

MARYLAND REGISTER

## Proposed Action on Regulations

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
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2. COMAR Codification

**Title Subtitle Chapter Regulation**

09 12 35 01-.05

3. Name of Promulgating Authority

Department of Labor, Licensing, and Regulation

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**Title 09**  
**DEPARTMENT OF LABOR, LICENSING, AND**  
**REGULATION**

**Subtitle 12 DIVISION OF LABOR AND INDUSTRY**

**09.12.35 Maryland Occupational Safety and Health Standard for Confined Spaces**

Authority: Labor and Employment Article, §§2-106(b)(4) and 5-312, Annotated Code of Maryland

**Notice of Proposed Action**

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The Commissioner of Labor and Industry proposes to repeal COMAR 09.12.35 Maryland Occupational Safety and Health Standard for Confined Spaces.

This action was considered by the Maryland Occupational Safety and Health Advisory Board pursuant to a meeting held on June 17, 2015. The notice of this meeting was given in 43:12 Md. R. (June 12, 2015) in accordance with General Provisions Article, §3-302(c), Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to repeal Maryland's Occupational Safety and Health Standard for Confined Spaces. At the Federal level, the Occupational Safety and Health Administration has adopted new standards on confined spaces with the Standards relating to Confined Spaces in Construction, 29 CFR Part 1926. The Commissioner has proposed adopting the new Federal standards by incorporation by reference, notice of which was published in 43:2 Md. R. 176 (January 22, 2016). This action seeks to repeal the existing Maryland regulations before Final Action on the proposed incorporation by reference of the Federal standard.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

## Opportunity for Public Comment

Comments may be sent to Mischelle Vanreusel, Regulatory and Grants Coordinator, Division of Labor & Industry, DLLR, 1100 N. Eutaw Street, Room 600, Baltimore, MD 21201, or call 410-767-2225, or email to [mischelle.vanreusel@maryland.gov](mailto:mischelle.vanreusel@maryland.gov), or fax to 410-767-2986. Comments will be accepted through November 29, 2016. A public hearing has not been scheduled.

## Economic Impact Statement Part C

- A. Fiscal Year in which regulations will become effective: FY 2017
- B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?  
No
- C. If 'yes', state whether general, special (exact name), or federal funds will be used:
- D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:  
This is a repeal of regulations so no implementation necessary.
- E. If these regulations have no economic impact under Part A, indicate reason briefly:  
This action is to repeal existing regulations and do not place any requirements on the Department or the public.
- F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.  
This action is to repeal existing regulations and do not place any requirements on the Department or the public.
- G. Small Business Worksheet:

Attached Document:

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# **Title 09 DEPARTMENT OF LABOR, LICENSING, AND REGULATION**

## **Subtitle 12 DIVISION OF LABOR AND INDUSTRY**

### **Chapter 35 Maryland Occupational Safety and Health Standard for Confined Spaces *Repealed***

[Authority: Labor and Employment Article, §§ 2-106(b)(4) and 5-312, Annotated Code of Maryland]

#### **.01 Scope.**

- A. Except for work subject to 29 CFR § 1910.146, this chapter applies to work conducted within a confined space.
- B. Compliance with this chapter does not preclude or preempt the applicability of any other standard.

C. Confined space includes, but is not limited to, any of the following areas which meet the criteria set out in Regulation .02A:

- (1) A storage tank, tank car, process vessel, bin, tank trailer, and other tank-like compartment usually having one or more manholes for entry;
- (2) An open-topped space more than 4 feet deep, such as a bin, silo, pit, vat, tub, vault, vessel, and floating roof storage tank;
- (3) A ventilation or exhaust duct, manhole, sewer, tunnel, pipeline, and similar structure; and
- (4) An oven, furnace, kiln, and similar structure.

**.02 Definitions.**

A. "Confined space" means a space:

- (1) Having limited means of entry or egress;
- (2) So enclosed that adequate dilution ventilation is not obtained by:
  - (a) Natural air movement, or
  - (b) Mechanically induced movement; and
- (3) Subject to:
  - (a) The accumulation of toxic or combustible agents, or
  - (b) An oxygen deficiency.

B. "Emergency" means a sudden and unexpected condition requiring immediate action.

C. "Oxygen deficiency" means that the tested atmosphere contains less than 19.5 percent oxygen.

**.03 Confined Space Entry: Non-Utility Operations.**

A. Scope and Applicability. This regulation applies to non-utility operations.

B. Except as provided in § D, before an employee enters a confined space, an employer shall ensure the following procedures:

(1) Line Disconnection.

