Total Respondents/Responses: 10,611.
Frequency: Biennially, On Occasion.
Estimated Total Burden Hours: 5,306.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $4,536.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 15, 2009.

Hazel Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E9–1391 Filed 1–22–09; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0046]

Calaveras Power Partners L.P., Matrix Service Inc., T. E. Ibberson Company, TIC—The Industrial Company, and Zachry Construction Corporation; Notice of Application for a Permanent Variance and Interim Order, Grant of an 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 an interim order; and request for comments.

SUMMARY: Calaveras Power Partners L.P., Matrix Service Inc., T. E. Ibberson Company, TIC—The Industrial Company, and Zachry Construction Corporation (''the applicants'') applied for a permanent variance from the provisions of the OSHA standards that regulate boatswain's chairs 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. In addition, the applicants requested an interim order based on the alternative conditions specified by the variance application. These alternative conditions consist of the same conditions specified in recent variances granted by OSHA from these hoist-tower and boatswain's-chair provisions, as well as several additional conditions that would provide employees with protection from shearing, fall, and struck-by hazards. Therefore, OSHA is granting the applicants' request for an interim order.

DATES: Comments and requests for a hearing must be submitted (postmarked, sent, or received) by February 23, 2009. The interim order specified by this notice becomes effective on January 23, 2009.

ADDRESSES: *Electronic.* Comments and requests for a hearing may be submitted electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting 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 to the OSHA Docket Office at (202) 693–1648; hard copies of these comments are not required. Instead of transmitting facsimile copies of attachments that supplement their comments (*e.g.*, studies and journal articles), commenters may submit these attachments, 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 attachments must clearly identify the sender's name, date, subject, and docket number (*i.e.*, OSHA–2007–0046) so that the Agency can attach them to the appropriate comments.

Regular mail, express delivery, hand (courier) 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. OSHA–2007–0046, 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., e.t.

Instructions. All submissions must include the Agency name and the OSHA docket number (*i.e.*, OSHA Docket No. OSHA–2007–0046). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials may 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 submissions or other material in the docket, go to *http://www.regulations.gov* or to the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.*, copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

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

Technical information. For technical information about this notice, contact MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, Room N–3655, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2110; fax: (202) 693–1644.

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

Additional information about this variance application also is available from the OSHA Region VI Office at: U.S. Department of Labor, OSHA, 525 Griffin St., Room 602, Dallas, TX 75202; telephone: (972) 850–4145; fax: (972) 850–4149.

I. Notice of Application

Calaveras Power Partners L.P., Matrix Service Inc., T. E. Ibberson Company, TIC—The Industrial Company, and Zachry Construction Corporation (hereafter, ''the applicants'') submitted applications 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 (''Variances and other relief under section 6(d)'') (see Exs. OSHA–2007–0046–0002 through

–0006).[1] The applicants seek a permanent variance from 29 CFR 1926.452(o)(3), which provides the tackle requirements for boatswain's chairs. The applicants also request a variance from paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 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 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 hoisting; and
- (c)(16)—Material and component requirements for construction of personnel hoists.

The applicants 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 applicants construct chimneys, all of which are located in the State of Texas.

The applicants certify that they provided employee representatives of current employees who would be affected by the permanent variance with a copy of their variance requests. The applicants also certify that they notified their employees of the variance requests by posting a summary of the application and specifying where the employees 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 applicants 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.

[1] The principle addresses for the applicants are as follows: Calaveras Power Partners L.P., 527 Logwood, San Antonio, TX 78221; Matrix Service Inc., 3810 Bakerview Spur, Bellingham, WA 98226; T. E. Ibberson Company, 828 Fifth Street South, Hopkins, MN 55343–7750; TIC—The Industrial Company, 22001 North Park Drive, Suite 700, Kingwood, TX 77339; and Zachry Construction Corporation, 527 Logwood, San Antonio, TX 78221.

II. Supplementary Information

A. Overview

The applicants construct, remodel, repair, maintain, inspect, and demolish tall chimneys made of reinforced concrete, brick, and steel. This work requires the applicants 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 applicants propose to use a hoist system that would lift and lower personnel-transport devices (*i.e.*, personnel cages, personnel platforms, or boatswain's chairs). The applicants also would attach material-transport devices such as hoppers, concrete buckets, or other containers to the hoist system to raise or lower construction material or equipment inside or outside a chimney. The applicants would use personnel cages, personnel platforms, or boatswain's 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.

