

alteration, repair, maintenance, or demolition of structures such as chimneys. However, this standard does not provide specific safety requirements for hoisting employees 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 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 asserted in their proposed variance that it is impractical and hazardous to locate a hoist tower outside tapered chimneys because it becomes increasingly difficult, as a chimney rises, to erect, guy, and brace a hoist tower; under these conditions, access from the hoist tower to the chimney or to the movable scaffolds used in constructing the chimney exposes employees to a serious fall hazard. Additionally, they noted 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. In the proposed variance, the employers contended 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 proposed to use the rope-guided hoist system discussed in section I of this notice to transport employees to and from work locations inside and outside chimneys. They

claimed that this hoist system should make it unnecessary for them to comply with other provisions of § 1926.552(c) that specify requirements for hoist towers, including:

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

The employers asserted that the proposed hoisting system protected employees at least as effectively as the hoist-tower requirements of § 1926.552(c). The following section of this preamble provides the comments received on the employers' proposed variance.

#### IV. Comments on the Proposed Variance

The private sector submitted no comments regarding the proposed variance. However, OSHA did receive comments from 14 of the 26 states and territories that have an autonomous occupational safety and health agency approved under Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667). The Agency received the 14 comments after it sent each of these 26 states and territories a copy of the application and requested that they provide information on whether their standards (the ones that would be affected by the proposed variance) were identical to the corresponding Federal standards, and, if so, did they agree to accept the alternative conditions proposed by the employers.

Of the 14 states and territories that submitted comments, the following nine states reported that they have standards that are identical to the Federal standards, and that they agree to accept the alternative conditions: Alaska, Arizona, Kentucky, Maryland, New Mexico, North Carolina, Oregon, and Tennessee (Exs. 2-1 to 2-8). South Carolina (Ex. 2-9) indicated that it, too, has identical standards, and that it would accept the alternative conditions, but noted that a provision of its state code (Chapter 7, Article 1, Subarticle 2, SC Code of Laws 1976, as amended) requires that "[i]n order that such a variance be honored by the Commissioner, it is and will be

incumbent upon the employer to file the final rule or order of the [U.S.] Secretary of Labor with the Commissioner of Labor at his office in Columbia, South Carolina."

Four State-plan states and one territory reported having identical standards, but did not accept the alternative conditions. Connecticut (Ex. 2-10) did not concur with the alternative conditions because its state-plan program regulates only public-sector employees and, therefore, it has "its own statutory and regulatory authority pertaining to the issuance of variances in the public sector." Hawaii (Ex. 2-11) declined to accept the alternative conditions because it did not have "a chance to do a thorough job of researching" them. The Virgin Islands (Ex. 2-12) agreed with Hawaii's position. Washington State (Ex. 2-13) noted that while its standards were the same as the Federal standards, "We anticipate updating the section of our standards with these particular codes and[,] therefore[,] their current numbering and possibly content may change in the next year or two[,] which means that granted variances would need to be updated." The Washington State response continued, "[W]e have no objection to such a variance being issued. However, for the reasons stated \* \* \* above regarding the coding system, it may be easier for the affected companies to directly submit variance requests to our attention so there is a record of which state specific codes have a variance in the event there [are] changes in the future of those codes."

While Iowa (Ex. 2-14) also has standards that are identical to the Federal standards, it stated that "[b]ecause the State of Iowa has a specific statute and regulations for variances, [the employers] would have to submit a request to Iowa for any work to be done here as opposed to accepting a variance granted by Federal OSHA." In addition, Iowa made several substantive comments regarding the proposed variance. First, it commented that "[t]he lack of the safety clamps required under [proposed Condition 9] \* \* \* would seem to indicate the company needs to comply with 1926.451(g)(1)(i) & (ii) for a work platform and boatswains' chair." In response, OSHA notes that paragraphs (c) and (d) of proposed Condition 7 would require, respectively, appropriately designed and constructed safety clamps, as well as clamps that, when used, apply tension to guide ropes without damaging them. Also, under proposed Condition 9, employers would have to attach safety clamps to each personnel cage; additionally, this