

alternating-current submersible pumps(s) installed in return and bleeder entries and sealed areas in the McElroy Mine with conditions.

*Docket No.:* M-2005-042-C.

*FR Notice:* 70 FR 35710.

*Petitioner:* Consolidation Coal Company.

*Regulation Affected:* 30 CFR 75.507.

*Summary of Findings:* Petitioner's proposal is to use non-permissible submersible pumps installed in bleeder and return entries and sealed areas of the Shoemaker Mine. This is considered an acceptable alternative method for the Shoemaker Mine. MSHA is requiring, for this petition only, that the surface pump control and power circuits be examined in accordance with 30 CFR 77.502 requirements, since the control and power circuits that enter the underground portions of the mine cannot be examined in their entirety to satisfy the requirements of 30 CFR 75.512 or the 30 CFR 75.364(b)(7) weekly examination requirement. The petition for modification is granted for the use of low- and medium-voltage, three-phase, alternating-current submersible pump(s) installed in return and bleeder entries and in sealed areas in the Shoemaker Mine with conditions.

*Docket No.:* M-2005-050-C.

*FR Notice:* 70 FR 42102.

*Petitioner:* Andalex Resources, Inc.

*Regulation Affected:* 30 CFR 75.1002.

*Summary of Findings:* Petitioner's proposal is to use low-voltage or battery powered non-permissible, electronic testing, diagnostic equipment or other equipment within 150 feet of pillar workings, under controlled conditions. This is considered an acceptable alternative method for the Aberdeen Mine. The petition for modification is granted for the use of low-voltage or battery-powered non-permissible electronic testing and diagnostic equipment in or inby the last open crosscut or within 150 feet of pillar workings under controlled conditions, for testing and diagnosing the mining equipment for the Aberdeen Mine with conditions.

*Docket No.:* M-2005-051-C.

*FR Notice:* 70 FR 42103.

*Petitioner:* Bear Gap Coal Company.

*Regulation Affected:* 30 CFR 75.1100-2(a)(2).

*Summary of Findings:* Petitioner's proposal is to use portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage equipped with three 10 quart pails is not practical. The petitioner proposes to use two portable fire extinguishers near the slope bottom and an additional portable

fire extinguisher within 500 feet of the working face. This is considered an acceptable alternative method for the Bear Gap Coal Company #6 Slope Mine. The petition for modification is granted for firefighting equipment in the working section for the Bear Gap Coal Company #6 Slope Mine with conditions.

*Docket No.:* M-2005-055-C.

*FR Notice:* 70 FR 48984.

*Petitioner:* Black Stallion Coal Company, LLC.

*Regulation Affected:* 30 CFR 75.503.

*Summary of Findings:* Petitioner's proposal is to use 900 feet of trailing cable on Roof Bolters and Mobile Roof Supports for trailing cables that supply 480-volt, three-phase, alternating current to roof bolters and mobile roof supports. This is considered an acceptable alternative method for the Black Stallion Mine. The petition for modification is granted for trailing cables supplying 480-volt, three-phase alternating current to roof bolters and mobile roof supports and 550-volt, three-phase alternating current to shuttle cars for the Black Stallion Mine with conditions.

*Docket No.:* M-2005-058-C.

*FR Notice:* 70 FR 48984.

*Petitioner:* Dodge Hill Mining Company, LLC.

*Regulation Affected:* 30 CFR 75.1101-1(b).

*Summary of Findings:* Petitioner's proposal is to conduct weekly examinations and functional testing of the deluge fire suppression systems as an alternative method of complying with the standard. This is considered an acceptable alternative method for the Dodge Hill Mine No. 1. The petition for modification is granted for the deluge-type water spray systems installed at belt-conveyor drives in lieu of blow-off dust covers for nozzles for the Dodge Hill Mine No. 1 with conditions.

*Docket No.:* M-2005-059-C.

*FR Notice:* 70 FR 48984.

*Petitioner:* Hopkins County Coal, LLC.

*Regulation Affected:* 30 CFR 75.1700.

*Summary of Findings:* Petitioner's proposal is to plug and mine through oil and gas wells in all mineable coal beds. This is considered an acceptable alternative method for the Elk Creek Mine. The petition for modification is granted for the Elk Creek Mine with conditions.

*Docket No.:* M-2005-060-C.

*FR Notice:* 70 FR 52449.

*Petitioner:* Pacific Minerals.

*Regulation Affected:* 30 CFR 75.1100-2(e)(2).

*Summary of Findings:* Petitioner's proposal is to use two portable fire

extinguishers or one extinguisher having at least twice the minimum capacity in 30 CFR 75.1100-1(e) at each temporary electrical installation at the Bridger Underground Mine. This is considered an acceptable alternative method for the Bridger Underground Mine. The petition for modification is granted for the temporary electrical installations provided the petitioner maintains two portable fire extinguishers having at least the minimum capacity specified for a portable fire extinguisher in 30 CFR 75.1100-1(e), or one portable fire extinguisher with twice the minimum capacity specified in 30 CFR 75.1100-2(e) at each of the temporary electrical installations for the Bridger Underground Mine.

*Docket No.:* M-2005-061-C.

*FR Notice:* 70 FR 52449.

*Petitioner:* Andalex Resources, Inc.

*Regulation Affected:* 30 CFR 75.500(d).

*Summary of Findings:* Petitioner's proposal is to use low-voltage or battery-powered non-permissible, electronic testing, diagnostic equipment or other, in or inby the last open crosscut under controlled conditions. This is considered an acceptable alternative method for the Aberdeen Mine. The petition for modification is granted for the use of low-voltage or battery-powered non-permissible electronic testing and diagnostic equipment in or inby the last open crosscut or within 150 feet of pillar workings or longwall face, under controlled conditions, for testing and diagnosing the mining equipment at the Aberdeen Mine with conditions.

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[V-04-1]

#### Commonwealth Dynamics, Inc., Mid-Atlantic Boiler & Chimney, Inc.,<sup>1</sup> and R and P Industrial Chimney Co., Inc.; Grant of a Permanent Variance

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

<sup>1</sup> Designated as Alberici Mid-Atlantic, LLC ("Alberici") on the notice of an application for a permanent variance and interim order published at 69 FR 48754. Mid-Atlantic Boiler & Chimney, Inc. ("MAB&C") has acquired Alberici's chimney-construction assets, including equipment, contracts, and employees. Prior to this acquisition, Alberici

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**ACTION:** Notice of a grant of a permanent variance.

