The National Electrical Contractors Association (NECA) places significant emphasis on electrical and construction worker safety and agrees that the strengthened OSHA requirements for confined spaces in construction, which were previously covered only under the confined work space requirements in the general industry standard, are needed. However, while NECA is mindful of the effort to develop new requirements for confined spaces in construction, there are some real concerns that are related to practical application and conformance to the new requirements. Regulations, codes, and standards are effective when they are understandable, practical, and enforceable. NECA has concerns about the complexity and additional burden of the new proposed regulations and additional costs associated with their implementation may cause industry to ignore the rules in some cases, placing workers at risk.

NECA is concerned with additional costs issues for host and controlling contractors, but is more concerned with the complexity of the proposed standard and the new requirements for the controlling contractors to establish the classification of the confined spaces. Another critical issue is apparent with the various distinctions of confined spaces and the additional training that would be necessary for contractors to be able to effectively establish the level of confined spaces and safety provisions that apply to each. In many cases, the contractor is not currently qualified to perform this task without this specific training or additional, even when the proposed standard provides such guidance. NECA is concerned that contractors that are not trained and routinely retrained would have a tendency to choose to ignore the classification of a confined working space where classification is warranted. There should be clearer criteria established within the proposed standard to clarify the confined work space classification, perhaps in tabular format for improved clarity and usability. Reducing the confined space classifications to only two or 3 at the most and clearly distinguishing between them would help responsible contractors be less intimidated by the complexity of the proposed classifications.

1. Comparison to subpart P.

Comment: Trenches should not be included in confined working space requirements of this section. NECA agrees that the lower flammable limit (LFL) in the general industry confined space standards should remain consistent with the LFL in the new proposed standard. (10% or 20%)

Note: Trenches are not confined spaces and it would not serve as an ease of purpose to have excavation standards be combined with confined space standards. As noted by the Agency, paragraph (b) of proposed § 1926.1202 clearly states that excavations covered by subpart P are not confined spaces covered by this proposed standard. This proposed standard for confined spaces in construction adopts an LFL of 10 percent in its definition of "hazardous atmosphere," which is the same LFL as in the general industry standard and in the ANSI Z117.1–2003 industry consensus confined-spaces standard and would retain that consistency.
2. Equipment necessary for a single attendant to monitor multiple PRCSs

This standard should clearly recognize the types of single space monitoring systems and those that are acceptable for monitoring multiple confined working spaces simultaneously. Both wireless and hard-wired types should be recognized as appropriate for the conditions involved. The standard should address the testing and charging policies for such systems used for monitoring as well as use within acceptable limits and in accordance with FCC guidelines. Monitoring attendants should be adequately trained in monitoring responsibilities specific to each construction site application.

Additional Comment: Having an attendant be expected to effectively monitor multiple PRCSs and to accomplish other assigned tasks, while simultaneously providing employees with the same level of protection they would receive when an attendant monitors only a single PRCS without electronic equipment would pose a safety concern. The only other effective means other than the use of electronic equipment for the monitoring of multiple confined working spaces would be to use multiple attendants.

3. Mechanical device(s) for vertical retrieval during rescue

Comment: NECA suggests recognizing portable and mechanical winches and pulleys as necessary based on job conditions. The lifting apparatus used shall not interfere with the ventilation equipment for the CACS. Portable winches are available in 120 volt AC powered types and also 12 volt DC battery powered types that would be suitable for the purpose.

4. Timely response to a rescue summons

Comment: NECA suggests not specifying a specific time limit for rescue response. Each jobsite condition is unique and may have different characteristics that would make placing a time limit on rescue response difficult, if not impossible to comply with in all cases. This is a variable that should not have a time frame specified as it could result in non-conformity and liability that would be (in some cases) beyond the host or controlling contractor’s control or means. For example, traffic control problems or mechanical equipment failures that would delay the response time beyond that of a predetermined or set time. For rescue response teams that are present on the jobsite, an established timeline for responding to a rescue summons becomes more practical, but can still present challenges and result in nonconformance beyond the host or controlling contractor’s control, depending on the various circumstances.

Suggested wording: 1926.1213 Employer must ensure that the rescue service can provide practical and effective response to a rescue summons in a reasonable timeframe that is predicated on the unique conditions of each confined space characteristics. The time frame for response rescue summons for onsite rescue teams shall be determined cooperatively by the host and controlling contractor in cooperation with the rescue response team(s).

5. Maintaining CACS and IHCS verification documents

Additional Comment: We agree with the Agency’s belief that it is not necessary for Employers to maintain the CACS and IHCS verification documents for review and evaluation for entry operations after the work is completed. As they are clearly defined, a “Controlled Atmosphere Confined Space (CACS) is a confined space where ventilation alone will control its atmospheric hazards at safe levels and an Isolated Hazard Confined Space (IHCS) is a confined space in which the employer has isolated all physical and atmospheric hazards” with “isolated” meaning the elimination or removal of a physical or atmospheric hazard by preventing its release into a confined space. The difference between a PRCS hazardous area and a CACS or an IHCS hazardous area shows a clear distinction between them as pertains to a hazardous atmosphere with a CACS or an IHCS being clearly less hazardous and therefore they should not be subject to document verification after the work is completed.
6. Rescue Service Preparation and Changes in Confined-Space Configuration

Re: Table 1 – Key Differences in Regulatory Provisions between General Industry and Construction Industry Standard

Permit-Required Confined Spaces (PRCS)

Comment: NECA suggests establishing a mandatory requirement that the standard be provided at the worksite regardless of a written plan or not.

Requirements for rescue teams to be onsite are excessive and costly. The standard should allow for supervision by host or controlling contractors and establish a rescue plan in the event of an accident. NECA believes that this requirement will result in more violations of the rule than conformance and result in more cost being expended in case something happens rather than costs incurred to help prevent the vent from happening. This should be restructured to provide contractors a practical way to comply with the regulation.

In proposed section 1926.1204(a) indicates that the controlling contractor is not required to enter a confined space to gather information for the subcontractor. NECA believes that the controlling contractor should not be relieved of this responsibility and should otherwise share in it as well as share the additional costs associated. In the OSHA response to item 17 in Table 6, OSHA emphasizes the need for communication between multiple employers and crafts that would be entering the confined spaces in sequence of each other to perform tasks. NECA believes that the controlling contractor should be responsible for verifying the training and communications between the multiple employers entering and working in the confined spaces and not depend on effective communication just between employers (subcontractors). The fear is that untrained or unqualified persons would be likely to enter the spaces where a self-declaring system of monitoring is employed. It is suggested that this section be reconsidered and clarified.

Item 12 of Table 6 suggests that contractors be trained and familiar with both standards with regard to use of chemicals. NECA agrees that additional clarification of the exact relationship between the general industry standard and the proposed standard for construction is needed to address specifically other related standards including the exposure limits standard and the hazard communication standards, and ventilation standard.

Note: NECA agrees that the relationship should be clarified between the draft proposed standard and other standards affecting work by construction employers in confined or enclosed spaces, including the Hazard Communication standard, the general industry standard, the Permissible Exposure Limit standards, the Ventilation standard, the Gases, Vapors, Fumes, Dusts, and Mists standard, and applicable EPA and HUD standards.