

WCB CONSULTATION

Submission on Proposed 2016
Occupational Health and Safety
Regulation Amendments

October 2016



Authority

This document is respectfully submitted on behalf of the Executive Officers of the BC Federation of Labour and represents the views of more than 500,000 affiliated members across the province of British Columbia.



Irene Lanzinger, President

moveup
/jc

Table of Contents

Authority	1
Introduction	5
Summary	5
Joint Health and Safety Committee Summary.....	6
BCFED Health and Safety Centre.....	6
Submission: Section 3.26 – Evaluation of Joint Committees.....	8
Conducting the Evaluation	9
Content of the Evaluation	11
The Act.....	12
The Regulation.....	12
JHSC Evaluation Tool	14
Submission: Section 3.27 – Minimum Training for JHSC	15
Minimum Training for Worker Representatives.....	17
Content of the Instruction & Training.....	18
Retraining After Two Years	19
Training Costs & Loss of Pay.....	19
Effective Date for Mandatory Training	20
Submission: Section 3.28 – Participation in Investigations	21
Submission: Section 4.81/2 – Tobacco Smoke	25
Submission: Section 1.1 – Definitions.....	28
Submission: Section 4.43.1 – Storage Racks.....	29
Section 4.43.1 (7) & (8)	29
Submission: Section 6.4-6.32 – Asbestos Inventory & Records	30

Section 6.4 (1).....	30
Section 6.4 (6).....	31
Section 6.4 (7).....	32
Section 6.32	32
Submission: Section 6.58-6.66 – Lead	34
6.58.1 Definitions: Lead Process	34
<i>Table 1: Levels of Lead Exposure by Industry in Canada</i>	36
Section 6.60 – Exposure Control Plan	38
Section 6.61.1 – Exceptions to Monitoring Requirements	39
Health Protection, Health Monitoring & Medical Removal.....	41
Section 6.59.1 (1) – Risk Assessment: Health Monitoring	41
Section 6.67 – Health Protection.....	42
Section 6.58.1 – Definitions – Medical Removal	43
Submission: Section 6.110-6.115.1 – Silica.....	45
Section 6.110 – Definitions: Silica Process	45
Submission: Section 12.83.1 – Chassis Dynamometer	46
Submission: Section 13.11 – Engineering Required: Scaffolds.....	46
Submission: Part 14 – Cranes and Hoists.....	46
Section 14.1 – Definitions	46
Section 14.2 – Construction Material Hoist (Light Duty)	47
Section 14.5 – Rated Capacity Indicators.....	47
Section 14.11 – Support Structures	47
Section 14.81 – Limit Devices.....	48
Submission: Section 20.2 – Construction, Excavation, Demolition: Notice of Project.....	48

Submission: Section 22.12 – Underground Supervisors	49
Submission: Section 23.69 – Oil and Gas: Flow Piping Systems	50
Submission: Section 26.13.4 – Saw Chain Shot	51
Conclusion	51

WCB Consultation

Submission on Proposed 2016 Occupational Health and Safety Regulation
Amendments | October 2016

Introduction

The BC Federation of Labour (BCFED) appreciates the opportunity to provide our submission with respect to the Workers' Compensation Board's (Board) proposed Occupational Health and Safety Regulation amendments for 2016.

The Federation represents more than 500,000 members of our affiliated unions, from more than 1,100 locals, working in every aspect of the BC economy. The BCFED is recognized by the Board and the government as a major stakeholder in advocating for the health and safety of all workers in BC.

The BCFED's submission was prepared in consultation with its affiliates and supports the individual submissions of its affiliates.

Summary

The Board released a number of proposed amendments to British Columbia's Occupational Health and Safety Regulation¹ (OHSR) for public consultation, including changes effecting Joint Health and Safety Committees (JHSCs) and worker health and safety representatives. The Table of Contents provides a full listing with clickable links to each section.

The BCFED's submission on each of the proposed amendments follows below.

¹ Occupational Health and Safety Regulation, B.C. Reg. 296/97; Retrieved from:
http://www.bclaws.ca/Recon/document/ID/freeside/296_97_00

Joint Health and Safety Committee Summary

Bill 35², amending the *Workers Compensation Act*³ (Act), was introduced in the BC Legislature on October 8, 2015, largely in response to the jury recommendations (JR) from the Coroner's Inquests into the Lakeland⁴ and Babine⁵ sawmill explosions. As per the Board's discussion paper, the proposed regulatory changes arise from these legislative amendments as well as the jury recommendations and include the following:

- Require an evaluation or audit tool to measure the effectiveness of joint health and safety committees (JHSC). (Lakeland JR #17; supported by Babine JR #13 & #18);
- Establish minimum mandatory training and education for JHSC members. (Lakeland JR #20);
- Clarify the meaning of "participation" in Section 174 of the Act related to employer incident investigations by providing more prescriptive regulations as to what activities a worker or employer representative participate in during investigations. (Lakeland JR #9).

BCFED Health and Safety Centre

In addition to the collective expertise of our affiliates with respect to JHSCs and worker health and safety representatives, the Federation has the added benefit of the expertise and experiences of the BCFED Health and Safety Centre (the Centre).

Since 2001 when the Federation received funding from WCB to launch the Centre, it has helped reduce injuries, diseases and fatalities in British Columbia workplaces. The focus of the Centre continues to be:

² Bill 35: *Workers Compensation Amendment Act (No. 2)*. 2015. Royal Assent Nov 17, 2015. 40th Parliament. 4th session. Retrieved from the Legislative Assembly of BC website: <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/40th-parliament/4th-session/bills/third-reading/gov35-3>. [Bill 35]

³ *Workers Compensation Act*. RSBC 1996. c. 492. [Act]

⁴ The jury's verdict following the Coroner's Inquest into the deaths of Glen Roche and Alan Little as a result of the Lakeland sawmill explosion can be found at <http://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/inquest/2015/roche-glenn-francis-2012-0607-0045-verdict.pdf>.

⁵ The jury's verdict following the Coroner's Inquest into the deaths of Robert Luggi Jr. and Carl Charlie as a result of the Babine sawmill explosion can be found at <http://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/inquest/2015/luggi-robert-francis-2012-0612-0001-jury-finding.pdf>.

- Improving the effectiveness of joint health and safety committees;
- Raising awareness of occupational health and safety (OHS) among young and new workers; and
- Ensuring geography, age, language and literacy levels are not barriers to health and safety awareness in BC.

Worker participation is a key pillar in the model used throughout the industrialized world for workplace health and safety. The Centre's services ensure that workers have access to the information, education and skills development necessary to effectively participate in the occupational health and safety.

The foundation of the Centre's JHSC work is the belief that participatory education and employing best practices in adult learning is critical to providing the knowledge that both worker and employer representatives need to carry out their roles and responsibilities for health and safety in the workplace. This knowledge base includes the essential skills in collaborative problem solving that are critical to implementing effective OHS programs.

Over the past 15 years, the BCFED Health and Safety Centre has evolved into a recognized and trusted centre of excellence for occupational health and safety education in both the employer and labour communities. The Centre is the largest provider of OHS education in British Columbia, reaching every part of our province—from Fort Nelson to Elkford, Prince Rupert and Port Hardy.

Since 2001, the Centre has provided eight-hour annual education to more than **27,000** JHSCs members, worker representatives, employees, supervisors and managers in BC. Through these sessions, the Centre has heard first-hand, from both workers and management, of the challenges and successes respecting health and safety in BC workplaces. The substantial practical knowledge and experience available to the Federation from the Centre puts us in a unique position to provide well-informed recommendations on the proposed JHSC changes.

Submission: Section 3.26 – Evaluation of Joint Committees

Effective joint health and safety committees are essential to achieving a sustainable culture of health and safety prevention in the workplace, including:

- Identifying potential hazards that lead to occupational injury and disease and advising the employer on how to eliminate or control the hazards;
- Encouraging workers to raise health and safety concerns and then expeditiously deal with the issues raised;
- Promoting health and safety education and training for employers, supervisors and workers, including ensuring they understand their health and safety rights and responsibilities;
- Ensuring that incident and “near hit” investigations and regular inspections are carried out;
- Advising the employer on policies, programs and improvements to working conditions and monitoring the effectiveness of these; and
- Advising the employer regarding compliance with legislative and regulatory requirements.

Joint committees serve an extremely important role, intended to extend the reach of the Board’s regulating and enforcement arm, as inspection officers will never be able to inspect the majority of worksites even annually. Research studies have identified a strong association between robust and proactive joint committees and improved health and safety outcomes overall. In contrast, ineffective joint committees are not able to properly meet their duties and functions as prescribed under Section 130 of the *Workers Compensation Act* (Act).

It is pertinent to note that the Lakeland jury recommended the following:

Implement an audit tool to measure the effectiveness of joint health and safety committees and ensure inspection officers audit an employer’s joint health and safety committee when WorkSafeBC inspections are conducted.

