U.S. Department of Labor
Occupational Safety and Health Administration
Preclearance Statement: 1218-0258

SUPPORTING STATEMENT
FOR THE COLLECTION OF INFORMATION REQUIREMENTS
FOR THE STANDARD ON CONFINED SPACES IN CONSTRUCTION
(29 CFR PART 1926, SUBPART AA)[1]
OMB CONTROL NO. 1218-0258
(May 2024)

This ICR is requesting the extension of a currently approved data collection.

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

The main objective of the Occupational Safety and Health Act of 1970 (i.e., "the Act") is to "assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources" (29 U.S.C. 651). To achieve this objective, the Act authorizes "the development and promulgation of occupational safety and health standards" (29 U.S.C. 651).

Section 6(b)(7) of the Act specifies that "[a]ny standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to ensure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure." This provision goes on to state that "[t]he Secretary, in consultation with the Secretary of Health and Human Services, may by rule promulgated pursuant to section 553 of title 5, United States Code, make appropriate modifications in the foregoing requirements relating to the use of labels or other forms of warning . . . as may be warranted by experience, information, or medical or technological developments acquired subsequent to the promulgation of the relevant standard" (29 U.S.C. 655).

With regard to recordkeeping, the Act specifies that "[e]ach employer shall make, keep and preserve, and make available to the Secretary . . . such records . . . as the Secretary . . . may prescribe by regulation as necessary or appropriate for the enforcement of this Act . . . ." (29 U.S.C. 657). The Act states further that "[t]he Secretary . . . shall prescribe such rules and regulations as [he/she] may deem necessary to carry out [his/her] responsibilities under this Act, including rules and regulations dealing with the inspection of an employer's establishment" (29 U.S.C. 657).

Under the authority granted by the Act, the Occupational Safety and Health Administration (i.e., "OSHA" or "the Agency") promulgated at 29 CFR part 1926, subpart AA, a safety standard for the construction industry that regulates confined spaces ("the Standard").

[1]The purpose of this Supporting Statement is to analyze and describe the burden hours and costs associated with provisions of the proposed Standard that contain paperwork requirements; this Supporting Statement does not provide information or guidance on how to comply with, or how to enforce, these provisions.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The Standard specifies a number of information collection requirements. Employers and employees would use these information collection requirements whenever they identify a confined space at a construction worksite. The following sections describe who would use the information collected under each requirement, as well as the purpose of the requirement. The purpose of the information would permit employers and employees to systematically evaluate the dangers in confined spaces before entry is attempted, and to ensure that adequate measures have been implemented to make the spaces safe for entry. In addition, the information collection provisions of the Standard specify requirements for developing and maintaining a number of records and other documents.

29 CFR 1926.1203 -- General Requirements

29 CFR 1926.1203(b)(1) – Informing employees of permit required confined space dangers.

Paragraph 1203(b)(1) requires employers who identify a permit required confined space (PRCS) to post danger signs or take other equally effective means to inform employees of the existence and location of, and the danger posed by, permit spaces. The note following paragraph 1203(b)(1) provides an example of the content of the optional danger sign.

For purposes of calculating the paperwork burden and costs associated with this provision, the Agency assumes that the provision will be accomplished with the posting of a sign at or near PRCS entrances. OSHA specifies language for the sign in the standard (i.e., "Danger–Permit-Required Confined Space. Do Not Enter"). Therefore, in accordance with 5 CFR Section 1320.3(c)(2) implementing the Paperwork Reduction Act of 1995 (PRA), this requirement does not fall within the definition of a collection of information. However, OSHA allows the employer to use "similar" language on the warning sign if desired. The Agency believes an employer would only rarely, if ever, opt for the similar language; therefore, for purposes of calculating burden hours and costs, OSHA estimates that a small percentage of employers will include a warning sign with language other than that provided by OSHA in Item 12.

Note: Paragraph 1203(c) is a performance-oriented provision requiring the employer to take effective measures to prohibit non-authorized entry, such as by providing barriers. If the employer chooses to post a sign in conjunction with training to achieve compliance with 1203(c), and a warning sign is already posted at the permit space under 1203(b)(1), then the employer does not need to post an additional sign under 1203(c). Thus, the costs and burdens associated with use of a sign under paragraph 1203(c) are already included in the costs for 1203(b)(1).

Purpose: It is important to prevent unauthorized entry of confined spaced by identifying permit spaces and informing exposed employees of their presence and the hazards involved. Employees need this information to understand the seriousness of potential hazards in PRCSs. Compliance with this requirement will prevent unauthorized entry into PRCSs. Everyone at the construction site benefits from this information even if they do not engage in construction activity (e.g., designers or architects).

29 CFR 1926.1203(b)(2) – Informing controlling contractors and employees' authorized representatives about PRCS hazards.

Paragraph 1203(b)(2) requires employers to inform, in a timely manner and in a manner other than posting, its employees' authorized representatives and the controlling contractor, of the hazards of confined spaces and the location of those spaces. The burden hours and costs associated with this provision are included in section "G. Information Exchange" requirement calculations described in Item 12.

Purpose: Notifying employees and their authorized representatives of the presence of confined spaces on a worksite will contribute to the successful implementation of safe entry operations, and the prevention of unauthorized entry, by ensuring that they have knowledge of the hazards present in the confined space. Sharing this information with employees' authorized representatives provides an additional way to ensure that this information reaches the employer's employees and alerts the authorized representatives that there is the potential for permit entry operations. This provision also will facilitate the effective sharing of this important information among other employers at the site whose activities may impact the PRCS, as well as the employees of those other employers.

29 CFR 1926.1203(d) – Written permit space program

Paragraph 1203(d) requires any employer that has employees who will enter a confined space to have and implement a written permit confined space program and to make the program available for inspection by employees and their representatives. Employers may write detailed permit space programs, while making the entry permits associated with the written programs less specific than the programs, provided the permits address the hazards of the particular space; conversely, the program may be less specific than the entry permit, in which case the employer must draft a detailed permit. Also see discussion of 29 CFR 1926.1204 and 29 CFR 1926.1212(a), additional requirements that pertain to the written program, in Item 2 of this Supporting Statement.

Purpose: The Agency believes that this requirement will protect employees from encountering PRCS hazards. The Agency also believes that it is necessary for employers to have a written permit space program at the worksite as a reference for employees involved in implementing safe entry procedures. A written program provides the basis for any permit space entry operation, as well as a reference for guiding and directing supervisors and employees alike. A written program also will serve to assign accountability for all functions related to permit space entry, and will aid in avoiding mistakes and misunderstandings. Additionally, because of the compliance flexibility and discretion that the standard provides to the employer, a written plan is essential to demonstrate that the employer took all aspects of permit space entry into consideration.

29 CFR 1926.1203(e)(1)(v) and 1926.1203(e)(2)(ix) – Alternate procedure documentation and availability.

Paragraph 1203(e)(1) sets forth the six conditions that an employer must meet before its employees can enter a permit space under the alternate procedures specified in paragraph (e)(2).

Paragraph 1203(e)(1)(v) requires employers to document the initial conditions before entry, including the determinations and supporting data required by paragraphs (e)(1)(i) through (e)(1)(iii) of the Standard (develop monitoring[2] and inspection data that supports the demonstrations required by paragraphs (e)(1)(i) and (e)(1)(ii), i.e., the elimination or isolation of physical hazards such that

[2] In this context, the Standard uses "monitoring" to match the general industry language, and the term encompasses both the initial testing of atmosphere and the subsequent measurements.

the only hazard in the space is an actual or potential hazardous atmosphere, and that continuous forced-air ventilation is sufficient to maintain the space safe for entry), and make this documentation available to employees who enter the spaces under the alternate procedures, or to their authorized representatives.

In addition, paragraph § 1203(e)(2)(ix) requires the employer to verify that the permit space is safe for entry and that the employer took the measures required by paragraph 1203(e)(2) (the procedures that employers must follow for permit space entries made under paragraph 1203(e)(1)). The verification must be in the form of a certification that contains the date, the location of the space, and the signature of the certifying individual. The employer must make the alternate procedure documentation of paragraphs (e)(1)(v) and (e)(2)(ix) available to entrants or to their employees' authorized representatives before entry.

OSHA considers the physical inspection of hazards and atmospheric testing and monitoring requirements of paragraphs 1203(e)(1)(i)-(iii), (e)(2)(iii) and (e)(2)(vi) to be antecedent events associated with the alternate procedure documentation. There are document retention requirements in other OSHA standards, such as the 30-year retention period for employee exposure records required by 29 CFR 1910.1020(d) (Preservation of records) which may apply to this documentation. See definition of "employee exposure record" at 29 CFR 1910.1020(c)(5). Employee exposure records retention is covered under OMB Control # 1218-0065, "Access to Employee Exposure and Medical Records."

Purpose: OSHA believes that in the context of construction work, these alternate procedures provide adequate safety measures while being more efficient, and less costly to implement, than complying with the full permit-program requirements specified by § 1926.1204. The data required by paragraph (e)(1)(iii) are essential for the employer and employees, as well as OSHA, to determine whether the employer can maintain the space safe for entry with the use of ventilation alone. The certification, in combination with the documentation required under paragraph 1203(e)(1)(v), will document the employer's efforts to comply with paragraph 1203(e)(2), enable OSHA and the employer to evaluate compliance with the standard, and, if permit space incidents occur, assist OSHA and the employer in ascertaining the causes of those incidents.

<u>29 CFR 1926.1203(e)(2)(iii) – Atmospheric testing prior to entry under alternate procedures.</u>

Paragraph 1203(e)(2)(iii) requires the employer to test the internal atmosphere of the permit space with a calibrated, direct-reading instrument before any employee enters the space. The employer must test the atmosphere, in sequence, for oxygen content, flammable gases and vapors, and potential toxic gases and vapors. OSHA considers the physical inspection of hazards and atmospheric testing and monitoring requirements of paragraphs 1203(e)(1)(i)-(iii), (e)(2)(iii) and (e)(2)(vi) to be antecedent events associated with the alternate procedure documentation.

Purpose: This provision is necessary to determine the appropriate amount of ventilation required to maintain the space safe for entry.

<u>29 CFR 1926.1203(e)(2)(vi) – Atmospheric monitoring during entry under alternate procedures.</u>

Paragraph 1203(e)(2)(vi) requires entry employers to continuously monitor the atmosphere in the permit space. Employers may use periodic monitoring, rather than continuous monitoring, only if the employer can demonstrate that the equipment for continuous monitoring is not commercially

available or that periodic monitoring is sufficient to ensure that the conditions in the PRCS remain within planned limits. When the employer uses periodic monitoring, it must be of sufficient frequency to ensure the control of atmospheric hazards as planned and must be able to detect new hazards in time to protect employees. This requirement for continuous monitoring differs from the general industry rule, which requires "periodic testing." Paragraph 1203(e)(2)(vi) also requires the employer to have continuous-monitoring equipment with a functional alarm that will notify all entrants when an atmospheric hazard reaches a specified threshold designed to give entrants an opportunity to escape before a hazardous atmosphere develops, or to check the monitor with sufficient frequency to alert other entrants when an atmospheric hazard reaches a specified threshold.

OSHA considers the atmospheric monitoring requirements of paragraphs 1203(e)(2)(vi) to be antecedent events associated with the alternate procedure documentation. There are document retention requirements in other OSHA standards, such as the 30-year retention period for employee exposure records required by 29 CFR 1910.1020(d) (Preservation of records) which may apply. See definition of "employee exposure record" at 29 CFR 1910.1020(c)(5). Employee exposure records retention is covered under OMB Control #1218-0065, "Access to Employee Exposure and Medical Records."

Purpose: Because construction work has a high level of unpredictability, OSHA believes that continuous monitoring will normally be needed to ensure that affected employees, especially the entrants, are protected. Continuous monitoring enables employers to quickly recognize deteriorating conditions, including the introduction of new atmospheric hazards into the confined space, and then to take timely actions to protect employees. For additional discussion of the need for continuous monitoring and its implementation, see the discussion of §1926.1204(e)(2) (discussion of continuous monitoring of permit spaces entered under a full permit program, rather than the alternative procedures).

29 CFR 1926.1203(e)(2)(viii) – Written approval for job-made hoisting systems.

Paragraph 1203(e)(2)(vii) allows for the use of job-made hoisting systems if a registered professional engineer approves these systems for personnel hoisting prior to use in entry operations regulated by §1926.1203(e). The Standard requires an engineer's approval to be in writing to ensure that the specifications and limitations of use are conveyed accurately to the employees implementing the job-made hoist, and that the approval can be verified.

OSHA assumes there are no burden hours or costs related to this provision because employers are unlikely to use a job-made hoist due to the relatively high cost for employers to choose this alternative instead of purchasing a tripod constructed specifically for personnel hoisting.

Purpose: This provision provides employers with flexibility in choosing personnel hoisting systems by allowing a registered professional engineer to approve a job-made system. OSHA believes that either option ensures that the personnel hoisting system will meet the design specifications needed for employees to safely access a space. This provision ensures that authorized entrants will always have a safe and effective means of entering and exiting the space, including escaping during an emergency.

29 CFR 1926.1203(g)(3) – Certification of former permit spaces as non-permit spaces

Paragraph 1203(g)(3) requires an entry employer seeking to reclassify a space from permit to non-permit status to document the basis for determining that it eliminated all permit space hazards through a certification that contains the date, the location of the space, and the signature of the certifying individual. In addition, the employer must make the certification available to each employee entering the space or his or her authorized representative. A reevaluation aimed at reestablishing compliance with paragraph 1203(g) will involve the demonstrations, testing, inspection, and documentation required in paragraphs (g)(1) through (g)(3). The employer must substantiate all determinations so that employers, employees, and the Agency have the means necessary to evaluate those determinations and ensure compliance with the conditions that would enable the employer to conduct entry operations using the alternate procedures specified by § 1926.1203 following reclassification.

Under the Standard, it is not necessary for entry employers to maintain the certification required under paragraph 1203(g)(3) for review and evaluation after completion of the work. (There are document retention requirements required by in other OSHA standards, such as the 30-year retention period for employee exposure records required by 29 CFR 1910.1020(d) (Preservation of records). (See note to proposed §1926.1219(b).) In some cases, the supporting documentation for the certification of elimination of hazards may constitute employee exposure records. See definition of "employee exposure record" at 29 CFR 1910.1020(c)(5). Employee exposure records retention is covered under OMB Control # 1218-0065, "Access to Employee Exposure and Medical Records.")

Purpose: The Agency believes that, in some instances, the procedures specified by paragraph 1203(g) will be more efficient and less costly to implement than permit space requirements. This provision is necessary to protect employees from physical or atmospheric hazards on initial entry into the space under this provision, and to ensure that the space remains safe during entry operations. The testing results also serve as a baseline against which employers and employees can compare current conditions within the space during entry operations. The requirement to make the certification available to employees or their authorized representatives ensures that entrants have the information necessary to detect developing hazards while they are working in the space.

<u>29 CFR 1926.1203(h) – Permit Space Entry Communication and Coordination.</u>

Timely information exchanges and coordination of work activities can be critical in safeguarding employees performing confined-space work, particularly on multi-employer worksites where one employer's actions can affect the health and safety of another employer's employees. There are a number of contractors and subcontractors performing jobs on most construction worksites, and there may be employees of different employers performing work within the same confined space. In many instances, employees of one subcontractor will enter a confined space after another subcontractor's employees complete their work within the space.

In paragraph (h), OSHA designates the controlling contractor, rather than the host employer, as the information hub for confined spaces information-sharing and coordination because the controlling contractor's function at a construction site makes it better situated than the host employer (assuming that the host employer is not also the controlling contractor) to contribute to and to facilitate a timely and accurate information exchange among all employers who have employees involved in confined space work. On a construction worksite, the controlling contractor has overall authority for the site and is best situated to receive and disseminate information about the previous and current work performed there.

29 CFR 1926.1203(h)(1) – Pre-entry duties of host employer.

Paragraph 1203(h)(1) requires the host employer to share with the controlling contractor information that the host has about the location of known permit spaces, the hazards or potential hazards in each space or the reason it is a permit space, and any previous steps that it took, or that other employers took, to protect workers from the hazards in those spaces.

Purpose: The host employer serves an important role in providing information because the host employer is likely to be the employer most familiar with the property and the most likely to retain, between separate construction projects, information about permit spaces on the property, particularly in construction involving existing facilities. As a result, the host employer may have information about hidden dangers or other information that can help reduce employee exposure to hazards in permit spaces. Telling other employers about each known permit space on the worksite is essential to achieving the purpose of the information-exchange requirements, which is to ensure that contractors with employees entering confined-spaces are aware of the type and degree of these hazards and can take necessary safety precautions. Having information about the previously identified hazards in a space, and the previous efforts to address them, will assist the entry employer in ascertaining if those hazards still exist, and help the entry employer avoid problems addressing the hazards that previous entry employers encountered.

29 CFR 1926.1203(h)(2) – Pre-entry information-sharing duties of controlling contractors.

OSHA requires controlling contractors to obtain the information specified in paragraph (h)(1) from the host employer (i.e., the location of permit spaces, the known hazards in those spaces, and measures employed previously to protect employees in that space). Then, before permit space entry, it must relay that information to any entity entering the permit space and to any entity whose activities could foreseeably result in a hazard in the confined space. (See paragraph 1203(h)(2)(ii).) The controlling contractor must also share any other information that it has gathered about the permit space, such as information received from prior entrants.

29 CFR 1926.1203(h)(2)(i) – Controlling contractor obtains information from host employer.

Paragraph 1203(h)(2)(i) requires the controlling contractor to obtain from the host employer, before permit space entry, available information regarding permit space hazards and previous entry operations.

Purpose: The controlling contractor needs this information for dissemination to entities entering permit spaces, and to fulfill its duty to coordinate permit-entry activities with other work occurring in and around the permit space.

29 CFR 1926.1203(h)(2)(ii) – Controlling contractor provides information to entities entering a permit space and other entities at the worksite.

Paragraphs 1203(h)(2)(ii)(A) and (B) require the controlling contractor, before entry operations begin, to share with the entrants, and any other entity at the worksite whose activities could foreseeably result in a hazard in the permit space, the information that the controlling contractor received from the host employer, as well as any additional information the controlling contractor has about the topics listed in paragraphs (h)(1)(i) through (iii) (i.e., the location of permit spaces, the hazards in those spaces, and any previous efforts to address those hazards).

Paragraph 1203(h)(2)(ii)(C) requires the controlling contractor, before entry operations begin, to share with each specified entity any precautions or procedures that the host employer, controlling contractor, or any entry employer implemented earlier for the protection of employees working in permit spaces.

Purpose: OSHA requires the controlling contractor to obtain the information from the host employer before entry operations begin so that the controlling contractor can share the information with the entities specified in §1203(h)(2)(ii) in time to minimize potential employee exposure to hazards in the confined spaces. The controlling contractor is at the hub of the information exchanges in the Standard, so this step is critical to ensuring that the host employer's information reaches the entities entering the permit space and others whose work may create hazards inside the permit space. For employers or other entities whose activities could foreseeably result in a hazard in the confined space, this information will make them aware of the confined spaces activity and improve their ability to assess whether those activities will create such a hazard, to prevent their employees' unauthorized entry into a permit space, and to help them prepare for coordination of their activities under final §1203(h)(4).

29 CFR 1203(h)(3) – Pre-entry information-sharing duties of entry employers.

This provision sets forth the information-exchange requirements for entry employers. OSHA uses the term "entry employer" to clarify that the paragraph applies to employers who plan to perform permit space entry operations.

29 CFR 1926.1203(h)(3)(i)

Paragraph (h)(3)(i) requires an entry employer to obtain information about the permit space entry operations from the controlling contractor, and works with paragraph 1203(h)(2), which requires the controlling contractor to share information about permit space entry operations with the entry employer.

Purpose: OSHA believes that the reciprocal obligations in the Standard increase the effectiveness of the information exchange by placing the duty to share this information on both parties. Both employers have the duty to exchange information, although they will likely accomplish their duties in a single interaction. The information exchange will ensure that the entry employer understands the type of space it will be evaluating, and will allow it to anticipate the permit space hazards that may be present during entry.

29 CFR 1926.1203(h)(3)(ii)

Paragraph (h)(3)(ii) requires an entry employer to inform the controlling contractor of the permit space program that the entry employer will follow, including information about any hazards likely to be confronted or created in each permit space. This exchange must take place prior to entry to ensure that the controlling contractor is informed of all the hazards in a timely manner and can take action, if needed, to prevent an accident or injury before entry operations begin.

Purpose: The controlling contractor needs this information to coordinate entry and other activities on the worksite as necessary, and the exchange provides the controlling contractor with another opportunity to inform the entry employer about the hazards of the permit space as required by

paragraph 1203(h)(2).

29 CFR 1926.1203(h)(4) – Coordination duties of controlling contractors and entry employers.

Paragraph 1203(h)(4) requires controlling contractors and entry employers to coordinate permit space entry operations in two circumstances: (1) when more than one entity performs entry operations at the same time, or (2) when permit space entry is performed at the same time that any activities that could foreseeably result in a hazard in the permit space are performed.

Purpose: There is a need to coordinate entry operations whenever multiple entities are performing work simultaneously in or around a permit space because of the possibility that one entity's activity might create a hazard for workers employed by a different entity (e.g., welding next to the application of a flammable coating). The purpose of this provision is to protect employees from foreseeable hazards that could result from a lack of coordination between entry entities in the permit space, or with entities outside the space whose activities could create hazards inside the permit space. This paragraph works in concert with the requirement that entry employers inform the controlling contractor of the permit space program that the employer will use and the hazards they are likely to encounter in the space, including hazards created after entry. The controlling contractor can use this information to coordinate the entry operations to ensure safety for all workers in the space.

It is important for the controlling contractor to participate in each coordination effort because construction worksites are constantly evolving, with multiple employers performing work. Consequently, the controlling contractor, as the employer with overall responsibility on the worksite, is in the best position to coordinate the entry operations. This provision also requires the entry employer to coordinate entry with the controlling contractor because it is the entry employer who evaluates a confined space, who will have employees under its direction entering the space, and who may have the most current information about the space.

29 CFR 1926.1203(h)(5) – Post-entry duties of controlling contractors and entry employers.

Paragraph 1203(h)(5)(i) requires the controlling contractor to debrief each entity that entered a permit space, at the end of entry operations, about the permit space program followed, and any hazards confronted or created in the permit space(s) during entry operations, and then, as required by paragraph 1203(h)(5)(iii), relay appropriate information to the host employer. Paragraph 1203(h)(5)(ii) requires the entry employer to share the same information with the controlling contractor in a timely manner.

The Standard contains a requirement for the controlling contractor to notify the host employer of any information it receives from debriefing the entry employer. The Standard makes the controlling employer the hub of the information and exchange and does not require entry employers to provide information directly to the host employers. The host employer will still receive the information, but from the controlling contractor. OSHA expects that in many cases there will be no need for a separate exchange because the controlling contractor can relay this information as part of its regular communications with the host employer.

Purpose: These requirements serve three purposes. First, they ensure that the controlling contractor requests the information. Second, they establish an affirmative duty for the entry employer to provide this information. Third, they ensure that the host employer will receive

information relevant to future permit space entries. The intent is for entry employers to identify and share information about additional hazards, new procedures, or other new information not previously identified in the required pre-entry information exchange.

OSHA believes it is appropriate to place the duty on the entry employer to provide this information, as well as to require the controlling contractor to request it. The entry employer, by virtue of performing permit space entry operations, will be the first employer to have access to new information. If the entry employer fails to communicate the information to the controlling contractor during the course of entry operations, the information transfer will occur during the entry employer debriefing.

29 CFR 1926.1203(i) – Absence of a controlling contractor.

Paragraph 1203(i) provides that, in the event no employer meets the definition of a controlling contractor on a particular worksite, the host employer or other employer that arranges for permit space entry work must fulfill the information exchange and coordination duties of a controlling contractor.

