

Western Australia

Dangerous Goods Safety (Explosives) Amendment Regulations 2013

Contents

1.	Citation	
2.	Commencement	
3.	Regulations amended	
4.	Regulation 3 amended	
5.	Regulation 10 amended	
6.	Regulation 17 amended	
7.	Regulation 20 amended	
8.	Regulation 21A inserted	
	21A. Extension of period for which security card is valid	3
9.	Regulation 22A inserted	
	22A. Replacement of security cards	5
10.	Regulations 23, 24 and 25 replaced	
	23. Authorisation by licence holder to have access to explosive	5
	24. Licence holder to keep records as to secure nominees	7
	25. Duties of secure nominees	8
11.	Regulation 29 amended	
12.	Regulation 30 amended	
13.	Regulation 36 amended	
14.	Regulation 45 amended	
15.	Regulation 46 amended	
16.	Regulation 65 amended	
17.	Regulation 77A inserted	
	77A. Explosives transport licence authorises storage of certain explosives in transit	
18.	Regulation 86A inserted	

Dangerous Goods Safety (Explosives) Amendment Regulations 2013**Contents**

- 86A. Storage by explosives transport licence holder
19. Regulation 92 amended
20. Regulation 94 amended
21. Regulation 97 amended
22. Regulation 102 amended
23. Part 11A inserted
- Part 11A — Explosives in ports**
- Division 1 — Preliminary matters**
- 111A. Terms used
- 111B. General provisions about AS 3846
- 111C. Cases in which this Part does not apply
- Division 2 — Explosives in port areas**
- 111D. Application of this Division
- 111E. Master's duties
- 111F. Prime contractor's duties
- 111G. Berth operator's duties
- 111H. Fire control equipment required at berth
- 111I. Emergency plan required for berth
- 111J. Information for occupier of site at risk from proximity to berth handling explosives
- Division 3 — Special berth (explosives)**
- 111K. When special berth (explosives) required
- 111L. Applying for declaration of special berth (explosives)
- 111M. Content of risk assessment
- 111N. Dealing with application under r. 111L
- 111O. Berth operator's duties
24. Regulation 112 amended
25. Regulation 118 amended
26. Regulation 132 amended
27. Regulation 136 amended
28. Regulation 143 amended
29. Regulation 149 amended
30. Regulation 157 amended
31. Regulation 158 amended
32. Regulation 162 amended
33. Regulation 164 amended
34. Regulation 165 replaced
165. Body corporate and partnership to have qualified officer
35. Regulation 167 amended
36. Regulation 171 amended

Dangerous Goods Safety (Explosives) Amendment Regulations 2013

Contents

- 37. Regulation 172 amended
- 38. Regulation 173 amended
- 39. Regulation 174 amended
- 40. Regulation 179A amended
- 41. Regulation 180 replaced
 - 180. Licence holder to notify Chief Officer of certain convictions and charges
- 42. Regulation 181 amended
- 43. Regulation 183 amended
- 44. Regulation 193 amended
- 45. Regulation 194 amended
- 46. Regulations 198 to 206 replaced
 - 198. Transitional status of secure employees
 - 199. Assessing fitness to drive
- 47. Schedule 1 amended
- 48. Schedule 4 amended
 - 7. Smoke generators
 - 8. Thermite igniters
- 49. Schedule 6 amended
 - 7. Smoke generators
- 50. Schedule 7 amended
 - 7. Smoke generators
 - 8. Thermite igniters
- 51. Schedule 8 amended
 - 6. Smoke generators
 - 7. Thermite igniters
- 52. Schedule 9 amended
 - 7. Smoke generators
 - 8. Thermite igniters
- 53. Schedule 10 amended

Dangerous Goods Safety Act 2004

Dangerous Goods Safety (Explosives) Amendment Regulations 2013

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Dangerous Goods Safety (Explosives) Amendment Regulations 2013*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on 1 January 2014.

3. Regulations amended

These regulations amend the *Dangerous Goods Safety (Explosives) Regulations 2007*.

4. Regulation 3 amended

- (1) In regulation 3 delete the definitions of:
secure employee
UNTC
- (2) In regulation 3 insert in alphabetical order:

medical practitioner means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;

Dangerous Goods Safety (Explosives) Amendment Regulations 2013**Contents**

secure nominee, of a licence holder, means an individual who, under regulation 23, is authorised by the licence holder to have unsupervised access to an explosive in the licence holder's possession;

unsupervised access authorisation means an authorisation given under regulation 23 by a licence holder for an individual to have unsupervised access to an explosive in the licence holder's possession;

UNTC means the *Recommendations on the Transport of Dangerous Goods, Manual of Tests and Criteria*, Fifth revised edition, published by the United Nations (ISBN 978-92-1-139135-0);

- (3) In regulation 3 in the definition of ***security card*** delete "regulation 17;" and insert:

regulation 20;

5. Regulation 10 amended

- (1) In regulation 10(2) delete "employee" and insert:

nominee

- (2) In regulation 10(3) delete "employee" and insert:

nominee

Dangerous Goods Safety (Explosives) Amendment Regulations 2013

Contents**6. Regulation 17 amended**

Delete regulation 17(2) and insert:

- (2) Only an individual can apply for a security card.

7. Regulation 20 amended

- (1) In regulation 20(2):

- (a) in paragraph (b) delete “satisfaction.” and insert:

satisfaction; or

- (b) after paragraph (b) insert:

- (c) the application is for a security card that would be valid at any time while a security card that the applicant already has is valid.

- (2) In regulation 20(6) after “5 years” insert:

or until the end of a period for which it is extended under regulation 21A

8. Regulation 21A inserted

After regulation 20 insert:

21A. Extension of period for which security card is valid

- (1) A person who has a valid security card may, within the period of 3 months before the security card is due to

Dangerous Goods Safety (Explosives) Amendment Regulations 2013**Contents**

- expire, apply to the Chief Officer for the period at the end of which the security card expires to be extended.
- (2) The application —
 - (a) must be made in the approved form; and
 - (b) must be accompanied by any documents specified in the approved form; and
 - (c) must be accompanied by the prescribed fee.
 - (3) If the photograph displayed on the applicant's security card was taken more than a period of 6 years before the application is made, the application must also be accompanied by a photograph of the applicant taken in the period of 6 months before the application is made.
 - (4) On receiving an application made in accordance with this regulation, the Chief Officer must approve the application and extend the period at the end of which the security card is due to expire by 5 years.
 - (5) The Chief Officer must, on approving the application —
 - (a) issue to the applicant a replacement security card showing when it is due to expire and, where applicable, displaying the photograph provided to the Chief Officer under subregulation (3); and
 - (b) give to the Commissioner of Police notice of the extension of the period at the end of which the security card is due to expire.
 - (6) If an application is made in accordance with this regulation but the applicant's security card expires before the application is approved, the period at the end of which the security card is due to expire is taken to have been extended under this regulation.

