

actual placements in employment. In addition, each grantee submits a quarterly file of individual records on all participants who exit the program, called the Workforce Investment Act Standardized Participant Record (WIASPR). The current MSFW reporting and recordkeeping system expires in June 2005.

This is a request to revise the current MSFW program reporting requirements to include data elements necessary for assessing grantee progress against common measures of performance beginning July 1, 2005. In 2002, under the President's Management Agenda, OMB and other Federal agencies developed a set of common performance measures to be applied to certain Federally-funded employment and training programs with similar strategic goals. Although the common measures are an integral part of ETA's performance accountability system, these measures provide only part of the information necessary to effectively oversee the workforce investment system. ETA will continue to collect from grantees data on program activities, participants, and outcomes that are necessary for program management and to convey full and accurate information on the performance of workforce programs to policymakers and stakeholders.

The value of implementing common measures is the ability to describe in a similar manner the core purposes of the workforce system—how many people found jobs; did people stay employed; and did earnings increase. Multiple sets of performance measures have burdened states and grantees as they are required to report performance outcomes based on varying definitions and methodologies. By minimizing the different reporting and performance requirements, common performance measures can facilitate the integration of service delivery, reduce barriers to cooperation among programs, and enhance the ability to assess the effectiveness and impact of the workforce investment system, including the performance of the system in serving individuals facing significant barriers to employment.

This revision to the MSFW program reporting requirements identifies a minimum level of information collection that is necessary to comply with Equal Opportunity requirements, holds grantees appropriately accountable for the Federal funds they receive, including common performance measures, and allows the Department to

fulfill its oversight and management responsibilities.

**Ira L. Mills,**

*Departmental Clearance Officer/Team Leader.*

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[V-04-2]

#### **International Chimney Corporation, Karrena International, LLC, and Matrix Service Industrial Contractors, Inc., Application for Permanent Variance and Interim Order, Grant of Interim Order, and Request for Comments**

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

**ACTION:** Notice of an application for a permanent variance and interim order; grant of interim order; and request for comments.

**SUMMARY:** International Chimney Corporation, Karrena International, LLC, and Matrix Service Industrial Contractors, Inc. ("the employers") have applied for a permanent variance from the provisions of the OSHA standards that regulate boatswains' chairs and hoist towers, specifically paragraph (o)(3) of § 1926.452 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of § 1926.552. In addition, the employers have requested an interim order based on the alternative conditions specified by the variance application. Since these conditions are the same as the conditions specified in the most recent permanent variance granted by the Agency for these boatswains'-chair and hoist-tower provisions, OSHA is granting the applicants' request for interim orders.

**DATES:** Submit comments and requests for a hearing by May 23, 2005.

**ADDRESSES:** *Electronic.* OSHA also permits electronic submission of comments (but not attachments) and hearing requests through its website at <http://ecomments.osha.gov>. If a commenter would like to submit additional materials to supplement comments that were submitted electronically, these materials must be sent, in triplicate hard copy, 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 materials must clearly identify the sender's name, date, subject, and docket number (i.e., V-04-2) to enable the Agency to attach them to the appropriate comments.

*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, identified with the docket number (i.e., V-04-2), to the OSHA Docket Office at (202) 693-1648; hard copies of these comments are not required. Instead of transmitting facsimile copies of additional material that supplement their comments (e.g., studies and journal articles), commenters may submit this material, in triplicate hard copy, to the OSHA Docket Office, Technical Data Center, Room N-2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. This material must clearly identify the sender's name, date, subject, and docket number (i.e., V-04-2) so that the Agency can attach them to the appropriate comments.

*Regular mail, express delivery, hand delivery, and messenger service.* Submit three copies of comments and any additional material (e.g., studies and journal articles), as well as hearing requests, to the OSHA Docket Office, Docket No. V-04-1, Technical Data Center, Room N-2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone: (202) 693-2350. Please contact the OSHA Docket Office at (202) 693-2350 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., ET.