Although stated verbally to the WCB, the Federation would like to confirm for the record that we are disappointed that the WCB has opted to address this jury recommendation with the very weak alternative of an internal “**evaluation**” process, rather than an independent audit performed by the Board. This important recommendation was offered after the jury’s serious consideration of the evidence about the significant health and safety defects in this workplace. There is no doubt that an internal evaluation, whether by a person chosen by the employer or the co-chairs of the joint committee, would have rectified this employer’s negligence. However, it is possible that a WCB audit of their JHSC, with associated orders, could have contributed to preventing this terrible tragedy.

With this in mind, our primary recommendations are as follows:

- *The BCFED **strongly recommends** that the Board of Directors reject the proposed section 3.26 and replace it with a requirement for Board officers to perform audits of joint health and safety committees during their inspections.*
- *Once implemented, the BCFED **strongly recommends** that the Board of Directors immediately direct the WCB to perform a province-wide “inspection blitz” to ensure that every workplace with 20 or more workers is audited within a three-year period.*

If the Board rejects this recommendation, we strongly recommend that the following amendments to the proposed section 3.26 language are made:

Conducting the Evaluation

The proposed language in Section 3.26 (a) provides that the employer or “a person retained by the employer” conduct the evaluation and in subsection (b) that alternatively the JHSC members could be tasked with conducting the evaluation.

Sections 115, 116 and 117 of the Act clearly demonstrates that the JHSC is not the *employer’s* committee, requiring employers and supervisors to “consult and cooperate” with the JHSC. The JHSC is a unique structure in the workplace, unlike any other, with its own legal requirements, duties, roles and functions. Employers being in control of the choice of *who* and *how* the

committee is evaluated takes the keys away from the committee, so to speak—it is fundamentally wrong.

It is the BCFED's position that the JHSC's co-chairs, with participation of the other committee members, must conduct the evaluation of the committee's effectiveness in order for it to be truly meaningful.

- The co-chairs of the committee are perfectly poised to do so as they possess the knowledge and skills to understand the duties and functions of the committee, have experience with the work and interaction of their own committee, and have intimate knowledge of the work and working conditions of that workplace.
- It will result in a more thoughtful, reflective and meaningful evaluation process leading to practical recommendations for improvement. An external evaluation process is more likely to result in a “checked box” approach which is more in keeping with a compliance audit than an effectiveness evaluation.
- Interviewees are more likely to be open and honest with the co-chairs of the committee than an employer appointed auditor.
- It reinforces the participatory approach to workplace health and safety and fosters a greater leadership role and responsibility in the co-chairs.
- The evaluation process is an invaluable learning tool that will expand the capacity of the joint committee members and imbed the principles of continuous improvement in workplace health and safety.
- The co-chairs are easily accessible and a more cost-effective option than an external auditor.
- There will never be enough qualified external auditors to perform an adequate job at this task.

- In addition, the question of bias or conflict of interest will be raised, as it has been in other jurisdictions where certain auditors have been found to be beholden to those paying for their services.
- *The BCFED **strongly recommends** amending the proposed OHSR Section 3.26 by mandating that the co-chairs of the committee conduct the evaluation.*
- *In consideration of other factors that may challenge the evaluation process, the BCFED **strongly recommends** that the proposed regulation also include the following key features:*
- *Require that time used to complete the evaluation is considered time worked.*
 - *Require that the evaluation includes interviewing front-line workers and supervisors.*
 - *Require a combination of quantitative and qualitative input, not simply online “check box” style.*
 - *Require the evaluation report to be attached to the JHSC meeting minutes and posted in the workplace or otherwise made available for workers to review.*

Content of the Evaluation

The Federation generally supports the content of the evaluation proposed in Section 3.26 (3) with the exception of the following.

As the main purpose of the evaluation is to measure the effectiveness of the committee, it is our position that the proposed subsections (b) and (c) that speak to effectiveness should be moved to the beginning of the section.

- *The BCFED **recommends** moving the proposed subsections (b) and (c) to the beginning OHSR Section 3.26 (3) as above.*

Additionally, the Board’s proposed subsection (a) identifies some of the JHSC legislative and regulatory requirements to measure in the evaluation process. It is very unclear as to why the Board chose to include certain items to measure while not choosing others. The decision as to

which parts of Division 4 of the Act to include in this list seems arbitrary at best. The BCFED submits that this list should be expanded to include, at least:

The Act

- Section 132 with respect to the availability of the Board to resolve disagreements in the committee.
- Section 140 with respect to the use of worker representative identified alternates to participate in inspections, investigations and inquiries in the worker representative is not reasonably available.
- Section 167 with respect to JHSC members' receiving a copy of the employer's application for a variance.
- Section 174 with respect to JHSC members' participation in investigations in accordance with subsection (1.1) and the new regulation (the proposed 3.28).
- Section 175 and 176 with respect to investigation and corrective action reports being copied to the JHSC.
- Sections 182 and 183 with respect to JHSC members accompanying a Board officer during an inspection and inspection reports provided to the JHSC.
- Section 186.1 with respect to the JHSC being provided with a copy of any compliance agreement.
- Section 189 with respect to the JHSC being provided with a copy of an order that the Board has varied or cancelled.
- Section 194 with respect to the JHSC being provided with compliance reports.

The Regulation

- Section 3.23 (2) (m) requiring JHSC contact information to be provided to young or new workers.
- Section 4.21 (5) mandating that the JHSC be consulted in the development of working alone procedures for checking on workers.

- Section 4.53 (1) requiring employers to consult with the JHSC regarding ergonomic risk identification, assessment and control, worker education and training and evaluation of compliance.
- Section 5.4 requiring consultation with the JHSC in developing the WHMIS program.
- Section 5.16 requiring SDS and 5.16.1 requiring toxicological data to be readily available to the JHSC.
- Section 5.54 requiring the employer to annually review any exposure control plan in consultation with the JHSC.
- Section 5.59 regarding the investigation of symptoms due to overexposure to hazardous substances in consultation with the JHSC.
- Section 5.97 regarding emergency plans being developed, implemented and annually reviewed in consultation with the JHSC.
- Section 6.10 requiring the employer to make documents available to the JHSC which outline why an employer was not able to substitute asbestos for a less hazardous material.
- Section 8.4 with respect to evaluation workplace conditions in consultation with the JHSC.
- Section 8.6 regarding annual review of the personal protective equipment program in consultation with the JHSC.
- Section 8.33 requiring employers to select respiratory protection in consultation with the JHSC.
- Section 9.11 requiring the hazard assessment and confined space entry program to be done in consultation with the JHSC.
- Section 21.4 requiring blasting logs to be available to worker representatives.
- Section 31.3 requiring fire departments or industrial fire brigades to have a separate JHSC.
- Section 31.9 requiring test and inspection records in the firefighting industry to be made available to the JHSC.

Knowledge and compliance with these legislative and regulatory requirements is an essential component of the effectiveness of the JHSC.

- *The BCFED **strongly recommends** amending the proposed OHSR Section 3.26 (3) to include all of the legislative and regulatory requirements, as opposed to arbitrarily choosing the requirements to measure.*

JHSC Evaluation Tool

The Board has developed a voluntary evaluation tool to assist employers in fulfilling their obligation to ensure that JHSC audits are performed as prescribed in OHSR section 3.26.

The tool was developed in consultation with stakeholders whom all agreed that in order to get to “effectiveness”, an evaluation would need to be more than a simple compliance “check box” format. Rather, a proper evaluation would include qualitative questions, as well as opportunities to expand responses beyond just “yes” or “no” for JHSCs to evaluate their level of compliance and areas requiring improvement.

In order to allow space for an evaluation that incorporates all of these factors, as well as instructions and examples to ensure the proper use of the tool, the draft tool is very large. Although the Federation has heard concerns from various employer representatives that the tool is “too large”, we respectfully, strongly disagree.

It is important to note again that the Board’s draft tool is, at this point, voluntary. Employers are welcome to create their own tool that conforms to the requirements of section 3.26. The Board’s tool should properly reflect the highest standard of evaluation for JHSC effectiveness—it should not be dumbed down to appease stakeholders that are merely concerned about getting it done with the least amount of time and paperwork necessary. Frankly, the labour movement would prefer to see the evaluation tool even more robust than currently drafted.

If time is a consideration, the evaluation can be conducted over two, three, or four meetings as necessary to ensure a full evaluation – there is no time limit set to complete it. The feedback from JHSC members that are currently engaged in testing the tool is that it does take time to

work through the tool properly, as it **fosters deep discussion and points of reflection amongst the JHSC members**. This feedback is heartening evidence that the tool is performing its primary function—to evaluate committee *effectiveness*.

It is understood that the Board’s effectiveness tool will continue to evolve as user feedback pours in from stakeholders. However, the Federation and our affiliates would be extremely disappointed to see the Board cave to concerns with respect to **size** of the tool, compromising its effectiveness by “simplifying” or shortening the existing draft tool.

Additionally, the Federation opines that the Board’s tool should really be the mandatory tool for JHSC evaluation. This will ensure that JHSCs across the province will be subjected to the same quality of evaluation, whether it be a big or small, sophisticated or unsophisticated workplace.

