EFFECTIVE DATE: As of February 6, 1995, the effective date for items 4, 5, 6, and 7, in the **Federal Register** document of August 9, 1994, (59 FR 40729) is delayed until August 6, 1995. In addition, OSHA is not applying subpart M to the non-building steel erection industry until August 6, 1995.

FOR FURTHER INFORMATION CONTACT: Anne C. Cyr, Office 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) 219–8148.

SUPPLEMENTARY INFORMATION:

I. Why OSHA Is Delaying the Effective Date of Subpart M to the Extent the Standard Applies to Steel Erection Activities

On November 25, 1986, OSHA proposed to revise fall protection requirements for the construction industry and to consolidate those requirements in subpart M of Part 1926. (51 FR 43718, November 26, 1986). At that time, the agency stated that it intended to apply subpart M to all steel erection activities, but noted that "[a]dditional requirements to have fall protection for connectors and for workers on derrick and erection floors during steel erection would remain in subpart R—Steel Erection." 51 FR 43720.

Steel erection involves a wide variety of structures, roughly grouped into building and non-building structures. The term "building" includes singlestory and multi-story buildings, such as mill buildings, warehouses, gymnasiums, stadiums, power plants, and theaters as well as metal floor decking and metal roof decking installed during the erection process. The term "non-building structures" refers to the erection of steel members during the construction of bridges (including viaducts and overpasses), towers, tanks, antennae and similar structures.

After reviewing comments on the proposed revisions to subpart M, OSHA decided that fall hazards for workers engaged in the erection of steel framed buildings would be better addressed in a rulemaking to revise Subpart R, "Steel Erection." Subpart R applies to steel frame buildings and contains a variety of safety requirements, of which fall protection is only one part.

OSHA announced this decision in the **Federal Register** on January 26, 1988:

The comments received to date have convinced the Agency to develop a separate proposed rule which will provide comprehensive coverage for fall protection in steel erection. OSHA intends, therefore, that the consolidation and revision of fall protection provisions in Subpart M not apply to steel erection and that the current fall protection requirements of Part 1926 continue to cover steel erection until the steel erection rulemaking is completed.

53 FR 2053.

OSHA also requested information on issues it believed would assist the agency in developing a proposal to revise subpart R. In discussing the request for information, OSHA stated that the revised subpart R would apply to "the steel erection industry" and would provide fall protection for "steel erection workers." 54 FR 2053.

On March 22–23, 1988, OSHA held a hearing for the purpose of taking testimony relevant to: (a) the subpart M proposal (as revised in scope to exclude steel frame buildings), and (b) the January 1988 request for information concerning "fall protection in steel erection."

When OSHA stated in the January 26, 1988, **Federal Register** notice and at the March 1988 hearing that "steel erection" fall hazards would be addressed in a rulemaking to revise subpart R rather than in the subpart M rulemaking, it meant "steel erection fall hazards covered by the existing subpart R." Since existing subpart R related only to buildings, these statements, OSHA believed, conveyed its intention that steel erection of buildings was being eliminated from subpart M rulemaking but not non-building steel erection.

The final Subpart M standard was issued August 9, 1994. It imposes the duty to provide fall protection for all construction activities and workplaces except designated activities for which other subparts of part 1926 specify fall protection requirements. See § 1926.501(a)(2). With respect to steel erection, § 1926.500(a)(2)(iii) provides:

(2) Section 1926.501 sets forth those workplaces, conditions, operations, and circumstances for which fall protection shall be provided except as follows: * * *

(iii) Requirements relating to fall protection for employees performing steel erection work in buildings are provided in subpart R of this part.

59 FR 40730.

Steel erection of non-building structures is not exempt from coverage because no other subpart of part 1926 specifies fall protection requirements for those activities and because the existing rulemaking record contains substantial evidence of the feasibility and efficacy of subpart M requirements in non-building steel erection work.

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, regardless of the type of steel erection being performed. They asserted that they had understood OSHA's January 26, 1988, and March 22–23, 1988, statements to mean that subpart M would not apply to any 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, in consequence, petitioners were deprived of an opportunity to comment on this issue.

OSHA has reviewed the rulemaking record in light of petitioner's fair notice claims. In retrospect, OSHA agrees that the January 26, 1988, **Federal Register** notice and March 22–23, 1988, hearing statements did not clearly communicate OSHA's intention that non-building steel erection would continue to be included in the subpart M revision.

Because OSHA has determined that petitioners and other interested persons did not receive adequate notice that subpart M would apply to non-building steel erection activities, OSHA is not applying the standard steel erection until August 6, 1995. The delay of application will begin on February 6, 1995 and continue for 6 months, through August 6, 1995. OSHA is also delaying for 6 months the effective date of supporting amendments to subpart E (items 4, 5, 6 and 7) of the August 9, 1994, **Federal Register** notice). The purpose of the delay is to maintain the fall protection requirements for steel erection that were in effect before issuance of revised subpart M and to permit OSHA to reopen the subpart M record for supplemental comments concerning subpart M coverage of nonbuilding steel erection work.

Subpart M and supporting amendments to subparts R, H, N, P, Q, and V will become effective for all construction activity other than steel erection on February 6, 1995.

II. Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

It is issued under section 6(b) of the Occupational Safety and Health Act (29 U.S.C. 655), section 107 of the Construction Safety Act (40 U.S.C. 333), and 29 CFR part 1911.