

**SUMMARY:** The Bureau of Reclamation is reopening the comment period for the Pick-Sloan Missouri Basin Program, Eastern and Western Division Proposed Project Use Power Rate Adjustment for an additional 30 days from the date of publication of this Notice. The initial Notice proposing this adjustment was published in the **Federal Register** on January 11, 2010 (75 FR 1408). The public comment period ended on February 10, 2010.

**DATES:** Written comments on the proposed power rate adjustment will be accepted on or before May 28, 2010.

**ADDRESSES:** Please send written comments to Mike Ferguson, GP-2020, Power O&M Administrator, P.O. Box 36900, Billings, MT 59107-6900.

All booklets, studies, comments, letters, memoranda, and other documents made or kept by Reclamation for the purpose of developing the proposed rate for Project Use Power will be made available for inspection and copying at the Great Plains Regional Office, located at 316 North 26th Street, Billings, MT 59101.

**FOR FURTHER INFORMATION CONTACT:** Mike Ferguson, Bureau of Reclamation, Great Plains Regional Office at 406-247-7705 or by e-mail at [mferguson@usbr.gov](mailto:mferguson@usbr.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Proposed Rate Adjustment**

Power rates for the P-SMBP are established pursuant to the Reclamation Act of 1902 (43 U.S.C. 391 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h (c)) and the Flood Control Act of 1944 (16 U.S.C. 825s).

Reclamation proposes to:

- (a) Increase the energy charge from 12.55 mills/kWh to 16.17 mills/kWh.
- (b) the monthly demand charge will remain at zero.

The Project Use Power Rate will be reviewed each time Western Area Power Administration (Western) adjusts the P-SMBP Firm Power Rate.

Dated: April 14, 2010.

**Michael J. Ryan,**  
*Regional Director.*

[FR Doc. 2010-9805 Filed 4-27-10; 8:45 am]

**BILLING CODE 4310-MN-P**

#### **INTERNATIONAL TRADE COMMISSION**

[Investigation No. 731-TA-1063, 1064, 1066-1068 (Review)]

##### **Frozen Warmwater Shrimp From Brazil, China, India, Thailand, and Vietnam**

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice of Commission determinations to conduct full five-year reviews concerning the antidumping duty orders on frozen warmwater shrimp from Brazil, China, India, Thailand, and Vietnam.

**SUMMARY:** The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on frozen warmwater shrimp from Brazil, China, India, Thailand, and Vietnam would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**DATES:** *Effective Date:* April 9, 2010.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:** On April 9, 2010, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that both the domestic and respondent interested party group responses to its notice of

institution (75 FR 1078, January 8, 2010) were adequate for each order under review.<sup>1</sup> A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: April 22, 2010.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 2010-9812 Filed 4-27-10; 8:45 am]

**BILLING CODE 7020-02-P**

#### **DEPARTMENT OF LABOR**

##### **Occupational Safety and Health Administration**

[Docket No. OSHA-2009-0005]

##### **Avalotis Corp.; Grant of a Permanent Variance**

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

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

**SUMMARY:** This notice announces the grant of a permanent variance to Avalotis Corp. ("the employer"). The permanent variance addresses the provision that regulates the tackle used for boatswain's 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. As an alternative to complying with these provisions, the employer may instead comply with the conditions listed in this grant; these alternative conditions regulate hoisting systems used during inside or outside chimney construction to raise or lower workers in personnel cages, personnel platforms, and boatswain's chairs between the bottom landing of a chimney and an elevated work location. Accordingly, OSHA finds that these alternative conditions protect workers at least as well as the requirements

<sup>1</sup> Commissioner Dean A. Pinkert determined that the respondent interested party response for the review of the order on subject merchandise from Brazil was inadequate but determined to conduct a full review of the order in order to promote administrative efficiency in light of his decision to conduct full reviews with respect to the orders in the other reviews.

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). This permanent variance applies in Federal OSHA enforcement jurisdictions, and in those States with OSHA-approved State Plans covering private-sector employers that have identical standards and agree to the terms of the variance.

