



## **U.S. DEPARTMENT OF LABOR**

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

**[Docket No. OSHA-2013-0025]**

#### **Proposed Revocation of Permanent Variances Granted for Chimney Construction**

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

**ACTION:** Notice proposing to revoke permanent variances and requesting comment.

**SUMMARY:** In this notice, the Occupational Safety and Health Administration (“OSHA” or the “Agency”) is proposing to revoke permanent variances that it granted between 1973 and 2010 to 24 companies engaged in chimney construction (hereafter, “previous variances”). The previous variances provided the companies with an alternative means of complying with provisions of OSHA standards regulating boatswains’ chairs, personnel platforms, and hoist towers. 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.

OSHA determined that, compared to the previous variances, the uniform variance: (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, OSHA is proposing to revoke the previous variances and to invite employers not covered by the uniform variance to submit applications for an equivalent variance.

**DATES:** Parties affected by this proposed action must submit comments and requests for a hearing (postmarked, sent, or received) by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Electronic. Submit comments and requests for a hearing electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments, and clearly indicate the docket number in the submission (OSHA-2013-0025).

Facsimile. OSHA allows facsimile transmission of comments that are 10 pages or fewer in length (including attachments), as well as hearing requests. Send these comments and requests to the OSHA Docket Office at (202) 693-1648; OSHA does not require hard copies of comments or hearing requests.

Instead of transmitting facsimile copies of attachments that supplement their comments (e.g., studies and journal articles), commenters may submit these attachments to the OSHA Docket Office, Technical Data Center, Room N-2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. These attachments must clearly identify the sender's name, date, subject, and docket number (i.e., OSHA-2013-0025) so that the Agency can attach them to the appropriate comments.

Regular mail, express delivery, hand delivery, and messenger (courier) service. Submit comments and any additional material (e.g., studies and journal articles), as well as hearing requests, to the OSHA Docket Office, Docket No. OSHA-2013-0025, Technical Data Center, Room N-2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone: (202) 693-2350 (OSHA's TTY number is (877) 889-5627). Contact the OSHA Docket Office for information

about security procedures concerning the delivery of materials by express delivery, hand delivery, and messenger service. The hours of operation for the OSHA Docket Office and Department of Labor are 8:15 a.m. to 4:45 p.m., e.t.

Instructions. All submissions must include the Agency name and the OSHA docket number (i.e., OSHA Docket No. OSHA-2013-0025). OSHA will place comments and other material, including any personal information, in the public docket without revision, and these comments and material will be available online at <http://www.regulations.gov>. Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

Docket. To read or download comments or other material in the docket, go to <http://www.regulations.gov> or to the OSHA Docket Office at the address above. The electronic docket for this proposed revocation established at <http://www.regulations.gov> lists most of the documents in the docket; however, some information (e.g., copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-

3647, Washington, DC 20210; telephone: (202) 693-1999; email:

[Meilinger.francis2@dol.gov](mailto:Meilinger.francis2@dol.gov).

General and technical information: Contact David Johnson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-3655, Washington, DC 20210; telephone: (202) 693-2110; email: [johnson.david.w@dol.gov](mailto:johnson.david.w@dol.gov). OSHA's web page includes information about the Variance Program (see <http://www.osha.gov/otpca/nrtl/index.html>).

Copies of the Federal Register notice: Electronic copies of this Federal Register notice are available at <http://www.regulations.gov>. This Federal Register notice, as well as other relevant information, also is available on OSHA's web page at <http://www.osha.gov>.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

#### **A. Previous Chimney-Related Construction Variances**

From 1973 to through 2010, the Agency granted permanent variances to a number of chimney-related construction companies from the provisions of the OSHA standards that regulate boatswains' chairs, personnel platforms, and hoist towers, specifically, 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.<sup>1</sup> Several of these early variances

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<sup>1</sup>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

(hereafter, “the 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, 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 the 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 (o)(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)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR

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72659 (December 6, 2005), 71 FR 10557 (March 1, 2006), 72 FR 6002 (February 8, 2007), 74 FR 34789 (July 17, 2009), 74 FR 41742 (August 18, 2009), and 75 FR 22424 (April 28, 2010).

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 (hereafter, “the uniform 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<sup>2</sup> 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 American National Standards Institute (ANSI) A10.22-2007; and Condition 6 (Methods of Operation), which expands and clarifies the training 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, 60904-60910, 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

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<sup>2</sup>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.

(1973 through 2010) with the recently published uniform variance. In doing so, OSHA believes that the uniform variance, compared to the outdated 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.

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").<sup>3</sup> Of these states, 18 states have standards identical to the Federal OSHA standards. These states are: Alaska,

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<sup>3</sup>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 the revocation action proposed herein. Twenty-one states and one territory operate State-Plan programs 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 proposed revocation action to these State-Plan programs would vary depending on several factors described later in this section.

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 proposed in this notice would apply to the previous variances granted in the 18 states that have standards identical to the Federal OSHA standards.

The State-Plan programs 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-Plan programs elected to exercise control over the variances, this proposed revocation action would 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 proposed revocation action described herein would not apply to any variances issued by these states involving these requirements.

### **III. Supplementary Information**

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

proposed revocation action described in this notice.<sup>4</sup> Refer to the Federal Register citation in the table to obtain detailed information about these previous variances.

