

WCB CONSULTATION

Submission on the proposed
amendments to the Occupational
Health and Safety Regulation
Part 16

May 2019




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.



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President

1000-19sub-wcb consultation-reg part16 final submission may 2019/km 

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Submission on the WCB proposed changes to Part 16 of the Occupational Health and Safety Regulation (OHSR)

The BC Federation of Labour (BCFED, Federation) represents more than 500,000 unionized workers through our affiliates. The BC Federation of Labour is as a long-standing major stakeholder at the Workers' Compensation Board (WCB), recognized as being the voice for all workers in the province. The BCFED advocates for the health and safety of all workers in BC and full compensation for injured workers and the families of workers who have been killed on the job.

The Federation considers the consultation process as a valuable opportunity to make recommendations on the proposed regulatory amendments.

The BCFED and our affiliates participated in the pre-consultation meetings and were concerned that this comprehensive review not weaken worker safety by reason of the proposed reduction in the number of sections.

In October 2018, the BCFED provided a submission on the Part 16 Mobile Equipment discussion paper, making recommendations that we hoped the WCB Board of Directors (BOD, Board) would implement in the proposed amendments that went out for public consultation.

We were disappointed that none of our recommendations are reflected in the current amendments.

This submission was prepared in consultation with our affiliates.

To provide clarity to this submission, the BCFED will respond only to the sections of Part 16 where we are recommending changes to the proposed amendments. The BCFED agrees with all other sections of the proposed amendments. The WCB has conducted a "full review of Part 16," therefore the amendments are complex and extensive.

Part 16 – Mobile Equipment (ME) and Consequential Amendments to Nine Other Parts

Section 16.1 Definitions

The current Part 16.1 was modified to include new definitions:

- “Earth-mover” was added to support the introduction of 16.42. Earth movers are defined according to ISO 6165-2012/earth-moving machinery: Basic types. *ISO 6165:2012 gives terms and definitions and an identification structure for classifying earth-moving machinery designed to perform the following operations: excavation, loading, transportation, and drilling, spreading, compacting or trenching of earth, rock and other materials, during work, for example, on roads and dams, in quarries and mines, and on building sites. Its purpose is to provide a clear means of identifying machines according to their function and design configurations*¹

The BCFED notes the ISO definition is currently under review and therefore recommends the WCB ensure that if any new language is developed, appropriate changes are made to the Part 16.1 definition.

“Excavator” was added to support introduction of 16.34(3) (e) and is distinguished from a loader by inclusion of “boom.”

“Excluded ground machine”. The BCFED recommends adding “any like machine acceptable to the Board.”

In the current regulation there is one definition for mobile equipment, and we think the proposed separate definitions in the amended regulation for prime mover and mobile

¹ <https://www.iso.org/standard/52639.html>

equipment creates confusion. The definition for mobile equipment includes reference to prime mover.

The BCFED recommends the two definitions be combined to create clarity and consistency for end-users.

Prime mover definition should be amended to use the term “continuous or crawler tracks” rather than “endless tracks.” On a quick Google search the common term for this type of ME is “continuous track.”

- The BCFED **generally supports** the definitions but strongly urges the Board to consider the following amendments to provide greater clarity and consistency thus better protecting workers:
 - Ensuring that any changes to the ISO 6165:2012 definition for earth movers are updated;
 - Under excluded ground machine, add subsection (f) any like machine acceptable to the Board;
 - Combining the mobile equipment definition with the prime mover definition into one mobile equipment definition for consistency and clarity; and
 - Use the term “continuous or crawler tracks” rather than “endless tracks.”

Section 16.2 Application

(2) should add description of 16.21 (seatbelts) for clarity.

Division 1 General Operating Requirements

Section 16.3 (1-5) Pre-operational inspection and monitoring

In the discussion paper the Board intends the provisions of 16.3 (1-5) to:

- place obligation to inspect on the operator, once per shift prior to operation;
- establish that both inspection and defect reporting must occur before the ME is first operated;
- require attention be paid to how ME performs during the shift;
- relieve the operator of the burden to definitively determine if machine is unsafe; and
- allow investigation for up to two years.

