

Western Australia

## **Dangerous Goods Safety (Security Risk Substances) Amendment Regulations 2013**

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### Contents

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1.	Citation	
2.	Commencement	
3.	Regulations amended	
4.	Regulation 3 amended	
5.	Regulation 5 amended	
6.	Regulation 6 replaced	
6.	Application of these regulations	2
7.	Regulations 9, 10 and 11 replaced	
9.	Licence holder may authorise individuals to have access to SRS	3
10.	Licence holder to keep records as to secure nominees	5
11.	Duties of secure nominee	6
8.	Regulation 12 amended	
9.	Regulation 21 amended	
10.	Regulation 24 amended	
11.	Regulation 27 amended	
12.	Regulation 30 amended	
13.	Regulation 31 amended	
14.	Regulation 32 amended	
15.	Regulation 33 replaced	
33.	Body corporate and partnership to have qualified officer	
16.	Regulation 40 amended	
17.	Regulation 42 amended	
18.	Regulation 46A amended	
19.	Regulation 46 replaced	

***Dangerous Goods Safety (Security Risk Substances) Amendment  
Regulations 2013***

**Contents**

---

- 46. Licence holder to notify Chief Officer of certain convictions and charges
- 20. Regulation 49 amended
- 21. Regulation 50 amended

Dangerous Goods Safety Act 2004

## **Dangerous Goods Safety (Security Risk Substances) Amendment Regulations 2013**

Made by the Governor in Executive Council.

**1. Citation**

These regulations are the *Dangerous Goods Safety (Security Risk Substances) 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 (Security Risk Substances) Regulations 2007*.

**4. Regulation 3 amended**

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

*secure nominee*, of a licence holder, means an individual who, under regulation 9, is authorised by the

***Dangerous Goods Safety (Security Risk Substances) Amendment  
Regulations 2013***

**Contents**

---

holder to have unsupervised access to an SRS in the holder's possession;

***unsupervised access authorisation*** means an authorisation given under regulation 9 by a licence holder for an individual to have unsupervised access to an SRS in the licence holder's possession.

- (3) In regulation 3 in the definition of ***unsupervised access*** delete "regulation 5(3)." and insert:

regulation 5(3);

**5. Regulation 5 amended**

In regulation 5(2) and (3) delete "employee" and insert:

nominee

**6. Regulation 6 replaced**

Delete regulation 6 and insert:

**6. Application of these regulations**

- (1) These regulations do not apply to or in respect of an explosive.
- (2) These regulations do not apply to or in respect of an SRS if it is in the possession or under the control of—
  - (a) a DGO acting in the course of duty; or
  - (b) a police officer acting in the course of duty; or

- (c) a member of the police force of another place who is in the State with the approval of the Commissioner of Police for the purposes of, or a purpose related to, law enforcement in this State, acting in the course of duty; or
- (d) an officer of the Commonwealth, or a defence force of the Commonwealth, acting in the course of duty; or
- (e) the air, military or naval force of another country that is in the State with the approval of the Commonwealth for the purposes of, or a purpose related to, the defence of the Commonwealth.

**7. Regulations 9, 10 and 11 replaced**

Delete regulations 9, 10 and 11 and insert:

**9. Licence holder may authorise individuals to have access to SRS**

- (1) A licence holder may authorise an individual —
  - (a) to have unsupervised access; or
  - (b) to have supervised access,to an SRS 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 SRS unless the individual has a security clearance.  
Penalty: a level 2 fine.

***Dangerous Goods Safety (Security Risk Substances) 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 SRS 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 holder must give the nominee a copy of the unsupervised access authorisation given by the holder to the nominee.  
Penalty: a level 3 fine.
- (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 SRS must ensure the individual is supervised while having access to the SRS by —
- (a) the licence holder; or
  - (b) a secure nominee of the licence holder acting in accordance with the unsupervised access authorisation given by the holder to the nominee.

Penalty: a level 3 fine.

**10. 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 holder to the nominee; and
  - (c) the record required by regulation 9(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 holder.

Penalty: a level 2 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;
  - (b) the details of each valid security card held by the secure nominee under the *Dangerous*
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***Dangerous Goods Safety (Security Risk Substances) Amendment Regulations 2013***

**Contents**

---

*Goods Safety (Explosives) Regulations 2007*  
Part 3 while he or she is a secure nominee;

- (c) if the secure nominee does not have such a security card but is a person referred to in the *Dangerous Goods Safety (Explosives) Regulations 2007* regulation 16(3) —
  - (i) the details of the written authorisation referred to in that subregulation; 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.