Dangerous Goods Safety (Explosives) Amendment Regulations 2013

Contents**9. Regulation 22A inserted**

After regulation 21 insert:

22A. Replacement of security cards

- (1) If the Chief Officer is satisfied a security card has been destroyed, lost or stolen, the Chief Officer may issue a replacement.
- (2) No fee is to be charged for issuing a replacement under subregulation (1).

10. Regulations 23, 24 and 25 replaced

Delete regulations 23, 24 and 25 and insert:

23. Authorisation by licence holder to have access to explosive

- (1) A licence holder may authorise an individual —
 - (a) to have unsupervised access; or
 - (b) to have supervised access,to an explosive in the licence holder's possession, and may cancel such an authorisation at any time.
- (2) A licence holder must not, under subregulation (1)(a), authorise an individual to have unsupervised access to an explosive unless —
 - (a) the individual has a security clearance; and
 - (b) the licence holder is satisfied the individual is suitably trained to safely handle any explosive to which the individual will have unsupervised access.

Penalty: a level 2 fine.

Dangerous Goods Safety (Explosives) Amendment Regulations 2013**Contents**

- (3) An authorisation given under subregulation (1)(a) by a licence holder to an individual authorising unsupervised access must —
- (a) be in writing; and
 - (b) state the following —
 - (i) the date on which the authorisation is given;
 - (ii) the name and residential address of the individual;
 - (iii) each type of explosive in the licence holder's possession to which the individual may have unsupervised access;
 - (iv) details about where and when the individual may have unsupervised access;
 - (v) each other condition imposed by the licence holder on the individual in relation to unsupervised access.
- (4) An authorisation given under subregulation (1)(a) to an individual has no effect unless —
- (a) it complies with subregulation (3); and
 - (b) the licence holder has a record that the individual has stated he or she understands the authorisation.
- (5) If a secure nominee of a licence holder requests the licence holder to do so, the licence holder must give the nominee a copy of each unsupervised access authorisation given by the licence holder to the nominee.
- Penalty: a level 3 fine.

Dangerous Goods Safety (Explosives) Amendment Regulations 2013

Contents

- (6) An unsupervised access authorisation given to an individual ceases to have effect if it is cancelled or the individual ceases to have a security clearance.
- (7) A licence holder who, under subregulation (1)(b), authorises an individual to have supervised access to an explosive must ensure the individual is supervised while having access to the explosive by —
 - (a) the licence holder; or
 - (b) a secure nominee of the licence holder having access to the explosive in accordance with an unsupervised access authorisation given by the licence holder to the nominee.

Penalty: a level 2 fine.

24. Licence holder to keep records as to secure nominees

- (1) A licence holder, for each individual who is a secure nominee of the licence holder, must keep —
 - (a) a proper record of the secure nominee; and
 - (b) a copy of each unsupervised access authorisation given by the licence holder to the secure nominee; and
 - (c) the record required by regulation 23(4)(b),

while the individual is a secure nominee of the licence holder and for 2 years after the date on which the individual ceases to be a secure nominee of the licence holder.

Penalty: a level 3 fine.

- (2) For the purpose of subregulation (1)(a), a proper record is not kept of a secure nominee unless a written record is made of this information —
 - (a) the name and residential address of the secure nominee;

Dangerous Goods Safety (Explosives) Amendment Regulations 2013**Contents**

- (b) the details of each valid security card held by the secure nominee while a secure nominee;
- (c) if the secure nominee does not have a security card but is a person referred to in regulation 16(3) —
 - (i) the details of the written authorisation referred to in regulation 16(3) that the person holds; and
 - (ii) if the secure nominee's usual place of residence is in the State, the date on which he or she took up such residence in the State;
- (d) if an unsupervised access authorisation given by the licence holder to the secure nominee is cancelled, the date on which it is cancelled.

25. Duties of secure nominees

- (1) A secure nominee of a licence holder must comply with each unsupervised access authorisation given by the licence holder to the secure nominee.
Penalty: a level 3 fine.
- (2) A secure nominee of a licence holder who is in possession of an explosive, if asked by a DGO to do so, must give the DGO the name and address of the licence holder.
Penalty: a level 3 fine.

11. Regulation 29 amended

Delete regulation 29(2) and insert:

- (2) The holder of a test permit is not authorised to supply the unauthorised explosive to which the permit relates

Dangerous Goods Safety (Explosives) Amendment Regulations 2013

Contents

to another person but may supply it to a secure nominee of the holder in accordance with an unsupervised access authorisation given by the holder to the nominee.

12. Regulation 30 amended

(1) Before regulation 30(1) insert:

(1A) In this regulation —

interstate law means each of these —

- (a) the *Dangerous Substances (Explosives) Regulation 2004* (Australian Capital Territory);
- (b) the *Explosives Regulation 2013* (New South Wales);
- (c) the *Dangerous Goods Regulations* (Northern Territory);
- (d) the *Explosives Regulation 2003* (Queensland);
- (e) the *Explosives Regulations 2011* (South Australia);
- (f) the *Explosives Regulations 2012* (Tasmania);
- (g) the *Dangerous Goods Act 1985* (Victoria).

(2) Delete regulation 30(2)(f)(iii) and insert:

- (iii) the classification code given to the explosive under the ADG Code; and
- (iv) if, under an interstate law, the explosive is an authorised explosive — the classification code given to it under each such law and details of each such authorisation;

Dangerous Goods Safety (Explosives) Amendment Regulations 2013**Contents**

13. Regulation 36 amended

(1) Delete regulation 36(3)(c) and insert:

- (c) is a secure nominee of the holder of such a licence acting in accordance with an unsupervised access authorisation given by the holder to the nominee; or

(2) Delete regulation 36(7)(b) and insert:

- (b) does so as a secure nominee of the holder of such a licence and in accordance with an unsupervised access authorisation given by the holder to the nominee; or

14. Regulation 45 amended

Delete regulation 45(b) and (c) and insert:

- (b) be a secure nominee of the holder of such a permit acting in accordance with an unsupervised access authorisation given by the holder to the nominee; or
- (c) be being supervised by the holder of such a permit, or by a secure nominee of such a holder having access to the explosive in accordance with an unsupervised access authorisation given by the holder to the nominee.

