

WCB CONSULTATION

Submission on the Proposed
2019 - 2022 Regulatory
Amendments Workplans

March 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 from across the province of British Columbia.

A handwritten signature in black ink, appearing to read 'W. Laird Cronk', written in a cursive style.

W. LAIRD CRONK

President

BC Federation of Labour

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Submission on the WCB proposed 2019-2022 Regulatory Amendment Workplan

The BC Federation of Labour (BCFED) represents more than 500,000 unionized workers through our affiliates in all industries across BC. The BC Federation of Labour is a long-standing major stakeholder at the Workers' Compensation Board (WCB) and recognized as 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 their surviving dependents.

The BCFED appreciates the opportunity to provide our submission with respect to the WCB's proposed Regulatory Amendment Workplan for 2019-2022.

This submission is done in consultation with our affiliated unions.

2020 Anticipated Public Hearings

1. Part 1, Part 5, Part 9, Part 22, Part 23 and Part 30, Multiple Sections – Flammable Liquid and Combustible Liquid

The intent of this amendment is to amend Sections 5.27 and 5.28 of the OHSR which currently requires the elimination or control of possible ignition sources when transferring or handling flammable liquids and excludes combustible liquids such as diesel fuel and propane despite these substances creating a similar risk of fire or explosion hazards. The amendment will also review the Part 5 definition of flammable and combustible liquids for consistency with the WHMIS 2015 and the BC Fire Code.

The BCFED supports these amendments that will provide greater protection for workers.

2. Part 3, Schedule 3 – A - Minimum Levels of First Aid

The BCFED contends that current minimum levels of First Aid in Part 3, Schedule 3-A that have only had minor changes since 1974, must be reviewed for all workplaces, not just high- risk, remote industries. A requirement of Schedule 3-A in determining the level of First Aid is the travel time away from a hospital, but there is no consideration of the response time of BC emergency services. In her 2016-2017, audit of ambulance wait-times in urban areas, Auditor General Carol Bellringer found that only half of the calls met the 9-minute time target on life threatening calls. Some improvements made to the system did not result in a substantial improvement to these findings. ¹

The BCFED recommends that consideration be given to response times of emergency services as well as distance from a hospital in developing amendments to Schedule 3-A.

The WCB sets the training requirements for First-Aid attendants in the Occupational First Aid, Reference and Training Manual. Requirements were updated in 2018 so it is curious that a further review is now being done to align with the 2017 CSA Standard Z1210-17.

The BCFED supports the review of First Aid training and aligning the current WCB requirements with the CSA standard as long as this review will not result in amendments less protective of workers.

3. Part 4, Section 4.62 – Handrails on Stairs

The purpose of the proposed amendments is to clarify that open stairways require a handrail on the wall side; determine if there should be different load requirements for permanent and temporary handrails and to provide consistency between the OHSR and the BC Building Code.

The BCFED supports this review to provide clarity and consistency.

¹ <https://globalnews.ca/news/5006294/b-c-ambulance-wait-times/>

4. Part 7, Section 7.19(1)(b)(i) Ionizing Radiation Lens Eye Dose Limit

The BCFED strongly supports the proposed amendments to Part 7, Section 7.19 (1)(b)(i) to bring the level of lens of eye dose limit in line with the International Commission on Radiation Protection (ICRP) recommendation of an equivalent dose limit of 20 mSv per year. This recommendation has been in place since 2011. The WCB is behind in amending the current allowable level of 150 mSv to the lens of a worker's eye. The European Union countries were required to implement the lower levels by February 2018. It is worrisome that workers will be exposed to 7 times the new lower levels for another possible 2 years. The implementation has other implications such as the introduction of new measuring equipment, consideration of a broader number of workers who may be exposed and additional training and education of workers.²

5. Part 12, Section 12.74 Automotive Lifts

The BCFED agrees with the review of this regulation and will reserve support of the proposed amendment until further discussion in the pre-consultation process.

6. Part 14, Section 14.39(2) Inconsistent Tower Crane Misadventures

In order to improve consistency and clarity on the use of a professional engineer to supervise an inspection of a crane in Section 14.39(2) the BCFED supports the intent of this review and will support amendments that will provide greater safety for workers.

