

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2008-0123; Directorate Identifier 2007-NM-056-AD]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model DC-8-11, DC-8-12, DC-8-21, DC-8-31, DC-8-32, DC-8-33, DC-8-41, DC-8-42, and DC-8-43 Airplanes; Model DC-8-51, DC-8-52, DC-8-53, and DC-8-55 Airplanes; Model DC-8F-54 and DC-8F-55 Airplanes; Model DC-8-61, DC-8-62, and DC-8-63 Airplanes; Model DC-8-61F, DC-8-62F, and DC-8-63F Airplanes; Model DC-8-71, DC-8-72, and DC-8-73 Airplanes; and Model DC-8-71F, DC-8-72F, and DC-8-73F Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier NPRM for an airworthiness directive (AD) that applies to all McDonnell Douglas Model DC-8 airplanes. The original NPRM would have superseded an existing AD that currently requires, among other things, revision of an existing program of structural inspections. The original NPRM proposed to require implementation of a revised program of structural inspections of baseline structure to detect and correct fatigue cracking in order to ensure the continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. The original NPRM resulted from a significant number of these airplanes approaching or exceeding the design service goal on which the initial type certification approval was predicated. This new action revises the original NPRM by reducing the inspection threshold for certain principal structural elements. We are proposing this supplemental NPRM to detect and correct fatigue cracking that could compromise the structural integrity of these airplanes.

DATES: We must receive comments on this supplemental NPRM by September 23, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024).

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dara Albouyeh, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5222; fax (562) 627-5210.

SUPPLEMENTARY INFORMATION:**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2008-0123; Directorate Identifier 2007-NM-056-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with a notice of proposed rulemaking (NPRM) for an AD (the "original NPRM") to supersede AD 93-01-15, amendment 39-8469 (58 FR 5576, January 22, 1993). The original NPRM applied to all McDonnell Douglas Model DC-8 airplanes. The original NPRM was published in the **Federal Register** on February 5, 2008 (73 FR 6622). The original NPRM proposed to retain certain requirements of AD 93-01-15. The original NPRM also proposed to require a revision of the FAA-approved maintenance program. In addition, the original NPRM proposed to require implementation of a revised structural inspection program of baseline structure to detect and correct fatigue cracking in order to ensure the continued airworthiness of airplanes as they approach the manufacturer's original fatigue design life goal.

Actions Since Original NPRM Was Issued

Since we issued the original NPRM, we have reviewed Boeing Report No. L26-011, "DC-8 All Series Supplemental Inspection Document (SID)," Volume I, Revision 7, dated March 2008 (hereafter "Revision 7"). The procedures specified in Revision 7 are identical to those specified in Boeing Report No. L26-011, "DC-8 All Series Supplemental Inspection Document (SID)," Volume I, Revision 6, dated July 2005 (referred to in the NPRM as the appropriate source of service information for accomplishing certain required actions). Revision 7 revises the inspection threshold for certain principal structural elements from landings to flight hours, which reduces the inspection threshold. Therefore, we have revised the supplemental NPRM to refer to Revision 7 as the appropriate source of service information for accomplishing certain proposed actions.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

The change discussed above expands the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

Costs of Compliance

There are about 194 airplanes of the affected design in the worldwide fleet. The following table provides the

estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per operator	Number of U.S.-registered airplanes	Fleet cost
Revision of maintenance inspection program (required by AD 93-01-15).	544 per operator (17 U.S. operators).	\$80	\$43,520, per operator	131	\$739,840
Revision of maintenance program and inspections (new proposed actions).	250 per operator (17 U.S. operators).	80	\$20,000	131	340,000

The number of inspection work hours, as indicated above, is presented as if the accomplishment of the actions in this proposed AD is to be conducted as "stand alone" actions. However, in actual practice, these actions for the most part will be done coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary additional inspection work hours will be minimal in many instances. Additionally, any costs associated with special airplane scheduling will be minimal.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this supplemental NPRM and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39-8469 (58 FR 5576, January 22, 1993) and adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA-2008-0123; Directorate Identifier 2007-NM-056-AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by September 23, 2008.

Affected ADs

(b) This AD supersedes AD 93-01-15.

Applicability

(c) This AD applies to all McDonnell Douglas airplanes identified in Table 1 of this AD, certificated in any category.