Dangerous Goods Safety (Explosives) Amendment Regulations 2013

Contents**15. Regulation 46 amended**

Delete regulation 46(b) and (c) and insert:

- (b) the person —
 - (i) is a secure nominee of the holder of a licence that authorises the holder to possess the explosive in the circumstances; and
 - (ii) possesses it in accordance with an unsupervised access authorisation given by the holder to the nominee;

or

- (c) the person possesses the explosive while being supervised by —
 - (i) the holder of a licence that authorises the holder to possess the explosive in the circumstances; or
 - (ii) a secure nominee of such a holder having access to the explosive in accordance with an unsupervised access authorisation given by the holder to the nominee.

16. Regulation 65 amended

(1) Delete regulation 65(1)(b) and insert:

- (b) is a secure nominee of the holder of a shotfiring licence and manufactures the ANFO in accordance with an unsupervised access authorisation given by the holder to the nominee; or

Dangerous Goods Safety (Explosives) Amendment Regulations 2013**Contents**

(2) Delete regulation 65(2)(b) and insert:

- (b) is a secure nominee of the holder of an explosives manufacture (MPU) licence and manufactures the explosive in accordance with an unsupervised access authorisation given by the holder to the nominee; or

17. Regulation 77A inserted

After regulation 76 insert:

77A. Explosives transport licence authorises storage of certain explosives in transit

- (1) In this regulation —
class 1.4 explosive means an explosive with a classification code of 1.4.
- (2) The holder of an explosives transport licence is authorised to store a class 1.4 explosive at a place for which there is no explosives storage licence if —
 - (a) the holder is authorised to possess the explosive under the explosives transport licence; and
 - (b) the holder is in the course of transporting the explosive; and
 - (c) the holder stores the explosive only while it is in transit in the course of being transported.

Dangerous Goods Safety (Explosives) Amendment Regulations 2013

Contents**18. Regulation 86A inserted**

At the beginning of Part 9 Division 4 insert:

86A. Storage by explosives transport licence holder

- (1) This regulation applies to a person who holds an explosives transport licence and who, under regulation 77A, stores an explosive at a place for which there is not an explosives storage licence held by the person.
- (2) The person must ensure the explosive is stored properly.
- (3) For the purposes of subregulation (2), an explosive is not stored properly unless —
 - (a) it is in a building or container that is separate from and at least 5 m from other buildings and containers; and
 - (b) the building or container does not contain anything other than explosives with a classification code of 1.4; and
 - (c) on the outside of the entrance to the building or container are the following —
 - (i) a Class 1 Label, Model No. 1.4, that complies with the AE Code Figure 3.1 and that is at least 250 mm square;
 - (ii) a sign that says “EXPLOSIVES” in black letters at least 100 mm high on a white or silver background;and
- (d) there is a fire extinguisher containing at least 9 L of water on or close to the outside of the building or container; and

Dangerous Goods Safety (Explosives) Amendment Regulations 2013**Contents**

- (e) there is no combustible material within 5 m of the outside of the building or container; and
 - (f) there is a “HAZCHEM” outer warning placard that complies with the *Dangerous Goods Safety (Storage and Handling of Non-explosives) Regulations 2007* regulation 71 and Schedule 4 clause 2 —
 - (i) at every entrance in the perimeter of the site where the building or container is situated; or
 - (ii) at a position or positions approved in writing by the FES Commissioner;and
 - (g) except when it needs to be opened to deal with the explosives in it, the building or container is kept closed and locked so as to prevent removal of or access to the explosives by unauthorised people.
- (4) If any of the packaging of the explosive is removed while the explosive is being stored, the person commits an offence.
- Penalty for an offence against subregulation (2) or (4):
a level 2 fine.

19. Regulation 92 amended

In regulation 92(4)(c)(iii) after “unexplained” insert:

loss

Dangerous Goods Safety (Explosives) Amendment Regulations 2013

Contents**20. Regulation 94 amended**

In regulation 94(2):

(a) delete paragraph (a) and insert:

(a) it is kept closed and locked except when it needs to be opened for use by the licence holder or a secure nominee of the licence holder acting in accordance with an unsupervised access authorisation given by the holder to the nominee; and

(b) in paragraph (b) delete “employee” and insert:

nominee

21. Regulation 97 amended

Delete regulation 97(3)(b)(ii) and insert:

(ii) is a secure nominee of the holder of such a licence and transports the load in accordance with an unsupervised access authorisation given by the holder to the nominee;

22. Regulation 102 amended

Delete regulation 102(2) and insert:

(2) A person who drives an MPU transporting a constituent of a bulk AN-based explosive on a road must be a secure nominee of the holder of an explosives manufacture (MPU) licence acting in

Dangerous Goods Safety (Explosives) Amendment Regulations 2013**Contents**

accordance with an unsupervised access authorisation given by the holder to the nominee.

Penalty: a level 1 fine or imprisonment for 10 months.

23. Part 11A inserted

After Part 10 insert:

Part 11A — Explosives in ports**Division 1 — Preliminary matters****111A. Terms used**

(1) If a term used in this Part is not defined in subregulation (2) but is defined in AS 3846 clause 1.4, it has the same meaning in this Part as it has in that clause, unless the contrary intention appears.

(2) In this Part —

AS 3846 means the Australian Standard AS 3846—2005, *The handling and transport of dangerous cargoes in port areas*, published by Standards Australia (ISBN 0 7337 7000 2);

berth means a berth in a port area but does not include any vessel moored at the berth;

handle, an explosive, means (despite section 3(1) of the Act) —

- (a) to load it on to a vehicle or into a container;
- (b) to unload it from a vehicle or container;
- (c) to carry, move or transport it by any means;
- (d) to store it while it awaits being so loaded, unloaded, carried, moved or transported;

Dangerous Goods Safety (Explosives) Amendment Regulations 2013

Contents

harbour master —

- (a) of a port subject to the *Port Authorities Act 1999*, has the meaning given in section 3(1) of that Act;
- (b) of a port subject to the *Shipping and Pilotage Act 1967*, has the meaning given in section 3 of that Act;

operator, of a berth, means the person who controls and manages operations at the berth;

port means —

- (a) a port as defined in the *Port Authorities Act 1999* section 3(1); or
- (b) a port as defined in the *Shipping and Pilotage Act 1967* section 3;

port area means the area associated with a port being —

- (a) if the port is subject to the *Port Authorities Act 1999* — the area or areas described in relation to the port under section 24 of that Act; and
- (b) if the port is subject to the *Shipping and Pilotage Act 1967* — the area bounded by the limits specified in relation to the port under section 10 of that Act;

prime contractor has the meaning given in regulation 95(2);

special berth (explosives) means a berth that, under regulation 111N, is declared to be a special berth (explosives);

vessel means anything, including a hovercraft, capable of transporting people or things by water.