**DATES:** The effective date of the permanent variance is April 28, 2010.

**FOR FURTHER INFORMATION CONTACT:** *General information and press inquiries.*

For general information and press inquiries about this notice, contact Jennifer Ashley, Director, OSHA Office of Communications, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-1999.

*Technical information.* For technical information about this notice, contact MaryAnn 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.

*Copies of this Federal Register notice.* Electronic copies of this notice are available at <http://www.regulations.gov>. Electronic copies of this notice, as well as news releases and other relevant information, are available on OSHA's Web site at <http://www.osha.gov>.

#### **SUPPLEMENTARY INFORMATION:**

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

In the past 36 years, a number of chimney construction companies 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 boatswain's chairs (*i.e.*, paragraph (o)(3) of 29 CFR 1926.452), result in access problems that pose a serious danger to workers. These companies requested permanent variances from these requirements, and proposed alternative equipment and procedures to protect workers while transporting them 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 20145 (May 14, 1985), 50 FR 40627 (October 4, 1985), 52 FR 22552 (June 12, 1987), 68 FR 52961 (September 8, 2003), 70 FR 72659 (December 6, 2005), 71 FR 10557 (March 1, 2006), 72 FR 6002, 74 FR 34789 (July

17, 2009), and 74 FR 41742 (August 18, 2009)).<sup>1</sup>

Avalotis Corp. ("the employer") applied for a permanent variance from the same personnel hoist- and boatswain's-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 the employer's variance applications in the **Federal Register** on November 9, 2009 (74 FR 57704).

The employer constructs, remodels, repairs, maintains, inspects, and demolishes tall chimneys made of reinforced concrete, brick, and steel. This work, which occurs throughout the United States, requires the employers to transport workers 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 work platforms and scaffolds so these structures will fit the decreasing circumference of the chimney as construction progresses upwards.

To transport workers to various heights inside and outside a chimney, the employer proposed in its variance application to use a hoist system that lifts and lowers personnel-transport devices that include personnel cages, personnel platforms, or boatswain's chairs. In this regard, the employer proposed to use personnel cages, personnel platforms, or boatswain's chairs solely to transport workers 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 workers. In addition, the employer proposed to attach a hopper or concrete bucket to the hoist system to raise or lower material inside or outside a chimney.

The employer 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 a 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. A cathead, which is a superstructure at the top of the system, supports the overhead sheaves. The overhead sheaves (and the vertical span of the hoist system) move upward with the system 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 employer 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 employer proposed to follow to improve worker 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 workers 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);
- Equipping workers who use a personnel cage, personnel platform, or boatswain's chair with, and ensuring that they use, personal fall arrest systems meeting the requirements of 29 CFR 1926.502(d);
- Ensuring that workers using a personnel cage secure their personal fall arrest system to an attachment point located inside the cage, and that workers using personnel platforms or boatswain's chairs secure their personal fall arrest systems to a vertical lifeline;
- When using vertical lifelines, securing the lifelines to the top of the chimney and weighting the lifelines properly, or suitably affixing the lifelines to the bottom of the chimney, and ensuring that workers remain attached to their lifeline during the entire period of vertical transit;

<sup>1</sup> Zurn Industries, Inc. received two permanent variances from OSHA. The first variance, granted on May 14, 1985 (50 FR 20145), addressed the boatswain's-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.

- Providing instruction to each worker who uses a personnel platform or boatswain's chair regarding the shearing and struck-by hazards posed by the hoist system (*e.g.*, work platforms, scaffolds), and the need to keep their limbs or other body parts clear of these hazards during hoisting operations;

- Providing the instruction on shearing and struck-by hazards before a worker uses one of these personnel-transport devices at the worksite; and periodically, and as necessary thereafter, including whenever the worker demonstrates: a lack of knowledge about the hazard or how to avoid it, a modification occurs to an existing shearing hazard, or a new shearing hazard develops at the worksite;

