

proposed condition specifies requirements that regulate the stopping capability and spring-compression force, as well as the operation and maintenance, of the clamps. OSHA has retained these proposed provisions, but has consolidated them under a single condition (Condition 11) in the permanent variance.

The proposed variance also would require employers to comply with paragraphs (g)(1)(i) and (g)(1)(ii) of §1926.451 as a condition of the permanent variance. In this regard, the third paragraph under “General Conditions” in the proposed variance notes that “the applicants acknowledge that they would comply with all other applicable provisions of 29 CFR parts 1910 and 1926 if OSHA grants the variance applications.” To clarify this requirement, OSHA is including this requirement as a distinct provision (Condition 1(b)) of the permanent variance; this provision states, “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 comply fully with all other applicable provisions of 29 CFR parts 1910 and 1926.”

Commenting further, Iowa noted that “[a] fall protection system for the cage and a positioning device for the employee to keep him/her in the cage would need to be addressed.” OSHA believes that the safety-clamp requirements specified in Conditions 7 and 9 of the proposed variance (Condition 11 of the permanent variance) are sufficient to prevent a personnel cage from falling should a hoist rope separate, while the construction requirements for personnel cages (e.g., steel-frame construction, wire-enclosed sides, safe handholds) provided under Condition 8 of the proposed variance (Condition 10 of the permanent variance) will prevent employees from falling out of the cages.

Iowa also made the following comments:

- “[T]here is no reference to protecting any of the cables or fall protection equipment during welding on the top platform. The application of requirements described in §1926.451(f)(17) should be considered.”
- “The problems associated with hazards to employees on the upper deck with the lift mechanism or protection of the lift mechanism from damage [are] not addressed.”
- “1910 issues are only mentioned in passing.”

These comments suggest that the proposed variance does not address the

identified hazards. However, as we noted earlier, the “General Conditions” section of the proposed variance (and Condition 1(b) of the permanent variance) require employers to comply with any other requirements of 29 CFR parts 1910 and 1926 that pertain to hazards in these workplaces. Therefore, regarding the first of these comments, under the permanent variance, employers must still implement the precautions specified in §1926.451(f)(17) to prevent the welding current from arcing through the suspension cables when employees are performing welding operations on suspended scaffolds.

The second of these comments appears to assert that none of the proposed conditions would protect employees if a hoist machine strikes a scaffold (i.e., “hazards to employees on the upper deck with the lift mechanism”), or that none of these conditions would prevent damage to the hoist machine (i.e., “protection of the lift mechanism from damage”). Regarding the first assertion, OSHA believes that proper design, maintenance, inspection, and operation of hoist machines as specified by Conditions 1 and 2 of the proposed variance, as well as proper selection and training of hoist operators as provided by proposed Condition 3, would prevent a hoist machine from endangering employees located on a scaffold. In the unlikely event a hoist machine strikes a scaffold, employees on the scaffold would be protected against falls under §1926.451(g), and would have additional protection under §1926.28 and subpart E (“Personal Protective and Life Saving Equipment”) of 29 CFR part 1926.

Iowa’s comment does not indicate what would cause damage to the hoist machine. OSHA assumes that such damage could only occur if a heavy object was to fall on or strike the machine. In this case, the Agency finds that the structural requirements listed in paragraphs (h) and (i) (“Frame” and “Stability,” respectively) of proposed Condition 2 (“Hoist Machine”) would adequately protect the machine from damage. Proposed paragraph 2(h) would require that the frame of the machine be “a self-supporting, rigid, welded steel structure, with holding brackets for anchor lines and legs for anchor bolts being integral components of the frame”; proposed paragraph 2(i) would prevent collapse of the hoist machine when struck by a heavy object by ensuring that the machine is secured “in position to prevent movement, shifting, or

dislodgement.” The Agency has retained both of these provisions in the permanent variance as paragraphs (h) (“Frame”) and (i) (“Stability”) of Condition 4 (“Hoist Machine”).

As to Iowa’s concerns about the coverage of 29 CFR part 1910, OSHA notes that the variance only covers construction provisions specified under 29 CFR part 1926. Condition 1(b) of the permanent variance states that any provisions of 29 CFR part 1910 that apply to the employers’ work activities will remain in effect.

V. Multi-State Variance

The variance application stated that the employers perform chimney work in a number of geographic locations in the United States, some of which could include one or more locations in State-plan states and territories. As noted in the previous section of this preamble, OSHA sent a copy of the variance application to all State-plan states and territories for comment. Nine states responded that they had identical provisions and also agreed to accept the alternative conditions. These states are: Alaska, Arizona, Kentucky, Maryland, New Mexico, North Carolina, Oregon, South Carolina, and Tennessee. (South Carolina commented that its state code requires the employers to submit to its State Commissioner of Labor any permanent variance issued by OSHA.) The remaining four states and one territory that submitted comments did not accept the alternative conditions for a variety of reasons. Additionally, the Agency cannot determine the status of the 12 State-plan states and single territory that did not submit comments. Therefore, based on the comments submitted to the record, the permanent Federal variance also will be effective in the following nine states: Alaska, Arizona, Kentucky, Maryland, New Mexico, North Carolina, Oregon, South Carolina (provided the employers first submit a copy of the permanent variance to the State Commissioner of Labor), and Tennessee.

VII. Corrections to the Variance

The Agency has made a number of minor editorial corrections to the proposed variance to improve comprehension of, and compliance with, the specified conditions (e.g., revising the term “applicants” to “employers”). OSHA also made several technical (non-substantive) revisions to the proposed variance. These revisions are described in the following table.