For the purposes of analyzing the costs of information exchanges, OSHA assumes that all projects have a controlling contractor. Thus, no burden hours or costs are associated with other types of employers fulfilling the information-exchange and coordination duties of a controlling contractor in Item 12 of this Supporting Statement.

Purpose: When no employer on a worksite meets the definition of controlling contractor, it is still necessary for one employer to be responsible for information exchange and coordination, thereby ensuring that entry employers are aware of the known hazards associated with the space, and that different entities do not create new hazards to each other.

29 CFR 1926.1204 – Permit Required Confined Space Program

The Agency requires each employer with employees who will enter a permit space to have and implement a written permit space program at the construction site (with the exception of ventilation-only entries conducted in accordance with § 1926.1203(e)). Also see discussion of 29 CFR 1926.1203(d) and 29 CFR 1926.1212(a), requirements that pertain to the written program.

OSHA anticipates that, in practice, some employers in construction may operate with a general permit space program that covers numerous types of permit spaces and hazards, along with a specific permit that includes the unique hazards and practices applicable to each of those spaces. The Agency has no objection to this approach, provided the permit conveys all of the applicable information to employees at the required times, this information is readily available to the employees for reference, and employees receive the training necessary for them to refer to the appropriate document for the required information. Therefore, for this purpose, OSHA allows employers to treat the permit as part of the written permit program required by this section.

As required elements of the written program, OSHA considers all provisions of § 1926.1204 to be information collection requirements, e.g. 1204(a) (implementation of the measures necessary to prevent unauthorized entry); 1204(b) (identification and evaluation of the hazards of PRCSs); 1204(c) (safe permit space entry operations); 1204(d) (equipment); 1204(e) (evaluation of PRCS conditions during entry operations); 1204(f) (attendant required); 1204(g) (attendant emergency

procedures); 1204(h) (designation of entry operation duties); 1204(i) (summoning rescue and emergency services procedures); 1204(j) (system for cancellation of entry permits, including safe termination of entry operations); 1204(k) (entry operation coordination procedures); 1204(l) (entry operation conclusion procedures); 1204(m) (entry operation review); and 1204(n) (permit space program review). The burden hours and cost associated with the implementation of the written program elements are the same costs taken to conduct testing and monitoring, hazard evaluation or classification, and development of a permit or alternate procedure verification. In addition, some provisions of § 1926.1204 constitute information collection requirements or antecedent events for reasons other than inclusion in the written program, as described below.

29 CFR 1926.1204(c), (g), (h), (i), (j), (k) and (l)) – Development of procedures.

Paragraph 1926.1204(c) requires an employer to develop procedures needed to facilitate safe entry operations into permit spaces. The subparagraphs in 1204(c) provide specific elements of the required procedures that employers must include in the permit program: identifying safe entry conditions that employers must meet to initiate and conduct the entry safely (paragraph (c)(1)); providing each authorized entrant with the opportunity to observe monitoring or testing (paragraph (c)(2)); isolating the PRCS (paragraph (c)(3)); purging, inserting, flushing, or ventilating the permit space (paragraph (c)(4)); ensuring that monitoring devices will detect an increase in atmospheric hazard levels in the event that the ventilation system malfunctions, and to do so in adequate time for employees to safely exit the space (paragraph (c)(5)); providing barriers to protect entrants from external hazards (paragraph (c)(6)); verifying that conditions are acceptable for entry and preventing employees from entering the permit space with a hazardous atmosphere unless demonstrating that personal protective equipment (PPE) will be effective for each employee (paragraph (c)(7)); and eliminating any conditions that could make it unsafe to remove an entrance cover (paragraph (c)(8)). Before entry is authorized, each entry employer must document the completion of these measures by preparing an entry permit, as required by paragraph 1926.1205(a).

Under paragraphs 1204 (g) through (l), entry employers are also required to develop procedures for: having an attendant respond to emergencies affecting multiple permit spaces monitored (paragraph 1926.1204(g)); specifying employees' name, confined space entry roles and duties (paragraph 1926.1204(h)); summoning rescue and emergency services, rescuing entrants from permit spaces, providing necessary emergency services to rescued employees, preventing unauthorized personnel from attempting a rescue (paragraph 1926.1204(i)); cancelling entry permits (paragraph 1926.1204(j)), coordinating entry operations (paragraph 1926.1204(k)), and for terminating an entry permit and entry operations (paragraph 1926.1204(l)).

Purpose: It is necessary for employers to have a written confined space program to effectively prevent unauthorized entry into PRCSs, to protect employees from encountering PRCS hazards, and as a reference at the worksite for employees who are involved with implementing safe entry procedures.

29 CFR 1926.1204(c)(3) and 1203(e)(1)(i) – Lockout/Tagout

Paragraphs 1204(c)(3) and 1203(e)(1)(i) (for PRCSs using alternate procedures) require tagging in accordance with the definition of "isolate" or "isolation" (see paragraph 1202) which requires employers to "lockout or tagout …all sources of energy."

Purpose: Proper control of hazardous energy sources prevents death or serious injury among

workers.

§§ 1926.1204(e)(1), (e)(1)(i) – Pre-entry testing in isolated and non-isolated PRCSs.

Paragraph 1926.1204(e)(1) requires an employer to test the permit space for acceptable entry conditions in an isolated permit space before entry is authorized to begin.[3] This paragraph also acknowledges that testing an isolated permit space may be infeasible because the PRCS is large or is part of a continuous system, thereby limiting the value of the initial testing of entry conditions because the conditions in the work space could be affected by substances in the connected spaces and, therefore, subject to change. Accordingly, under (e)(1)(i), pre-entry testing must occur, to the extent feasible, when the space is large or part of continuous system (a non-isolated permit space), such as a sewer. OSHA considers the atmospheric testing requirements of paragraphs 1204(e)(1) and (e)(1)(i) to be antecedent events associated with the preparation of a permit under paragraphs 1205(a) and § 1926.1206.

Purpose: Information obtained from testing is vital to the identification of atmospheric hazards within the space, and is also needed to make accurate determinations for whether an employer must follow the unique procedures in paragraphs 1204(e)(1)(i-iii).

29 CFR 1926.1204 (e)(1)(ii) and (e)(2) – Continuous monitoring in isolated and non-isolated PRCSs.

Paragraph 1204(e)(2) requires an employer to continuously monitor atmospheric hazards during permit space entry operations unless the employer can demonstrate that the equipment for continuously monitoring a hazard is not commercially available or that periodic monitoring is sufficient. The Agency recognizes that, for some PRCSs, especially when the same PRCS has been entered and monitored repeatedly and found to have a stable atmosphere (such as a remote location that is not proximate to potential sources of atmospheric hazards), the employer may be able to show that periodic monitoring will be sufficient to ensure that the conditions in the PRCS remain within acceptable entry conditions. However, when periodic monitoring is used, it must be of sufficient frequency to ensure the control of atmospheric hazards at planned levels, and capable of detecting new hazards in time to protect employees.

Similarly, paragraph (e)(1)(ii) requires an employer to continuously monitor a non-isolated permit space (like a sewer) unless the employer can demonstrate that the equipment needed for continuous monitoring is not available commercially. This requirement is different than the monitoring requirement for isolated spaces in § 1926.1204(e)(2) because paragraph (e)(1)(ii) does not allow periodic monitoring *unless* continuous monitoring is not commercially unavailable.

OSHA considers the atmospheric monitoring requirements of paragraphs 1204(e)(1)(ii) and (e)(2) to be antecedent events associated with the preparation of a permit under paragraphs 1205(a) and § 1926.1206.

[3] Paragraph § 1926.1203(a) requires each employer that has employees who may work in a confined space to ensure that a competent person identifies all confined spaces on the site, and to determine, through initial testing as necessary, which of these spaces are permit spaces. For purposes of estimating paperwork burden and costs, the Agency assumes this testing is the same testing required by § 1926.1204(e)(1) and (e)(1)(i), and for alternate procedures, the same testing required by § 1926.1203(e).

Purpose: Construction work tends to follow a less predictable course than work covered by the General Industry Standard and, thus, requires atmospheric monitoring more frequently. Because of this high level of unpredictability, OSHA believes, generally, that continuous monitoring is necessary to protect affected employees, especially the entrants. These provisions enable the employer to recognize deteriorating conditions quickly, and to identify new atmospheric hazards in time to take the actions required to protect employees.

Non-isolated permit spaces, relative to other PRCSs, have an enhanced risk of unexpected changes in hazardous atmosphere levels because atmospheric hazards could migrate in an uncontrolled manner from other areas, so OSHA only permitted periodic monitoring in non-isolated spaces in the absence of a viable alternative. By monitoring the space continuously, employers should detect rising levels of a hazardous atmosphere or the introduction of a new atmospheric hazard before it is too late to warn the authorized entrants and evacuate them from the space.

29 CFR 1926.1204(e)(6) – Providing testing and monitoring results to employees.

Paragraph 1204(e)(6) requires each entry employer to immediately provide the results of any testing conducted in accordance with §1204 to each authorized entrant or that employee's authorized representative. The information collection requirements burden hours and costs associated with this provision are included in the costs for posting the permit in Item 12.

Purpose: This requirement will ensure that employees and their representatives have the information necessary to identify potential inadequacies in the testing and take action under paragraph 1204(e)(5) to avoid unsafe entries. In some cases the testing may reveal specific conditions that fall within an employee's expertise or may be relevant to an individual health condition of the employee.

29 CFR 1926.1204(m) – Review of entry operations and revision of procedures when inadequate.

Paragraph 1204(m) requires each entry employer to review its permit space program whenever the procedures are inadequate, and to revise those procedures when necessary.

Purpose: See discussion of §§ 1926.1204(n) and 1926.1205(f) for explanation on the need to review an entry permit and make revisions as necessary.

29 CFR 1926.1204(n) – Annual review of written program.

Paragraph 1204(n) requires each entry employer to review its permit space program at least every year and make revisions to its procedures as necessary. This provision requires an employer to review cancelled permits within one year after each entry.[4]

Purpose: The purpose of this annual review is to evaluate the effectiveness of protection provided to

[4] The Agency notes that, in interpreting the same language in the General Industry Standard, OSHA permitted employers to rely on documentation of quarterly reviews, rather than cancelled entry permits, in conducting its annual review, so long as that documentation contains the same information required to be in the cancelled entry permits, including "any information regarding problems encountered during entry operations that was recorded to comply with paragraph (e)(6)" and "any revision of the program that resulted from such problems." See 10/21/93 letter to John Anderson, available at www.osha.gov. The Agency will accept the equivalent documentation under the construction standard.

employees involved in PRCS entries during this period. This requirement helps ensure that employers complete future PRCS entries in a similar manner if the entries were successful, or make changes to the permit program to improve future entry operations if any problems or concerns are discovered. This 12 month period is a calendar year because the purpose of paragraph 1204(n) is to ensure that no more than 12 months separates the date the employer cancels or terminates the confined-space entry and the date the employer reviews its confined-space operations for deficiencies. This approach also provides employers with the most flexibility in determining when to conduct the annual review.

29 CFR 1926.1205 – Permitting Process

An employer conducting a permit space entry must post an entry permit outside the permit space to document the employer's efforts to identify and control conditions in that permit space. Section 1205 sets forth the required process for establishing entry permits and § 1206 sets forth the required specific information that must be identified on the permit.

29 CFR 1926.1205(a) – Preparing an entry permit.

Paragraph 1205(a) requires each entry employer to prepare, prior to entry into a PRCS, an entry permit containing all the information specified in §1926.1204(c) (practices and procedures for ensuring safe entry). OSHA emphasizes that the permit is considerably more than a simple checklist; it requires careful attention and planning. The permit must list all measures necessary for making the particular permit space safe for entry; if the permit omits some procedures, serious consequences could result. Also, when more than one employer is performing confined-space entry, one permit will suffice, provided the controlling contractor properly coordinates the entry operations of the multiple employers as required under § 1926.1203(h)(4), and the permit identifies all of the hazards and safety measures required for all of the work conducted in that space.

Purpose: Entry permits are a critical component of the safety process for preparing to enter a confined space because they provide key information about hazards in the PRCS, and the methods used to protect employees from those hazards. The permits also specify who is authorized to perform work within the PRCS, their duties, and the extent of their authority with respect to safety in and around the PRCS. The Agency believes the use of this administrative tool is essential to enable the entry employer to ensure that the employees under its direction in the permit space are safe, and to account for each employee in the space in the event of an emergency. The permit also can be useful to the controlling contractor and other employers working near the confined space because it provides a readily accessible means of identifying the work performed and the provisions needed to ensure worker safety. Making the information on the permit accessible to employers and employees in and around the PRCS also allows them to maintain an elevated awareness of the conditions within the PRCS, as well as the equipment and procedures necessary for safe PRCS entry operations.

The permitting process is important because it helps the employer determine if conditions in the permit space are safe enough for entry, and it requires the involvement of the entry supervisor, thereby ensuring that a person with the qualifications needed to identify permit space hazards, and the authority to order corrective measures for their control, will oversee entry operations.

29 CFR 1926.1205(b) and 1926.1210(b) – Signing the permit

Paragraph 1205(b) requires the entry supervisor to sign the permit before entry begins. Similarly,

paragraph 1926.1210(b) requires the entry supervisor to verify that the employer performed all tests specified by the entry permit, and that all procedures and equipment so specified are in place before he or she may sign the permit and allow entry. The paragraph also specifies that the entry supervisor must verify this information by checking that the corresponding entries made on the permit.

Purpose: These preliminary checks are necessary to ensure that the conditions in the space are within the acceptable entry conditions – hazard levels are as planned, and protective measures are in place, working properly, and are effective – before entry operations commence. Although the employer remains ultimately liable for compliance with this standard, the entry supervisor's signature underscores to the employer and the entry supervisor the importance of their determination that the PRCS entry operation meets the prerequisites for safe entry listed in the permit. OSHA believes that signing the form makes it more likely that the employer will address the items listed on the form than if they do not have to sign the form.

29 CFR 1926.1205(c) – Posting the permit.

Paragraph 1205(c) requires an employer to make the completed entry permit available to all authorized entrants, or their authorized representatives, at the time each employee enters the space, by posting it at the entry portal or by any other equally effective means, so that entrants can confirm that pre-entry preparations have been accomplished.

Purpose: One of the keys to protecting employees from PRCS hazards is for both employers and employees to know the location of the PRCSs at the job site, the characteristics of the hazards, and their associated dangers. The provisions in this paragraph are designed to achieve this goal. Once entrants are provided with this information, they will then be able to make their own judgments as to the completeness of pre-entry preparations and point out any deficiencies that they believe exist. Employees will also be more likely to bring new hazards to the attention of the supervisor if they are discovered while working in the permit space if the employees are aware of which hazards have already been identified and which have not. Posting the permit for employees to see at the entry point can also be useful when multiple employers will be working in the same permit space. Sharing this information with employee authorized representatives may help bring the representative's expertise to bear in identifying additional hazards not accounted for in the permit process. In addition, the entry employer must continuously update the permit to reflect an updated list of all entrants. Posting this list provides an immediate reference for the entry supervisor and attendant to ensure that all entrants are evacuated in the event of an emergency.

29 CFR 1926.1205(f) – Retaining the permit.

Paragraph 1205(f) requires the employer to retain each entry permit for at least 1 year to facilitate the review of the permit-required confined space program required by paragraph 1926.1204(n) of the Standard. Any problems encountered during an entry operation must be noted on the pertinent permit so that appropriate revisions to the permit space program can be made. Employers should list the problems resulting in the cancellation or suspension of a permit on the entry permit.

These document retention requirements are in addition to the document retention requirements required by other OSHA standards, such as the 30-year retention period for employee exposure records required by 29 CFR 1910.1020(d) (Preservation of records). In some cases, entry permits may constitute employee exposure records. (See definition of "employee exposure record" at 29 CFR 1910.1020(c)(5).) Employee exposure records retention is covered under OMB Control

Number 1218-0065, "Access to Employee Exposure and Medical Records."

Purpose: The purpose of this document retention requirement, and the requirement to note problems directly on the permit, is to facilitate the evaluation of the effectiveness of protection provided to employees involved in PRCS entries during the annual review required under 1204(n). This requirement helps ensure that employees complete future PRCS entries in a similar way if the entries were successful, or that employers improve future PRCS entries by resolving any problems or concerns discovered.

29 CFR 1926.1206 – Entry Permit

An employer conducting a permit space entry must post an entry permit outside the permit space to document the employer's efforts to identify and control conditions in that permit space (see §1926.1205(c)). The main purpose of the permit is to provide a concise summary of the permit space entry requirements for a particular entry that will be useful to the personnel who are conducting the entry operations, to rescue personnel, to the controlling contractor, to other employers working near the confined space, and to any personnel who need to review the conduct of entry operations after the employer terminates the operations. Making the information on this document accessible to employers and employees affected by the hazards in and around the permit space also allows them to maintain an elevated awareness of the conditions within the permit space, as well as knowledge of the equipment and procedures necessary for safe permit space entry operations. OSHA notes that the Standard does not require employers to include on the entry permit each determination or action taken with respect to the permit entry; however, employers still must make certain demonstrations (which likely would be made through documentation) about hazards, ventilation, monitoring or equipment, and to document other determinations as required by the Standard, and to make that information available to employees (See, e.g., paragraphs 1203(e)(1), 1203(g)(2) and 1203(g)(3)).

29 CFR 1926.1206 (a)-(p) and 29 CFR 1926.1209(c) – Contents of the permit.

Paragraphs 1206(a)-(p) and 1926.1209(c) set forth the information which must be identified on the permit.

29 CFR 1926.1206(a)

Paragraph 1206(a) requires the employer to identify the permit space workers are planning to enter.

Purpose: This information will ensure that employees use the correct permit for the PRCS.

29 CFR 1926.1206(b)

Paragraph 1206(b) requires the employer to record the purpose of the entry. This information must be sufficiently specific, such as identifying specific tasks or jobs that employees are to perform within the space, to confirm that the employer considered performance of each specific construction activity in the hazard assessment of the PRCS.

Purpose: An entry employer's failure to evaluate construction activities performed within the PRCS for their effect on the conditions within the space could result in serious injury or death to employees.

29 CFR 1926.1206(c)

Paragraph 1206(c) requires the employer to record the date and authorized duration of the planned entry.

Purpose: One purpose of this provision is to ensure that employees engaged in PRCS operations are informed of the period during which conditions in the PRCS must meet acceptable entry conditions as specified in the entry permit. A second purpose is to place some reasonable limit on the duration of the permit, because a permit of unlimited duration is not likely to account for changed PRCS conditions.

29 CFR 1926.1206(d)

Paragraph 1206(d) requires the employer to record the identity of the authorized entrants so that the attendant is capable of safely overseeing the entry operations. Employers can meet this requirement by referring in the entry permit to a system such as a roster or tracking system used to keep track of who is currently in the PRCS.

Purpose: The availability of this information enables the attendant, entry supervisor, or rescue service to quickly and accurately account for entrants who might still be in the PRCS when an emergency occurs. A second purpose is to provide assurance that all authorized entrants have exited the PRCS at the end of entry operations. A third purpose would be to assist the attendant and entry supervisor in preventing unauthorized personnel from entering the space.

29 CFR 1926.1206(e)

Under paragraph 1206(e), when a permit program requires ventilation, OSHA requires employers to ensure that they have a monitoring system in place that will alert employees of increased atmospheric hazards in the event the ventilation system stops working. (See § 1926.1204(c)(5).) This provision requires the employer to record the means of detecting an increase in atmospheric-hazard levels if the ventilation system stops working.

Purpose: It is important for employers to provide this information on the entry permit so that any new employees can easily access this information, and respond appropriately and as quickly as possible to ensure the continued safety of entrants. For example, if the original entry supervisor is replaced by a new entry supervisor halfway through entry operations, the new entry supervisor can refer to the entry permit for this information.

29 CFR 1926.1206(f)

Paragraph 1206(f) requires the employer to record the names of each attendant required to be stationed outside each permit space for the duration of entry operations.

Purpose: Without this requirement, the employer could waste valuable time finding the attendant responsible for protecting authorized entrants during an emergency.

29 CFR 1926.1206(g)

Paragraph 1206(g) requires the employer to record the name of each employee currently serving as entry supervisor.

Purpose: The same reasons for requiring the names of the attendants apply for requiring the name of the entry supervisor: it provides an assured means of distinguishing these important individuals quickly and easily so that employees may alert them of a developing hazard, and it provides the opportunity for these individuals to review the permit and entry conditions to ensure that entry conditions remain safe.

29 CFR 1926.1206(h)

Paragraph 1206(h) requires the employer to record the hazards associated with the planned confined space entry operations. This list must include all hazards, regardless of whether the employer protects the authorized entrants from the hazards by isolation, control, or PPE.

Purpose: Providing this list will make it clear which hazards the employer already identified so that the entrants can confirm that they received training to work around such hazards and will know to bring any other developing hazard to the attention of the entrance supervisor immediately.

29 CFR 1926.1206(i)

Paragraph 1206(i) requires the employer to record the measures used to isolate or control the hazards prior to entry.

This information must be consistent with the requirements specified in paragraph 1204(c), and must include the methods used to isolate or control the hazards, the type of personal protective equipment provided, the methods used to monitor each hazard (including the use of early-warning systems, if required by paragraph 1204(e), and how frequently each hazard is to be monitored.) Note that under paragraph 1204(e), employers must use continuous monitoring of atmospheric hazards unless the employer demonstrates that periodic monitoring is sufficient. The permit need only refer to the procedures used to meet the requirements of this paragraph in sufficient detail to enable employees to determine what measures they must take, and how to perform those measures.

These measures include, but are not limited to, the locking and tagging out of equipment. For analysis of the lockout/tagout requirements of this Standard, see: "29 CFR 1926.1204(c)(3) and 1203(e)(1)(i) – Lockout/Tagout," above in Item 2.

Purpose: OSHA requires the employer to identify the measures used to isolate or control the hazards prior to entry on the permit so that the authorized entrants, attendants, and entry supervisors have this information on hand at the worksite, thereby ensuring safe entry operations. Proper control of hazardous energy sources prevents death or serious injury among workers.

29 CFR 1926.1206(j)

Paragraph 1206(j) requires the employer to specify the acceptable entry conditions. The list of acceptable entry conditions includes energy control considerations and conditions such as the permissible levels allowed for oxygen, flammable gases and vapors, other hazardous substances during PRCS entry. Additional information regarding PRCS conditions includes, for example, the methods used to maintain a water hazard at safe levels.

Paragraph (j) also requires employers, when applicable, to provide the ventilation-malfunction determinations made in paragraph (c)(5) of § 1926.1204. Some permit spaces may require ventilation to control the atmospheric hazards at levels that are below the levels at which they are harmful to entrants (that is, at a sufficiently low level that entrants will have time to exit the PRCS safely). In these spaces, the employer is responsible for identifying that level and monitoring the permit space atmosphere to detect any increase of the potentially hazardous substance. OSHA notes, as it did in the explanation of this provision in the general industry standard, that there is likely to be overlap between this requirement to list the acceptable entry conditions and the separate requirement in paragraph 1926.1206(i) to identify the hazard-control or elimination measures that the employer must also list on the permit. The Agency anticipates that employers may elect to combine these two elements when filling out the permit, and such an approach is permissible so long as the employer includes all of the relevant information in some form that the authorized entrant, attendant, or entry supervisor can identify quickly.

Purpose: The Agency's requirement that the employer include these determinations on the permit informs employees (for example, entry supervisors, attendants, and authorized entrants) about the time required for the entrants to evacuate the PRCS should the ventilation system fail, and allows authorized entrants, attendants, and entry supervisors to respond quickly to any deviations in these conditions, including ventilation-system failure.

