

ONGOING REGULATION REVIEW – WORKPLAN FOR 2003

1. ISSUE

At issue is the Policy and Regulation Development Bureau's ("Bureau") 2003 workplan for reviewing occupational health and safety regulations ("Workplan").

The Workplan has been drafted based on the recommendations contained in an October 2002 report entitled, *Review of the Occupational Health and Safety Regulatory Review Process*, that was completed for the Panel of Administrators ("Panel") by an external consultant.¹

2. BACKGROUND

In March of 2002, the Panel approved a *Framework for Reviewing the Occupational Health and Safety Regulation* ("Framework"). The Framework outlines two phases of review activities that would be undertaken over the succeeding 18 months.

The first phase addresses work that is currently in progress. The following issues were identified for completion during this phase:

- amendments of the occupational first aid provisions;
- identification and elimination of duplication and redundancy within the *Occupational Health and Safety Regulation* ("OHSR");
- consideration of adopting occupational exposure limits as recommended by an external authority in place of the existing table of exposure limits provided in the *OHSR*;
- transferring jurisdiction where appropriate; and,
- consolidating health and safety program requirements in the Core Requirements of the *OHSR*.

With respect to the second phase of activities, the Framework does not provide for a list of issues.² However, it does specify that the second phase will concentrate on identifying existing regulations that are problematic to industry, and where appropriate, adopt performance-based regulations in place of prescriptive requirements. A review of the *OHSR* will also be undertaken to examine those regulations that are rarely used, often varied with the approval of the Prevention

¹ This report was tabled at the November 19, 2002 Panel meeting.

² In order to develop a comprehensive Workplan to support the Framework, the Bureau established an internal working group with representation from the Prevention Division. This working group is responsible for developing a detailed plan that addresses resourcing requirements and specific timeframes for identified tasks, as well as the priorities to be addressed in Phase 2.

Division, and/or overly burdensome and complex in relation to the risk to worker health and safety.

As part of the terms of reference for the external report on the regulatory review process, the consultant was asked to determine if the Framework approved by the Panel provided the most appropriate approach to reviewing the *OHSR*. The consultant concluded that the Framework provides a coherent approach and should facilitate the development of regulations that are both proportionate to the risk in the workplace, and responsive to the provincial government's desire to reduce the "red tape and regulatory burden" that does not impact worker health and safety.

Notwithstanding the consultant's general acceptance of the current Framework, specific recommendations were made with respect to the following issues:

- Review Framework
- Workplan and Timelines
- Public Consultation
- Structuring Regulations and Associated Documents
- Structuring Resources to Support the Process
- Public Hearing Process

With respect to the development of the Workplan, the discussion section below provides additional detail on the adoption of guiding principles for regulation review; mechanisms for issue identification; criteria for issue prioritization and regulation development; and, identification of roles and responsibilities.

3. DISCUSSION

3.1 Guiding Principles

In developing a workplan or process model for regulation review, it is useful to consider a set of guiding principles. By reflecting upon the Board's statutory obligations and mandate as set out in Part 3 of the *Workers Compensation Act*, the Bureau has identified the following principles:

- Ongoing review will ensure that the Board's regulations are consistent with current workplace practices, technological advances and other changes affecting occupational health and safety and occupational environment.
- The process of review will be conducted in a transparent and accessible manner that provides for meaningful participation by affected workplace parties.

- Regulation development will be concerned with occupational health and safety generally, and with the maintenance of reasonable standards for the protection of health and safety of workers in British Columbia and the occupational environment in which they work.
- In drafting regulations the Board will adopt plain language and will endeavor to strike a reasonable balance between establishing standards or practices for controlling risk and providing flexibility to enable workplaces to determine appropriate measures for achieving compliance.

3.2 Issue Identification

In an effort to identify specific regulations requiring review, the Bureau sent out a letter in June of 2002 to over 400 stakeholders. The correspondence was generic in nature and posed the following questions:

- Are there any regulations you consider particularly problematic in your industry? If so what are those specific regulations and why are they problematic?
- Which regulations do you consider reasonable standards for the protection of workers?
- Which regulations could be more appropriately structured (i.e. more or less detailed) for better results?

Based on the results of this consultation process and a review of outstanding issues identified by individual stakeholders, the former Health and Safety Advisory Committee, and the Prevention Division, a list of potential issues for review has been compiled.

