J. J. KELLER'S
CONSTRUCTION REGULATORY UPDATE
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Confined spaces rule: Construction provisions similar to those for general industry

OSHA issued a final standard for construction work in confined spaces, which will take effect August 3, 2015. The new standard, Subpart AA of 29 CFR 1926, sets requirements for practices and procedures to protect employees engaged in construction activities at a worksite with one or more confined spaces. However, the standard does not apply to construction work regulated elsewhere in Part 1926 for excavations, underground construction, and diving operations. Key provisions of the final standard require employers to:

- Determine what kinds of spaces their employees will be in, what hazards could be there, and how those hazards should be made safe;
- Train each employee whose work is regulated by this standard, at no cost to the employee;
- Develop and implement a written confined space program if employees will enter permit spaces;
- Take effective steps to prevent employees from entering those spaces, if employees will not need to enter the permit spaces; and
- Provide rescue and emergency services for employees who enter permit spaces, should anything go wrong.

In addition, if a contractor (or subcontractor) will be hired to do confined space work, the controlling contractors and host employers must discuss spaces on the site and their hazards with both entry employers and each other before and after entry.

Construction versus general industry

The standard will provide construction employees with protections similar to those general industry employees have had for more than two decades, but with some differences tailored to the construction industry.

Keep in mind that OSHA requires that all employers and employees engaged in construction work follow the regulations in 1926. OSHA defines construction work as "… work for construction, alteration, and/or repair, including painting and decorating."

Construction work is not limited to new construction, but can include the repair of existing facilities or the replacement of structures and their components.

It should be noted that if a construction employer has been following the general industry standard, 29 CFR 1910.146, these employers will discover several differences between that and the new Subpart AA of 29 CFR 1926, including:

- More detailed provisions for coordinating activities with other employers at the site;

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Check our website for the latest OSHA/DOT documents. Go to Construction and then Reference Materials.

- **Confined Spaces in Construction (OSHA final rule)**
- **Frequently asked questions on the confined spaces for construction rule**
- **Fall protection in construction; OSHA publication OSHA 3146-05R 2015**

OSHA releases Spring 2015 construction regulatory agenda

OSHA recently published the Spring 2015 construction regulatory agenda, for upcoming regulatory activity impacting construction industry employers. We've selected several that may be of special interest to our readers.

PROPOSED RULE STAGE

Occupational Exposure to Crystalline Silica

A Notice of Proposed Rulemaking was published September 2013. OSHA is currently analyzing comments it received.

Crystalline silica is a significant component of the earth's crust, and many workers in a wide range of industries are exposed to it, usually in the form of respirable quartz or, less frequently, cristobalite.

Chronic silicosis is a uniquely occupational disease resulting from exposure of employees over long periods of time (10 years or more). Exposure to high levels of respirable crystalline silica causes acute or accelerated forms of silicosis that are ultimately fatal.

The current OSHA permissible exposure limit (PEL) for general industry is based on a formula proposed by the American Conference of Governmental Industrial Hygienists (ACGIH) in 1968 (PEL=10mg/cubic meter/(% silica + 2), as respirable dust). The current PEL for construction and shipyards (derived from ACGIH's 1970 Threshold Limit Value) is based on particle counting technology, which is considered obsolete. NIOSH and ACGIH recommend 50µg/m3 and 25µg/m3 exposure limits, respectively, for respirable crystalline silica.

Both industry and worker groups have recognized that a comprehensive standard for crystalline silica is needed to provide for exposure monitoring, medical surveillance, and worker training. ASTM International has published recommended standards for addressing the hazards of crystalline silica. The Building Construction Trades Department of the AFL-CIO has also developed a recommended comprehensive program standard. These standards include provisions for methods of compliance, exposure monitoring, training, and medical surveillance.

Workers are exposed to crystalline silica dust in general industry, construction, and maritime industries. Industries that could be particularly affected by a standard for crystalline silica include: foundries, industries that have abrasive blasting operations, paint manufacture, glass and concrete product manufacture, brick making, china and pottery manufacture, manufacture of plumbing fixtures, and many construction activities including highway repair, masonry, concrete work, rock drilling, and tuckpointing.

The seriousness of the health hazards associated with silica exposure is demonstrated by the fatalities and disabling illnesses that continue to occur. From 2009 to 2013 silicosis was identified on over 500 death certificates as an underlying or contributing cause of death. It is likely that many more cases have occurred where silicosis went undetected.