29 CFR 1926.1206(k)

Paragraph 1206(k) requires the employer to record the dates, times, and results of the tests and monitoring performed prior to entry, and the names or initials of the individual/s who performed each test. Consistent with data collection from continuous monitoring under § 1910.146, the continuous monitoring values recorded on the entry permit are "real time" concentrations. Although the Standard does not specify the frequency with which the employer must record continuous monitoring measurements, from a compliance perspective, the quantity of data entered on the permit should indicate the number of times the entry supervisor or other entrant examined the monitoring data, and must be of sufficient frequency to demonstrate that the permit space was monitored such that these employee could identify a change in atmosphere or other potential hazard in time to allow entrants to exit the permit space safely. Employers also must include the initial entry monitoring results on the entry permit; these results serve as a baseline for subsequent measurements.

Purpose: Entering the testing and monitoring results in the permit enables the entry supervisor, attendants, and authorized entrants to determine readily whether acceptable entry conditions exist with regard to atmospheric hazards in the PRCS. The employer also could use this information to identify atmospheric conditions within the PRCS that need to be monitored frequently because of the nature or degree of the hazard they present. Furthermore, documentation of test results on the permit also facilitates the review of canceled permits required under paragraph (d)(14). If testing indicates that levels of hazardous substances are increasing, the increased hazard will be easy to recognize through a review of the recorded test results on the canceled permit.

Listing the names of those who performed the testing identifies a point of contact to which entry supervisors and attendants can direct questions they may have regarding the results and procedures. The date and time (or, for continuous monitoring, a time period) provides a basis for detecting dangerous trends in atmospheric conditions that may indicate that more frequent observation of the atmospheric data is necessary.

29 CFR 1926.1206(l)

Paragraph 1206(l) requires the employer to identify the rescue and emergency services required by the Standard, and the means by which these services will be summoned when needed. In some cases, an employer must include pertinent information, such as communication equipment and emergency telephone numbers, on the permit to sufficiently identify the means by which the rescue services will be summoned.

Purpose: Identification of the rescue service and the means for summoning it enables attendants to summon the correct rescue service immediately in case of emergency. The inclusion of this specific information would allow attendants to avoid errors and delays in contacting the rescue service.

29 CFR 1926.1206(m)

Paragraph 1206(m) requires the employer to record all the methods of communication used by authorized entrants and attendants during entry operations. OSHA anticipates that the method of communication chosen may vary according to the circumstances of the particular workplaces; however, the methods chosen must enable the attendants and the entrants to maintain effective and continuous contact. OSHA notes that, while such communication will normally be achieved through speech, other methods, such as tapping on a wall, may be acceptable as long as it achieves effective and continuous contact.

Purpose: OSHA notes that establishing a routine for maintaining contact between attendants and authorized entrants help attendants detect problems within the PRCS and help facilitate rescue when necessary.

29 CFR 1926.1206(n)

Paragraph 1206(n) requires the employer to record the equipment it provides in accordance with the requirements of the Standard. This equipment would typically include, for example, personal protective equipment, testing equipment, communications equipment (including equipment needed for an attendant to monitor the space), alarm systems, rescue equipment, and other equipment that the employer would provide to ensure compliance with paragraph (d)(4) of § 1926.1204 (personal protective equipment) or any other part of the Standard.

Purpose: This requirement provides employees with a ready reference to the equipment required for safe entry operations.

29 CFR 1926.1206(o)

Paragraph 1206(o) requires the employer to record any additional information needed to ensure safe confined space entry operations. Examples of the information required by paragraph (o) may include: problems encountered in the PRCS; problems that an attendant, entry supervisor, or authorized entrant believes may be relevant to the safety of the entrants working in the space; or any other information that may be relevant to employee safety under these conditions.

Purpose: This provision is necessary for employee protection due to the wide-ranging types of hazards found in permit-required confined spaces, there are many hazards that cannot be adequately

addressed with any precision in a generic permit space standard.

29 CFR 1926.1206(p)

Paragraph 1206(p) requires the employer to record information about any other permits, such as for hot work, issued for work inside the confined space. If the employer identifies additional permits, these additional permits may be, but are not required to be, attached to the entry permit.

Purpose: Attachments to the entry permit provide information about the activity covered by the permit to employees involved in the entry operations so they can take appropriate precautions.

29 CFR 1926.1207 – Training

29 CFR 1926.1207(a) – Training.

Paragraph 1207(a) requires employers to train each employee who performs work regulated by the Standard, and specifies the requirements of that training.[5] Paragraph (a) requires the training to impart the understanding, knowledge, and skills necessary for the safe performance of the duties assigned under those sections. In addition to this requirement, paragraphs 1204(h), 1207(b) and (c), 1208(a), 1209(a) and (b), 1210(a), and 1211(b)(1) - (b)(3) of the Standard specify in detail the knowledge requirements for authorized entrants, attendants, entry supervisors, and rescue service personnel.

Requirements to provide training to supervisors and workers are not considered information collection requirements under the implementing rules and guidelines of the PRA. In addition, OSHA does not consider the development of training by employers to be an antecedent event to an information collection requirement because no written training plan is required by the Standard. Therefore, OSHA does not take burden hours or costs for training development or delivery in Item 12.

29 CFR 1926.1207(d) – Training records.

Under paragraph 1207(d), employers must maintain training records. In addition, the employer record must contain the names of each employee trained, the trainer's name, and the dates of training, and the employer must make these records available for inspection by employees and their authorized representatives for the period of time that the employee is employed by the employer. This documentation can take any form that reasonably demonstrates the employee's completion of the training. Examples include a record of test scores, a photocopied card certifying completion of a class, or any other reasonable means. The employer may store these records electronically.

Once the employee ceases to work for the employer, there is no longer a significant benefit in tracking this information. Therefore, an employer must retain training documentation until the employee ceases to work for the employer. In the event an employee ceases to work for the employer, paragraph 1207(d) does not necessarily require the employer to continue to maintain or store the training records; however, there is an incentive for the employer to retain these records if there is a possibility that the employer might re-hire the employee. The standard does require the employer to maintain a set of training records for all employees performing confined space work,

[5] Paragraph 1203(a) requires that a competent person, which Section 1202 defines, have training. The training required for competent persons under the Standard is the same training required under Section 1207.

regardless of when the employer hired the employee, so if the employee is rehired the employer would be required to produce that employee's training records or retrain the employee.

Purpose: Compliance with this provision provides employers and OSHA with an administrative tool that they can use to confirm which employees will be able to perform the duties required by this standard. Permit space employees rely on their fellow employees for safe entry operations, and this provision provides that the training records that document employees' training status be available to those employees and their representatives. This requirement can be especially important in the construction industry due to the high level of employee turnover and multiple employers present at construction sites, including employers who conduct simultaneous entry under paragraph 1204(k). If multiple employers will have employees in the same space, each employer can confirm that the other employer's workers are properly trained. Consequently, making these records available for inspection by employees and their representatives provides an additional level of review to ensure that the employees received the proper training and are ready to engage in safe entry operations.

Moreover, these training records are a valuable resource for tracking whether an employee received the necessary training. If these records are to serve as a tool to confirm employee training, the records must be available during the period the employee is working for the employer.

29 CFR 1926.1208 – Duties of Authorized Entrants

<u>29 CFR 1926.1208(c)/29 CFR 1926.1208(d) – Communicate with attendant.</u>

Paragraph 1208(c) requires an employer to ensure that an authorized entrant communicates effectively with the attendant to facilitate the assessment of entrant status and timely evacuation as required by §1209(f).

Paragraph 1208(d) requires an employer to ensure that an authorized entrant alerts the attendant whenever one of the following circumstances in paragraphs 1926.1208(d)(1)-(2) arises: (1) There is a warning sign or symptom of exposure to a dangerous situation; or (2) the entrant recognizes a prohibited condition. In some instances, a properly trained authorized entrant may be able to recognize and report his/her own symptoms, such as headache, dizziness, or slurred speech, and take the required action. In other cases, the authorized entrant, once the effects begin, may be unable to recognize or report them. In these latter cases, this provision requires that other, unimpaired, authorized entrants in the PRCS, who employers must properly train to recognize signs, symptoms, and other hazard exposure effects in other authorized entrants, report these effects to the attendant.

Purpose: The authorized entrant's communication with the attendant provides the attendant with information regarding any problems the entrant is having, which the attendant can use to determine whether there is a need to evacuate the PRCS. Reporting these effects will ensure that the authorized entrants can be removed from hazardous conditions in a timely manner.

Section 1926.1209 – Duties of Attendants

<u>29 CFR 1926.1209(e) – Communicate with authorized entrants.</u>

Paragraph 1209(e) requires the attendant to communicate with authorized entrants as necessary to assess and keep track of the entrants' status and to notify entrants if evacuation under paragraph

1926.1209(f) of the Standard is necessary. Use of the word "assess" connotes an interactive duty in which the attendant may ask questions of the entrant, or ask the entrant to perform a task so that the attendant can evaluate the entrant's status.

The attendant's "communication" with the entrant may take different forms depending on the limitations of the particular permit space. In most instances, the attendant could use voice communication, including communication by phone, walkie-talkie, or other device that provides a clear and continuous means of communication with the entrant. In other cases, alternative methods, such as tapping on the walls of the space to allow for assessment through a pre-arranged code, may be sufficient to satisfy § 1926.1209(e).

Purpose: OSHA believes that an authorized entrant's communication with the attendant provides information that the attendant needs to determine if the entry can continue. For example, subtle behavioral changes detected in the entrant's speech, or deviations from set communication procedures, could alert the attendant that it is necessary to evacuate or rescue the entrant. This requirement may assist the attendant in fulfilling the attendant's duties to identify signs and symptoms of exposure or behavioral changes. In addition, if the need arises, the attendant must communicate to the entrants an order to evacuate because the entrants may not know that there is an emergency.

29 CFR 1926.1209(f) – Order evacuation.

Paragraph 1926.1209(f) requires the attendant to assess the activities and conditions inside and outside the space to determine if it is safe for entrants to stay in the space. OSHA requires the attendant to evacuate the permit space under any of the four "conditions" listed in paragraphs 1926.1209(f)(1) through (f)(4): (1) the attendant notices a prohibited condition, (2) the attendant identifies the behavioral effects of hazard exposure in an authorized entrant, (3) there is a condition outside the space that could endanger the authorized entrants, or (4) the attendant cannot effectively and safely perform the duties required under § 1926.1209. If the attendant notices a condition or activity outside the space not addressed by the entry coordination procedures, then the attendant or entry supervisor could, directly or through the controlling contractor, seek to correct the condition or stop the activity (such as described in the example above). If the attendant cannot address the situation immediately, then the attendant must order the entrants to evacuate the permit space until the employer resolves the problem.

Purpose: The attendant may be in the best position to warn the entrants of hazardous conditions developing outside the space and impending danger within the space, and to recognize physical and behavioral changes in the entrants that indicate that conditions within the space may be deteriorating. Should the entrant become incapacitated, the attendant often is an entrant's only contact with individuals outside the confined space. Therefore, the attendant is necessary to detect emergencies that develop in the space, and to retrieve the entrant or summon emergency assistance before it is too late to prevent injury or death to the entrant.

29 CFR 1926.1209(g) – Summon rescue services.

Paragraph 1209(g) requires the attendant to call upon rescue and other emergency services as soon as he or she decides that authorized entrants may need assistance to escape from permit space hazards. The Agency notes that in some situations, the attendant may be the person designated to perform non-entry rescue and, therefore, may simply commence that rescue. If other personnel are

necessary for non-entry rescue, or if entry rescue is necessary, then the attendant must summon those personnel immediately.

Purpose: This provision is necessary to ensure that rescue of authorized entrants occurs as soon as possible to maximize their chance of survival and limiting their injuries, as well as minimizing risk of injury to the rescue-service employees.

29 CFR 1926.1209(h) – Entry employer duties.

Paragraph 1209(h) requires the attendant to take the actions specified in §1926.1209(h)(1) through (h)(3) to prevent unauthorized persons from entering a permit space while entry is taking place.

29 CFR 1926.1209(h)(1) – Warn non-authorized entrants to stay away.

If someone other than an authorized entrant happens to approach the PRCS, paragraph 1209(h)(1) specifies that the attendant must make that individual aware that he/she must stay away from the PRCS. Some construction sites may be accessible to the public, so the attendant also would be responsible for warning members of the public who may attempt to enter a permit space at the site.

Purpose: These provisions protect employees who approach a permit spaces without proper authorization, training, or equipment, from the hazards of the permit space, and prevent injury to the entrants already in the permit space from the actions of unauthorized entrants and the items they may carry into the space.

29 CFR 1926.1209(h)(2) – Advise non-authorized entrants to exit the PRCS immediately.

Paragraph (h)(2) requires the attendant, should an unauthorized person enter the PRCS, to advise him/her to exit the space immediately.

Purpose: See 1209(h)(1), above.

29 CFR 1926.1209(h)(3) – Notify the entry supervisor of unauthorized persons in the PRCS.

Paragraph (h)(3) requires the attendant to notify the entry supervisor, along with the authorized entrants, of unauthorized persons who have entered the PRCS.

Purpose: Because an attendant may not have supervisory authority, or because the errant individual may work for another employer at a multi-employer construction site, an attendant may not have the authority to stop unauthorized individuals from entering the PRCS, or to require them to exit once they are inside the space. Therefore, this provision requires the attendant to notify the entry supervisor, along with the authorized entrants, of this situation, and to evacuate if necessary, as unauthorized entry will typically create a prohibited condition under the permit.

Section 29 CFR 1926.1210 – Duties of Entry Supervisors

Paragraph 1210(b) is described above in the discussion of paragraph 1205(a) in Item 2. Paragraph 1210(d) is described below in the discussion of paragraph 1211(c) in Item 2.

Section 1926.1211 – Rescue and Emergency Services

29 CFR 1926.1211(a)(1) and (a)(2) – Assess prospective rescue service's response abilities.

Paragraph § 1926.1211(a)(1) requires an employer to assess a prospective rescue service's ability to respond to a rescue summons in a timely manner. As discussed in more detail in the preamble, there are a number of factors that are relevant in evaluating the prospective rescue service. Some of those include: (1) whether the service is unavailable at certain times of the day or in certain situations; (2) the likelihood that key personnel of the rescue service might be unavailable at times and, if the rescue service becomes unavailable while an entry is underway, whether the service has the capability of notifying the employer so that the employer can abort the entry; (3) whether the permit space is difficult to reach, such as if the space is in a remote location or a continuous system, (4) the nature of the hazards, and (5) the time that it will take to enter the space and retrieve an employee.

Paragraph § 1926.1211(a)(2) requires an employer to assess a prospective rescue service's ability to provide adequate and effective rescue services. In evaluating a prospective rescue provider's abilities, the employer also must consider the willingness of the service to become familiar with the particular hazards and circumstances faced during its permit space entries. Paragraphs (a)(4) and (a)(5) of § 1926.1211 require the employer to provide its designated rescuers with information about its confined spaces and access to those spaces to allow the rescuers to develop appropriate rescue plans and to perform rescue drills. A rescue service's receptiveness to this information is directly relevant to its ability to function appropriately during actual rescue operations.

OSHA considers these assessment provisions to be performance-oriented and, therefore, is not taking burden for the requirement under Item 12 below. (The actual documentation of the rescue service is recorded on the permit (see discussion of paragraph 1206(l) in Item 2, above) and is taken as burden for the permit in Item 12.)

Purpose: Employers must develop rescue plans that anticipate and minimize potential harm to employees in the event an employee becomes trapped or exposed to an atmospheric hazard. These requirements are necessary to ensure that the rescue service can perform rescue safely and effectively.

29 CFR 1926.1211(a)(4) – Communicate with rescue services.

Paragraph 1211(a)(4) requires an employer to inform the designated rescue service of the known hazards associated with the permit space in the event that a rescue becomes necessary. To meet the requirements of this provision, the employer would have to inform the rescue service prior to issuing a permit that the employer selected the service to rescue its employees in the event of an emergency, and that the employer is relying on the rescue services to perform these rescues when necessary.

Compliance with this paragraph, as well as with paragraphs (a)(1) and (a)(2) of this section, often requires the employer to provide this information to the rescue service immediately prior to each permit space entry. Similarly, if an entry involves hazards not usually encountered by the rescue service, or hazards or a configuration that would require the rescue service to use equipment that it does not always have available, then the employer would have to notify the rescue service of these hazards and conditions prior to beginning the entry operation.

Purpose: This provision provides the rescue service with information about hazards and conditions

in the permit space that will protect the rescue-service employees who enter the permit space for rescue operations, training, or any other purpose. A rescue service's receptiveness to this information is directly relevant to its ability to function appropriately during actual rescue operations.

29 CFR 1926.1211(a)(5) – Develop a rescue service plan.

Paragraph 1211(a)(5) requires an employer to provide the designated rescue team or service with access to all permit spaces from which the rescue may need to perform a rescue so that the rescue team or service, whether in-house or third party, can develop appropriate rescue plans.

The documentation of the in-house rescue service plan is considered to be part of the rescue procedure component of the written PRCS program (see 1204(i) in Item 2 of this Supporting Statement, above) and is taken as burden for the written PRCS program in Item 12.

Purpose: OSHA believes that this provision will allow the rescue service to become familiar with the configuration and features of the permit space to which the employer may summon it to perform rescue operations, and thereby develop appropriate rescue plans and practice rescue operations.

29 CFR 1926.1210(d) and 29 CFR 1926.1211(c) – Confirm rescue service availability.

If an entry employer determines that it will use non-entry rescue, it must confirm, prior to entry, that emergency assistance *will be available* in the event that non-entry rescue fails. OSHA expects this confirmation would typically involve a quick phone call or other communication before making the first entry. The employer need not repeat such confirmation when there are several entries planned as part of the same project, provided the employer discusses during the initial contact with the rescue service the availability of emergency assistance for the expected duration of the project. This confirmation is especially important if the employer uses a 911 service or other third-party service that is small and has few teams on call because the service must be available to provide emergency assistance quickly when needed if the assistance is to be effective.

Likewise, paragraph 1210(d) requires the entry supervisor to verify that rescue services are available, and that the means for obtaining such services are operable.

Purpose: Emergency assistance, such as a 911 emergency-responder service or an on-site or off-site entry-rescue team, may prevent a situation from resulting in injury or death, so it is critical that emergency assistance be available to respond to the emergency.

29 CFR 1926.1211(d) – Provide Safety Data Sheet (SDS) to treating medical facilities.

Paragraph 1211(d) requires an employer to provide relevant information about a hazardous substance to a medical facility treating an entrant exposed to the hazardous substance if the substance is one for which the employer must keep a SDS or other similar information at the worksite.

Purpose: Such information would aid emergency medical services and medical facilities in correctly diagnosing and treating the employee rescued from the permit space.

Section 29 CFR 1926.1212 – Employee Participation

§ 1926.1212(a) – Consult with employees/authorized representatives on development and implementation of a written program.

Paragraph 1212(a) requires employers to consult with affected employees and their authorized representatives in the development and implementation of the written permit space program required by § 1926.1203.

Purpose: Allowing employees and their authorized representatives to participate in this manner contributes to confined space safety. Employees who work in confined spaces, and their representatives, are particularly well qualified to contribute to the task analysis that is a necessary step in developing a confined space program. These employees are most familiar with the practices used during confined space entries. If those practices differ significantly from the practices planned by the employer, the employees can alert the employer to take appropriate steps to remedy any deficiencies in the permit-entry procedures. Likewise, employees may know of hazards within the space that non-entrants are not taking into consideration. This provision leaves the final contents of the confined space program up to the employer, by allowing for employee input this provision should promote safety and avoid the need to develop a cumbersome procedure to resolve conflicts between employers and employees regarding confined-space entries. Paragraph 1212(a) also is consistent with Section 2(b)(13) of the OSH Act, 29 U.S.C. 652(b)(13), which emphasizes employer-employee cooperation by stating that one of the purposes of the Act is to encourage "joint labor-management efforts to reduce injuries and disease arising out of employment."

29 CFR 1926.1212(b) – Employee access.

Paragraph 1212(b) requires that affected employees and their authorized representatives have access to all information developed under this standard. Other sections of this standard already specifically require that employers make information available to employees and their representatives. These provisions include §§1926.1203(d) (written program), 1203(e)(1)(v) and (e)(2)(ix) (alternate procedure certification) ; 1203(g) (reclassification certification); 1204(e)(6) (monitoring and testing results); 1926.1205(c) (completed permit); and 1926.1207(d) (training records). This provision does not require employees or their authorized representatives to request or review this information; however, it provides them with the option of requesting and reviewing the information should they choose to do so. Employers need not provide separate copies of the information to each employee; employers have flexibility in determining how to distribute the information so long as each employee can access it.

Purpose: This provision emphasizes that employees and their representatives have a right to all information affecting their health and safety.

Section 29 CFR 1926.1213—Disclosure

Paragraph 1213 requires an employer, who must retain documentation under the Standard, to make that information available to the Secretary of Labor, or a designee, upon request. The request from the Secretary or the Secretary's designee (for example, OSHA) may be either oral or written. Unless another provision of the Standard requires employers to maintain a document at the worksite, the employer may maintain these documents off site as long as the employer can produce them readily to the requesting official, such as through electronic transmission to the worksite where OSHA is conducting an inspection.

This provision creates no new retention requirement – it merely confirms that when employers are already required to maintain records, they must make those records available to the Secretary. The provision provides employers with flexibility in where and how such records are maintained.

The requirements of the PRA do not apply to disclosure of records during an investigation of specific individuals or entities (see 5 CFR 1320.4(a)(2)). OSHA would only review records in the context of an open investigation of a particular employer to determine compliance with the Standard. Therefore, OSHA takes no burden or cost for this provision in this Supporting Statement.

Purpose: OSHA included this provision to enable the Agency to more accurately identify potential safety hazards at a worksite and to monitor compliance with the requirements of this standard. These documents pertain to the determinations made, and actions taken, regarding hazards. They provide valuable information to use when inspecting the worksite, including evaluating any potential safety hazards.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.

Employers would be able to use automated, electronic, mechanical, or other technological information collection techniques, or other forms of information technology when establishing and retaining the required records. The following paragraphs would require employers to prepare written documents that must include the signature/initials of the individual who prepares the documentation: paragraphs (e)(2)(ix) and (g)(3) of 29 CFR 1926.1203; paragraphs (b), (e)(1) and (e)(2) of 1926.1205; and paragraph 1926.1210(b). Employers may scan and electronically maintain copies of these signed records.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item A.2 above.

The requirements to collect and retain information are specific to each employer and employee involved, and no other source or agency duplicates these proposed requirements or can make the information available to OSHA (i.e., the information is available only from employers).

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

OSHA previously revised the Standard in response to numerous stakeholder comments, including those from the Office of Advocacy of the Small Business Administration, which indicated that employers in construction in large part followed the general industry standard and, therefore, preferred that the construction Standard not depart substantially from general industry standard.

OSHA did not include a provision in the Standard that required an employer to summon an entry-rescue service whenever the employer initiated a non-entry rescue. OSHA also allows employers to use the alternative ventilation-only procedures under final §1203(e) if an employer is able to isolate all physical hazards in the space, which provides more flexibility to an employer than the general

industry standard. Furthermore, OSHA allows employers to suspend a permit in certain circumstances, rather than cancelling and developing a new permit. Each of these options has the potential to significantly reduce the economic impact on employers, including small entities.

The Standard minimizes the impact of the information-exchange requirements on host employers and controlling contractors. OSHA believes that the affected parties conduct such multi-employer communication currently with minimal disruption to business operations, and that the obligations specified by the final standard will become routine and easy to fulfill for employers who must initiate a system for regular communication.

Also, a variety of examples of confined-space programs are widely available on the Internet, which employers may adapt for their needs; in addition, OSHA developed a small entity compliance guide to aid employers in developing such programs.

6. Describe the consequence to federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The Agency believes that the information-collection frequencies required by the Standard are the minimum frequencies that would be necessary to effectively regulate confined spaces and, thereby, fulfill its mandate "to assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources" as specified in the Act at 29 U.S.C. 651. Accordingly, if employers do not perform the information collections, or delay in providing this information, employees may be subject to an increased risk of death and serious injury when working in confined spaces.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **requiring respondents to report information to the agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **requiring the use of statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentially that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**

- **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentially to the extent permitted by law.**

No special circumstances exist that would require employers to collect the information under the Standard using the procedures specified by this Item. The requirements are within the guidelines set forth in 5 CFR 1320.5.