² Marie Claire Cantone et al 2017 J. Radiol. Prot. 37 527 <https://iopscience.iop.org/article/10.1088/1361-6498/aa604b/pdf>

2021 Anticipated Public Hearings

1. Part 4, New Section – Hazard Identification and Risk Assessment

The BCFED strongly supports the new regulation on hazard identification and risk assessment **to not only apply beyond high risk workplaces but to provide clarity to these fundamental health and safety processes.**

We would agree with the Canadian Centre of Occupational Health and Safety:

“The meaning of the word hazard can be confusing. Often dictionaries do not give specific definitions or combine it with the term “risk”. For example, one dictionary defines hazard as “a danger or risk” which helps explain why many people use the terms interchangeably.

There are many definitions for hazard but the most common definition when talking about workplace health and safety is:

*A **hazard** is any source of **potential** damage, harm or adverse health effects on something or someone.”³*

The CSA Z1002 Standard "Occupational Health and Safety - Hazard identification and elimination and risk assessment and control" uses the following term:

*“**Risk** – the combination of the likelihood of the occurrence of a harm and the severity of that harm.”*

The risk assessment process involves:

- Identify hazards and risk factors that have the potential to cause harm (hazard identification).
- Analyze and evaluate the risk associated with that hazard (risk analysis, and risk evaluation).
- Determine appropriate ways to eliminate the hazard, or control the risk when the hazard cannot be eliminated (risk control)

³ https://www.ccohs.ca/oshanswers/hsprograms/hazard_risk.html

The confusing use of these terms is abundantly clear in Part 4, Working Alone or in Isolation, Section 4.20.2 that requires hazard identification, elimination and control and mentions nothing about doing a risk assessment, whereas in the Violence in the Workplace regulation, Section 4.28 there is a requirement to conduct a risk assessment with no reference to identifying the hazards.

2. Part 4, Section 4.58-Specifications for Guard and Guardrails

The BCFED agrees with the review of this regulation and the intent to bring the WCB requirements up to the higher standards for guardrail loads that are found in the BC Building Code and other jurisdictions. We are strongly supportive of the concern for worker safety in ensuring load requirements, improving understanding and compliance with testing load capacity of guardrails and with the provision of prescriptive design requirements taking into consideration: materials used, connection details and layout requirements.

3. Part 10, Multiple Sections – Lockout

The BCFED is concerned that this review is generated largely by the employer stakeholders and the statement made, in the WCB document that “recommendations have been made to remove the lockout requirement for routine maintenance providing safeguards are in place to protect workers” is highly concerning. The possibility of eroding the current regulation is troubling, given the stats from the WCB manufacturing high risk strategy. In the last 3 quarters of 2018 inspections, Section 10.4(1) had the highest number of violations out of 5,961 orders written⁴. Section 10.4(1) Lockout Procedures:

“When lockout of energy isolating devices is required, the devices must be secured in the safe position using locks in accordance with procedures that are made available to all workers who are required to work on the machinery or equipment.”

⁴ <https://www.worksafebc.com/en/about-us/what-we-do/high-risk-strategies/manufacturing>

Employers are, it would seem from these statistics, not providing workers with the basic requirement of safe work procedures to properly carry out their lockout duties. Failure to lockout can result in serious injuries and death. The BCFED is strongly opposed to any proposed amendments that would put workers at increased risk of injury or death.

4. Part 12, Multiple Sections- Safeguarding

The second highest number of violations in the WCB manufacturing high risk strategy, for three quarters of 2018 was Regulation 12, Section 12.2(b):

“ensure that a worker cannot access a hazardous point of operation”

These violations may be indicative of a lack of a comprehensive risk assessment, allowing inappropriate guarding to be used.

The BCFED is supportive of the review and the intent to propose an amendment to adopt the most recent version of the CSA standard Z432. The standard has a comprehensive risk assessment that is directed towards manufacturers and end users.

5. Part 13, Part 14, Part 20 and Part 31, Multiple Sections – Equipment Inspections

The BCFED supports the review of Equipment Inspections with the intent to define the term “safe for use” to clarify that the professional engineer must include structural, mechanical and control systems components in certificate inspections.