*Personal information.* OSHA will make available to the public, without revision, all comments and other material submitted to the docket, including any personal information. 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.

**FOR FURTHER INFORMATION CONTACT:** For information about this notice contact MaryAnn S. Garrahan, Director, Office of Technical Programs and Coordination Activities, Room N-3655, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-2110; fax: (202)

693–1644. For additional copies of this **Federal Register** notice, contact the Office of Publications, Room N–3103, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210 (telephone: (202) 693–1888). Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's Web site on the Internet at <http://www.osha.gov/>. Contact the OSHA Docket Office for information about docket materials not available through the OSHA Web site, and for assistance in using the Web site to locate docket submissions.

Additional information about this variance application also is available from the following OSHA Regional Offices:

- U.S. Department of Labor, OSHA, JFK Federal Building, Room E340, Boston, MA 02203; telephone: (617) 565–9860; fax: (617) 565–9827.
- U.S. Department of Labor, OSHA, 201 Varick St., Room 670, New York, NY 10014; telephone: (212) 337–2378; fax: (212) 337–2371.
- U.S. Department of Labor, OSHA, Curtis Building, Suite 740 West, 170 South Independence Mall West, Philadelphia, PA 19106; telephone: (215) 861–4900; fax: (215) 861–4904.
- U.S. Department of Labor, OSHA, Sam Nunn Atlanta Federal Center, 61 Forsyth St., SW., Room 6T50, Atlanta, GA 30303; telephone: (404) 562–2300; fax: (404) 562–2295.
- U.S. Department of Labor, OSHA, 230 South Dearborn St., Room 3244, Chicago, IL 60604; telephone: (312) 353–2220; fax: (312) 353–7774.
- U.S. Department of Labor, OSHA, 525 Griffin St., Room 602, Dallas, TX 75202; telephone: (214) 767–4736; fax: (214) 767–4693.
- U.S. Department of Labor, OSHA, City Center Square, 1100 Main St., Suite 800, Kansas City, MO 64105; telephone: (816) 426–5861; fax: (816) 426–2750.
- U.S. Department of Labor, OSHA, 1999 Broadway, Suite 1690, Denver, CO 80202–5716 (overnight), P.O. Box 46550, Denver, CO 80201–6550 (mail); telephone: (303) 844–1600; fax: (303) 844–1616.
- U.S. Department of Labor, OSHA, 71 Stevenson St., Room 420, San Francisco, CA 94105; telephone: (415) 975–4310; fax: (415) 975–4319.
- U.S. Department of Labor, OSHA, 1111 Third Ave., Suite 715, Seattle, WA 98101–3212; telephone: (206) 553–5930; fax: (206) 553–6499.

## I. Notice of Application

The following companies (“the employers”) have submitted requests for a 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: (1) International Chimney Corporation, 55 South Long Street, Williamsville, New York 14221 (P.O. Box 260, Buffalo, NY 14231) (Ex. 1); (2) Karrena International, LLC, 57 South Long Street, Williamsville, New York 14221 (P.O. Box 200, Buffalo, NY 14231) (Ex. 2); and Matrix Service Industrial Contractors, Inc., 6945 Crabb Road, Temperance, Michigan 48182 (Ex. 3). The employers seek a permanent variance from § 1926.452(o)(3), which provides the tackle requirements for boatswains’ chairs. The employers also request a variance from paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of § 1926.552 that regulate hoist towers. These latter paragraphs specify the following requirements:

- (c)(1)—Construction requirements for hoist towers outside a structure;
- (c)(2)—Construction requirements for hoist towers inside a structure;
- (c)(3)—Anchoring a hoist tower to a structure;
- (c)(4)—Hoistway doors or gates;
- (c)(8)—Electrically interlocking entrance doors or gates to the hoistway and cars;
- (c)(13)—Emergency stop switch located in the car;
- (c)(14)(i)—Using a minimum of two wire ropes for drum hoisting; and
- (c)(16)—Material and component requirements for construction of personnel hoists. The employers contend that the permanent variance would provide their employees with a place of employment that is at least as safe and healthful as they would obtain under the existing provisions.

