location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding the following new airworthiness directive:

Mcdonnell Douglas: Docket 95–NM–115–AD.

Applicability: Model DC–8 airplanes equipped with main landing gears having swivel type bogie beams on which the swivel pin lugs have not been nickel plated, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the swivel-type bogie beam of the main landing gear (MLG) due to stress corrosion, which could result in collapse of the MLG during landing, accomplish the following:

(a) Perform a one-time magnetic particle inspection to detect cracking of the swivel bogie beam lugs, in accordance with McDonnell Douglas DC–8 Service Bulletin 32–182, dated January 20, 1995; McDonnell Douglas Service Bulletin DC8–32–182, Revision 01, dated July 21, 1995, or Revision 02, dated August 30, 1995; at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Prior to the accumulation of 11,600 total flight hours, or within 10 years since the installation of the forward bogie beam of the MLG, whichever occurs first.

(2) Prior to the accumulation of 2,000 flight hours, or 2 years after the effective date of this AD, whichever occurs first.

(b) If no cracking is detected during the inspection required by paragraph (a) of this AD, prior to further flight, perform a visual inspection to detect corrosion in the swivel pin lug surfaces and bores, in accordance with McDonnell Douglas DC–8 Service Bulletin 32–182, dated January 20, 1995; or McDonnell Douglas Service Bulletin DC8–32–182, Revision 01, dated July 21, 1995, or Revision 02, dated August 30, 1995.

Note 2: Particular attention should be paid to the lubrication of the swivel pin lug and the lower swivel pin bushing during regular normal maintenance.

(1) If no corrosion is detected, prior to further flight, accomplish paragraph (b)(1)(i), (b)(1)(ii), (b)(1)(iii), or (b)(1)(iv) of this AD, as applicable, in accordance with the service bulletin.

(i) For Group I airplanes on which the forward bogie beam has not been modified previously: Modify the forward bogie beam in accordance with the actions specified (for Group I airplanes) as Condition 1 of the Accomplishment Instructions of the service bulletin.

(ii) For Group I airplanes on which the forward bogie beam has been modified previously: Modify the forward bogie beam in accordance with the actions specified (for Group I airplanes) as Condition 2 of the Accomplishment Instructions of the service bulletin.

(iii) For Group II airplanes on which the forward bogie beam has not been modified previously: Modify the forward bogie beam in accordance with the actions specified (for Group II airplanes) as Condition 1 of the Accomplishment Instructions of the service bulletin.

(iv) For Group II airplanes on which the forward bogie beam has been modified previously: Modify the forward bogie beam in accordance with the actions specified (for Group II airplanes) as Condition 2 of the Accomplishment Instructions of the service bulletin.

(2) If any corrosion is detected, prior to further flight, accomplish paragraph (b)(2)(i), (b)(2)(ii), (b)(2)(iii), or (b)(2)(iv), as applicable, in accordance with the service bulletin.

(i) For Group I airplanes on which the forward bogie beam has not been modified previously: Modify the forward bogie beam in accordance with the actions specified (for Group I airplanes) as Condition 1 of the Accomplishment Instructions of the service bulletin. If the dimensions of the reworked swivel pin lug exceed the limits specified in Table I of the service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(ii) For Group I airplanes on which the forward bogie beam has been modified previously: Modify the forward bogie beam in accordance with the actions specified (for Group I airplanes) as Condition 2 of the Accomplishment Instructions of the service bulletin. If the dimensions of the reworked swivel pin lug exceed the limits specified in Table I of the service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO.

(iii) For Group II airplanes on which the forward bogie beam has not been modified previously: Modify the forward bogie beam in accordance with the actions specified (for Group II airplanes) as Condition 1 of the Accomplishment Instructions of the service bulletin. If the dimensions of the reworked swivel pin lug exceed the limits specified in Table I of the service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO.

(iv) For Group II airplanes on which the forward bogie beam has been modified previously: Modify the forward bogie beam in accordance with the actions specified (for Group II airplanes) as Condition 2 of the Accomplishment Instructions of the service bulletin. If the dimensions of the reworked swivel pin lug exceed the limits specified in Table I of the service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO.

(c) If any cracking is detected during the inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO.