**SUMMARY:** This notice announces the grant of a permanent variance to Commonwealth Dynamics, Inc., Mid-Atlantic Boiler & Chimney, Inc., and R and P Industrial Chimney Co., Inc. (“the employers”). The permanent variance addresses the provision that regulates the tackle used for boatswains’ chairs (29 CFR 1926.452 (o)(3)), as well as the provisions specified for personnel hoists by paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552. Instead of complying with these provisions, the employers must comply with a number of alternative conditions listed in this grant; these alternative conditions regulate rope-guided personnel-hoisting systems used during inside or outside chimney construction to raise or lower employees in personnel cages, personnel platforms, and boatswains’ chairs between the bottom landing of a chimney and an elevated work location. Accordingly, OSHA finds that these alternative conditions protect employees at least as well as the requirements specified by 29 CFR 1926.452(o)(3) and 1926.552(c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16).

**DATES:** The effective date of the permanent variance is March 1, 2006.

**FOR FURTHER INFORMATION:** For information about this notice contact Ms. MaryAnn S. Garrahan, Director, Office of Technical Programs and Coordination Activities, Room N-3655, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2110; fax (202) 693-1644. You may obtain additional copies of this notice from the Office of Publications, Room N-3101, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1888. For electronic copies of this notice, contact the Agency on its Web page at <http://www.osha.gov>, and select “Federal Register,” “Date of Publication,” and then “2005.”

*Additional information also is available from the following OSHA Regional Offices:*

U.S. Department of Labor, OSHA, JFK Federal Building, Room E340, Boston,

notified employees who were being transferred to MAB&C that it has requested OSHA to transfer its interest in the variance application and interim order to MAB&C. In addition, an authorized representative for MAB&C certified that MAB&C agrees to comply with the grant of an interim order published at 69 FR 48754, and to comply with the conditions of the variance grant resulting from the variance application. (See Ex. 5-19.)

MA 02203, telephone: (617) 565-9860, fax: (617) 565-9827.

U.S. Department of Labor, OSHA, 201 Varick St., Room 670, New York, NY 10014, telephone: (212) 337-2378, fax: (212) 337-2371.

U.S. Department of Labor, OSHA, the Curtis Center, Suite 740 West, 170 South Independence Mall West, Philadelphia, PA 19106-3309, telephone: (215) 861-4900, fax: (215) 861-4904.

U.S. Department of Labor, OSHA, Atlanta Federal Center, 61 Forsyth St. SW., Room 6T50, Atlanta, GA 30303, telephone: (404) 562-2300, fax: (404) 562-2295.

U.S. Department of Labor, OSHA, 230 South Dearborn St., Room 3244, Chicago, IL 60604, telephone: (312) 353-2220, fax: (312) 353-7774.

U.S. Department of Labor, OSHA, City Center Square, 1100 Main St., Suite 800, Kansas City, MO 64105, telephone: (816) 426-5861, fax: (816) 426-2750.

U.S. Department of Labor, OSHA, 525 Griffin St., Room 602, Dallas, TX 75202, telephone: (214) 767-4731/-4736 (ext. 224), fax: (214) 767-4693/-4188.

U.S. Department of Labor, OSHA, 1999 Broadway, Suite 1690, P.O. Box 46550, Denver, CO 80201-6550, telephone: (720) 264-6550, fax: (720) 264-6585.

U.S. Department of Labor, OSHA, 71 Stevenson St., Room 420, San Francisco, CA 94105, telephone: (415) 975-4310, fax: (415) 744-4319.

U.S. Department of Labor, OSHA, 1111 Third Ave., Suite 715, Seattle, WA 98101-3212, telephone: (206) 553-5930, fax: (206) 553-6499.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

In the past 30 years, a number of chimney-construction companies have demonstrated to OSHA that several personnel-hoist requirements (*i.e.*, paragraphs (c)(1), (c)(2), (c)(3), (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552), as well as the tackle requirements for boatswains’ chairs (*i.e.*, paragraph (o)(3) of 29 CFR 1926.452), result in access problems that pose a serious danger to their employees. These companies requested permanent variances from these requirements, and proposed alternative equipment and procedures to protect employees while being transported to and from their elevated worksites during chimney construction and repair. The Agency subsequently granted these companies permanent variances based on the proposed alternatives (see 38 FR 8545 (April 3, 1973), 44 FR 51352 (August 31,

1979), 50 FR 40627 (October 4, 1985), 52 FR 22552 (June 12, 1987), and 68 FR 52961 (September 8, 2003)).<sup>2</sup>

On October 27, 2003, January 20, 2004, and March 16, 2004, Commonwealth Dynamics, Inc., R and P Industrial Chimney Co., Inc., and Mid-Atlantic Boiler & Chimney, Inc., respectively, applied for a permanent variance from the same personnel-hoist and boatswains’-chair requirements as the previous companies, and proposed as an alternative to these requirements the same equipment and procedures approved by OSHA in the earlier variances. The Agency published their variance application in the **Federal Register** on August 10, 2004 (69 FR 48754). OSHA received no hearing requests in response to these **Federal Register** notices. However, a private individual and a number of States and Territories having OSHA-approved safety and health programs (“State-Plan States and Territories”) submitted comments on the proposed alternative. In addition, several other State-Plan States and Territories have commented on an earlier variance application involving the same standards submitted by other employers engaged in chimney construction and repair;<sup>3</sup> OSHA is relying on these previous comments to determine the position of these State-Plan States and Territories on the variance application submitted by the present employers. (See sections IV (“Comments on the Proposed Variance”) and V (“Multi-State Variance”) below for a discussion of these comments.)

Commonwealth Dynamics, Inc., Mid-Atlantic Boiler & Chimney, Inc., and R and P Industrial Chimney Co., Inc. (“the employers”) construct, remodel, repair, maintain, inspect, and demolish tall chimneys made of reinforced concrete, brick, and steel. This work, which occurs throughout the United States, requires the employers to transport employees and construction material to and from elevated work platforms and scaffolds located, respectively, inside and outside tapered chimneys. While tapering contributes to the stability of a chimney, it necessitates frequent relocation of, and adjustments to, the

<sup>2</sup> Zurn Industries, Inc. received two permanent variances from OSHA. The first variance, granted on May 14, 1985 (50 FR 20145), addressed the boatswains’-chair provision (then in paragraph (l)(5) of 29 CFR 1926.451), as well as the hoist-platform requirements of paragraphs (c)(1), (c)(2), (c)(3), and (c)(14)(i) of 29 CFR 1926.552. The second variance, granted on June 12, 1987 (52 FR 22552), includes these same paragraphs, as well as paragraphs (c)(4), (c)(8), (c)(13), and (c)(16) of 29 CFR 1926.552.