TABLE 1—APPLICABILITY

	Model
(1)	DC-8-11, DC-8-12, DC-8-21, DC-8-31, DC-8-32, DC-8-33, DC-8-41, DC-8-42, and DC-8-43 airplanes.
(2)	DC-8-51, DC-8-52, DC-8-53, and DC-8-55 airplanes.
(3)	DC-8F-54 and DC-8F-55 airplanes.
(4)	DC-8-61, DC-8-62, and DC-8-63 airplanes.
(5)	DC-8-61F, DC-8-62F, and DC-8-63F airplanes.
(6)	DC-8-71, DC-8-72, and DC-8-73 airplanes.
(7)	DC-8-71F, DC-8-72F, and DC-8-73F airplanes.

Unsafe Condition

(d) This AD results from a significant number of these airplanes approaching or exceeding the design service goal on which the initial type certification approval was predicated. We are issuing this AD to detect and correct fatigue cracking that could compromise the structural integrity of these airplanes.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Certain Requirements of AD 93-01-15:

Revise the FAA-Approved Maintenance Inspection Program

(f) Within 6 months after February 26, 1993 (the effective date of AD 93-01-15), incorporate a revision of the FAA-approved maintenance inspection program that provides no less than the required inspection of the Principal Structural Elements (PSEs) defined in Sections 2 and 3 of Volume I of McDonnell Douglas Report No. L26-011, "DC-8 Supplemental Inspection Document (SID)," dated March 1991, in accordance with Section 2 of Volume III-91, dated April 1991, of that document. The non-destructive inspection techniques set forth in Sections 2 and 3 of Volume II, dated March 1991, of that SID provide acceptable methods for

accomplishing the inspections required by this AD. All inspection results, negative or positive, must be reported to McDonnell Douglas, in accordance with the instructions of Section 2 of Volume III-91 of the SID. Information collection requirements contained in this regulation have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

Corrective Action

(g) Cracked structure detected during the inspections required by paragraph (f) of this AD must be repaired before further flight, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

New Requirements of this AD

Revision of the Maintenance Inspection Program

(h) Within 12 months after the effective date of this AD, incorporate a revision of the FAA-approved maintenance inspection program that provides for inspection(s) of the PSEs, in accordance with Boeing Report No. L26-011, "DC-8 All Series Supplemental Inspection Document (SID)," Volume I, Revision 7, dated March 2008. Incorporation of this revision ends the requirements of paragraphs (f) and (g) of this AD.

Non-Destructive Inspections (NDIs)

(i) For all PSEs listed in Section 2 of Boeing Report No. L26-011, "DC-8 All Series Supplemental Inspection Document (SID)," Volume I, Revision 7, dated March 2008, perform an NDI for fatigue cracking of each PSE, in accordance with the NDI procedures specified in Section 2 of McDonnell Douglas Report No. L26-011, "DC-8 Supplemental Inspection Document (SID)," Volume II, Revision 8, dated January 2005, at the times specified in paragraph (i)(1), (i)(2), or (i)(3) of this AD, as applicable.

(1) For airplanes that have less than three quarters of the fatigue life threshold ($\frac{3}{4}N_{TH}$) as of the effective date of this AD: Perform the NDI for fatigue cracking at the times specified in paragraphs (i)(1)(i) and (i)(1)(ii) of this AD. After reaching the threshold (N_{TH}), repeat the inspection for that PSE at intervals not to exceed $\Delta NDI/2$.

(i) Perform an initial NDI no earlier than one-half of the threshold ($\frac{1}{2}N_{TH}$) but before reaching three-quarters of the threshold ($\frac{3}{4}N_{TH}$), or within 60 months after the effective date of this AD, whichever occurs later.

(ii) Repeat the NDI no earlier than $\frac{3}{4}N_{TH}$ but before reaching the threshold (N_{TH}), or within 18 months after the inspection required by paragraph (i)(1)(i) of this AD, whichever occurs later.

Note 1: The DC-8 SID and this AD refer to the repetitive inspection interval as $\Delta NDI/2$. However, the headings of the tables in Section 4 of Volume I of the DC-8 SID refer to the repetitive inspection interval of $NDI/2$. The values listed under $NDI/2$ in the tables in Section 4 of Volume I of the DC-8 SID are the repetitive inspection intervals, $\Delta NDI/2$.

(2) For airplanes that have reached or exceeded three-quarters of the fatigue life threshold ($\frac{3}{4}N_{TH}$), but less than the threshold (N_{TH}), as of the effective date of this AD: Perform an NDI before reaching the threshold (N_{TH}), or within 18 months after the effective date of this AD, whichever occurs later. Thereafter, after passing the threshold (N_{TH}), repeat the inspection for that PSE at intervals not to exceed $\Delta NDI/2$.

(3) For airplanes that have reached or exceeded the fatigue life threshold (N_{TH}) as of the effective date of this AD: Perform an NDI within 18 months after the effective date of this AD. Thereafter, repeat the inspection for that PSE at intervals not to exceed $\Delta NDI/2$.