8. If applicable, provide a copy and identify the date and page number of publication in the *Federal Register* of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if the collection-of-information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

As required by the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), OSHA published a 60-day notice in the Federal Register on May 22, 2024 (89 FR 45019). soliciting comments on its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Confined Spaces in Construction Industry under Docket Number OSHA-2017-0014**.** This notice is part of a preclearance consultation program that provides interested parties the opportunity to comment on OSHA's request for an extension by OMB of a previous approval of the information collection requirements found in the above Standard. The Agency will respond to any substantive comments submitted in response to this notice.

9. Explain any decision to provide any payments or gifts to respondents, other than remuneration of contractors or grantees.

The Agency will <u>not</u> provide payments or gifts to the respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

No such assurance is necessary because the paperwork requirements specified by the Standard do not involve confidential information.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

None of the information collection requirements in the Standard require sensitive information.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**

- **If this request for approval covers more than one form, provide separate hour burden estimates for each form.**

- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.**

RESPONDENT HOUR AND COST BURDEN DETERMINATIONS

Table 2 below provides a summary of the annual burden hour and cost estimates for each paragraph of the Subpart that contains an information collection requirement (as described under Item 2 above). The table also provides the values used by the Agency to calculate estimates, including the number of projects covered by the collections of information, the frequency with which the requirement occurs per project, the time required to perform each occurrence, the labor category involved in performing the requirement, and the hourly wage rate for the labor category.

Establishment and Employment ICR Estimates

In the previous ICR, the agency used estimated respondents, burden hours and costs consistent with Final Economic Analysis (FEA) ("Confined Spaces Compliance Costs" Docket OSHA-2007-0026, ID OSHA-2007-0026-0025), for the 2015 Confined Spaces in Construction Final Rule. (May 4, 2015; 80 FR 25365)

The number of respondents for this request is 32,510 affected employers. For this ICR, the agency inflated the original estimated numbers using national construction industry-specific data from the Bureau of Labor Statistic's *Occupational Employment Statistics.* OSHA uses the percent change

from May 2017 through May 2019 to recalculate the total number of activities for the table below. In May 2017, BLS data indicated 5,728,460 were employed as construction workers. In May 2019, BLS data indicates there were 6,194,140 employed as construction workers, which is an 8.13% increase from the previous ICR. Assuming the average number of workers per project has remained constant since the previous ICR, conservatively, OSHA applies the 8.13% increase to the estimated 30,066 affected employers (respondents) reported in the 2018 ICR to estimate affected employers in 2020, or 32,510 employers annually. ((6,194,140 – 5,728,460) ÷ 5,728,460 = 8.13%) and (30,066 x (1+.0813) = 32,510 employers)). (OES data is available at: https://www.bls.gov/oes/tables.htm). To access the employment numbers referenced above, select the year, "National Industry-Specific and by Ownership," and the Standard Occupational Classification (SOC) code.)

Like the employer estimates OSHA applies the 8.13% increase to the estimated 51,511 affected projects the estimated 51,551 projects reported in the 2018 ICR to estimate affected projects in 2020, or 55,742 projects. (51,551 x (1+.0813) = 55,742 projects). The increase is also applied to all other calculations in Item 12, unless indicated otherwise.

Wage Rate Determinations

The Agency determined the wage rate from mean hourly wage earnings to represent the cost of employee time. For the relevant standard occupational classification category, OSHA used the wage rates reported in the Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Employment Statistics* (OES), May 2023 [date accessed: April 2, 2024)] (OEWS data is available at Tables Created by BLS : U.S. Bureau of Labor Statistics. To access these wage rates, select the year, "National" and the Standard Occupational Classification (SOC) code.)

To derive the loaded hourly wage rate presented in the table below, the agency used data from the Bureau of Labor Statistics' (BLS) *Occupational Employment Statistics (OES*), as described in the paragraph above. Then, the agency applied to the wage rates a fringe benefit markup based on data found in Table 2 of the following BLS release: *Employer Costs for Employee Compensation* news release text, released 10:00 AM (EDT), March 13, 2024, https://www.bls.gov/news.release/ecec.nr0.htm. BLS reported that for civilian workers, fringe benefits accounted for 31.0 percent of total compensation and wages accounted for the remaining 69 percent. To calculate the loaded hourly wage for each occupation, the agency divided the mean hourly wage rate by 1 minus the fringe benefits.

Table 1 - WAGE HOUR ESTIMATES (2022 Dollars)

Occupational Title	SOC Code	Mean Hourly Wage Rate (A)	Fringe Benefits (B)	Loaded Hourly Wage Rate (C) = (A)/((1-(B))
Construction Supervisor	47-1011	$39.11	.311	$56.76

(Project Manager)				
Construction Trades Workers (Skilled Worker)	47-2000	$28.53	.311	$41.41
Construction Laborer (Construction Worker)	47-2061	$23.69	.311	$34.38
Secretaries and Administrative Assistants, Except Legal, Medical and Executive (Clerical Employee)	43-6014	$21.87	.311	$31.74
Helpers, Construction Trades (Unskilled Worker)	47-3010	$19.87	.311	$28.84

A. Posting of Danger Signs (§ 29 CFR 1926.1203(b)(1))

OSHA estimates that approximately 36,883 projects of the 55,742 projects with confined spaces must be marked with 348,200 warning signs. The language for the required danger sign is provided by the Standard (i.e., "Danger–Permit-Required Confined Space. Do Not Enter"). Therefore, in accordance with Section 1320.3(c)(2) of the Paperwork Reduction Act of 1995 (PRA), this requirement does not fall within the definition of a collection of information.

However, OSHA allows the employer to use "similar" language on the danger sign if desired. The Agency believes an employer would only rarely opt for the similar language; therefore, for purpose of this supporting statement, OSHA estimates that 6,964 (2 percent of the 348,200 signs) will include a sign with language other than that provided by OSHA. OSHA estimates that it takes five minutes (5/60 hour) for an unskilled worker to prepare and install signs each year. OSHA estimates the annual burden hours and cost for this requirement are:

Burden hours: 6,964 signs x 5/60 hour = 580.33 hours
Cost: 580.33 hours × $28.84 = $16,736.72

B. Written Permit Space Programs (§§ 29 CFR 1926.1203(d)), §1204, 1211(a)(5), and 1212(a))

Employers whose employees enter permit spaces are required to have and implement a written permit space program at the construction site. Employers must consult with affected employees and their authorized representatives on the development and implementation of all aspects of the permit space program.

OSHA estimates that 39,568 projects (36,593 (estimate from previous supporting statement) x (1+.0813)) with confined spaces must obtain new written programs each year. OSHA notes that, in practice, an employer is likely to develop one, somewhat generic, program, and then apply it later to other projects.

The Agency estimates one hour for employers to develop a written permit space program and to develop procedures for safely terminating PRCS entry operations for both planned and emergency conditions. OSHA made the determination that the time to develop procedures for safely terminating PRCS entry operations is minimal and therefore, includes this time with the 1 hour associated with developing the general written permit program. Therefore, OSHA estimates that it takes one hour of supervisor time to consult with affected employees, obtain or develop the permit space program and

procedures.

The Agency also estimates an additional hour to obtain or develop rescue procedures for the 3,487 (3,225 (estimate from previous supporting statement) x (1+.0813)) projects not currently in compliance with paragraph 1204(i) (summoning rescue and emergency services procedures) of the standard. The burden hour and cost estimates for obtaining or developing the written program are:

Burden hours: 39,568 projects × 1 hour (new program) = 39,568.00 hours
Cost: 39,568.00 hours × $56.76 (supervisor rate) = $2,245,879.68

Burden hours: 3,487 projects without rescue procedures x 1 hour (rescue procedures) = 3,487.00 hours
Cost: 3,487.00 x $56.76 (supervisor rate) = $197,922.12

The total burden hours for obtaining or developing the written program, as well as rescue procedures, is 43,055.00 (39,568 + 3,487) and the total cost is $2,443,801.80 ($2,245,879.68 + $197,922.12).

C. Testing and Monitoring

1. Atmospheric Testing (§§ 29 CFR 1203(e)(1)(i)-(iii), 1203(e)(2)(iii), 1204(b), 1204(e)(1), 1204(e)(1)(i))) and Atmospheric Monitoring (§§ 1203(e)(2)(vi), 1204(e)(1)(ii) and 1204(e)(2))

The Agency estimates that atmospheric testing and atmospheric monitoring for all confined spaces, including those entered under alternative procedures, will take an average of 10 minutes (10/60 hour) for a supervisor to perform per entry.[6] (The results of these tests and monitoring must be recorded initially and periodically on the permit in accordance with 29 CFR 1926.1206(k).) The agency estimates there are 9,427 entries on the 31,738 projects requiring testing and atmospheric monitoring. (8,718 (estimate from previous supporting statement) x and 29,352 (estimate from previous supporting statement) x (1+.0813), respectively.) The estimated annual burden hours and cost for a supervisor to perform these requirements are:

Burden hours: 9,427 entries × 10/60 hour (atmospheric testing) = 1,571.16 hours
Cost: 1,571.16 hours × $56.76 = $89,179.04

2. Atmospheric Monitoring Set-Up and Calibration

The agency estimates that it would take a supervisor twenty minutes (20/60 hour) to set-up continuous or periodic monitoring equipment at each of the 377,923 confined space entries requiring this control (349,508 (estimate from previous supporting statement) x (1+.0813)). The agency estimates that it would take a supervisor thirty minutes (30/60 hour) to calibrate monitoring devices at 1,303 confined space projects per year (1,205 (estimate from previous supporting statement) x (1+.0813)). OSHA estimates that the annual burden hours and costs for a supervisor to perform these provisions are:

[6]OSHA considers the atmospheric testing and monitoring and physical inspection requirements to be antecedent events associated with the alternate procedure and permit documentation.

Burden hours: 377,923 entries/monitoring set-ups × 20/60 hour (set-up) = 125,974.33 hours
Cost: 125,974.33 hours x $56.76 = $7,150,303

Burden hours: 1,303 projects × 30/60 hour (calibrate) = 651.50 hours
Cost: 651.50 hours x $56.76 = $36,979.14

The total burden hours for testing and monitoring is 128,197.00 (1,571.16 + 125,974.33 + 651.50) and the total cost is $7,276,461.21 ($89,179.04 + $7,150,303 + $36,979.14).

D. Alternate Procedure Certification and Documentation (§§ 29 CFR 1926.1203(e)(1)(v)) and 1203(e)(2)(ix))

The Agency estimates that approximately 7,586 confined spaces will be entered each year under the alternate procedure in §1926.1203(e) of the Standard (7,016 (estimate from the previous supporting statement) x (1+.0813)). A written certification must be prepared, to verify that the PRCS is safe for entry under the alternate procedures, containing the date, the location of the space, and the signature of the person providing the certification, in accordance with paragraph (e)(2)(ix). The Agency estimates that 210,313 written certifications will be generated to verify safe-entry in these spaces (194,500 (estimate from the previous supporting statement) x (1+.0813)). The certification must be made available to each employee who enters the space. Prior to entry of a confined space under the alternate procedure, a supervisor must document the initial assessment determinations and supporting data, including atmospheric testing results as required by paragraphs (e)(1)(v).[7]

For purposes of this ICR, it is assumed that the documentation of initial assessment determinations and supporting data will also describe: the type and location of the confined space, physical hazards and methods for isolating those hazards, atmospheric hazards and the safe levels of these hazards, and methods for controlling the atmospheric hazards. In addition, it is assumed that this document includes an attachment or print-out record of the atmospheric testing results which includes information about: the equipment used, model number, calibration time and date, and the name and signature of the individual collecting the sample and will describe the determination made to show that if the ventilation system stops working, atmospheric hazards will remain at safe levels long enough for entrants to recognize the problem and safely exit the space. New attachments will be added when changes occur.[8]

OSHA believes that it takes a supervisor 3 minutes (3/60 hour) to develop and generate an alternate procedure space certification and documentation of initial assessment determinations and supporting data. The burden hour and cost estimates for developing and generating these documents are:

Burden hours: 210,313 alternate procedure space entries × 3/60 hour = 10,515.65 hours
Cost: 10,515.65 hours × $56.76 (supervisor) = $596,868.29

[7] Both section 1926.1203(e)(1)(v) and 1203(e)(2)(ix) require employers, before entry, to document the basis for use of the alternate procedures, and to make that documentation available to each employee who enters the permit space or to that employee's authorized representative. The Agency believes that only one instance of documentation of the basis for use of the alternate procedures would be needed. Thus, OSHA takes the burden for employers to develop, generate, certify and post the certificate under 1926.1203(e)(1)(v) and 1926.1203(e)(2)(ix).

[8] The burden and cost associated with these attachments are taken in paragraph C.1. of Item 12.

The Agency estimates that employers would make the alternate procedure documentation (written certification and documentation of initial assessment determinations and supporting data), available to the employees entering an alternate procedure space, and to their authorized representatives, by having a construction employee post a copy of the document near the entrance to the alternate procedure space (the same assumption made in the previous ICR). OSHA estimates that it will take a clerical employee 5 minutes (5/60 hour) to copy the document and make the certification available by posting. The burden hour and cost estimates for posting the certificate is:

Burden hours: 210,313 alternate procedure space entries x 5/60 hour (post) = 17,526.08 hours
Cost: 17,526.08 hours x $31.74 (clerical) = $556,277.78

The total burden hours for alternate procedure certification and documentation is 28,041.73 (10,515.65 + 17,526.08) and the total cost is $1,153,146.1 ($596,868.29 + $556,277.78).

E. Evaluation and Identification of Confined Spaces (§§1203(e)(1)(i) and (iii), 29 CFR 1926.1203(f), 1926.1203(g)(4), 1204(b) and 1204(e)(5))

OSHA estimates that of the 55,742 confined space projects subject to the Standard annually, approximately 21,946 are not in compliance (51,551 (estimate from the previous supporting statement) and 20,296 (estimate from the previous supporting statement) x (1+.0813), respectively) and would require a competent person to evaluate, reevaluate or identify the confined spaces, and identify the physical hazards within the confined spaces, at the project. In the FEA, OSHA takes the cost of a supervisor's wage for the competent person, and indicates that it would take that person an average of 12 minutes (12/60 hour) of time to evaluate (or reevaluate) a permit space and to identify hazards per project. The estimated annual burden hours and cost for these requirements are:

Burden hours: 21,946 projects × 12/60 hour = 4,389.20 hours
Cost: 4,389.20 hours × $56.76 = $249,130.99

F. Written Certification that All Hazards Have Been Eliminated (Reclassification of a Permit Space) (§ 29 CFR 1926.1203(g)(3))

The Agency estimates that 30,228 confined spaces (27,955 (estimate from the previous supporting statement) x (1+.0813)) will be reclassified each year.[9] A certificate must be prepared for each entry and made available to workers. The certification contains the date, the location of the space, the hazard(s) eliminated, and the signature of the person making the determination.

OSHA believes that it takes a supervisor 3 minutes (3/60 hour) to develop and generate a certificate associated with reclassification. The estimated annual burden hours and cost for these requirements are:

Burden hours: 30,228 permit spaces to be reclassified annually x 3/60 hour to develop and generate = 1,511.40 hours
Cost: 1,511.40 hours × $56.76 = $85,787.06

[9] To initially determine the percentage of reclassified spaces each year in previous ICRs, OSHA used assumptions from the 2009 Confined Spaces in General Industry ICR. The assumption was 4.2 percent of total confined spaces each year.

OSHA estimates that it will take a clerical worker 5 minutes (5/60 hours) to make the reclassification certification available to employees.

Burden hours: 30,228 permit spaces to be reclassified annually x 5/60 hour (post) = 2,519.00 hours
Cost: 2,519.00 hours x $31.74 (clerical) = $79,953.06

The total burden hours for reclassification is 4,030.40 (1,511.40 + 2,519.00) and the total cost is $165,740.12 ($85,787.06 + $79,953.06).

G. Information Exchange

Although OSHA believes that employers on construction sites currently conduct the information exchange described in the Standard as part of their usual and customary business practices, in the FEA for this Standard the Agency included estimated costs for information-exchange requirements.

1. **Duties of Host Employer and Controlling Employer (§§ 29 CFR 1926.1203(h)(1)(i)-(iii), (h)(2)(i), (h)(5)(iii) and 1203(i))**

Host employers and the controlling contractor must exchange information about known permit spaces, such as location, past experiences with hazards in the spaces, any changes in hazards, and other pertinent information, both before entry operations begin and again after entry operations. In the FEA, OSHA estimates that a supervisor for the host employer and a supervisor for the controlling contractor will engage in 8 minutes (8/60 hour) of conversation per project to fulfill these information-exchange requirements. The agency estimates that there are 38,196 confined space projects not currently in compliance with these information exchange provisions (35,324 (estimate from the previous supporting statement x (1+.0813)). The estimated annual burden hours and cost for these requirements are:

Burden hours: 38,196 confined space projects x 2 parties x 8/60 hour = 10,185.60 hours
Cost: 10,185.60 hours x $56.76= $578,134.66

2. **Duties of Entry Employer and Controlling Employer (§§ 29 CFR 1926.1203(b)(2), (h)(2)(ii), (h)(3)(i)-(ii), (h)(5)(i)-(h)(5)(ii) and 1203(i))**

Controlling contractors and entry employers must exchange information about permit spaces and their hazards, both before entry operations begin and again after entry operations. In addition, under §1926.1203(b)(2), they also must share this information with employee representatives. OSHA estimates the information exchange requirement can be fulfilled with an average of 20 minutes (20/60 hour) of communication (one pre-entry and one post-entry, each lasting 10 minutes) (10/60 hour) between 3 parties (a supervisor for the controlling contractor and an entry employer plus a worker-authorized representative of that entry employer) to fulfill these information exchange requirements. The Agency estimates that there are 38,196 confined space projects not currently in compliance with these information exchange requirements provisions (35,324 (estimate from the previous supporting statement) x (1+.0813)) and 69,224 entry employers (64,019 (estimate from the previous supporting statement) x (1+.0813)) are associated with these projects. The estimated annual burden hours and cost for these requirements are:

Burden hours: 69,224 entry employers x 3 parties x 2 conversations x 10/60 hour = 69,224.00 hours
Cost: 69,224.00 hours x $56.76 = $3,929,154.20

3. Duties of Controlling Employer to Provide Information to Non-entry Employers and Entities (§ 29 CFR 1926.1203(h)(2)(ii) and 1203(i))

Before entry operations begin, the controlling contractor must provide information about permit-required spaces to non-entry employers and entities whose employees' activities could, either alone or in conjunction with the activities within a PRCS, foreseeably result in a hazard within the PRCS. To estimate the cost of compliance with this provision, OSHA anticipates that the controlling contractor's supervisor will engage in one 5 minute (5/60 hour) conversation with 10% of non-entry employers (31 non-entry employers) with nearby workers who could pose hazards (29 (estimate from previous supporting statement) x (1+.0813)).[10] The estimated annual burden hours and cost for these requirements are:

Burden hours: 31 non-entry employers x 2 supervisors x 1 conversation x 5/60 hour = 5.16 hours
Cost: 5.16 hours × $56.76 = $292.88

4. Entry Coordination (§§ 29 CFR 1926.1203(h)(4)(i), (h)(4)(ii) and 1203(i))

The controlling contractor must coordinate entry operations when multiple employers enter simultaneously or when an employer makes an entry while other work is performed at the site (outside the confined space) that may result in a hazard within the confined space. In the FEA, OSHA estimates that three parties (the controlling contractor and two employers) will engage in one 10-minute conversation per coordinated entry. OSHA assumes that all estimated simultaneous entries will require coordination and estimates that 10 percent of all entries will be subject to hazards as a result of work outside the confined space. The Agency estimates that there are 68,712 simultaneous entries and 564,737 entries with hazards posed by non-entrant workers. (63,546 (estimate from previous supporting statement) and 522,276 (estimate from the previous supporting statement x (1+.0813), respectively.) The estimated annual burden hours and cost for these requirements are:

Burden hours: 68,712 number of simultaneous entries × 3 supervisors x 10/60 hour = 34,356.00 hours
Cost: 34,356.00 hours × $56.76 = $1,950,046.60

Burden hours: 564,737 number of entries with hazards posed by non-entrant workers x 3 supervisors x 10/60 hours = 282,368.50 hours
Cost: 282,368.50 hours × $56.76 = $16,027,236

The total burden hours for information exchange is 396,139.27 (10,185.60 + 69,224.00 + 5.16 + 34,356.00 + 282,368.50) and the total cost is $22,484,864 ($578,134.66 + $3,929,154.2 + $292.88 + $1,950,046.6 + $16,027,236).

H. Lockout/Tagout (§§ 29 CFR 1204(c)(3) and 1206(i))

[10] In previous ICRs, the number of non-entry employers was calculated from estimates of the average number of non-entry workers per project, modeled upon an average employer size of 20 employees.

The Agency estimates that it would take a skilled construction worker 10 minutes (10/60 hour) of time per confined space entry requiring lockout or tag/out of equipment to apply a tag and/or lock and to deenergize the power source for that equipment at 72,177 project entries (66,750 (estimate from previous supporting statement) x (1+ .0813)). The estimated annual burden hours and cost for these requirements are:

Burden hours: 72,177 entries × 10/60 hours =12,029.50 hours
Cost: 12,029.50 hours x $41.41 = $498,141.6

I. Entry Permits (§§1926.1205(a),(c), and (f), 1206, and 1204(e)(6))

Before any employee enters a PRCS, employers are required to prepare a written entry permit. The entry supervisor identified on the permit must sign the entry permit to authorize entry. The employer must cancel the entry permit when a condition that is not allowed under the entry permit arises in or near the permit space and suspension of the permit is not allowed. The permit must be made available for inspection by employees and their authorized representatives by posting it at the entry portal or by any other equally effective means, and retained for one year after cancellation. Employers must note on the permit any problems encountered during an entry operation so that appropriate revisions to the permit space program can be made.[11]

OSHA estimates that of the 987,321 entry permits completed annually under the Standard, (913,087 (estimate from the previous supporting statement) x (1+ .0813)) approximately 67,027 are not in compliance with requirements for issuance of the permit (61,987 (estimate from the previous supporting statement) x (1+.0813)), while 527,174 entry permits are not in compliance with recordkeeping requirements (487,537 (estimate from the previous supporting statement) x (1+.0813)).[12] The Agency estimates it takes an average of 10 minutes (10/60 hour) for a supervisor to develop and generate the permit, including time for the documentation of any problems encountered during entry operations on the permit. The burden hour and cost estimates for permits are:

Burden hours: 67,027 permits × 10/60 hour (develop and generate permit) = 11,171.16 hours
Cost: 11,171.16 hours × $56.76 (supervisor) = $634,075.04

Entry permits must be made available for inspection by employees and their authorized representatives by posting or other equally effective means, and retained for one year after cancellation. The Agency estimates that 527,174 permits will incur recordkeeping costs. OSHA estimates that it will take a clerical employee 5 minutes (5/60 hour) to post the permit and one minute (1/60 hour) to maintain the record. The burden hour and cost estimates for permits are:

[11] OSHA considers the requirements of 1204(e)(2), suspension of the entry permit, and 1204(e)(3), cancelling the entry permit when a condition that is not allowed under the entry permit arises in or near the permit space, as antecedent events associated with the employer's notation of problems encountered during entry operations under 1205(f).

[12] The Agency notes that the permit estimates are overestimations because suspension of permits under 1926.1205(e)(2) now provides an alternate approach to cancellation of permits.

Burden hours: 527,174 permits × 6/60 hour (post and maintain) = 52,717.40 hours
Cost: 52,717.40 hours x $1.74 (clerical) = $1,673,250.28

The total burden hours for entry permits is 63,888.56 (11,171.16 + 52,717.40), and the total cost is $2,307,325.30 ($634,075.04 + $1,673,250.28).