Dangerous Goods Safety (Explosives) Amendment Regulations 2013**Contents**

111B. General provisions about AS 3846

- (1) This regulation operates for the purposes of this Part.
- (2) In a provision of AS 3846 to which this Part refers directly or indirectly —
 - (a) a reference to “regulatory authority” is taken to be a reference to the Chief Officer;
 - (b) a reference to “dangerous cargo” is taken to be a reference to dangerous goods.
- (3) If a term used in AS 3846 is defined in regulation 111A, it has the same meaning in AS 3846 as it has in regulation 111A, despite AS 3846 clause 1.4, unless the contrary intention appears.
- (4) If a provision of AS 3846 conflicts or is inconsistent with a provision of this Part, the provision of this Part prevails to the extent of the inconsistency.

111C. Cases in which this Part does not apply

- (1) In this regulation —

emergency device means an article, containing one or more explosives with or without other substances, that is designed to be used in distress or an emergency for signalling, warning or rescue purposes —

 - (a) to produce light, sound, gas, smoke, or a combination of them, by means of an exothermic chemical reaction that does not rely on oxygen from external sources to sustain the reaction; or
 - (b) to propel an article, such as a line or a flare, through the air.
- (2) This Part does not apply to or in relation to a vehicle in a port area if the only explosive it is carrying is an

Dangerous Goods Safety (Explosives) Amendment Regulations 2013

Contents

emergency device to be used in an emergency involving the vehicle or if the vehicle is in distress.

- (3) This Part does not apply to or in relation to an emergency device in a port area if it is in the area for the purposes of being used in an emergency involving a vehicle in the area or if a vehicle in the area is in distress.
- (4) This Part does not apply to or in relation to explosives in a port area that are required for the operation, safety or maintenance of a vessel and that are or will be part of the vessel's stores or equipment.

Division 2 — Explosives in port areas**111D. Application of this Division**

This Division applies to explosives in a port area, whether or not at a special berth (explosives).

111E. Master's duties

- (1) The master of a vessel in a port area that is transporting or about to transport an explosive commits an offence if any of the requirements of AS 3846 clause 4.3.1(b), (f), (h), (k), (l), (n), (o) or (p) is contravened on board or in respect of the vessel.
- (2) The master of a vessel on which there is an explosive commits an offence if any of the requirements of AS 3846 clause 4.4 is contravened while the vessel is in a port area.

Penalty: a level 2 fine.

111F. Prime contractor's duties

The prime contractor for the transport of an explosive by road into, in or from a port area commits an offence

Dangerous Goods Safety (Explosives) Amendment Regulations 2013**Contents**

if any of the requirements of AS 3846 clause 4.3.1(j), (k), (l) or (n) is contravened in relation to the transport of the explosive into, in or from the port area.

Penalty: a level 2 fine.

111G. Berth operator's duties

The berth operator of a berth where an explosive is being handled commits an offence if a requirement or recommendation of any of these clauses of AS 3846 is contravened —

- (a) clause 4.3.1 (other than paragraphs (d), (e), (h), (m) and (q));
- (b) clause 4.3.3(a);
- (c) clause 4.3.4;
- (d) clause 4.3.5;
- (e) clause 4.3.6.

Penalty: a level 2 fine.

111H. Fire control equipment required at berth

- (1) This regulation applies to a berth at which there is all or any part of a load of explosives if the total load that has been, is being, or is to be, transferred to or from the berth includes —
 - (a) explosives with a classification code of 1.4 and a gross weight of 10 tonnes or more; or
 - (b) other explosives with a gross weight of 1 kg or more.
- (2) The berth operator of the berth must ensure the berth has adequate fire control equipment.

Penalty: a level 1 fine.

Dangerous Goods Safety (Explosives) Amendment Regulations 2013

Contents

- (3) For the purposes of subregulation (2), fire control equipment is not adequate fire control equipment unless —
- (a) it is designed and constructed either to automatically extinguish or to be capable, when used by a person, of extinguishing any fire that is reasonably foreseeable at the berth having regard to —
 - (i) the types and quantities of explosives at the berth; and
 - (ii) the conditions under which they are handled at the berth; and
 - (iii) any materials and other substances at the berth;
 - and
 - (b) it is designed and constructed to prevent explosives at the berth from being affected by any such fire; and
 - (c) the equipment it uses to extinguish any such fire is compatible with equipment used, and can be used immediately without adaptation or modification, by any fire brigade under the control of the FES Commissioner; and
 - (d) each substance it uses to extinguish any such fire is compatible with the material that is on fire.
- (4) The berth operator of the berth must ensure the fire control equipment at the berth is in proper working order.

Penalty: a level 1 fine.

Dangerous Goods Safety (Explosives) Amendment Regulations 2013**Contents**

- (5) For the purposes of subregulation (4), fire control equipment is not in proper working order unless —
- (a) it is installed, maintained and tested in accordance with the instructions of its designer and manufacturer; and
 - (b) it is always in working order; and
 - (c) it is always available for immediate use to extinguish a fire; and
 - (d) it is not obstructed or otherwise positioned in a manner that hinders its operation or access to it or use of it.
- (6) If any fire control equipment at the berth stops working or becomes unusable, the operator of the berth must ensure that —
- (a) the implications of the equipment being inoperative or unusable are assessed; and
 - (b) alternative measures are taken to control, to the same level of effectiveness, the risks that were controlled by the equipment when functioning fully; and
 - (c) the equipment is replaced or returned to full operation as soon as practicable.

Penalty: a level 1 fine.

- (7) If the implications assessed by the operator under subregulation (6)(a) include a significant reduction in the effectiveness of the fire control equipment, the operator must notify the FES Commissioner of the fact as soon as practicable after the equipment stops working or becomes unusable.

Penalty: a level 2 fine.