6. Part 14 and Part 19, multiple Sections-Zone Limiting/Anti-Collision Devices in Tower Cranes

The BCFED supports amendments that will ensure anti-collision devices and zone limiting devices are installed to avoid crane collisions and improve safety.

2022 Anticipated Public Hearings

1. Part 5, Multiple Sections- Combustible Dust

The BCFED strongly supports the WCB's plan to fully review the combustible dust requirements to identify and address issues and **urges the WCB to conduct this review earlier than 2022.**

There is no single regulation that lays out the requirements for combustible dust in a clear and concise manner. This lack of clear regulations is disturbing, considering that in 2012, only three months apart, BC had two catastrophic mill explosions in Burns Lake and Prince George. Four workers died in those explosions; Robert Luggie, a lead hand and Carl Charlie, the #1 cutoff saw operator and 20 other workers were seriously injured. The Lakeland explosion killed Glenn Roche and Alan Little and 22 workers were injured.

The combustible dust requirements are found in Part 5, Chemical Agents and Biological Agents, Section 5.81;

"If combustible dust collects in a building or structure on machinery or equipment, it must be safely removed before accumulation of the dust could cause a fire or explosion."

The following are a list of applicable regulations, policies and guidelines.

Regulation:

3.5 General Requirements

3.7 Special Inspections

3.10 Reporting Unsafe Conditions

4.72 Design and Operation

5.71 Combustible or Flammable Contaminants

Policy:

D3-115-3 Employer Duties: Wood Dust Mitigation and Control

D3-116-2 Worker Duties: Wood Dust Mitigation and Control

D3-117-3 Supervisor Duties: Wood Dust Mitigation and Control

Guidelines:

G 4.42 (1) Cleaning with Compressed Air

G5.71 (3) Location and Construction of Dust Collectors

G5.81 Sawmills and other Wood Products Manufacturing

The myriad of requirements for dealing with combustible dust and the difficulties in applying them for employers, workers and WCB prevention officers is well documented in the WCAT Decision:

WCAT-2015-03813, December 18, 2015; Warren Hoole, Vice Chair. ⁵

The Vice-Chair is concerned about the general nature of Section 5.81 and the non-binding requirements of the Guideline.

*22. Section 5.81 is of a **general nature**. More specific, **but not binding**, direction is found in associated “guideline” G5.81 Combustible Dust-Sawmills and other wood products manufacturing facilities. That guideline in turn relies on a standard of the National Fire Prevention Associations entitled NFPA: Standard for the Prevention of fires and Explosions in Wood Processing and Woodworking Facilities.*

The Guideline and the NFPA provide numerical thresholds for identifying the risk of explosions and identifying secondary and primary dust; measuring accumulation (at least 1/8th inch thick over at least 5% of upwards facing surfaces) and moisture content (less than 25%).

In this appeal the WCB Officer did not measure the accumulation but took photos only. Hoole says, in regard to measurements:

[29] “I further note in passing that it may be useful for a board officer to measure at least some of the dust material for moisture content and composition. It would help to establish the percentage of secondary dust present and whether it is capable of deflagration or explosion. I don’t know if convenient and effective sampling equipment is available; however, if it is, the Board may wish to take a more forensic approach to the evaluation of dust, at least in cases where there is a likelihood of a substantial administrative penalty.”

⁵ <http://www.wcat.bc.ca/research/decisions/pdf/2015/12/2015-03813.pdf>

The Vice-Chair has further concerns about the fire hazard created by the accumulation of dust:

[32] With respect to the risk of fire associated with accumulations of dust, either primary or secondary, I have already noted that there is no useful guidance in the policy, guidelines, or standard as to how much is too much. This is perplexing. Every sawmill will have at least some wood particles present near some form of potential ignition, such as hot machinery, electrical equipment, or some other ignition source. That is the very nature of sawmills and it would be helpful if the Board established realistic and effective parameters in this regard so that employers will clearly know what standards to follow.

