

Western Australia

Dangerous Goods Safety (Storage and Handling of Non-explosives) Amendment Regulations 2013

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Dangerous Goods Safety Act 2004

Dangerous Goods Safety (Storage and Handling of Non-explosives) Amendment Regulations 2013

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Dangerous Goods Safety (Storage and Handling of Non-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 (Storage and Handling of Non-explosives) Regulations 2007*.

4. Regulation 3 deleted

Delete regulation 3.

5. Regulation 4 amended

- (1) In regulation 4 delete the definition of *UNTC*.
- (2) In regulation 4 insert in alphabetical order:

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IMDG Code means the *IMDG Code, International Maritime Dangerous Goods Code*, 2012 Edition, incorporating Amendment 36-12 (ISBN: 978-92-801-1561-1);

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 4 in the definition of ***petrol station*** before “vehicles” (each occurrence) insert:

road

- (4) In regulation 4 in the definition of ***rural dangerous goods location*** delete paragraphs (e) and (f) and insert:

- (e) at which dangerous goods used for agricultural, aquacultural, floricultural, horticultural or pastoral purposes are stored, handled or supplied to others;

- (5) In regulation 4 in the definition of ***UN Number*** delete “under the UNTC shown”.

6. Regulation 6 amended

Delete regulation 6(a) and (b) and insert:

- (a) dangerous goods while they are being transported by a road vehicle on a road or other place over which vehicles move, whether on private property or not, that is open to, or used

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by, the public, whether on payment of consideration or not; or

- (b) dangerous goods while they are being transported by rail other than on —
 - (i) a slipway; or
 - (ii) a railway used exclusively by a crane;or

7. Regulation 8 amended

(1) In regulation 8(2):

(a) delete “(5) and (6),” and insert:

(5), (6) and (7),

(b) in paragraph (c) delete “liquid; or” and insert:

liquid.

(c) delete paragraph (d).

(2) Delete regulation 8(6) and insert:

- (6) Hay, straw and bhusa are not dangerous goods for the purposes of these regulations.
- (7) Despite subregulation (4), sulphur in any form is dangerous goods for the purposes of these regulations.

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8. Regulation 12A inserted

After regulation 11 insert:

12A. Chief Officer may determine classification of goods

- (1) In this regulation —
goods means any substance or article.
- (2) Subject to subregulation (4), the Chief Officer may, for the purposes of these regulations, determine that goods are or are not —
 - (a) dangerous goods; or
 - (b) dangerous goods of a particular class or division; or
 - (c) dangerous goods that have a particular subsidiary risk; or
 - (d) dangerous goods of a particular packing group; or
 - (e) incompatible with particular dangerous goods.
- (3) Subject to subregulation (4), the Chief Officer may, for the purposes of these regulations, determine that goods meet the description, and criteria, that apply to goods of a particular UN Number.
- (4) The Chief Officer may determine that goods are dangerous goods for the purposes of these regulations only if the goods are dangerous goods for the purposes of the definition of *dangerous goods* in section 3(1) of the Act.
- (5) If goods cease to be dangerous goods for the purposes of the definition of *dangerous goods* in section 3(1) of the Act, a determination made under

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subregulation (2)(a) that the goods are dangerous goods ceases to be in effect in respect of the goods.

9. Regulations 13A and 13B inserted

At the beginning of Part 3 Division 1 insert:

13A. Duties of manufacturer and importer as to classification of goods

- (1) In this regulation —
goods means any substance or article.
- (2) A person who manufactures any goods must not supply them to another person unless —
 - (a) it has been determined whether they are dangerous goods; and
 - (b) if they are dangerous goods, they have been classified in accordance with the ADG Code.

Penalty: a level 1 fine.

- (3) A person who imports any goods into the State from outside Australia must not supply them to another person unless —
 - (a) it has been determined whether they are dangerous goods; and
 - (b) if they are dangerous goods, they have been classified in accordance with the IMDG Code.

Penalty: a level 1 fine.

13B. Chief Officer may direct analysis of goods

- (1) In this regulation —
goods means any substance or article.