In addition, the International Agency for Research on Cancer has designated crystalline silica as carcinogenic to humans, and the National Toxicology Program has concluded that respirable crystalline silica is a known human carcinogen.

Exposure to crystalline silica has also been associated with an increased risk of developing tuberculosis and other nonmalignant respiratory diseases, as well as renal and autoimmune diseases. Exposure studies and OSHA enforcement data indicate that some workers

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continue to be exposed to levels of crystalline silica far in excess of current exposure limits. Congress has included compensation of silicosis victims on Federal nuclear testing sites in the Energy Employees' Occupational Illness Compensation Program Act of 2000.

According to OSHA, there is a particular need to modernize its exposure limits for construction and shipyard workers.

The NPRM was published on September 12, 2013 (78 FR 56274). OSHA received over 1,700 comments from the public on the proposed rule, and over 200 stakeholders provided testimony during public hearings on the proposal. The agency is now reviewing and considering the evidence in the rulemaking record.

Amendments to the Cranes and Derricks in Construction Standard

OSHA is proposing corrections and amendments to the final standard for cranes and derricks published in August 2010. The standard has a large number of provisions designed to improve crane safety and reduce worker injury and fatality.

The proposed amendments: correct references to power line voltage for direct current (DC) voltages as well as alternating current (AC) voltages; broadens the exclusion for forklifts carrying loads under the forks from "winch or hook" to with a "winch and boom"; clarifies an exclusion for work activities by articulating cranes; provides four definitions inadvertently omitted in the final standard; replaces "minimum approach distance" with "minimum clearance distance" throughout to remove ambiguity; clarifies the use of demarcated boundaries for work near power lines; corrects an error permitting body belts to be used as a personal fall arrest system rather than a personal fall restraint system; replaces the verb "must" with "may" used in error in several provisions; corrects an error in a caption on standard hand signals; and resolves an issue of "NRTL-approved" safety equipment (e.g., proximity alarms and insulating devices) that is required by the final standard, but is not yet available.

Crane Operator Qualification in Construction

Notice of Proposed Rulemaking expected December 2015

The rulemaking will identify criteria for employers to follow to ensure their crane operators are completely qualified to operate cranes safely on construction work sites. In the 2010 final cranes standard, the Agency established crane operator certifications as the sole criterion for operator safety. Certification is virtually always provided by third party testing entities.

Following publication of the final crane standard, stakeholders informed the Agency that certification did not by itself establish a safe enough level of experience and competence--employers must be responsible to ensure that crane operators are qualified. OSHA responded by publishing a final rule postponing the deadline for operator certification and extending the employer duty to permit the Agency to conduct rulemaking, if necessary, on operatory qualification. This rulemaking will also clarify issues surrounding operatory certification, including the "type and capacity" requirement from the 2010 final construction cranes standard. Establishing clear benchmarks for employers to follow to ensure crane operator competence is essential for construction work site safety.

FINAL RULE STAGE

Walking Working Surfaces and Personal Fall Protection Systems (Slips, Trips, and Fall Prevention)

Final Rule may be as early as August 2015.

NOTE: This rule would impact construction employer's general industry areas such as maintenance facilities, warehouses, and offices.

In 1990, OSHA published a proposed rule (55 FR 13360) addressing slip, trip, and fall hazards and establishing requirements for personal fall protection systems. Slips, trips, and falls are among the leading causes of work-related injuries and fatalities.

Since that time, new technologies and procedures have become available to protect employees from these hazards. OSHA has been working to update these rules to reflect current technology. As a result of issues raised in comments to the 1990 NPRM, OSHA published a notice to reopen the rulemaking for comment on May 2, 2003.

Based on comments received on the 2003 notice, OSHA determined that the rule proposed in 1990 was out of date and did not reflect current industry practice or technology. The Agency published a second proposed rule on May 24, 2010, which reflected current information and increased consistency with other OSHA standards. Hearings were held on January 18 through 21, 2011.

Improve Tracking of Workplace Injuries and Illnesses

Final Rule may be as early as September 2015.

OSHA is making changes to its reporting system for occupational injuries and illnesses. An updated

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Study finds when health risks go down, worker productivity goes up

Changes in employee health risk factors have a significant impact on work productivity, reports a study in the April Journal of Occupational and Environmental Medicine, official publication of the American College of Occupational and Environmental Medicine (ACOEM).

The productivity benefits of improved health are "cumulative over time," highlighting the need for companies to make "continuous investments in the culture of health," according to the study by Laura Haglund-Howieson, MBA, and colleagues of StayWell in St Paul, Minnesota.