(d) As of the effective date of this AD, no forward bogie beam swivel pin lug shall be installed on any airplane, unless that swivel pin lug has been modified in accordance with McDonnell Douglas DC–8 Service Bulletin 32–182, dated January 20, 1995; or McDonnell Douglas Service Bulletin DC8–32–182, Revision 01, dated July 21, 1995, or Revision 02, dated August 30, 1995.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 19, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10208 Filed 4–24–96; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 33–7283; 34–37132; File No. S7–12–96]

RIN 3235–AG78

Odd-lot Tender Offers by Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed Rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is publishing for comment a proposed amendment to Rule 13e–4 (''Rule 13e–4'' or ''Rule'') under the Securities Exchange Act of 1934. Rule 13e–4 governs cash tender offers and exchange offers by issuers for their equity securities. The proposed amendment would remove the Rule's requirement that issuer tender offers made to odd-lot holders specify a record date of ownership for eligibility to tender into the offer. The amendment would enable issuers to conduct extended odd-lot tender offers for their equity securities.

DATES: Comments should be submitted on or before May 28, 1996.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–12–96; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: K. Susan Grafton, Special Counsel, or Lauren C. Mullen, Attorney, Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 5–1, Washington, D.C. 20549, at (202) 942–0772.

SUPPLEMENTARY INFORMATION:

I. Background

A. Odd-lot Tender Offers

Rule 13e–4 under the Securities Exchange Act of 1934 (''Exchange Act'')[1] governs cash tender offers and exchange offers by issuers for their equity securities.[2] In an odd-lot tender offer (''Odd-lot Offer''), the offer to purchase is limited to security holders who own less than 100 shares (''Odd-lot Holders''). The purpose of an Odd-lot Offer generally is to reduce the issuer's disproportionately high cost of servicing small shareholder accounts, and to enable such shareholders to dispose of their securities without incurring brokerage fees.

In light of the limited purposes of Odd-lot Offers and the fact that they are not characterized by large premiums or significant market impact, the majority of these tender offers present minimal potential for fraud and manipulation. Thus, paragraph (h)(5) of Rule 13e–4 excepts Odd-lot Offers from the application of the Rule's requirements, other than the ''all holders'' and ''best price'' provisions contained in paragraph (f)(8) of the Rule.[3]

B. Record Date Requirement

Paragraph (h)(5) of Rule 13e–4 requires issuers making Odd-lot Offers to set a record date prior to the offer's announcement for the purpose of determining a security holder's eligibility to participate in the offer. This provision applies *only* to Odd-lot Offers, and was incorporated into the Rule to prevent holders of round-lots from separating their holdings into eligible odd-lots and tendering them pursuant to the Odd-lot Offer.[4] Also, acceptance of such shares was considered to result in added cost to the issuer without achieving the corresponding benefit from reducing the number of its small shareholder accounts. Furthermore, Odd-lot Holders could be disadvantaged if such behavior were to result in an oversubscription of the Odd-lot Offer, causing *bona fide* Odd-lot Holders to have their securities rejected or prorated by the issuer. Finally, the Commission was concerned that Odd-lot Offers left open indefinitely or for an extended period of time might establish a minimum price for the subject security. In adopting paragraph (h)(5), the Commission expressed its view that the record date requirement would minimize any pegging effect by limiting the number of shares eligible to be purchased by the issuer at the tender offer price.

C. Extended Odd-lot Offers

The requirement of a record date places a practical limitation on the time period that an Odd-lot Offer can be made available, because only those shareholders who were Odd-lot Holders as of the record date may participate. Recently, some issuers have expressed an interest in offering to purchase odd-lots on a continuous, periodic, or extended basis (collectively, ''Extended Odd-lot Offers'') to avoid the costs associated with implementing sequential programs. An issuer desiring to make an Extended Odd-lot Offer must obtain an exemption from the Rule's record date requirement.

Several exemptions have been granted to allow issuers to conduct Extended Odd-lot Offers.[5] Based on information provided to the staff, the Commission preliminarily believes that the record date requirement is no longer necessary for the following reasons:

- Round-lot holders generally do not separate their holdings into odd-lots to participate in Extended Odd-lot Offers.
- Risk of prorationing or over-subscription is absent because Extended Odd-lot Offers do not limit the number of shares that will be accepted.
- There is little manipulative incentive because an Extended Odd-lot Offer typically involves a *de minimis* percentage of an issuer's outstanding shares.
- Because the consideration offered in an Extended Odd-lot Offer typically is based on a uniformly applied formula tied to the market price of the subject security, and not on a fixed-price, it is unlikely that such tender offer could be used to peg the price of a security.
- Odd-lot transactions generally have little influence on the market price of a security, thus, even a fixed-price Extended Odd-lot Offer is unlikely to have a pegging effect on the subject security.