B. Previous Variances From 29 CFR 1926.452(o)(3) and 1926.552(c)

Since 1973, a number of chimney-construction companies demonstrated to OSHA that several of the hoist-tower requirements of 29 CFR 1926.552(c) present chimney-access problems that pose a serious danger to their employees. These companies received permanent variances from these personnel-hoist and boatswain's-chair requirements, and they used essentially the same alternate apparatus and procedures that the applicants 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 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), and 71 FR 10557 (March 1, 2006).[2]

[2] Zurn Industries, Inc. received two permanent variances from OSHA. The first variance, granted on May 14, 1985 (50 FR 20145), addressed the boatswain's-chair provision (then in paragraph (l)(5) of § 1926.451), as well as the hoist-tower 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.

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. OSHA–2007–0046–0007 and –0008). 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* Ex. OSHA–2007–0046–0009).

The permanent variance granted 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 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 applicants' request for a permanent variance is consistent with the permanent variances that OSHA granted previously to other employers in the chimney-construction industry. Therefore, the Agency believes that the conditions specified in this variance application will provide the applicants' employees with at least the same level of safety they would receive from 29 CFR 1926.452(o)(3) and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552.

C. Requested Variance From 29 CFR 1926.452(o)(3)

The applicants state that it is necessary, on occasion, to use a boatswain's chair to transport employees to and from a bracket scaffold on the outside of an existing tapered chimney during flue installation or repair work, or to and from an elevated scaffold located inside a chimney that has a tapering diameter. Paragraph (o)(3) of 29 CFR 1926.452, which regulates the tackle used to rig a boatswain's chair, states that this tackle must ''consist of correct size ball bearings or bushed blocks containing safety hooks and properly 'eye-spliced'

minimum five-eighth (5/8) inch (1.6 cm) 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 boatswain's chair. However, the applicants 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 29 CFR 1926.452(o)(3), the applicants propose to use the hoisting system described in Section II.E (''Proposed Alternative to 29 CFR 1926.452(o)(3) and 29 CFR 1926.552(c)'') of this notice, both inside and outside a chimney, to raise or lower employees in a personnel cage to work locations. The applicants 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 applicants then would use a boatswain's chair to lift employees to work locations. The applicants would limit use of the boatswain's chair to elevations above the highest work location that the personnel cage and personnel platform can reach; under these conditions, the applicants would attach the boatswain's chair directly to the hoisting cable only when the structural arrangement precludes the safe use of the block and tackle required by 29 CFR 1926.452(o)(3).

D. Requested Variance From 29 CFR 1926.552(c)

Paragraph (c) of 29 CFR 1926.552 specifies the requirements for enclosed hoisting systems used to transport personnel from one elevation to another. This paragraph ensures that employers transport employees safely to and from elevated work platforms by mechanical means during 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 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 extra bridging and bracing must be installed to support a walkway between the hoist tower and the tapered chimney.

Paragraph (c)(1) of 29 CFR 1926.552 requires employers to enclose hoist towers located outside a chimney on the side or sides used for entrance to, and exit from, the chimney; these enclosures must extend the full height of the hoist tower. The applicants 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 applicants 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 29 CFR 1926.552 requires that employers enclose all four sides of a hoist tower even when the tower is located inside a chimney; the enclosure must extend the full height of the tower. The applicants contend that it is hazardous for employees to erect and brace a hoist tower inside a chimney, especially tapered chimneys, because these structures have limited space and cannot accommodate hoist towers; space limitations result from chimney design (*e.g.*, tapering), as well as reinforced steel projecting into the chimney from formwork that is near the work location.

As an alternative to complying with the hoist-tower requirements of 29 CFR 1926.552(c)(1) and (c)(2), the applicants propose to use the hoist system described below in Section II.E (''Proposed Alternative to 29 CFR 1926.452(o)(3) and 29 CFR 1926.552(c)'') of this notice to transport employees to and from work locations inside and outside chimneys. Use of the proposed hoist system would eliminate the need for the applicants to comply with other provisions of 29 CFR 1926.552(c) that specify requirements for hoist towers. Therefore, the applicants also are requesting a permanent variance from the following related provisions:

- (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)—Material and component requirements for construction of personnel hoists.

The applicants assert that the proposed hoisting system would protect its employees at least as effectively as the hoist-tower requirements of 29 CFR 1926.552(c).

