

Compliance Alert: New Federal Confined Spaces Rules Take Effect January 1, 2021



Heads-up federally regulated employers! Major changes to confined spaces rules have taken effect. Here's a look at the 8 key changes and what you must do to comply with them.

Background

The new rules, which were published in the June 20, 2020 Canada Gazette, have been in the pipeline since 2014 when the federal Labour Program's Occupational Health and Safety Advisory Committee (OHSAC) flagged confined spaces as a priority for review. The new rules are designed to clear up confusion, especially over what constitutes a 'confined space,' and update the current rules, i.e., Part XI of the Canadian OHS Regulations (COHSR). Here are the highlights.

1. New Class of 'Hazardous Confined Spaces'

Current Definition

An enclosed or partially enclosed space that:

- (a) is not designed or intended for human occupancy except for purpose of performing work,
- (b) has restricted means of access and egress, and
- (c) may become hazardous to any person entering it due to
 - (i) its design, construction, location or atmosphere,
 - (ii) the materials or substances in it, or
 - (iii) any other conditions relating to it

New Definition

A space that is:

- (a) is enclosed or partially enclosed
- (b) not designed or intended for human occupancy
- (c) has limited or restricted means of access and egress **or an internal configuration that could complicate provision of first aid, evacuation, rescue or other emergency measures**

Current Rules: The definition of 'confined space' is based on the space's physical characteristics, design, use and atmospheric conditions and you have to implement the applicable Part XI safety measures to all spaces that meet the definition.

New Rules: The new rules create a new classification called a 'hazardous confined spaces,' defined as a confined space that, when entered, occupied or exited by persons, presents hazards likely to cause injury, illness or other adverse health effects to persons entering, occupying or exiting it because of (a) its design, construction, location or atmosphere; (b) the materials or substances in it; or (c) any other conditions relating to it.

Significance: To determine the required safety measures, employers will have to determine whether the confined space is a regular 'confined space' or a 'hazardous confined space' the same basic model used in Alberta ('restricted space' vs. 'confined space') and jurisdictions that distinguish between 'confined spaces' and 'permit confined spaces.'

2. New Surveying & Inventorying Requirements

Employers will have to survey the workplace to see if it contains any confined spaces a worker may enter and have a qualified person determine whether it's a hazardous confined space. If it's likely that a worker will enter a confined space classified as hazardous, the employer must implement safe entry and exit, checking and emergency response procedures. Employers must also create and make available to workers at the site a written inventory of both regular and hazardous confined spaces at the site before workers enter them.

3. New Reinspection & Hazard Assessment Requirements

Confined and hazardous confined spaces must be reinspected for hazard identification and assessment purposes after a change to their structure, intended use or immediate surrounding area.

4. More Stringent Minimum Oxygen Levels

The minimum level of oxygen that the air inside a confined space or hazardous confined space must contain will increase from 18% to 19.5%, the same as most other jurisdictions require. The maximum oxygen level will remain 23%.

5. New Emergency Procedure Requirements

Employers will have to implement emergency procedures for all hazardous confined spaces, not just confined spaces with hazardous atmospheric conditions as under current rules. As before, the employer must consult the workplace joint health and safety committee (JHSC) or health and safety representative (HSR) in developing these procedures.

6. Stricter Atmospheric Monitoring Requirements

Continuous atmospheric monitoring will be required when the qualified person notes it in the hazard assessment report. The new rules also say that atmospheric testing equipment must be used by a qualified person and that it be used, calibrated and maintained in accordance with the manufacturer's instructions, a common requirement in other jurisdictions.

7. Extension of Employers' Safety Duties to Contractors

Making express what current rules only imply, the new regulations extend an

employer's duty to protect persons entering a hazardous confined space to include workers of contractors. Employers will have to not only share and ensure that contractors follow their entry procedures but also verify that workers of the contractor that will enter the space have received training on safely working in the hazardous confined space.

8. New Training Record Requirements

The new rules also require employers to maintain records of all employees who receive instruction and training on emergency procedures and their safety duties when working in confined spaces.