Discrepant Findings

(j) If any discrepancy (e.g., differences on the airplane from the NDI reference standard, such as PSEs that cannot be inspected as specified in McDonnell Douglas Report No. L26-011, "DC-8 Supplemental Inspection Document (SID)," Volume II, Revision 8, dated January 2005, or do not match rework, repair, or modification descriptions in Boeing Report No. L26-011, "DC-8 All Series Supplemental Inspection Document (SID)," Volume I, Revision 7, dated March 2008) is detected during any inspection required by paragraph (i) of this AD, do the action specified in paragraph (j)(1) or (j)(2) of this AD, as applicable.

(1) If a discrepancy is detected during any inspection done before $\frac{3}{4}N_{TH}$ or N_{TH} : The area of the PSE affected by the discrepancy must be inspected before N_{TH} or within 18 months after the discovery of the discrepancy, whichever occurs later, in accordance with a method approved by the Manager, Los Angeles ACO.

(2) If a discrepancy is detected during any inspection done after N_{TH} : The area of the PSE affected by the discrepancy must be inspected before the accumulation of an additional $\Delta NDI/2$ or within 18 months after the discovery of the discrepancy, whichever occurs later, in accordance with a method approved by the Manager, Los Angeles ACO.

Reporting Requirements

(k) All negative or positive findings of the inspections done in accordance with paragraph (i) of this AD must be reported to Boeing at the times specified in, and in accordance with, the instructions contained in Section 4 of Boeing Report No. L26-011, "DC-8 All Series Supplemental Inspection Document (SID)," Volume I, Revision 7, dated March 2008. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

Corrective Actions

(l) Any cracked structure of a PSE detected during any inspection required by paragraph (i) of this AD must be repaired before further flight using a method approved in accordance with the procedures specified in paragraph (p) of this AD. Accomplish the actions described in paragraphs (l)(1), (l)(2), and (l)(3) of this AD, at the times specified.

(1) Within 18 months after repair, do a damage tolerance assessment (DTA) that defines the threshold for inspection of the repair and submit the assessment for approval.

(2) Before reaching 75% of the repair threshold as determined in paragraph (l)(1) of this AD, submit the inspection methods and repetitive inspection intervals for the repair for approval.

(3) Before the repair threshold, as determined in paragraph (l)(1) of this AD, incorporate the inspection method and repetitive inspection intervals into the FAA-approved structural maintenance or inspection program for the airplane.

Note 2: For the purposes of this AD, we anticipate that submissions of the DTA of the repair, if acceptable, should be approved within 6 months after submission.

Note 3: FAA Order 8110.54, "Instructions for Continued Airworthiness," dated July 1, 2005, provides additional guidance about the approval of repairs to PSEs.

Inspection for Transferred Airplanes

(m) Before any airplane that has exceeded the fatigue life threshold (N_{TH}) can be added to an air carrier's operations specifications, a program for the accomplishment of the inspections required by this AD must be established as specified in paragraph (m)(1) or (m)(2) of this AD, as applicable.

(1) For airplanes that have been inspected in accordance with this AD: The inspection of each PSE must be done by the new operator in accordance with the previous operator's schedule and inspection method, or the new operator's schedule and inspection method, at whichever time would result in the earlier accomplishment date for that PSE inspection. The compliance time for accomplishing this inspection must be measured from the last inspection done by the previous operator. After each inspection has been done once, each subsequent inspection must be done in accordance with the new operator's schedule and inspection method.

(2) For airplanes that have not been inspected in accordance with this AD: The inspection of each PSE required by this AD must be done either before adding the airplane to the air carrier's operations specification, or in accordance with a schedule and an inspection method approved by the Manager, Los Angeles ACO. After each inspection has been done once, each subsequent inspection must be done in accordance with the new operator's schedule.

Acceptable for Compliance

(n) McDonnell Douglas Report No. MDC 91K0262, "DC-8 Aging Aircraft Repair Assessment Program Document," Revision 1, dated October 2000, provides inspection/replacement programs for certain repairs to the fuselage pressure shell. Accomplishing these repairs and inspection/replacement programs before the effective date of this AD is considered acceptable for compliance with the requirements of paragraphs (g) and (l) of this AD for repairs subject to that document.

(o) Actions done before the effective date of this AD in accordance with Boeing Report No. L26-011, "DC-8 All Series Supplemental

Inspection Document (SID),” Volume I, Revision 6, dated July 2005, are acceptable for compliance with the corresponding requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(p)(1) The Manager, Los Angeles ACO, FAA, ATTN: Dara Albouyeh, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5222; fax (562) 627-5210; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

(4) AMOCs approved previously in accordance with AD 93-01-15 are approved as AMOCs for the corresponding provisions of this AD.