E. Proposed Alternative to 29 CFR 1926.452(o)(3) and 29 CFR 1926.552(c)

To power the hoist system, the applicants would use a hoist engine, located and controlled outside the chimney. 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 a personnel- or material-transport device. The cathead, which is a superstructure at the top of the hoist system, supports the overhead sheaves. The overhead sheaves (and the vertical span of the hoist system) move upward with the hoist system as chimney construction progresses. Two guide cables, suspended from the cathead, eliminate swaying and rotation of the load. If the hoist rope breaks, safety clamps activate and grip the guide cables to prevent the load from falling. The applicants 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 applicants would implement additional conditions to improve employee safety, including:

(1) Attaching the wire rope to the personnel cage using a keyed-screwpin shackle or positive-locking link;

(2) Adding limit switches to the hoist system to prevent overtravel by the personnel- or material-transport devices;

(3) Providing the safety factors and other precautions required for personnel hoists specified by the pertinent provisions of 29 CFR 1926.552(c), including canopies and shields to protect employees located in a personnel cage from material that may fall during hoisting and other overhead activities;

(4) Providing falling-object protection for scaffold platforms as specified by 29 CFR 1926.451(h)(1);

(5) Conducting tests and inspections of the hoist system as required by 29 CFR 1926.20(b)(2) and 1926.552(c)(15);

(6) Establishing an accident-prevention program that conforms to 29 CFR 1926.20(b)(3);

(7) Equipping employees who use a personnel cage, personnel platform, or boatswain's chair with, and ensuring that they use, personal fall-arrest systems meeting the requirements of 29 CFR 1926.502(d);

(8) Ensuring that employees using a personnel cage secure their personal fall-arrest system to an attachment point located inside the cage, and that employees using personnel platforms or boatswain's chairs secure their personal fall-arrest systems to a vertical lifeline;

(9) When using vertical lifelines, securing the lifelines to the top of the chimney and weighting the lifelines properly or suitably affixing the lifelines to the bottom of the chimney, and ensuring that employees remain attached to their lifeline during the entire period of vertical transit;

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

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

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

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

OSHA revised the requirements for using personal fall-protection systems specified in previous variances addressing these hoist systems (see Conditions 7 and 8, above). This revision adds a requirement that the applicants provide employees using personnel cages with personal fall-protection systems, and ensure that the employees use these systems, in accordance with 29 CFR 1926.502(d). OSHA believes this revision will protect employees from falling out of a cage in the event the door of the cage opens inadvertently during lifting operations.

The last four of these conditions (Conditions 10–13) also are new, having never been part of previous variance applications covering these hoist systems. OSHA believes that these additional conditions are necessary to protect employees from shearing, fall, and struck-by hazards associated with using hoist systems in chimney construction. Accordingly, conditions 10–12 address shearing hazards that employees may encounter while a personnel platform or boatswain's chair is transporting them to or from an elevated jobsite. During transport, the personnel-transport device will pass near structures, including work platforms and scaffolds, that could crush or inflict other serious injury on a hand, arm, foot, leg, or other body part that extends beyond the confines of the device. To prevent these injuries, OSHA believes that employees who use these devices must be able to recognize shearing hazards at the worksite, and how to avoid them. Additionally, attaching a readily visible warning of the hazards to personnel platforms and boatswain's chairs would supplement and reinforce the hazard training by reminding employees of the hazard and how to avoid it.

The last condition (Condition 13) requires the applicants to establish a safety zone around the bottom landing where employees access personnel- and material-transport devices. The applicants must ensure that employees enter the safety zone only to access a transport device that is in the area circumscribed by the safety zone, and only when the hoist system is not in operation. This condition will prevent a transport device that is descending from an elevated jobsite from striking an employee who is in or near the bottom-landing area and is not aware of the descending device. During descent, it also is difficult for employees in or on these devices to detect an employee beneath them. Therefore, it is necessary for the applicants to establish a safety zone and ensure that employees only enter the safety zone when a transport device is at the bottom landing and not in operation (*i.e.*, the drive components of the hoist system are disengaged and the braking mechanism is properly applied).

This variance application also specifies a condition that requires the applicants to notify (1) the nearest OSHA Area Office at least 15 days before commencing chimney-construction operations covered by the variance, and (2) OSHA national headquarters as soon as an applicant knows that it will cease doing business or transfers the activities covered by the variance to another company. These administrative requirements will enable OSHA to more easily enforce, and determine the status of, the variance than is presently the case. Currently, OSHA has little or no information about chimney-construction activities conducted under a variance, making it difficult for it to assess compliance with the conditions specified under the variance. Additionally, OSHA finds that construction companies cease operations or transfer chimney-construction assets to successor companies without informing OSHA that the variance is no longer needed or requesting that the Agency reassign the variance to the successor company. OSHA believes that these notification requirements would improve administrative oversight of the variance program, thereby enhancing employee safety and reducing its administrative burden.

