III. Preliminary Findings on the Application

OSHA’s preliminary findings:
1. UL submitted an acceptable application for expansion of its scope of recognition. OSHA’s review of the application file and its comparability analysis indicate that UL can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of 21 test standards for NRTL testing and certification listed above. This preliminary determination does not constitute an interim or temporary approval of UL’s application.

2. The UL 66 and UL 8750 test standards are appropriate test standards, and OSHA proposes to include these test standards in the NRTL Program’s list of appropriate test standards.

OSHA welcomes public comment as to whether UL meets the requirements of 29 CFR 1910.7 for expansion of its recognition as an NRTL. OSHA also seeks comments as to whether the UL 66 and UL 8750 test standards are appropriate test standards under the NRTL Program. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. Commenters must submit the written request for an extension by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer period. OSHA may deny a request for an extension if the request is not adequately justified. To obtain or review copies of the publicly available information in UL’s application, including pertinent documents (e.g., exhibits) and all submitted comments, contact the Docket Office, Room N–3655, Washington, DC 20210; email: information.inquiries@osha.gov. OSHA’s Web page includes information about the NRTL Program (see http://www.osha.gov/dts/otpca/nrlts/).

SUPPLEMENTARY INFORMATION: On October 2, 2013, OSHA published a Federal Register notice (78 FR 60900) in which it updated the previous variances with a single, permanent variance (“the uniform variance”). The 2013 Federal Register notice granted the uniform variance to a number of the companies that held previous variances. On January 31, 2014, OSHA published a Federal Register notice (79 FR 5462) in which it proposed to revoke the previous variances. OSHA received no comments on the proposed revocation. Therefore, with this action, OSHA is revoking the previous variances and invites employers not covered by the uniform variance to submit applications for an equivalent variance.

I. Background

A. Previous Chimney-Related Construction Variances

From 1973 through 2010, the Agency granted permanent variances to a number of chimney-construction companies from the provisions of the OSHA standards that regulate boatswain’s chairs, personnel platforms, and hoist towers, specifically, paragraph (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552. Several of these previous variances limited the scope of the variances only to chimneys constructed using jump-form construction techniques and procedures. See, for example, 38 FR 8545 granted April 3, 1973, and 71 FR 10557 granted March

1 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 6062 (February 8, 2007), 74 FR 34789 (July 17, 2009), 74 FR 41742 (August 16, 2009), and 75 FR 22424 (April 28, 2010).
1, 2006), while more recently granted chimney-construction variances, limited the scope of the variances to the construction of tapered chimneys using jump-form construction techniques and procedures (see, for example, 75 FR 22424; April 28, 2010). In addition, the conditions specified in the previous variances became somewhat inconsistent over time, and none of these variances kept pace with updated construction methods used by, and technological advances taking place in, the chimney-construction industry.

B. Grant of the Uniform Chimney-Construction Variance

In the period from November 2012 through January 2013, 15 employers involved in chimney construction submitted applications for a new permanent variance under Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655) and 29 CFR 1905.11 (“Variances and other relief under section 6(d)”). The applicants construct, renovate, repair, maintain, inspect, and demolish tall chimneys and similar structures made of concrete, brick, and steel. This work, which occurs throughout the United States, requires employers to transport employees and construction tools and materials to and from elevated worksites located inside and outside these structures.

As in the past, the employers sought a permanent variance from paragraph (a)(3) of 29 CFR 1926.452, which regulates the tackle used to rig a boatswain’s chair, as well as paragraphs (c)(1) through (c)(4), (c)(9), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552, which regulate personnel platforms and hoist towers. OSHA consolidated these variance applications into a single application and published the uniform variance application, along with a request for public comment, in the Federal Register on March 21, 2013 (78 FR 17432). On October 2, 2013, the Agency granted the permanent variance in a notice published in the Federal Register (78 FR 60900). The scope of the uniform variance included both chimneys and chimney-related structures such as silos and towers, as well as jump-form and slip-form construction techniques and procedures, regardless of structural configuration. Additionally, the uniform variance added or revised conditions that improved worker safety, including: Condition 3 (Definitions), which defines 29 key terms used in the variance, usually technical terms, for the purpose of standardizing and clarifying the meaning of these terms; Condition 5 (Hoist Machines), which updates the requirements for the design and use of hoist machines based on guidance provided by the American National Standards Institute (ANSI) A10.22–2007; and Condition 6 (Methods of Operation), which expands and clarifies the requirements for both the operators of the hoist machine and the employees who ride in the cage (this condition adopted several provisions of ANSI A10.22–2007). (See the table and preamble in 78 FR 60900, October 2, 2013, for an extensive description of the differences between the uniform variance and a previous variance published in 2010.)