Issued in Renton, Washington, on August 21, 2008.

Kevin Hull,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8-20085 Filed 8-28-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 2

RIN 1290-AA23

Requirements for DOL Agencies' Assessment of Occupational Health Risks

AGENCY: Office of the Assistant Secretary for Policy, Office of the Secretary, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to the Secretary of Labor's authority at 5 U.S.C. section 301, the Department of Labor (Department or DOL) is proposing to compile its existing best practices related to risk assessment into a single,

easy to reference regulation, and to include two requirements to establish consistent procedures for conducting risk assessments that promote greater public input and awareness of the Department's health rulemakings. DOL proposes to issue an Advanced Notice of Proposed Rulemaking soliciting public information on relevant data when developing risk assessments for health standards regulating occupational exposure to toxic substances and hazardous chemicals, and to electronically post rulemaking documents and underlying studies used in a risk assessment. The proposed regulation implements recommendations of the 1997 Presidential/Congressional Commission on Risk Assessment and Risk Management Report,¹ and is consistent with Government-wide Office of Management and Budget's (OMB) Information Quality Guidelines,² current internal DOL Information Quality Guidelines,³ and the OMB/Office of Science and Technology Policy 2007 Memorandum on Updated Principles for Risk Analysis.⁴

DATES: Comments must be submitted on or before September 29, 2008.

ADDRESSES: You may submit comments, identified by RIN, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail/Hand Delivery/Courier:* Submit comments to Office of the Assistant Secretary for Policy, 200 Constitution Avenue, NW., S-2312, Washington, DC 20210, *Attention:* Risk Assessment Policy. Because of security-related concerns, there may be a significant delay in the receipt of submissions by United States Mail. You must take this into consideration when preparing to meet the deadline for submitting comments.

Instructions: All submissions received must include the agency name and Regulatory Information Number (RIN) for this rulemaking. Comments received will be posted without change to

¹ Presidential/Congressional Commission on Risk Assessment and Risk Management, *Framework for Environmental Health Risk Management*, 2 Final Report 131-36 (1997).

² http://www.whitehouse.gov/omb/fedreg/2005/011405_peer.pdf.

³ U.S. Dept. of Labor, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Department of Labor* (2002) (Appendix II), available at <http://www.dol.gov/informationquality.htm>.

⁴ OMB/OSTP Memorandum for the Heads of Executive Departments and Agencies, *Updated Principles for Risk Analysis* (2007) M-07-24, available at <http://www.whitehouse.gov/omb/memoranda/fy2007/m07-24.pdf>.

<http://www.regulations.gov>, and available for public inspection in the Office of the Assistant Secretary for Policy, 200 Constitution Avenue, NW., S-2312, Washington, DC 20210, including any personal information provided. Persons submitting comments electronically are encouraged not to submit paper copies.

Docket: All comments will be available for public inspection and copying during normal business hours by contacting OASP at (202) 693-5959 (VOICE) (this is not a toll free number) or 1-877-889-5627 (TTY/TDD). You may also contact OASP at the address listed above. As noted above, the Department also will post all comments it receives on <http://www.regulations.gov>.

Copies of the proposed rule are available in alternative formats of large print and electronic file on computer disk, which may be obtained at the above-stated address.

FOR FURTHER INFORMATION CONTACT: Kathleen Franks, Office of Regulatory and Programmatic Policy, Office of the Assistant Secretary for Policy, U.S. Department of Labor, (202) 693-5959. This is not a toll-free number.

Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

A. Background

The Department's Mission Under the Occupational Safety and Health Act and Federal Mine Safety and Health Act

The Secretary of Labor (Secretary) is charged with ensuring safe and healthful working conditions for every working man and woman in the Nation. To that end, the Secretary has broad authority to promulgate health standards. In Section 6(b)(5) of the Occupational Safety and Health Act of 1970 (OSH Act)⁵ and Section 101(a)(6) (A) of the Federal Mine Safety and Health Act of 1977 (Mine Act),⁶ Congress required the Secretary to set health standards “on the basis of the best available evidence.”⁷ The Acts also state that, “in addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field.”⁸ In sum, the OSH Act and Mine Act

⁵ 29 U.S.C. 655 (2000).

⁶ 30 U.S.C. 811 (2000).

⁷ 29 U.S.C. 655(b)(5) (2000), 30 U.S.C. 811(a)(6) (2000).

⁸ *Id.*