

Overview of proposed amendments to

Part 4: General Conditions

Section 4.3, Safe machinery and equipment

Section 4.3 (1) (b) (i) states that the employer must select, use and operate tools and machines in accordance with the manufacturer's recommendations and instructions.

Section 4.3 (4) (a) requires any modification of a tool, machine or piece of equipment to follow the manufacturer's recommendations and instructions.

As manufacturers often recommend the use of their own products or authorized dealer, the regulation has the effect of prohibiting the use of after market or competing products which may be safer, cheaper and/or more reliable.

Referring only to the manufacturer instructions does not restrict trade and is consistent with the phrasing in other jurisdictions. As a result, it is proposed to remove the reference to manufacturer recommendations from both sections.



PART 4: GENERAL CONDITIONS

BUILDINGS, STRUCTURES AND EQUIPMENT

Safe machinery and equipment

- 4.3** (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 ~~recommendations and~~ instructions, if available,
 - (ii) safe work practices, and
 - (iii) the requirements of this Regulation.
- (2) Unless otherwise specified by this Regulation, the installation, inspection, testing, repair and maintenance of a tool, machine or piece of equipment must be carried out
- (a) in accordance with the manufacturer's instructions and any standard the tool, machine or piece of equipment is required to meet, or
 - (b) as specified by a professional engineer.
- (3) 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.
- (4) Unless otherwise specified by this Regulation, any modification of a tool, machine or piece of equipment must be carried out in accordance with
- (a) the manufacturer's ~~recommendations and~~ instructions, if available,
 - (b) safe work practices, and
 - (c) the requirements of this Regulation.
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Explanatory Note

Existing section 4.3 (1) (b) (i) states that the employer must select, use and operate tools and machines in accordance with the manufacturer's recommendations and instructions. The manufacturer's recommendations are often not enforced as the manufacturer will normally recommend the use of its product. The regulation, as currently worded, prohibits the use of after market or competing products which may be safer, cheaper and/or more reliable. The current provision is trade restrictive.

The current language of section 4.3 (4) (a) requires any modification of a tool, machine or piece of equipment to follow the manufacturer's recommendations and instructions. Instructions are mandatory, but recommendations can be self-serving. For example, a recommendation to use only the authorized dealer or the manufacturer's parts or services, when other options are available which are more cost effective and equally safe, is self-serving and restricts trade.