Dangerous Goods Safety (Explosives) Amendment Regulations 2013

Contents

- (8) In determining the alternative measures required under subregulation (6)(b) the operator must have regard to the need for —
- (a) the provision of alternative fire control equipment; and
 - (b) a reduction of the quantities of explosives at the berth; and
 - (c) the handling of explosives to stop or be limited; and
 - (d) modifications to systems of work.

111I. Emergency plan required for berth

- (1) In this regulation —
emergency plan, for a berth, means a document that contains —
- (a) a plan of the actions to be taken and the procedures to be followed; and
 - (b) the information needed by people, if a dangerous situation occurs at the berth.
- (2) This regulation applies to a berth at which there is all or any part of a load of explosives if the total load that has been, is being, or is to be, transferred to or from the berth includes —
- (a) explosives with a classification code of 1.4 and a gross weight of 10 tonnes or more; or
 - (b) other explosives with a gross weight of 1 kg or more.
- (3) The operator of the berth must ensure there is an emergency plan for the berth.

Penalty: a level 2 fine.

Dangerous Goods Safety (Explosives) Amendment Regulations 2013**Contents**

- (4) The operator of the berth may at any time revise the emergency plan for the berth.
- (5) The operator of the berth must review the emergency plan and, if necessary, revise it —
- (a) whenever there is a significant change in the risk in relation to explosives at the berth to people, property or the environment; and
 - (b) as soon as practicable after a dangerous situation occurs at the berth; and
 - (c) in any event, at intervals of not more than 3 years from the day on which the plan was first made or last revised.
- Penalty: a level 2 fine.
- (6) The operator of the berth must have a copy of the current emergency plan for the berth at the berth.
- Penalty: a level 1 fine.
- (7) The operator of the berth, on request, must give a copy of the current emergency plan for the berth to the Chief Officer, a DGO or the FES Commissioner.
- Penalty: a level 3 fine.
- (8) The Chief Officer, a DGO or the FES Commissioner, by a written notice, may direct the operator of the berth to make such amendments to the emergency plan as are specified in the notice before a date specified in the notice.
- (9) An operator given a notice under subregulation (8) must obey it.
- Penalty: a level 3 fine.
- (10) A person who, under an emergency plan for a berth, has a function and who, without a reasonable excuse, does not obey the emergency plan commits an offence.
- Penalty: a level 2 fine.

Dangerous Goods Safety (Explosives) Amendment Regulations 2013

Contents**111J. Information for occupier of site at risk from proximity to berth handling explosives**

- (1) This regulation applies to a berth at which there is all or any part of a load of explosives if the total load that has been, is being, or is to be, transferred to or from the berth includes —
 - (a) explosives with a classification code of 1.4 and a gross weight of 10 tonnes or more; or
 - (b) other explosives with a gross weight of 1 kg or more.
- (2) If, in the event of a dangerous situation occurring at the berth, the risk in relation to explosives at the berth to people, property or the environment would extend to a place because of its proximity to the berth, the operator of the berth must ensure the occupier of the place is given at least the following —
 - (a) information about the risk and what might happen if a dangerous situation occurs at the berth;
 - (b) information about what to do if a dangerous situation occurs at the berth;
 - (c) information about what the operator will do if a dangerous situation occurs at the berth;
 - (d) information to enable the occupier to contact the berth operator.

Penalty: a level 2 fine.

Division 3 — Special berth (explosives)**111K. When special berth (explosives) required**

- (1) A person must not handle an explosive, or allow an explosive to be handled, in a port area except at a special berth (explosives) at which the explosive may

Dangerous Goods Safety (Explosives) Amendment Regulations 2013**Contents**

be handled under a declaration made under regulation 111N.

Penalty: a level 1 fine.

- (2) Subregulation (1) does not apply to a berth if —
- (a) the distance between an explosive at the berth or on any vessel at the berth and each of the following —
- (i) every protected place;
 - (ii) the accommodation quarters on any vessel, other than a vessel at the berth to load or unload the explosive,
- is at least the separation distance specified in Table 4.2 in AS 3846 for the NEQ of the explosive or, if the explosive has a classification code of 1.6, for the NEQ of a single article containing the explosive; and
- (b) the distance between an explosive at the berth or on any vessel at the berth and each of the following —
- (i) every road open to and used by the public;
 - (ii) every railway used by the public,
- is at least half the separation distance specified in Table 4.2 in AS 3846 for the NEQ of the explosive or, if the explosive has a classification code of 1.6, for the NEQ of a single article containing the explosive.
- (3) For the purposes of subregulation (2)(a) and (b), the NEQ of an explosive at a berth is the total NEQ of the explosive that is —
- (a) at the berth; and

Dangerous Goods Safety (Explosives) Amendment Regulations 2013

Contents

- (b) on any vessel at the berth, including any explosive on board that is not handled while the vessel is at the berth.
 - (4) For the purposes of subregulation (2)(a) and (b), if explosives with different classification codes are to be handled, the greater or greatest separation distance specified in Table 4.2 in AS 3846 applies.
- 111L. Applying for declaration of special berth (explosives)**
- (1) Only these persons may apply for a berth to be declared a special berth (explosives) —
 - (a) the harbour master of the port;
 - (b) the operator of the berth.
 - (2) An application for a berth to be declared a special berth (explosives) must —
 - (a) be made to the Chief Officer; and
 - (b) be in an approved form; and
 - (c) specify the following —
 - (i) the location of the berth;
 - (ii) the name of the berth operator;
 - (iii) each explosive that will be handled at the berth;
 - (iv) the maximum quantity of explosive that will be at the berth and on any vessel at the berth, including any explosive on board that is not handled while the vessel is at the berth;
 - (v) any other matter required by the approved form;
- and

Dangerous Goods Safety (Explosives) Amendment Regulations 2013**Contents**

- (d) be signed by the applicant; and
- (e) be accompanied by the following —
 - (i) an aerial photo of the berth and its surroundings on which are marked concentric circles with radii of 500 m, 1 000 m and 2 000 m from the centre of the berth;
 - (ii) a risk assessment for the berth that complies with regulation 111M;
 - (iii) the fee.

