

Week of **May 11, 2015**

## OSHA Issues Final Rule on Confined Spaces in Construction

Construction industry employers face new requirements following the May 4th release of the Occupational Safety and Health Administration's comprehensive final rule governing confined spaces in construction. The rule goes into effect August 3, 2015.

The new standard, Subpart AA of 29 CFR §1926 (available at: [www.gpo.gov/fdsys/pkg/FR-2015-05-04/pdf/2015-08843.pdf](http://www.gpo.gov/fdsys/pkg/FR-2015-05-04/pdf/2015-08843.pdf)), requires employers to determine what kinds of confined spaces their workers are in, what hazards could be there, how those hazards should be made safe, what training workers should receive, and how to rescue those workers if anything goes wrong.

"This rule will save lives of construction workers," said OSHA Assistant Secretary Dr. David Michaels. He added that the emphasis in the rule is on training, continuous worksite evaluation, and communication. The agency estimates that the rule would result each year in five fewer construction workers' deaths and 780 fewer workers being injured due to confined spaces hazards.

The rule defines confined spaces as work areas that:

- (1) are large enough for an employee to enter,
- (2) have limited means of entry or exit, and
- (3) are not designed for continuous occupancy.

Such spaces can present physical and atmospheric hazards, the agency said. The rule requires preparation of a written program before entry is allowed into any location meeting the legal definition of a "permit space" (i.e., a permit-required confined space).

Among the standard's key requirements is one providing that every employer with employees working on a job site containing a permit space, but whose work will not require their workers to enter it, still must take affirmative steps to prevent entry by their employees. In addition, the controlling contractor, rather than the host employer, is

the primary point of contact for information about permit spaces at the worksite. At sites where both OSHA's general industry and its construction industry confined spaces regulations apply, employers must adhere to the construction industry regulations.

OSHA identified a number of areas within which confined spaces could occur, including:

- bins;
- boilers;
- pits;
- manholes;
- tanks;
- incinerators;
- scrubbers;
- concrete pier columns;
- sewers;
- transformer vaults;
- heating, ventilating, and air-conditioning (HVAC) ducts;
- storm drains;
- water mains;
- precast concrete and other pre-formed manhole units;
- drilled shafts;
- enclosed beams;
- vessels;
- digesters;
- lift stations;
- cesspools;
- silos;
- air receivers;
- sludge gates;
- air preheaters;
- step up transformers;
- turbines;
- chillers;
- bag houses; and
- mixers/reactors.

According to the agency, the rule will affect construction work involving buildings, highways, bridges, tunnels, utility lines, and more, as well as general contractors, specialty-trade construction contractors, and employers engaged in some types of residential construction work.

The standard does not apply to construction work regulated by:

- §1926 subpart P, on excavations;
- §1926 subpart S, on underground construction, caissons, cofferdams, and compressed air; or
- §1926 subpart Y, on diving.

The new regulation is similar to permit-required confined spaces requirements that have been in place in general industry since 1993. However, a number of changes have

been made to tailor the rule to the unique construction environment. These include requirements to ensure that multiple employers share vital safety information and continuously monitor hazards. Some provisions in the new rule clarify existing requirements in the general industry standard, OSHA said.

The regulation updates a training-only requirement for confined spaces in construction that dates to 1979. After the 1993 general industry confined spaces standard went into effect, OSHA agreed to propose a standard for confined spaces in construction as part of a legal settlement with the United Steelworkers of America. The proposed rule was issued in November 2007.

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## DOL Proposes Changes to Black Lung Benefits Program

The Department of Labor's Office of Workers' Compensation Programs (OWCP) has issued a proposed rule intended to shore up procedural issues related to the black lung benefits program.

Under the proposal (available at: [www.gpo.gov/fdsys/pkg/FR-2015-04-29/pdf/2015-09573.pdf](http://www.gpo.gov/fdsys/pkg/FR-2015-04-29/pdf/2015-09573.pdf)), issued April 29, coal mine operators must pay all benefits due on a claim before the award can be challenged through modification. The proposal also gives miners claiming black lung benefits greater access to their health records.