The places of employment affected by this variance application are the present and future projects where the employers construct chimneys, located in states under federal jurisdiction, as well as State-plan states that 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”). The employers certify that they have provided employee representatives of current employees who would be affected by the permanent variance with a copy of their variance requests. They also certify that they notified their employees of the variance requests by posting a summary of the application and specifying where they can examine a copy of the application at a prominent location or locations where they normally post notices to their employees (or instead of a summary, posting the application

itself); and by other appropriate means. In addition, the employers have informed employees and their representatives of their right to petition the Assistant Secretary of Labor for Occupational Safety and Health for a hearing on this variance application.

## II. Multi-State Variance

The employers perform chimney work in a number of geographic locations in the United States; these locations are likely to include one or more locations in State-plan states. Consequently, any permanent variance granted as a result of this variance application would be subject to the requirements specified by 29 CFR 1952.9 (“Variances affecting multi-state employers”) and 29 CFR 1905.14(b)(3) (“Action on applications”). Under these regulations, a permanent variance granted by the Agency would become effective in State-plan states to the extent that the relevant state standards are the same as the federal OSHA standards from which the employers are seeking the permanent variance, and the state has jurisdiction over both private- and public-sector employers and employees.<sup>1</sup>

## III. Supplementary Information

### A. Overview

The employers construct, remodel, repair, maintain, inspect, and demolish tall chimneys made of reinforced concrete, brick, and steel. This work, which occurs throughout the United States, requires the employers to transport employees and construction material to and from elevated work platforms and scaffolds located, respectively, inside and outside tapered chimneys. While tapering contributes to the stability of a chimney, it requires frequent relocation of, and adjustments to, the work platforms and scaffolds so that they will fit the decreasing circumference of the chimney as construction progresses upwards.

To transport employees to various heights inside and outside a chimney, the employers propose to use a hoist system that would lift and lower personnel-transport devices that include personnel cages, personnel platforms, or

<sup>1</sup> Three State-plan states (*i.e.*, Connecticut, New Jersey, and New York) and one territory (*i.e.*, Virgin Islands) do not have jurisdiction over private-sector employees (*i.e.*, they limit their occupational safety and health jurisdiction to public-sector employees only). State-plan states and territories that have jurisdiction over both public- and private-sector employers and employees 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.

boatswains' chairs. The employers also would attach a hopper or concrete bucket to the hoist system to raise or lower material inside or outside a chimney. The employers would use personnel cages, personnel platforms, or boatswains' chairs solely to transport employees with the tools and materials necessary to do their work, and *not* to transport only materials or tools in the absence of employees.

The employers would use a hoist engine located and controlled outside the chimney, to power the hoist system. The system also would consist of a wire rope that: spools off the hoist 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 the personnel or material transport. The cathead, which is a superstructure at the top of a derrick, supports the overhead sheaves. The overhead sheaves (and the vertical span of the hoist system) move upward with the derrick as chimney construction progresses. Two guide cables, suspended from the cathead, eliminate swaying and rotation of the load. If the hoist rope breaks, safety clamps activate and grip the guide cables to prevent the load from falling. The employers would 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.

The employers would implement additional conditions to improve employee safety, including:

- 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 § 1926.552(c), including canopies and shields to protect employees located in a personnel cage from material that may fall during hoisting and other overhead activities;
- Providing falling-object protection for scaffold platforms as specified by § 1926.451(h)(1);
- Conducting tests and inspections of the hoist system as required by §§ 1926.20(b)(2) and 1926.552(c)(15);
- Establishing an accident-prevention program that conforms to § 1926.20(b)(3);
- Ensuring that employees who use a personnel platform or boatswain's chair

wear full body harnesses and lanyards, and that the lanyards are attached to lifelines during the entire period of vertical transit; and

- Securing the lifelines (used with a personnel platform or boatswain's chair) to the rigging at the top of the chimney and to a weight at the bottom of the chimney to provide maximum stability to the lifelines.