<sup>3</sup> The previous variance application was from American Boiler and Chimney Co. and Oak Park Chimney Corp. (68 FR 52961, September 8, 2003).

work platforms and scaffolds so that they will fit the decreasing circumference of the chimney as construction progresses upwards.

To transport employees to various heights inside and outside a chimney, the employers proposed in their variance application to use a hoist system that lifts and lowers personnel-transport devices that include personnel cages, personnel platforms, or boatswains' chairs. In this regard, the employers proposed to use personnel cages, personnel platforms, or boatswains' chairs solely to transport employees with the tools and materials necessary to do their work, and not to transport only materials or tools on these devices in the absence of employees. In addition, the employers proposed to attach a hopper or concrete bucket to the hoist system to raise or lower material inside or outside a chimney.

The employers also proposed to use a hoist engine, located and controlled outside the chimney, to power the hoist system. The proposed system consisted of a wire rope that: spools off the winding drum (also known as the hoist drum or rope drum) into the interior of the chimney; passes to a footblock that redirects the rope from the horizontal to the vertical planes; goes from the footblock through the overhead sheaves above the elevated platform; and finally drops to the bottom landing of the chimney where it connects to a personnel- or material-transport device. The cathead, which is a superstructure at the top of a derrick, supports the overhead sheaves. The overhead sheaves (and the vertical span of the hoist system) move upward with the derrick as chimney construction progresses. Two guide cables, suspended from the cathead, eliminate swaying and rotation of the load. If the hoist rope breaks, safety clamps activate and grip the guide cables to prevent the load from falling. The employers proposed to use a headache ball, located on the hoist rope directly above the load, to counterbalance the rope's weight between the cathead sheaves and the footblock.

Additional conditions that the employers proposed to follow to improve employee safety included:

- Attaching the wire rope to the personnel cage using a keyed-screwpin shackle or positive-locking link;
- Adding limit switches to the hoist system to prevent overtravel by the personnel-or material-transport devices;
- Providing the safety factors and other precautions required for personnel hoists specified by the pertinent provisions of 29 CFR 1926.552(c),

including canopies and shields to protect employees located in a personnel cage from material that may fall during hoisting and other overhead activities;

- Providing falling-object protection for scaffold platforms as specified by 29 CFR 1926.451(h)(1);
- Conducting tests and inspections of the hoist system as required by 29 CFR 1926.20(b)(2) and 1926.552(c)(15);
- Establishing an accident-prevention program that conforms to 29 CFR 1926.20(b)(3);
- Ensuring that employees who use a personnel platform or boatswains' chair wear full-body harnesses and lanyards, and that the lanyards are attached to the lifelines during the entire period of vertical transit; and
- Securing the lifelines (used with a personnel platform or boatswains' chair) to the rigging at the top of the chimney and to a weight at the bottom of the chimney to provide maximum stability to the lifelines.

## II. Proposed Variance From 29 CFR 1926.452(o)(3)

The employers noted in their variance request that it is necessary, on occasion, to use a boatswains' chair to transport employees to and from a bracket scaffold on the outside of an existing chimney during flue installation or repair work, or to transport them to and from an elevated scaffold located inside a chimney that has a small or tapering diameter. Paragraph (o)(3) of 29 CFR 1926.452, which regulates the tackle used to rig a boatswains' chair, states that this tackle must "consist of correct size ball bearings or bushed blocks containing safety hooks and properly 'eye-spliced' minimum five-eighth (5/8) inch diameter first-grade manila rope [or equivalent rope]."

The primary purpose of this paragraph is to allow an employee to safely control the ascent, descent, and stopping locations of the boatswains' chair. However, the employers stated in their variance request that, because of space limitations, the required tackle is difficult or impossible to operate on some chimneys that are over 200 feet tall. Therefore, as an alternative to complying with the tackle requirements specified by 29 CFR 1926.452(o)(3), the employers proposed to use the hoisting system described above in section I ("Background") of this notice to raise or lower employees in a personnel cage to work locations both inside and outside a chimney. In addition, the employers proposed to use a personnel cage for this purpose to the extent that adequate space is available, and to use a personnel platform when using a

personnel cage was infeasible because of limited space. When available space makes using a personnel platform infeasible, the employers proposed to use a boatswains' chair to lift employees to work locations. The proposed variance limited use of the boatswains' chair to elevations above the last work location that the personnel platform can reach; under these conditions, the employers proposed to attach the boatswains' chair directly to the hoisting cable only when the structural arrangement precludes the safe use of the block and tackle required by 29 CFR 1926.452(o)(3).

## III. Proposed Variance from 29 CFR 1926.552(c)

Paragraph (c) of 29 CFR 1926.552 specifies the requirements for enclosed hoisting systems used to transport employees from one elevation to another. This paragraph ensures that employers transport employees safely to and from elevated work platforms by mechanical means during the construction, alteration, repair, maintenance, or demolition of structures such as chimneys. However, this standard does not provide specific safety requirements for hoisting employees to and from elevated work platforms and scaffolds in tapered chimneys; the tapered design requires frequent relocation of, and adjustment to, the work platforms and scaffolds. The space in a small-diameter or tapered chimney is not large enough or configured so that it can accommodate an enclosed hoist tower. Moreover, using an enclosed hoist tower for outside operations exposes employees to additional fall hazards because they need to install extra bridging and bracing to support a walkway between the hoist tower and the tapered chimney.

Paragraph (c)(1) of 29 CFR 1926.552 requires the employers to enclose hoist towers located outside a chimney on the side or sides used for entrance to, and exit from, the chimney; these enclosures must extend the full height of the hoist tower. The employers asserted in their proposed variance that it is impractical and hazardous to locate a hoist tower outside tapered chimneys because it becomes increasingly difficult, as a chimney rises, to erect, guy, and brace a hoist tower; under these conditions, access from the hoist tower to the chimney or to the movable scaffolds used in constructing the chimney exposes employees to a serious fall hazard. Additionally, they noted that the requirement to extend the enclosures 10 feet above the outside scaffolds often exposes the employees

involved in building these extensions to dangerous wind conditions.

Paragraph (c)(2) of 29 CFR 1926.552 requires that employers enclose all four sides of a hoist tower even when the tower is located inside a chimney; the enclosure must extend the full height of the tower. In the proposed variance, the employers contended that it is hazardous for employees to erect and brace a hoist tower inside a chimney, especially small-diameter or tapered chimneys or chimneys with sublevels, because these structures have limited space and cannot accommodate hoist towers; space limitations result from chimney design (e.g., tapering), as well as reinforced steel projecting into the chimney from formwork that is near the work location.