- *The BCFED **strongly supports** the Board’s draft evaluation tool as it ensures that the Board is providing a leading example of the prescribed JHSC evaluation.*
- *The BCFED **strongly recommends** that the Board’s draft evaluation tool be made mandatory in order to ensure that all JHSC evaluations are high quality and meaningful.*

Submission: Section 3.27 – Minimum Training for JHSC

The Federation applauds the Board’s proposed new section 3.27 requiring a minimum of eight hours of instruction and training for JHSC members.

Education and training of JHSC members is essential to ensuring the effective participation of committee members, in particular with respect to understanding their duties and functions as prescribed by the Act and OHSR. Well educated committee members lend to a high functioning and effective committee which provides the necessary foundation for the prevention of occupational health and safety hazards.

The BCFED Health and Safety Centre has 15 years of experience in developing curricula and facilitating courses to educate JHSC members about their duties, functions, rights and

responsibilities under the Act and OHSR. The Centre's experience clearly demonstrates that to have effective and lasting learning outcomes, participatory education and employing best practices in adult learning needs to be incorporated into JHSC curriculum development. In many instances it can be many years since a participant was in a formal classroom learning environment. This experience provides the basis for our position that it is necessary to provide a minimum of eight hours of education for new JHSC members to ensure that they are equipped to function effectively as committee members.

A proper allotment of time is required to impart the information needed and allow participants to actively participate and apply the knowledge in class through practical exercises, supporting adult learning and deepening the understanding and retention. Paired with our recommendation below to expand the minimum training to include all of the information that JHSC members should know, the Federation opines that the minimum training should be increased to a minimum of **16 hours** instead of the proposed eight.

The labour movement in BC has long advocated for the need for mandatory education of joint committee members, increasing the confidence, capacity and credibility of joint committee members. The necessity of this was further emphasized in the evidence exposed at the Coroner's Inquests into the two sawmill explosions in 2012 that tragically killed four workers and seriously injured many more. It is a positive step forward to catch up to comparative provincial jurisdictions that have much greater prescribed committee member education requirements. (Manitoba is 16 hours per year and Ontario has the certified member program enabling up to five days training, etc.)

- *The BCFED **supports** the proposed new OHSR Section 3.27 requiring eight hours of minimum training of JHSC members.*
- *The BCFED **strongly recommends** increasing the minimum requirement to 16 hours in order to ensure the full examination of all the JHSC prescribed duties and functions and to allow for a participatory education experience.*

Minimum Training for Worker Representatives

In keeping with the Federation's points above, we vehemently oppose the Board's decision to reduce the minimum training for worker health and safety representatives to only four hours.

Worker representatives are responsible for all of the same duties and functions as joint committee members, with one key difference—they have to do this entirely on their own.

Worker representatives do not have the support of fellow joint committee members – in fact, the Act does not even require that the employer appoint an employer representative to work with them.

Worker representatives must face the employer independently to raise health and safety issues and advise the employer on these issues. Often these smaller employers are less sophisticated or knowledgeable about their health and safety responsibilities, leading to challenging conversations, confrontation, or other barriers.

This makes it even more important for worker representatives to receive in-depth education to increase their confidence and credibility in fulfilling their responsibilities as a worker representative. Under the Act, worker representatives have the same annual education entitlement, recognizing worker representatives as equally important and deserving for this education. The regulation definitely should not introduce a second tier (second “class”) of entitlement for worker representatives.

Sadly, this would send the terribly inaccurate message that worker representatives are not as important as joint health and safety committees and, as such, safety is not as important of an issue in workplaces with under 20 employees.

There are also very practical reasons why it makes more sense to keep the requirements consistent:

- Two sets of curricula – Instituting two levels of education entitlement forces the employer and external training providers to develop two different courses for essentially the same purpose.

- Adequacy of training – The two-thirds of the mandatory education topics that pertain equally to worker representatives, those relating to their duties and functions, will take up the majority of the eight-hour course. Compressing worker representative education into four hours robs them of the opportunity for the same level of education as joint committee members on these important topics. Furthermore, worker representatives and JHSC members learning and sharing experiences in the same classroom enriches the learning environment for both.
- Course availability – It also creates course scheduling and availability challenges. Due to the number of joint committee members in the province—four or more representatives per workplace compared to one worker representative per workplace—the demand will allow for scheduling more course opportunities throughout the year and across the province than those just for worker representatives. This is a particularly crucial point for workplaces in regional BC.
- Worker representative mobility – Having consistent education requirements for worker representatives facilitates worker representatives to seamlessly move into a joint committee role within the two (2) year requirement without the need for another course to simply learn about the rules of procedure and evaluation of joint committees.

This would be beneficial to both workers and employers as workers either move to a new workplace or the employer's employee composition increases requiring them to establish a joint committee.

➤ *The BCFED **vehemently opposes** restricting the minimum mandatory training allotment to four hours for worker health and safety representatives.*

Content of the Instruction & Training

The Board proposes the required content of the instruction and training in OHSR Section 3.27 (3). Similar to the comments noted above regarding the JHSC evaluation, it is unclear as to why the Board has not included **ALL** of the legislative and regulatory requirements that pertain to the JHSC members.

In order for committee members to participate and fulfill their duties and functions effectively, they must be educated about all of the sections relating to them in the Act and OHSR.

Therefore, the Federation submits that the Board include all of the sections identified in the list above under the subheading “[Content of the Evaluation](#)”.

- *The BCFED **strongly recommends** amending the proposed OHSR Section 3.27 (3) to include all of the legislative and regulatory requirements, as opposed to arbitrarily choosing which requirements JHSC members should be educated about.*

Retraining After Two Years

The Federation supports the Board’s proposal in Section 3.27 (4) that allows new committee members to receive the minimum training if they have been off the JHSC for at least two years.

As noted previously, this education is critical for new members to ensure that they have the knowledge and skills to perform their roles effectively. It would be unrealistic and unreasonable to expect a worker or employer representative to recall all of the duties, functions, and other requirements of the Act and OHSR after two years of being away from the work of the JHSC.

The retraining of new JHSC members that have been away from the committee for at least two years is a small price to pay for a healthy and safe workplace.

- *The BCFED **supports** the re-training of new committee members that have been off the JHSC for at least two years, as proposed in Section 3.27 (4).*

Training Costs & Loss of Pay

In keeping with Section 135 (3) of the Act, the employer must provide the education at no cost to the worker, without loss of pay or benefits. It is the Federation’s position that this should be explicitly documented in Section 3.27 for consistency and clarity, ensuring that there are no barriers for workers to access this education.

This was requested in earlier consultations and the argument provided for not including it was that it was already implied based on the Act requirements. With all due respect to the reasonable employers in the province, this will not be obvious to many employers and will

create unnecessary and artificial labour relations battles for both joint committee members and worker representatives trying to access the education. It simply must be explicitly stated in the regulation.

In fact, the proposed 3.27 (10) states that this requirement is not educational leave as prescribed in Section 135 of the Act. The Federation can foresee this being misinterpreted and used as rationale in reviews or appeals of orders enforcing the employer's responsibility to pay—wasting the time of all parties on something that could easily be clearly established in the regulation.

Many joint committee members already face resistance to this with their annual entitlement even with the requirement explicitly stated in the Act. Workers need to be clear about their right to education at no cost to them. Employers need to clearly understand their responsibility to cover all costs. And WCB Officer's need the ability to enforce this requirement.

➤ *The BCFED strongly recommends amending the proposed OHSR Section 3.27 to include the requirement that the education be provided to the worker at no cost, without loss of pay or benefits.*

Effective Date for Mandatory Training

The Board's proposed regulation states that the requirements of 3.26 apply to members that were selected on or after June 1, 2017.

It is the Federation's position that this education is extremely important and therefore, there is no good rationale to delay the implementation of this regulation until June 2017. The BCFED strongly recommends that this new requirement be made mandatory for JHSC members selected as of January 2017.

A January implementation is easier to incorporate into budgetary and planning schedules for organizations as it corresponds with the calendar year change. In contrast, June is traditionally the slower time, shut down, lay off (education), and vacation time of many people and organizations.

Considering the regulation allows the employer to provide the education within six (6) months of their joining the committee, training providers and employers will still have until June 30, 2017, to fulfill their new obligation.

In anticipation of this new requirement, many training providers, including the BCFED Health and Safety Centre, have already adapted their curriculum offerings to ensure that this education is readily available as of January 2017.

Pushing the implementation to June 2017 means that most committee members will be left without this essential education until the end of 2017—more than one year from now. This is simply not acceptable.

➤ *The BCFED **strongly opposes** the implementation date of June 2017 for the mandatory minimum training.*

Submission: Section 3.28 – Participation in Investigations

This proposed change is in response to the Lakeland jury recommendation #9, which stated:

Clarify the meaning of the term “participation” in s. 174 of the Workers’ Compensation Act to ensure full and meaningful participation in the investigative process by both the employer and the worker representative. [emphasis added]

Section 130 of the Act establishes that duty of joint committee members and worker representatives is:

- (h) to ensure that accident investigations and regular inspections are carried out as required by this Part and the regulations;
- (i) to participate in inspections, investigations and inquiries as provided in this Part and the regulations;

Section 174 of the Act was recently amended to include the following:

(1.1) For the purposes of subsection (1), the participation of the employer or a representative of the employer and a worker representative includes, but is not limited to, the following activities:

- (a) viewing the scene of the incident with the persons carrying out the investigation;
- (b) providing advice to the persons carrying out the investigation respecting the methods used to carry out the investigation, the scope of the investigation, or any other aspect of the investigation;
- (c) other activities, as prescribed by the Board.