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- (2) If the Chief Officer has reasonable grounds to suspect any goods —
- (a) are dangerous goods; and
 - (b) have not been classified in accordance with the ADG Code or the IMDG Code,
- he or she may give the person who manufactured the goods or imported them into the State a written direction that complies with subregulation (3).
- (3) The direction must direct the recipient —
- (a) to analyse and test the goods to do either or both of the following (as specified in the direction) —
 - (i) to determine whether they are dangerous goods;
 - (ii) if they are dangerous goods, to classify them in accordance with the ADG Code or the IMDG Code (as specified in the direction);
- and
- (b) to give the Chief Officer a written report of the results of the analysis and test on or before a date specified in the direction.
- (4) The direction may include any or all of the following in relation to the goods —
- (a) the method, procedure or test to be used to analyse and test the goods;
 - (b) the person, or class of person, by whom the goods must be analysed or tested;
 - (c) any other matter the Chief Officer considers is reasonably necessary to ensure —
 - (i) it is accurately determined whether the goods are dangerous goods; and

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- (ii) if the goods are dangerous goods, they are accurately classified in accordance with the ADG Code or the IMDG Code;
 - (d) a direction that the recipient must not sell or supply the goods until the Chief Officer has been given the report of the results of the analysis and test.
- (5) The Chief Officer, in writing, may amend or cancel the direction.
- (6) A person given a direction under this regulation must obey it.
Penalty: a level 1 fine.

10. Regulation 25 amended

- (1) In regulation 25(1A) delete the definition of *handle*.
- (2) After regulation 25(3)(a) insert:
 - (ba) the dangerous goods are not manufactured or processed on the site; and
- (3) In regulation 25(6):
 - (a) delete “that exceed the manifest quantity in an item of Schedule 1”;
 - (b) delete paragraph (a)(ii) and insert:
 - (ii) contain only residual amounts of the dangerous goods that cannot be removed reasonably practicably by draining or decanting them;

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- (4) After regulation 25(7) insert:
 - (8) Subregulations (2), (3), (5), (6) and (7) do not apply to a dangerous goods site within a port area as defined in regulation 134.

11. Regulation 26 amended

- (1) In regulation 26(2):
 - (a) delete paragraphs (b) and (c) and insert:
 - (b) the risk assessment that would be required by regulation 48 for the site if it were licensed; and
 - (c) the manifest, and the dangerous goods site plan, that would be required by regulation 78 for the site if it were licensed; and
 - (b) delete paragraph (e) and insert:
 - (e) unless a fee would be payable under the *Dangerous Goods Safety (Major Hazard Facilities) Regulations 2007* regulation 34 in respect of the site if the licence were granted, the annual fee for the first year of the licence; and
 - (f) if the application is not accompanied by a certificate issued under subregulation (3), a checking fee equal to the amount (if any) required to be paid under paragraph (e).
- (2) Delete regulation 26(3) and insert:
 - (3) In addition to any document that is required to accompany the application, it may be accompanied by

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a certificate that complies with subregulation (4) and is signed by a person approved by the Chief Officer.

- (4) A certificate given by a person under subregulation (3) must certify that the person —
- (a) has read the application; and
 - (b) is satisfied the application complies with subregulation (2); and
 - (c) has read the risk assessment; and
 - (d) is satisfied the risk assessment —
 - (i) identifies all the risks to people, property and the environment in relation to the dangerous goods that would be on the site to which the licence would relate; and
 - (ii) identifies all reasonably practicable measures to minimise those risks;
- and
- (e) is satisfied the manifest complies with Schedule 3 Division 2; and
 - (f) is satisfied the dangerous goods site plan complies with Schedule 3 Division 3.

12. Regulation 29 amended

- (1) In regulation 29(3):
- (a) in paragraph (a) delete the passage that begins with “a written” and ends with “site; and” and insert:

the revised risk assessment that would be required by regulation 48 for the site if the licence were amended; and

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- (b) in paragraph (c) delete “relates.” and insert:

relates; and
- (c) after paragraph (c) insert:
 - (d) if the application is not accompanied by a certificate given under subregulation (4B), a checking fee equal to the amount (if any) required to be paid under paragraph (c).
- (2) After regulation 29(4A) insert:
 - (4B) In addition to any document that is required to accompany the application, it may be accompanied by a certificate that complies with subregulation (4C) and is signed by a person approved by the Chief Officer.
 - (4C) A certificate given by a person under subregulation (4B) must certify that the person —
 - (a) has read the application; and
 - (b) is satisfied the application complies with subregulation (3); and
 - (c) has read the revised risk assessment; and
 - (d) is satisfied the revised risk assessment —
 - (i) identifies all the risks to people, property and the environment in relation to the dangerous goods that would be on the site if the licence were amended; and
 - (ii) identifies all reasonably practicable measures to minimise those risks.

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13. Regulation 47 amended

- (1) Delete regulation 47(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.
 - (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 47(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.