As an alternative to complying with the hoist-tower requirements of 29 CFR 1926.552(c)(1) and (c)(2), the employers proposed to use the rope-guided hoist system discussed in section I (“Background”) of this notice to transport employees to and from work locations inside and outside chimneys. They claimed that this hoist system would make it unnecessary for them to comply with other provisions of 29 CFR 1926.552(c) that specify requirements for hoist towers, including:

- (c)(3)—Anchoring the hoist tower to a structure;
- (c)(4)—Hoistway doors or gates;
- (c)(8)—Electrically interlocking entrance doors or gates that prevent hoist movement when the doors or gates are open;
- (c)(13)—Emergency stop switch located in the car;
- (c)(14)(i)—Using a minimum of two wire ropes for drum-type hoisting; and
- (c)(16)—Construction specifications for personnel hoists, including materials, assembly, structural integrity, and safety devices.

The employers asserted that the proposed hoisting system protected employees at least as effectively as the personnel-hoist requirements of 29 CFR 1926.552(c). The following section of this preamble reviews the comments received on the employers’ proposed variance.

#### IV. Comments on the Proposed Variance

The only comment from the private sector regarding the proposed variance was submitted by Mr. Bradley Glosson of MACB Technical Services (Ex. 4–1). Mr. Glosson recommended adopting American National Safety Standard ASME B30.23 (“Personnel Lifting Systems”), stating:

Any variance approved should be based upon a uniform, nationally endorsed and

professionally established set of criteria for the safe design and operational issues. Review and consideration of the B30.3 Standard, and the President[ial] Order to use existing National Standards wherever feasible, should be undertaken prior to issuance of this variance.

In response to this comment, the Agency notes that the employer seeking a permanent variance proposes the alternative conditions in the variance request. The Agency’s responsibility under section (6)(d) of the Occupational Safety and Health Act of 1970 is to determine “by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used \* \* \* will provide employment and places of employment to [their] employees which are as safe and healthful as those which would prevail if [they] complied with the standard.” (See 29 U.S.C. 655.) Therefore, employers, not the Agency, determine what will be proposed as an alternative to an OSHA standard.

The “Presidential Order” to which Mr. Glosson refers is most likely Office of Management and Budget (OMB) Circular A–119 (“Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities”), the most recent edition of which was published by OMB on August 19, 2002. The Circular does not refer to variances. Variances are applied narrowly (only to the employers that request them) and typically involve only a few provisions of a standard. As explained above, OSHA’s obligation to issue variances is set forth in Section 6(d) of the OSH Act; the granting of these permanent variances is in accord with OSHA’s statutory responsibilities.

OSHA also received comments from 17 of the 26 States and Territories that operate occupational safety and health State plans approved under section 18 of the Occupational Safety and Health Act of 1970 (i.e., “State-Plan States”; 29 U.S.C. 667). The Agency received these 17 comments after it sent each of these 26 States and Territories a copy of the application and requested that they provide information on whether their standards (the ones that would be affected by the proposed variance) were identical to the corresponding Federal OSHA standards, and, if so, did they agree to accept the alternative conditions proposed by the employers.

None of the 17 State-Plan States and Territories that submitted comments provided substantive remarks regarding the conditions proposed in the variance application. Ten of these 17 State-Plan States and Territories reported that they

have standards that are identical to the Federal OSHA standards, and that they agreed to accept the proposed alternative. These 10 State-Plan States and one Territory are: Arizona, Indiana, Maryland, Minnesota, North Carolina, Oregon, Puerto Rico, Tennessee, Virginia, and Wyoming (Exs. 5–1, 5–3–1, 5–16, 5–14, , 5–11, 5–10, 5–9, 5–7, 5–6, and 5–5, respectively). Three of the State-Plan States (Kentucky, Michigan, and South Carolina) agreed with the proposed alternative, but did so conditionally. Kentucky (Ex. 5–4) noted that, while it agreed with the terms of the variance, Kentucky statutory law requires affected employers to apply to the State for a State variance. Michigan (Ex. 5–15) agreed to the alternative conditions, but noted that its standards are not identical to the OSHA standards covered by the variance application. Therefore, Michigan cautioned that employers electing to use the variance in that State must comply with several provisions in the Michigan standards that are not addressed in the OSHA standard. South Carolina (Ex. 5–8) indicated that it would accept the alternative conditions, but noted that, for the grant of such a variance to be accepted by the South Carolina Commissioner of Labor, the employers must file the grant at the Commissioner’s office in Columbia, South Carolina.

Three State-Plan States (Connecticut (Ex. 5–2), New Jersey (Ex. 5–13), and New York (Ex. 5–12)) have OSHA-approved safety and health programs that cover only public-sector (i.e., State and local government) employment. While OSHA received no comment from the Virgin Islands, its State-Plan program also covers only public-sector employment. Therefore, in these State-Plan States and one Territory, the authority to cover private-sector employers under the variance continues to reside with Federal OSHA.

Washington State (Ex. 5–17) could not agree to the alternative conditions because its applicable standards were not identical to the OSHA standards. Therefore, the employers must apply separately for a permanent variance from Washington State.

In response to a previous application by chimney-construction companies for an identical variance (see footnote 3), four State-Plan States (Alaska, Nevada, New Mexico, and Vermont) indicated that their standards were the same as the Federal OSHA standards, and agreed to the terms of the variance. Utah agreed to accept the Federal variance, but requires the employers to contact the Occupational Safety and Health Division, Labor Commission of Utah,

regarding a procedural formality that must be completed before implementing the variance in that State. California, Iowa, and Hawaii have standards that either differ from the Federal standards or did not agree to the alternative conditions proposed in the variance application, and would not permit the employers to implement in their States any variance resulting from the application without further application to the State.

#### V. Multi-State Variance

The variance application stated that the employers perform chimney work in a number of geographic locations in the United States, some of which could include locations in one or more of the States and Territories that operate OSHA-approved safety and health programs under section 18 of the Occupational Safety and Health Act of 1970 ("State-Plan States and Territories"; see 29 U.S.C. 651 *et seq.*). State-Plan States and Territories have primary enforcement responsibility over the work performed in those States and Territories. Under the provisions of 29 CFR 1952.9 ("Variances affecting multi-state employers") and 29 CFR 1905.14(b)(3) ("Actions on applications"), a permanent variance granted by the Agency becomes effective in State-Plan States and Territories as an authoritative interpretation of the applicants' compliance obligation when: (1) The relevant standards are the same as the Federal OSHA standards from which the applicants are seeking the permanent variance; and (2) the State-Plan State or Territory does not object to the terms of variance application.

