

## ***Advocacy Recommends That OSHA Further Streamline its Proposed Confined Spaces in Construction Rule***

On February 28, 2008, the U.S. Small Business Administration's (SBA) Office of Advocacy (Advocacy) submitted comments to the Occupational Safety and Health Administration (OSHA) on OSHA's *Proposed Confined Spaces in Construction Rule* [72 Fed. Reg. 67352 (November 28, 2007)]. OSHA's proposed rule would impose new obligations on employers in the construction industry to protect their employees from hazards associated with confined spaces on a construction site. For example, the proposed rule would create four new classifications of confined spaces for construction sites and establish detailed requirements employers must follow when employees are exposed to hazards associated with each type of confined space. The rule would also establish requirements for host-employers and controlling-contractors to coordinate their activities and exchange information.

OSHA's proposed rule was the subject of a Small Business Advocacy Review Panel (SBAR Panel) convened by OSHA in 2003 in accordance with the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996. The SBAR Panel was assisted in its review of the draft rule by a number of "small entity representatives" (SERs) from the construction industry who took time from their busy schedules to review the draft rule and provide their advice and recommendations. While many of the recommendations of the SBAR Panel have been incorporated into OSHA's proposed rule, Advocacy recommends that OSHA further clarify and streamline the proposed rule.

A complete copy of Advocacy's letter to OSHA is available at: [www.sba.gov/advo/laws/comments/](http://www.sba.gov/advo/laws/comments/).

- Advocacy recommends that OSHA try to harmonize the proposed rule as much as possible with the existing general industry standard because many employers operate on work sites that include both general industry and construction confined spaces, and employees may encounter both types of confined spaces in close proximity. The general industry standard differs significantly from the proposed construction rule. This was, and remains, a key concern of the SERs.
- Advocacy is concerned about the host-employer and controlling-contractor provisions of the proposed rule and is apprehensive about OSHA's imposition of legal obligations on employers for employees who are not their own.
- Advocacy recommends that OSHA include a list of examples of confined spaces for each of the new categories to make the rule easier to understand, and to include an Appendix summarizing the regulatory requirements for each category. Further, Advocacy recommends that OSHA clarify the definition of a "confined space" itself, which is currently unclear.

For more information about OSHA's proposed rule, please visit Advocacy's Web page at [www.sba.gov/advo](http://www.sba.gov/advo) or contact Bruce Lundegren, Assistant Chief Counsel, at (202) 205-6144 (or [bruce.lundegren@sba.gov](mailto:bruce.lundegren@sba.gov)).