

Consultation on Proposed Amendments to Section 7 of Regulation 851 (Pre-Start Health and Safety Reviews in Factories)

Introduction

The Ministry of Labour, Training and Skills Development (MLTSD) is proposing to amend section 7 of the Industrial Establishments regulation ([Regulation 851](#)) under the [Occupational Health and Safety Act](#) (OHSA), which requires that a pre-start health and safety review (PSR) be carried out in [factories](#).

Between February 3 and April 30, 2020, the ministry held a consultation to get stakeholder feedback about the current pre-start health and safety review requirements and the [current PSR guideline](#). The feedback received indicated that while there is general support for PSRs and their role in proactively protecting worker health and safety, there was strong support for changes that would clarify and streamline the regulatory requirements.

Based on the feedback received during that consultation, the ministry is now proposing amendments to Section 7 and the table to that section, including:

- Maintaining the existing elements of section 7 but streamline and re-order the requirements so they are easier to understand.
- Removing reference to an engineer needing to affix his or her seal to the report. This requirement is and would continue to be addressed under the [Professional Engineers Act](#). The guideline would be revised to clearly address the requirements for engineers' seals under that statute and the role of the Professional Engineers Ontario (PEO) in regulating the engineering profession.
- Revoking existing subsections (5) through (9), which set out exemptions, and move them into the Table to section 7.
- Revising and streamlining the descriptions of the circumstances for Items 1, 7, and 8 in the Table to section 7;
- Revising and streamlining the descriptions of the exemptions for Items 2 and 7 in the Table to section 7; and
- Adding a new exemption to Item 8 in the Table to section 7 for portable devices that extract smoke, fumes or other substances that do not exhaust to the outdoors.

Proposal for Section 7

If the amendments are approved, it is anticipated that a revised section 7 could look like this:

(1) In this section,

“apparatus” means equipment or a machine or device; (“appareil”)

“protective element” means a shield, a guard, an operating control acting as a guard, a locking device or any other device preventing access; (“élément protecteur”)

“spray booth” means a spray booth as defined in Ontario Regulation 213/07 (Fire Code) made under the Fire Protection and Prevention Act, 1997; (“cabine de pulvérisation”)

(2) Subject to subsection (6), if a circumstance described in the Table to this section will exist and a listed provision of this Regulation applies, the owner, lessee, or employer at a factory shall ensure a pre-start health and safety review is conducted,

(a) when a new apparatus, structure or protective element is to be constructed, added or installed or a new process is to be used; or

(b) when an existing apparatus, structure, protective element or process is to be modified and one of the following steps must be taken to obtain compliance with the applicable provision:

1. 1. New or modified engineering controls are used.

2. 2. Other new or modified measures are used.

3. 3. A combination of new, existing or modified engineering controls and other new or modified measures is used.

(3) A pre-start health and safety review shall be conducted by,

(a) a professional engineer for items 1, 2, 3, 4, 5, 6 or 7 of the Table to this section;

(b) a professional engineer or by a person who in the opinion of the owner, lessee or employer possesses special, expert or professional knowledge or qualifications appropriate to assess any potential or actual hazards, for item 8 of the Table to this section.

(4) The person conducting the pre-start health and safety review shall prepare, date and sign a written report containing details of,

(a) the measures to be taken for compliance with the relevant provisions of this Regulation that are listed in the Table to this section;

(b) the structural adequacy of the apparatus or structure if item 3 or 7 of the Table to this section applies;

(c) the measures to be taken to protect the health and safety of workers if testing is to be performed prior to the operation or use of the apparatus, structure or process, as the case may be; and

- (d) his or her special, expert or professional knowledge or qualifications if the person is not a professional engineer,
and provide it to the owner, lessee or employer.
- (5) When a pre-start health and safety review is required, the owner, lessee or employer shall ensure that the apparatus, structure, protective element or process is not operated or used, as the case may be, unless the review has been conducted, and,
- (a) all measures identified in the review as being required for compliance with the relevant provisions of this Regulation that are listed in the Table to this section have been taken; or
 - (b) if some or all of the measures specified in clause (a) are not taken, the owner, lessee or employer has provided written notice to the joint health and safety committee or the health and safety representative, if any, of what measures have been taken to comply with the relevant provisions of this Regulation that are listed in the Table to this section.
- (6) Despite subsections (2) to (5), a pre-start health and safety review is not required,
- (a) at a logging operation, or
 - (b) if an exemption set out in the Table to this section applies.
- (7) The joint health and safety committee or health and safety representative, if any, shall be provided copies of
- (a) the written report required by subsection (4) before the apparatus, structure, protective element or process is operated or used, as the case may be; and
 - (b) documents establishing an exemption set out in the Table of this section, if any, upon request.
- (8) The following documents shall be kept readily accessible in the workplace for as long as the apparatus, structure, or protective element remains in the workplace or the process is used in the workplace,
- 1. the written report required by subsection (4) together with any supporting documents; and
 - 2. any documents establishing an exemption set out in the Table to this section.