#### *B. Previous Variances From §§ 1926.452(o)(3) and 1926.552(c)*

Since 1973, ten chimney-construction companies demonstrated to OSHA that several of the hoist-tower requirements of § 1926.552(c) present access problems that pose a serious danger to their employees. These companies received permanent variances from these personnel-hoist and boatswains'-chair requirements, and they used essentially the same alternate apparatus and procedures that the employers are now proposing to use in this variance application. The Agency published the permanent variances for these companies at 38 FR 8545 (April 3, 1973), 44 FR 51352 (August 31, 1979), 50 FR 40627 (October 4, 1985), 52 FR 22552 (June 12, 1987), and 68 FR 52961 (September 8, 2003) (*see* Exs. 4 to 8).<sup>2</sup>

In 1980, the Agency evaluated the alternative conditions specified in the permanent variances that it had granted to chimney-construction companies as of that date. In doing so, OSHA observed hoisting operations conducted by these companies at various construction sites. These evaluations found that, while the alternative conditions generally were safe, compliance with the conditions among the companies was uneven (*see* Exs. 9 and 10). Additionally, the National Chimney Construction Safety and Health Advisory Committee, an industry-affiliated organization, conducted evaluations of the hoist systems that provided useful information regarding the safety and efficacy of the alternative conditions (*see, e.g.,* Ex. 11).

The permanent variance granted most recently by OSHA to American Boiler and Chimney Co. and Oak Park Chimney Corp. (*see* 68 FR 52961, September 8, 2003) updated the permanent variances granted by the Agency in the 1970s and 1980s by

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

clarifying the alternative conditions and citing the most recent consensus standards and other references. On the basis of this experience and knowledge, the Agency finds that the employers' requests for a permanent variance are consistent with the permanent variances that OSHA has granted previously to other employers in the chimney-construction industry. Therefore, the Agency believes that the conditions specified in these variance applications will provide the employees of the employers with at least the same level of safety that they would receive from § 1926.452(o)(3) and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of § 1926.552.

#### *C. Requested Variance From § 1926.452(o)(3)*

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

The primary purpose of this paragraph is to allow an employee to safely control the ascent, descent, and stopping locations of the boatswains' chair. However, the employers note that the required tackle is difficult or impossible to operate on some chimneys that are over 200 feet tall because of space limitations. Therefore, as an alternative to complying with the tackle requirements specified by § 1926.452(o)(3), the employers propose to use the hoisting system described in section III.A ("Overview") of this notice, both inside and outside a chimney, to raise or lower employees in a personnel cage to work locations. The employers would use a personnel cage for this purpose to the extent that adequate space is available; they would use a personnel platform whenever a personnel cage is infeasible because of limited space. However, when limited space also makes a personnel platform infeasible, the employers then would use a boatswains' chair to lift employees to work locations. The employers would limit use of the boatswains' chair to elevations above the highest work location that the personnel cage and

personnel platform can reach; under these conditions, they would attach the boatswains' chair directly to the hoisting cable only when the structural arrangement precludes the safe use of the block and tackle required by § 1926.452(o)(3).

*D. Requested Variance From § 1926.552(c)*

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

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

Paragraph (c)(2) of § 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. The employers contend that it is hazardous for employees to erect and brace a hoist tower inside a chimney, especially small-diameter or tapered

chimneys, or chimneys with sublevels, because these structures have limited space and cannot accommodate hoist towers; space limitations result from chimney design (e.g., tapering), as well as reinforced steel projecting into the chimney from formwork that is near the work location.