Section 16.3(1) and (2) require the operator to conduct an inspection of the ME at the beginning of the shift before the machine is operated, and during operation, the operator must continuously monitor the performance. In both sections any unsafe, or potentially unsafe, defects are to be reported to the supervisor or the employer. Section 16.3 (3) requires the employer to keep a record of the defect reported in Section 16.3(1) for two years. Curiously there is no requirement to keep a report made under Section 16.3(2) for two years.

The requirement that is glaringly missing from Section 16.3 is the action that must be taken by the supervisor or the employer upon the operator reporting any unsafe, or potentially unsafe, defects of the ME. Other than the employer ensuring a record of the report is kept for two years.

16.3 is silent on the employer's responsibilities as required in the following:

- a) WCA Division 3, Section 115 General duties of employers

- (2) Without limiting subsection (1), an employer must*

- a. Remedy any workplace conditions that are hazardous to the health or safety of the employer's worker*

- b) OHSR Section 3.9 Remedy without delay

- Unsafe or harmful conditions found in the course of an inspection must be remedied without delay*

- c) OHSR Section 3.10 Reporting unsafe conditions

- Whenever a person observes what appears to be an unsafe, or harmful condition, or act, the person must report it as soon as possible to a supervisor or to the employer, and the person receiving the report must investigate the reported unsafe condition or act and must ensure that any necessary corrective action is taken without delay.*

- d) OHSR Section 4.3 Safe machinery and equipment

- (1) The employer must ensure that each tool, machine and piece of equipment in the workplace is*

- a. Capable of safely performing the functions for which it is used, and*

- b. Selected, used and operated in accordance with*

- (i) The manufacturer's instructions, if available,*
 - (ii) Safe work practices, and*
 - (iii) The requirements of this regulation*
- (2) A tool, machine or piece of equipment determined to be unsafe for use must be identified in a manner which will ensure it is not inadvertently returned to service until it is made safe for use.*

The omission of fundamental employer responsibilities to investigate a reported defect, to implement a corrective measure and to identify an unsafe ME put workers at great danger.

Section 16.3 (4)

Under Section 16.3(4) a record of the defect required under sub-section 3 may be:

- a. Included in a record of maintenance, repair or modification required by Section 16.17, or
- b. Prepared as a stand-alone record.

The Board's notes in the discussion paper on the record of the defect makes a connection with the requirements of records kept under Section 16.17: Maintenance and Records. It would make sense therefore, that the current Section 16.17 is combined into Section 16.3 rather than being separated out and located at a distance in the regulation. Adding to the confusion, the requirements of Section 4.9: Inspection and Maintenance Records do not apply to the records required in 16.3 (3) and Section 16.7(2) yet Section 4.9 does apply to Section 16.43(4) lift trucks.

The discussion paper notes that Section 16.3(3) mirrors the *Industrial Roads Act* reg 450/59 s.9:

Reporting of defects

9 *Drivers shall examine their equipment before starting work each day and shall be responsible for reporting in writing to their immediate supervisor or other authorized person all defects or unsafe conditions. Suitable logbooks or report forms shall be made available by the industrial road administrator for this purpose (W.C.B. 869).²*

² http://www.bclaws.ca/civix/document/id/lc/statreg/450_59

The BCFED contends there is no need to reference another piece of legislation when Section 4.9 of the OHSR requires a machine or piece of equipment to have a written record of an inspection and maintenance and that a written record must be signed by the operator who does an inspection at the start of each shift. Both Section 4.9 and the *Industrial Roads Act* clearly require a written report to be signed by the operator, but this requirement is not included in Section 16.3.

Section 16.3(3) requires the employer to keep a record of a defect reported in Section 16.3(1) for a period of two years. The discussion paper gives no rationale for not keeping a report of a defect reported in 16.3(2) while monitoring the ME during operation.