3.3 Issue Prioritization & Regulation Development

In determining the relative priority of issues for review, the Bureau is mindful of the following general factors:

- the Board's statutory mandate;
- the government's deregulation timeframes;
- the Board's capacity to resource the process; and,
- the ability of stakeholders to respond to the issues in a timely manner.

Specific criteria have also been developed to ensure that the commitments made by the Board are both appropriate and manageable. The following criteria are relevant to both the issue prioritization process and the regulation development process:

- **Relevance:** The extent to which regulations continue to make sense with respect to the problems or conditions they are intended to address. Consideration may be given to changes in workplace practice, risk, or technology. Consideration may also be given to whether a regulation is the preferred public policy instrument for achieving the intended objectives. This may include an examination of the number of orders or variances written against a regulation under review to determine the extent to which it is utilized.
- **Appropriateness:** The extent to which regulations are logical given the specific objectives to be achieved. This factor includes consideration of whether the issue may be best addressed through application of a performance-based regulation rather than a prescriptive regulation.
- **Achievement of Intended Results:** The extent to which goals and objectives have been realized.
- **Acceptance:** The extent to which workplace parties judge a regulation to be satisfactory. This factor includes consideration of whether a regulation is overly complex.
- **Balance:** The extent to which regulations provide a proportionate response, given due regard to the nature of the risk and the nature of the regulatory burden (i.e., whether the regulation is onerous for employers relative to the risk to worker health and safety).
- **Cost Effectiveness:** The extent to which regulations provide effectiveness in health and safety outcomes, at the least cost, in terms of compliance and economic impact. This factor may include consideration of the approach taken in other relevant jurisdictions.
- **Secondary Impacts:** The extent to which other significant consequences, either intended or unintended and either positive or negative, have occurred.

3.4 Roles and Responsibilities within the Board

To effectively support the regulation review process, the roles and responsibilities of participants should be clearly identified and understood.

It is contemplated that the Bureau will continue to be responsible for leading and coordinating the regulation review process, and developing and presenting final recommendations for consideration by the Panel. Specific areas of responsibility include the following:

- identify issues, recommend priorities, and develop work plans;
- implement work plans;
- work with the Prevention Division to identify internal and external sources of relevant expertise;
- ensure the required analysis is conducted to support informed decision-making;
- develop draft regulations and related policy documents;
- conduct consultation with affected parties;
- chair public hearings;
- develop and present final recommendations for the Panel's consideration; and,
- ensure all statutory and government requirements are met, including compliance with notice provisions, statutory timeframes relating to effective dates, Regulatory Reform Policy, deposit of regulation with the Registrar of Regulations, and publication of regulations in the BC Gazette.

It is also contemplated that the Prevention Division will continue to provide objective technical support to the regulation review process, and implement and enforce the *OHSR*. Specific areas of responsibility include the following:

- provide technical and scientific input;
- indicate what is practical from an implementation perspective;
- maintain a comprehensive list of issues identified within the Division;
- identify and coordinate Divisional "subject matter" experts;
- assist the Bureau with prioritizing issues in accordance with pre-defined criteria;
- communicate any significant unresolved technical concerns formally to the Panel through the President/CEO;
- develop implementation plans for Panel approval; and,
- implement regulatory changes.

3.5 Stakeholder Consultation

The *Act* provides a mandatory requirement for consultation in the form of a public hearing.³ The Board also has discretion to engage in additional consultations with persons considered to be affected by a proposed regulation.

The Workplan recognizes that meaningful involvement of stakeholders is vital to the success of the regulation review process. It is contemplated that the views of stakeholders would be obtained through a three-phased approach to consultation:

- macro-based consultation through designated stakeholder advisors to the Bureau;

³ Section 226 of the *Act*.

- industry sector specific consultation during the regulation development process; and,
- public hearing on final proposal and draft amendments.

Each of these phases is discussed in detail below.

Macro-based Consultation:

In the past, the approach to consultation for regulation review was consensus-based through a representational advisory committee (i.e., the previous Health and Safety Advisory Committee). This consensus-based approach created considerable challenges in bringing issues to a timely resolution.