As an alternative to complying with the hoist-tower requirements of § 1926.552(c)(1) and (c)(2), the employers propose to use the rope-guided hoist system proposed above in section III.A ("Overview") of this application to transport employees to and from work locations inside and outside chimneys. Use of the proposed hoist system would eliminate the need for the employers to comply with other provisions of § 1926.552(c) that specify requirements for hoist towers. Therefore, they are requesting a permanent variance from several other closely-related provisions, as follows:

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

The employers assert that the proposed hoisting system would protect their employees at least as effectively as the hoist-tower requirements of § 1926.552(c).

#### IV. Grant of Interim Order

In addition to requesting a permanent variance, the employers also requested an interim order that would remain in effect until the Agency makes a decision on their application for a permanent variance. During this period, the employers must comply fully with the conditions of the interim order as an alternative to complying with the tackle requirements provided for boatswains' chairs by § 1926.452(o)(3) and the requirements for hoist towers specified by paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i) and (c)(16) of § 1926.552.

Based on its previous experience with permanent variances from these provisions granted to other companies, OSHA believes that an interim order is justified in this case. As noted above in section III.B ("Previous Variances \* \* \*"), the Agency has granted five permanent variances from these

provisions to 10 companies since 1973. Over this period, the affected companies have used effectively the alternative conditions specified in the variances. Moreover, the conditions of the interim order requested by the employers duplicate exactly the conditions approved in the permanent variance granted recently to American Boiler and Chimney Co. and Oak Park Chimney Corp. (see 68 FR 52961). In granting this permanent variance to American Boiler and Chimney Co. and Oak Park Chimney Corp., the Agency stated, "[W]hen the employers comply with the conditions of the following order, their employees will be exposed to working conditions that are at least as safe and healthful as they would be if the employers complied with paragraph (o)(3) of § 1926.452, and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of § 1926.552." (See 68 FR 52967.)

Having determined previously that the alternative conditions proposed by the employers will protect employees at least as effectively as the requirements of paragraph (o)(3) of § 1926.452 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of § 1926.552, OSHA has decided to grant an interim order to the employers pursuant to the provisions of § 1905.11(c). Accordingly, in lieu of complying with paragraph (o)(3) of § 1926.452 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of § 1926.552, the employers will: (1) Provide notice of this grant of interim order to the employees affected by the conditions of the interim order using the same means they used to inform these employees of their application for a permanent variance; and (2) comply with the conditions listed below in section V ("Specific Conditions of the Interim Order \* \* \*") of this application for the period between the date of this **Federal Register** notice and the date the Agency publishes its final decision on the application in the **Federal Register**; the interim order will remain in effect during this period unless OSHA modifies or revokes it in accordance with the requirements of § 1905.13.

With regard to chimney-construction operations conducted in State-plan states, the employers are invited to submit a request to the appropriate occupational safety and health authorities in those states where such operations are planned or are ongoing to determine whether they will honor this interim order. (For a list of State-plan states, see footnote 1 above.)

## V. Specific Conditions of the Interim Order and the Application for a Permanent Variance

The following conditions apply to the interim order being granted by OSHA to International Chimney Corporation, Karrena International, LLC, and Matrix Service Industrial Contractors, Inc. as part of their application for a permanent variance described in this **Federal Register** notice. In addition, these conditions specify the alternatives to the requirements of paragraph (o)(3) of § 1926.452 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of § 1926.552 that the employers are proposing in their application for a permanent variance. These conditions include:<sup>3</sup>

### 1. Scope

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

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

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

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

(b) *Boatswains' chair.* When the employers demonstrate that available space makes a personnel platform for transporting employees infeasible, they may:

(i) Replace the personnel platform with a boatswains' chair when they limit use of the boatswains' chair to elevations that are above the highest work location that the personnel platform can reach; and

(ii) When doing so, they must/would attach the boatswains' chair directly to the hoisting cable only when the structural arrangement precludes the

safe use of the block and tackle required by § 1926.452(o)(3).

### 3. Qualified Competent Person

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

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

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

### 4. Hoist Machine

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

(b) *Raising or lowering a transport.* The employers must/would ensure that: (i) The hoist machine includes a base-mounted drum hoist designed to control line speed; and

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

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

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

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

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

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

(d) *Constant-pressure control switch.* The employers must/would:

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

(ii) Protect the control switch to prevent it from activating if the hoist

machine is struck by a falling or moving object.