14. Regulation 48 amended

- (1) Delete regulation 48(1).
- (2) In regulation 48(2) after “The operator” insert:

of a dangerous goods site

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15. Regulation 50 deleted

Delete regulation 50.

16. Regulation 73 replaced

Delete regulation 73 and insert:

73. Fire control equipment required on site

- (1) The operator of a dangerous goods site must ensure there is adequate fire control equipment on the site.
Penalty: a level 1 fine.
- (2) For the purposes of subregulation (1), 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 site having regard to —
 - (i) the types and quantities of dangerous goods on the site; and
 - (ii) the conditions under which they are handled on the site; and
 - (iii) any materials and other substances on the site;and
 - (b) it is designed and constructed to prevent dangerous goods on the site 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

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- 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.
- (3) The operator of a dangerous goods site must ensure the fire control equipment on the site is in proper working order.
- Penalty: a level 1 fine.
- (4) For the purposes of subregulation (3), 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.
- (5) If any fire control equipment on a dangerous goods site stops working or becomes unusable, the operator of the site 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.

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- (6) If the implications assessed by the operator under subregulation (5)(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.
- (7) In determining the alternative measures required under subregulation (5)(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 dangerous goods on the site; and
 - (c) the storing or handling of dangerous goods to stop or be limited; and
 - (d) modifications to systems of work.

17. Regulation 74 amended

In regulation 74 delete “protection system” and insert:

control equipment

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18. Regulation 75 replaced

Delete regulation 75 and insert:

75. Emergency plan required for some sites

- (1) In this regulation —
emergency plan, for a dangerous goods site, 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 on the site.
- (2) This regulation applies to a dangerous goods site if dangerous goods are stored or handled on the site in quantities that exceed the manifest quantity in relation to those goods.
- (3) The operator of the site must ensure there is an emergency plan for the site.
- (4) The operator of the site may at any time revise the emergency plan for the site.
- (5) The operator of the site must review the emergency plan for the site and, if necessary, revise it —
 - (a) whenever there is a significant change in the risk in relation to dangerous goods on the site to people, property or the environment; and
 - (b) whenever there is a significant change to the layout of or to any structure on the site; and
 - (c) as soon as practicable after a dangerous situation occurs on the site; and

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- (d) in any event, at intervals of not more than 3 years from the day on which the plan was first prepared or last reviewed.

Penalty: a level 2 fine.

- (6) The operator of the site must have a copy of the current emergency plan for the site on the site.

Penalty: a level 1 fine.

- (7) The operator of the site, on request, must give a copy of the current emergency plan for the site 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 site to make such amendments to the current emergency plan for the site 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 dangerous goods site, has a function and who, without a reasonable excuse, does not obey the emergency plan commits an offence.

Penalty: a level 2 fine.

76A. Information for occupier of site adjacent to dangerous goods site

- (1) This regulation applies to a dangerous goods site if dangerous goods are stored or handled on the site in quantities that exceed the manifest quantity in relation to those goods.

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- (2) If the risk in relation to dangerous goods on the site to people, property or the environment were a dangerous situation to occur on the site would extend to a place adjacent to the site, the operator of the site 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 on the site;
 - (b) information about what to do if a dangerous situation occurs on the site;
 - (c) information about what the operator will do if a dangerous situation occurs on the site;
 - (d) information to enable the occupier to contact the operator of the site.

Penalty: a level 2 fine.

76B. FES emergency response guide required for some sites

- (1) In this regulation —
- agreed FES emergency response guide*, for a dangerous goods site, means an FES emergency response guide that has been prepared or revised by the operator of the site in consultation with the officer in charge of the fire station or of the office of the FES Department nearest the site;
- FES emergency response guide*, for a dangerous goods site, means a document, in a form approved by the FES Commissioner, that contains information relevant to any fire brigade or other person under the control of the FES Commissioner when dealing with any fire or dangerous situation that might occur on the site, including information about the following —
- (a) the operator of the site;

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- (b) the layout of the site;
 - (c) the construction of any structure on the site;
 - (d) the dangerous goods on the site;
 - (e) the equipment and resources on the site to detect or deal with any such fire or dangerous situation.
- (2) This regulation applies to a dangerous goods site if —
 - (a) the quantity of dangerous goods stored or handled on the site exceeds 10 times the manifest quantity in relation to those goods; and
 - (b) the site is not —
 - (i) a petrol station; or
 - (ii) a mine as defined in the *Mines Safety and Inspection Act 1994* section 4(1).
- (3) The operator of the site must ensure there is an agreed FES emergency response guide for the site.
- (4) The operator of the site may at any time revise the agreed FES emergency response guide for the site.
- (5) The operator of the site must review the agreed FES emergency response guide for the site and, if necessary, revise it —
 - (a) whenever there is a significant change to the type or quantity of dangerous goods on the site; and
 - (b) whenever there is a significant change to the layout of or to any structure on the site; and
 - (c) as soon as practicable after a fire or dangerous situation occurs on the site; and

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- (d) in any event, at intervals of not more than 3 years from the day on which the guide was first prepared or last reviewed.