In response, the Board proposes new language that outlines investigation activities for worker and employer representatives, as follows (emphasis added).

For the purposes of Section 174 (1.1) (c) of the Act, the following activities are prescribed:

- (a) **assisting** the persons carrying out the investigation with gathering information relating to the investigation;
- (b) **assisting** the persons carrying out the investigation with analyzing the information gathered during the investigation;
- (c) **assisting** the persons carrying out the investigation with identifying any corrective actions necessary to prevent recurrence of similar incidents.

The participation of workers in investigations, and other OHS activities, is an issue of paramount importance to the labour movement. It is our position that the Act provides for the full and active participation of worker and employer representatives in employer investigations. This is also supported by the worker participation clause, 4.2.3, of the CSA standard for Occupational Health and Safety Management Systems.⁶

⁶ CSA Group. (2014, December). *Z1000-14 Occupational health and safety management*. [CSA]

In our extensive experience, it is typically the employers that are **“the persons”** conducting the investigations for the majority of the workplace incidents. In these cases, the Act absolutely supports that the worker representative is participating alongside the employer representative in every aspect of the investigative process—they are a part of the investigation team.

However, even in situations where there is an external investigator retained, it is our position that the employer and the worker representative still have the right to fully participate in the conduct of the investigation.

This is why the Federation and its affiliates are so passionate about the crafting of the new language in Section 3.28 in such a way that does not undermine the equal right to full and active participation in the incident investigation process.

The BCFED submits that the language that is currently proposed, as above, undermines the role of the employer and worker representatives. Workers’ rightful place as equal partners in workplace health and safety was recognized and prescribed more than 100 years ago with the birth of our modern workers’ compensation legislation.

The worker and employer representative would only be “assisting” in the **rare cases** where an external investigator was retained to perform the investigation. To reiterate, in cases where the employer is the one conducting the investigation, the worker representative would not be “assisting” the employer representative, but rather, an equal part of the investigation team.

Everyone can likely agree on the fact that employers, or their representatives, have more power in the workplace structure to right this wrong—making this regulation unevenly detrimental to **worker** representatives. This does not do justice to the jury recommendation that asked for clearer language that “ensured the full and meaningful participation” of worker and employer representatives. Rather, it perpetuates the struggle that already exists in many workplaces to achieve meaningful, active participation of worker representatives in investigations.

The Federation insists that the Board removes the word “assisting” in the proposed new Section 3.28 and instead drafts language that is more in keeping with the language in Section 174 (1.1) of the Act. The insertion of the word “assisting” simply adds another level of interpretation that is unnecessary in this context and creates, perhaps unintentionally, more barriers to worker participation than currently exist in many workplaces.

The Canadian Standards Association has drafted a standard for incident investigations which reinforces that worker representatives need to be involved in all aspects of the investigation, including:

- planning;
- determining the scope and required resources;
- composition of the investigation team;
- gathering information and evidence; analysis of the information and contributing causes;
- development of corrective actions; and
- assessing the effectiveness of the corrective actions.

Section 3.28 should be amended as follows.

For the purposes of Section 174 (1.1) (c) of the Act, the following activities are prescribed:

- (a) ~~assisting the persons carrying out the investigation with~~ gathering information relating to the investigation;
- (b) ~~assisting the persons carrying out the investigation with~~ analyzing the information gathered during the investigation;
- (c) ~~assisting the persons carrying out the investigation with~~ identifying any corrective actions necessary to prevent recurrence of similar incidents.

Alternatively, the phrase “working with the persons carrying out the investigation to...” could be used.

- Therefore, we **strongly recommend** that the Board of Directors amend the proposed regulation, as follows:
 - Remove the proposed language and replace with language that includes the activities in the CSA draft standard.
 - At the very least, remove the word “assisting” from each of the bullets in the proposed new Section 3.28 and instead draft language that is in keeping with the language in Section 174 (1.1) of the Act.
 - Add an explicit requirement for incident investigation training for joint committee members, worker representatives, supervisors, or other employer designates expected to perform investigations.

Submission: Section 4.81/2 – Tobacco Smoke

The BC Ministry of Health recently amended the *Tobacco Control Act* and the Tobacco Control Regulation to address the use of e-cigarettes, for example, prohibiting the use of e-cigarettes in workplaces. There are also changes to current tobacco use laws that include a non-smoking buffer zone increase from three to six metres.

These new laws for use of tobacco and e-cigarettes are effective as of September 1, 2016 and all users of these products must adjust their practices to meet the requirements of the new [*Tobacco and Vapour Products Control Act*](#) (TVPCA) and the [*Tobacco and Vapour Products Control Regulation*](#) (TVPCR).

Section 2.41 of the TVPCA provides exemptions to the new requirements, as follows:

A person is exempt from the prohibitions set out in sections 2 to 2.4, other than section 2 (1), with respect to vapour products that are prescribed products or devices intended to be used for medical purposes, including to reduce nicotine dependence.

Section 4.23 (2) of the TVPCR introduces exemptions to Section 2.3 (1) (a) of the TVPCA which bans the use of e-cigarettes inside buildings, structures or vehicles. The exemption includes the premises of retailers that distribute e-cigarettes and other vapour products, as follows:

(c) a person who uses an e-cigarette or holds an activated e-cigarette within the premises at which a retailer deals in, sells, offers to sell or distributes vapour products, if

(i) no minors are permitted in the premises,

(ii) the premises are fully enclosed such that no vapour may escape to an adjacent premises or to a public area outside the premises,

(iii) the person

(A) is the retailer or an employee of the retailer who holds an activated e-cigarette only to demonstrate the safe and proper use of the e-cigarette, or

(B) uses an e-cigarette or holds an activated e-cigarette only to sample an e-substance that, if purchased, will be consumed off the premises, and

(iv) no more than 2 persons are, at the same time, using an e-cigarette or holding an activated e-cigarette for the purpose of sampling an e-substance.

Amendments are proposed to OHSR [sections 4.81 and 4.82](#) for the purpose of harmonization with the workplace relevant tobacco smoke and e-cigarette vapour requirements in the TVPCA and TVPCR.

The labour movement has been advocating for many years for vapour products to be treated the same as tobacco products in the workplace, following the precautionary principle for occupational health, for a number of reasons, including:

- Studies are beginning to emerge that suggest negative health impacts of vapour products.
- There is no way to control persons from purchasing nicotine containing vapour products for their use, therefore exposing surrounding workers to these vapours; and
- Many workers suffer from severe reactions to scents and other chemicals that are included in vapour products.

As such, we are very pleased with the Board's decision to expand the existing regulation to include vapour products.

However, in order to ensure the best protections for workers from vapour products, we request that the proposed regulation be amended as follows:

- *The BCFED **strongly recommends** including the full definition of e-cigarette and activated e-cigarette in the regulation.*

The BCFED has consistently raised concerns about the OHSR simply referring to other legislation, regulation, standards, etc., rather than including the language in the regulation. Employers and workers should not have to search out multiple documents to figure out what their requirements are for workplace health and safety.

Whereas in some situations, it may be appropriate to simply reference these external documents, in this case, the definitions for vapour products should be readily available directly preceding the associated requirements. Definitions are included in legislative and regulatory documents in order to assist the readers in understanding the application of the requirements that follow. Again, simply referring to an external document for definitions really makes no sense and certainly does not assist the users in interpreting their requirements. Including the definitions would only add a few sentences to the existing proposal.

- *The BCFED **strongly opposes** adopting the TVPCR exemption with respect to medically prescribed vapour products.*

The Federation is not in favour of including the medical exemption in the regulation at all. There is no good reason why a person with a medically prescribed vapour product could not go to the appropriate designated areas outside of the workplace building, structure or vehicle to use their e-cigarette.

There is no place for such an exemption in the confines of a work environment and it opens the door to other potential conflicting issues in the workplace. For example, a person that has been

medically prescribed marijuana and may choose to use a Tetrahydrocannabinol (THC) containing vapour product—is this appropriate in the workplace? Certainly, if the Federal government legalizes marijuana in the near future this will become an ongoing workplace debate. What about vapour products that include nicotine?

It is not clear why the Board does not propose a strong regulation that clearly reinforces that tobacco smoke and any other vapour products are not acceptable in the workplace where other workers may be exposed.

Even if the Board of Directors were to consider allowing it, this should absolutely not absolve the employer from **controlling** the exposure to other workers, which section 4.81 is meant to cover. At the very least, a new subsection should be added under section 4.81 to prescribe the control measures the employer is required to use for the TVPCA 2.41 exemption.

Similarly, the way in which the proposed language frames the TVPCR exemption makes it sound like employers are completely exempt from controlling exposures to vapour products in these retail premises. We do not agree with this position. Again, a new subsection should be added under section 4.81 to prescribe the control measures that these retail employers must put in place.