J. Annual Review of Written Permit Space Program (§29 CFR 1926.1204(m)) and Cancelled Permits (§29 CFR 1926.1204(n))

OSHA estimates 5 minutes (5/60 hour) of a supervisor's time per project to review and revise 47,820 written permit space programs and the related cancelled permits and other available information annually (44,225 (estimate from the previous supporting statement) x (1+.0813)). The burden hour and cost estimates for reviewing and revising the written program are:

Burden hours: 47,820 projects × 5/60 hour = 3,985.00 hours
Cost: 3,985.00 hours × $56.76 (supervisor rate) = $226,188.60

K. Training Records (§29 CFR 1926.1207(d))

The employer must maintain training records to show that the training required by paragraphs §1926.1207(a) through (c) of this standard has been accomplished. The training records must contain each employee's name, the name of the trainers, and the dates of training. OSHA estimates that 261,470 employees (including supervisors) will be trained annually under the Standard (241,811 (estimate from previous supporting statement) x (1+.0813)). OSHA believes that each year, 13% of the 261,470 workers and supervisors, or 33,991 (261,470 x 13%) will be considered new workers and supervisors who receive new PRCS-related tasks, or are exposed to a new PRCS hazard.

For new employees, the agency estimates that a clerical worker would take two minutes (2/60 hour) to generate and one minute (1/60 hour) to maintain a training record. For existing employees, the agency estimates that a clerical worker would take one minute (1/60 hour) to maintain the training record. Thus, the annual burden hours and costs for this provision are estimated to be:

Burden hours: 33,991 new workers and supervisors x 3/60 hour (generate and maintain) = 1,699.53 hours

Cost: 1,699.53 hours × $31.74 (clerical rate) = $53,943.08

Burden hours: 227,480 existing workers and supervisors x 1/60 hour (maintain) = 3,791.32 hours

Cost: 3,791.32 hours × $31.74 (clerical rate) = $120,336.50

The total burden hours for training records is 5,490.85 (1,699.53 + 3,791.32) and the total cost is $174,279.58 ($53,943.08 + $120,336.50).

L. Attendant Communications

1. Authorized Entrant Communications with Attendants (§§ 29 CFR 1926.1208 (c) and (d))

The Agency assumes that authorized entrants, who are general construction employees, take a total of fifteen minutes (15/60 hour), during each of the 31,909 entries involving attendant supervision (29,510 (estimate from previous supporting statement) x (1+.0813)), to communicate with the attendant who is monitoring their status to: 1. enable the attendant to assess entrant status and to alert the entrants of the need to evacuate the space; and 2. to inform the attendant of any warning signs, symptoms, unusual behavior, other effects of PRCS hazards in themselves or other authorized entrants, or prohibited conditions.[13] The Agency determines that the yearly burden hours and cost of these proposed provisions to be:

Burden hours: 31,909 entries x 15/60 hour = 7,977.25 hours
Cost: 7,977.25 hours x $34.38 (general employee rate) = $274,257.86

2. Attendant Communications (§§ 29 CFR 1926.1209(e), (f), (g) and (h)(1)-(3))

OSHA estimates the following burden hours for an attendant, who is a general construction employee, to accomplish the following paperwork requirements: during each of the 31,909 entries involving attendant supervision, fifteen minutes (15/60 hour) to communicate with authorized entrants as necessary while monitoring their status; for the one per cent (319) of entries in which an attendant observes unsafe conditions, one minute (1/60 hour) to alert authorized entrants of the need to evacuate the PRCS; for the 99 entries estimated to involve rescue operations, two minutes (2/60 hour) to recognize unsafe conditions, summon rescue (and other emergency services, if necessary) as soon as the attendant determines that assistance is needed, and inform the employer when a non-entry or entry rescue begins or an authorized entrant may need medical aid or assistance in escaping from the PRCS; and, for ten percent (3,191) of these projects, one minute (1/60 hour) to warn any individual who is not an authorized entrant and approaches a PRCS during entry operations to stay away from the PRCS or to exit the PRCS if that individual enters the PRCS, as well as to inform the authorized entrant and entry supervisor of any such unauthorized entry.[14] The estimated burdens hours and cost for these proposed requirements each year are:

Burden hours: (31,909 entries x 15/60 hour) + (319 entries x 1/60 hour) + (99 entry rescues x 2/60 hour) + (3,191 entries x 1/60 hour) = 8,039.05 hours
Cost: 8,039.05 hours x $34.38 (general employee rate) = $276,382.54

The total burden hours for attendant communications is 16,016.30 (7,977.25 + 8,039.05) and the total cost is $550,640.39 ($274,257.86 + $276,382.54).

M. Rescue

1. Confirmation of Rescue Service Availability (§§ 29 CFR 1926.1210(d) and 1926.1211(c))

[13] Except for the entries estimated to involve rescue operations, the applied percentages and time estimates are estimates retained from the proposed rule ICR. The estimate of entries involving rescue operations is based on the analysis below in Item 12, Section M.2., Informing the Rescue Service About the Hazards of the Space.

[14] The applied percentages and time estimates are estimates retained from the proposed rule ICR. These estimates are for the purpose of calculating collection of information burden hours and costs only and are not direct estimates.

For the 9,913 projects (9,168 (estimate from the previous supporting statement) x (1+.0813)) that may involve in-house entry rescue, OSHA estimates that a supervisor would take two minutes (2/60 hour) to confirm, prior to PRCS entry, that emergency assistance would be available in the event that non-entry rescue fails, the means for summoning them are operable, and the service would notify the employer as soon as the services become unavailable.[15] The estimated annual burden hours and cost of this provision are:

Burden hours: 9,913 projects x 2/60 hour = 330.43 hours
Cost: 330.43 hours x $56.76 (supervisor rate) = $18,755.21

2. Informing the Rescue Service About the Hazards of the Space (1211(a)(4))

The Agency estimates that covered employers would perform 99 entries involving in-house rescue per year (92 (estimate from the previous supporting statement) x (1+.0813)).[16] The Agency estimates that it would take two minutes (2/60 hour) to inform the rescue service of the hazards they may confront when called on to perform rescue at the site. OSHA determines that the burden hours and cost of this provision each year to be:

Burden hours: 99 entry rescues x 2/60 hour (inform) = 3.30 hours
Cost: 3.30 hours x $56.76 = $187.31

The total burden hours for rescue is 333.73 (330.43 + 3.30) and the total cost is $18,942.52 ($187.31 +$18,755.21).

N. Providing SDS to Treating Medical Facility (§ 1926.1211(d))

The agency estimates that a supervisor would take five minutes (5/60 hour) to collect relevant information about a hazardous substance, if the substance is one for which the employer must keep an SDS or other similar information at the worksite, and provide or communicate it to a medical facility that is treating an employee exposed to the hazardous substance. The Agency assumes that 50 such treatments would occur each year.[17] The yearly burden hours and cost for this provision is estimated to be:

Burden hours: 50 treatments × 5/60 hours = 4.16 hours
Cost: 4.16 hours x $56.76 (supervisor's rate) = $236.12

O. Access

1. Employee Access to Records (§§ 29 CFR 1926.1212(b), 1203(d), 1204(e)(6) and

[15] The time estimate in this Section is retained from the proposed rule ICR.

[16] The Agency conservatively estimates that 1% of the 9,913 projects prepared to perform in-house entry rescue would conduct an actual rescue (99 entry rescues). This estimate is for the purpose of calculating collection of information burden hours and costs only and is not a direct estimate.

[17] As stated above, the Agency conservatively estimates that 1% of the 9,913 projects prepared to perform in-house entry rescue would conduct an actual rescue (99 entry rescues). The Agency estimates that 50% of these rescues (50) would involve providing an SDS to a treating medical facility. This estimate is for the purpose of calculating collection of information burden hours and costs only and is not a direct estimate.

1207(d))

OSHA has no data on the number of access requests made by workers and their designated representatives and, therefore, the Agency estimates that 1% of all affected employees will request access to these types of records, not already made available by posting. The Agency estimates that it would take a supervisor five minutes (5/60 hour) to disclose such records in response to an employee request for 5,662 employees (5,236 (estimate from the previous supporting statement x (1+.0183). The estimated annual burden hours and cost of this proposed provision are:

Burden hours: 5,662 employees x 5/60 hours = 471.83 hours
Cost: 471.83 hours x $56.76 (supervisor's rate) = $26,781.07

Table 2 - Estimated Annualized Respondent Hour and Cost Burden Table

Information Collection Requirements	Type of Respondent	No. of Respondents	No. of Responses per Respondent	Total Responses	Avg. Burden (In Hours)	Total Burden Hours	Hourly Wage Rate	Total Burden Cost
A. Posting of Danger Signs (§ 29 CFR 1926.1203(b)(1))	Unskilled Worker	6,964	1	6,964	5/60	580.33	$28.84	$16,736.72
Subtotal A				**6,964**		**580.33**		**$16,737**
B. Written Permit Space Programs (§§ 29 CFR 1926.1203(d)), 1204, 1211(a)(5), and 1212(a))	Supervisor	39,568	1	39,568	1	39,568.00	$56.76	$2,245,879.68
	Supervisor	3,487	1	3,487	1	3,487.00	$56.76	$197,922.12
Subtotal B				**43,055**		**43,055.00**		**$2,443,802**
C. Testing and Monitoring								
1. Atmospheric Testing and Physical Inspection (§§ 29 CFR 1926.1203(e)(1)(iii), 1203(e)(2)(iii), 1204(b), 1204(e)(1), 204(e)(1)(i))) and Atmospheric Monitoring (§§ 1203(e)(2)(vi), 1204(e)(1)(ii) and 1204(e)(2))	Supervisor	9,427	1	9,427	10/60	1,571.16	$56.76	$89,179.04
2. Atmospheric Monitoring Set-Up and Calibration	Supervisor	377,923	1	377,923	20/60	125,974.33	$56.76	$7,150,302.97
3. Atmospheric Monitoring Calibration	Supervisor	1,303	1	1,303	30/60	651.50	$56.76	$36,979.14
Subtotal C				**388,653**		**128,197.00**		**$7,276,461.15**
D. Alternate Procedure Certification and Documentation								
1. Develop and Generate (§§ 29 CFR 1203(e)(1)(v) and 1203(e)(2)(ix))	Supervisor	7,586	27.72	210,313	3/60	10,515.65	$56.76	$598,868.29
2. Provide Access by Posting	Clerical	7,586	27.72	210,313	5/60	17,526.08	$31.74	$556,277.78
Subtotal D				**420,626**		**28,041.73**		**$1,153,146.07**
E. Evaluation and Identification of Confined Spaces (§§	Supervisor	21,946	1	21,946	12/60	4,389.20	$56.76	$249,130.99

29 CFR 1926.1203(f), 1203(g)(4), 1204(b), and 1204(e)(5))								
Subtotal E				**21,946**		**4,389.20**		**$249,130.99**
F. Written Certification that All Hazards Have Been Eliminated (Reclassification of a Permit Space) (§ 29 CFR 1926.1203(g)(3))								
1. Develop and Generate	Supervisor	30,228	1	30,228	3/60	1,511.40	$56.76	$85,787.06
2. Provide Access by Posting	Clerical	30,228	1	30,228	5/60	2,519.00	31.74	$79,953.06
Subtotal F				**60,456**		**4,030.40**		**$165,740.12**
G. Information Exchange								
1.Duties of Host Employer and Controlling Employer (§§29 CFR 1926.1203(h)(1)(i)-(iii), (h)(2)(i), (h)(5)(iii) and 1203(i))	Supervisor	38,196	2	76,392	8/60	10,185.60	$56.76	$578,134.66
2. Duties of Entry Employer and Controlling Employer (§§ 29 CFR 1926.1203(b)(2), (h)(2)(ii), (h)(3)(i)-(ii), (h)(5)(i)-(h)(5)(ii) and 1203(i))	Supervisor	69,224	6	415,344	10/60	69,224.00	$56.76	$3,929,154.24
3. Duties of Controlling Employer to Provide Information to Non-entry Employers and Entities (§§ 29 CFR 1926.1203(h)(2)(ii)) and 1203(i))	Supervisor	31	2	62	5/60	5.16	$56.76	$292.88
4. Entry Coordination (§§ 29 CFR 1926.1203(h)(4)(i), (h)(4)(ii), and 1203(i))	Supervisor	68,712	3	206,136	10/60	34,356.00	$56.76	$1,950,046.56
	Supervisor	564,737	3	1,694,211	10/60	282,368.50	$56.76	$16,027,236.06
Subtotal G				**2,392,145**		**396,139.26**		**$22,484,864.40**
H. Lockout/Tagout	Skilled	72,177	1	72,177	10/60	12,029.50	$41.41	$498,141.60

(§§ 29 CFR 1926.1204(c)(3) and 1206(i))	Worker							
Subtotal H				**72,177**		**12,029.50**		**$498,141.60**
I. Entry Permits (§§ 29 CFR 1926.1205(a), (c) and (f) and 1206))								
1. Develop and Generate	Supervisor	67,027	1	67,027	10/60	11,171.16	$56.76	$634,075.04
2. Provide Access by Posting and Maintain	Clerical	527,174	1	527,174	6/60	52,717.40	$31.74	$1,673,250.28
Subtotal I				**594,201**		**63,888.56**		**$2,307,325.32**
J. Annual Review of Written Permit Space Program (§ 29 CFR 1926.1204(m)) and Cancelled Permits (§ 29 CFR 1926.1205(n))	Supervisor	47,820	1	47,820	5/60	3,985.00	$56.76	$226,188.60
Subtotal J				**47,820**		**3,985.00**		**$226,188.60**
K. Training Records (§ 29 CFR 1926.1207(d))								
	Clerical	33,991	1	33,991	3/60	1,699.53	$31.74	$53,943.08
	Clerical	227,480	1	227,480	1/60	3,791.32	$31.74	$120,336.50
Subtotal K				**261,471**		**5,490.85**		**$174,279.58**
L. Attendant Communications								
1. Authorized Entrant Communications with Attendants (§§ 29 CFR 1926.1208 (c) and (d))	General Employee	31,909	1	31,909	15/60	7,977.25	$34.38	$274,257.86
2. Attendant Communications (§§ 29 CFR 1926.1209(e), (f), (g) and (h)(1)-(3))	General Employee	31,909	1	31,909	15/60	8.039.05	$34.38	$276,382.54
Subtotal L				**63,818**		**16,016.30**		**$550,640.39**
M. Rescue								
1. Confirmation of Rescue Service Availability (§§ 29 CFR 1926.1210(d) and 1926.1211(c))	Supervisor	9,913	1	9,913	2/60	330.43	$56.76	$18,755.21
2. Informing the Rescue Service about the Hazards of the Space (§ 1211(a)(4))	Supervisor	99	1	99	2/60	3.30	$56.76	$187.31
Subtotal M				**10,012**		**333.73**		**$18942.51**
N. Providing SDS to Treating Medical	Supervisor	50	1	50	5/60	4.16	$56.76	$236.12

Facility (§ 1926.1211(d))								
Subtotal N				**50**		**4.16**		**$236.12**
O. Employee Access to Records (§§ 29 CFR 1926.1212(b), 1203(d), 1204(e)(6), and 1207(d))	Supervisor	5,662	1	5,662	5/60	471.83	$56.76	$26,781.07
Subtotal O				**5,662**		**471.83**		**$26,781.07**
GRAND TOTAL				**4,389,056**		**706,653**		**$37,592,416**

*** Number of Respondents= 32,510.**

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- **The cost estimate should be split into two components: (a) a total capital and start up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of service component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**

- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**

- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

Using the same methodology described in Item 12, *Establishment and Employment ICR Estimates*, the Agency estimates that the total capital, operations and maintenance cost of these requirements to be $1,100,529. There is no change from the previous ICR.

(A) Signs (§§ 1926.1203(b) and (b)(1); 1205(e)(2))

The Agency estimates that 36,883 projects will obtain and post 6,964 warning signs with a useful life of 5 years. Each sign will cost $18.92.[18]

(6,964 signs/5 years) x $18.92 (sign) = $26,351.77 per year

(B) Tags (§§ 1926.1204(c)(3); 1206(i))

OSHA estimates that 17,843 projects will have 474,464 confined space entries each requiring an average of .2 tags (useful life of 5 years) at a cost of $1.61 per tag.

474,464 entries x .2 tags x $1.61 (tag) = $152,777.40 per year

(C) Gas Monitor (§§1203(e)(1)(iii), 1203(e)(2)(iii); 1204(b), 1204(e)(1), (e)(1)(i))) and §§ 1203(e)(2)(vi); 1204(e)(1)(ii) and (e)(2))

The cost of a gas monitor is $1,000 and 4,607 confined spaces projects will purchase the monitor, with a useful life of 5 years, to conduct all atmospheric testing and monitoring and record the results on the permit.

(4,607 projects/5 years) x $1,000 (monitor) = $921,400.00 per year

Total is: $26,351.77 + $152,777.40 + $921,400.00= $1,100,529 (rounded)

14. Provide estimates of the annualized cost to the Federal Government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 into a single table.

There are no costs to the Federal Government associated with this Information Collection Request. The requirements of the PRA do not apply to disclosure of records during an investigation of specific individuals or entities (see 5 CFR 1320.4(a)(2)). OSHA would only review records in the context of an open investigation of a particular employer to determine compliance with the Standard.

15. Explain the reasons for any program changes or adjustments.

There is no change in burden hours. There was a miscalculation in the last ICR for the total number of responses (previous ICR was recorded as 4,392,664 and should be 4,389,056). But, this miscalculation does not change the overall burden hours for this current ICR package.

[18] OSHA notes that this calculation is an overestimate because it does not account for reuse of the signs for different projects.

16. For collections of information whose results will be published, outline plans for tabulations, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

OSHA will not publish the information collected under the Standard.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

OSHA lists current valid control numbers in §§1910.8, 1915.8, 1917.4, 1918.4, and 1926.5, and publishes the expiration date in a Federal Register notice announcing OMB approval of the information collection requirement. (See 5 CFR 1320.3(f)(3).) OSHA believes that this is the most appropriate and accurate mechanism to inform interested parties of these expiration dates.

18. Explain each exception to the certification statement.

OSHA is not seeking an exception to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This Supporting Statement does not contain any information collection requirements that employ statistical methods.

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Title 29 —Labor
Subtitle B—Regulations Relating to Labor
Chapter XVII—Occupational Safety and Health Administration, Department of Labor
Part 1926—Safety and Health Regulations for Construction

Authority: 40 U.S.C. 3704; 29 U.S.C. 653, 655, and 657; and Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), 5-2007 (72 FR
31159), 4-2010 (75 FR 55355), 1-2012 (77 FR 3912), or 8-2020 (85 FR 58393), as applicable; and 29 CFR part 1911, unless otherwise noted Sections 1926.58, 1926.59, 1926.60, and 1926.65 also issued under 5 U.S.C. 553 and 29 CFR part 1911. Section 1926.61 also issued under 49 U.S.C. 1801-1819 and 5 U.S.C. 553. *See Part 1926 for more*
Source: 44 FR 8577, Feb. 9, 1979; 44 FR 20940, Apr. 6, 1979, unless otherwise noted.

Subpart AA Confined Spaces in Construction

§ 1926.1200 [Reserved]

§ 1926.1201 Scope.
§ 1926.1202 Definitions.
§ 1926.1203 General requirements.
§ 1926.1204 Permit-required confined space program.
§ 1926.1205 Permitting process.
§ 1926.1206 Entry permit.
§ 1926.1207 Training.
§ 1926.1208 Duties of authorized entrants.
§ 1926.1209 Duties of attendants.
§ 1926.1210 Duties of entry supervisors.
§ 1926.1211 Rescue and emergency services.

§ 1926.1212 Employee participation.
§ 1926.1213 Provision of documents to Secretary.
Subpart AA—Confined Spaces in Construction
Authority: 40 U.S.C. 3701 *et seq.;* 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 1-2012 (77 FR 3912); and
29 CFR part 1911.
Source: 80 FR 25518, May 4, 2015, unless otherwise noted.

Editorial Notes: 1. At 44 FR 8577, Feb. 9, 1979, and corrected at 44 FR 20940, Apr. 6, 1979, OSHA reprinted
without change the entire text of 29 CFR part 1926 together with certain General Industry Occupational Safety and
Health Standards contained in 29 CFR part 1910, which have been identified as also applicable to construction
work. This republication developed a single set of OSHA regulations for both labor and management forces within
the construction industry.
2. Nomenclature changes to part 1926 appear at 84 FR 21597, May 14, 2019.

§ 1926.1200 [Reserved]
§ 1926.1201 Scope.
Note to paragraph (a). Examples of locations where confined spaces may occur include, but are not limited to, the following: Bins; boilers; pits (such as elevator, escalator, pump, valve or other equipment); manholes (such as sewer, storm drain, electrical, communication, or other utility); tanks (such as fuel, chemical, water, or other liquid, solid or gas); incinerators; scrubbers; concrete pier columns; sewers; transformer vaults; heating, ventilation, 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/or mixers/reactors.
§ 1926.1202 Definitions.
The following terms are defined for the purposes of this subpart only:
(a) This standard sets forth requirements for practices and procedures to protect employees engaged in construction activities at a worksite with one or more confined spaces, subject to the exceptions in paragraph (b) of this section.
(b) *Exceptions.* This standard does not apply to:
(1) Construction work regulated by subpart P of this part (Excavations).
(2) Construction work regulated by subpart S of this part (Underground Construction, Caissons, Cofferdams and Compressed Air).
(3) Construction work regulated by subpart Y of this part (Diving).
(c) Where this standard applies and there is a provision that addresses a confined space hazard in another
applicable OSHA standard, the employer must comply with both that requirement and the applicable provisions of this standard.
Acceptable entry conditions means the conditions that must exist in a permit space, before an employee may
enter that space, to ensure that employees can safely enter into, and safely work within, the space.
Attendant means an individual stationed outside one or more permit spaces who assesses the status of authorized entrants and who must perform the duties specified in § 1926.1209.
Authorized entrant means an employee who is authorized by the entry supervisor to enter a permit space.
Barrier means a physical obstruction that blocks or limits access.

Blanking or *blinding* means the absolute closure of a pipe, line, or duct by the fastening of a solid plate (such as
a spectacle blind or a skillet blind) that completely covers the bore and that is capable of withstanding the
maximum pressure of the pipe, line, or duct with no leakage beyond the plate.
Competent person means one who is capable of identifying existing and predictable hazards in the surroundings
or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has the authorization to take prompt corrective measures to eliminate them.

Note to the definition of "Controlling Contractor". If the controlling contractor owns or manages the property, then it is both a controlling employer and a host employer.
Note to the definition of "Entry Employer". An employer cannot avoid the duties of the standard merely by refusing to decide whether its employees will enter a permit space, and OSHA will consider the failure to so decide to be an implicit decision to allow employees to enter those spaces if they are working in the proximity of the space.
Confined space means a space that:
(1) Is large enough and so configured that an employee can bodily enter it;
(2) Has limited or restricted means for entry and exit; and
(3) Is not designed for continuous employee occupancy.
Control means the action taken to reduce the level of any hazard inside a confined space using engineering
methods (for example, by ventilation), and then using these methods to maintain the reduced hazard level. Control also refers to the engineering methods used for this purpose. Personal protective equipment is not a control.
Controlling Contractor is the employer that has overall responsibility for construction at the worksite.
Double block and bleed means the closure of a line, duct, or pipe by closing and locking or tagging two in-line
valves and by opening and locking or tagging a drain or vent valve in the line between the two closed valves.
Early-warning system means the method used to alert authorized entrants and attendants that an engulfment
hazard may be developing. Examples of early-warning systems include, but are not limited to: Alarms activated by remote sensors; and lookouts with equipment for immediately communicating with the authorized entrants and attendants.
Emergency means any occurrence (including any failure of power, hazard control or monitoring equipment) or
event, internal or external, to the permit space that could endanger entrants.
Engulfment means the surrounding and effective capture of a person by a liquid or finely divided (flowable) solid
substance that can be aspirated to cause death by filling or plugging the respiratory system or that can exert enough force on the body to cause death by strangulation, constriction, crushing, or suffocation.
Entry means the action by which any part of a person passes through an opening into a permit-required confined space. Entry includes ensuing work activities in that space and is considered to have occurred as soon as any part of the entrant's body breaks the plane of an opening into the space, whether or not such action is intentional or any work activities are actually performed in the space.
Entry Employer means any employer who decides that an employee it directs will enter a permit space.
Entry permit (permit) means the written or printed document that is provided by the employer who designated
the space a permit space to allow and control entry into a permit space and that contains the information
specified in § 1926.1206.