The researchers analyzed health assessment surveys from nearly 97,000 workers between 2009 and 2011. The employees' "Health Risk Scores" were analyzed as predictors of work absenteeism as well as "presenteeism."

Confined spaces, from page 1

- Requiring a competent person to evaluate the site and identify confined and permit spaces;
- Requiring continuous atmospheric monitoring when possible;
- Requiring continuous monitoring of engulfment hazards;
- Allowing for the suspension of a permit, instead of cancellation;
- Requiring that employers who direct employees to enter a space without using a complete permit system to eliminate or isolate any physical hazards first;
- Requiring that employers who are relying on local entities for emergency services to arrange for those responders to give the employer advance notice if they will be unable to respond for a period of time; and
- Requiring employers to provide training in a language and vocabulary that the employee understands.

The August 3, 2015, is a firm effective date, and the new standard does not come with any delayed compliance dates.

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and modernized reporting system would enable a more efficient and timely collection of data, and would improve the accuracy and availability of the relevant records and statistics.

This rulemaking involves modification to 29 CFR part 1904.41 to expand OSHA's legal authority to collect and make available injury and illness information required under part 1904, and a modification to 29 CFR part 1904.35 to clarify an employee's right to report injury and illnesses to their employer without fear of retaliation.

Updating OSHA Standards Based on National Consensus Standards Eye and Face Protection

The Final Rule is expected at any time.

Under section 6(a) of the OSH Act, during the first two years of the Act, OSHA was directed to adopt national consensus standards as OSHA standards. Some of these standards were adopted as regulatory text, while others were incorporated by reference. In the more than 40 years since these standards were adopted by OSHA, the organizations responsible for these consensus standards have issued updated versions of these standards.

However, in most cases, OSHA has not revised its regulations to reflect later editions of the consensus standards. OSHA standards also continue to incorporate by reference various consensus standards that are now outdated and, in some cases, out of print. The Agency is undertaking a multi-year project to update these standards.

A notice describing the project was published in November 2004 (69 FR 68283). The Personal Protective Equipment (PPE) Final Rule, published September 2009, amended the general industry PPE standard and incorporated by reference a number of updated consensus standards governing the design and testing of certain types of PPE.

The Final Rule did not update PPE standards for the construction industry; these standards currently refer to outdated consensus rules. In addition, while the Final Rule was undergoing final OMB review, ANSI published a 2010 edition of the Eye and Face Protection (ANSI Z-87.1) consensus standard. OSHA intends to publish a Notice of Proposed Rulemaking to incorporate the 2010 edition of the American National Standard, Z87.1 Eye and Face Protection for general industry, shipyard employment, long shoring, marine terminals, and construction industries.

The heat (app) is on!

According to the Occupational Safety and Health Administration (OSHA), heat illness sickens thousands of workers every year, and severe cases can be fatal. To help keep outdoor workers cool, OSHA developed a free app to calculate worksite heat index and risk levels, and educate users about how to respond to a heat emergency.

The app was first launched in 2011, and according to OSHA, more than 187,000 people have downloaded it. The app was recently updated on May 5. The new version is optimized for the latest iPhones. It automatically provides the current conditions and maximum heat at a location and can accept manual input if users don't have cell service.

When the app calculates the heat index for a worksite, the tool displays a risk level based on the heat index for outdoor workers. Users can also receive reminders about the protective measures that should be taken at that risk level to protect workers from heat-related illness. The protective measures include:

- Drinking enough fluids,
- Scheduling rest breaks,
- Planning for and knowing what to do in an emergency,
- Adjusting work operations,
- Gradually building up the workload for new workers,
- Training on heat illness signs and symptoms, and
- Monitoring each other for signs and symptoms of heat-related illness.

According to OSHA, working in full sunlight can increase heat index values by 15 degrees Fahrenheit. Workers should keep this in mind and plan additional precautions for working in these conditions.

The OSHA Heat Tool is also available in Spanish for Android and iPhone devices. Get the app by visiting www.osha.gov/SLTC/heatillness/heat_index/heat_app.html.

FMCSA proposes changes to the diabetes standard

The Federal Motor Carrier Safety Administration (FMCSA) published a proposed rule on May 4, 2015, to permit drivers with stable, well-controlled insulin-treated diabetes mellitus (ITDM) to be qualified to operate commercial motor vehicles (CMVs) in interstate commerce.