111M. Content of risk assessment

For the purposes of regulation 111L(2)(e)(ii), a risk assessment for a berth is a document that —

- (a) is in a form acceptable to the Chief Officer; and
 - (b) identifies all hazards relating to the explosive that is or will be handled at the berth and to handling the explosive; and
 - (c) for each hazard, assesses —
 - (i) the probability of the hazard causing a fire or explosion; and
 - (ii) the nature and extent of the harm to people, property and the environment that is likely to result from any such fire or explosion;
- and
- (d) for each hazard, identifies the measures that will eliminate or, if it is not reasonably practicable to eliminate, that will reduce so far as reasonably practicable —
 - (i) the probability of the hazard causing a fire or explosion; and

Dangerous Goods Safety (Explosives) Amendment Regulations 2013

Contents

- (ii) the harm to people, property and the environment that is likely to result from such a fire or explosion;

and

- (e) records the method of reasoning used to determine the matters referred to in paragraphs (b) to (d); and
- (f) contains the information listed in, and addresses, the items listed in AS 3846 clause 4.6.2.

111N. Dealing with application under r. 111L

- (1) Any decision made by the Chief Officer under this regulation must be in writing.
- (2) On an application made under regulation 111L, the Chief Officer may declare the berth to be a special berth (explosives) for a period, not over 5 years, specified in the declaration.
- (3) Without limiting the matters the Chief Officer may consider before making a declaration under subregulation (2), he or she must not make a declaration unless he or she has considered —
 - (a) the adequacy of the risk assessment accompanying the application; and
 - (b) the items listed in AS 3846 clause 4.6.2.
- (4) A declaration made under subregulation (2) may specify any of these requirements that the Chief Officer considers necessary to ensure explosives are handled safely at the special berth (explosives) —
 - (a) the maximum quantity of explosive that is permitted to be on any vessel at the berth, including any explosive on board that is not handled while the vessel is at the berth;

Dangerous Goods Safety (Explosives) Amendment Regulations 2013**Contents**

- (b) any requirements that must be obeyed when explosives are handled at the berth.
- (5) The Chief Officer may at any time amend or cancel a declaration made under subregulation (2).

111O. Berth operator's duties

The berth operator of a special berth (explosives) where explosives are being handled commits an offence if any requirement specified in a declaration made under regulation 111N is contravened at the berth.

Penalty: a level 1 fine.

24. Regulation 112 amended

Delete regulation 112(c) and (d) and insert:

- (c) in the case of a person who is a secure nominee of the holder of an explosives supply licence —
 - (i) the supply is authorised by the licence; and
 - (ii) the person supplies the explosive in accordance with an unsupervised access authorisation given by the licence holder to the nominee;
- or
- (d) in the case of a person who is a secure nominee of the holder of a licence referred to in regulation 113, 114A, 114, 115 or 116 —
 - (i) the supply is in accordance with that regulation; and
 - (ii) the person supplies the explosive in accordance with an unsupervised access

Dangerous Goods Safety (Explosives) Amendment Regulations 2013

Contents

authorisation given by the licence holder to the nominee;

or

25. Regulation 118 amended

Delete regulation 118(4)(b) and (c) and insert:

- (b) the explosive is delivered to a secure nominee of Y who shows X proof that he or she is a secure nominee; and
- (c) X obtains the secure nominee's personal receipt.

26. Regulation 132 amended

- (1) In regulation 132(3) delete "employee" and insert:

nominee

- (2) In regulation 132(4) delete "employee" and insert:

nominee

27. Regulation 136 amended

In regulation 136 in the definition of *fireworks event* after "other" insert:

than

Dangerous Goods Safety (Explosives) Amendment Regulations 2013**Contents**

28. Regulation 143 amended

- (1) In regulation 143(3) delete “employee” and insert:

nominee

- (2) In regulation 143(4) delete “employee” and insert:

nominee

29. Regulation 149 amended

- (1) Delete regulation 149(1)(e) and (f) and insert:

(e) be accompanied by —

- (i) if the application is made more than 14 days before the date of the proposed event, the fee;
- (ii) if the application is made within 14 days before the date of the proposed event, the fee plus a fee of \$35.

- (2) In regulation 149(2)(c):

- (a) delete “including —” and insert:

including the following —

- (b) after subparagraph (ii) insert:

- (iiia) the number of event fireworks that are ground displays (if any);

Dangerous Goods Safety (Explosives) Amendment Regulations 2013

Contents

- (iiib) the number of event fireworks that are aerial shells (if any);

30. Regulation 157 amended

- (1) Delete regulation 157(1)(da) and insert:
 - (da) if the application is for a trading licence, be accompanied by —
 - (i) the annual fee (if any) payable for the 1st year of the licence applied for; and
 - (ii) if the application is not accompanied by a certificate given under subregulation (8), a checking fee equal to the amount (if any) required to be paid under subparagraph (i);
 - and
- (2) Delete regulation 157(5) and insert:
 - (5) An application by a body corporate or partnership must be accompanied by proof of the incorporation of the body or the existence of the partnership.
- (3) After regulation 157(7) insert:
 - (8) In addition to any document that is required to accompany the application, an application for a trading licence may be accompanied by a certificate that complies with subregulation (9) and is signed by a person approved by the Chief Officer.

Dangerous Goods Safety (Explosives) Amendment Regulations 2013**Contents**

- (9) A certificate given by a person under subregulation (8) must —
- (a) if it relates to an application for a trading licence that, under subregulation (7), is accompanied by a written explosives management plan, certify that the person —
 - (i) has read the application; and
 - (ii) is satisfied the application complies with this regulation; and
 - (iii) if the application is accompanied by a document for the purposes of subregulation (5), is satisfied the document complies with that subregulation; and
 - (iv) has read the explosives management plan; and
 - (v) is satisfied the plan complies with regulation 161; and
 - (vi) has done a risk assessment of the activities the licence would authorise and, having regard to section 8 of the Act, is satisfied the applicant has taken or will take all reasonably practicable measures to minimise the risk to people, property and the environment in relation to the explosives to which the licence would relate; and
 - (vii) if the trading licence would relate to a site, is satisfied the site can be operated in accordance with these regulations; and
 - (viii) is satisfied the explosives to which the licence would relate will be secure;

Dangerous Goods Safety (Explosives) Amendment Regulations 2013

Contents

- (b) if it relates to an application for any other trading licence, certify that the person —
 - (i) has read the application; and
 - (ii) is satisfied the application complies with this regulation; and
 - (iii) if the application is accompanied by a document for the purposes of subregulation (5), is satisfied the document complies with that subregulation.