- Attaching a readily visible warning to each personnel platform and boatswain's chair notifying workers in a language they understand of potential shearing hazards during hoisting operations; for warnings located on personnel platforms, using the following (or equivalent) wording: "Warning—To avoid serious injury, keep your hands, arms, feet, legs, and other parts of your body inside this platform while it is in motion"; and for boatswain's chairs, the warning uses the following (or equivalent) wording: "Warning—To avoid serious injury, do not extend your hands, arms, feet, legs, or other parts of your body from the side or to the front of this chair while it is in motion"; and

- Establishing a clearly designated exclusion zone around the hoist system's bottom landing and prohibiting any worker from entering the exclusion zone except to access a personnel cage, personnel platform, boatswain's chair, or material-transport device, and then only when the personnel- and material-transport device is at the bottom landing and not in operation.

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

The employer noted in its variance request that it is necessary, on occasion, to use a boatswain's chair to transport workers 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 tapering diameter. Paragraph (o)(3) of 29 CFR 1926.452, which regulates the tackle used to rig a boatswain's 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 ( $\frac{5}{8}$ ) inch diameter first-grade manila rope [or equivalent rope]."

The primary purpose of this paragraph is to allow a worker to safely control the ascent, descent, and stopping locations of the boatswain's chair. However, the employer stated in its 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 employer proposed to use the hoisting system described above in section I ("Background") of this notice to raise or lower workers in a personnel cage to work locations both inside and outside a chimney. In addition, the employer proposed to use a personnel cage for this purpose to the extent that adequate space is available, and to use a personnel platform only when using a personnel cage was infeasible because of limited space. When available space makes using a personnel platform infeasible, the employer proposed to use a boatswain's chair to lift workers to work locations. The proposed variance limited use of the boatswain's chair to elevations above the last work location that the personnel platform can reach; under these conditions, the employer proposed to attach the boatswain's 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 workers from one elevation to another. This paragraph ensures that employers transport workers 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 workers 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 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 workers 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 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 employer asserted in its 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 workers to a serious fall hazard. Additionally, the employer noted that the requirement to extend the enclosures 10 feet above the outside scaffolds often exposes the workers 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 employer contended that it is hazardous for workers to erect and brace a hoist tower inside a chimney, especially 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 employer proposed to use the hoist system discussed in section I ("Background") of this notice to transport workers to and from work locations inside and outside chimneys. The employer claimed that this hoist system would make it unnecessary for it 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 employer asserted that the proposed hoisting system protected workers at least as effectively as the personnel-hoist requirements of 29 CFR 1926.552(c).

#### IV. Comments on the Proposed Variance

OSHA received no comments on the proposed variance, including no comments from State-Plan States and Territories.

#### V. Multi-State Variance

The variance applications 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 the variance application.

As noted in the previous section of this notice (section IV ("Comments on the Proposed Variance")), OSHA received no comments on the variance application published in the **Federal Register** from any State-Plan State or Territory. However, several State-Plan States and Territories commented on earlier variance applications published in the **Federal Register** involving the same standards and submitted by other employers engaged in chimney construction and repair; OSHA is relying on these previous comments to determine the position of these State-Plan States and Territories on the variance applications submitted by the present employers.<sup>2</sup> The remaining

paragraphs in this section provide 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 standards identical to the Federal OSHA 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 13 States and Territories with OSHA-approved State plans, four of the States and one Territory (Connecticut, Illinois, New Jersey, New York, and the Virgin Islands) cover only public-sector workers and have no authority over the private-sector workers addressed in this variance application (*i.e.*, that authority continues to reside with Federal OSHA).

Four States (Kentucky, Michigan, South Carolina, and Utah) accepted the proposed alternative when specific additional requirements are fulfilled. Kentucky 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 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 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. 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, Hawaii, Iowa, and Washington either had different requirements in the affected standards or declined to accept the terms of the variance. Therefore, the employers must apply separately for a permanent variance from these four States.