"We have listened to our stakeholders, and through this proposed rule, we hope to ensure that all coal miners have full access to information about their health and to enhance the accuracy of entitlement determinations," OWCP Director Leonard J. Howie III said in a news release. "Our goal is to work with all parties involved to make the Black Lung claims process as transparent and efficient as possible."

The Black Lung Benefits Act generally allows for modification of claim decisions based on a mistake of fact or a change in conditions up to one year after the

last payment of benefits or denial of a claim. According to OWCP, when coal companies try to overturn awards through the modification process, they commonly do not pay benefits owed under the award, despite being legally obligated to do so.

The proposed rule would require the company to demonstrate it has paid all benefits owed under any effective claim award before it may challenge the award through modification. To potentially avoid what it called "administrative difficulties," OWCP said the requirement would only apply to modification requests made prospectively after the effective date of the final rule. In addition, noncompliance would not prejudice the operator's right to make additional modification requests in that same claim in the future, the agency stated.

Another proposed change would require affected parties – including employers, claimants, attorneys, and other authorized representatives – to disclose all medical information developed in connection with a claim for benefits, even when the party does not intend to submit the information into evidence. Currently, the claimant and the affected coal company can develop as

much medical information about the miner as their finances allow, and then choose which data to submit as evidence for consideration.

“Experience has demonstrated that miners may be harmed if they do not have access to all information about their health, including information that is not submitted for the record,” OWCP said.

The agency requests that public comments be received by June 29, 2015. Commenters are encouraged to provide their submittals electronically through the federal e-rulemaking portal at [www.regulations.gov](http://www.regulations.gov) using the identifying RIN number 1240-AA10.

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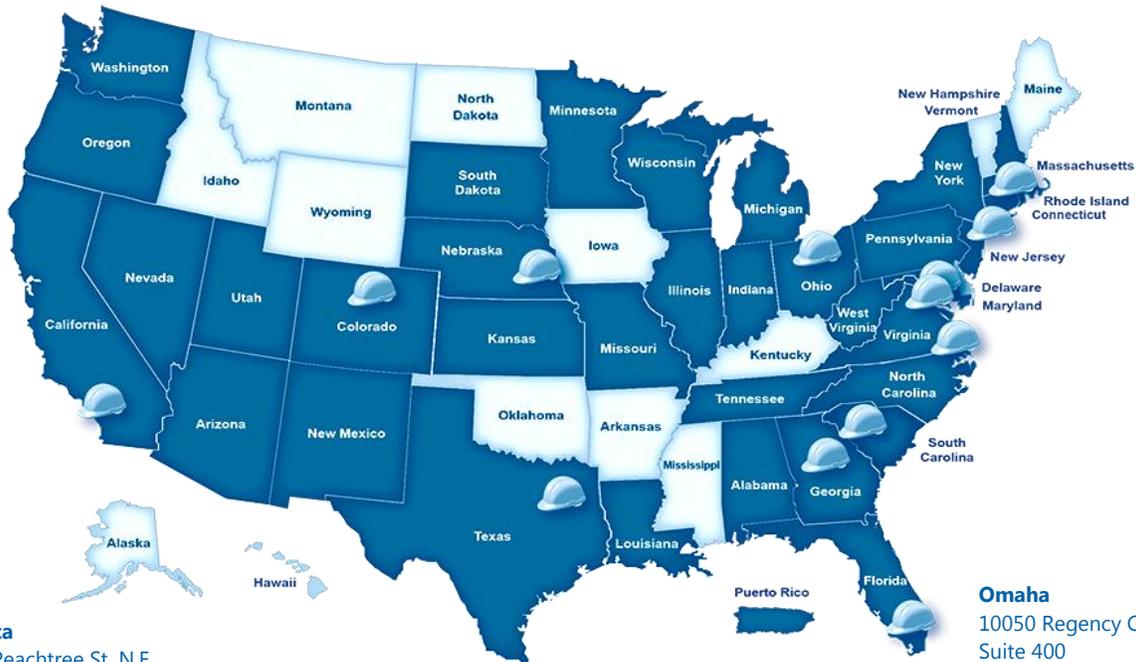
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