Entry rescue occurs when a rescue service enters a permit space to rescue one or more employees.
29 CFR Part 1926 Subpart AA (up to date as of 4/16/2024)
Confined Spaces in Construction 29 CFR 1926.1202 "Confined space"
29 CFR 1926.1202 "Entry rescue" (enhanced display) page 3 of 21
Note to the definition of "Entry supervisor" An entry supervisor also may serve as an attendant or as an authorized entrant, as long as that person is trained and equipped as required by this standard for each role he or she fills. Also, the duties of entry supervisor may be passed from one individual to another during the course of an entry operation.
Note to paragraph (2) of the definition of "Hazardous atmosphere". This concentration may be approximated as a condition in which the combustible dust obscures vision at a distance of 5 feet (1.52 meters) or less.
Note to paragraph (4) of the definition of "Hazardous atmosphere". An atmospheric concentration of any substance that is not capable of causing death, incapacitation, impairment of ability to selfrescue,
injury, or acute illness due to its health effects is not covered by this definition.
Note to paragraph (5) of the definition of "Hazardous atmosphere". For air contaminants for which OSHA has not determined a dose or permissible exposure limit, other sources of information, such as Safety Data Sheets that comply with the Hazard Communication Standard, § 1926.59, published information, and internal documents can provide guidance in establishing acceptable atmospheric conditions.
Entry supervisor means the qualified person (such as the employer, foreman, or crew chief) responsible for
determining if acceptable entry conditions are present at a permit space where entry is planned, for authorizing entry and overseeing entry operations, and for terminating entry as required by this standard.
Hazard means a physical hazard or hazardous atmosphere. See definitions below.
Hazardous atmosphere means an atmosphere that may expose employees to the risk of death, incapacitation,
impairment of ability to self-rescue (that is, escape unaided from a permit space), injury, or acute illness from one or more of the following causes:
(1) Flammable gas, vapor, or mist in excess of 10 percent of its lower flammable limit (LFL);
(2) Airborne combustible dust at a concentration that meets or exceeds its LFL;
(3) Atmospheric oxygen concentration below 19.5 percent or above 23.5 percent;
(4) Atmospheric concentration of any substance for which a dose or a permissible exposure limit is published in subpart D of this part (Occupational Health and Environmental Control), or in subpart Z of this part (Toxic and Hazardous Substances), and which could result in employee exposure in excess of its dose or permissible exposure limit;
(5) Any other atmospheric condition that is immediately dangerous to life or health.
Host employer means the employer that owns or manages the property where the construction work is taking
place.
29 CFR Part 1926 Subpart AA (up to date as of 4/16/2024)
Confined Spaces in Construction 29 CFR 1926.1202 "Entry supervisor"
29 CFR 1926.1202 "Host employer" (enhanced display) page 4 of 21
Note to the definition of "Host employer". If the owner of the property on which the construction activity occurs has contracted with an entity for the general management of that property, and has transferred to that entity the information specified in § 1926.1203(h)(1), OSHA will treat the contracted management entity as the host employer for as long as that entity manages the property. Otherwise, OSHA will treat the owner of the property as the host employer. In no case will there be more than one host employer.
Note to the definition of "Immediately dangerous to life or health". Some materials—hydrogen fluoride gas and cadmium vapor, for example—may produce immediate transient effects that, even if severe, may pass without medical attention, but are followed by sudden, possibly fatal collapse 12-72 hours after exposure. The victim "feels normal" after recovery from transient effects until

collapse. Such materials in hazardous quantities are considered to be “immediately” dangerous to life or health.
Note to the definition of “Intering”. This procedure produces an IDLH oxygen-deficient atmosphere.
Hot work means operations capable of providing a source of ignition (for example, riveting, welding, cutting,
burning, and heating).
Immediately dangerous to life or health (IDLH) means any condition that would interfere with an individual's
ability to escape unaided from a permit space and that poses a threat to life or that would cause irreversible adverse health effects.
Inerting means displacing the atmosphere in a permit space by a noncombustible gas (such as nitrogen) to
such an extent that the resulting atmosphere is noncombustible.
Isolate or isolation means the process by which employees in a confined space are completely protected against the release of energy and material into the space, and contact with a physical hazard, by such means as: Blanking or blinding; misaligning or removing sections of lines, pipes, or ducts; a double block and bleed system; lockout or tagout of all sources of energy; blocking or disconnecting all mechanical linkages; or placement of barriers to eliminate the potential for employee contact with a physical hazard.
Limited or restricted means for entry or exit means a condition that has a potential to impede an employee's
movement into or out of a confined space. Such conditions include, but are not limited to, trip hazards, poor illumination, slippery floors, inclining surfaces and ladders.
Line breaking means the intentional opening of a pipe, line, or duct that is or has been carrying flammable,
corrosive, or toxic material, an inert gas, or any fluid at a volume, pressure, or temperature capable of causing injury.
Lockout means the placement of a lockout device on an energy isolating device, in accordance with an established procedure, ensuring that the energy isolating device and the equipment being controlled cannot be operated until the lockout device is removed.
Lower flammable limit or lower explosive limit means the minimum concentration of a substance in air needed
for an ignition source to cause a flame or explosion.

Monitor or *monitoring* means the process used to identify and evaluate the hazards after an authorized entrant
enters the space. This is a process of checking for changes that is performed in a periodic or continuous manner after the completion of the initial testing or evaluation of that space.
Non-entry rescue occurs when a rescue service, usually the attendant, retrieves employees in a permit space
without entering the permit space.
Non-permit confined space means a confined space that meets the definition of a confined space but does not
meet the requirements for a permit-required confined space, as defined in this subpart.
Oxygen deficient atmosphere means an atmosphere containing less than 19.5 percent oxygen by volume.
Oxygen enriched atmosphere means an atmosphere containing more than 23.5 percent oxygen by volume.
Permit-required confined space (permit space) means a confined space that has one or more of the following
characteristics:
(1) Contains or has a potential to contain a hazardous atmosphere;
(2) Contains a material that has the potential for engulfing an entrant;

(3) Has an internal configuration such that an entrant could be trapped or asphyxiated by inwardly converging walls or by a floor which slopes downward and tapers to a smaller cross-section; or
(4) Contains any other recognized serious safety or health hazard.
Permit-required confined space program (permit space program) means the employer's overall program for
controlling, and, where appropriate, for protecting employees from, permit space hazards and for regulating employee entry into permit spaces.
Physical hazard means an existing or potential hazard that can cause death or serious physical damage. Examples include, but are not limited to: Explosives (as defined by paragraph (n) of § 1926.914, definition
of "explosive"); mechanical, electrical, hydraulic and pneumatic energy; radiation; temperature extremes; engulfment; noise; and inwardly converging surfaces. Physical hazard also includes chemicals that can cause death or serious physical damage through skin or eye contact (rather than through inhalation).
Prohibited condition means any condition in a permit space that is not allowed by the permit during the period
when entry is authorized. A hazardous atmosphere is a prohibited condition unless the employer can demonstrate that personal protective equipment (PPE) will provide effective protection for each employee
in the permit space and provides the appropriate PPE to each employee.
Qualified person means one who, by possession of a recognized degree, certificate, or professional standing, or
who by extensive knowledge, training, and experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work, or the project.
Representative permit space means a mock-up of a confined space that has entrance openings that are similar
to, and is of similar size, configuration, and accessibility to, the permit space that authorized entrants enter.
Rescue means retrieving, and providing medical assistance to, one or more employees who are in a permit
space.
Rescue service means the personnel designated to rescue employees from permit spaces.
Retrieval system means the equipment (including a retrieval line, chest or full body harness, wristlets or anklets,
if appropriate, and a lifting device or anchor) used for non-entry rescue of persons from permit spaces.

Note to the definition of "Test or testing". Testing enables employers both to devise and implement adequate control measures for the protection of authorized entrants and to determine if acceptable entry conditions are present immediately prior to, and during, entry.

§ 1926.1203 General requirements.

Note to paragraph (b)(1). A sign reading "DANGER—PERMIT-REQUIRED CONFINED SPACE, DO NOT ENTER" or using other similar language would satisfy the requirement for a sign.
Serious physical damage means an impairment or illness in which a body part is made functionally useless or is
substantially reduced in efficiency. Such impairment or illness may be permanent or temporary and includes, but is not limited to, loss of consciousness, disorientation, or other immediate and substantial reduction in mental efficiency. Injuries involving such impairment would usually require treatment by a physician or other licensed health-care professional.
Tagout means:
(1) Placement of a tagout device on a circuit or equipment that has been deenergized, in accordance with an established procedure, to indicate that the circuit or equipment being controlled may not be operated until the tagout device is removed; and
(2) The employer ensures that:

(i) Tagout provides equivalent protection to lockout; or
(ii) That lockout is infeasible and the employer has relieved, disconnected, restrained and otherwise rendered safe stored (residual) energy.
Test or testing means the process by which the hazards that may confront entrants of a permit space are identified and evaluated. Testing includes specifying the tests that are to be performed in the permit space.
Ventilate or *ventilation* means controlling a hazardous atmosphere using continuous forced-air mechanical systems that meet the requirements of § 1926.57 (Ventilation).
(a) Before it begins work at a worksite, each employer must ensure that a competent person identifies all confined spaces in which one or more of the employees it directs may work, and identifies each space that is a permit space, through consideration and evaluation of the elements of that space, including testing as necessary.
(b) If the workplace contains one or more permit spaces, the employer who identifies, or who receives notice of, a permit space must:
(1) Inform exposed employees by posting danger signs or by any other equally effective means, of the existence and location of, and the danger posed by, each permit space; and
(2) Inform, in a timely manner and in a manner other than posting, its employees' authorized representatives and the controlling contractor of the existence and location of, and the danger posed by, each permit space.

Note to paragraph (e)(1). See paragraph (g) of this section for reclassification of a permit space after all hazards within the space have been eliminated.
(c) Each employer who identifies, or receives notice of, a permit space and has not authorized employees it directs to work in that space must take effective measures to prevent those employees from entering that permit space, in addition to complying with all other applicable requirements of this standard.
(d) If any employer decides that employees it directs will enter a permit space, that employer must have a written permit space program that complies with § 1926.1204 implemented at the construction site. The written program must be made available prior to and during entry operations for inspection by employees and their authorized representatives.
(e) An employer may use the alternate procedures specified in paragraph (e)(2) of this section for entering a permit space only under the conditions set forth in paragraph (e)(1) of this section.
(1) An employer whose employees enter a permit space need not comply with §§ 1926.1204 through 1206 and §§ 1926.1208 through 1211, provided that all of the following conditions are met:
(i) The employer can demonstrate that all physical hazards in the space are eliminated or isolated through engineering controls so that the only hazard posed by the permit space is an actual or potential hazardous atmosphere;
(ii) The employer can demonstrate that continuous forced air ventilation alone is sufficient to maintain that permit space safe for entry, and that, in the event the ventilation system stops working, entrants can exit the space safely;
(iii) The employer develops monitoring and inspection data that supports the demonstrations required by paragraphs (e)(1)(i) and (ii) of this section;
(iv) If an initial entry of the permit space is necessary to obtain the data required by paragraph (e)(1)(iii) of this section, the entry is performed in compliance with §§ 1926.1204 through

1926.1211;
(v) The determinations and supporting data required by paragraphs (e)(1)(i), (ii), and (iii) of this section are documented by the employer and are made available to each employee who enters the permit space under the terms of paragraph (e) of this section or to that employee's authorized representative; and
(vi) Entry into the permit space under the terms of paragraph (e)(1) of this section is performed in accordance with the requirements of paragraph (e)(2) of this section.
(2) The following requirements apply to entry into permit spaces that meet the conditions set forth in paragraph (e)(1) of this section:
(i) Any conditions making it unsafe to remove an entrance cover must be eliminated before the cover is removed.
(ii) When entrance covers are removed, the opening must be immediately guarded by a railing, temporary cover, or other temporary barrier that will prevent an accidental fall through the opening and that will protect each employee working in the space from foreign objects entering the space.

(iii) Before an employee enters the space, the internal atmosphere must be tested, with a calibrated direct-reading instrument, for oxygen content, for flammable gases and vapors, and for potential toxic air contaminants, in that order. Any employee who enters the space, or that employee's authorized representative, must be provided an opportunity to observe the pre-entry testing required by this paragraph.
(iv) No hazardous atmosphere is permitted within the space whenever any employee is inside the space.
(v) Continuous forced air ventilation must be used, as follows:
(A) An employee must not enter the space until the forced air ventilation has eliminated any hazardous atmosphere;
(B) The forced air ventilation must be so directed as to ventilate the immediate areas where an employee is or will be present within the space and must continue until all employees have left the space;
(C) The air supply for the forced air ventilation must be from a clean source and must not increase the hazards in the space.
(vi) The atmosphere within the space must be continuously monitored unless the entry employer can demonstrate that equipment for continuous monitoring is not commercially available or periodic monitoring is sufficient. If continuous monitoring is used, the employer must ensure that the monitoring equipment has an alarm that will notify all entrants if a specified atmospheric threshold is achieved, or that an employee will check the monitor with sufficient frequency to ensure that entrants have adequate time to escape. If continuous monitoring is not used, periodic monitoring is required. All monitoring must ensure that the continuous forced air ventilation is preventing the accumulation of a hazardous atmosphere. Any employee who enters the space, or that employee's authorized representative, must be provided with an opportunity to observe the testing required by this paragraph (e)(2)(vi).
(vii) If a hazard is detected during entry:
(A) Each employee must leave the space immediately;
(B) The space must be evaluated to determine how the hazard developed; and
(C) The employer must implement measures to protect employees from the hazard before any subsequent entry takes place.
(viii) The employer must ensure a safe method of entering and exiting the space. If a hoisting system is used, it must be designed and manufactured for personnel hoisting; however, a job-made hoisting system is permissible if it is approved for personnel hoisting by a registered professional engineer, in writing, prior to use.
(ix) The employer must verify that the space is safe for entry and that the pre-entry measures required by paragraph (e)(2) of this section have been taken, through a written certification that

contains the date, the location of the space, and the signature of the person providing the certification. The certification must be made before entry and must be made available to each employee entering the space or to that employee's authorized representative.

Note to paragraph (g)(2). Control of atmospheric hazards through forced air ventilation does not constitute elimination or isolation of the hazards. Paragraph (e) of this section covers permit space entry where the employer can demonstrate that forced air ventilation alone will control all hazards in the space.

(f) When there are changes in the use or configuration of a non-permit confined space that might increase
the hazards to entrants, or some indication that the initial evaluation of the space may not have been adequate, each entry employer must have a competent person reevaluate that space and, if necessary, reclassify it as a permit-required confined space.

(g) A space classified by an employer as a permit-required confined space may only be reclassified as a nonpermit
confined space when a competent person determines that all of the applicable requirements in paragraphs (g)(1) through (4) of this section have been met:

(1) If the permit space poses no actual or potential atmospheric hazards and if all hazards within the space are eliminated or isolated without entry into the space (unless the employer can demonstrate that doing so without entry is infeasible), the permit space may be reclassified as a non-permit confined space for as long as the non-atmospheric hazards remain eliminated or isolated;

(2) The entry employer must eliminate or isolate the hazards without entering the space, unless it can demonstrate that this is infeasible. If it is necessary to enter the permit space to eliminate or isolate hazards, such entry must be performed under §§ 1926.1204 through 1926.1211. If testing and inspection during that entry demonstrate that the hazards within the permit space have been eliminated or isolated, the permit space may be reclassified as a non-permit confined space for as long as the hazards remain eliminated or isolated;

(3) The entry employer must document the basis for determining that all hazards in a permit space have been eliminated or isolated, through a certification that contains the date, the location of the space, and the signature of the person making the determination. The certification must be made available to each employee entering the space or to that employee's authorized representative; and

(4) If hazards arise within a permit space that has been reclassified as a non-permit space under paragraph (g) of this section, each employee in the space must exit the space. The entry employer must then reevaluate the space and reclassify it as a permit space as appropriate in accordance with all other applicable provisions of this standard.

(h) *Permit space entry communication and coordination.*

(1) Before entry operations begin, the host employer must provide the following information, if it has it, to the controlling contractor:

(i) The location of each known permit space;

(ii) The hazards or potential hazards in each space or the reason it is a permit space; and

(iii) Any precautions that the host employer or any previous controlling contractor or entry employer implemented for the protection of employees in the permit space.

(2) Before entry operations begin, the controlling contractor must:

(i) Obtain the host employer's information about the permit space hazards and previous entry operations; and

Note to paragraph (h). Unless a host employer or controlling contractor has or will have employees in a confined space, it is not required to enter any confined space to collect the information specified in this paragraph (h).

§ 1926.1204 Permit-required confined space program.

Each entry employer must:
(ii) Provide the following information to each entity entering a permit space and any other entity at the worksite whose activities could foreseeably result in a hazard in the permit space:
(A) The information received from the host employer;
(B) Any additional information the controlling contractor has about the subjects listed in paragraph (h)(1) of this section; and
(C) The precautions that the host employer, controlling contractor, or other entry employers implemented for the protection of employees in the permit spaces.
(3) Before entry operations begin, each entry employer must:
(i) Obtain all of the controlling contractor's information regarding permit space hazards and entry operations; and
(ii) Inform the controlling contractor of the permit space program that the entry employer will follow, including any hazards likely to be confronted or created in each permit space.
(4) The controlling contractor and entry employer(s) must coordinate entry operations when:
(i) More than one entity performs permit space entry at the same time; or
(ii) Permit space entry is performed at the same time that any activities that could foreseeably result in a hazard in the permit space are performed.
(5) After entry operations:
(i) The controlling contractor must debrief each entity that entered a permit space regarding the permit space program followed and any hazards confronted or created in the permit space(s) during entry operations;
(ii) The entry employer must inform the controlling contractor in a timely manner of the permit space program followed and of any hazards confronted or created in the permit space(s) during entry operations; and
(iii) The controlling contractor must apprise the host employer of the information exchanged with the entry entities pursuant to this subparagraph.
(i) If there is no controlling contractor present at the worksite, the requirements for, and role of, controlling
contactors in this section must be fulfilled by the host employer or other employer who arranges to have employees of another employer perform work that involves permit space entry.
(a) Implement the measures necessary to prevent unauthorized entry;
(b) Identify and evaluate the hazards of permit spaces before employees enter them;

Note to paragraph (c)(4). When an employer is unable to reduce the atmosphere below 10 percent LFL, the employer may only enter if the employer inerts the space so as to render the entire atmosphere in the space non-combustible, and the employees use PPE to address any other atmospheric hazards (such as oxygen deficiency), and the employer eliminates or isolates all physical hazards in the space.
Note to paragraph (d)(4). The requirements of subpart E of this part and other PPE
(c) Develop and implement the means, procedures, and practices necessary for safe permit space entry operations, including, but not limited to, the following:
(1) Specifying acceptable entry conditions;
(2) Providing each authorized entrant or that employee's authorized representative with the opportunity to observe any monitoring or testing of permit spaces;
(3) Isolating the permit space and physical hazard(s) within the space;
(4) Purging, inerting, flushing, or ventilating the permit space as necessary to eliminate or control atmospheric hazards;
(5) Determining that, in the event the ventilation system stops working, the monitoring procedures will detect an increase in atmospheric hazard levels in sufficient time for the entrants to safely exit the permit space;
(6) Providing pedestrian, vehicle, or other barriers as necessary to protect entrants from external hazards;

(7) Verifying that conditions in the permit space are acceptable for entry throughout the duration of an authorized entry, and ensuring that employees are not allowed to enter into, or remain in, a permit space with a hazardous atmosphere unless the employer can demonstrate that personal protective equipment (PPE) will provide effective protection for each employee in the permit space and provides the appropriate PPE to each employee; and
(8) Eliminating any conditions (for example, high pressure) that could make it unsafe to remove an entrance cover.
(d) Provide the following equipment (specified in paragraphs (d)(1) through (9) of this section) at no cost to
each employee, maintain that equipment properly, and ensure that each employee uses that equipment properly:
(1) Testing and monitoring equipment needed to comply with paragraph (e) of this section;
(2) Ventilating equipment needed to obtain acceptable entry conditions;
(3) Communications equipment necessary for compliance with §§ 1926.1208(c) and 1926.1209(e), including any necessary electronic communication equipment for attendants assessing entrants' status in multiple spaces;
(4) Personal protective equipment insofar as feasible engineering and work-practice controls do not adequately protect employees;

requirements continue to apply to the use of PPE in a permit space. For example, if employees use respirators, then the respirator requirements in § 1926.103 (Respiratory protection) must be met.
(5) Lighting equipment that meets the minimum illumination requirements in § 1926.56, that is approved for the ignitable or combustible properties of the specific gas, vapor, dust, or fiber that will be present, and that is sufficient to enable employees to see well enough to work safely and to exit the space quickly in an emergency;
(6) Barriers and shields as required by paragraph (c)(4) of this section;
(7) Equipment, such as ladders, needed for safe ingress and egress by authorized entrants;
(8) Rescue and emergency equipment needed to comply with paragraph (i) of this section, except to the extent that the equipment is provided by rescue services; and
(9) Any other equipment necessary for safe entry into, safe exit from, and rescue from, permit spaces.
(e) Evaluate permit space conditions in accordance with the following paragraphs (e)(1) through (6) of this
section when entry operations are conducted:
(1) Test conditions in the permit space to determine if acceptable entry conditions exist before changes to the space's natural ventilation are made, and before entry is authorized to begin, except that, if an employer demonstrates that isolation of the space is infeasible because the space is large or is part of a continuous system (such as a sewer), the employer must:
(i) Perform pre-entry testing to the extent feasible before entry is authorized; and,
(ii) If entry is authorized, continuously monitor entry conditions in the areas where authorized entrants are working, except that employers may use periodic monitoring in accordance with paragraph (e)(2) of this section for monitoring an atmospheric hazard if they can demonstrate that equipment for continuously monitoring that hazard is not commercially available;
(iii) Provide an early-warning system that continuously monitors for non-isolated engulfment hazards. The system must alert authorized entrants and attendants in sufficient time for the authorized entrants to safely exit the space.
(2) Continuously monitor atmospheric hazards unless the employer can demonstrate that the equipment for continuously monitoring a hazard is not commercially available or that periodic monitoring is of sufficient frequency to ensure that the atmospheric hazard is being controlled at safe levels. If continuous monitoring is not used, periodic monitoring is required with sufficient frequency to ensure that acceptable entry conditions are being maintained during the course of entry operations;

(3) When testing for atmospheric hazards, test first for oxygen, then for combustible gases and vapors, and then for toxic gases and vapors;
(4) Provide each authorized entrant or that employee's authorized representative an opportunity to observe the pre-entry and any subsequent testing or monitoring of permit spaces;
(5) Reevaluate the permit space in the presence of any authorized entrant or that employee's authorized representative who requests that the employer conduct such reevaluation because there is some indication that the evaluation of that space may not have been adequate; and

Note to paragraph (m). Examples of circumstances requiring the review of the permit space program include, but are not limited to: Any unauthorized entry of a permit space, the detection of a permit space hazard not covered by the permit, the detection of a condition prohibited by the permit, the occurrence of an injury or near-miss during entry, a change in the use or configuration of a permit space, and employee complaints about the effectiveness of the program.
(6) Immediately provide each authorized entrant or that employee's authorized representative with the results of any testing conducted in accordance with this section.
(f) Provide at least one attendant outside the permit space into which entry is authorized for the duration of
entry operations:
(1) Attendants may be assigned to more than one permit space provided the duties described in § 1926.1209 can be effectively performed for each permit space.
(2) Attendants may be stationed at any location outside the permit space as long as the duties described in § 1926.1209 can be effectively performed for each permit space to which the attendant is assigned.
(g) If multiple spaces are to be assigned to a single attendant, include in the permit program the means and
procedures to enable the attendant to respond to an emergency affecting one or more of those permit spaces without distraction from the attendant's responsibilities under § 1926.1209;
(h) Designate each person who is to have an active role (as, for example, authorized entrants, attendants,
entry supervisors, or persons who test or monitor the atmosphere in a permit space) in entry operations, identify the duties of each such employee, and provide each such employee with the training required by §
1926.1207;
(i) Develop and implement procedures for summoning rescue and emergency services (including procedures
for summoning emergency assistance in the event of a failed non-entry rescue), for rescuing entrants from permit spaces, for providing necessary emergency services to rescued employees, and for preventing unauthorized personnel from attempting a rescue;
(j) Develop and implement a system for the preparation, issuance, use, and cancellation of entry permits as
required by this standard, including the safe termination of entry operations under both planned and emergency conditions;
(k) Develop and implement procedures to coordinate entry operations, in consultation with the controlling
contractor, when employees of more than one employer are working simultaneously in a permit space or elsewhere on the worksite where their activities could, either alone or in conjunction with the activities within a permit space, foreseeably result in a hazard within the confined space, so that employees of one
employer do not endanger the employees of any other employer;
(l) Develop and implement procedures (such as closing off a permit space and canceling the permit) necessary for concluding the entry after entry operations have been completed;
(m) Review entry operations when the measures taken under the permit space program may not protect

employees and revise the program to correct deficiencies found to exist before subsequent entries are authorized; and

Note to paragraph (n). Employers may perform a single annual review covering all entries performed during a 12-month period. If no entry is performed during a 12-month period, no review is necessary.