31. Regulation 158 amended

In regulation 158:

- (a) delete paragraph (a) and insert:
 - (a) that is made by a medical practitioner who examined the applicant within 6 months before the day the application is made; and
- (b) delete paragraph (c) and insert:
 - (c) that certifies that the medical practitioner examined and passed the applicant in accordance with the set of medical standards described as the commercial standards in *Assessing Fitness to Drive for commercial and private vehicle drivers*, Fourth Edition 2012, published by Austroads Ltd (ISBN 978-1-921991-01-1).

Dangerous Goods Safety (Explosives) Amendment Regulations 2013**Contents**

32. Regulation 162 amended

- (1) Delete regulation 162(1)(e) and insert:
- (e) if the applicant is an individual, to give the Chief Officer a report by —
 - (i) a medical practitioner about the person's physical health and fitness to engage safely in the activities that would be authorised by the licence; and
 - (ii) a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the psychology profession about the person's mental health and fitness to engage safely in the activities that would be authorised by the licence.
- (2) Delete regulation 162(2) and insert:
- (2) On an application for a licence made by an individual, the Chief Officer may request the applicant to demonstrate he or she —
- (a) is competent to engage safely in the activities that would be authorised by the licence; or
 - (b) is competent to keep any explosive possessed under the licence secure; or
 - (c) is competent to do both of the above.

33. Regulation 164 amended

- (1) In regulation 164(2):
- (a) delete paragraph (b);

Dangerous Goods Safety (Explosives) Amendment Regulations 2013

Contents

- (b) delete paragraph (c)(ii) and insert:
 - (ii) has a security clearance; and
- (c) delete paragraph (e).
- (2) Delete regulation 164(6).
- 34. Regulation 165 replaced**
Delete regulation 165 and insert:
 - 165. Body corporate and partnership to have qualified officer**
 - (1) In this regulation —
officer, of a body corporate or a partnership, means an individual who is concerned in the management of, or employed by, the body or partnership;
qualified officer, of a body corporate or a partnership that holds a licence, means an officer of the body or partnership who —
 - (a) has reached 18 years of age; and
 - (b) is competent to engage safely in the activities that are authorised by the licence and to keep any explosive possessed under the licence secure; and
 - (c) has a security clearance.
 - (2) A body corporate or a partnership that holds a licence must have one or more qualified officers.
Penalty: a level 3 fine.
 - (3) A body corporate or a partnership that holds a licence must keep a proper record of at least one of its qualified officers.

Dangerous Goods Safety (Explosives) Amendment Regulations 2013**Contents**

Penalty: a level 3 fine.

- (4) For the purpose of subregulation (3), a proper record is not kept of a qualified officer unless a written record is made of this information —
- (a) the officer's personal details;
 - (b) the officer's date of birth;
 - (c) the position the officer holds in the body corporate or partnership;
 - (d) details of the security clearance held by the officer,

and is kept while the officer is, and for 2 years after the date on which the officer ceases to be, an officer of the body or partnership.

- (5) The Chief Officer at any time may direct an individual who is recorded by a body corporate or a partnership under subregulation (3) to demonstrate to the Chief Officer that he or she is competent —
- (a) to engage safely in the activities that are authorised by the licence held by the body corporate or partnership; and
 - (b) to keep any explosive possessed under the licence secure.
- (6) The power in subregulation (5) may be exercised whether or not the individual is an officer of the body corporate or partnership.
- (7) A person who does not comply with a direction given under subregulation (5) commits an offence.

Penalty: a level 3 fine.

Dangerous Goods Safety (Explosives) Amendment Regulations 2013

Contents

35. Regulation 167 amended

In regulation 167(1)(a) delete “3 years” and insert:

5 years

36. Regulation 171 amended

Delete regulation 171(2) and (3) and insert:

- (2) If the Chief Officer is satisfied that a card issued to a person under regulation 168(2) has been destroyed, lost or stolen, the Chief Officer may issue a replacement.
- (3) No fee is to be charged for issuing a replacement under subregulation (1) or (2).

37. Regulation 172 amended

- (1) In regulation 172(1) delete the definition of ***amend*** and insert:

amend, a licence, includes —

- (a) to amend the licence to delete the name of the holder of the licence and substitute another; and
 - (b) to amend, include and remove a condition of the licence.
- (2) In regulation 172(3)(c) before “a fee equal to” insert:

be accompanied by

Dangerous Goods Safety (Explosives) Amendment Regulations 2013**Contents**

- (3) In regulation 172(7) delete “165 to 167,” and insert:

166 and 167,

38. Regulation 173 amended

- (1) Delete regulation 173(4).
(2) In regulation 173(6) delete “165 to 167,” and insert:

166 and 167,

39. Regulation 174 amended

- (1) In regulation 174(1):
(a) delete paragraph (a) and insert:

(a) either —

- (i) the holder; or
(ii) an individual who, under regulation 165, is, and is recorded by the holder as, a qualified officer of the holder,

is charged in this State or elsewhere with a relevant offence; or

- (b) in paragraph (b)(iv) delete “and” and insert:

or

Dangerous Goods Safety (Explosives) Amendment Regulations 2013

Contents

(2) Delete regulation 174(2)(a) and insert:

(a) either —

(i) the holder; or

(ii) an individual who, under regulation 165, is, and is recorded by the holder as, a qualified officer of the holder,

is convicted in this State or elsewhere of a relevant offence; or

40. Regulation 179A amended

(1) In regulation 179A(3) after “fee” insert:

(if any)

(2) In regulation 179A(4) delete “equal to 10% of the fee.” and insert:

of \$35.

41. Regulation 180 replaced

Delete regulation 180 and insert:

180. Licence holder to notify Chief Officer of certain convictions and charges

If —

(a) the holder of a licence; or

Dangerous Goods Safety (Explosives) Amendment Regulations 2013**Contents**

- (b) an individual who, under regulation 165, is, and is recorded by the holder as, a qualified officer of the holder,

is charged with or convicted of a relevant offence, in this State or elsewhere, the holder must give the Chief Officer written notice of the fact as soon as practicable.

Penalty: a level 3 fine.

42. Regulation 181 amended

Delete regulation 181(2) and insert:

- (2) The holder of an explosives manufacture licence must give the Chief Officer written notice of any proposed development at the site to which the licence relates.

Penalty: a level 3 fine.

43. Regulation 183 amended

- (1) Delete regulation 183(2) and insert:

- (2) The register must record, in relation to each licence, this information —

- (a) the name of the holder of the licence;
- (b) the date on which the licence was issued;
- (c) the date (if any) on which the licence was renewed;
- (d) the date (if any) on which the licence was suspended;
- (e) the date (if any) on which the licence was cancelled.