Based on the responses previously received from State-Plan States and Territories, the permanent Federal OSHA variance will be effective in the following thirteen 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 four additional states, Kentucky, Michigan, South Carolina, and Utah, when the employers meet specific additional requirements.

However, this permanent variance does not apply in California, Hawaii, Iowa, and Washington State. As stated earlier, in the four States and one Territory (Connecticut, Illinois, New Jersey, New York, and the Virgin Islands) that have State-Plan programs that cover only public-sector workers, authority over the employers under the permanent variance continues to reside with Federal OSHA.

#### VI. Decision

Avalotis Corp. seeks a permanent variance from the provision that regulates the tackle used for boatswain's 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 boatswain's chairs must "consist of correct size ball bearings or bushed blocks containing safety hooks and properly 'eye-spliced' minimum five-eighth ( $\frac{5}{8}$ ) inch diameter first-grade manila rope [or equivalent rope]." The primary purpose of this provision is to allow a worker to safely control the ascent, descent, and stopping locations of the boatswain's chair. The proposed alternative to these requirements allows the employer to use a boatswain's chair to lift workers to work locations inside and outside a chimney when either a personnel cage or a personnel platform is infeasible. The employer proposed to attach the boatswain's chair to the hoisting system described as an alternative to 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 workers 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.

<sup>2</sup> See 68 FR 52961 (Oak Park Chimney Corp. and American Boiler & Chimney Co.), 70 FR 72659 (International Chimney Corporation, Karrena International, LLC, and Matrix Service Industrial Contractors, Inc.), and 71 FR 10557 (Commonwealth Dynamics, Inc., Mid-Atlantic Boiler & Chimney, Inc., and R and P Industrial Chimney Co., Inc.).

As an alternative to complying with the hoist-tower requirements of 29 CFR 1926.552(c)(1) and (c)(2), the employer proposed to use a hoist system to transport workers 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 workers to and from elevated work locations, the employer proposed to attach a personnel cage to the hoist system. However, when the employer can demonstrate that adequate space is not available for the cage, it may use a personnel platform above the last worksite that the cage can reach. Further, when the employer shows that space limitations make it infeasible to use a work platform for transporting workers, it may use a boatswain's chair above the last worksite serviced by the personnel platform. Using the 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 employer 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)).

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 employer complies with the conditions of the following order, the working conditions of the employer's workers will be at least as safe and healthful as if the employers complied with the working conditions specified by 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. This decision is applicable in all States under Federal OSHA enforcement jurisdiction, and in the 13 State-Plan States and one Territory with standards identical to the Federal standards (Alaska, Arizona, Indiana, Maryland, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, Tennessee, Virginia, Vermont, and Wyoming). In Kentucky, Michigan, South Carolina and Utah, the employers must meet additional conditions before this variance will apply in those States. This decision does not apply in California, Hawaii, Iowa, and Washington.

## VII. Order

OSHA issues this order authorizing Avalotis Corp. ("the employer") 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. This order applies in Federal OSHA enforcement jurisdictions, and in those States with OSHA-approved State plans that have identical standards and have agreed to the terms of the variance.

### 1. Scope of the Permanent Variance

(a) This permanent variance applies only to tapered chimneys when the employer uses a hoist system during inside or outside chimney construction to raise or lower its workers 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 hoist system as specified in this permanent variance, the employer must:

(i) Use the personnel cages, personnel platforms, or boatswain's chairs raised and lowered by the hoist system solely to transport workers with the tools and materials necessary to do their work; and

(ii) Attach a hopper or concrete bucket to the 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 employer 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 Boatswain's Chair

(a) *Personnel platform.* When the employer demonstrates that available space makes a personnel cage for transporting workers infeasible, it may replace the personnel cage with a personnel platform when it limits use of the personnel platform to elevations above the last work location that the personnel cage can reach.

(b) *Boatswain's chair.* The employer must:

(i) Before using a boatswain's chair, demonstrate that available space makes it infeasible to use a personnel platform for transporting workers;

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

(iii) Use a boatswain's chair in accordance with block-and-tackle

requirements specified by 29 CFR 1926.452(o)(3), unless the employer can demonstrate that the structural arrangement of the chimney precludes such use.