➤ *The BCFED **strongly recommends** amending the proposed language to make it absolutely clear that employers' have the responsibility to protect other workers from any vapour products, even in retail locations that are exempted under the TVPCR.*

Submission: Section 1.1 – Definitions

The Board proposes minor amendments to the definitions of “combustible liquid” and “flammable liquid” in Section 1.1 of the OHSR, removing the references to outdated Workplace Hazardous Materials Information System (WHMIS) terms. These proposed amendments are an interim measure pending further review of the new WHMIS 2015 requirements.

The BCFED is in agreement with these proposed amendments as the substance of the definitions remain the same and, therefore, the worker protections are unchanged.

- *The BCFED **supports** the proposed amendments to OHSR Section 1.1.*

Submission: Section 4.43.1 – Storage Racks

The Board proposes to introduce new regulation specific to the proper installation, inspection and maintenance of storage racks with steel shelving or a steel framework. As per the Board’s discussion paper, storage racks are common in many workplaces across the province and pose hazards that have led to serious injury, and even death in other jurisdictions.

Instituting specific requirements for storage racks will identify for employers the steps necessary to mitigate the hazards posed by storage racks and ensure that Board Officers have standards that can be consistently enforced.

- *The BCFED generally **supports** the proposed new regulation with the exception of the issues outlined below.*

Section 4.43.1 (7) & (8)

Section 4.43.1 (7) and (8) specifies the requirement for “regular” inspection and maintenance but does not define or specify any kind of parameter for what “regular” means. The BCFED understands that the disadvantage to specifying a particular inspection and maintenance interval is that issues that arise in advance of the defined interval may be overlooked or ignored, creating a hazard to workers.

However, it is our opinion that the disadvantages for not specifying some frame around what “regular” means is much greater. An employer may, intentionally or unintentionally, self-define “regular” in such a way as to allow hazards to remain unidentified and/or uncorrected for a lengthy period of time, leaving workers at serious risk of injury or death. The BCFED opines that either a specific interval be defined or a parameter be introduced to ensure that stakeholders have a consistent framework for “regular” inspections and maintenance.

For example, the language in Section 4.43.1 (7) could be amended as follows, *“The employer must ensure that a qualified person, in accordance with the instructions of the manufacturer or a professional engineer, regularly inspects the storage rack for wear, corrosion, damage,*

missing or incompatible parts, or signs of fatigue, at intervals that will prevent the development of unsafe working conditions, but not less than [insert average interval defined by manufacturers or professional engineers] times per year.”

It would also seem prudent to specify that an inspection is required following any incident that had the potential to cause damage to the structure, for example a rack being struck by a forklift or other mobile equipment.

NEW! We note the Board’s explanation in their updated discussion paper that this is because the CSA standard provides that the frequency is governed by many factors. However, the CSA standard is not referenced in the regulation. The language should be amended to define “regular” based on the factors that CSA had determined should be considered to specify the intervals.

➤ *The BCFED strongly recommends the BOD to amend the proposed OHSR Section 4.43.1 (7) and (8) to include a specified interval or parameter for inspections and maintenance, as well as a requirement to inspect and repair, if necessary, following an incident that has the potential to cause damage to the storage racks.*

Submission: Section 6.4-6.32 – Asbestos Inventory & Records

The Board seeks to introduce expanded regulatory requirements with respect to asbestos inventory in Section 6.4 of the OHSR, as well as consequential amendments to Sections 6.5, 6.6 and 6.32.

Section 6.4 (1)

The first amendment that the Board proposes for subsection (1) is to add owners to the existing requirement for employers to ensure that an asbestos inventory is done. The discussion paper describes situations that were not contemplated previously in the regulation in which the owner would be the logical person to authorize the collection of samples to test. Including

owners in this regulatory requirement will ensure that employers or owners are able to fulfill their obligation to collect samples and prepare an asbestos inventory without impediment.

- *The BCFED **supports** adding owners as being responsible for fulfilling the requirements of OHSR Section 6.4 (1) as it allows for a higher likelihood of completing quality asbestos inventories which are necessary to provide proper control measures for workers.*

The third amendment for subsection (1) is the addition of prescriptive requirements for the minimum information to include in the asbestos inventory. According to the Board, these requirements are similar to those recommended in their *Safe Work Practices for Handling Asbestos*⁷ handbook and are already included as best practice by many employers. Including the requirements in the regulation will clarify for employers and owners the minimum information expected when creating an inventory, as well as ensure consistent enforcement by Board officers.

- *The BCFED **strongly supports** the inclusion of prescriptive requirements in OHSR Section 6.4 (1)(c).*

Section 6.4 (6)

In the proposed subsection (6) of OHSR Section 6.4, the Board requires the employer to ensure that a copy of the inventory is “readily available at the workplace.” The BCFED is in support of this requirement, however, in accordance with Section 6.11 (b) of the regulation, it is our position that workers should be made aware of the inventory and where it can be accessed, as well as made aware of the areas of ACM identified in the inventory. The BCFED recommends that the regulation be amended, with examples as follows:

1. “The employer must ensure that workers are instructed as to the content of the inventory, in accordance with Section 6.11 (b), and that a copy of the current version of the inventory is readily available at the workplace.”

⁷ Available on the Board’s website at:

http://www.worksafebc.com/publications/health_and_safety/by_topic/assets/pdf/asbestos.pdf

2. “The employer must ensure that a copy of the current version of the inventory is readily available at the workplace **and that workers are instructed how to access the inventory and the contents of it, in accordance with Section 6.11 (b).**”

➤ *The BCFED **strongly recommends** that the BOD amend OHSR Section 6.4 (6) to include the instruction of workers as to the existence, whereabouts and contents of the asbestos inventory, in keeping with Section 6.11 (b) of the OHSR and the overriding principle of workers’ right to know.*

Section 6.4 (7)

The Board’s proposed language for subsection (7) introduces new requirements to retain and maintain asbestos inventories as long as there is ACM in the workplace, as well as to retain the records of any changes made to the inventory, for example, as a result of abatement activities, for thirty (30) years after all of the ACM has been removed.

The BCFED is pleased with the Board’s decision to increase the retention requirements for these important records. The Board suggests in their discussion paper that this amendment would benefit employers with respect to providing a record for due diligence purposes and that it would assist Board Officers in understanding the history of the existence and mitigation of ACM. However, from the BCFED’s perspective, the most important reason to keep these records is to provide historical evidence in support of workers who are diagnosed with asbestos-related disease, often following a lengthy latency period (sometimes more than twenty years).

➤ *The BCFED **vehemently supports** the new retention requirements proposed in OHSR Section 6.4 (7) as it increases protections for workers as well as maintains an historical record of potential asbestos exposures in the workplace.*

Section 6.32

In keeping with the submission above for Section 6.4 (7), the BCFED is in support of amending Section 6.32 to reflect the documents not covered by the proposed Section 6.4 (7), and ensuring that all of these documents are retained for at least ten (10) years.

- *The BCFED **supports** the proposed amendments to Section 6.32 of the OHSR.*

Submission: Section 6.58-6.66 – Lead

The Board seeks to significantly clarify the requirements for the handling and prevention of exposure to lead-containing products in their proposed amendments to Section 6.58 to 6.66 of the OHSR. The proposed regulation outlined is more prescriptive than the existing regulation, providing more detailed instruction to employers and workers with respect to how to control exposure to lead, ultimately leading to healthier and safer workplaces. Although the BCFED generally supports the proposed new regulation, there are a number of areas that require further consideration.

6.58.1 Definitions: Lead Process

The BCFED generally supports the list of work activities and processes provided as examples of lead processes. However, upon review, there are adjustments that could be made to ensure:

- the most hazardous work activities are identified,
- clarity of interpretation by utilizing common language and full-scope definitions, and
- that guidelines and other education materials are developed to promote awareness about preventing of lead exposures.

First, the BCFED finds the term “spray painting” in subsection (n) to be incomplete and somewhat misleading. It is our position that this should be amended to read, “applying lead-containing surface coatings” or “applying surface coatings.” This phrase more properly captures the full-scope of the activity and is in keeping with the term and definition proposed under Section 6.58.1, “coating” (referencing paint and similar materials), the language used in the Board’s existing publication, *Lead-Containing Paints and Coatings: Preventing Exposure in the*

Construction Industry (“WCB-Lead/Construction”)⁸, as well as the Surface Coating Materials Regulations (SCMR)⁹ annexed to Canada’s *Hazardous Products Act*.¹⁰

Further, based on the exemptions listed in the SCMR Section 4(2), it would seem that “spraying” is not the only method of application that could expose workers to these lead-containing paints and surface coatings.

➤ *The BCFED strongly recommends that the BOD amend proposed Section 6.58.1 (n) from “spray painting” to “applying of lead-containing paint and surface coatings,” or “applying surface coatings,” to ensure the regulation is capturing the full-scope of the activity or work process.*

The occupational estimates of lead exposures by industry in Canada¹¹ are reproduced in Table 1 below based off the data provided by CAREX Canada on their website. This data clearly identifies the largest number of workers exposed, as well as the largest number of high-level exposures, in public administration, including police officers (34,000 exposed) and the repair and maintenance occupations, including welders (77,000 exposed) and mechanics.