OSHA requested comments on this application from each of the State-Plan States and Territories. The Agency noted in its request that, absent any comment, it would assume that the State or Territory's position regarding this variance application was the same as the position it took on a previous variance application (see footnote 3). As noted under the previous section, several State-Plan States and Territories did not submit comments on this variance application, indicating that they continue to maintain their previous positions regarding the alternative conditions proposed under this variance application. The following paragraph provides a summary of the positions taken by the State-Plan States and Territories on the proposed alternative conditions.

The following thirteen State-Plan States and one Territory have identical standards and agreed to accept the alternative conditions: Alaska, Arizona, Indiana, Maryland, Minnesota, Nevada,

New Mexico, North Carolina, Oregon, Puerto Rico, Tennessee, Vermont, Virginia, and Wyoming. Of the remaining 12 States and Territories with OSHA-approved State plans, three of the States and one Territory (Connecticut, New Jersey, New York, and the Virgin Islands) cover only public-sector employees and have no authority over the private-sector employees addressed in the variance application (*i.e.*, that authority continues to reside with Federal OSHA). Additionally, four States (Kentucky, Michigan, South Carolina, and Utah) accepted the proposed alternative when specific additional requirements are fulfilled, while three States and one Territory (California, Hawaii, Iowa, and Washington) either had different requirements in their standards or declined to accept the terms of the variance.

Based on the responses received from State-Plan States and Territories, the permanent Federal OSHA variance will be effective in the following State-Plan States and one Territory: Alaska, Arizona, Indiana, Maryland, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, Tennessee, Virginia, Vermont, and Wyoming; and in Kentucky, Michigan, South Carolina, and Utah when the employers meet specific additional requirements. However, this permanent variance does not apply in Washington, California, Hawaii, or Iowa. As stated earlier, in the three States and one Territory (Connecticut, New Jersey, New York, and the Virgin Islands) that have State-Plan programs that cover only public-sector employees, authority over the employers under the permanent variance continues to reside with Federal OSHA.

#### VI. Decision

Commonwealth Dynamics, Inc., Mid-Atlantic Boiler & Chimney, Inc., and R and P Industrial Chimney Co., Inc. seek a permanent variance from the provision that regulates the tackle used for boatswains' chairs (29 CFR 1926.452 (o)(3)), as well as the provisions specified for personnel hoists by paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552. Paragraph (o)(3) of 29 CFR 1926.452 states that the tackle used for boatswains' chairs must "consist of correct size ball bearings or bushed blocks containing safety hooks and properly 'eye-spliced' minimum five-eighths (5/8) inch diameter first-grade manila rope [or equivalent rope]." The primary purpose of this provision is to allow an employee to safely control the ascent, descent, and stopping locations

of the boatswains' chair. The proposed alternative to these requirements allows the employer to use a boatswains' chair to lift employees to work locations inside and outside a chimney when both a personnel cage and a personnel platform are infeasible. The employers proposed to attach the boatswains' chair to the hoisting system described as an alternative for paragraph (c) of 29 CFR 1926.552.

Paragraph (c) of 29 CFR 1926.552 specifies the requirements for enclosed hoisting systems used to transport personnel from one elevation to another. This paragraph ensures that employers transport employees safely to and from elevated work platforms by mechanical means during construction work involving structures such as chimneys. In this regard, paragraph (c)(1) of 29 CFR 1926.552 requires employers to enclose hoist towers located outside a chimney on the side or sides used for entrance to, and exit from, the structure; these enclosures must extend the full height of the hoist tower. Under the requirements of paragraph (c)(2) of 29 CFR 1926.552, employers must enclose all four sides of a hoist tower located inside a chimney; these enclosures also must extend the full height of the tower.

As an alternative to complying with the hoist-tower requirements of 29 CFR 1926.552(c)(1) and (c)(2), the employers proposed to use a rope-guided hoist system to transport employees to and from elevated work locations inside and outside chimneys. The proposed hoist system includes a hoist machine, cage, safety cables, and safety measures such as limit switches to prevent overrun of the cage at the top and bottom landings, and safety clamps that grip the safety cables if the main hoist line fails. To transport employees to and from elevated work locations, the employers proposed to attach a personnel cage to the hoist system. However, when they can demonstrate that adequate space is not available for the cage, they may use a personnel platform above the last worksite that the cage can reach. Further, when the employers show that space limitations make it infeasible to use a work platform for transporting employees, they have proposed to use a boatswains' chair above the last worksite serviced by the personnel platform. Using the proposed hoist system as an alternative to the hoist-tower requirements of 29 CFR 1926.552(c)(1) and (c)(2) eliminates the need to comply with the other provisions of 29 CFR 1926.552(c) that specify requirements for hoist towers.

Accordingly, the employers have requested a permanent variance from these and related provisions (*i.e.*,

paragraphs (c)(3), (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16)).

After reviewing the variance application, as well as the comments made to the record regarding the application, OSHA has made only minor editorial amendments and technical corrections to the proposed variance.<sup>4</sup> Therefore, under section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), and based on the record discussed above, the Agency finds that when the employers comply with the conditions of the following order, their employees will be exposed to working conditions that are at least as safe and healthful as they would be if the employers complied with paragraph (o)(3) of 29 CFR 1926.452, and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552.

## VII. Order

OSHA issues this order authorizing Commonwealth Dynamics, Inc., Mid-Atlantic Boiler & Chimney, Inc., and R and P Industrial Chimney Co., Inc. (“the employers”) to comply with the following conditions instead of complying with paragraph (o)(3) of 29 CFR 1926.452 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552:

### 1. Scope of the Permanent Variance

(a) This permanent variance applies only when the employers use a rope-guided hoist system during inside or outside chimney construction to raise or lower their employees between the bottom landing of a chimney and an elevated work location on the inside or outside surface of the chimney.

(b) When using a rope-guided hoist system as specified in this permanent variance, the employers must:

(i) Use the personnel cages, personnel platforms, or boatswains’ chairs raised and lowered by the rope-guided hoist system solely to transport employees

<sup>4</sup> Among the technical corrections, OSHA added two conditions to the permanent variance. The first condition is a new paragraph 1(b) that requires the employers to use personnel cages, personnel platforms, or boatswains’ chairs only to transport employees with the tools and materials necessary to do their work, and to attach a hopper or concrete bucket to the hoist system for transporting other materials and tools inside or outside a chimney. The second condition revises paragraph 2(b) in the variance application by adding a requirement that employers attach a boatswains’ chair to the hoisting cable only when they can demonstrate that the structural arrangement of the chimney precludes the safe use of the block and tackle required by 29 CFR 1926.452(o)(3). Both of these technical corrections are consistent with language proposed by the employers and described in section III (SUPPLEMENTARY INFORMATION) of their variance application (see 69 FR 48755 and 48756).

with the tools and materials necessary to do their work; and

(ii) Attach a hopper or concrete bucket to the rope-guided hoist system to raise and lower all other materials and tools inside or outside a chimney.