### 3. Qualified Competent Person

(a) The employer 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 workers.

(b) The employer 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 employer must designate the hoist machine as a portable personnel hoist.

(b) *Raising or lowering a transport.*

The employer must ensure that:

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

(ii) Whenever the employer raises or lowers a personnel or material hoist (*e.g.*, a personnel cage, personnel platform, boatswain's 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 employer must power the hoist machine by an air, electric, hydraulic, or internal-combustion drive mechanism.

(d) *Constant-pressure control switch.* The employer 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 employer 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 employer 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 employer must equip the hoist machine with a slack-rope switch to prevent rotation of the winding drum under slack-rope conditions.

(h) *Frame.* The employer 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 employer must secure hoist machines in position to prevent movement, shifting, or dislodgement.

(j) *Location.* The employer 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>3</sup>

(k) *Drum and flange diameter.* The employer 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 employer 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 employer must ensure that all electrical equipment is weatherproof.

(n) *Limit switches.* The employer must equip the hoist system with limit switches and related equipment that automatically prevent overtravel of a personnel cage, personnel platform, boatswain’s 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 employer must:

(i) Ensure that only trained and experienced workers, 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 worker who uses a personnel cage for transportation.

(b) *Speed limitations.* The employer 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 workers;

(ii) One hundred (100) feet (30.5 m) per minute when a personnel platform or boatswain’s chair is being used to transport workers; or

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

(c) *Communication.* The employer must:

(i) Use a voice-mediated intercommunication system to maintain communication between the hoist operator and the workers located in or on a moving personnel cage, personnel platform, or boatswain’s 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 employer 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 employer must maintain a safety factor of at least eight (8) times the safe workload throughout the entire length of hoist rope.

(c) *Size.* The employer 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 employer 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 employer must attach the rope to a personnel cage, personnel platform, or boatswain’s chair with a keyed-screwpin shackle or positive-locking link.

(f) *Wire-rope fastenings.* When the employer uses clip fastenings (*e.g.*, U-bolt wire-rope clips) with wire ropes, it 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 employer 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 employer 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 employer 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 employer must use a cathead (*i.e.*, “overhead support”) that

<sup>3</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.”

consists of a wide-flange beam, or two (2) steel-channel sections securely bolted back-to-back to prevent spreading.

(b) *Installation.* The employer 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 employer 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 employer 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 employer must affix two (2) guide ropes by swivels to the cathead. The guide ropes must:

(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 defects at all times.

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

(c) *Height.* The employer 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 employer 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;

(vi) Safe handholds (e.g., rope grips—but not rails or hard protrusions<sup>4</sup>) that accommodate each occupant; and

(vii) Attachment points to which workers secure their personal fall protection systems.

<sup>4</sup> To reduce impact hazards should workers lose their balance because of cage movement.

(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 the footblock. In addition, the employer 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 employer must post the procedures for operating the personnel cage conspicuously at the hoist operator's station.

(e) *Capacity.* The employer 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) *Worker notification.* The employer must post a sign in each personnel cage notifying workers 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 employer 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 Non-guided 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 workers 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 employer 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 employer 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 employer must keep the safety clamp assemblies clean and functional at all times.

#### 12. Overhead Protection

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

(b) The employer must ensure that the canopy or shield slopes to the outside of the personnel cage.<sup>5</sup>

#### 13. Emergency-Escape Device

(a) *Location.* The employer 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 employer must ensure that written instructions for operating the emergency-escape device are attached to the device.

(c) *Training.* The employer must instruct each worker who uses a

<sup>5</sup> Paragraphs (a) and (b) were adapted from OSHA's Underground Construction standard (29 CFR 1926.800(t)(4)(iv)).

personnel cage for transportation on how to operate the emergency-escape device:

- (i) Before the worker uses a personnel cage for transportation; and
- (ii) Periodically, and as necessary, thereafter.