§ 1926.1205 Permitting process.

§ 1926.1206 Entry permit.

The entry permit that documents compliance with this section and authorizes entry to a permit space must identify:

(n) Review the permit space program, using the canceled permits retained under § 1926.1205(f), within 1 year
after each entry and revise the program as necessary to ensure that employees participating in entry operations are protected from permit space hazards.

(a) Before entry is authorized, each entry employer must document the completion of measures required by §
1926.1204(c) by preparing an entry permit.

(b) Before entry begins, the entry supervisor identified on the permit must sign the entry permit to authorize
entry.

(c) The completed permit must be made available at the time of entry to all authorized entrants or their authorized representatives, by posting it at the entry portal or by any other equally effective means, so that
the entrants can confirm that pre-entry preparations have been completed.

(d) The duration of the permit may not exceed the time required to complete the assigned task or job identified on the permit in accordance with § 1926.1206(b).

(e) The entry supervisor must terminate entry and take the following action when any of the following apply:

(1) Cancel the entry permit when the entry operations covered by the entry permit have been completed; or

(2) Suspend or cancel the entry permit and fully reassess the space before allowing reentry when a condition that is not allowed under the entry permit arises in or near the permit space and that condition is temporary in nature and does not change the configuration of the space or create any new hazards within it; and

(3) Cancel the entry permit when a condition that is not allowed under the entry permit arises in or near the permit space and that condition is not covered by paragraph (e)(2) of this section.

(f) The entry employer must retain each canceled entry permit for at least 1 year to facilitate the review of the
permit-required confined space program required by § 1926.1204(n). Any problems encountered during an entry operation must be noted on the pertinent permit so that appropriate revisions to the permit space
program can be made.

(a) The permit space to be entered;

(b) The purpose of the entry;

(c) The date and the authorized duration of the entry permit;

Note to paragraph (d). This requirement may be met by inserting a reference on the entry permit as to the means used, such as a roster or tracking system, to keep track of the authorized entrants within the permit space.

Note to paragraph (i). Those measures can include, but are not limited to, the lockout or tagging of

equipment and procedures for purging, inerting, ventilating, and flushing permit spaces.

§ 1926.1207 Training.

(d) The authorized entrants within the permit space, by name or by such other means (for example, through
the use of rosters or tracking systems) as will enable the attendant to determine quickly and accurately, for the duration of the permit, which authorized entrants are inside the permit space;
(e) Means of detecting an increase in atmospheric hazard levels in the event the ventilation system stops
working;
(f) Each person, by name, currently serving as an attendant;
(g) The individual, by name, currently serving as entry supervisor, and the signature or initials of each entry
supervisor who authorizes entry;
(h) The hazards of the permit space to be entered;
(i) The measures used to isolate the permit space and to eliminate or control permit space hazards before
entry;
(j) The acceptable entry conditions;
(k) The results of tests and monitoring performed under § 1926.1204(e), accompanied by the names or initials of the testers and by an indication of when the tests were performed;
(l) The rescue and emergency services that can be summoned and the means (such as the equipment to use
and the numbers to call) for summoning those services;
(m) The communication procedures used by authorized entrants and attendants to maintain contact during
the entry;
(n) Equipment, such as personal protective equipment, testing equipment, communications equipment, alarm
systems, and rescue equipment, to be provided for compliance with this standard;
(o) Any other information necessary, given the circumstances of the particular confined space, to ensure employee safety; and
(p) Any additional permits, such as for hot work, that have been issued to authorize work in the permit space.
(a) The employer must provide training to each employee whose work is regulated by this standard, at no cost
to the employee, and ensure that the employee possesses the understanding, knowledge, and skills necessary for the safe performance of the duties assigned under this standard. This training must result in an understanding of the hazards in the permit space and the methods used to isolate, control or in other ways protect employees from these hazards, and for those employees not authorized to perform entry rescues, in the dangers of attempting such rescues.

§ 1926.1208 Duties of authorized entrants.

The entry employer must ensure that all authorized entrants:

§ 1926.1209 Duties of attendants.

The entry employer must ensure that each attendant:
(b) Training required by this section must be provided to each affected employee:
(1) In both a language and vocabulary that the employee can understand;
(2) Before the employee is first assigned duties under this standard;
(3) Before there is a change in assigned duties;
(4) Whenever there is a change in permit space entry operations that presents a hazard about which an employee has not previously been trained; and
(5) Whenever there is any evidence of a deviation from the permit space entry procedures required by §

1926.1204(c) or there are inadequacies in the employee's knowledge or use of these procedures.
(c) The training must establish employee proficiency in the duties required by this standard and must introduce new or revised procedures, as necessary, for compliance with this standard.
(d) The employer must maintain training records to show that the training required by paragraphs (a) through
(c) of this section has been accomplished. The training records must contain each employee's name, the
name of the trainers, and the dates of training. The documentation must be available for inspection by employees and their authorized representatives, for the period of time the employee is employed by that employer.
(a) Are 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;
(b) Properly use equipment as required by § 1926.1204(d);
(c) 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 by § 1926.1209(f);
(d) Alert the attendant whenever:
(1) There is any warning sign or symptom of exposure to a dangerous situation; or
(2) The entrant detects a prohibited condition; and
(e) Exit from the permit space as quickly as possible whenever:
(1) An order to evacuate is given by the attendant or the entry supervisor;
(2) There is any warning sign or symptom of exposure to a dangerous situation;
(3) The entrant detects a prohibited condition; or
(4) An evacuation alarm is activated.
(a) Is familiar with and understands the hazards that may be faced during entry, including information on the
mode, signs or symptoms, and consequences of the exposure;

Note to paragraph (d). Once an attendant has been relieved by another attendant, the relieved attendant may enter a permit space to attempt a rescue when the employer's permit space program allows attendant entry for rescue and the attendant has been trained and equipped for rescue operations as required by § 1926.1211(a).

§ 1926.1210 Duties of entry supervisors.

The entry employer must ensure that each entry supervisor:
(b) Is aware of possible behavioral effects of hazard exposure in authorized entrants;
(c) Continuously maintains an accurate count of authorized entrants in the permit space and ensures that the
means used to identify authorized entrants under § 1926.1206(d) accurately identifies who is in the permit space;
(d) Remains outside the permit space during entry operations until relieved by another attendant;
(e) Communicates with authorized entrants as necessary to assess entrant status and to alert entrants of the
need to evacuate the space under § 1926.1208(e);
(f) Assesses activities and conditions inside and outside the space to determine if it is safe for entrants to
remain in the space and orders the authorized entrants to evacuate the permit space immediately under any of the following conditions:
(1) If there is a prohibited condition;
(2) If the behavioral effects of hazard exposure are apparent in an authorized entrant;
(3) If there is a situation outside the space that could endanger the authorized entrants; or
(4) If the attendant cannot effectively and safely perform all the duties required under this section;

(g) Summons rescue and other emergency services as soon as the attendant determines that authorized
entrants may need assistance to escape from permit space hazards;
(h) Takes the following actions when unauthorized persons approach or enter a permit space while entry is
underway:
(1) Warns the unauthorized persons that they must stay away from the permit space;
(2) Advises the unauthorized persons that they must exit immediately if they have entered the permit space; and
(3) Informs the authorized entrants and the entry supervisor if unauthorized persons have entered the permit space;
(i) Performs non-entry rescues as specified by the employer's rescue procedure; and
(j) Performs no duties that might interfere with the attendant's primary duty to assess and protect the authorized entrants.
(a) Is familiar with and understands the hazards that may be faced during entry, including information on the
mode, signs or symptoms, and consequences of the exposure;

§ 1926.1211 Rescue and emergency services.

Note to paragraph (a)(1). What will be considered timely will vary according to the specific hazards involved in each entry. For example, § 1926.103 (Respiratory protection) requires that employers provide a standby person or persons capable of immediate action to rescue employee(s) wearing respiratory protection while in work areas defined as IDLH atmospheres.
(b) Verifies, by checking that the appropriate entries have been made on the permit, that all tests specified by
the permit have been conducted and that all procedures and equipment specified by the permit are in place before endorsing the permit and allowing entry to begin;
(c) Terminates the entry and cancels or suspends the permit as required by § 1926.1205(e);
(d) Verifies that rescue services are available and that the means for summoning them are operable, and that
the employer will be notified as soon as the services become unavailable;
(e) Removes unauthorized individuals who enter or who attempt to enter the permit space during entry operations; and
(f) Determines, whenever responsibility for a permit space entry operation is transferred, and at intervals dictated by the hazards and operations performed within the space, that entry operations remain consistent with terms of the entry permit and that acceptable entry conditions are maintained.
(a) An employer who designates rescue and emergency services, pursuant to § 1926.1204(i), must:
(1) Evaluate a prospective rescuer's ability to respond to a rescue summons in a timely manner, considering the hazard(s) identified;
(2) Evaluate a prospective rescue service's ability, in terms of proficiency with rescue-related tasks and equipment, to function appropriately while rescuing entrants from the particular permit space or types of permit spaces identified;
(3) Select a rescue team or service from those evaluated that:
(i) Has the capability to reach the victim(s) within a time frame that is appropriate for the permit space hazard(s) identified;
(ii) Is equipped for, and proficient in, performing the needed rescue services;
(iii) Agrees to notify the employer immediately in the event that the rescue service becomes unavailable;
(4) Inform each rescue team or service of the hazards they may confront when called on to perform rescue at the site; and
(5) Provide the rescue team or service selected with access to all permit spaces from which rescue may be necessary so that the rescue team or service can develop appropriate rescue plans and practice

rescue operations.
(b) An employer whose employees have been designated to provide permit space rescue and/or emergency
services must take the following measures and provide all equipment and training at no cost to those employees:

(1) Provide each affected employee with the personal protective equipment (PPE) needed to conduct permit space rescues safely and train each affected employee so the employee is proficient in the use of that PPE;
(2) Train each affected employee to perform assigned rescue duties. The employer must ensure that such employees successfully complete the training required and establish proficiency as authorized entrants, as provided by §§ 1926.1207 and 1926.1208;
(3) Train each affected employee in basic first aid and cardiopulmonary resuscitation (CPR). The employer must ensure that at least one member of the rescue team or service holding a current certification in basic first aid and CPR is available; and
(4) Ensure that affected employees practice making permit space rescues before attempting an actual rescue, and at least once every 12 months, by means of simulated rescue operations in which they remove dummies, manikins, or actual persons from the actual permit spaces or from representative permit spaces, except practice rescue is not required where the affected employees properly performed a rescue operation during the last 12 months in the same permit space the authorized entrant will enter, or in a similar permit space. Representative permit spaces must, with respect to opening size, configuration, and accessibility, simulate the types of permit spaces from which rescue is to be performed.
(c) Non-entry rescue is required unless the retrieval equipment would increase the overall risk of entry or would not contribute to the rescue of the entrant. The employer must designate an entry rescue service whenever non-entry rescue is not selected. Whenever non-entry rescue is selected, the entry employer must ensure that retrieval systems or methods are used whenever an authorized entrant enters a permit space, and must confirm, prior to entry, that emergency assistance would be available in the event that non-entry rescue fails. Retrieval systems must meet the following requirements:
(1) Each authorized entrant must use a chest or full body harness, with a retrieval line attached at the center of the entrant's back near shoulder level, above the entrant's head, or at another point which the employer can establish presents a profile small enough for the successful removal of the entrant. Wristlets or anklets may be used in lieu of the chest or full body harness if the employer can demonstrate that the use of a chest or full body harness is infeasible or creates a greater hazard and that the use of wristlets or anklets is the safest and most effective alternative.
(2) The other end of the retrieval line must be attached to a mechanical device or fixed point outside the permit space in such a manner that rescue can begin as soon as the rescuer becomes aware that rescue is necessary. A mechanical device must be available to retrieve personnel from vertical type permit spaces more than 5 feet (1.52 meters) deep.
(3) Equipment that is unsuitable for retrieval must not be used, including, but not limited to, retrieval lines that have a reasonable probability of becoming entangled with the retrieval lines used by other authorized entrants, or retrieval lines that will not work due to the internal configuration of the permit space.
(d) If an injured entrant is exposed to a substance for which a Safety Data Sheet (SDS) or other similar written
information is required to be kept at the worksite, that SDS or written information must be made available
to the medical facility treating the exposed entrant.

§ 1926.1212 Employee participation.

§ 1926.1213 Provision of documents to Secretary.

For each document required to be retained in this standard, the retaining employer must make the document
available on request to the Secretary of Labor or the Secretary's designee.

(a) Employers must consult with affected employees and their authorized representatives on the development and implementation of all aspects of the permit space program required by § 1926.1203.

(b) Employers must make available to each affected employee and his/her authorized representatives all
information required to be developed by this standard.

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Title 29 —Labor
Subtitle B—Regulations Relating to Labor
Chapter XVII—Occupational Safety and Health Administration, Department of Labor
Part 1910—Occupational Safety and Health Standards
Subpart Z—Toxic and Hazardous Substances

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736),
1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), or 5-2007 (72 FR 31159), 4-2010 (75 FR 55355) or 1-2012 (77 FR
3912), as applicable; and 29 CFR part 1911. All of subpart Z issued under 29 U.S.C. 655(b), except those substances that have exposure limits listed in Tables Z-1, Z-2, and Z-3 of § 1910.1000. The latter were issued under 29 U.S.C. 655(a). Section
1910.1000, Tables Z-1, Z-2 and Z-3 also issued under 5 U.S.C. 553, but not under 29 CFR part 1911 except for the arsenic (organic compounds), benzene, cotton dust, and chromium (VI) listings. *See Subpart Z of Part 1910 for more*

Source: 39 FR 23502, June 27, 1974, unless otherwise noted. Redesignated at 40 FR 23072, May 28, 1975.
Source: 39 FR 23502, June 27, 1974, unless otherwise noted.

§ 1910.1020 Access to employee exposure and medical records.

This content is from the eCFR and is authoritative but unofficial.

(a) *Purpose.* The purpose of this section is to provide employees and their designated representatives a right
of access to relevant exposure and medical records; and to provide representatives of the Assistant Secretary a right of access to these records in order to fulfill responsibilities under the Occupational Safety and Health Act. Access by employees, their representatives, and the Assistant Secretary is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this section, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this section is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or
affect existing legal obligations concerning the protection of trade secret information.

(b) *Scope and application.*

(1) This section applies to each general industry, maritime, and construction employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

(2) This section applies to all employee exposure and medical records, and analyses thereof, of such employees, whether or not the records are mandated by specific occupational safety and health standards.

(3) This section applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house of contractual (e.g., fee-for-service) basis. Each

employer shall assure that the preservation and access requirements of this section are complied with regardless of the manner in which the records are made or maintained.
(c) *Definitions* —
(1) *Access* means the right and opportunity to examine and copy.
Editorial Note: Nomenclature changes to part 1910 appear at 84 FR 21597, May 14, 2019.

(2) *Analysis using exposure or medical records* means any compilation of data or any statistical study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.
(3) *Designated representative* means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purposes of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.
(4) *Employee* means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of a deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.
(5) *Employee exposure record* means a record containing any of the following kinds of information:
(i) Environmental (workplace) monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained;
(ii) Biological monitoring results which directly assess the absorption of a toxic substance or harmful physical agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc) but not including results which assess the biological effect of a substance or agent or which assess an employee's use of alcohol or drugs;
(iii) Material safety data sheets indicating that the material may pose a hazard to human health; or
(iv) In the absence of the above, a chemcial inventory or any other record which reveals where and when used and the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.
(6)
(i) *Employee medical record* means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel or technician, including:
(A) Medical and employment questionnaires or histories (including job description and occupational exposures),
(B) The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including chest and other X-ray examinations taken for the purposes of establishing a base-line or detecting occupational illness, and all biological monitoring not defined as an “employee exposure record”),
(C) Medical opinions, diagnoses, progress notes, and recommendations,
(D) First aid records,
(E) Descriptions of treatments and prescriptions, and

(F) Employee medical complaints.
(ii) “Employee medical record” does not include medical information in the form of:
(A) Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part

of normal medical practice; or
(B) Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.); or
(C) Records created solely in preparation for litigation which are privileged from discovery under the applicable rules of procedure or evidence; or
(D) Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.
(7) *Employer* means a current employer, a former employer, or a successor employer.
(8) *Exposure* or *exposed* means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.), and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.
(9) *Health Professional* means a physician, occupational health nurse, industrial hygienist, toxicologist, or epidemiologist, providing medical or other occupational health services to exposed employees.
(10) *Record* means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing).
(11) *Specific chemical identity* means the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance.
(12)
(i) *Specific written consent* means a written authorization containing the following:
(A) The name and signature of the employee authorizing the release of medical information,
(B) The date of the written authorization,
(C) The name of the individual or organization that is authorized to release the medical information,
(D) The name of the designated representative (individual or organization) that is authorized to receive the released information,
(E) A general description of the medical information that is authorized to be released,
(F) A general description of the purpose for the release of the medical information, and
(G) A date or condition upon which the written authorization will expire (if less than one year).

(ii) A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless the release of future information is expressly authorized, and does not operate for more than one year from the date of written authorization.
(iii) A written authorization may be revoked in writing prospectively at any time.
(13) *Toxic substance or harmful physical agent* means any chemical substance, biological agent (bacteria,
virus, fungus, etc.), or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and nonionizing
radiation, hypo-or hyperbaric pressure, etc.) which:
(i) Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS), which is incorporated by reference as specified in § 1910.6; or
(ii) Has yielded positive evidence of an acute or chronic health hazard in testing conducted by, or known to, the employer; or
(iii) Is the subject of a material safety data sheet kept by or known to the employer indicating that the material may pose a hazard to human health.

(14) *Trade secret* means any confidential formula, pattern, process, device, or information or compilation of information that is used in an employer's business and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it.
(d) *Preservation of records.*
(1) Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:
(i) *Employee medical records.* The medical record for each employee shall be preserved and maintained for at least the duration of employment plus thirty (30) years, except that the following types of records need not be retained for any specified period:
(A) Health insurance claims records maintained separately from the employer's medical program and its records,
(B) First aid records (not including medical histories) of one-time treatment and subsequent observation of minor scratches, cuts, burns, splinters, and the like which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a non-physician and if maintained separately from the employer's medical program and its records, and
(C) The medical records of employees who have worked for less than (1) year for the employer need not be retained beyond the term of employment if they are provided to the employee upon the termination of employment.
(ii) *Employee exposure records.* Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

(A) Background data to environmental (workplace) monitoring or measuring, such as laboratory reports and worksheets, need only be retained for one (1) year as long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and
(B) Material safety data sheets and paragraph (c)(5)(iv) records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years; [1] and
(C) Biological monitoring results designated as exposure records by specific occupational safety and health standards shall be preserved and maintained as required by the specific standard.
(iii) *Analyses using exposure or medical records.* Each analysis using exposure or medial records shall be preserved and maintained for at least thirty (30) years.
(2) Nothing in this section is intended to mandate the form, manner, or process by which an employer preserves a record as long as the information contained in the record is preserved and retrievable, except that chest X-ray films shall be preserved in their original state.
(e) *Access to records —*
(1) *General.*
(i) Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner. If the employer cannot reasonably provide access to the record within fifteen (15) working days, the employer shall within the fifteen (15) working days apprise the employee or designated representative requesting the record of the reason for the delay and the earliest date when the record can be made available.
(ii) The employer may require of the requester only such information as should be readily known to the requester and which may be necessary to locate or identify the records being requested (e.g. dates and locations where the employee worked during the time period in question).
(iii) Whenever an employee or designated representative requests a copy of a record, the employer

shall assure that either:
(A) A copy of the record is provided without cost to the employee or representative,
(B) The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record, or
(C) The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.
(iv) In the case of an original X-ray, the employer may restrict access to on-site examination or make other suitable arrangements for the temporary loan of the X-ray.

(v) Whenever a record has been previously provided without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (*i.e.*, search and copying expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record, except that
(A) An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided; and
(B) An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.
(vi) Nothing in this section is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this section.
(2) *Employee and designated representative access —*
(i) *Employee exposure records.*
(A) Except as limited by paragraph (f) of this section, each employer shall, upon request, assure the access to each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this section, an exposure record relevant to the employee consists of:
(*1*) A record which measures or monitors the amount of a toxic substance or harmful physical agent to which the employee is or has been exposed;
(*2*) In the absence of such directly relevant records, such records of other employees with past or present job duties or working conditions related to or similar to those of the employee to the extent necessary to reasonably indicate the amount and nature of the toxic substances or harmful physical agents to which the employee is or has been subjected, and
(*3*) Exposure records to the extent necessary to reasonably indicate the amount and nature of the toxic substances or harmful physical agents at workplaces or under working conditions to which the employee is being assigned or transferred.
(B) Requests by designated representatives for unconsented access to employee exposure records shall be in writing and shall specify with reasonable particularity:
(*1*) The records requested to be disclosed; and
(*2*) The occupational health need for gaining access to these records.
(ii) *Employee medical records.*
(A) Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in paragraph (e)(2)(ii)(D) of this section.