III. Grant of Interim Order

In addition to requesting a permanent variance, the applicants 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 applicants must comply fully with the conditions of the interim order as an alternative to complying with the tackle requirements provided for boatswain's chairs by 29 CFR 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 29 CFR 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 II.B (''Previous Variances from 29 CFR 1926.452(o)(3) and 1926.552(c)''), the Agency has granted a number of permanent variances from

these provisions since 1973. Over this period, the affected companies have effectively used the alternative conditions specified in the variances. The conditions of the interim order requested by the applicants substantially duplicate the conditions approved recently in the permanent variance granted to American Boiler and Chimney Co. and Oak Park Chimney Corp. (see 68 FR 52961), while adding conditions that would provide employees with protection from shearing, fall, and struck-by hazards. In granting a 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 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.'' (See 68 FR 52967.)

Based on its determination that the alternative conditions proposed by American Boiler and Chimney Co. and Oak Park Chimney Corp will protect employees at least as effectively as 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, as well as the additional conditions specified in this variance application that will protect employees from shearing, fall, and struck-by hazards, OSHA has decided to grant an interim order to the applicants pursuant to the provisions of 29 CFR 1905.11(c). Accordingly, in lieu of complying with paragraph (o)(3) of 29 CFR 1926.452 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552, the applicants will: (1) Provide notice of this grant of an interim order to the employees affected by the conditions of the interim order using the same means it used to inform these employees of their applications for a permanent variance; and (2) comply with the conditions listed below in section IV (''Specific Conditions of the Interim Order and the Application for a Permanent Variance'') 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 29 CFR 1905.13.

IV. 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 Calaveras Power Partners L.P., Matrix Service Inc., T. E. Ibberson Company, TIC—The Industrial Company, and Zachry Construction Corporation as part of their applications 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 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 that the applicants are proposing in their application for a permanent variance. These conditions include: [3]

1. Scope

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

(b) When using a hoist system as specified in this permanent variance, the applicants must/would:

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

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

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

(d) The interim order/permanent variance does not apply/would not apply in any State or territory having an occupational safety and health program approved by the Federal Occupational Safety and Health Administration under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667).[4]

2. Replacing a Personnel Cage With a Personnel Platform or a Boatswain's Chair

(a) *Personnel platform.* When the applicants 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) *Boatswain's chair.* The applicants must/would:

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

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

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

3. Qualified Competent Person

(a) The applicants must/would:

(i) Provide a qualified competent person, as specified in paragraphs (f) and (m) of 29 CFR 1926.32, who is responsible for ensuring that the design, maintenance, and inspection of the hoist system comply with the conditions specified herein 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 applicants 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 applicants must/would designate the hoist machine as a portable personnel hoist.

(b) *Raising or lowering a transport.* The applicants must/would ensure that:

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

[3] In these conditions, the verb ''must'' applies to the interim order, while the verb ''would'' pertains to the application for a permanent variance.

[4] These States and territories are referred to as ''State-plan States and Territories.'' The 22 State-plan States and territories having authority 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. Three State-plan States (*i.e.*, Connecticut, New Jersey, and New York) and one territory (*i.e.*, Virgin Islands) do not have authority over private-sector employees (*i.e.*, they limit their occupational safety and health authority to public-sector employees only).

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

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

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

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

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

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

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

(i) Equip the hoist machine with an operating line-speed indicator maintained in proper 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 applicants 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 applicants 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 applicants 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 applicants must/would secure hoist machines in position to prevent movement, shifting, or dislodgement.

(j) *Location*. The applicants 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 degree (½°) and one and one-half degrees (1½°) for smooth drums, and between one-half degree (½°) and two degrees (2°) for grooved drums, with the lead sheave centered on the drum.[5]

(k) *Drum and flange diameter*. The applicants 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 (1½) times the winding-drum diameter.

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

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

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

5. Methods of Operation

(a) *Employee qualifications and training*. The applicants 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, personnel platform, or boatswain's chair for transportation.

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

(i) Two hundred 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 boatswain's 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 (*i.e.*, using a dedicated material-transport device such as a hopper or concrete bucket).

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

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

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

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

6. Hoist Rope

(a) *Grade*. The applicants 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 applicants must/would maintain a safety factor of at least eight (8) times the safe workload throughout the entire length of hoist rope.