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

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

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

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

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

(h) *Frame.* The employers must/would ensure that the frame of the hoist machine is a self-supporting, rigid, welded-steel structure, and that holding brackets for anchor lines and legs for anchor bolts are integral components of the frame.

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

(j) *Location.* The employers must/would:

(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 (1/2) degree and one and one-half (1 1/2) degrees for smooth drums, and between one-half (1/2) degree and two (2) degrees for grooved drums, with the lead sheave centered on the drum.<sup>4</sup>

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

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

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

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

<sup>3</sup> In these conditions, the verb "must" applies to the interim order, while the verb "would" pertains to the application for a permanent variance.

<sup>4</sup> Taken from the definition of, and specifications for, the term "fleet angle" from Cranes and Derricks, H. I. Shapiro, et al. (eds.); New York: McGraw-Hill, 2000. 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."

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

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

## 5. Methods of Operation

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

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

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

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

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

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

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

(c) *Communication.* The employers must/would:

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

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

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

## 6. Hoist Rope

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

(b) *Safety factor.* The employers must/would maintain a safety factor of at least eight (8) times the maximum rated load capacity throughout the entire length of hoist rope.

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

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

(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 § 1926.552(a)(3) occurs.

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

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

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

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

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

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

## 7. Footblock

(a) *Type of block.* The employers must/would 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 maximum rated load capacity, 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 as required by the direction of rope travel.

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

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

## 8. Cathead and Sheave

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

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

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

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

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

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

## 9. Guide Ropes

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

(i) Consist of steel safety cables not less than one-half ( $\frac{1}{2}$ ) inch (1.3 cm) in diameter; and

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

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

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

## 10. Personnel Cage

(a) *Construction.* The employers must/would ensure that the personnel cage is of steel-frame construction and capable of supporting a load that is four (4) times its maximum rated load capacity. The employers also must/would 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 ( $\frac{1}{2}$ ) 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 ( $\frac{1}{8}$ ) inch (0.3 cm) aluminum, or an equivalent material; and

(vi) Safe handholds (e.g., rope grips—but *not* rails or hard protrusions<sup>5</sup>) that accommodate each occupant.

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

(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 employers must/would ensure that the personnel cage has a gate that:

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

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

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

(e) *Capacity.* The employers must/would:

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

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

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

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

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

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

(i) Conduct static drop tests of each personnel cage, and these tests must/would comply with the definition of "static drop test" specified by section 3 ("Definitions") and the static drop-test procedures provided in section 13 ("Inspections and Tests") of American National Standards Institute (ANSI) standard A10.22-1990 (R1998)

("American National Standard for Rope-Guided and Nonguided Worker's Hoists—Safety Requirements");

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

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

#### 11. Safety Clamps

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

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

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

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

(c) *Operation.* The employers must/would ensure that the safety clamps attached to the personnel cage:

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

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

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

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

#### 12. Overhead Protection

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

(b) The employers must/would ensure that the canopy or shield slopes to the outside of the personnel cage.<sup>6</sup>

#### 13. Emergency-Escape Device

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

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

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

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

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

(i) Before the employee uses a personnel cage for transportation; and

(ii) Periodically, and as necessary, thereafter.

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

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

(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 § 1926.451(a)(1).

(b) *Fall-protection equipment.* Before employees use work platforms or boatswains' chairs, the employers must/would equip the employees with, and ensure that they use, body harnesses and lifelines as specified by § 1926.104 and the applicable requirements of § 1926.502(d).

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

(a) The employers must/would:

(i) Conduct inspections of the hoist system as required by § 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 § 1926.552(c)(15).

(b) The employers must/would comply with the accident-prevention requirements of § 1926.20(b)(3).