Currently, drivers with ITDM are prohibited from driving CMVs in interstate commerce unless they obtain an exemption from FMCSA. The notice of proposed rulemaking (NPRM) would enable individuals with ITDM to obtain a Medical Examiner's Certificate (MEC), from a medical examiner (ME) at least annually in order to operate in interstate commerce if the treating clinician (TC) who is the healthcare professional responsible for prescribing insulin for the driver's diabetes, provides documentation to the ME that the condition is stable and well-controlled.

Comments must be submitted on or before July 6, 2015, using docket number FMCSA-2005-23151

OSHA proposes approval of State Plan for Maine

OSHA recently published a proposed rulemaking to approve a new occupational safety and health plan for Maine state and local employees. Under the OSH Act, state and local government employees are specifically excluded from federal coverage. These employees receive formal OSHA coverage only through an OSHA-approved State Plan.

The Maine State Plan for state and local government employees will be the newest OSHA-approved State Plan. OSHA says, if approved, the plan will cover approximately 81,000 public workers. Private sector and federally employed workers will remain under the jurisdiction of federal OSHA.

The notice of proposed rulemaking (NPRM) will have a 30-day comment period. Comments and requests for a hearing were to be submitted by June 19, 2015.

To be eligible for initial (developmental) approval as a state and local government employee State Plan, a state must be able to operate an occupational safety and health program that is, or will be, at least as effective as the federal program.

CVSA releases revised medical-card enforcement bulletin

The Commercial Vehicle Safety Alliance (CVSA) has issued revised guidance concerning the enforcement of medical-card requirements on drivers who hold a commercial driver's license (CDL).

The guidance says that if a driver's CDL is valid but his or her electronic driving record does not contain medical information, the inspector should accept a paper medical certificate if it was issued within the past 60 days. Previously the CVSA's limit was 30 days.

If the certificate was issued 61 or more days ago, the driver can be cited for failing to provide the medical certificate to the state licensing agency, a violation of 49 CFR 383.71(h).

The new guidance affects enforcement only; the federal safety regulations themselves have not changed. The rules say CDL drivers only have to carry their medical cards for up to 15 days.

The revised guidance should help drivers licensed in states that fail to meet the 10-day deadline to update the driving records of CDL drivers who have provided their medical cards to the state licensing agency.

The guidance appears in the CVSA's inspection bulletin titled *Enforcement of Medical Examiner's Certificate Integration with the Commercial Driver's License,* which was revised on April 16, 2015.

Chemicals shipped now must use 16-section GHS-style format

Last month on June 1, 2015 (several years after the Occupational Safety and Health Administration (OSHA) published the final rule modifying the Hazard Communication Standard (HCS)), chemical manufacturers and importers were required to provide Safety Data Sheets (SDSs) in place of Material Safety Data Sheets (MSDSs) for all shipments of hazardous chemicals to all downstream customers.

Any shipment of chemicals after the June 1 effective date must be accompanied with an SDS that uses the 16-section GHS-style format.

Employer responsibilities

OSHA states that all employers must have, maintain, and make available to employees the most recent MSDS or SDS received from a chemical manufacturer, importer, or distributor for each hazardous chemical in the workplace, regardless of the format. If the employer is not maintaining the most current MSDS or SDS received, then enforcement action may occur.

However, OSHA says it will not be issuing citations for maintenance of MSDSs when SDSs have not yet been received. Employers may, but are not required to, contact manufacturers or distributors of products they have previously ordered to request new SDSs, and the SDSs must be provided.

If a chemical manufacturer has gone out of business, the employer's responsibility is to maintain the most recent MSDS for that product. OSHA will not cite companies for maintaining MSDSs when these products were received prior to June 1, 2015.

While the employer is under no obligation to create an SDS for a hazardous chemical in situations where the manufacturer or importer has gone out of business, if it chooses to generate a new SDS, the employer will become the responsible party for its content. However, OSHA still requires employers to maintain the most recently received version of the MSDS or SDS.

Where an employer is maintaining MSDSs in addition to SDSs, the employer's Hazard Communication program and information and training program must reflect this. This ensures that employees are aware of potential differences between MSDSs and SDSs and how to utilize both the MSDSs and the SDSs.

OSHA issues resources on protecting roofers, fall prevention, respirator evaluation

The Occupational Safety and Health Administration (OSHA) published a booklet on Protecting Roofing Workers. It provides guidance for preventing falls from roofs, which, according to OSHA, accounted for nearly 1,200 fatalities between 2008 and 2012, or more than a third of all occupational fall deaths during that period.