(c) Except for the requirements specified by 29 CFR 1926.452(o)(3) and 1926.552(c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16), the employers must comply fully with all other applicable provisions of 29 CFR parts 1910 and 1926.

### 2. Replacing a Personnel Cage With a Personnel Platform or a Boatswains’ Chair

(a) *Personnel platform.* When the employers demonstrate that available space makes a personnel cage for transporting employees infeasible, they may replace the personnel cage with a personnel platform when they limit use of the personnel platform to elevations above the last work location that the personnel cage can reach.

(b) *Boatswains’ chair.* Employers must:

(i) Before using a boatswains’ chair, demonstrate that available space makes it infeasible to use a personnel platform for transporting employees;

(ii) Limit use of a boatswains’ chair to elevations above the last work location that the personnel platform can reach; and

(iii) Use a boatswains’ chair in accordance with block-and-tackle requirements specified by 29 CFR 1926.452(o)(3), unless they can demonstrate that the structural arrangement of the chimney precludes such use.

### 3. Qualified Competent Person

(a) The employers must:

(i) Provide a qualified competent person, as specified in paragraphs (f) and (m) of 29 CFR 1926.32, who is responsible for ensuring that the design, maintenance, and inspection of the hoist system comply with the conditions of this grant and with the appropriate requirements of 29 CFR part 1926 (“Safety and Health Regulations for Construction”); and

(ii) Ensure that the qualified competent person is present at ground level to assist in an emergency whenever the hoist system is raising or lowering employees.

(b) The employers must use a qualified competent person to design and maintain the cathead described under Condition 8 (“Cathead and Sheave”) below.

### 4. Hoist Machine

(a) *Type of hoist.* The employers must designate the hoist machine as a portable personnel hoist.

(b) *Raising or lowering a transport.*

The employers must ensure that:

(i) The hoist machine includes a base-mounted drum hoist designed to control line speed; and

(ii) Whenever they raise or lower a personnel or material hoist (e.g., a personnel cage, personnel platform, boatswains’ chair, hopper, concrete bucket) using the hoist system:

(A) The drive components are engaged continuously when an empty or occupied transport is being lowered (i.e., no “freewheeling”);

(B) The drive system is interconnected, on a continuous basis, through a torque converter, mechanical coupling, or an equivalent coupling (e.g., electronic controller, fluid clutches, hydraulic drives).

(C) The braking mechanism is applied automatically when the transmission is in the neutral position and a forward-reverse coupling or shifting transmission is being used; and

(D) No belts are used between the power source and the winding drum.

(c) *Power source.* The employers must power the hoist machine by an air, electric, hydraulic, or internal-combustion drive mechanism.

(d) *Constant-pressure control switch.*

The employers must:

(i) Equip the hoist machine with a hand- or foot-operated constant-pressure control switch (i.e., a “deadman control switch”) that stops the hoist immediately upon release; and

(ii) Protect the control switch to prevent it from activating if the hoist machine is struck by a falling or moving object.

(e) *Line-speed indicator.* The employers must:

(i) Equip the hoist machine with an operating line-speed indicator maintained in good working order; and

(ii) Ensure that the line-speed indicator is in clear view of the hoist operator during hoisting operations.

(f) *Braking systems.* The employers must equip the hoist machine with two (2) independent braking systems (i.e., one automatic and one manual) located on the winding side of the clutch or couplings, with each braking system being capable of stopping and holding 150 percent of the maximum rated load.

(g) *Slack-rope switch.* The employers must equip the hoist machine with a slack-rope switch to prevent rotation of the winding drum under slack-rope conditions.

(h) *Frame.* The employers must ensure that the frame of the hoist

machine is a self-supporting, rigid, welded-steel structure, and that holding brackets for anchor lines and legs for anchor bolts are integral components of the frame.

(i) *Stability.* The employers must secure hoist machines in position to prevent movement, shifting, or dislodgement.

(j) *Location.* The employers must:

(i) Locate the hoist machine far enough from the footblock to obtain the correct fleet angle for proper spooling of the cable on the drum; and

(ii) Ensure that the fleet angle remains between one-half degree ( $1/2^\circ$ ) and one and one-half degrees ( $1\ 1/2^\circ$ ) for smooth drums, and between one-half degree ( $1/2^\circ$ ) and two degrees ( $2^\circ$ ) for grooved drums, with the lead sheave centered on the drum.<sup>1</sup>

(k) *Drum and flange diameter.* The employers must:

(i) Provide a winding drum for the hoist that is at least 30 times the diameter of the rope used for hoisting; and

(ii) Ensure that the winding drum has a flange diameter that is at least one and one-half ( $1\ 1/2$ ) times the winding-drum diameter.

(l) *Spooling of the rope.* The employers must never spool the rope closer than two (2) inches (5.1 cm) from the outer edge of the winding-drum flange.

(m) *Electrical system.* The employers must ensure that all electrical equipment is weatherproof.

(n) *Limit switches.* The employers must equip the hoist system with limit switches and related equipment that automatically prevent overtravel of a personnel cage, personnel platform, boatswains' chair, or material-transport device at the top of the supporting structure and at the bottom of the hoistway or lowest landing level.

## 5. Methods of Operation

(a) *Employee qualifications and training.* The employers must:

(i) Ensure that only trained and experienced employees, who are knowledgeable of hoist-system operations, control the hoist machine; and

(ii) Provide instruction, periodically and as necessary, on how to operate the hoist system, to each employee who uses a personnel cage for transportation.

(b) *Speed limitations.* The employers must not operate the hoist at a speed in excess of:

(i) Two hundred and fifty (250) feet (76.9 m) per minute when a personnel cage is being used to transport employees;

(ii) One hundred (100) feet (30.5 m) per minute when a personnel platform or boatswains' chair is being used to transport employees; or

(iii) A line speed that is consistent with the design limitations of the system when only material is being hoisted.

(c) *Communication.* The employers must:

(i) Use a voice-mediated intercommunication system to maintain communication between the hoist operator and the employees located in or on a moving personnel cage, personnel platform, or boatswains' chair;

(ii) Stop hoisting if, for any reason, the communication system fails to operate effectively; and

(iii) Resume hoisting only when the site superintendent determines that it is safe to do so.

## 6. Hoist Rope

(a) *Grade.* The employers must use a wire rope for the hoist system (*i.e.*, "hoist rope") that consists of extra-improved plow steel, an equivalent grade of non-rotating rope, or a regular lay rope with a suitable swivel mechanism.