To address issues regarding the previous committee model, it is proposed that an advisory group be established with representation from both the worker and employer communities. The operation of the proposed advisory group would not be consensus-based. Rather, it would be the Bureau's responsibility to make determinations based on the advice/comment received from each member. In addition, the means of communication would primarily be through written submissions rather than face-to-face group meetings.

In order to establish the group of designated advisors, the BC Federation of Labour and the Employers' Forum to the Workers Compensation Board would be contacted to provide nominees. The Workers' Advisers Office and the Employers' Advisers Office would also be invited to participate. The Bureau would have discretion to add other individuals or representative as required.

It is proposed that the advisory group have a formal role at two specific points in the process: during the initial priority setting process, and at the conclusion of sector-based consultation prior to release of draft regulatory language to public hearing.

Industry Sector Specific Consultation:

This consultation phase also takes place prior to a public hearing, but is focused on the technical issues concerning specific implications on worker health and safety as identified by the Prevention Division during regulation development.

The objective of this consultation phase is to obtain feedback from those key employer and worker representatives with direct experience in the affected industry sector and with a working knowledge of the regulation under review.

To identify these key stakeholders, the Bureau would develop a consultation strategy with the assistance of the Prevention Division. Through the work of its Industry Services Managers and various educational initiatives, the Prevention Division is well positioned to identify the necessary participants. The Bureau

would also seek the advice of the Ministry of Skills Development and Labour to identify other interested parties not typically represented by large worker or employer associations. Once drafted, the consultation strategy would be presented to the advisory group for comment.

Public Hearing:

The results of the macro-based and industry specific consultations would be presented in the submission to the Panel requesting approval to release proposed amendments to public hearing. A public hearing is the final phase of consultation and the most inclusive.

Once approval to hold a public hearing is received, the Bureau would work with the Board's Communications Department to develop an appropriate campaign to ensure that stakeholders are aware of the proceedings and the opportunity to participate. As required under the *Act*, notice of the hearing would be published in various newspapers. The number of venues would be dependent on the level of controversy/interest in the proposed regulation.

It should be noted that in each of the above 3 phases of stakeholder consultation, the Bureau would utilize the Internet to maximize opportunities for all interested parties to participate.

4. ITEMS PROPOSED FOR REVIEW

The items listed in Appendix 1 are proposed for review during 2003 and have been organized by public hearing date. It is anticipated that there will be two major public hearing dates in 2003 – one in March and the other in June.

In addition to the specific items targeted for either a March or June public hearing date, Appendix 1 also identifies general projects that would be undertaken in 2003 and into the first six months of 2004.

APPENDIX 1
SUMMARY OF REGULATORY PROVISIONS TO BE REVIEWED

Public Hearing – March, 2003

SECTION OR PROJECT	ISSUE
Part 33 , Occupational First Aid	Proposed amendments to establish performance-based regulations for Occupational First Aid have been drafted. At its meeting on August 27, 2002, the Panel approved the release of the proposed amendments to public hearing.
Section 5.48 (Table 5-4) , Occupational Exposure Limits	The Bureau has developed proposed amendments that would replace Table 5-4 of the <i>OHSR</i> with the American Conference of Governmental Industrial Hygienists' 2002 Threshold Limit Values ("TLVs") for chemical and biological substances. The proposed amendments would also incorporate the same TLVs into the <i>Regulations for Occupational Health and Safety in Agriculture</i>).
Duplication and Redundancy Review – Various sections	<p>A package of proposed amendments has been prepared to eliminate duplications or redundancies in the <i>OHSR</i>. The package includes the following categories:</p> <ul style="list-style-type: none"> • removing references to the statutes and regulations of other agencies that apply in any event, • removing provisions whose sole function is to provide a cross references from one part of the Board's regulation to another part, • consolidating all the provisions on fall protection into Part 11 of the <i>OHSR</i>, • removing specific provisions that repeat general duty provisions in the <i>Act</i> or regulation relating to authorizing the use of equipment, following manufacturers' instructions, duties of supervisors, the training of workers, and the capacity of buildings, structures and equipment, • deleting provisions relating to aircraft that are within Federal rather than Provincial jurisdiction, and • replacing the statements in many regulations allowing the Board to accept alternative standards with one general section.