Additionally, OSHA released an updated Fall Protection in Construction publication to help workers and employers better understand OSHA's Fall Protection in Construction standard requirements and the criteria for fall protection in construction workplaces.

OSHA also has a new resource to help employers conduct medical evaluations in workplace situations where respirators are required to protect employees from hazardous airborne contaminants. When respiratory protection is required, employers must have a respirator protection program as directed in OSHA's Respiratory Protection standard. The Respirator Medical Evaluation Questionnaire Infosheet provides the mandatory minimum required medical questionnaire for this evaluation.

OSHA inspectors driving past jobsite spot roofers in dangerous situation

Inspectors from the Occupational Safety and Health Administration (OSHA) were recently headed back to their Providence, Rhode Island, office after completing a site inspection when they spotted a dangerous situation at another site.

Two men working for a Massachusetts roofing contractor were on a ladder-jack scaffold without guardrails, and with no protective gear to keep them from falling 16 feet to the ground. The two federal OSHA inspectors pulled over, ordered the employees off the scaffold, and began an inspection.

The contractor's failure to provide and ensure the use of fall protection led OSHA to cite him for both a willful violation of worker safety standards, and for a serious violation, for not having his employees use an access ladder to reach the scaffold's work platform safely. He faces fines totaling $72,800, and has 15 business days from receipt of the citations and proposed penalties to comply, meet with OSHA's area director, or contest the findings before the independent Occupational Safety and Health Review Commission.

OSHA has cited the contractor for fall-related hazards seven times since October 2010.

Electronic logging device rule on track for September publication

The Federal Motor Carrier Safety Administration (FMCSA) continues to project September 30, 2015, as the date the agency expects to issue its long-awaited electronic logging device (ELD) rule.

The rule will require most interstate commercial truck and bus drivers to begin using electronic recorders in place of paper to track their hours of work, affecting more than 3 million drivers.

Before the final rule can be published, it must first pass scrutiny by the office of U.S. Transportation Secretary Anthony Foxx and then the White House's Office of Management and Budget (OMB). The rule was expected to go to the OMB in mid-June 2015.

The rule was expected to require most drivers who presently complete paper logs to switch to ELDs within two years after the rule's effective date. The rule will also include technical specifications for electronic logs and new requirements related to the "supporting documents" that drivers and motor carriers must retain for auditing purposes.

The ELD rule is expected to have an exception for drivers who only have to complete a standard log 8 days or fewer within a 30-consecutive-day period. These drivers would be allowed to continue using paper logs instead of ELDs.

As recently as February, the FMCSA had projected a delay to publication of the final ELD rule until November 9, 2015. A few weeks later, however, the agency back-tracked and reverted to its long-standing projection of September 30, 2015.

Answers to Safety Selections quiz

1. c, 2. b, 3. c

Safety Selections for the construction industry

You can use this Safety Selection to conduct periodic safety meetings at your construction site. Your jobsite supervisor or other instructor can use the material as the basis for the safety discussion.

Safety Selection—Confined Space—Authorized Entrants

What is a permit-required confined space (permit space)?

A permit space is a confined space that may have a hazardous atmosphere, engulfment hazard, internal configuration that could trap or asphyxiate, or other serious hazard, such as exposed wiring.

Authorized entrants

The authorized entrants are employees who are authorized by the entry supervisor to enter a permit space.

Authorized entrants must

- Be familiar with and understand the hazards that may be faced during entry, including information on the mode, signs or symptoms, and consequences of the exposure;
- Properly use equipment, including personal protective equipment (PPE);
- Communicate with the attendant as necessary to enable the attendant to assess entrant status and to enable the attendant to alert entrants of the need to evacuate the space as required.
- Alert the attendant whenever:
  - There is any warning sign or symptom of exposure to a dangerous situation; or
  - The entrant detects a prohibited condition; and
- Exit from the permit space as quickly as possible whenever:
  - An order to evacuate is given by the attendant or the entry supervisor;
  - There is any warning sign or symptom of exposure to a dangerous situation;
  - The entrant detects a prohibited condition; or
  - An evacuation alarm is activated.

Remember, always follow your company confined space policy and training.

Quiz

For each question, circle the letter of the correct answer.

1. A permit space is a confined space that may have:
   a. hazardous atmosphere b. an engulfment hazard c. both a and b

2. Authorized entrants are employees who are authorized by the _____to enter a permit space.
   a. fire department b. entry supervisor c. attendant

3. Requirements the authorized entrant must perform include:
   a. use PPE properly b. communicate with the attendant c. both a and b

Name:_____ **Date:**_____

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