(b) *Safety factor.* The employers must maintain a safety factor of at least eight (8) times the safe workload throughout the entire length of hoist rope.

(c) *Size.* The employers must use a hoist rope that is at least one-half ( $1/2$ ) inch (1.3 cm) in diameter.

(d) *Inspection, removal, and replacement.* The employers must:

(i) Thoroughly inspect the hoist rope before the start of each job and on completing a new setup;

(ii) Maintain the proper diameter-to-diameter ratios between the hoist rope and the footblock and the sheave by inspecting the wire rope regularly (see Conditions 7(c) and 8(d) below); and

(iii) Remove and replace the wire rope with new wire rope when any of the conditions specified by 29 CFR 1926.552(a)(3) occurs.

(e) *Attachments.* The employers must attach the rope to a personnel cage, personnel platform, or boatswains' chair with a keyed-screwpin shackle or positive-locking link.

(f) *Wire-rope fastenings.* When the employers use clip fastenings (*e.g.*, U-bolt wire-rope clips) with wire ropes, they must:

(i) Use Table H-20 of 29 CFR 1926.251 to determine the number and spacing of clips;

(ii) Use at least three (3) drop-forged clips at each fastening;

(iii) Install the clips with the "U" of the clips on the dead end of the rope; and

(iv) Space the clips so that the distance between them is six (6) times the diameter of the rope.

## 7. Footblock

(a) *Type of block.* The employers must use a footblock:

(i) Consisting of construction-type blocks of solid single-piece bail with a safety factor that is at least four (4) times the safe workload, or an equivalent block with roller bearings;

(ii) Designed for the applied loading, size, and type of wire rope used for hoisting;

(iii) Designed with a guard that contains the wire rope within the sheave groove;

(iv) Bolted rigidly to the base; and

(v) Designed and installed so that it turns the moving wire rope to and from the horizontal or vertical direction as required by the direction of rope travel.

(b) *Directional change.* The employers must ensure that the angle of change in the hoist rope from the horizontal to the vertical direction at the footblock is approximately  $90^\circ$ .

(c) *Diameter.* The employers must ensure that the line diameter of the footblock is at least 24 times the diameter of the hoist rope.

## 8. Cathead and Sheave

(a) *Support.* The employers must use a cathead (*i.e.*, "overhead support") that consists of a wide-flange beam, or two (2) steel-channel sections securely bolted back-to-back to prevent spreading.

(b) *Installation.* The employers must ensure that:

(i) All sheaves revolve on shafts that rotate on bearings; and

(ii) The bearings are mounted securely to maintain the proper bearing position at all times.

(c) *Rope guides.* The employers must provide each sheave with appropriate rope guides to prevent the hoist rope from leaving the sheave grooves when the rope vibrates or swings abnormally.

(d) *Diameter.* The employers must use a sheave with a diameter that is at least 24 times the diameter of the hoist rope.

## 9. Guide Ropes

(a) *Number and construction.* The employers must affix two (2) guide ropes by swivels to the cathead. The guide ropes must:

<sup>1</sup> This variance adopts the definition of, and specifications for, fleet angle from *Cranes and Derricks*, H. I. Shapiro, *et al.* (eds.); New York: McGraw-Hill; 3rd ed., 1999, page 592. Accordingly, the fleet angle is "[t]he angle the rope leading onto a [winding] drum makes with the line perpendicular to the drum rotating axis when the lead rope is making a wrap against the flange."

(i) Consist of steel safety cables not less than one-half (1/2) inch (1.3 cm) in diameter; and

(ii) Be free of damage or defect at all times.

(b) *Guide rope fastening and alignment tension.* The employers must fasten one end of each guide rope securely to the overhead support, with appropriate tension applied at the foundation.

(c) *Height.* The employers must rig the guide ropes along the entire height of the hoist-machine structure.

#### 10. Personnel Cage

(a) *Construction.* A personnel cage must be of steel-frame construction and capable of supporting a load that is four (4) times its maximum rated load capacity. The employers also must ensure that the personnel cage has:

(i) A top and sides that are permanently enclosed (except for the entrance and exit);

(ii) A floor securely fastened in place;

(iii) Walls that consist of 14-gauge, one-half (1/2) inch (1.3 cm) expanded metal mesh, or an equivalent material;

(iv) Walls that cover the full height of the personnel cage between the floor and the overhead covering;

(v) A sloped roof constructed of one-eighth (1/8) inch (0.3 cm) aluminum, or an equivalent material; and

(vi) Safe handholds (e.g., rope grips—but *not* rails or hard protrusions<sup>2</sup>) that accommodate each occupant.

(b) *Overhead weight.* A personnel cage must have an overhead weight (e.g., a headache ball of appropriate weight) to compensate for the weight of the hoist rope between the cathead and footblock. In addition, the employers must:

(i) Ensure that the overhead weight is capable of preventing line run; and

(ii) Use a means to restrain the movement of the overhead weight so that the weight does *not* interfere with safe personnel hoisting.

(c) *Gate.* The personnel cage must have a gate that:

(i) Guards the full height of the entrance opening; and

(ii) Has a functioning mechanical lock that prevents accidental opening.

(d) *Operating procedures.* The employers must post the procedures for operating the personnel cage conspicuously at the hoist operator's station.

(e) *Capacity.* The employers must:

(i) Hoist no more than four (4) occupants in the cage at any one time; and

(ii) Ensure that the rated load capacity of the cage is at least 250 pounds (113.4 kg) for each occupant so hoisted.

(f) *Employee notification.* The employers must post a sign in each personnel cage notifying employees of the following conditions:

(i) The standard rated load, as determined by the initial static drop test specified by Condition 10(g) ("Static drop tests") below; and

(ii) The reduced rated load for the specific job.

(g) *Static drop tests.* The employers must:

(i) Conduct static drop tests of each personnel cage that comply with the definition of "static drop test" specified by section 3 ("Definitions") and the static drop-test procedures provided in section 13 ("Inspections and Tests") of American National Standards Institute (ANSI) standard A10.22-1990 (R1998) ("American National Standard for Rope-Guided and Nonguided Worker's Hoists—Safety Requirements");

(ii) Perform the initial static drop test at 125 percent of the maximum rated load of the personnel cage, and subsequent drop tests at no less than 100 percent of its maximum rated load; and

(iii) Use a personnel cage for raising or lowering employees only when no damage occurred to the components of the cage as a result of the static drop tests.

#### 11. Safety Clamps

(a) *Fit to the guide ropes.* The employers must:

(i) Fit appropriately designed and constructed safety clamps to the guide ropes; and

(ii) Ensure that the safety clamps do not damage the guide ropes when in use.