Public Hearing – June, 2003

SECTION OR PROJECT	ISSUE
Part 22, Underground Workings	This issue concerns adopting the standards provided by the <i>Mines Act</i> in place of the current requirements in Part 22. Consideration would be given to retaining certain provisions currently provided in the <i>OHSR</i> where necessary due to the differences between mining activities and civil underground workings.
Sections 4.84 – 4.106, Occupational Environment Requirements	<p>This issue concerns outdated provisions relating to lunchrooms, washrooms and the storage of clothing. Application is restricted to factories, offices and shops. Though these terms are defined, they are very difficult to apply in practice. As a result, what appear to be irrational distinctions may result between employers in indifferent types of business.</p> <p>The washroom requirements are out of date and unrealistic. They are not consistent with the <i>B.C. Building Code</i> and can sometimes be very onerous, for example, requiring 4 separate washrooms for small stores and restaurants (2 for staff and 2 for the public).</p>
Part 7, Noise, Vibration, Radiation and Temperature	<p>A review of Part 7 will be undertaken in an effort to adopt performance-based regulations.</p> <p>Stakeholders have raised concerns over the complexity and onerous nature of this Part. For example, many of the requirements concerning vibration and radiation are very technical and require professional expertise for implementation.</p> <p>There is also a question of relevance with respect to a number of requirements. Data from the Prevention Division indicates that approximately 50% of the sections are not referenced.</p>
Part 11, Fall Protection	<p>Although this Part is relatively well utilized, it is identified as appropriate for review because the issue lends itself to a performance based approach. Many of the requirements are considered “best practices” and may appropriately be referenced in a code of practice rather than a regulation.</p> <p>As well, a number of the requirements are considered by industry to be very prescriptive and complex. Stakeholders have requested greater flexibility in determining appropriate control mechanisms. The prescriptive nature of this Part has led to some frustration in situations where specific regulations do not reflect technical advancements made in the industry. As a result, in some cases, the regulations require employers to adopt a control mechanism that is not as effective as available alternatives.</p>

SECTION OR PROJECT	ISSUE
<p>Part 13, Ladders, Scaffolds and Temporary Platforms</p>	<p>This Part deals with a large variety of equipment for supporting and lifting people at heights. It is difficult for prescriptive sections to keep up to date with changes in equipment, the types of equipment in use and what they are used for.</p> <p>Employers have identified a number of problematic requirements within Part 13 that are considered onerous. One example can be found at section 13.18(1). This section states that "each major component of manufactured scaffolding must be clearly marked to identify the manufacturer" and subsection (2) requires at the workplace a copy of the manufacturer's technical data for each component in use. Stakeholders in the scaffolding industry have found the section unworkable since in practice manufacturers do not mark their scaffolding; many manufacturers are outside the province; and, compliance would not necessarily achieve the object of ensuring components are not mismatched or overloaded.</p> <p>There is a further question of relevance with respect to various requirements contained in this Part. Data from the Prevention Division reveals that approximately 50% of the sections are not referenced.</p> <p>A review of this Part will serve to facilitate the adoption of performance-based regulations.</p>
<p>Regulations for Agricultural Operations ("Agriculture Regulations")</p>	<p>The <i>Agriculture Regulations</i> came into effect in 1993. The <i>OHSR</i> came into effect in 1998. For historical reasons, the <i>Agriculture Regulations</i> were not consolidated at the time the <i>OHSR</i> was developed. It is proposed that a comprehensive review be undertaken with the aim of consolidating the <i>Agriculture Regulations</i> into the <i>OHSR</i>. Where appropriate, certain exemptions may be required to facilitate the consolidation.</p>

Other Projects:

In addition to the projects set to proceed to either a March or June public hearing, it is proposed that work commence on a number of general projects. Over the course of 2003 and into the first six months of 2004, the Bureau, with the cooperation of the Prevention Division, would undertake the following:

- Consult with the oil and gas industry in an effort to develop performance-based regulations suitable for Part 23 of the *OHSR*. This may serve as a pilot project for determining the best approach to developing performance-based regulations for specific industries.

- Review the referenced standards in the *OHSR* and Prevention Division Guidelines and identify any “redundancies”, “duplications” and/or “contradictions”.
- Identify industry/activity specific requirements that may be appropriately addressed/consolidated in the general hazard requirement sections of the *OHSR*.
- Identify those Parts of the *OHSR* that, while maintaining reasonable standards for the protection of health and safety, may be suitable for adoption of a more performance based compliance model.