Penalty: a level 2 fine.

- (6) The operator of the site must ensure the current agreed FES emergency response guide for the site is on the site.

Penalty: a level 1 fine.

- (7) The operator of the site must ensure that —

- (a) the Chief Officer; and
- (b) the fire station or the office of the FES Department nearest the site,

have a copy of the current agreed FES emergency response guide for the site.

Penalty: a level 1 fine.

19. Regulation 78 amended

In regulation 78(4)(a) delete “DGO,” and insert:

DGO and

20. Regulation 93 amended

Delete regulation 93(2) and insert:

- (2) An applicant who does not obey such a request within 21 days after the date on which it is made, or any longer period permitted by the Chief Officer, is taken to have withdrawn the application.

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21. Regulation 110 amended

- (1) Delete regulation 110(2) and insert:
 - (2) The register must record, in relation to each registration, this information —
 - (a) the name of the holder of the registration;
 - (b) the date on which the registration was granted;
 - (c) the date (if any) on which the registration was renewed;
 - (d) the date (if any) on which the registration was suspended;
 - (e) the date (if any) on which the registration was cancelled.
 - (3A) The register may record any other information relevant to a registration holder or to the issue, amendment, renewal, suspension or cancellation of a registration that the Chief Officer thinks fit.
- (2) After regulation 110(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.

22. Regulation 132 amended

Delete regulation 132(3)(d) and (e) and insert:

- (d) the location and proper use, fitting and maintenance of any personal protective

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equipment or safety equipment kept at the location in accordance with regulation 129.

23. Part 8A inserted

After regulation 133 insert:

Part 8A — Dangerous goods in ports

Division 1 — Preliminary matters

134. Terms used

In this Part, unless the contrary intention appears —

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

consignor, of dangerous goods, has the meaning given in regulation 135A;

explosion risk goods has the meaning given in regulation 135B;

handle, dangerous goods, means (despite section 3(1) of the Act) —

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

harbour master —

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

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- (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 the 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;

special berth (non-explosives) means a berth that, under regulation 135K, is declared to be a special berth (non-explosives);

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

135A. Meaning of consignor

For the purposes of these regulations, a person is the consignor of dangerous goods in a port area —

- (a) if the person, with the person's authority, is named or otherwise identified as the consignor of the goods in documentation associated with

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- transporting the goods into or from the port area; or
- (b) if paragraph (a) does not apply to the person or anyone else — if the person —
- (i) engages another person, either directly or through an agent or other intermediary, to transport the goods into or from the port area; or
- (ii) has possession of, or control over, the goods immediately before the goods are transported into or from the port area;
- or
- (c) if neither paragraph (a) nor (b) applies to the person or anyone else and the goods are being imported into Australia — if the person is the importer.

135B. Meaning of explosion risk goods

For the purposes of this Part, the dangerous goods listed in the Table are explosion risk goods.

Table

Dangerous goods	UN No.	Class
Ammonium nitrate, with not more than 0.2% total combustible material, including any organic substance, calculated as carbon to the exclusion of any other added substance	1942	5.1
Ammonium nitrate based fertiliser	2067	5.1
Ammonium nitrate, liquid (hot concentrated solution)	2426	5.1

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Dangerous goods	UN No.	Class
Ammonium nitrate emulsion or suspension or gel, immediate for blasting explosives	3375	5.1
Calcium hypochlorite, dry or calcium hypochlorite mixture, dry, with more than 39% available chlorine (8.8% available oxygen)	1748	5.1
Calcium hypochlorite, dry with more than 10% but not more than 39% available chlorine	2208	5.1
Calcium hypochlorite, hydrated or calcium hypochlorite, hydrated mixture, with not less than 5.5% but not more than 16% water	2880	5.1
Calcium hypochlorite, dry, corrosive or calcium hypochlorite mixture, dry, corrosive with more than 39% available chlorine (8.8% available oxygen)	3485	5.1
Calcium hypochlorite mixture, dry, corrosive with more than 10% but not more than 39% available chlorine	3486	5.1
Calcium hypochlorite, hydrated, corrosive or calcium hypochlorite, hydrated mixture, corrosive with not less than 5.5% but not more than 16% water	3487	5.1