[33] Indeed, as currently written and in relation to fire, section 5.81 of the OHS Regulation would effectively be infringed all the time at every mill in the Province. The potential breadth and vagueness of section 5.81 of the OHS Regulation as it relates to the accumulation of primary or secondary wood dust that could cause a fire (as opposed to an explosion or deflagration) therefore appears to me to be troublesome.

[34] I realize that the provision is intended to be applied in a common sense manner; however, it seems to me that it is over-broad as currently framed and does not provide suitable direction to the employer community about when the fire risk is engaged by any particular type, duration, or location of accumulation.

[35] I would therefore suggest that, in the same way as deflagration or explosion hazards are managed by concrete threshold measurements, similarly specific threshold measurements should be provided to inform employers when accumulations of primary and/or secondary dust will constitute a fire hazard.

[36] Here, although I have expressed concern about the potentially over-broad application of section 5.81 and the lack of concrete guidance in relation to fire, I am satisfied that this particular employer has permitted accumulations that pose a fire hazard.

The current regulatory requirements focus on sawmills and wood products manufacturing and do not consider other combustible dusts such as: metal (aluminum and magnesium), coal and carbon, plastics and organic dust (sugar, flour, and paper), and some textiles.

The BCFED urges the WCB to develop a specific regulation for combustible dust that is applicable to all industries that produce combustible dusts, that prescribes how employers deal with and measure combustible dust in a clear and concise manner.

2. Part 5 and Part 6, Multiple Sections – Reducing the Risk Posed by Toxic Process Gases

The BCFED strongly supports the review of Toxic Process Gases and the intent to include all operations using ammonia, to strengthen the provisions for personal protective equipment and emergency planning.

3. Part 9, Full Review – Confined Spaces

The BCFED strongly objects to the following statement in the workplan; *“Stakeholders have indicated the regulations are overly restrictive and may not be appropriate for every circumstance.”*

The BCFED reminds the WCB that we represent 500,000 unionized workers in BC, in addition to workers who are not represented by a union. Labour is considered a stakeholder along with employers and the WCB. We disagree with the above statement and ask that the stakeholders be identified as employers or the WCB. The BCFED supports a review of Part 9, but given the history in BC of multiple fatalities in confined space incidents under the current regulatory requirements, the BCFED will only support improvements to the regulation to better protect workers who are doing this very dangerous work.

4. Part 24, Sections 24.1 to 24.68 – Diving

The BCFED supports a full review and updating of this regulation to reflect advances in technology, equipment, and best practices.

Additional Projects

1. Part 4, Sections 4.24 to 4.31 – Violence, Bullying and Harassment

In February 2017, the BCFED submitted a comprehensive document titled ‘Workplace Violence: Proposed Regulatory Amendments.’ The BCFED formed a sub-committee made up of representatives from our affiliates and the committee worked for over a year developing the amendments. They looked at regulations in other jurisdictions, notably, the European Union, and discovered that these countries were focused on protecting workers from all psychosocial hazards. The purpose of the proposal was to address the alarming increase in workplace violence and Bullying and Harassment in British Columbia. In 2018, the WCB received 845 complaints of Bullying and Harassment. We know that many workers do not report incidents of violence and Bullying and Harassment. It becomes “part of their job”.

At the time the proposed amendments were submitted, the former BCFED OHS Director and the sub-committee met with the WCB and were assured that the Violence Prevention Regulation and the Bullying and Harassment Policy would be put on the regulatory workplan.

This never happened. Most disturbing for the BCFED, on the 2019 - 2022 Regulatory Workplan, Violence, Bullying and Harassment were added as an Additional Project with no time line for Public Hearings.

We are attaching the original BCFED submission on Proposed Regulatory Amendments for Workplace Violence, February, 2017 in order that we don’t repeat our original rational and research and proposed language in this submission.

The BCFED believes this is a place to begin the review and consultation work required to develop a leading edge, wholistic regulation to prevent all psychological injuries.