The BCFED prefers the records-keeping requirement in Section 4.9 (3):

.....for the duration of the service life of the machine or equipment and must be reasonable available to the workplace and made available, upon request of the operator...

It is reasonable to expect that, as long as an ME is in operation, the operator, the supervisor and maintenance workers have access to the complete history of any defects. The requirements of Section 4.9 are superior and very clear; it appears the Board is watering down these requirements by excluding them from Section 16.3.

Part 16 has not been amended to include the employer's responsibility to document worker training. Worker training is included in Sections 16.40(5) training for ATV operators and 16.43(2) operator training for lift trucks. Neither of these sections mention keeping records of training.

- The BCFED **does not support** the proposed amendments to Section 16.3 (1-5) and strongly recommends the Board consider further amendments as already mentioned above:

- to clarify employer duties and responsibilities to respond to reports of defects in MEs by investigating, implementing corrective measures and identifying unsafe equipment to prevent usage until repairs are made;
- to combine the requirements of Section 16.3 and 16.17 being that they are both included in Division 1 General Requirements. Also include requirements for documenting worker training as mentioned above. Rename Section 16.3 to Records: Pre-operational, Monitoring, Maintenance and Training; and
- make the requirements of Section 4.9 applicable to all sections of OHSR Part 16 including keeping records for the service life of the ME.

Section 16.6 Obstructed Views and Pedestrians

The amendments to Section 16.6 do not contemplate the rear visibility systems now required for all vehicles under 10,000 GVW. Typically, MEs will be larger but some smaller trucks will be used as work vehicles and as of 2018 will be equipped with these systems.

- The BCFED **generally supports** the amendments and strongly recommends the Board consider making all protective measures mandatory and in place simultaneously. Other effective means or “additional means” should refer to personal protective equipment and either contain the phrase “acceptable to the Board” or mandate something more specific. The regulation needs to include language regarding those MEs that have the required rear visibility systems.

Section 16.16 Tire Servicing

Tire servicing is very dangerous work. An inflated tire contains stored energy which can explode and cause serious injury or death. The BCFED supports the inclusion of safe work procedures in Section 16.16 (1). Workers must be trained on safe work procedures and we are curious that training for workers who are assigned to work on tires, rims and wheels is not a requirement of Section 16.16. It is a part of the current 16.47: Training and it is our position it must be included in the new regulation:

(3) Workers assigned to work on tires, rims and wheels must be trained in and follow safe work procedures established under section (1)

- The BCFED **generally supports** the amendments to Section 16.16 but recommends the Board must keep the current Section 16.47 (2) on training for workers in Section 16.16.

Division 2 General Machine Requirements

Section 16.34 Rollover Protective Structure (ROPS)

Section 16.34(2) applies to ME where a risk assessment performed by a qualified person determines there is no significant risk to the operator of a rollover and exempts a snowmobile, ATV and any other mobile equipment designed for a standing operator or with a straddle seat.

Section 28.6.1 Part 28: Agriculture requires:

If an agricultural tractor is proposed to be used without a ROPS under Section 16.34(4), then in addition to the factors listed in Section 16.34(1) to be considered in the rollover risk assessment, the qualified person must also consider the training and experience of the operator.

The training and experience of the operator is an important consideration and must be added to the risk assessment criteria in 16.34 (1).

The BCFED is concerned that once a risk assessment is completed and it is determined there is no risk of rollover, there is no requirement to have safe work procedures. For example, a risk assessment for a Zamboni operated on the smooth service of the ice rink will determine there is no risk of rollover. Once the Zamboni leaves the ice and exits the rink, perhaps down a ramp without railings, the risk may change. This is a regular occurrence and the employer needs to have safe work procedures for workers to follow.

- The BCFED **generally supports** the proposed amendments in Section 16.34 but proposes adding into Section 16.34(2) the requirement to have safe work procedures after a risk assessment determines no ROPS are required but where the work situation changes.

Section 16.34(1) should be amended to add sub-section (e) the training and experience of the operator.