#### 14. Personnel Platforms

(a) *Personnel platforms.* When the employer elects to replace the personnel cage with a personnel platform in accordance with Condition 2(a) of this variance, it 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).

#### 15. Protecting Workers From Fall and Shearing Hazards

(a) *Fall hazards.* The employer must:

- (i) Before workers use personnel cages, personnel platforms, or boatswain's chairs, equip the workers with, and ensure that they use, personal fall arrest systems that meet the requirements of 29 CFR 1926.502(d);
- (ii) Ensure that workers using personnel cages secure their fall arrest systems to attachment points located inside the cage;
- (iii) Ensure that workers using personnel platforms and boatswain's chairs secure their personal fall arrest systems to a vertical lifeline; and
- (iv) When using vertical lifelines:
  - (A) Secure the lifelines to the top of the chimney;
  - (B) Weight the lifelines properly, or suitably affix the lifelines to the bottom of the chimney; and
  - (C) Ensure that workers remain attached to their lifeline during the entire period of vertical transit.

(b) *Shearing hazards.* The employer must:

- (i) Provide workers who use personnel platforms or boatswain's chairs with instruction on the shearing hazards posed by the hoist system (e.g., work platforms, scaffolds), and the need to keep their limbs or other body parts clear of these hazards during hoisting operations;
- (ii) Provide the instruction on shearing and struck-by hazards:
  - (A) Before a worker uses a personnel platform or boatswain's chair at the worksite; and
  - (B) Periodically, and as necessary, thereafter, including whenever a worker demonstrates a lack of knowledge about

the hazards or how to avoid the hazards, a modification occurs to an existing shearing or struck-by hazard, or a new shearing or struck-by hazard develops at the worksite; and

- (iii) Attach a readily visible warning to each personnel platform and boatswain's chair notifying workers in a language they understand of potential shearing hazards they may encounter during hoisting operations, and that uses the following (or equivalent) wording:

(A) For personnel platforms:

“Warning—To avoid serious injury, keep your hands, arms, feet, legs, and other parts of your body inside this platform while it is in motion”; and

(B) For boatswain's chairs:

“Warning—To avoid serious injury, do not extend your hands, arms, feet, legs, or other parts your body from the side or to the front of this chair while it is in motion.”

#### 16. Exclusion Zone

The employer must:

- (a) Establish a clearly designated exclusion zone around the bottom landing of the hoist system; and
- (b) Prohibit any worker from entering the exclusion zone except to access a personnel- or material-transport device, and then only when the device is at the bottom landing and not in operation (i.e., when the drive components of the hoist machine are disengaged and the braking mechanism is properly applied).

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

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

#### 18. Welding

- (a) The employer must use only qualified welders to weld components of the hoisting system.
- (b) The employer 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 1926, subpart J (“Welding and Cutting”).

#### 19. OSHA Notification

- (a) At least 15 calendar days prior to commencing any chimney construction

operation using the conditions specified herein, the employer must notify the OSHA Area Office nearest to the worksite, or the appropriate State Plan Office, of the operation, including the location of the operation and the date that the operation will commence.

(b) The employer must inform OSHA national headquarters as soon as it has knowledge that it will:

- (i) Cease to do business; or
- (ii) Transfer the activities covered by this permanent variance to a successor company.

#### VIII. Authority and Signature

David Michaels, PhD, MPH, 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. OSHA is issuing this notice 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. 5-2007 (72 FR 31160), and 29 CFR part 1905.

Signed at Washington, DC, on April 22, 2010.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2010-9785 Filed 4-27-10; 8:45 am]

**BILLING CODE 4510-26-P**

---

#### THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

##### Federal Council on the Arts and the Humanities; Arts and Artifacts Indemnity Panel Advisory Committee

**AGENCY:** The National Endowment for the Humanities.

**ACTION:** Notice of Meeting.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in Room 730, from 9:30 a.m. to 5 p.m., on Thursday, May 13, 2010.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after July 1, 2010.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures