

August 31, 2011

## Oregon OSHA - Proposed Changes To Confined Spaces in General Industry and Construction

### *Public Hearings Scheduled for:*

<u>Date</u>	<u>Time</u>	<u>Location</u>
September 30, 2011	10:00 am	Fremont Place, Building I 1750 NW Naito Parkway, Suite 112 Portland OR 97209-2533
October 7, 2011	10:00 am	Oregon OSHA Field Office 1140 Willagillespie, Suite 42 Eugene OR 97401-2101

Oregon OSHA proposes to adopt new rule, OAR 437-002-0146 Confined Spaces, that replaces OAR 437-002-1910.146 Permit-Required Confined Spaces. This expands the scope of the new rule to include the construction industry.

The requirements of this standard are similar to the requirements of the existing standard, but is written to clarify employer obligations and eliminate confusing requirements.

Specific exemptions include:

- Construction work regulated by OAR 437-003-1926 Division 3/P, Excavations and OAR 437-003-1926 Division 3/S, Underground Construction, Caissons, Cofferdams and Compressed Air, when the only hazards are addressed by these rules. Sewer work is not included in the exception.
- Enclosed spaces regulated by OAR 437-002-1910.269 Division 2/R, Electric Power Generation, Transmission and Distribution, except when that standard requires compliance with this standard.
- Welding in confined spaces regulated by OAR 437-002-1910 Division 2/Q, Welding, Cutting & Brazing, when the only hazards are related to the welding process.

Other than the exceptions listed above, when any other applicable standard addresses work in confined spaces or additional hazards that may be present, employers must comply with the provisions of that standard and this standard. Where the requirements of one standard are more restrictive than the other, follow the more stringent requirements.

This rule eliminates the distinction between a permit-required confined space (permit space) and a non-permit-required confined space. Under this rule, a space with no actual or potential hazards is a confined space. A space with actual or potential hazards is a permit-required confined space.

We also eliminated and combined the frequently confusing language of alternate entry and permit space reclassification. Under the proposal, a permit space is always a permit space, and can only be entered with a permit or under alternate entry procedures.

Both the current rule and this proposed rule require that all workplaces are evaluated to determine if there are any confined spaces on site, and if any of those spaces are permit spaces. This proposal takes into account the transitory nature of mobile workers as well as the regular fluctuations on construction sites, and the process necessary in these cases to do an evaluation as these situations occur.

Both the current rule and this proposed rule require a written permit space program. This proposal also requires that, on fixed sites, the program identifies all confined spaces and the reason why permit spaces are classified as permit spaces.

This rule requires that all equipment is used and maintained per the manufacturer's instructions, and that employees expected to use it are trained on how to use it.

The provision for rescue teams conducting annual training rescue is waived for mobile workers but only when the following occurs before any entry is made. The rescue personnel have access to the space or a simulation of a similar space to develop the rescue plan and practice a rescue.

This rule also makes it clear that any service that is relied upon to be a confined space rescue provider must be knowledgeable and capable of performing confined space rescues. There are instances where a local fire department is identified as the rescue service, often without their knowledge. Any employer relying on the local fire department must ensure that the fire department is aware that they are designated and have agreed to it. They must assure that all third party rescue services (such as a fire department or a contract service) have the equipment, training, personnel, and availability to perform that service.

The alternate entry provisions are more specific than what the current rule requires. The space is still classified as permit required confined space but alternate methods are allowed for entry. Alternate entry is allowed when all hazards have been eliminated, or all physical hazards are eliminated and all atmospheric hazards are controlled with constant ventilation and checked/verified with constant monitoring. It also requires that the entrant have an effective means to communicate with others outside of the space to summon help if necessary.

This proposal requires awareness training for all employees who work around permit spaces so they can readily identify permit spaces, understand the process for how those spaces are entered, and understand their hazards.

There are four appendices included in this rule to assist with the identification and evaluation of confined spaces, as well as issues to consider for rescue services.

This rulemaking will amend Oregon-initiated rules OAR 437-002-0182, 437-002-0256, and 437-002-0312 to update the rule reference to the new Oregon rule 437-002-0146 Confined Spaces. Also, notes will be added to 1910.120 Appendix E, and 1910.269 that currently refer the reader to 1910.146. The new note will announce that Oregon OSHA repealed 1910.146, and in Oregon 437-002-0146 applies.

**When does this happen:** Adoption tentatively will be Fall 2011, with an undetermined effective date.

**To get a copy:** Our web site – [www.orosha.org](http://www.orosha.org) Rules/Compliance, then Proposed Rules  
Or call the Oregon OSHA Resource Center at 503-947-7447

**To comment:** Department of Consumer and Business Services/Oregon OSHA  
350 Winter Street NE  
Salem OR 97301-3882  
E-mail – [tech.web@state.or.us](mailto:tech.web@state.or.us) or, Fax – 503-947-7461

**Comment period closes:** **October 14, 2011**

**OR-OSHA contact:** **Dave McLaughlin, Central Office @ 503-947-7457;**  
**or email at [dave.j.mclaughlin@state.or.us](mailto:dave.j.mclaughlin@state.or.us)**

Note: In compliance with the Americans with Disabilities Act (ADA), this publication is available in alternative formats by calling 503-378-3272.

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING\***

A Statement of Need and Fiscal Impact accompanies this form.

Department of Consumer and Business Services/Oregon OSHA

OAR 437

Agency and Division

Administrative Rules Chapter Number

Sue Joye

350 Winter Street NE Salem OR 97301-3882

503-947-7449

Rules Coordinator

Address

Telephone

**RULE CAPTION**

Proposed changes to confined space rules in general industry and construction.

September 30, 2011	10:00 am	Fremont Place, Building I 1750 NW Naito Parkway, Suite 112 Portland OR 97209-2533	Sue Joye
October 7, 2011	10:00 am	Oregon OSHA Field Office 1140 Willagillespie, Suite 42 Eugene OR 97401-2101	Sue Joye
Hearing Date	Time	Location	Hearings Officer

*Auxiliary aids for persons with disabilities are available upon advance request.*

**RULEMAKING ACTION**

**AMEND:** OAR 437-002-0140, 437-002-0182, 437-002-0256, 437-002-0312, 437-003-0001

**ADOPT:** OAR 437-002-0146

ORS 654.025(2) and 656.726(4)

Stat. Auth.

Other Authority

ORS 654.001 through 654.295

Stats. Implemented

**RULE SUMMARY**

Oregon OSHA proposes to adopt new rule, OAR 437-002-0146 Confined Spaces, that replaces OAR 437-002-1910.146 Permit-Required Confined Spaces. This expands the scope of the new rule to include the construction industry.

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Please visit our web site [www.orosha.org](http://www.orosha.org) Click 'Rules/Compliance' in the left vertical column and view our proposed, adopted, and final rules.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

October 14, 2011

**Last Day for Public Comment**

Last day to submit written comments to the Rules Coordinator

/s/Joan M. Fraser  
Signature

Joan M. Fraser                      8/15/2011  
Printed name                                      Date

\*The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00pm on the preceding workday.                                      ARC 920-2005

## STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Consumer and Business Services/Oregon OSHA

OAR 437

Agency and Division

Administrative Rules Chapter Number

**In the Matter of:** Amending OAR 437-002-0140, 437-002-0182, 437-002-0256, 437-002-0312, 437-003-0001.  
Adopting OAR 437-002-0146

**Rule Caption:**

Proposed changes to confined spaces in general industry and construction.

**Statutory Authority:** ORS 654.025(2) and 656.726(4)

**Stats. Implemented:** ORS 654.001 through 654.295

**Need for the Rule(s):**

This rule was initiated to address confined space hazards for the construction industry, as the current rule does not apply to the construction industry. The goal in this process was to draft a rule that is less confusing than the current rule, addresses shortcomings with the current rule, and is laid out in a manner where employers can better understand what is expected of them.

A common discussion throughout this process was that many construction employers may perform work that falls within the scope of the current rule one day, and then work outside of the scope of the current rule the next, but within the same confined space and dealing with the same hazards. Instead of having employers deal with two sets of rules, it was decided to have one rule that applies to both General Industry work and Construction work.

**Documents Relied Upon, and where they are available:**

OAR 437-002-1910.146 (Permit-Required Confined Spaces)

Washington Administrative Code Chapter 296-809 (Confined Spaces)

Federal Register / Vol. 72, No. 228 / Wednesday, November 28, 2007 (Proposed Rule for Confined Spaces in Construction)

ANSI /ASSE Z117.1-2003 (Safety Requirements for Confined Spaces)

**Fiscal and Economic Impact, including Statement of Cost of Compliance:**

The current standard applies to all employers who fall within the Division 2, General Occupational Safety and Health rules, and this revision would apply to employers who perform construction work inside confined spaces. In discussions with stakeholders from the construction industry, it is recognized that maintenance activities, even when performed by a construction company, can fall within the requirements of the existing standard. Some stakeholders from the construction industry also indicated that they perform work in other states where the equivalent rules for confined spaces already apply to their industry. Many stakeholders from the construction industry also recognize the inherent danger of entering confined spaces, and indicated that they follow the existing rule even when it does not explicitly apply to their scope of work.

Much of the cost of compliance will be in equipment. If purchases are necessary, the following is a breakdown of equipment costs:

- A four-way gas meter can range from \$700-4,000
- A single gas meter can range from \$200-\$800
- Ventilation blowers can range from \$350-\$3,000
- Additional hoses for blowers can range from \$100-\$1,500
- A tripod can range from \$900-\$1,500
- A winch can range from \$650-\$6,000
- A tripod-winch unit can range from \$2,500-7,500

Additionally, gas meter sensors need to be replaced periodically, typically annually to biannually, although some equipment manufacturers have sensors that can last up to four years. Replacement sensors can range from \$200-\$900.

Another consumable cost associated with gas meters is the calibration gas. These can range from \$45-\$500, depending on the contents and size of the container. The frequency of replacement can vary widely, depending on how often it is used, the duration of use, and the size of the container.

Another cost associated with compliance is in employee time. This rule does require an attendant while a permit-required confined space is occupied. The duties of the attendant cannot interfere with their primary function of ensuring the safety of the entrant(s). Another cost in time will be in equipment maintenance. Recurring maintenance can involve annual, monthly, weekly, or even daily maintenance, depending on the equipment used, the manufacturer's instructions, and the frequency of use by that employer. The duration of time such maintenance would require depends heavily on the tasks that need to be performed based on the equipment, as well as the amount of equipment maintained by the employer.

Employee training time can vary, depending on the assigned duties. In addition to the current training requirements for entrants, attendants, entry supervisors, and rescue personnel, this revision also requires awareness training for all employees who work in areas with permit-required confined spaces. This training could take up to an hour per training session, but it could take longer for employers with complex confined space issues.

Specialized training is required for rescue personnel. Every member of a rescue team must have training in first aid and CPR, as well as training in the methods they will use to remove entrants from a permit-required confined space in the event of an emergency. Rescue team members must also periodically perform a training or mock rescue from the various types of confined spaces they may be called upon to perform a rescue, to ensure that any such rescue can be performed expeditiously and with minimal risk to the person(s) being rescued and the rescue team.

While these costs can seem prohibitive to an employer who does not have any, or only some, of the items and issues above, the stakeholders from the construction industry with whom we worked on these rules were united in their understanding that these rules are absolutely necessary and the associated costs are necessary because the most common result of a problem within a confined space is at least one fatality. More than half of the fatalities that occur within confined spaces are would-be rescuers, so the ability to understand the conditions within a confined space and be able to rescue an entrant in a timely manner is vitally important. In the last 10 years, there have been at least 47 incidents in the US involving incidents in confined spaces in all industries, with 70 employees directly affected, 40 of whom died from the incident.

Any fiscal impact should affect large and small business the same proportionately.

Oregon OSHA's own costs in administering the rules are limited to the rulemaking itself. All state agencies as well as units of local government are affected in the sense that they are employers under the Oregon Safe Employment Act.