**Table 1**  
**Previous Chimney Variances**

<b>Name of Employer (Company)</b>	<b>Variance or Docket No.</b>	<b>Date Granted</b>	<b><u>Federal Register</u> Citation</b>	<b>Applied for Uniform Variance?</b>
Airtek-Karrena Chimney Corporation	V-79-3	08/31/79	44 FR 51350	No
Avalotis Corporation	OSHA-2009-005	04/28/10	75 FR 22424	Yes
Bowen Engineering Corporation (merged with Mid-Atlantic Boiler and Chimney, Inc., formerly Alberici-Mid Atlantic, LLC)*	V-04-1	03/01/06	71 FR 10557	Yes
Calaveras Power Partners, Inc.	OSHA-2007-0046	07/17/09	74 FR 34789	No
Commonwealth Dynamics, Inc.	V-04-1	03/01/06	71 FR 10557	Yes
Continental-Heine Chimney Company, Inc.	V-73-13	04/03/73	38 FR 8545	No
Francis Hankin and Company, Inc.	V-77-12; V-77-6	08/31/79	44 FR 51352	No
Gibraltar Chimney International, LLC	OSHA-2007-004	08/18/09	74 FR 41742	Yes

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<sup>4</sup>As noted above, the previous variances addressed the requirements of paragraph (o)(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 regulate personnel platforms and hoist towers.

<b>Name of Employer (Company)</b>	<b>Variance or Docket No.</b>	<b>Date Granted</b>	<b><u>Federal Register Citation</u></b>	<b>Applied for Uniform Variance?</b>
Hamon Custodis (formerly Custodis Construction Co. Inc., then Custodis Cuttrell, Inc.)*	V-73-13	04/03/73	38 FR 8545	Yes
Hoffman, Inc.	OSHA-2007-004	08/18/09	74 FR 41742	Yes
International Chimney Corporation	V-04-2	12/06/05	70 FR 72659	Yes
Karrena-International, LLC	V-04-2	12/06/05	70 FR 72659	Yes
Kiewit Power Constructors Co.***	OSHA-2007-004	08/18/09	74 FR 41742	Yes
Matrix Service, Inc.	OSHA-2007-0046	07/17/09	74 FR 34789	No
Matrix SME, Inc. (formerly Matrix Service Industrial Contractors, Inc.)*	V-04-2	12/06/05	70 FR 72659	Yes
NAES Power Contractors (formerly American Boiler & Chimney Company)*	V-02-1	09/08/03	68 FR 52961	Yes
Oak Park Chimney Corporation	V-02-1	09/08/03	68 FR 52961	No
PDM Steel Service Centers (formerly Pittsburgh-Des Moines Steel Company)*	V-77-12; V-77-6	08/31/79	44 FR 51352	No
Pullman Power, LLC (formerly	V-73-13	04/03/73	38 FR 8545	Yes

<b>Name of Employer (Company)</b>	<b>Variance or Docket No.</b>	<b>Date Granted</b>	<b><u>Federal Register</u> Citation</b>	<b>Applied for Uniform Variance?</b>
M. W. Kellogg Co., then Pullman Power Products Corporation)*				
R and P Industrial Chimney Co., Inc.	V-04-1	03/01/06	71 FR 10557	Yes
Rust Constructors, Inc. (formerly Rust Engineering Company)*	V-73-13	04/03/73	38 FR 8545	No
T. E. Ibberson Company	OSHA-2007-0046	07/17/09	74 FR 34789	Yes
TIC-The Industrial Company	OSHA-2007-0046	07/17/09	74 FR 34789	Yes
Zachry Construction Corporation	OSHA-2007-0046	07/17/09	74 FR 34789	No

\*The first name is the current name of the company; names in parentheses are, first, the name listed on the original variance, followed by any subsequent names.

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

#### **IV. Proposed 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, 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 1905.13(a)(2), OSHA is proposing to revoke the previous chimney-construction variances. Consequently, employers involved in chimney construction would 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)(i), 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, Verona, PA 15147
- Bowen Engineering Corporation (merged with Mid-Atlantic Boiler & Chimney, Inc., (formerly Alberici Mid-Atlantic, LLC)), 8802 N. Meridian St. Indianapolis, IN 46260
- Commonwealth Dynamics, Inc., 95 Court Street, Portsmouth, NH 03801
- Gibraltar Chimney International, LLC, 92 Cooper Ave. Tonawanda, NY 14150
- Hamon Custodis, Inc. (formerly Custodis Construction Co., Inc., then Custodis Cuttrell, Inc.), 58 East Main Street, Somerville, NJ 08876
- Hoffmann, Inc., 6001 49th Street South, Muscatine, IA 52761
- 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 SME, Inc. (formerly Matrix Service Industrial Contractors, Inc.), 1510 Chester Pike, Suite 500, Eddystone, PA 19022

- NAES Power Contractors (formerly American Boiler and Chimney Company),  
167 Anderson Rd., Cranberry Township, PA 16066
- Pullman Power, LLC (formerly M. W. Kellogg Co., then Pullman Power Products Corporation), 6501 E. Commerce Avenue, Suite 200, Kansas City, MO 64120
- R and P Industrial Chimney Co., Inc., 244 Industrial Parkway, Nicholasville, KY 40356
- T. E. Ibberson Company, 828 5th St. South, Hopkins, MN 55343
- TIC-The Industrial Company, 9780 Mt. Pyramid Ct., Suite 100, Englewood, CO 80112

Eight employers hold previous variances and did not apply for the uniform variance.

These employers are:

- Airtek-Karrena 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 the proposed revocation action, these employers would 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)(i), and (c)(16) of 29 CFR 1926.552 when engaged in chimney construction. OSHA would invite 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, PhD, 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 January 28, 2014.

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

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