⁸ Workers’ Compensation Board of BC. (2011). *Lead-containing paints and coatings: preventing exposure in the construction industry*. Retrieved April 2016, from: http://www.worksafebc.com/publications/health_and_safety/by_topic/assets/pdf/LeadContainingPaintCoatings.pdf. [WCB-Lead/Construction]

⁹ Surface Coatings Materials Regulations, SOR/2005-109; Retrieved from: <http://www.laws-lois.justice.gc.ca/eng/regulations/SOR-2005-109/FullText.html>

¹⁰ Hazardous Products Act, R.S.C., 1985, c. H-3; Retrieved from: <http://www.laws-lois.justice.gc.ca/eng/acts/H-3/>

¹¹ CAREX Canada. (December, 2012). *Lead*. Retrieved April 2016, from: http://www.carexcanada.ca/en/lead/occupational_estimate/#level_of_exposure

Table 1: Levels of Lead Exposure by Industry in Canada

	Low Exposure (n)	Moderate Exposure (n)	High Exposure (n)	Total Workers Exposed (n)
911-913: Public administration	16,000	100	25,000	41,000
811: Repair and maintenance	2,700	17,000	20,000	40,000
238: Specialty trade contractors	28,000	7,900	900	36,000
332: Fab. metal product mfg	9,000	14,000	800	23,000
336: Transport equipment mfg	4,100	12,000	3,100	19,000
333: Machinery manufacturing	11,000	200	100	12,000
331: Primary metal mfg	1,800	5,800	3,000	11,000
611: Educational services	1,100	5,800	2,600	9,400
236: Construction of buildings	5,400	3,900	0	9,300
441: Motor vehicle parts dealers	1,500	6,800	0	8,300
237: Heavy and civil engineering construction	5,300	0	0	5,300
326: Plastics and rubber products manufacturing	2,600	1,500	0	4,000

*Numbers may not add up due to rounding

The Board has produced a few publications and bulletins focusing on preventing lead exposures, with specific information regarding lead-containing paints in the construction industry¹² and lead exposures in plumbing, renovation and restoration¹³. While these publications are appropriate and useful, there is no specific information produced with respect to repair and maintenance or public administration. For example, the Board's publication, *Lead: Preventing Exposure at Work*,¹⁴ does not even mention these two industries (aside from radiator maintenance) as being work activities that expose workers to high levels of lead. Considering the level of exposure documented in these industries, the BCFED strongly

¹² WCB-Lead/Construction, *supra* note 7

¹³ For more information, see the Board's webpage, *Exposures – Hazardous Materials Exposures: Lead*, retrieved from: <http://www2.worksafebc.com/Topics/OccDisease/HazMatExposure.asp?ReportID=36950>

¹⁴ Workers' Compensation Board of BC. (2011). *Lead: preventing exposure at work*. Retrieved April 2016, from: http://www.worksafebc.com/publications/health_and_safety/by_topic/assets/pdf/lead.pdf. Pp. 2-3.

encourages the Board to develop an education and awareness campaign with respect to these lesser known occupations that have high lead exposure, in particular, police services.

- *The BCFED strongly recommends that the Board develop education and awareness materials for preventing lead exposures in police services as well as repair and maintenance occupations.*

In addition to those mentioned above, the Board's explanatory notes from the current discussion paper, as well as the description provided in the Board's publications, are missing specific references to other occupations and uses with notable lead exposures that may not be obvious to workers and employers. The following are some examples that could be more explicitly identified in the Board's publications:

- Manufacture of cable sheathing, circuit boards, lining for chemical baths and storage vessels, chemical transmission pipes, electrical components, polyvinyl chloride (PVC) as a chemical stabilizer, nuclear and radiation shielding (television, video, computer screens, nuclear waste containers, x-ray shielding aprons¹⁵), water repellents, dyes, varnishes and resins, automotive parts, explosives, and paper coatings.¹⁶
- Lead pigments and compounds¹⁷ (the second largest use of lead after lead-acid batteries), mainly for plastics, glass (including glass blowing) and ceramics, and paint primers (lead tetraoxide) for steel and iron.^{18,19}

¹⁵ U.S. Department of Health and Human Services' Agency for Toxic Substances and Disease Registry. (2007). *Toxicological Profile for Lead*. Retrieved from: <http://www.atsdr.cdc.gov/toxprofiles/tp13.pdf>. Pp. 19, 294

¹⁶ Health Canada. (2013). *Risk Management Strategy for Lead*. Retrieved from: http://www.hc-sc.gc.ca/ewh-semt/alt_formats/pdf/pubs/contaminants/prms_lead-psgr_plomb/prms_lead-psgr_plomb-eng.pdf. [Health Canada] P. 13.

¹⁷ This is of particular concern as in the Board's explanatory notes on page 9 of their discussion paper, *Proposed Amendments to Part 6: Substance Specific Requirements*, it refers to "pigments and coatings" as consumer products such as art materials. Clearly these pigments and compounds are used in the production of various products as well as in surface coatings applied by workers.

¹⁸ International Agency for Research on Cancer [IARC]. (2006). *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans: Inorganic and Organic Lead Compounds*. (Volume 87). Retrieved from: <http://monographs.iarc.fr/ENG/Monographs/vol87/mono87.pdf>. [IARC-Lead] Pp. 69, 70, 165

¹⁹ Health Canada, *supra* note 15 at 13

- Lead chromate is used extensively as the yellow pigment in road markings and signs.^{20, 21}

➤ *The BCFED strongly recommends that the Board includes all of the above potential occupations, work activities, and processes in their publications and educational materials for stakeholders.*

Section 6.60 – Exposure Control Plan

Section 6.60 outlines the required components of the exposure control plan, including subsection (3) (d) which requires written procedures for “the correct selection, use, care and maintenance of any required personal protective equipment and clothing.” However, the proposed language does not provide any direction about how to achieve this.

The BCFED opines that Section 6.60 (3) (d) must at least make reference to Part 8, Personal Protective Clothing and Equipment, of the OHSR. The preferred option would be to develop specific regulations under this section for PPE and clothing, similar to those provided in Sections 6.29-6.31 regarding asbestos.

For example, in the U.S., the Occupational Safety & Health Administration (OSHA) Standard for lead, Section 1910.1025²², subsection (f) provides very specific requirements for National Institute for Occupational Safety and Health (NIOSH) approved respiratory protection, as well as for protective clothing in subsection (g). These provisions give very clear direction for the employer, the worker, and the Board Officers with respect to how best to protect workers from lead exposure when using PPE and clothing.

²⁰ IARC-Lead, *supra* note 17 at 70

²¹ This information is noted in the Board’s publication specific to surface coatings in construction (see note 7), but not in the general publication regarding preventing lead exposures (see note 13).

²² Occupational Safety & Health Administration [OSHA]. (2001). Regulations (Standards-29CFR). Retrieved from: <http://www.nmic.org/nyccelp/laws/29CFR1910.1025.htm>. [OSHA-Lead]

- *The BCFED **strongly recommends** that the Board amend the proposed regulations to include specific direction for the selection, use, care and maintenance of PPE and clothing, in accordance with the OHS requirements.*

Section 6.61.1 – Exceptions to Monitoring Requirements

Section 6.61.1 proposes that employers are not required to implement the exposure monitoring required under Section 6.61 if a qualified person determines that the controls in place are effective based on the following:

(b) The employer

- (i) has previously monitored for airborne concentrations of lead during equivalent work operations and there is no reason to believe that the results of the previous monitoring would not continue to apply, or
- (ii) has objective exposure monitoring data that was collected during equivalent work operations through industry surveys or peer-reviewed or scientific studies using sampling and analytical methods, referred to in section 6.61(2).

The Board's discussion paper states that this section adds the option for employers to "estimate" the level of worker exposure in order to implement controls, "bypassing" the requirements in section 5.53, by using:

- Information already published in literature, or
- Previous exposure data.

The Board provides the following rationale:

1. Air monitoring on construction sites is challenging because of the changing nature of work;
2. It is difficult to implement exposure monitoring in construction, especially among small and medium sized employers; and

3. It is difficult to obtain reliable data due to the short duration of work activities.

The BCFED has serious concerns with respect to the proposed regulation and the rationale provided. Developing regulation that allows employers to “bypass” existing requirements and “estimate” workers’ exposure is outrageous and frightening – it undermines the entire premise of the regulations developed to prevent workers’ exposure to hazardous substances, such as lead. In fact, these same arguments could be used by many industries with respect to any of the regulations in the OHSR – it is a slippery slope to allow blanket exception to regulations for the reasons outlined.

The rationale provided by the Board is not sufficient to support this regulation considering the construction industry has the potential for high levels of exposure to lead, requiring even stricter adherence to the regulatory requirements to ensure workers are adequately protected. Contrary to developing a regulatory work around, the fact that the work activities and processes are more precarious in construction provides an excellent reason for the Board, perhaps in conjunction with the construction industry, to commission studies on these work activities and processes to assist in developing more prescriptive regulations for the industry to implement without the need for an exposure assessment.