#### 16. Welding

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

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

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

<sup>6</sup> Paragraphs (a) and (b) have been adapted from the personnel-cage provisions of OSHA's Underground Construction Standard (§ 1926.800(t)(4)(iv)).

<sup>5</sup> To reduce impact hazards should employees lose their balance because of cage movement.



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

## VII. Authority and Signature

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

Signed at Washington, DC, on April 14, 2005.

**Jonathan L. Snare,**

*Acting Assistant Secretary of Labor.*

[FR Doc. 05-7999 Filed 4-20-05; 8:45 am]

**BILLING CODE 4510-26-P**

## NATIONAL COUNCIL ON DISABILITY

### Youth Advisory Committee Meeting (Teleconference)

*Time and Date:* 1 p.m., e.d.t., May 19, 2005.

*Place:* National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

*Agency:* National Council on Disability (NCD).

*Status:* All parts of this meeting will be open to the public. Those interested in participating should contact the appropriate staff member listed below.

*Agenda:* Roll call, announcements, reports, new business, adjournment.

*Contact Person for More Information:* Geraldine Drake Hawkins, Ph.D., Program Analyst, National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202-272-2004 (voice), 202-272-2074 (TTY), 202-272-2022 (fax), [ghawkins@ncd.gov](mailto:ghawkins@ncd.gov) (e-mail).

*Youth Advisory Committee Mission:* The purpose of NCD's Youth Advisory Committee is to provide input into NCD activities consistent with the values and goals of the Americans with Disabilities Act.

Dated: April 18, 2005.

**Ethel D. Briggs,**

*Executive Director.*

[FR Doc. 05-8018 Filed 4-20-05; 8:45 am]

**BILLING CODE 6820-MA-P**

## POSTAL SERVICE

### Board of Governors; Sunshine Act Meeting; Notification of Day Added to Meeting

**PREVIOUSLY ANNOUNCED DATE OF MEETING:** April 12, 2005.

**STATUS:** Closed.

**PREVIOUS ANNOUNCEMENT:** 70 FR 17270, April 5, 2005.

**ADDITION:** The Board of Governors of the United States Postal Service voted unanimously to add an additional day to the agenda of its closed meeting and that no earlier announcement was possible.

**STATUS:** April 11, 2005-4:30 p.m. (Closed).

**MATTERS TO BE CONSIDERED:** Agenda of previously announced April 12 closed meeting.

#### FOR FURTHER INFORMATION CONTACT:

William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260-1000. Telephone (202) 268-4800.

**William T. Johnstone,**

*Secretary.*

[FR Doc. 05-8075 Filed 4-18-05; 8:45 am]

**BILLING CODE 7710-12-M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-51540; File No. SR-CBOE-2005-21]**

### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to the Calculation of the National Best Bid or Offer When Another Exchange Is Disconnected From the Intermarket Options Linkage

April 13, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 17, 2005, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its rules regarding calculation of the National Best Bid/Offer ("NBBO") when another participant in the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan") is disconnected from the Linkage.<sup>3</sup> The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com>), the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

Exchange Rule 6.13(e) provides circumstances where two Floor Officials may determine that the quotes from one or more particular markets, in one or more classes of options, are not reliable. Currently, two circumstances are listed: (1) When another participant in the Linkage Plan ("Participant")<sup>4</sup> declares its quotes non-firm, and (2) when another Participant has communicated to the CBOE that the Participant is experiencing systems or other problems there are affecting the reliability of its disseminated quotes. The Exchange now seeks to add one more circumstance to the list: when another Participant in the Intermarket Options Linkage has "disconnected" from the Linkage and is not accepting Linkage orders. CBOE believes this addition is necessary because there are times when, because

<sup>3</sup> The term "Linkage" means the systems and data communications network that link electronically the options exchanges to one another for the purpose of sending and receiving Linkage Orders, related confirmations, order statuses and Administrative Messages. See Section 2(14) of the Linkage Plan.

<sup>4</sup> See Section 2(24) of the Linkage Plan.