The BCFED demands this regulatory review be put into the 2020 workplan to provide greater protection for workers against all forms of workplace violence. We also include in this submission our comments on the proposal to look at the Bullying and Harassment Policy:

The BCFED recommended in our submission on the 2016-2018 regulatory workplan amending the Violence in the Workplace Regulation, Section 4.27-4.31. In early 2017 the BCFED submitted proposed amendments to this regulation. The proposed amendments included moving the requirements of the workplace bullying and harassment policy into the regulation where it rightly belongs. Also added to the amendments were requirements to prevent family and relationship violence (formerly called domestic violence). Since then, the BCFED has had no response from the WCB on the proposed amendments.

The BCFED considers a comprehensive review of the “Workplace Conduct Regulation”, “Violence Prevention Regulation” and the “Bullying and Harassment Policy” a high priority and recommends that it be added to the 2019-2020 regulatory workplan. Simply, reviewing the Bullying and Harassment Policy will not provide an effective regulatory framework to protect workers against incidents of violence. Workers across many industries are at daily risk of being bitten, hit, punched, sworn at, bullied and harassed. Those most at risk work in health care, including elder care, social services, retail, transportation, and education.

The federal government has passed Bill C-65 amending the Canada Labour Code to strengthen the existing framework for the prevention of harassment and violence, including sexual harassment and sexual violence, in the workplace. This legislation was acted upon as a result of an on-line survey and consultations across Canada that showed 60% of survey participants had experienced harassment, 21% had experienced violence and 3% had experienced sexual violence.

A recent study by the BC Teachers’ Federation found that 90% of teachers face violence on the job.

2. Part 31, Full Review – Wildland Firefighters

The BCFED expects that wildland firefighting will continue to become increasingly risky as the effects of climate change intensify and population growth continues in BC. Predictions are that fires will be more frequent and larger in the future, occurring even more in the wildland-urban interface. The BCFED thanks the BC Government and Service Employees Union for the following analysis of the current regulatory requirements.

- Currently, Part 31 Firefighting does not apply to wildland firefighting, but some of it should or could apply, and/or be adapted to be appropriate to wildland firefighting. For example, Part 31's specific requirements around PPE, for the inspection and maintenance of equipment, for written safe work procedures for certain types of fires, and to manage fatigue and stress all have relevance for wildland firefighting. The BC Wildfire Service already has many safe work practices/procedures in place which could be adapted to be included in a wildland-specific regulation.
- Wildland fires are considered by WCB to be a 'forestry operation,' and are covered by Part 26. In some ways, this is like fitting a square peg into a round hole. For instance, in the initial stages of a fire, wildland fire fighters are not really able to meet the requirements of Section 26.2 to plan a forestry operation before work commences - it just doesn't fit the context of the work. Similarly, the requirements under Section 26.11 for danger trees to be identified, assessed and removed or otherwise dealt with before work commences is similarly challenging to apply to the context of the initial stages of a wildfire. It would be better to have a regulation that is specific to wildland firefighting, rather than trying to "sort of" apply regulations that are really written for commercial forestry operations.
- Wildland fire fighting involves extensive aviation operations, both fixed wing and rotary. A wildland-specific regulation could address gaps between the Canadian aviation regulations and wildland fire fighting operations, as well as mandating that relevant improvements/learnings from the aviation world be shared with joint committees in wildland fire organizations.
- The BC Wildfire Service currently uses the Incident Command System, which has specific training and experience requirements for incident commanders to be certified to manage certain types of incidents. This needs to be better implemented within the BC Wildfire Service, and it may be appropriate to add this to regulation to lend greater strength to the requirement for people in charge of wildland fires to have the necessary certification to be in those positions.

The BCFED recommends the WCB put the review of Part 31 on the 2020 public hearing workplan as many more workers are expected to be involved in this very high-risk work therefore the WCB must ensure that this work is properly regulated.

Conclusion

The Federation recommends that the WCB Board of Directors seriously consider this submission and revise their proposed 2018-2022 workplans accordingly, in support of healthier and safer workplaces and work activities, and fair and equitable compensation for all workers.

SM/mp

move**up**

WCB Consultation-Proposed 2019-2022 Regulatory Amendment

The BC Federation of Labour office is located on unceded xʷməθkʷəy̓əm (Musqueam), səliilwətaʔt (Tsleil-Waututh), Skwxwú7mesh (Squamish) territories.