(c) *Size*. The applicants must/would use a hoist rope that is at least one-half (½) inch (1.3 cm) in diameter.

(d) *Inspection, removal, and replacement*. The applicants 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 condition specified by 29 CFR 1926.552(a)(3) occurs.

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

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

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

[5] This provision adopts the definition of, and specifications for, fleet angle from *Cranes and Derricks,* H. I. Shapiro, *et al.* (eds.); New York: McGraw-Hill; 3rd ed., 1999, page 592. Accordingly, the fleet angle is ''[t]he angle the rope leading onto a [winding] drum makes with the line perpendicular to the drum rotating axis when the lead rope is making a wrap against the flange.''

(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 applicants 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 safe workload, or an equivalent block with roller bearings;

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

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

(iv) Bolted rigidly to the base; and

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

(b) *Directional change*. The applicants 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 applicants 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 applicants 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 applicants 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 applicants 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 applicants 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 applicants must/would affix two (2) guide ropes by swivels to the cathead. The applicants must/would ensure that the guide ropes:

(i) Consist of steel safety cables not less than one-half (½) 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 applicants must/would fasten one end of each guide rope securely to the overhead support, with appropriate tension applied at the foundation.

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

10. Personnel Cage

(a) *Construction*. The applicants 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 applicants 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 (½) 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 (⅛) inch (0.3 cm) aluminum, or an equivalent material;

(vi) Safe handholds (*e.g.*, rope grips–but *not* rails or hard protrusions) [6] that accommodate each occupant; and

(v) Attachment points to which employees must/would secure their personal fall protection systems.

(b) *Overhead weight*. The applicants 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 applicants 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 applicants 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 applicants must/would post the procedures for operating the personnel cage conspicuously at the hoist operator's station.

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

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

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

(iii) Use a personnel cage for raising or lowering 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 applicants 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 applicants must/would attach safety clamps to each personnel cage for gripping the guide ropes.

(c) *Operation*. The applicants 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) Be capable of stopping and holding a personnel cage that is carrying 100 percent of its maximum rated load

[6] To reduce impact hazards should employees lose their balance because of cage movement.

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 applicants must/would keep the safety-clamp assemblies clean and functional at all times.

12. Overhead Protection

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

(b) The applicants must/would ensure that the canopy or shield slopes to the outside of the personnel cage.

13. Emergency-Escape Device

(a) *Location*. For employees using a personnel cage, the applicants 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 applicants must/would ensure that written instructions for operating the emergency-escape device are attached to the device.

(c) *Training*. The applicants 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

When the applicants elect to replace the personnel cage with a personnel platform in accordance with Condition 2(a), above, they must/would:

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

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

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

15. Protecting Employees from Fall and Shearing Hazards

(a) *Fall hazards*. The applicants must/would:

(i) Before employees use personnel cages, personnel platforms, or boatswain's chairs, equip the employees with, and ensure that they use, personal fall-arrest systems that meet the requirements of 29 CFR 1926.502(d);

(ii) Ensure that employees using personnel cages secure their fall-arrest systems to attachment points located inside the cage;

(iii) Ensure that employees using personnel platforms and boatswain's chairs secure their personal fall-arrest systems to a vertical lifeline; and

(iv) When using vertical lifelines:

(A) Secure the lifelines to the top of the chimney;

(B) Weight the lifelines properly or suitably affix the lifelines to the bottom of the chimney; and

(C) Ensure that employees remain attached to their lifeline during the entire period of vertical transit.

(b) *Shearing hazards*. The applicants must/would:

(i) Provide employees who use personnel platforms or boatswain's chairs with instruction on the shearing hazards posed by the hoist system (*e.g.*, work platforms, scaffolds), and the need to keep their limbs or other body parts clear of these hazards during hoisting operations;

(ii) Provide the instruction on shearing hazards:

(A) Before an employee uses a personnel cage, personnel platform, or boatswain's chair at the worksite; and

(B) Periodically, and as necessary, thereafter, including whenever an employee demonstrates a lack of knowledge about the hazard and how to avoid it, a modification occurs to an existing shearing hazard, or a new shearing hazard develops at the worksite; and

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

(A) For personnel platforms: ''Warning—To avoid serious injury, keep your hands, arms, feet, legs, and other parts of your body inside this platform while it is in motion''; and

(B) For boatswain's chairs: ''Warning—To avoid serious injury, do not extend your hands, arms, feet, legs, or other parts your body from the side or to the front of this chair while it is in motion.''

