

REGULATORY UPDATE

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OSHA Final Rule for Work in Confined Spaces in Construction

On May 4, 2015, the Occupational Safety and Health Administration (OSHA) published a [final rule](#) for work in confined spaces in the construction industry.

The final rule mirrors substantive provisions of the current general industry standard, but accounts for specific construction-industry differences. The final rule becomes effective **Aug. 3, 2015**.

OSHA estimates that each year, on average, confined-space work in construction results in six fatalities and 812 injuries. OSHA projects that full compliance with the final rule can reduce fatalities and injuries by 96 percent.

DELAYED ENFORCEMENT

While the final rule becomes effective Aug. 3, 2015, OSHA [announced](#) on July 9, 2015, it would postpone full enforcement of this standard until **Oct. 2, 2015**.

OSHA is delaying enforcement of this standard to accommodate industry concerns about having adequate time to train employees and acquire the equipment necessary to comply with the new standard.

During the period between the effective date and the full enforcement date, OSHA will not issue citations to employers that:

- Make **good faith efforts** to comply with the new standard; and
- Are in compliance with either the new standard or the previous standard.

When evaluating whether an employer is making a good faith effort, OSHA will consider whether the employer is scheduling training for employees as required by the new standard, ordering equipment necessary to comply with the new standard and taking alternative measures to educate and protect employees from confined space hazards.

AFFECTED ESTABLISHMENTS

OSHA estimates that an average of 20,479 establishments have at least one employee entering at least one confined space each year. The final rule affects establishments across the construction industry, including establishments with work involving buildings, highways, bridges, tunnels and utility lines. General contractors, specialty-trade contractors and employers engaged in some residential construction work may also be affected.

This table shows the 15 NAICS codes OSHA concluded will be affected by the final rule:

NAICS Code	Industry	NAICS Code	Industry
221310	Water Supply and Irrigation Systems	237310	Highway, Street, and Bridge Construction
236115	New Single-Family Housing Construction (except Operative Builders)	237990	Other Heavy and Civil Engineering Construction

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NAICS Code	Industry	NAICS Code	Industry
236116	New Multifamily Housing Construction (except Operative Builders)	238190	Other Foundation, Structure, and Building Exterior Contractors
236118	Residential Remodelers	238210	Electrical Contractors and Other Wiring Installation Contractors
236210	Industrial Building Construction	238220	Plumbing, Heating, and Air-Conditioning Contractors
236220	Commercial and Institutional Building Construction	238310	Drywall and Insulation Contractors
237110	Water and Sewer Line and Related Structures Construction	238910	Site Preparation Contractors
237130	Power and Communication Line and Related Structures Construction		

PRIOR REQUIREMENTS

OSHA's previous standard for work in confined spaces for the construction industry was broad and offered little guidance to employers. The prior requirement directed employers to train employees on:

- The hazards associated with work in confined spaces;
- The precautions employees must take when assigned to work in confined spaces; and
- The personal protective equipment employees must use while working in confined spaces.

However, data and enforcement experience showed that the prior provision did not adequately protect construction employees from hazards associated with confined-space work.

THE FINAL RULE

The final rule includes provisions for:

- Identifying confined spaces and the hazards they may contain;
- Allowing employers to prevent entry into a potentially hazardous space;
- Removing hazards prior to entry to avoid employee exposure;
- Restricting entry through a permit system when removing the hazard is not possible;
- Providing appropriate testing and equipment when entry is required; and
- Arranging for rescue services to remove entrants from a confined space when necessary.

EMPLOYER OBLIGATIONS

The final rule requires employers to identify permit-required confined spaces (PRCSs), share timely information, create a written program and issue entry permits.

Identifying PRCSs.

This Regulatory Update is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

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Under the final rule, employers must identify PRCs at their workplaces and take appropriate measures for the protection of affected employees. Employers must have a competent person evaluate the spaces where employees will work and (1) evaluate whether a space meets the definition of a confined space, and if so, (2) identify any confined spaces that are PRCs.

Sharing information.

OSHA believes that sharing information is crucial in order to identify hidden or latent dangers in permit spaces. Ultimately, sharing information can prevent the actions of one employer from exposing another employer's workers to unknown hazards. This requirement requires communication and coordination among controlling contractors and subcontractors, and between host employers and controlling contractors. The final rule makes controlling contractors (rather than the host employer) responsible for the communication, but does not require identifying separate classifications of spaces. The controlling contractor is also responsible for coordinating work in and around confined spaces so that no contractor working at the site creates a hazard inside the confined space.

Creating a written program and issuing permits.

The final rule requires entry employers to develop and implement a written permit-space program, and to review the permit-space program. The rule also requires employers to issue entry permits and specifies the information employers must include in the permits. Finally the rule also requires periodic review of permit procedures.

STATE PLANS

States that run an OSHA-approved state plan must amend their standards and adopt the final rule **within six months**, unless they can show that their current standards are at least as effective in protecting workers as this final rule.

MORE INFORMATION

Please contact Millhiser Smith Agency, Inc. or visit the OSHA [website](#) for more information on confined spaces in construction.