(a) Ensure that any line, except for a fire suppressant or extinguishing system, that enters the space and carries a harmful agent:

- (i) Is physically disconnected from the space; or
- (ii) Is blocked by a blind or other device capable of ensuring complete closure.

(b) "Line" includes, but is not limited to, a connection for:

- (i) Supply;
- (ii) Discharge;
- (iii) Overflow;
- (iv) Venting;
- (v) Drainage; or
- (vi) A similar connection.

(2) Render inoperable by disconnection a fixed mechanical device or equipment which, if operated, might endanger an employee or cause a hazard.

(3) Except for lighting, padlock or tag electrical service equipment in accordance with 29 CFR 1910.145(f).

(4) Atmospheric Testing.

(a) When neither adequate natural air movement nor adequate continuous forced ventilation is provided, test the atmosphere in the confined space first for oxygen deficiency.

(b) Test the internal atmosphere for the following:

(i) Combustible gas in excess of 10 percent of the lower explosive limit; and

(ii) When there is reason to suspect their presence, air contaminants in excess of levels specified in Subpart Z of 29 CFR 1910

(5) Ventilation. If a test made in accordance with § B(4) indicates that the atmosphere is unsafe:

(a) Ventilate the space until the concentration of each hazardous substance is reduced to a safe level or removed; and

(b) Continue ventilation as long as a recurrence of the hazard is probable.

(6) Respirators.

(a) As an alternative to ventilation, or if ventilation does not adequately reduce or remove a hazardous substance, ensure that an employee enters a confined space only if that employee wears an appropriate respirator:

(i) In accordance with the requirements of 29 CFR 1910.134; and

(ii) That is approved for that purpose by the National Institute for Occupational Safety and Health (NIOSH) and the federal Mine Safety and Health Administration (MSHA).

(b) Self-Contained Respirators. When an employee uses a self-contained respirator, ensure that:

(i) The primary air capacity is sufficient to sustain the employee through the performance of the task inside the confined space;

(ii) The employee wearing a respirator does not remain in the confined space when the primary air system either is depleted or is being replaced;

(iii) A reserve air supply is provided and used only in the event of an emergency.

(7) Communication and Rescue Requirements.

(a) Provide for constant communication between the employee inside the confined space and an employee who is:

- (i) In the immediate vicinity; and
- (ii) Outside the confined space.

(b) Provide:

- (i) Adequate rescue procedures; and
- (ii) Rescue equipment specifically designed for rescue from the type of confined space where the work is being performed.

(c) Ensure that each employee working inside and outside the confined space has been adequately trained in rescue and cardiac pulmonary resuscitation procedures.

(d) Ensure that an employee entering a confined space for rescue complies with § B (6).

(8) Lighting.

(a) Ensure that a temporary light has:

(i) A guard to prevent accidental contact with the bulb, unless the bulb is deeply recessed by the reflector construction; and

(ii) A heavy-duty electrical cord which has safe connections and insulation and, if spliced, has insulation at the splice equal to that of a cable.

(b) Ensure that a temporary light is not suspended by its electrical cord unless the cord and the light are designed for this means of suspension.

(c) Ensure that working spaces, walkways, and similar locations are clear of cords so as not to create a hazard to employees.

(d) Ensure that portable electrical lighting used in a moist or other hazardous location, such as a drum, tank, and vessel, is operated at a maximum of 12 volts.

C. Air Supply. An employer shall provide an adequate continuous supply of air while work is performed under any of the following conditions:

(1) Combustible or explosive gas vapors have been initially detected and subsequently reduced to a safe level by ventilation;

(2) Organic solvents are used in the work procedure;

(3) Open-flame torches are used in the work procedure;

(4) A manhole is located in that portion of a public right of way open to vehicular traffic or exposed to a seepage of gas or gases; or

(5) A toxic gas or oxygen deficiency is found.

D. Emergency Confined Space Entry.

The employer shall establish a written procedure covering confined space entry under emergency conditions, which may exclude the use of procedures stated in § B(1), (4), and (5).

**.04 Confined Space Entry: Utility Operations Including Gas, Water, and Sewage.**

A. Scope.

(1) This regulation applies to utility operations, including gas, water, and sewage.

(2) Compliance with this regulation does not preclude or preempt the applicability of any other state or federal standard, including, but not limited to:

(a) 29 CFR 1926.956(a) and (b), for Electric Utility Operations; and

(b) 29 CFR 1910.268(o) for Telecommunication Utility Operations.

B. When work is to be performed in a confined space by a gas, water, or sewage utility, before an employee enters the confined space, the employer shall ensure the following:

(1) Atmospheric Testing.

(a) When neither adequate natural air movement nor adequate continuous forced ventilation is provided, test the atmosphere in the confined space first for oxygen deficiency.

(b) Test the internal atmosphere for the following:

(i) Combustible gas in excess of 10 percent of the lower explosive limit; and

(ii) When there is reason to suspect their presence, air contaminants in excess of levels specified in Subpart Z of 29 CFR 1910.

(2) Ventilation. If a test made in accordance with § B(1) indicates that the atmosphere is unsafe:

(a) Ventilate the space until the concentration of each hazardous substance is reduced to a safe level or removed; and

(b) Continue ventilation as long as a recurrence of the hazard is probable.

(3) Respirators.

(a) As an alternative to ventilation, or if ventilation does not adequately reduce or remove a hazardous substance, ensure that an employee enters a confined space only if that employee wears an appropriate respirator:

(i) In accordance with the requirements of 29 CFR 1910.134; and

(ii) That is approved for that purpose by the National Institute for Occupational Safety and Health (NIOSH) and the federal Mine Safety and Health Administration (MSHA).

(b) Self-Contained Respirators. When an employee uses a self-contained respirator, ensure that:

(i) The primary air capacity is sufficient to sustain the employee through the performance of the task inside the confined space;

(ii) The employee wearing a respirator does not remain in the confined space when the primary air system either is depleted or is being replaced;

(iii) A reserve air supply is provided and used only in the event of an emergency.

C. An adequate continuous supply of air shall be provided while work is performed under any of the following conditions:

(1) When combustible or explosive gas vapors have been initially detected and subsequently reduced to a safe level by ventilation;

(2) When organic solvents are used in the work procedure;

(3) When open-flame torches are used in the work procedure;

(4) When a manhole is located in that portion of a public right of way open to vehicular traffic or exposed to a seepage of gas or gasses; or

(5) When a toxic gas or oxygen deficiency is found.

D. Communication and Rescue Requirements.

(1) Each employee working inside and outside the confined space shall be adequately trained in rescue and cardiac pulmonary resuscitation.

(2) An employee whose presence is required in the immediate vicinity for the purposes of rendering emergency assistance is not precluded from occasionally entering the confined space to provide nonemergency assistance.

(3) If the atmosphere of the confined space has been tested as required in § B(1), a qualified employee, working alone, is not precluded from entering a confined space for brief periods of time for the purpose of:

(a) Inspection;

(b) Housekeeping;

(c) Taking readings; or

(d) Performing similar work.

E. An employer shall provide and ensure the use of a ladder or other safe means for entry to and exit from a manhole exceeding 4 feet in depth.

F. When open flames are used, an employer shall take the following precautions:

(1) Test for combustible gas:

(a) Immediately before the open-flame device is used, and

(b) At least once per hour while the device is in use; and

(2) A fuel tank, for example, acetylene, may be in the manhole only when it is being used.

#### **.05 Confined Space Entry: On-Farm Operations.**

A. Scope. This regulation applies to on-farm operations.

B. Except as provided in § E, before an employee enters a confined space for an on-farm operation, an employer shall:

(1) Render inoperable by disconnection a fixed mechanical device or equipment which, if operated, might endanger an employee or cause a hazard.

(2) Except for lighting, padlock or tag electrical service equipment in accordance with 29 CFR 1910.145(f).

(3) Lighting.

(a) Ensure that a temporary light has:

(i) A guard to prevent accidental contact with the bulb, unless the bulb is deeply recessed by the reflector construction; and

(ii) A heavy-duty electrical cord which has safe connections and insulation and, if spliced, has insulation at the splice equal to that of a cable.

(b) Ensure that a temporary light is not suspended by its electrical cord unless the cord and the light are designed for this means of suspension.

(c) Ensure that working spaces, walkways, and similar locations.

C. Confined Spaces Containing Fermenting Animal Feeds. An employee may not enter a confined space containing fermenting animal feeds either during filling or within 10 days after that, unless the employer ensures that:

(1) The space is adequately ventilated; and

(2) Another person is present to render emergency assistance.

D. Confined Spaces Used for Grain Storage. An employee may not enter a confined space used for grain storage unless the employer ensures that the employee wears a dust mask when entering and cleaning.

E. Emergency Confined Space Entry. The employer shall establish a written procedure covering confined space entry under emergency conditions.]

Thomas J. Meighen  
Commissioner of Labor and Industry