product safety standards are needed to achieve the objectives of the existing MSHA product approval requirements. While certain standards, including those accepted by other mining agencies, may be equivalent, MSHA must make that determination on a standard-by-standard basis. It is MSHA's belief that certain product safety standards may well be equivalent without modifications; others may require modification. The Agency will do a systematic analysis first to make this determination.

MSHA's equivalency analysis will compare the subject product safety standards, whether domestic or international, and MSHA's applicable product approval requirements. Where they differ, each difference will be examined to assess its effect on overall safety, and the differences as a whole will be assessed. Where the differences do not impact the objectives of the MSHA requirements, MSHA will issue a determination that the standard is equivalent to MSHA's approval requirements. However, if certain design criteria or performance requirements fail to meet MSHA's objectives or could diminish the safety of the product in

underground mines, MSHA will specify the modifications necessary to reconcile the differences between the two so that at least the same degree of protection is provided.

Under this final rule, when MSHA evaluates a product safety standard to determine equivalency, the Agency will be looking at the standard as a whole and whether it meets the objectives of MSHA's applicable product approval requirements. The Agency recognizes that some non-MSHA product safety standards may have more stringent provisions than MSHA's comparable approval requirements. However, it is not the Agency's intention to require more stringent protections where a non-MSHA product safety standard may afford them. MSHA intends to require modifications only where the non-MSHA standard does not provide equivalent protection. For manufacturers who choose to design products to more stringent standards, for purposes other than MSHA approval, this final rule provides the vehicle for them to obtain MSHA approval even if their products were not designed specifically to MSHA's approval requirements. It is not the Agency's intention to develop a "hybrid" regulation, choosing the most stringent requirements from both the MSHA requirements and non-MSHA standards. This final rule requires modifications to provide at least the same degree of protection as MSHA's product approval requirements.

After MSHA has determined that equivalent requirements exist or that certain requirements, other than those in MSHA approval regulations, can be modified to provide at least the same degree of protection, the applicant will be given the option of requesting that MSHA base its approval on the equivalent, non-MSHA product safety standard, instead of on MSHA's applicable product approval requirements. This option will benefit manufacturers by permitting them to design products to a single set of requirements for sale in multiple markets (domestic and international as well as mining and non-mining applications). This option will also benefit miners by encouraging a more rapid introduction of mining products embodying new technology with enhanced safety features.

Because this final rule permits approval of mining equipment intended to compete in multiple market areas with differing approval requirements, the approved product design will incorporate the highest level of safety required by any of the intended market areas. For example, if the target areas