Proposal for the Table to Section 7

Item	Circumstances	Applicable provisions of this Regulation	Exemptions
1.	<ol style="list-style-type: none"> 1. More than 235 litres of flammable liquids are stored in a building, room, or area. 2. Flammable liquids are dispensed in a building, room or area. 	Subsections 22 (1), (2) and (4)	N/A
2.	<p>Any of the following are used as protective elements in connection with an apparatus:</p> <ol style="list-style-type: none"> 1. Safeguarding devices that signal the apparatus to stop, including but not limited to safety light curtains and screens, area scanning safeguarding systems, radio frequency systems and capacitance safeguarding systems, safety mat systems, two-hand control systems, two-hand tripping systems and single or multiple beam systems. 2. Barrier guards that use interlocking mechanical or electrical safeguarding devices. 	Sections 24, 25, 26, 28, 31 and 32	<ol style="list-style-type: none"> 1. The protective element was installed at the time the apparatus was manufactured, and <ol style="list-style-type: none"> a) The apparatus and the protective element were both manufactured in accordance with and meet current applicable standards, or have been modified to meet current applicable standards. b) The apparatus is installed in accordance with the manufacturer's instructions and current applicable standards. 2. The protective element was not installed at the time the apparatus was manufactured, and <ol style="list-style-type: none"> a) The apparatus and the protective element were both manufactured in accordance with and meet current applicable standards, or have been modified to meet current applicable standards. b) The apparatus and the protective element have both been installed in accordance with the manufacturer's instructions and current applicable standards, if any.
3.	Material, articles or things are placed or stored on a structure that is a rack or stacking structure.	Clause 45 (b)	A rack or stacking structure is designed and tested for use in accordance with current applicable standards.

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Item	Circumstances	Applicable provisions of this Regulation	Exemptions
4.	A process involves a risk of ignition or explosion that creates a condition of imminent hazard to a person's health or safety.	Section 63	A process conducted inside a spray booth that is manufactured and installed in accordance with current applicable standards.
5.	The use of a dust collector involves a risk of ignition or explosion that creates a condition of imminent hazard to a person's health or safety.	Section 65	N/A
6.	A factory produces aluminum or steel or is a foundry that melts material or handles molten material.	Sections 87.3, 87.4, 87.5 and 88, subsections 90 (1), (2) and (3), and sections 91, 92, 94, 95, 96, 99, 101 and 102	N/A
7.	<p>The construction, addition, installation or modification relates to</p> <ol style="list-style-type: none"> 1. a travelling crane, overhead crane, monorail crane, gantry crane, jib crane, or other lifting device suspended from or supported by a structure, or 2. a vehicle lift or hoist. 	Sections 51 and 53	<ol style="list-style-type: none"> 1. The supporting structure was originally designed for the travelling crane, overhead crane, monorail crane, gantry crane, jib crane, or other lifting device that is being installed or used. 2. A vehicle lift or hoist that is certified as meeting current applicable standards.
8.	A process that uses or produces a hazardous biological or chemical agent and uses a ventilation system that is installed or modified to limit the exposure of a worker in accordance with any exposure limit set out in Regulation 833 of the Revised Regulations of Ontario, 1990 (Control of Exposure to Biological or Chemical Agents)	Sections 127 and 128	A portable device that extracts smoke, fumes or other substances that does not exhaust to the outdoors.

Feedback

Please let us know if you support the proposed amendments to section 7 and to the conditions and exemptions in section 7. Please indicate why or why not.

To compare with the current requirements, please see [section 7 of Regulation 851](#).

Guideline

Feedback from the consultation earlier this year also indicated very strong support for revisions to the [current PSR guideline](#) that would clarify and strengthen that resource. The ministry is working on revisions to the guideline that would reflect the proposed changes to the PSR requirements and provide clearer, more helpful compliance assistance to workplace parties.

Regulatory Impact Assessment

All ministries are subject to requirements set out in the *Reducing Regulatory Cost for Business Act, 2017* (RRCBA), which came into force January 1, 2018. As part of its obligations under the RRCBA, the Ministry of Labour, Training and Skills Development conducted a Regulatory Impact Analysis (RIA) of these proposed amendments. A regulatory impact assessment is a process of identifying and assessing the incremental benefits and costs of regulations and non-regulatory alternatives.

The ministry does not anticipate that there will be any additional costs to businesses as a result of the proposed amendments. The clarification and streamlining of the existing requirements are anticipated to result in savings to the affected workplaces that are required to complete pre-start health and safety reviews under Regulation 851.

Notice to Consultation Participants

Submissions and comments provided to the Ministry of Labour, Training and Skills Development (the Ministry) are part of a public consultation process to solicit views on proposed amendments to pre-start review requirements in the Industrial Establishments Regulation. This process may involve the Ministry publishing or posting to the internet your submissions, comments, or summaries of them. In addition, the Ministry may also disclose your submissions, comments, or summaries of them, to other parties during and after the consultation period.

Therefore, you should not include the names of other parties (such as the names of employers or other employees) or any other information by which other parties could be identified in your submission.

Further, if you, as an individual, do not want your identity to be made public, you should not include your name or any other information by which you could be identified in the main body of the submission. If you do provide any information which could disclose your identity in the body of the submission, this information may be released with published material or made available to the public. However, your name and contact

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information provided outside of the body of the submission (such as that which may be found in a cover letter, on the outside of an envelope, or in the header or signature of an email) will not be disclosed by the Ministry unless required by law. An individual who provides a submission or comments and indicates a professional affiliation with an organization will be considered a representative of that organization and his or her identity in their professional capacity as the organization's representative may be disclosed.

Personal information collected during this consultation is under the authority of section 70 of the *Occupational Health and Safety Act* and is in compliance with subsection 38(2) of the *Freedom of Information and Protection of Privacy Act*.

If you have any questions regarding the collection of personal information as a result of this consultation, you may contact the Ministry's Freedom of Information Office, 400 University Avenue, 10th Floor, Toronto, Ontario, M7A 1T7, or by calling 416-326-7786.

Comments Due Date

March 11, 2021

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