

have access to testing or monitoring results.

Based on discussions with the USWA, OSHA agreed to initiate further rulemaking, issuing a notice of proposed rulemaking (NPRM) (59 FR 60735) on November 28, 1994. The proposed revisions to § 1910.146(k)(2) more clearly express what the Agency intended when it promulgated the permit space standard. They state specifically that host employers must ensure that prospective rescuers who are not employees of the host employer are able to respond to a rescue summons in a timely manner and are equipped and trained to perform permit space rescues at the host employer's facility.

In addition, based on information received subsequent to the promulgation of § 1910.146, OSHA proposed to make § 1910.146(k)(3)(i), which deals with the point of attachment for a retrieval line, more performance-oriented by allowing any point of attachment which enables the entrant's body to present the smallest possible profile during retrieval.

Also, the Agency asked for public input on the USWA's suggestion that OSHA add provisions which would require that employers provide for employee observation of permit space testing or monitoring, and that employers also provide employee access to the results of permit space testing or monitoring.

The NPRM set a 90 day comment period, ending on February 27, 1995, to receive written comments on the proposed revisions and the issues raised. OSHA received 51 written comments (Exs. 161-1 through 161-51). Several commenters (Ex. 161-21, 161-22, 161-38, 161-40, 161-44) required that OSHA convene an informal public hearing to address their concerns. The comments received in response to the proposed revision and issues raised are available for inspection and copying in the OSHA Docket Office, Docket No. S-019A, room N2625, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Based on the response to the NPRM, OSHA has decided to convene an informal public hearing, beginning on September 27, 1995, and to reopen the comment period to obtain public input regarding the need to more clearly express a host employer's responsibility to assess a prospective rescue service's capabilities (i.e., is equipped, trained, and can respond in a timely manner) and regarding the need for employee participation in testing and monitoring. The Agency requests that hearing participants and commenters provide supporting information for any

recommendations, so OSHA can adequately assess these materials when drafting the final rule for this rulemaking.

Rescue and Emergency Services

Existing paragraph (k)(1) sets requirements for employers who have their own employees enter permit spaces to provide rescue and emergency services. The criteria set by this paragraph are designed to protect such employees from permit space hazards and to maximize their ability to provide effective rescue and emergency services. Paragraph (k)(1) applies both to rescuers employed by employers who are conducting permit space operations and to rescuers employed by outside rescue services, insofar as such employees are regulated by OSHA (State and local government employees in non-State Plan States are not covered).

OSHA's experience indicates that many employers who conduct permit space operations rely on off-site rescue services, such as those provided by local fire departments, in lieu of establishing an adequate rescue capability using their own employees. The Agency has acknowledged that there are circumstances where it is reasonable for "host employers" to rely on persons other than their own employees to provide rescue and emergency services. Accordingly, existing paragraph (k)(2) sets criteria for the use of such "outside" rescue and emergency services.

In particular, the host employer must provide the "outside rescuers" with pertinent information about the identified permit space hazards and give them access to any permit space from which rescue may be necessary, so that the rescue service can develop appropriate rescue plans and can practice performing rescues.

Pursuant to §§ 1910.146(d)(9) and (f)(11), the host employer is currently required to establish effective means of summoning rescuers and document those means in the entry permit. Unless non-entry rescue procedures have been implemented or the potential rescuers are standing by as entry operations proceed, some time will pass between the transmittal of the rescue summons and the retrieval of an entrant. OSHA expects affected employers to make arrangements for rescue which maximize the likelihood that entrants will be retrieved safely while minimizing the risks for potential rescuers.

However, in response to a submission (Ex. 1) from the United Steelworkers of America (USWA), the Agency has acknowledged (59 FR 60736) that the

final rule may not have been sufficiently clear as to a "host" employer's responsibility for the performance of "outside" rescue services. Accordingly, the Agency has proposed to revise § 1910.146(k)(2) so the standard clearly indicates that "host" employers are required to retain rescue services that can respond adequately and in a timely fashion when summoned to perform rescues.

In response, some commenters (Exs. 161-9, 161-13, 161-31, 161-42 and 161-50) expressed support for the proposed revisions as the appropriate means to ensure that rescue services performed adequately. Those commenters indicated that compliance would pose no difficulties.

On the other hand, several commenters (Exs. 161-1, 161-2, 161-5, 161-6, 161-11 and 161-33) expressed concern that the proposed language appears to rule out the use of outside rescue services. Those commenters stated that OSHA should not discourage the use of off-site rescue services because there will be situations where affected employers have no viable alternative to relying on those services. Furthermore, those commenters have indicated that an "off-site" rescue service summoned by a "host" employer might well be able to respond at least as quickly and effectively as an "on-site" rescue service set up by the employer conducting entry operations.

One commenter (Ex. 161-1) expressed concern that "[a]doption of this section as stated may force small inexperienced employers into establishing in-house rescue teams with little or no practical training." In addition, a commenter (Ex. 161-6) stated that "[o]n-site rescue teams are usually comprised of electricians, pipefitters, maintenance workers and other craftspeople where rescue is a sideline. Whereas most on-site teams are only given a minimal amount of time to train, many off-site technical rescue teams do nothing but train for and run fire and rescue calls." However, another commenter (Ex. 161-40) stated that on-site employees, properly trained and equipped, would perform better than off-site rescue services, because on-site personnel would be familiar with the facility and closer to the spaces being entered.

In addition, the USWA (Ex. 161-38) commented as follows:

In our June 22, 1993 letter, the USWA expressed concern that the provisions of the standard (primarily paragraph (k)(2)) allowing off-site rescue services were vague and ineffective. In subsequent discussions with OSHA and the DOL solicitors, we argued that only an on-site rescue service could respond in time to save the life of an