(B) Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. appendix A to this section contains a sample form which may be used to establish specific written consent for access to employee medical

records.
(C) Whenever access to employee medical records is requested, a physician representing the employer may recommend that the employee or designated representative:
(*1*) Consult with the physician for the purposes of reviewing and discussing the records requested,
(*2*) Accept a summary of material facts and opinions in lieu of the records requested, or
(*3*) Accept release of the requested records only to a physician or other designated representative.
(D) Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employee's health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only. Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.
(E) A physician, nurse, or other responsible health care personnel maintaining medical records may delete from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.
(iii) *Analyses using exposure or medical records.*
(A) Each employee shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.
(B) Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.), the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of the analysis need not be provided.
(3) *OSHA access.*
(i) Each employer shall, upon request, and without derogation of any rights under the Constitution or the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.,* that the employer chooses to exercise, assure the prompt access of representatives of the Assistant Secretary of

Labor for Occupational Safety and Health to employee exposure and medical records and to analyses using exposure or medical records. Rules of agency practice and procedure governing OSHA access to employee medical records are contained in 29 CFR 1913.10.
(ii) Whenever OSHA seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to 29 CFR 1913.10(d), the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.
(f) *Trade secrets.*
(1) Except as provided in paragraph (f)(2) of this section, nothing in this section precludes an employer from deleting from records requested by a health professional, employee, or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in mixture, as long as the health professional, employee, or designated representative is notified that information has been deleted. Whenever deletion of trade

secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the requesting party to identify where and when exposure occurred.
(2) The employer may withhold the specific chemical identity, including the chemical name and other specific identification of a toxic substance from a disclosable record provided that:
(i) The claim that the information withheld is a trade secret can be supported;
(ii) All other available information on the properties and effects of the toxic substance is disclosed;
(iii) The employer informs the requesting party that the specific chemical identity is being withheld as a trade secret; and
(iv) The specific chemical identity is made available to health professionals, employees and designated representatives in accordance with the specific applicable provisions of this paragraph.
(3) Where a treating physician or nurse determines that a medical emergency exists and the specific chemical identity of a toxic substance is necessary for emergency or first-aid treatment, the employer shall immediately disclose the specific chemical identity of a trade secret chemical to the treating physician or nurse, regardless of the existence of a written statement of need or a confidentiality agreement. The employer may require a written statement of need and confidentiality agreement, in accordance with the provisions of paragraphs (f)(4) and (f)(5), as soon as circumstances permit.
(4) In non-emergency situations, an employer shall, upon request, disclose a specific chemical identity, otherwise permitted to be withheld under paragraph (f)(2) of this section, to a health professional, employee, or designated representative if:
(i) The request is in writing;
(ii) The request describes with reasonable detail one or more of the following occupational health needs for the information:
(A) To assess the hazards of the chemicals to which employees will be exposed;

(B) To conduct or assess sampling of the workplace atmosphere to determine employee exposure levels;
(C) To conduct pre-assignment or periodic medical surveillance of exposed employees;
(D) To provide medical treatment to exposed employees;
(E) To select or assess appropriate personal protective equipment for exposed employees;
(F) To design or assess engineering controls or other protective measures for exposed employees; and
(G) To conduct studies to determine the health effects of exposure.
(iii) The request explains in detail why the disclosure of the specific chemical identity is essential and that, in lieu thereof, the disclosure of the following information would not enable the health professional, employee or designated representative to provide the occupational health services described in paragraph (f)(4)(ii) of this section:
(A) The properties and effects of the chemical;
(B) Measures for controlling workers' exposure to the chemical;
(C) Methods of monitoring and analyzing worker exposure to the chemical; and,
(D) Methods of diagnosing and treating harmful exposures to the chemical;
(iv) The request includes a description of the procedures to be used to maintain the confidentiality of the disclosed information; and,
(v) The health professional, employee, or designated representative and the employer or contractor of the services of the health professional or designated representative agree in a written confidentiality agreement that the health professional, employee or designated representative will not use the trade secret information for any purpose other than the health need(s) asserted and agree not to release the information under any circumstances other than to OSHA, as provided in paragraph (f)(7) of this section, except as authorized by the terms of the agreement

or by the employer.
(5) The confidentiality agreement authorized by paragraph (f)(4)(iv) of this section:
(i) May restrict the use of the information to the health purposes indicated in the written statement of need;
(ii) May provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages; and,
(iii) May not include requirements for the posting of a penalty bond.
(6) Nothing in this section is meant to preclude the parties from pursuing non-contractual remedies to the extent permitted by law.
(7) If the health professional, employee or designated representative receiving the trade secret information decides that there is a need to disclose it to OSHA, the employer who provided the information shall be informed by the health professional prior to, or at the same time as, such disclosure.

(8) If the employer denies a written request for disclosure of a specific chemical identity, the denial must:
(i) Be provided to the health professional, employee or designated representative within thirty days of the request;
(ii) Be in writing;
(iii) Include evidence to support the claim that the specific chemical identity is a trade secret;
(iv) State the specific reasons why the request is being denied; and,
(v) Explain in detail how alternative information may satisfy the specific medical or occupational health need without revealing the specific chemical identity.
(9) The health professional, employee, or designated representative whose request for information is denied under paragraph (f)(4) of this section may refer the request and the written denial of the request to OSHA for consideration.
(10) When a heath professional employee, or designated representative refers a denial to OSHA under paragraph (f)(9) of this section, OSHA shall consider the evidence to determine if:
(i) The employer has supported the claim that the specific chemical identity is a trade secret;
(ii) The health professional employee, or designated representative has supported the claim that there is a medical or occupational health need for the information; and
(iii) The health professional, employee or designated representative has demonstrated adequate means to protect the confidentiality.
(11)
(i) If OSHA determines that the specific chemical identity requested under paragraph (f)(4) of this section is not a *bona fide* trade secret, or that it is a trade secret but the requesting health professional, employee or designated representatives has a legitimate medical or occupational health need for the information, has executed a written confidentiality agreement, and has shown adequate means for complying with the terms of such agreement, the employer will be subject to citation by OSHA.
(ii) If an employer demonstrates to OSHA that the execution of a confidentiality agreement would not provide sufficient protection against the potential harm from the unauthorized disclosure of a trade secret specific chemical identity, the Assistant Secretary may issue such orders or impose such additional limitations or conditions upon the disclosure of the requested chemical information as may be appropriate to assure that the occupational health needs are met without an undue risk of harm to the employer.
(12) Notwithstanding the existence of a trade secret claim, an employer shall, upon request, disclose to the Assistant Secretary any information which this section requires the employer to make available. Where there is a trade secret claim, such claim shall be made no later than at the time the information is provided to the Assistant Secretary so that suitable determinations of trade secret status can be made and the necessary protections can be implemented.
(13) Nothing in this paragraph shall be construed as requiring the disclosure under any circumstances of

process or percentage of mixture information which is trade secret.

Appendix A to § 1910.1020—Sample Authorization Letter for the Release of Employee Medical Record Information to a Designated Representative (Non-Mandatory)

I, _____ (full name of worker/patient), hereby authorize _____ (individual or organization holding the medical
records) to release to _____ (individual or organization authorized to receive the medical information), the
following medical information from my personal medical records:
(Describe generally the information desired to be released)
I give my permission for this medical information to be used for the following purpose:
but I do not give permission for any other use or re-disclosure of this information.

(g) *Employee information.*

(1) Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform current employees covered by this section of the following:

(i) The existence, location, and availability of any records covered by this section;

(ii) The person responsible for maintaining and providing access to records; and

(iii) Each employee's rights of access to these records.

(2) Each employer shall keep a copy of this section and its appendices, and make copies readily available, upon request, to employees. The employer shall also distribute to current employees any informational materials concerning this section which are made available to the employer by the Assistant Secretary of Labor for Occupational Safety and Health.

(h) *Transfer of records.*

(1) Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this section to the successor employer. The successor employer shall receive and maintain these records.

(2) Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected current employees of their rights of access to records at least three

(3) months prior to the cessation of the employer's business.

(i) *Appendices.* The information contained in appendices A and B to this section is not intended, by itself, to
create any additional obligations not otherwise imposed by this section nor detract from any existing obligation.

Note: Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year); (2) describe medical information to be created in the future that you intend to be covered by this authorization letter; or (3) describe portions of the medical information in your records which you do not intend to be released as a result of this letter.)

Full name of Employee or Legal Representative
Signature of Employee or Legal Representative
Date of Signature

Appendix B to § 1910.1020—Availability of NIOSH Registry of Toxic Effects of Chemical Substances (RTECS) (Non-Mandatory)

The final regulation, 29 CFR 1910.20, applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents (paragraph (b)(2)). The term *toxic substance or harmful physical agent* is defined by paragraph (c)(13) to encompass chemical substances, biological agents, and physical stresses for which there is evidence of harmful health effects. The regulation uses the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) as one of the chief sources of information as to whether evidence of harmful health effects exists. If a substance is listed in the latest printed RTECS, the regulation applies to exposure and medical records (and analyses of these records) relevant to employees exposed to the substance.

It is appropriate to note that the final regulation does not require that employers purchase a copy of RTECS, and many employers need not consult RTECS to ascertain whether their employee exposure or medical records are subject to the rule. Employers who do not currently have the latest printed edition of the NIOSH RTECS, however, may desire to obtain a copy. The RTECS is issued in an annual printed edition as mandated by section 20(a)(6) of the Occupational Safety and Health Act (29 U.S.C. 669(a)(6)).

The Introduction to the 1980 printed edition describes the RTECS as follows:

"The 1980 edition of the Registry of Toxic Effects of Chemical Substances, formerly known as the Toxic Substances list, is the ninth revision prepared in compliance with the requirements of Section 20(a)(6) of the Occupational Safety and Health Act of 1970 (Public Law 91-596). The original list was completed on June 28, 1971, and has been updated annually in book format. Beginning in October 1977, quarterly revisions have been provided in microfiche. This edition of the Registry contains 168,096 listings of chemical substances: 45,156 are names of different chemicals with their associated toxicity data and 122,940 are synonyms. This edition includes approximately 5,900 new chemical compounds that did not appear in the 1979 Registry. (p. xi)

"The Registry's purposes are many, and it serves a variety of users. It is a single source document for basic toxicity information and for other data, such as chemical identifiers ad information necessary for the preparation of safety directives and hazard evaluations for chemical substances. The various types of toxic effects linked to literature citations provide researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical

substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards
which may be associated with chemical intermediates in the development of final products, and thus can more
readily select substitutes or alternative processes which may be less hazardous. Some organizations, including
health agencies and chemical companies, have included the NIOSH Registry accession numbers with the
listing of chemicals in their files to reference toxicity information associated with those chemicals. By including
foreign language chemical names, a start has been made toward providing rapid identification of substances
produced in other countries. (p. xi)
"In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the
environment and to provide pertinent data on the toxic effects from known doses entering an organism by any
route described. (p xi)
"It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it
must be avoided. A listing does mean, however, that the substance has the documented potential of being
harmful if misused, and care must be exercised to prevent tragic consequences. Thus, the Registry lists many
substances that are common in everyday life and are in nearly every household in the United States. One can
name a variety of such dangerous substances: prescription and non-prescription drugs; food additives;
pesticide concentrates, sprays, and dusts; fungicides; herbicides; paints; glazes, dyes; bleaches and other
household cleaning agents; alkalies; and various solvents and diluents. The list is extensive because chemicals
have become an integral part of our existence."
The RTECS printed edition may be purchased from the Superintendent of Documents, U.S. Government Printing
Office (GPO), Washington, DC 20402 (202-783-3238).
Some employers may desire to subscribe to the quarterly update to the RTECS which is published in a
microfiche edition. An annual subscription to the quarterly microfiche may be purchased from the GPO (Order
the "Microfiche Edition, Registry of Toxic Effects of Chemical Substances"). Both the printed edition and the
microfiche edition of RTECS are available for review at many university and public libraries throughout the
country. The latest RTECS editions may also be examined at the OSHA Technical Data Center, Room
N2439—Rear, United States Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210
(202-523-9700), or at any OSHA Regional or Area Office (*See,* major city telephone directories under United
States Government-Labor Department).

[53 FR 38163, Sept. 29, 1988; 53 FR 49981, Dec. 13, 1988, as amended at 54 FR 24333, June 7, 1989; 55 FR 26431, June 28, 1990;
61 FR 9235, Mar. 7, 1996. Redesignated at 61 FR 31430, June 20, 1996, as amended at 71 FR 16673, Apr. 3, 2006; 76 FR 33608,
June 8, 2011]

[1] Material safety data sheets must be kept for those chemicals currently in use that are effected by the Hazard
Communication Standard in accordance with 29 CFR 1910.1200(g).

29 CFR 1910.1020 (up to date as of 4/16/2024)
Access to employee exposure and medical records. 29 CFR 1910.1020(i)
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Title 29 —Labor
Subtitle B—Regulations Relating to Labor
Chapter XVII—Occupational Safety and Health Administration, Department of Labor
Part 1926—Safety and Health Regulations for Construction
Subpart C—General Safety and Health Provisions

Authority: 40 U.S.C. 3701 *et seq.;* 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 6-96 (62 FR 111), 5-2007 (72 FR 31160), or 1-2012 (77 FR 3912) as applicable; and 29 CFR part
1911.

Authority: 40 U.S.C. 3704; 29 U.S.C. 653, 655, and 657; and Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), 5-2007 (72 FR
31159), 4-2010 (75 FR 55355), 1-2012 (77 FR 3912), or 8-2020 (85 FR 58393), as applicable; and 29 CFR part 1911, unless otherwise noted Sections 1926.58, 1926.59, 1926.60, and 1926.65 also issued under 5 U.S.C. 553 and 29 CFR part 1911. Section 1926.61 also issued under 49 U.S.C. 1801-1819 and 5 U.S.C. 553. *See Part 1926 for more*

Source: 44 FR 8577, Feb. 9, 1979; 44 FR 20940, Apr. 6, 1979, unless otherwise noted.

§ 1926.33 Access to employee exposure and medical records.

Note: The requirements applicable to construction work under this section are identical to those set forth at § 1910.1020 of this chapter.

[61 FR 31431, June 20, 1996]

This content is from the eCFR and is authoritative but unofficial.

Editorial Notes: 1. At 44 FR 8577, Feb. 9, 1979, and corrected at 44 FR 20940, Apr. 6, 1979, OSHA reprinted
without change the entire text of 29 CFR part 1926 together with certain General Industry Occupational Safety and
Health Standards contained in 29 CFR part 1910, which have been identified as also applicable to construction
work. This republication developed a single set of OSHA regulations for both labor and management forces within
the construction industry.

2. Nomenclature changes to part 1926 appear at 84 FR 21597, May 14, 2019.

29 CFR 1926.33 (up to date as of 4/16/2024)
Access to employee exposure and medical records. 29 CFR 1926.33 (Apr. 16, 2024)
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SEC. 2. Congressional Findings and Purpose

29 USC 651

(a) The Congress finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.

(b) The Congress declares it to be its purpose and policy, through the

exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources --

(1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions; (2) by providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

(3) by authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under the Act;

(4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

(5) by providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

(6) by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;

(7) by providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;

(8) by providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health; affecting the OSH Act since its passage in 1970 through January 1, 2004.

(9) by providing for the development and promulgation of occupational safety and health standards;

(10) by providing an effective enforcement program which shall include a prohibition against giving advance notice of any inspection and sanctions for any individual violating this prohibition;

(11) by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the States to assist in identifying their needs and responsibilities in the area of occupational safety and health, to develop plans in accordance with the provisions of this Act, to improve the administration and enforcement of State occupational safety and health laws, and to conduct experimental and demonstration projects in connection therewith;

(12) by providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem;

(13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

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6. Occupational Safety and Health Standards

29 USC 655:

(a) Without regard to chapter 5 of title 5, United States Code, or to the other subsections of this section, the Secretary shall, as soon as practicable during the period beginning with the effective date of this Act and ending two years after such date, by rule promulgate as an occupational safety or health standard any national consensus standard, and any established Federal standard, unless he determines that the promulgation of such a standard would not result in improved safety or health for specifically designated employees. In the event of conflict among any such standards, the Secretary shall promulgate the standard which assures the greatest protection of the safety or health of the affected employees.

(b) The Secretary may by rule promulgate, modify, or revoke any occupational safety or health standard in the following manner:

(1) Whenever the Secretary, upon the basis of information submitted to him in writing by an interested person, a representative of any organization of employers or employees, a nationally recognized standards-producing organization, the Secretary of Health and Human Services, the National Institute for Occupational Safety and Health, or a State or political subdivision, or on the basis of information developed by the Secretary or otherwise available to him, determines that a rule should be promulgated in order to serve the objectives of this Act, the Secretary may request the recommendations of an advisory committee appointed under section 7 of this Act. The Secretary shall provide such an advisory committee with any proposals of his own or of the Secretary of Health and Human Services, together with all pertinent factual information developed by the Secretary or the Secretary of Health and Human Services, or otherwise available, including the results of research, demonstrations, and experiments. An advisory committee shall submit to the Secretary its recommendations regarding the rule to be promulgated within ninety days from the date of its appointment or within such longer or shorter period as may be prescribed by the Secretary, but in no event for a period which is longer than two hundred and seventy days.

(2) The Secretary shall publish a proposed rule promulgating, modifying, or revoking an occupational safety or health standard in the Federal Register and shall afford interested persons a period of thirty days after publication to submit written data or comments. Where an advisory committee is appointed and the Secretary determines that a rule should be issued, he shall publish the proposed rule within sixty days after the submission of the advisory committee's recommendations or the expiration of the period prescribed by the Secretary for such submission.

(3) On or before the last day of the period provided for the submission of written data or comments under paragraph (2), any interested person may file with the Secretary written objections to the proposed rule, stating the grounds therefore and requesting a public hearing on such objections. Within thirty days after the last day for filing such objections, the Secretary shall publish in the Federal Register a notice specifying the occupational safety or health standard to which objections have been filed and a hearing requested, and specifying a time and place for such hearing.

(4) Within sixty days after the expiration of the period provided for the submission of written data or comments under paragraph (2), or within sixty days after the completion of any hearing held under paragraph (3), the Secretary shall issue a rule promulgating, modifying, or revoking an occupational safety or health standard or make a determination that a rule should not be issued. Such a rule may contain a provision delaying its effective date for such period (not in excess of ninety days) as the Secretary determines may be necessary to insure that affected employers and employees will be informed of the existence of the standard and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the standard.

(5) The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

(6) (A) Any employer may apply to the Secretary for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of clause (B) and establishes

that --

(i) he is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date,

(ii) he is taking all available steps to safeguard his employees against the hazards covered by the standard, and

(iii) he has an effective program for coming into compliance with the standard as quickly as practicable.

Any temporary order issued under this paragraph shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing: *Provided,* That the Secretary may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve

compliance with the standard or one year, whichever is shorter, except that such an order may be renewed not more that twice (I) so long as the requirements of this paragraph are met and (II) if an application for renewal is filed at least 90 days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than 180 days.

(B) An application for temporary order under this paragraph (6) shall contain:

(i) a specification of the standard or portion thereof from which the employer seeks a variance,

(ii) a representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor,

(iii) a statement of the steps he has taken and will take (with specific dates) to protect employees against the hazard covered by the standard,

(iv) a statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take (with dates specified) to come into compliance with the standard, and

(v) a certification that he has informed his employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means.

A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the Secretary for a hearing.

(C) The Secretary is authorized to grant a variance from any standard or portion thereof whenever he determines, or the Secretary of Health and Human Services certifies, that such variance is necessary to permit an employer to participate in an experiment approved by him or the Secretary of Health and Human Services designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

(7) Any standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event such medical examinations are in the nature of research, as determined by the Secretary of

Health and Human Services, such examinations may be furnished at the expense of the Secretary of Health and Human Services. The results of such examinations or tests shall be furnished only to the Secretary or the Secretary of Health and Human Services, and, at the request of the employee, to his physician. The Secretary, in consultation with the Secretary of Health and Human Services, may by rule promulgated pursuant to section 553 of title 5, United States Code, make appropriate modifications in the foregoing requirements relating to the use of labels or other forms of warning, monitoring or measuring, and medical examinations, as may be warranted by experience, information, or medical or technological developments acquired subsequent to the promulgation of the relevant standard.

(8) Whenever a rule promulgated by the Secretary differs substantially from an existing national consensus standard, the Secretary shall, at the same time, publish in the Federal Register a statement of the reasons why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard.

(c) (1) The Secretary shall provide, without regard to the requirements of chapter 5, title 5, Unites States Code, for an emergency temporary standard to take immediate effect upon publication in the Federal Register if he determines --

(A) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and

(B) that such emergency standard is necessary to protect employees from such danger.

(2) Such standard shall be effective until superseded by a standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

(3) Upon publication of such standard in the Federal Register the Secretary shall commence a proceeding in accordance with section 6 (b) of this Act, and the standard as published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a standard under this paragraph no later than six months after publication of the emergency standard as provided in paragraph (2) of this subsection.

(d) Any affected employer may apply to the Secretary for a rule or order for a variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The Secretary shall issue such rule or order if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the Secretary on his own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

(e) Whenever the Secretary promulgates any standard, makes any rule, order, or decision, grants any exemption or extension of time, or compromises, mitigates, or settles any penalty assessed under this Act, he shall include a statement of the reasons for such action, which shall be published in the Federal Register.

(f) Any person who may be adversely affected by a standard issued under this section may at any time prior to the sixtieth day after such standard is promulgated file a petition challenging the validity of such standard with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing of such petition shall not, unless otherwise ordered by the court, operate as a stay of the standard. The determinations of the Secretary shall be conclusive if supported by substantial evidence in the record considered as a whole.

(g) In determining the priority for establishing standards under this section, the Secretary shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments. The Secretary shall also give due regard to the recommendations of the Secretary of Health and Human Services regarding the need for mandatory standards in determining the priority for establishing such standards.

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SEC. 8. Inspections, Investigations, and Recordkeeping

29 USC 657

(a) In order to carry out the purposes of this Act, the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized --

(1) to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; and

(2) to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent or employee.

(b) In making his inspections and investigations under this Act the Secretary may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

In case of a contumacy, failure, or refusal of any person to obey such an order, any district court of the United States or the United States courts of any territory or possession, within the jurisdiction of which such person is found, or resides or transacts business, upon the application by the Secretary, shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(c) (1) Each employer shall make, keep and preserve, and make available to the Secretary or the Secretary of Health and Human Services, such records regarding his activities relating to this Act as the Secretary, in cooperation with the Secretary of Health and Human Services, may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this paragraph such regulations may include provisions requiring employers to conduct periodic inspections. The Secretary shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this Act, including the provisions of applicable standards.

(2) The Secretary, in cooperation with the Secretary of Health and Human Services, shall prescribe regulations requiring employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(3) The Secretary, in cooperation with the Secretary of Health and Human Services, shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 6. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provision for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable occupational safety and health standard promulgated under section 6, and shall inform any employee who is being thus exposed of the corrective action being taken.

(d) Any information obtained by the Secretary, the Secretary of Health and Human Services, or a State agency under this Act shall be obtained with a minimum burden upon employers, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible.

(e) Subject to regulations issued by the Secretary, a representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any workplace under subsection (a) for the purpose of aiding such inspection. Where there is no authorized employee representative, the Secretary or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

(f) (1) Any employees or representative of employees who believe that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the Secretary or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employees or representative of employees, and a copy shall be provided the employer or his agent no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available pursuant to subsection (g) of this section. If upon receipt of such notification the Secretary determines there are reasonable grounds to believe that such violation or danger exists, he shall make a special inspection in accordance with the provisions of this section as soon as practicable, to determine if such violation or danger exists. If the Secretary determines there are no reasonable grounds to believe that a violation or danger exists he shall notify the employees or representative of the employees in writing of such determination.

(2) Prior to or during any inspection of a workplace, any employees

or representative of employees employed in such workplace may notify the Secretary or any representative of the Secretary responsible for conducting the inspection, in writing, of any violation of this Act which they have reason to believe exists in such workplace. The Secretary shall, by regulation, establish procedures for informal review of any refusal by a representative of the Secretary to issue a citation with respect to any such alleged violation and shall furnish the employees or representative of employees requesting such review a written statement of the reasons for the Secretary's final disposition of the case.

(g) (1) The Secretary and Secretary of Health and Human Services are authorized to compile, analyze, and publish, either in summary or detailed form, all reports or information obtained under this section.

(2) The Secretary and the Secretary of Health and Human Services shall each prescribe such rules and regulations as he may deem necessary to carry out their responsibilities under this Act, including rules and regulations dealing with the inspection of an employer's establishment.

(h) The Secretary shall not use the results of enforcement activities, such as the number of citations issued or penalties assessed, to evaluate employees directly involved in enforcement activities under this Act or to impose quotas or goals with regard to the results of such activities.