16. Safety Zone

The applicants must/would:

(a) Establish a clearly designated safety zone around the bottom landing of the hoist system; and

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

17. Inspections, Tests, and Accident Prevention

(a) The applicants must/would:

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

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

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

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

18. Welding

(a) The applicants must/would ensure that only qualified welders weld components of the hoisting system.

(b) The applicants 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

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

19. OSHA Notification

(a) At least 15 calendar days prior to commencing any chimney-construction operation using the conditions specified herein, the applicants must/would notify the OSHA Area Office nearest to the worksite of the operation, including the location of the operation and the date the operation will commence.

(b) Each applicant must/would inform OSHA national headquarters as soon as it has knowledge that it will:

(i) Cease to do business; or

(ii) Transfer the activities covered by this permanent variance to a successor company.

V. Authority and Signature

Thomas M. Stohler, 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. 5–2007 (72 FR 31160), and 29 CFR part 1905.

Signed at Washington, DC, on January 15, 2009.

Thomas M. Stohler,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9–1291 Filed 1–22–09; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0048]

NSF International; Expansion of Recognition

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

ACTION: Notice.

SUMMARY: This notice announces the Occupational Safety and Health Administration's final decision expanding the recognition of NSF International (NSF) as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7.

DATES: The expansion of recognition becomes effective on January 23, 2009.

FOR FURTHER INFORMATION CONTACT: MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of NSF International (NSF), as a Nationally Recognized Testing Laboratory (NRTL). NSF's expansion covers the use of additional test standards. OSHA's current scope of recognition for NSF may be found in the following informational Web page: *http://www.osha.gov/dts/otpca/nrtl/nsf.html.*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products approved by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. We maintain an informational Web page for each NRTL that details its scope of recognition. These pages can be accessed from our Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

In an earlier action involving NSF, OSHA issued a **Federal Register** notice to grant NSF's previous application, which was for an expansion of recognition (71 FR 70431, December 4, 2006).

NSF submitted another application, dated October 23, 2007 (see Exhibit 18–1, as cited in the preliminary notice), to expand its recognition to include one additional test standard. The NRTL Program staff determined that the standard was an ''appropriate test standard'' within the meaning of 29 CFR 1910.7(c). In connection with this request, OSHA did not perform an on-site review of NSF's NRTL testing facilities. However, NRTL Program assessment staff reviewed information pertinent to the request and recommended that NSF's recognition be expanded to include the additional test standard listed below (*see* Exhibit 18–2, as cited in the preliminary notice). Therefore, OSHA is approving this one test standard for the expansion.

Based on this review, OSHA published a preliminary notice announcing the expansion application in the **Federal Register** on August 29, 2008 (73 FR 51008). Comments were requested by September 15, 2008, but no comments were received in response to this notice. OSHA is now proceeding with this final notice to grant NSF's expansion application.

You may obtain or review copies of all public documents pertaining to the NSF application by accessing *http://www.regulations.gov*, which is the Federal eRulemaking Portal, or by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210. Docket No. OSHA–2006–0048 contains all materials in the record concerning NSF's recognition.

The current address of the NSF facility (site) already recognized by OSHA is: NSF International, 789 Dixboro Road, Ann Arbor, MI 48105.

Final Decision and Order

NRTL Program staff has examined the application, the assessor's recommendation, and other pertinent information. Based on this examination and the assessor's recommendation, OSHA finds that NSF meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitation and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of NSF, subject to this limitation and these conditions.

Limitation

OSHA limits the expansion of NSF's recognition to testing and certification of products for demonstration of conformance to the following test standard, OSHA determined is an appropriate test standard within the meaning of 29 CFR 1910.7(c): UL 1285 Pipe and Couplings, Polyvinyl Chloride (PVC), for Underground Fire Service.

The designation and title of this test standard was current at the time of the preparation of the preliminary notice.

OSHA's recognition of NSF, or any NRTL, for a particular test standard is limited to equipment or materials (i.e., products) for which OSHA standards require third-party testing and certification before use in the workplace. Consequently, if a test standard also covers any product(s) for which OSHA does not require such testing and certification, an NRTL's scope of recognition does not include that product(s).

The test standard listed above may be approved as an American National Standard by the American National Standards Institute (ANSI). However, for convenience, we use the designation of the standards-developing organization for the standard, as opposed to the ANSI designation. You may contact ANSI to find out whether a test standard is currently ANSI approved.

Conditions

NSF also must abide by the following conditions of the recognition, in