Additionally, although the BCFED understands that it may be cost prohibitive for small employers to obtain the exposure data required by the regulations, it is our position that there are already provisions in place for specific exemptions to the requirement. Section 164 of the *Workers Compensation Act*²³ allows for variance from a provision of the regulations for a specific workplace or work process of an employer. A variance order is the appropriate way to address this rationale as the Board would oversee the collection of data and implementation of controls.

The BCFED takes particular exception to Section 6.61.1 (2)(b)(ii) which allows employers to use “industry surveys.” It is not at all clear as to what “industry surveys” actually are. In the pre-consultation sessions for this section, employer stakeholders suggested the use of other

²³ *Workers Compensation Act*. RSBC 1996. c. 492.

employers' exposure monitoring data for equivalent work operations – this seems starkly different from industry “surveys.”

- *The BCFED **vehemently opposes** the proposed Section 6.61.1, as it increases workers' risk of exposure to lead, and strongly encourages the BOD to remove this section.*
- *If the BOD chooses to approve this section, the BCFED **strongly recommends** that the Board amend Section 6.61.1 (2) to tighten up the industry data allowed.*
- *If the BOD chooses to approve this section, the BCFED also **strongly recommends** that the Board develop comprehensive guidelines for the use and enforcement of this new section and ensure that there is strict enforcement of this requirement.*

Health Protection, Health Monitoring & Medical Removal

The BCFED has concerns with respect to the references to health protection, health monitoring, and medical removal in the proposed regulations.

Section 6.59.1 (1) – Risk Assessment: Health Monitoring

The proposed Section 6.59.1(1) defines “health monitoring” as monitoring conducted in accordance with:

- (a) an exposure control plan under section 5.54(2)(f), or
- (b) a health protection program under section 6.67.

Section 5.54(2)(f) does not define health monitoring, but simply lists it as part of an exposure control plan, “when required.” The guidelines for this section, G5.54-5 Health Monitoring, provide direction as to when and what kind of health monitoring is recommended and include the recommendation to conduct health monitoring for lead exposures. Health monitoring is also referenced in Section 6.11 regarding asbestos and in Section 6.79 with respect to pesticides – the guidelines for these sections refer back to G5.54-5 for direction.

As Section 5.54 does not outline any health monitoring requirements with which to conform, the definition that states that it is monitoring “in accordance” with Section 5.54 is inaccurate, as

well as confusing to employers. This is also true for the reference to Section 6.67 discussed below. The regulation should be amended to provide explicit direction as to when and how health monitoring is required for lead exposures.

Section 6.67 – Health Protection

As noted above, Section 6.59.1 states that health monitoring may also be done in accordance with Section 6.67, which states:

The employer must develop and implement an effective health protection program, in a manner acceptable to the Board, if a worker is exposed to potentially hazardous levels of lead.

Health protection is not mentioned in Part 5 of the OHSR, and only mentioned one other time in Part 6, Section 6.79 specific to pesticides, which states:

Where, in the opinion of the Board, it is necessary to provide health monitoring for workers exposed to pesticides, employers and workers must participate as required by the Board, and records must be maintained in a manner acceptable to the Board.

The guidelines for these two sections do not provide any direction as to what a health protection program is, rather G6.67 references back to health monitoring under Section 5.54(2)(f). And G6.79 states its purpose as establishing the manner acceptable to the Board with respect to maintaining records of health monitoring. There is no guidance with respect to what a health protection program “*acceptable to the Board*” entails.

Once again, as there is no direction provided in Section 6.67, or the guidelines for any other reference to health protection programs, as to what a health protection program is, the statement that “health monitoring” is monitoring in accordance with, or conforming to, Section 6.67 is at the very least vague. In contrast, the OSHA Standard Section 1910.1025 (j)²⁴ provides in-depth requirements for the medical surveillance of workers exposed to lead.

²⁴ OSHA-Lead, *supra* note 21

After going back and forth between the various references in the regulation and the guidelines, one is led to assume that a “health protection program” is in fact, “health monitoring” – in which case, why is the regulation using two different terms to mean the same thing?

- *The BCFED strongly recommends that the Board amend the definition of “health monitoring” in Section 6.59.1(1) to be more accurate and explicit as to the definition or requirements.*
- *The BCFED strongly recommends that the Board amend Section 6.67 to clearly prescribe what is required for a health protection program.*
- *The BCFED strongly recommends that the Board add the requirement for the worker to receive a copy of any health monitoring data.*

Section 6.58.1 – Definitions – Medical Removal

The Board proposes to add the definition of “medical removal” in Section 6.58.1 to assist with the interpretation of the existing Section 6.69(c) of the OHSR with respect to establishing provisions for the medical removal of workers in primary lead smelters. Section 6.69 provides that primary lead smelters are exempt from maintaining lead concentrations below the exposure limit, as long as they have a health protection plan and medical removal provisions.

First, it is unclear as to why the provision for medical removal is confined to primary lead smelter operations. In the U.S., the OSHA Standard Section 1910.1025 (k)²⁵ requires temporary medical removal for workers who are exposed to lead at or above the “action level”²⁶ in *any industry*, with the following criteria:

- Blood lead level at or above 60 micrograms per 100 grams (60µg/100g) of whole blood–based on a periodic and follow-up sampling test;

²⁵ OSHA-Lead, *supra* note 21

²⁶ OSHA defines “action level” in Section 1910.1025 (b) as “employee exposure, without regard to the use of respirators, to an airborne concentration of lead of 30 micrograms per cubic meter (50 µg/m³) of air averaged over an 8-hour period.” This is approximately 50% below the Permissible exposure limit of 50 µg/m³ (or 0.05 mg/ m³), which is similar to the trigger level requiring additional workplace monitoring and an exposure control plan in Sections 5.53 and 5.54.

- Blood lead level at or above 50µg/100g of whole blood – based on an average of the last 3 sampling tests (unless the last test showed levels at or below 40µg/100g;
- Final medical determination that a worker has a medical condition that places the worker at increased risk of impairment with further exposure.

The BCFED submits that medical removal should be required for workers in other industries that meet requirements similar to those outlined in the OSHA Standard. This would ensure that all workers exposed to high levels (hazardous levels) of lead would be monitored and removed if the medical data supported it, protecting them from further effects of lead exposure.

➤ *The BCFED **strongly recommends** that the Board expand the requirements for medical removal to include workers meeting specific requirements, similar to the OSHA Standard, in any industry.*

Further, contrary to the OSHA Standard, the Board does not provide any requirement for the employer's responsibility to the worker who has been medically removed. For example, Sections 1910.1025 (k)(1) (iii), (iv), (v) and (k)(2) outline the requirements of the employer to return the worker to their former job status, remove special protective measures or limitations, follow up with medical surveillance (health monitoring) and medical removal protection benefits. Medical removal protection benefits require the employer to maintain the worker's earnings, seniority, employment rights and benefits as if the worker was at work for up to eighteen (18) months.

These requirements recognize that the worker requiring medical removal is not at fault and therefore should not suffer any loss as a result of the medical removal. It clearly prescribes the path for the employer to follow to ensure a smooth process for returning to work. It is the position of the BCFED that the Board should implement similar requirements for BC workers requiring medical removal as a result of overexposure to lead.

➤ *The BCFED **strongly recommends** that the Board develop comprehensive requirements for the medical removal of a worker, as discussed above, including medical removal protection benefits.*

Submission: Section 6.110-6.115.1 – Silica

The BCFED's recommendations for lead are the same for the silica sections listed below:

- [Exposure Control Plan](#) (6.112.1)
- [Exception to Monitoring Requirements](#) (6.112.4)

In addition to the above, the BCFED submits the following.

Section 6.110 – Definitions: Silica Process

The BCFED generally supports the list of work activities and processes provided as examples of silica processes. However, upon review, there are adjustments that could be made to ensure that all of the potential hazardous work activities are identified.

According to CAREX Canada, the largest industrial group is construction – building construction and trade contractors make up approximately 54% of the exposed workers –the largest occupational groups within that being: labourers, heavy equipment operators, plasterers and drywallers.²⁷ Aside from heavy equipment operators, these occupations are not easily identified under the silica process definition. In addition, occupations such as a traffic controllers (flaggers) are not identified.