Section 16.38 Rollover and Fire

This is a new provision and the discussion paper states that the provisions are required to protect operators if all exits are blocked in a rollover. The regulation applies only to a feller buncher, a timber harvester, and a timber processor when operating on a sloped forest worksite. There are no notes in the discussion paper explaining the reason these particular MEs are at higher risk of fire in a rollover incident.

Section 16.38(2) (a) requires a powered cutting tool to be attached to the inside of the cab which can effectively cut through steel guard bars and polycarbonate windows in a timely manner to provide an emergency means of escape. The discussion paper notes that factory tests show that a powered cutting tool can cut through four steel bars and bulletproof polycarbonate in seven minutes. The BCFED has concerns about the cutting tool:

- What is considered a proper powered cutting tool?
- How is the cutting tool powered? By battery? Is the battery continuously charged via the ME?
- How does the employer ensure that the cutting tool is charged? There is no requirement for the operator to do periodic inspections of the cutting tool.
- Typically, this type of tool when cutting metal creates sparks, thereby possibly increasing the risk of fire particularly if fuel has been spilled during the rollover.
- If the operator has been injured in the rollover they may not be able to use the cutting tool. They may best be rescued from the outside of the ME by a spotter. This scenario may have been contemplated in 16.38(2)(b) which requires the fire extinguisher to be placed on the outside of the cab.

- The employer must be required to have a working alone policy as per the Occupational Health and Safety Regulation, Part 4 General Conditions Working Alone or in Isolation, Sections 4.20.1-4.22.
- The BCFED **generally supports** the proposed amendments to Section 16.38 but recommends the Board do some research on the questions posed regarding the powered cutting tool. Minimally, the powered cutting tool should be required to be in “good working order.” The BCFED is somewhat reassured by the fact that the requirements of 16.38 are in addition to the requirements of Section 16.24: Alternate means of escape from the cab.
- In addition, the employer be required to develop a working alone policy as per Sections 4.20.1-4.22 of the OHSR.

Division 3 Additional Requirements for Specific Prime Movers

Section 16.40 ATVs

Section 16.40 (5) sets out the requirements for training ATV operators. The training must be done by a qualified person and include the following:

- (a) operating skills according to the ATV manufacturer’s instructions;
- (b) the ATV operator’s pre-operational inspection;
- (c) basic mechanical requirements; and
- (d) loading and unloading the vehicle for transport, if a job requirement.

Although the basic elements of the training are a requirement, the BCFED is concerned that because there is no specific standard required in 16.40(5) for ATV training, there will be inconsistent practices in the application of ATV training. The Ministry of Forests, Lands, Natural Resource Operations and Rural Development use the Canada Safety Council (CSC) ATV rider

training course. The six-to-eight-hour course includes an on-line/written component and time on the vehicle. The CSC course is also used in the “oil patch.”³

16.40(5) should also require operators of ATVs to renew their training, take a “refresher” and the BCFED recommends this be every three years to ensure consistent practice.

16.40(6)(7) sets out the requirements for safely loading and unloading ATVs. There is no requirement in this section to ensure the carrier vehicle is an appropriate size for the ATV it is carrying. Newer ATVs are larger. There have been incidents of the ATVs breaking the back window of the carrier vehicle when it is too small. For example, a Ford Ranger vs a Ford 150.

- The BCFED **generally supports** the proposed amendments for 16.40 but strongly urges the Board to make the CSC ATV rider training course mandatory and to require operators to renew their training every three years. A record of the training should be kept and updated as per 16.3. The BCFED also recommends this section be amended to include the requirement for an appropriately sized carrier vehicle be provided when transporting an ATV.

Conclusion

The BCFED appreciates the opportunity to provide our submission regarding the amendments to Part 16 Mobile Equipment. We are confident the WCB Board of Directors will seriously consider this submission and revise the proposed amendments based on our recommendations in support of improved safety for workers.

³ <https://canadasafetycouncil.org/product/atv-rider-course/>