(b) *Attach to the personnel cage.* The employers must attach safety clamps to each personnel cage for gripping the guide ropes.

(c) *Operation.* The safety clamps attached to the personnel cage must:

(i) Operate on the "broken rope principle" defined in section 3 ("Definitions") of ANSI standard A10.22-1990 (R1998);

(ii) Be capable of stopping and holding a personnel cage that is carrying 100 percent of its maximum rated load and traveling at its maximum allowable speed if the hoist rope breaks at the footblock; and

(iii) Use a pre-determined and pre-set clamping force (i.e., the "spring compression force") for each hoist system.

(d) *Maintenance.* The employers must keep the safety-clamp assemblies clean and functional at all times.

#### 12. Overhead Protection

(a) The employers must install a canopy or shield over the top of the personnel cage that is made of steel plate at least three-sixteenth (3/16) of an inch (4.763 mm) thick, or material of equivalent strength and impact resistance, to protect employees (i.e., both inside and outside the chimney) from material and debris that may fall from above.

(b) The employers must ensure that the canopy or shield slopes to the outside of the personnel cage.<sup>3</sup>

#### 13. Emergency-Escape Device

(a) *Location.* The employers must provide an emergency-escape device in at least one of the following locations:

(i) In the personnel cage, provided that the device is long enough to reach the bottom landing from the highest possible escape point; or

(ii) At the bottom landing, provided that a means is available in the personnel cage for the occupants to raise the device to the highest possible escape point.

(b) *Operating instructions.* The employers must ensure that written instructions for operating the emergency-escape device are attached to the device.

(c) *Training.* The employers must instruct each employee who uses a personnel cage for transportation on how to operate the emergency-escape device:

(i) Before the employee uses a

personnel cage for transportation; and

(ii) Periodically, and as necessary, thereafter.

#### 14. Personnel Platforms and Fall-Protection Equipment

(a) *Personnel platforms.* When the employers elect to replace the personnel cage with a personnel platform in accordance with Condition 2(a) of this variance, they must:

(i) Ensure that an enclosure surrounds the platform, and that this enclosure is at least 42 inches (106.7 cm) above the platform's floor;

(ii) Provide overhead protection when an overhead hazard is, or could be, present; and

(iii) Comply with the applicable scaffolding strength requirements specified by 29 CFR 1926.451(a)(1).

(b) *Fall-protection equipment.* Before employees use work platforms or boatswains' chairs, the employers must equip the employees with, and ensure that they use, full body harnesses,

<sup>2</sup> To reduce impact hazards should employees lose their balance because of cage movement.

<sup>3</sup> Paragraphs (a) and (b) were adapted from OSHA's Underground Construction Standard (29 CFR 1926.800(t)(4)(iv)).

lanyards and lifelines as specified by 29 CFR 1926.104 and the applicable requirements of 29 CFR 1926.502(d). This requirement includes securing the lifelines to the top of the chimney and to a weight at the bottom of the chimney, and ensuring the employees' lanyards are attached to the lifeline during the entire period of vertical transit.

#### 15. Inspections, Tests, and Accident Prevention

(a) The employers must:

(i) Conduct inspections of the hoist system as required by 29 CFR 1926.20(b)(2);

(ii) Ensure that a competent person conducts daily visual inspections of the hoist system; and

(iii) Inspect and test the hoist system as specified by 29 CFR 1926.552(c)(15).

(b) The employers must comply with the accident-prevention requirements of 29 CFR 1926.20(b)(3).

#### 16. Welding

(a) The employers must use only qualified welders to weld components of the hoisting system.

(b) The employers must ensure that the qualified welders:

(i) Are familiar with the weld grades, types, and materials specified in the design of the system; and

(ii) Perform the welding tasks in accordance with 29 CFR part 1926, subpart J ("Welding and Cutting").

#### VII. Authority and Signature

Jonathan L. Snare, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC directed the preparation of this notice. This notice is issued under the authority specified by section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 5-2002 (67 FR 65008), and 29 CFR part 1905.

Signed at Washington, DC on January 30, 2005.

**Jonathan L. Snare,**

*Acting Assistant Secretary of Labor.*

[FR Doc. E6-2959 Filed 2-28-06; 8:45 am]

**BILLING CODE 4510-26-P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice.

**SUMMARY:** NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted to OMB at the address below on or before March 31, 2006 to be assured of consideration.

**ADDRESSES:** Send comments to Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-5167.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301-837-1694 or fax number 301-837-3213.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on December 7, 2005 (70 FR 72860 and 72861). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. In this notice, NARA is soliciting comments concerning the following information collection:

*Title:* Online Reproduction Orders for National Archives Records.

*OMB number:* 3095-NEW.

*Agency form number:* N/A.

*Type of review:* Regular.

*Affected public:* Individuals or households.

*Estimated number of respondents:* 13,270.

*Estimated time per response:* 10 minutes.

*Frequency of response:* On occasion.

*Estimated total annual burden hours:* 2,680 hours.

*Abstract:* In December, 2003, NARA launched Order Online!, its online ordering mechanism. With the availability of an Internet-based ordering system (Order Online!), NARA has made accessible online certain reproduction order forms (replicas of the NATF Series 80 Forms and the NATF 36). In the near future, NARA plans to make available custom orders for the remaining types of reproduction services, to allow researchers to submit reproduction orders and remit payment electronically.

The information that NARA proposes to collect for quoted reproduction orders includes the descriptive information (information necessary to search for the records), payment information (e.g., credit card type, credit card number, and expiration date), customer name, shipping and billing address, and phone number. NARA also proposes to offer customers the option of submitting their e-mail address as a means of facilitating communication such as order confirmation, status updates, and issue handling.

Dated: February 22, 2006.

**Martha Morphy,**

*Acting Assistant Archivist for Information Services.*

[FR Doc. E6-2835 Filed 2-28-06; 8:45 am]

**BILLING CODE 7515-01-P**

## NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

### Notice of Meetings

**AGENCY:** U.S. National Commission on Libraries and Information Science.

**ACTION:** Notice of meetings.

**SUMMARY:** The U.S. National Commission on Libraries and Information Science is holding an open business meeting to discuss Commission programs and administrative matters. Commissioners will review programs related to the Commission's strategic initiatives. Each of the Commission's task forces will share progress reports and the Commission will discuss future directions and activities. Topics will include (1) debrief on the symposium at the University of Michigan on Mass Digitization Impacts; (2) debrief on World Summit on the Information Society in Tunis; (3) the 2006 Health Information Awards; (4) the White House Conference on Aging; (5) the Commission's involvement in American Corners; (6) new measures of library performance and impact; (7)