

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## 29 CFR Part 1926

[Docket No. S-206B]

## Safety Standards for Fall Protection in the Construction Industry

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; correcting amendment.

**SUMMARY:** Negotiated rulemaking is currently underway to develop a proposed revision of OSHA's standards for steel erection in subpart R of part 1926. That proposal is expected to include fall protection requirements for employees performing steel erection work. OSHA has concluded that the Agency's recently revised general requirements for fall protection (subpart M of part 1926) should be amended at this time to clarify that they do not apply to any steel erection activities. Therefore, OSHA is withdrawing amendments to subpart E which have not yet become effective and is amending certain provisions of subpart M of part 1926 in order to maintain the fall protection requirements for steel erection that were in effect before the issuance of revised subpart M.

**EFFECTIVE DATE:** This document is effective on August 2, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Liblong, Director of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219-8151.

## SUPPLEMENTARY INFORMATION:

## I. Background

On August 9, 1994, the Occupational Safety and Health Administration (OSHA) issued a final rule on Fall Protection in the Construction Industry, 29 CFR part 1926, subpart M (59 FR 40672), which became effective, except as described below, on February 6, 1995. With respect to steel erection activities, the new subpart M established the duty to provide fall protection for employees engaged in steel erection in structures other than buildings (revised §§ 1926.500(a)(2)(iii), and 1926.501(b)) and established the fall protection systems criteria and training requirements for employees engaged in all steel erection work (revised §§ 1926.500(a)(2)(iii), (a)(3), (a)(4), 1926.502, and 1926.503).

On October 7, 1994, five steel erection companies petitioned OSHA for an administrative stay of final subpart M to the extent the standard applies to steel erection activities. They argued that OSHA had not given fair notice that subpart M would apply to the steel erection industry at all, and that, in consequence, they did not have the opportunity to comment on this issue.

After reviewing the rulemaking record in light of petitioner's fair notice claims, OSHA agreed that the petitioners and other interested persons did not receive adequate notice of OSHA's intention that some steel erection activities would be covered by revised subpart M. Because of the notice deficiency, OSHA recognized that the rulemaking record was incomplete with respect to steel erection and that revised subpart M was not a final rule to the extent it applied to steel erection.

Accordingly, OSHA granted the request for an administrative stay and delayed the effective date of revisions to subpart M and subpart E, to the extent they applied to steel erection, until August 6, 1995 (60 FR 5131, January 26, 1995). OSHA explained in the January 1995 notice that it intended to reopen the subpart M record for supplemental comments concerning subpart M coverage of certain steel erection work. See 60 FR 5131.

For construction activity other than steel erection, revised subpart M and supporting amendments to subparts E, H, N, P, Q, and V became effective on February 6, 1995.

At the time OSHA granted the petitioners' request for an administrative stay and delayed the effective date of revised subpart M, a negotiated rulemaking committee was in the process of developing a proposal to revise 29 CFR part 1926, subpart R. Subpart R currently applies to steel erection of buildings. The Steel Erection Negotiated Rulemaking Advisory Committee, SENRAC, was expected to issue a proposal in June 1995 which would, among other things, expand subpart R's scope. In order to avoid overlap or conflict between two rulemakings concerning steel erection fall hazards, OSHA decided to wait to reopen subpart M for additional comment concerning coverage of steel erection until after SENRAC's June proposal made clear which steel erection activities would remain unregulated by subpart R. Accordingly, OSHA delayed the effective date of revisions to subpart E and subpart M purporting to apply to steel erection for six months, or until August 6, 1995 (60 FR 5131, January 26, 1995).

To date, SENRAC has not decided which steel structures will be subject to subpart R's fall protection requirements. Accordingly, OSHA has granted SENRAC additional time to develop a proposal to revise subpart R. In light of these developments, further extending the administrative stay of subpart M would prolong indefinitely the time in which the text of the standard does not reflect the standard's actual scope. OSHA has decided therefore that subpart M should be amended at this time to accurately reflect that it does not cover steel erection and that subpart E should be amended so that the generic fall protection provisions that have applied to steel erection continue in effect.

OSHA intends, after the SENRAC proposal is issued and the scope of the subpart R revision rulemaking is definite, to formally propose to amend subpart M to include any steel erection activity omitted from the subpart R revision process.

Until subparts M and R are finally revised, the Agency's enforcement policy on fall protection during steel erection is the policy outlined in Deputy Assistant Secretary Stanley's July 10, 1995 memorandum to the Office of Field Programs, "Fall Protection in Steel Erection." The memorandum provides that the term "steel erection activities" means the movement and erection of skeleton steel members (structural steel) in or on buildings or non-building structures. It includes the initial connecting of steel, employees moving point-to-point, installing metal floor or roof decking, welding, bolting and similar activities.

The memorandum further provides that steel erection does not include the erection of steel members such as lintels, stairs, railings, curtainwalls, windows, architectural metalwork, column covers, catwalks, and similar non-skeletal items or the placement of reinforcing rods in concrete structures.

Accordingly, OSHA is amending subpart M and subpart E in order to maintain, until such time as further rulemaking procedures may be initiated and completed, the fall protection requirements for steel erection that were in effect before the issuance of revised subpart M.

## II. Summary and Explanation

## A. Personal Protective Equipment—Subpart E

OSHA is amending subpart E to withdraw the actions whereby the Agency removed §§ 1926.104, Safety belts, lifelines and lanyards; 1926.105, safety nets; and 1926.107 (b), (c) and (f)