In light of its experience with Extended Odd-lot Offers and the advantages of these programs for issuers as well as for shareholders, the Commission proposes to amend the Rule to eliminate the mandatory record date requirement.

[1] 15 U.S.C. 78a *et seq.*

[2] 17 CFR 240.13e–4.

[3] 17 CFR 240.13e–4(h)(5); see Securities Exchange Act Release No. 19988 (July 21, 1983), 48 FR 34251 (adopting the paragraph now designated as (h)(5) of Rule 13e–4 excepting Odd-lot Offers from the Rule's requirements).

Rule 13e–4(f)(8)(i) requires that the tender offer be open to all security holders of the class of securities subject to the tender offer. 17 CFR 240.13e–4(f)(8)(i). Rule 13e–4(f)(8)(ii) requires that consideration paid to any security holder pursuant to an issuer tender offer be the highest consideration paid to any other security holder during such tender offer. 17 CFR 240.13e–4(f)(8)(ii).

[4] See Securities Exchange Act Release No. 19246 (November 18, 1982), 47 FR 53398, 53400 (proposing adoption of the paragraph now designated as (h)(5) of Rule 13e–4).

[5] See, *e.g.*, Letter regarding American Telephone and Telegraph Company Odd-Lot Program, 1992 SEC No-Act. LEXIS 622 (May 4, 1992); Letter regarding BellSouth Corporation Odd-Lot Program, 1992 SEC No-Act. LEXIS 631 (May 4, 1992).

D. Related Issues

Odd-lot Offers also raise issues under Rules 10b–6 and 10b–13 under the Exchange Act.[6] Rule 10b–6 is an anti-manipulation rule that, subject to certain exceptions, prohibits persons engaged in a distribution of securities from bidding for or purchasing, or inducing others to purchase, such securities, or any related securities, until they have completed their participation in the distribution. The rule is intended to prevent distribution participants and their affiliated purchasers from artificially conditioning the market for the subject security in order to facilitate the offering, and to protect the integrity of the securities market as an independent pricing mechanism. Rule 10b–13 prohibits any person making a cash tender offer or exchange offer for an equity security from purchasing or arranging to purchase such security, or any security immediately convertible into or exchangeable for such security, otherwise than pursuant to the tender or exchange offer, during the period commencing as of the public announcement of the offer and ending on the date when the offer must, by its terms, be accepted or rejected. The rule is intended to eliminate the incentive for the bidder to purchase shares from certain holders otherwise than pursuant to the offer at a more favorable price than the tender offer consideration.

Where an issuer is involved in a distribution, as defined in Rule 10b–6, purchases by the issuer (or its affiliated purchasers) of securities that are the subject of the distribution are restricted, including purchases pursuant to an Odd-lot Offer. For example, the issuer may wish to conduct a public offering during an Odd-lot Offer, or the securities purchased during an Odd-lot Offer may be resold in a manner constituting a distribution. Securities also may need to be purchased in connection with an Odd-lot Offer to satisfy the request of Odd-lot Holders who want to ''round up'' their holdings. In addition, purchases by an issuer conducting an Odd-lot Offer also are restricted by Rule 10b–13, which prohibits purchases of the target security, including purchases in connection with an open market repurchase program, once the Odd-lot Offer is publicly announced and continuing until its expiration.

Issuers frequently have sought exemptive relief from Rules 10b–6 and 10b–13 in connection with their Extended Odd-lot Offers.[7] The Commission is proposing to issue class exemptions from Rules 10b–6[8] and 10b–13 that would permit issuers to conduct Odd-lot Offers while the issuer is engaged in a distribution under Rule 10b–6, to round up odd-lots on behalf of Odd-lot Holders, and to make purchases of its securities otherwise than pursuant to the Odd-lot Offer.[9] The class exemptions from Rules 10b–6 and 10b–13 would be available during any Odd-lot Offer.

II. Request for Comment

The Commission requests that interested persons submit comments on any aspect of the proposed amendment to Rule 13e–4 to eliminate the record date requirement. If the record date requirement is deleted, issuers would not be able to specify a record date in an Odd-lot Offer because of the Rule's ''all holders'' provision. Should Rule 13e–4 retain a provision to permit issuers to specify a record date in an Odd-lot Offer? Commenters should discuss whether there is any potential for round-lot holders to divide their round-lots to participate in Extended Odd-lot Offers. The Commission is interested in information regarding issuers' experiences with Odd-lot Offers, including Extended Odd-lot Offers.