**11. Duties of secure nominee**

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

**8. Regulation 12 amended**

Delete regulation 12(2)(a) and insert:

- (a) the person —
  - (i) is a secure nominee of the holder of a licence referred to in subregulation (1)



that authorises the holder to possess the SRS in the circumstances; and

- (ii) possesses the SRS in accordance with the unsupervised access authorisation given by the holder to the nominee;

or

**9. Regulation 21 amended**

Delete regulation 21(2)(a) and insert:

- (a) the person —
  - (i) is a secure nominee of the holder of a licence referred to in subregulation (1) that authorises the holder to manufacture the SRS in the circumstances; and
  - (ii) manufactures the SRS in accordance with the unsupervised access authorisation given by the holder to the nominee;

or

**10. Regulation 24 amended**

Delete regulation 24(3)(a) and (b) and insert:

- (a) is a secure nominee of the holder of such a licence that authorises the holder to transport the SRS; and
  - (b) transports the SRS in accordance with the unsupervised access authorisation given by the holder to the nominee.
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***Dangerous Goods Safety (Security Risk Substances) Amendment  
Regulations 2013***

Contents

---

**11. Regulation 27 amended**

Delete regulation 27(2)(a) and insert:

- (a) the person —
  - (i) is a secure nominee of the holder of a licence referred to in subregulation (1) that authorises the holder to supply the SRS in the circumstances; and
  - (ii) supplies the SRS in accordance with the unsupervised access authorisation given by the holder to the nominee;

or

**12. Regulation 30 amended**

(1) After regulation 30(1)(c) insert:

- (da) if the application is not accompanied by a certificate given under subregulation (5), a checking fee equal to the amount (if any) required to be paid under paragraph (c); and

(2) Delete regulation 30(3) and insert:

- (3) An application by a body corporate or a partnership must be accompanied by proof of the incorporation of the body or of the existence of the partnership.

(3) After regulation 30(4) insert:

- (5) In addition to any document that is required to accompany the application, an application for a licence

may be accompanied by a certificate that complies with subregulation (6) and is signed by a person approved by the Chief Officer.

- (6) A certificate given by a person under subregulation (5) must certify that the person —
- (a) has read the application; and
  - (b) is satisfied the application complies with this regulation; and
  - (c) if the application is accompanied by a document for the purposes of subregulation (3), is satisfied the document complies with that subregulation; and
  - (d) if the application is accompanied by a security plan —
    - (i) has read the security plan; and
    - (ii) is satisfied the plan complies with regulation 31; and
    - (iii) unless the application is for an SRS fertiliser licence, has done an assessment of the risks referred to in regulation 31(2)(a) and is satisfied the applicant has taken or will take all reasonably practicable measures to minimise those risks in relation to the SRS to which the licence would relate;
- and
- (e) if the licence would relate to a site, is satisfied the site can be operated in accordance with these regulations.
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***Dangerous Goods Safety (Security Risk Substances) Amendment  
Regulations 2013***

Contents

---

**13. Regulation 31 amended**

- (1) In regulation 31(2) delete “A security” and insert:

Unless this regulation says otherwise, a security

- (2) Delete regulation 31(5) and insert:

- (5) A security plan for the purposes of an SRS fertiliser licence must include the following —

- (a) the material listed in subregulation (2)(d) to (k);
- (b) such of the material required in a security plan under subregulation (3) or (4) as is relevant to the activities relating to any SRS that will be conducted by the holder of the licence.

**14. Regulation 32 amended**

- (1) Delete regulation 32(6)(c).
- (2) Delete regulation 32(7)(d) and (e).

**15. Regulation 33 replaced**

Delete regulation 33 and insert:

**33. 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 keep any SRS possessed under the licence secure; and
  - (c) has a security clearance that was issued within the previous 5 years.
- (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.  
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 corporate 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
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***Dangerous Goods Safety (Security Risk Substances) Amendment  
Regulations 2013***

**Contents**

---

Officer that he or she is competent to keep any SRS 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.

**16. Regulation 40 amended**

- (1) In regulation 40(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) After regulation 40(5) insert:

- (6A) Regulation 32, with any necessary changes, applies in relation to dealing with an application to amend a licence as if it were an application for a licence.
- (6B) Regulations 34 and 35, with any necessary changes, apply in relation to amending a licence in the same way as they apply to issuing a licence.

**17. Regulation 42 amended**

(1) Delete regulation 42(1)(a) and insert:

(a) either —

(i) the holder; or

(ii) an individual who, under regulation 33, 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

(2) Delete regulation 42(2)(a) and insert:

(a) either —

(i) the holder; or

(ii) an individual who, under regulation 33, 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

**18. Regulation 46A amended**

(1) In regulation 46A(3) after “fee” insert:

(if any)

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***Dangerous Goods Safety (Security Risk Substances) Amendment  
Regulations 2013***

**Contents**

---

- (2) In regulation 46A(4) delete “equal to 10% of the fee.” and insert:

of \$35.

**19. Regulation 46 replaced**

Delete regulation 46 and insert:

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

If—

- (a) the holder of a licence; or
- (b) an individual who, under regulation 33, 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.

**20. Regulation 49 amended**

In regulation 49(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.

**21. Regulation 50 amended**

Delete regulation 50(3) and insert:

(3) If a body corporate or a partnership is the holder of a licence, each individual who, under regulation 33, is, and is recorded by the holder as, a qualified officer of the holder must ensure the security plan that relates to the licence is complied with by the body corporate or partnership.

R. KENNEDY, Clerk of the Executive Council.

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