OSHA’s New Confined Space Rule
29 CFR 1926 Subpart AA

After much discussion and years of planning, OSHA recently announced a new Confined Spaces in Construction rule (29 CFR 1926 Subpart AA). The rule goes into effect August 3, 2015, but OSHA has postponed full enforcement of the new standard until October 2, 2015. During this 60-day period, OSHA will not issue citations to an employer making good faith efforts to comply with the new standard, as long as the employer is in compliance with either the training requirements of the new standard, found at 29 CFR 1926.1207, or the training requirements found at the former 29 CFR 1926.21(b)(6)(i).

Is the Rule for Construction, General Industry, or Both?
The new rule (1926 Subpart AA) is for construction. The old rule (1910.146) is for general industry.

Who Has To Comply With Which Confined Space Rule?
General industry employers comply with the general industry rule (1910.146). Construction employers have to comply with the new, construction rule (1926 Subpart AA). OSHA provides the following guideline:
“If you are doing construction work – such as building a new structure or upgrading an old one – then you must follow the construction confined space rule.”

But, the new regulation itself also includes some exceptions:
“Exceptions. This standard does not apply to: (1) Construction work regulated by §1926 subpart P—Excavations. (2) Construction work regulated by §1926 subpart S—Underground Construction, Caissons, Cofferdams and Compressed Air. (3) Construction work regulated by §1926 subpart Y—Diving.”

What If My Workers Do Both Construction Work and General Industry Work?
The employer “will meet OSHA requirements if that employer meets the requirements of 29 CFR 1926 Subpart AA – Confined Spaces in Construction.”

How Is This New Confined Spaces in Construction Rule Different than Rules that Previously Applied to Construction Work in Confined Spaces?
The new rule requires employers to determine:
- What kinds of spaces their workers are in
- What hazards could be there
- How those hazards should be made safe
- What training workers should receive
- How to rescue those workers if anything goes wrong
How Is the Rule for Confined Spaces in Construction Different than the Rule for Confined Spaces in General Industry?

There are five important differences from the general industry rule. They are:

1. More detailed provisions requiring coordinated activities when there are multiple employers at the worksite. This will ensure hazards are not introduced into a confined space by workers performing tasks outside the space. An example would be a generator running near the entrance of a confined space causing a buildup of carbon monoxide within the space. (See the question below about controlling contractors, host employers, and entry employers for more on this.)
2. Requiring a competent person to evaluate the work site and identify confined spaces, including permit spaces.
3. Requiring continuous atmospheric monitoring whenever possible.
4. Requiring continuous monitoring of engulfment hazards. For example, when workers are performing work in a storm sewer, a storm upstream from the workers could cause flash flooding. An electronic sensor or observer posted upstream from the work site could alert workers in the space at the first sign of the hazard, giving the workers time to evacuate the space safely.
5. Allowing for the suspension of a permit, instead of cancellation, in the event of changes from the entry conditions list on the permit or an unexpected event requiring evacuation of the space. The space must be returned to the entry conditions listed on the permit before re-entry.

Also, OSHA added some provisions that clarify some things in the rule for General Industry. They are:

1. Requiring that employers who direct workers to enter a space without using a complete permit system prevent workers’ exposure to physical hazards through elimination of the hazard or isolation methods such as lockout/tagout.
2. Requiring that employers who are relying on local emergency services for emergency services arrange for responders to give the employer advance notice if they will be unable to respond for a period of time (because they are responding to another emergency, attending department-wide training, etc.).
3. Requiring employers to provide training in a language and vocabulary the worker understands.

How Does This Rule Assign Responsibilities Between Host Employers, Controlling Contractors, and Entry Employers?

The rule makes the controlling contractor, rather than the host employer, the primary point of contact for information about permit spaces at the work site.

The host employer must provide information it has about permit spaces at the work site to the controlling contractor, who then passes it on to the employers whose employees will enter the spaces.

Likewise, entry employers must give the controlling contractor information about their entry program and hazards they encounter in the space, and the controlling contractor passes that information on to other entry employers and back to the host.

As mentioned above, the controlling contractor is also responsible for making sure employers outside a space know not to create hazards in the space, and that entry employers working in a space at the same time do not create hazards for one another’s workers.
Here are some relevant definitions from the new standard that may help you make sense of the section above:

**Controlling Contractor:** The employer that has overall responsibility for construction at the worksite

**Entry Employer:** Any employer who decides that an employee it directs will enter a permit space

**Host Employer:** The employer that owns or manages the property where the construction work is taking place

**Will I Need a Written Confined Space Program?**
Yes, if your workers will be entering permit-required confined spaces.

**What Do I Need to Do If a Work Site Has Confined Spaces But My Workers Won't Enter Them?**
Take effective steps to prevent your employees from entering the space.

**Where Can I Find More Information From OSHA About the New Confined Spaces in Construction Rule?**
https://www.osha.gov/confinedspaces/index.html

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