Additionally, the Commission encourages comment on any potential market impact of Extended Odd-lot Offers. Is there any opportunity for an Extended Odd-lot Offer to have a pegging effect on the security's price? Should Extended Odd-lot Offers be limited to those offering a consideration based on a market price formula (*e.g.*, based on the average price per share of the securities subject to the offer)?

Finally, the Commission seeks comment on the proposed class exemptions from Rules 10b–6 and 10b–13.

Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 6–9, Washington, DC 20549, and should refer to file No. S7–12–96. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov, and should include the file number on the subject line of the E-mail.

III. Summary of Initial Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act, which became effective on January 1, 1981, imposes procedural steps applicable to agency rulemaking which has a ''significant economic impact on a substantial number of small entities.''[10] The Chairman of the Commission has certified pursuant to the Regulatory Flexibility Act that the proposed amendment to Rule 13e–4, if adopted, will not have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefore, is attached to this release as Appendix A.

IV. Statutory Basis

Pursuant to Sections 3(b), 9(a)(6), 10(b), 13(e), 14(e), and 23(a) of the Exchange Act; 15 U.S.C. 78c(b), 78i(a)(6), 78j(b), 78m(e), 78n(e), and 78w(a), the Commission proposes to amend Rule 13e–4 in Chapter II of Title 17 of the Code of Federal Regulations by amending paragraph (h)(5) of § 240.13e–4.

[6] 17 CFR 240.10b–6 and 17 CFR 240.10b–13.

[7] See, *e.g.*, Letter regarding Society National Bank, 1995 SEC No-Act. LEXIS 912 (December 11, 1995); Letter regarding Armco, Inc., 1995 SEC No-Act. LEXIS 754 (October 20, 1995); Letter regarding Yankee Energy Systems, Inc., 1995 SEC No-Act. LEXIS 142 (January 6, 1995); and Letter regarding El Paso Natural Gas Company, 1994 SEC No-Act. LEXIS 52 (January 7, 1994). The Commission previously has granted exemptions from Rule 10b–13 to permit the issuer, or the broker or trustee for the Odd-lot Offer, to bid for or purchase securities that are the subject of the Odd-lot Offer in order to satisfy a round up feature of the Odd-lot Offer, or to satisfy the requirements of issuer plans, provided that no such purchases are made otherwise than pursuant to the offer from the Odd-lot Holders eligible to participate in the Odd-lot Offer. The proposed exemptions from Rule 10b–13, if issued, would not include a restriction on purchases of securities from eligible Odd-lot Holders. Comment is requested on whether such a restriction should be included.

[8] On April 11, 1996, the Commission issued a release proposing new Regulation M, which would replace Rule 10b–6, among other rules. Securities Exchange Act Release No. 37094 (April 11, 1996). Proposed Rule 102 of Regulation M would permit issuers to purchase odd-lots during a distribution. If the Commission determines to issue the proposed class exemption from Rule 10b–6 for Odd-lot Offers, it may be superseded by adoption of Regulation M.

[9] If adopted, the proposed amendment, along with any class exemptions from Rules 10b–6 and 10b–13, would supersede any prior exemptions granted with respect to Odd-lot Offers. These provisions, however, would not address other issues that may be raised by Odd-lot Offers under the Securities Act of 1933, 15 U.S.C. 77a *et seq.*, or under Sections 15(a) or 14(d) of the Exchange Act, 15 U.S.C. 78o(a) or 78n(d), respectively. See, *e.g.*, Letter regarding Armco, Inc., *supra* note 7.

[10] 5 U.S.C. 601 *et seq.* Although Section 601(b) of the Regulatory Flexibility Act defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. 5 U.S.C. 601(b). The Commission has adopted definitions of the term small entity for purposes of Commission rulemaking in accordance with the Regulatory Flexibility Act. Those definitions are set forth in Rule 0–10, 17 CFR 240.0–10. See Securities Exchange Act Release No. 18452 (January 28, 1982). An issuer, other than an investment company, is a ''small business'' or ''small organization'' under Rule 0–10, if the issuer, on the last business day of its most recent fiscal year, had total assets of $5,000,000 or less.

List of Subjects in 17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

Text of the Proposed Amendment

For the reasons set out in the preamble, the Commission is proposing to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

§ 240.13e–4 [Amended]

2. Section 240.13e–4 is amended by removing the phrase ''as of a specified date prior to the announcement of the offer'' from the introductory text of paragraph (h)(5).

Dated: April 19, 1996.

By the Commission.

Jonathan G. Katz,

Secretary.

Note: This Appendix A to the Preamble will not appear in the Code of Federal Regulations.

Appendix A

Regulatory Flexibility Act Certification

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendment to Rule 13e–4 set forth in Securities Exchange Act Release No. 37132, if promulgated, will not have a significant economic impact on a substantial number of small entities. Specifically, issuers making a tender offer to holders of odd-lots will be excepted from the record date requirements of the rule, and will no longer be required to distinguish between their odd-lot holders on the basis of the dates upon which those security holders acquired their odd-lot holdings. Accordingly, issuers will be relieved of the need to request an exemption from the provisions of the rule to conduct periodic, continuous, or extended odd-lot offers. Although the proposed amendment to Rule 13e–4 is expected to have favorable effects on issuers and small investors, the size of these effects will not have a significant economic impact on a substantial number of small entities.

Dated: April 19, 1996.

Arthur Levitt,

Chairman.

[FR Doc. 96–10243 Filed 4–24–96; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 70 and 71

RIN: 1219–AA81

Response to National Institute for Occupational Safety and Health (NIOSH) Criteria Document

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Response to NIOSH criteria document.

SUMMARY: On November 7, 1995, the Mine Safety and Health Administration (MSHA) received a criteria document from the National Institute for Occupational Safety and Health (NIOSH) entitled *Criteria for a Recommended Standard: Occupational Exposure to Respirable Coal Mine Dust* (Criteria Document), which contains a number of recommendations for reducing occupational health risks associated with exposures to respirable coal mine dust and crystalline silica. The Federal Mine Safety and Health Act of 1977 (Mine Act) requires MSHA to issue a public response to such criteria documents.

MSHA has determined that it will respond to the Criteria Document by developing a proposed rule to enhance protection for miners from exposure to respirable coal mine dust and crystalline silica. Although MSHA will begin preliminary work on a proposed rule, the Agency will defer full development of the rule until it can consider the broad range of recommendations expected to be issued in the fall by the Secretary's Advisory Committee to Eliminate Pneumoconiosis among Coal Mine Workers.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Room 631, Arlington, Virginia 22203, 703–235–1910.

SUPPLEMENTARY INFORMATION:

I. Rulemaking History

The Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.*, (Mine Act) authorizes the National Institute for Occupational Safety and Health (NIOSH) of the U.S. Department of Health and Human Services to recommend that the Secretary of Labor promulgate specific occupational safety and health standards to achieve the objectives of the Mine Act. By means of criteria documents, NIOSH notifies MSHA of its recommendations for health and safety standards. When the Secretary of Labor receives any such recommendations from NIOSH, Section 101(a)(1) of the Mine Act requires him to take one of three actions within 60 days: (1) refer such recommendations to an advisory committee; (2) publish such recommendations as a proposed rule; or (3) publish in the Federal Register his determination not to do so and his reasons therefor.

On November 7, 1995, NIOSH submitted to MSHA a Criteria Document addressing the occupational health risks associated with exposure to respirable coal mine dust and crystalline silica. The criteria document contained a number of recommendations, including that MSHA reduce its permissible exposure limit for respirable coal mine dust and establish a separate standard for crystalline silica.

Although the statutory deadline for MSHA's response fell on January 7, 1996, the funding lapse for the U.S. Department of Labor and the resulting shutdown prevented timely action on this matter. On January 10, 1996, MSHA informed the public by notice in the Federal Register (61 FR 731) that it would respond to the Criteria Document as quickly as possible after the resumption of normal agency operations.

II. Agency Determination

MSHA has determined that it will respond to the NIOSH Criteria Document through the publication of a proposed rule derived from the recommendations in the Document. The proposed rule will address enhanced protections for surface and underground coal miners from exposure to respirable coal mine dust and crystalline silica.

Although MSHA will begin the background work necessary to develop such a rule, the Agency will delay full development of the proposed rule until it has received and considered the recommendations of the Advisory Committee to Eliminate Pneumoconiosis among Coal Mine Workers, which is currently addressing a number of issues that are the subject of recommendations in the Criteria Document. The Advisory Committee was established by the Secretary of Labor on January 31, 1995, and was charged with making recommendations for improved standards and other appropriate action in a number of areas, including permissible exposure limits to eliminate black lung disease and silicosis; the means to control respirable coal mine dust levels; improved monitoring of respirable coal mine dust levels and the role of the miner in that monitoring; and the adequacy of the