In view of the Agency’s history with the variances granted for chimney-related construction, OSHA determined that it should replace the previously granted variances (1973 through 2010) with the recently published uniform variance. In doing so, OSHA believes that the uniform variance, when compared to the previous variances: (1) provides more consistency across the conditions specifying the variance, thereby expediting OSHA’s enforcement of the conditions; (2) allows employers to use updated technology and industry practices; and (3) increases worker safety.

In developing the uniform variance, OSHA sent a letter on December 21, 2012, to all employers holding previous chimney-construction variances (see Ex. OSHA–2013–0025–0001 for a sample letter). The letter informed them of the process of developing a uniform variance and of OSHA’s plan to revoke all previous chimney-construction variances once OSHA published the uniform variance. In response to this letter, 15 chimney-construction employers holding previous variances applied for the new uniform variance.

II. Multi-State Variances

Twenty-seven states have safety and health plans approved by OSHA under Section 18 of the Occupational Safety and Health (OSH) Act (29 U.S.C. 667) and 29 CFR part 1952 (“Approved State Plans for Enforcement of State Standards”). Of these states, 18 states have standards identical to the Federal OSHA standards. These states are: Alaska, Arizona, Hawaii, Indiana, Iowa, Kentucky, Maryland, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Vermont, Virginia, and Wyoming. Accordingly, the revocation action announced in this notice applies to the previous variances granted in the 17 states and two territories that have standards identical to the Federal OSHA standards.

The State Plans operated by Hawaii, Iowa, Kentucky, and South Carolina either declined to accept the terms of previous variances or stated that affected employers must apply to the state program for a state variance prior to initiating chimney construction. Because these State Plans elected to exercise control over the variances, this revocation action does not apply to any chimney-construction variances granted under these State-Plan programs.

State-Plan programs operated by four states (California, Michigan, Utah, and Washington) have requirements in their construction standards for the tackle used to rig a boatswain’s chair, personnel platforms, and hoist towers that differ from the requirements specified by the Federal OSHA standards. In these cases, only the State-Plan program has authority to issue variances from these requirements. Therefore, the revocation action described herein does not apply to any variances issued by these states involving these requirements.

III. Previous Chimney-Construction Variances

The following table provides information about the previous variances granted by OSHA between 1973 and 2010 for chimney construction, and which are subject to the revocation action described in this notice. Refer to the Federal Register Utah, Vermont, Virginia, Washington, and Wyoming. The application of this revocation action to these State Plans varies depending on several factors described later in this section.

2 Throughout this notice, OSHA uses the terms “jump-form construction” and “slip-form construction” instead of “jump-form formwork construction” and “slip-form formwork construction,” respectively.

3 State-Plan programs operated by four states and one territory (Connecticut, Illinois, New Jersey, New York, and the Virgin Islands) limit their occupational safety and health authority to public-sector (i.e., state and local government) employers only. Federal OSHA retains authority over private-sector employers in these states and territory; therefore, private-sector employers in these states and territory are subject to the previous variances granted by Federal OSHA, and to this revocation action. Twenty-one states and one territory operate State Plans that exercise occupational safety and health authority over both public-sector employers and private-sector employers; these states and territory are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. The application of this revocation action to these State Plans varies depending on several factors described later in this section.

4 As noted above, the previous variances addressed the requirements of paragraph (a)(3) of 29 CFR 1926.452, which regulates the tackle used to rig a boatswain’s chair, and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552, which regulates personnel platforms and hoist towers.
IV. Revocation of Previous Variances

Based on its review of the record and the findings described in this Federal Register notice, OSHA determined that the conditions specified in the uniform variance published on October 2, 2013, (78 FR 60900) provide consistent and technologically sound measures designed to replace and supersede the previous chimney-construction variances granted by OSHA prior to 2010. Accordingly, OSHA finds that the uniform variance, when compared to the previous variances: (1) Provides more consistency across the conditions specified by the variance, thereby expediting OSHA’s enforcement of the conditions; (2) allows employers to use updated technology and industry practices; and (3) increases worker safety. Therefore, under the authority granted by 29 CFR 1926.552 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(l), and (c)(16) of 29 CFR 1926.552 or, if granted a uniform variance, comply with the conditions of that variance. OSHA granted the uniform variance to the following 15 employers:

- Avalotis Corp; 400 Jones Street, Somerville, NJ 08876
- Commonwealth Dynamics, Inc., 95 Court Street, Somerville, NJ 08876
- Kiewit Power Constructors Co.**, 8802 N. Meridian St, Indianapolis, IN 46260
- Hoffman, Inc., 6001 49th Street, Indianapolis, IN 46260
- Hamon Custodis, Inc. (formerly Custodis Construction Co. Inc., then Custodis Crtturlin, Inc.) *.
- International Chimney Corporation
- Kiewit Power Constructors Co.**, 8802 N. Meridian St, Indianapolis, IN 46260
- Matrix Service, Inc. (formerly Matrix Service Industrial Contractors, Inc.) *
- NAES Power Contractors (formerly American Boiler & Chimney Company)
- Oak Park Chimney Corporation
- Pullman Power, LLC (formerly M. W. Kellogg Co., then Pullman Power Products Corporation) *
- R and P Industrial Chimney Co., Inc.
- TIC-The Industrial Company
- Zachry Construction Corporation

Federal Register notice (79 FR 5462) in which it proposed to revoke the previous variances. OSHA received no comments on the proposed revocation, including no comments from State Plans.

Consequently, following the publication of this revocation notice, employers involved in chimney construction will either have to comply with the requirements of paragraph (o)(3) of 29 CFR 1926.452 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(l), and (c)(16) of 29 CFR 1926.552 or, if granted a uniform variance, comply with the conditions of that variance. OSHA granted the uniform variance to the following 15 employers:

- Avalotis Corp; 400 Jones Street, Somerville, NJ 08876
- Commonwealth Dynamics, Inc., 95 Court Street, Somerville, NJ 08876
- Kiewit Power Constructors Co.**, 8802 N. Meridian St, Indianapolis, IN 46260
- Hoffman, Inc., 6001 49th Street, Indianapolis, IN 46260
- Hamon Custodis, Inc. (formerly Custodis Construction Co. Inc., then Custodis Crtturlin, Inc.) , 58 East Main Street, Somerville, NJ 08876
- International Chimney Corporation, 55 South Long Street, Williamsville, NY 14221
- Karrena International Chimney, 57 South Long Street, Williamsville, NY 14221
- Kiewit Power Constructors Co., 9401 Renner Blvd., Lenexa, KS 66219
- Matrix Service, Inc. (formerly Matrix Service Industrial Contractors, Inc.), 8802 N. Meridian St, Indianapolis, IN 46260

** Includes a subsequent interim order granted 03/26/07.

* The current name of the company is listed. Names in parentheses are the name listed on the original variance, followed by any subsequent names.
Nine employers hold previous variances and did not apply for the uniform variance. These employers are:

- Airtrek-Karrana Chimney Corporation, 1776 Heritage Drive, Quincy, MA 02171
- Calaveras Power Partners, Inc., P. O. Box 241769, San Antonio, TX 78224
- Continental-Heine Chimney Company, Inc., 127 North Dearborne Street, Chicago, IL 60602
- Francis Hankin and Company, Inc., 117 Crockford Boulevard, Scarborough, Ontario, Canada, MIR 3B9
- Matrix Service, Inc., 3810 Bakerview Spur, Bellingham, WA 98226
- Oak Park Chimney Corporation, 1800 Des Plaines Avenue, Forest Park, IL 60130
- PDM Steel Service Centers (formerly Pittsburgh-Des Moines Steel Company) 3535 East Myrtle Street, Stockton, CA 95205
- Rust Constructors, Inc. (formerly Rust Engineering Co.), 2 Perimeter Park South, Suite 300W, Birmingham, AL 35243
- Zachry Construction Corporation, 527 Logwood, San Antonio TX 78221

Under this revocation action, these nine employers, when engaged in chimney construction, will have to comply with the requirements of paragraph (o)(3) of 29 CFR 1926.452 when rigging tackle for boatswain’s chairs, and paragraphs (c)(1) through (c)(4), (c)(6), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552 when using personnel platforms and hoist towers. OSHA invites these employers, and any other employers seeking an alternative means of complying with these provisions, to submit applications for a variance containing conditions that are equivalent to the conditions specified by the uniform variance.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC, authorized the preparation of this notice. OSHA is issuing this notice under the authority specified by 29 U.S.C. 655, Secretary of Labor’s Order No. 1–2012 (76 FR 3912; Jan. 25, 2012), and 29 CFR part 1905.

Signed at Washington, DC, on April 16, 2014.

David Michaels,
Assistant Secretary of Labor for Occupational Safety and Health.

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