Other industries or activities that may expose workers to crystalline silica and not easily identified in the silica process definition are: agriculture (including plowing and chemicals), glass (including fibreglass), ceramics (including bricks, tiles, porcelain, refractories, vitreous enamels), silicon, rubber and plastics, paints, soaps and cosmetics, asphalt and roofing felt, dental material, paint, etc.²⁸

²⁷ CAREX Canada. (June, 2015). *Silica (Crystalline)*. Retrieved April 2016, from:

[http://www.carexcanada.ca/en/silica_\(crystalline\)/](http://www.carexcanada.ca/en/silica_(crystalline)/)

²⁸ IARC. (1997). *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans: Silica, Some Silicates, Coal Dust and Para-aramid Fibrils*. (Volume 68). Retrieved from

<http://monographs.iarc.fr/ENG/Monographs/vol68/mono68.pdf>. [IARC-Silica] Pp. 62-63

- *The BCFED **strongly recommends** that the Board includes all of the above potential occupations, work activities, and processes in their publications and educational materials for stakeholders.*

Submission: Section 12.83.1 – Chassis Dynamometer

The Board proposes to move the requirements of the existing Policy R12.2-1 of the *Prevention Manual*²⁹ with respect to safeguarding requirements for testing motor vehicles on chassis dynamometers into Part 12 of the OHSR. The BCFED supports this proposal as the OHSR is the appropriate place for occupational health and safety requirements for tools, machinery and equipment.

- *The BCFED **strongly supports** moving the safety requirements for chassis dynamometers from policy into the OHSR.*

Submission: Section 13.11 – Engineering Required: Scaffolds

Section 13.11 of the OHSR specifies the work platforms that must be constructed, installed and used in accordance with engineering instructions. The Board seeks to add a new subsection (e) which requires a scaffold be used to support a crane or hoist to be engineered.

- *The BCFED **supports** the amendment to Section 13.11 of the OHSR.*

Submission: Part 14 – Cranes and Hoists

Section 14.1 – Definitions

The Board proposes to remove the definitions for “miscellaneous material hoist” and “safe working load” from Section 14.1 of the OHSR as these terms are not used in Part 14.

- *The BCFED **supports** the proposed amendments to Section 14.1 of the OHSR.*

²⁹ Workers’ Compensation Board of BC. (2014). *Prevention Manual*. Retrieved from: http://www.worksafebc.com/publications/policy_manuals/Prevention_Manual/Assets/PDF/prevmnl.pdf

Section 14.2 – Construction Material Hoist (Light Duty)

Section 14.2(8) of the OHSR requires construction material hoists to meet the CSA Standard for Material Hoists. Section 14.96 also relates to construction material hoist requirements prior to use and refers to the same CSA Standard, but allows an exemption for light duty portable material hoists in subsection (3).

The current guideline G14.96 explains that light duty portable construction material hoists were never intended to be covered by Section 14.2(8) as many requirements of the CSA Standard do not apply to these hoists. As this practice has been in place for some time and as the BCFED is unable to find any evidence to the contrary at this time, we are prepared to support the amendment to align Sections 14.2(8) and 14.96(3).

➤ *The BCFED **supports** the proposed amendments to Section 14.2 of the OHSR.*

Section 14.5 – Rated Capacity Indicators

The Board proposes amendments to Section 14.5(1) and (2) of the OHSR, clarifying that subsection (1) does not apply to subsections (2) and (3). In addition, it proposes to clarify a term that will allow for the deleting of Policy R14.5-1 of the *Prevention Manual*.

➤ *The BCFED **supports** the proposed amendments to Section 14.5 of the OHSR.*

➤ *The BCFED **supports** deleting Policy R14.5-1 of the Prevention Manual.*

Section 14.11 – Support Structures

The proposed amendments for Section 14.11 of the OHSR clarifies that the rated capacity of the structure must not be exceeded by the rated capacity of the crane or hoist. The BCFED supports this amendment as it improves worker safety.

Additionally, the Board proposes to delete the accompanying Policy R14.11-1 of the *Prevention Manual* as the requirements contained in the policy are already provided for in other sections of the OHSR. However, the Board is contemplating including some of the explanatory information from the policy in a guideline, which the BCFED supports in order to not lose this important guidance.

- *The BCFED **supports** the proposed amendments to Section 14.11 of the OHSR.*
- *The BCFED **supports** the deletion of Policy R14.11-1 of the Prevention Manual but recommends the retention of any pertinent guidance information in a guideline.*

Section 14.81 – Limit Devices

The Board proposes to move the requirements for testing limit devices on tower cranes in Policy R14.81-1 of the Prevention Manual into the OHSR. The BCFED supports that regulation is the appropriate place for safety requirements of cranes and hoists.

The Board explains that reference to the CSA Standard in the existing policy will not be put into the regulation as the Board's proposed regulation is stronger.

In addition, the Board proposes to amend the regulation to ensure that the malfunction of any warning devices, limit devices or safety devices are remedied before use.

- *The BCFED **supports** the proposed amendments to Section 14.81 of the OHSR.*
- *The BCFED **supports** the deletion of Policy R14.81-1 of the Prevention Manual, moving the requirements into the OHSR.*

Submission: Section 20.2 – Construction, Excavation, Demolition: Notice of Project

The Board proposes amendments to Section 20.2 of the OHSR with respect to notice of projects (NOP), as well as introducing new requirements for the notice of project for hazardous substances under Section 20.2.1 (formerly section 20.2(1)(c)).

Subsection 20.2(3) is amended to add the requirement for the NOP to be posted for the duration of the project – this is extremely important for the ongoing safety of workers as well as for Board officers' enforcement activities.

Section 20.2(5) has been amended to require information to be sent to the Board if the conditions of the original NOP change significantly. This is also an important amendment for the same reason described above.

➤ *The BCFED **supports** the proposed amendments to Section 20.2 of the OHSR.*

Section 20.2.1 contains the existing requirements of Section 20.2(1)(c) but adds the requirement for employers responsible for work activities with hazardous substances to ensure the Board gets a copy of the NOP. This is an important improvement due to the workers' potentially significant exposures to hazardous substances.

The Board also proposes in subsection (1) that the NOP be provided 72 hours prior to the work activity, as opposed to 24 hours. This amendment is proposed to allow the Board officers more time to review the work procedures and for the employer to amend any procedures that the Board identifies prior to work beginning. It is the position of the BCFED that increasing the notice to 72 hours is not overly onerous on employers in comparison to the risk of exposing workers to hazardous substances without adequate controls. This amendment will lead to the greater protection of workers potentially exposed to hazardous substances.

➤ *The BCFED **supports** the proposed amendments to Section 20.2.1 of the OHSR.*

Submission: Section 22.12 – Underground Supervisors

The Board proposes significant amendments to Section 22.12 respecting underground supervisors, described as follows in the Board's discussion paper:

The purpose of the proposed amendments is to reduce the number of variance requests made by employers. The proposed amendments to section 22.12 of the Occupational Health and Safety Regulations ("OHSR") incorporate the qualifications that are deemed "acceptable to the Board" in the variance process. The proposed amendments broaden the qualification requirements for the underground working supervisor beyond the certifications issued under the Mines Act.

The BCFED and affiliated subject-matter experts participated in the fulsome pre-consultations for these amendments. The main concern during consultation was that the qualifications for underground supervisors remain comprehensive in order to maintain a high level of safety in these very high risk work activities, while still allowing employers flexibility in identifying these qualified workers.

Since that time, it has come to our attention that variance orders of the existing requirements were received by employers wishing to bring in temporary foreign workers as underground supervisors. In one case that we are aware of, these supervisors were unable to speak any English, which was the primary language spoken by the balance of the workers on the jobsite. As one can imagine, for the ensured health and safety of the workers in these very high-hazard workplaces, it is absolutely necessary for the supervisors to not only possess the appropriate qualifications but also be able to properly instruct and supervise these workers in a common language.

It is imperative that the Board rigorously enforce these new regulations and perform targeted inspections of the worksite, including foreign or multi-national projects, to ensure that underground supervisors possess, and can demonstrate, the qualifications proposed in this section and are able to instruct and supervise workers in a common language.

➤ *The BCFED **supports** the proposed amendments to Section 22.12 of the OHSR, with the proviso that it is strictly enforced by the Board via targeted inspections of these projects.*

Submission: Section 23.69 – Oil and Gas: Flow Piping Systems

The Board proposes substantial changes to Part 23 of the OHSR, in particular to Section 23.69 regarding flow piping systems. At this time, the BCFED has not identified any reduction of worker safety with these changes. However, the BCFED retains the right to raise concerns upon further review.

➤ *The BCFED **tentatively supports** the proposed amendments to Sections 23.1, 23.14, 23.26.1, 23.69 and 23.72 of the OHSR.*

Submission: Section 26.13.4 – Saw Chain Shot

The Board proposes the addition of a regulation, Section 26.13.4, requiring mobile equipment in forestry-related operations to be equipped with windows that protect the worker from saw chain shot. The BCFED is in agreement with this new requirement but is concerned with the implementation date of February 2018, as it continues to leave workers exposed.

During pre-consultations, industry indicated that this was necessary due to the time it would take for mobile equipment manufacturers to design and test the new thicker windows along with the other protective equipment. While the BCFED understands this rationale, leaving workers unprotected from saw chain shot for another two (2) years is troubling.

➤ *The BCFED **supports** the proposed amendments to Section 26.13.4 of the OHSR, but **strongly recommends** that the BOD reduce the timeframe for implementation.*

Conclusion

The Federation appreciates the opportunity to provide a submission regarding the proposed OHSR amendments. We are confident that the Board of Directors will seriously consider this submission and revise the proposed regulations based on our recommendations, in support of healthier and safer workplaces and work activities.