Dangerous Goods Safety (Explosives) Amendment Regulations 2013

Contents

(3A) The register may record any other information relevant to a licence holder or to the issue, amendment, renewal, suspension or cancellation of a licence that the Chief Officer thinks fit.

(2) After regulation 183(4) insert:

(5) The Chief Officer must ensure the information listed in subregulation (2) and recorded in the register is accessible to the public during normal office hours.

44. Regulation 193 amended

In regulation 193(2):

(a) in paragraph (c) delete “regulations.” and insert:

regulations; or

(b) after paragraph (c) insert:

(d) any certificate that may be given under these regulations.

45. Regulation 194 amended

Delete regulation 194(3) and insert:

(3) If a body corporate or a partnership is the holder of a licence, each individual who, under regulation 165, is, and is recorded by the holder as, a qualified officer of the holder must ensure the explosives management

Dangerous Goods Safety (Explosives) Amendment Regulations 2013**Contents**

plan that relates to the licence is complied with by the body corporate or partnership.

Penalty: a level 2 fine.

46. Regulations 198 to 206 replaced

Delete regulations 198 to 206 and insert:

198. Transitional status of secure employees

If immediately before the day on which the *Dangerous Goods Safety (Explosives) Amendment Regulations 2013* regulation 10 commences an individual is a secure employee of a licence holder, then, on the commencement of that regulation, the person is taken to be a secure nominee of the licence holder until —

- (a) the person, under regulation 23, is authorised by the licence holder to have unsupervised access to an explosive in the licence holder's possession; or
- (b) the end of 3 months after the date of that commencement,

whichever happens first.

199. Assessing fitness to drive

If a certificate that complies with regulation 158(c) as in force immediately before the date on which the *Dangerous Goods Safety (Explosives) Amendment Regulations 2013* regulation 31 commences is issued within one year after that date, it is taken to be a certificate that complies with regulation 158(c) as in force after that date.

Dangerous Goods Safety (Explosives) Amendment Regulations 2013

Contents**47. Schedule 1 amended**

In Schedule 1:

(a) after item 1 insert:

2A.	Application to extend period for which a security card is valid (r. 21A)	42
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(b) delete items 3 and 4 and insert:

3.	Application to have an explosive authorised (r. 30(2)(j)) —	
(a)	if the explosive is authorised under an interstate law (as defined in regulation 30(1A))	130
(b)	otherwise	520
4A.	Application for a berth to be declared a special berth (explosives) (r. 111L(2)(e)(iii))	3 900
4.	Application for a fireworks event permit (r. 149(1)(e)) — one fee being whichever of the following is the highest fee applicable to the event —	
(a)	if the event fireworks include a ground display but no aerial shells	130
(b)	if the event fireworks include not more than 3 000 aerial shells	260
(c)	if the event fireworks include more than 3 000 aerial shells	3 900

(c) delete item 6.

Dangerous Goods Safety (Explosives) Amendment Regulations 2013**Contents**

48. Schedule 4 amended

After Schedule 4 clause 6 insert:

7. Smoke generators

A person may possess an article that generates smoke signals if —

- (a) the article has a classification code of 1.4G or 1.4S; and
- (b) in the circumstances the person has a reasonable reason to possess it.

8. Thermite igniters

A person may possess an article that ignites thermite if —

- (a) the article has a classification code of 1.4G or 1.4S; and
- (b) the person is employed to weld rails for railways or is an employee of such a person; and
- (c) the person possesses the article in the course of his or her duties as such.

49. Schedule 6 amended

After Schedule 6 clause 6 insert:

7. Smoke generators

A person may store an article that generates smoke signals at any place if —

- (a) the article has a classification code of 1.4G or 1.4S; and
- (b) there is not more than 250 kg of such articles at the place.

Dangerous Goods Safety (Explosives) Amendment Regulations 2013

Contents**50. Schedule 7 amended**

After Schedule 7 clause 6 insert:

7. Smoke generators

A person may transport an article that generates smoke signals if —

- (a) the article has a classification code of 1.4G or 1.4S; and
- (b) there is not more than 250 kg of such articles in the vehicle.

8. Thermite igniters

A person may transport an article that ignites thermite if —

- (a) the article has a classification code of 1.4G or 1.4S; and
- (b) the person is engaged or employed to weld rails for railways or is an employee of such a person; and
- (c) the person transports the article in the course of his or her duties as such.

51. Schedule 8 amended

After Schedule 8 clause 5 insert:

6. Smoke generators

A person may supply an article that generates smoke signals if the article has a classification code of 1.4G or 1.4S.

7. Thermite igniters

A person may supply an article that ignites thermite if —

- (a) the article has a classification code of 1.4G or 1.4S; and

Dangerous Goods Safety (Explosives) Amendment Regulations 2013**Contents**

- (b) the person is engaged or employed to weld rails for railways or is an employee of such a person; and
- (c) the person supplies the article in the course of his or her duties as such; and
- (d) the person to whom the article is supplied is engaged or employed to weld rails for railways or is an employee of such a person.

52. Schedule 9 amended

After Schedule 9 clause 6 insert:

7. Smoke generators

A person may use an article that generates smoke signals if—

- (a) the article has a classification code of 1.4G or 1.4S; and
- (b) the person uses it for the purposes for which it is designed; and
- (c) the person uses it in accordance with its manufacturer's instructions for its use.

8. Thermite igniters

A person may use an article that ignites thermite if—

- (a) the article has a classification code of 1.4G or 1.4S; and
- (b) the person is engaged or employed to weld rails for railways or is an employee of such a person; and
- (c) the person uses the article in the course of his or her duties as such.

Dangerous Goods Safety (Explosives) Amendment Regulations 2013

Contents

53. Schedule 10 amended

Delete Schedule 10 clause 2(e) and insert:

- (e) the measures that will be taken to ensure that the plan is reviewed to see whether it meets current standards and addresses current circumstances —
 - (i) whenever there is a significant change in the risk in relation to the explosives to which the licence relates to people, property or the environment; and
 - (ii) as soon as practicable after a dangerous situation occurs that involves the explosives to which the licence relates; and
 - (iii) in any event, at intervals of not more than 5 years after the grant of the licence or the last review of the plan,and that the plan is revised if necessary;

R. KENNEDY, Clerk of the Executive Council.