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Division 2 — Non-explosives in port areas

135C. Application of this Division

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

135D. Packaging and documentation requirements for non-explosives

(1) In this regulation —

ADG compliant has the meaning given in subregulation (2);

designated ADG document, for dangerous goods, means the dangerous goods transport document for the goods that complies with the ADG Code Chapter 11.1;

designated IMDG documents, for dangerous goods, means these documents —

- (a) the dangerous goods transport document that, under the IMDG Code, has to be signed by the consignor of the goods and to accompany the goods;
- (b) the container/vehicle packing certificate that, under the IMDG Code, has to be provided for the goods;

IMDG compliant has the meaning given in subregulation (3).

(2) In this regulation, dangerous goods are *ADG compliant* if —

- (a) they are packed, marked, labelled and placarded in accordance with; and
- (b) their packaging complies with,

the ADG Code.

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- (3) In this regulation, dangerous goods are ***IMDG compliant*** if —
- (a) they are packed, marked, labelled and placarded in accordance with; and
 - (b) their packaging complies with,
- those provisions of the IMDG Code that that Code says are mandatory.
- (4) A person must not import dangerous goods into a port area by sea from within Australia unless the goods are ADG compliant or IMDG compliant.
Penalty: a level 1 fine.
- (5) A person must not import dangerous goods into a port area by sea from within Australia unless the goods are accompanied by the designated ADG document, or the designated IMDG documents, for the goods.
Penalty: a level 1 fine.
- (6) A person must not import dangerous goods into a port area by sea from outside Australia unless the goods are IMDG compliant.
Penalty: a level 1 fine.
- (7) A person must not import dangerous goods into a port area by sea from outside Australia unless the goods are accompanied by the designated IMDG documents for the goods.
Penalty: a level 1 fine.
- (8) The consignor of dangerous goods in a port area for the purposes of being transported by sea to a place within Australia commits an offence if the goods are neither ADG compliant nor IMDG compliant.
Penalty: a level 1 fine.

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- (9) The consignor of dangerous goods in a port area for the purposes of being transported by sea to a place within Australia commits an offence if the goods are not accompanied by the designated ADG document, or the designated IMDG documents, for the goods.
Penalty: a level 1 fine.
- (10) The consignor of dangerous goods in a port area for the purposes of being transported by sea to a place outside Australia commits an offence if the goods are not IMDG compliant.
Penalty: a level 1 fine.
- (11) The consignor of dangerous goods in a port area for the purposes of being transported by sea to a place outside Australia commits an offence if the goods are not accompanied by the designated IMDG documents.
Penalty: a level 1 fine.
- 135E. Master's duties as to emergency plan for vessel**
- The master of a vessel transporting more than the manifest quantity of dangerous goods must not take the vessel into a port area unless —
- (a) there is on board a written emergency plan for dealing with any dangerous situation involving the goods that arises on the vessel while the vessel is in the port area; and
 - (b) the vessel has adequate crew and equipment to carry out the plan should the need to do so arise; and
 - (c) the master has consulted the harbour master of the port about the management of any emergency that might arise from handling or transporting the goods in the port area.
- Penalty: a level 1 fine and imprisonment for 10 months.

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135F. Berth operator's duties as to emergency plan for berth

- (1) This regulation applies to a berth for which regulation 75 requires that the berth operator have an emergency plan.
- (2) The berth operator of a berth to which this regulation applies must not handle dangerous goods at the berth unless —
 - (a) the berth operator has given the harbour master of the port a copy of the emergency plan for the berth required by regulation 75; and
 - (b) the harbour master has agreed to the plan.

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

135G. Berth operator's duty to minimise time dangerous goods kept at berth

- (1) This regulation applies when dangerous goods are unloaded from or loaded on to a vessel at a berth.
- (2) The operator of the berth must ensure that any handling of the dangerous goods at the berth is completed as soon as practicable after the vessel berths at the berth or the dangerous goods arrive on the berth.

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

- (3) The operator of the berth must ensure that the vessel does not remain at the berth for any longer than is reasonably necessary to complete any handling of the dangerous goods.

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

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Division 3 — Explosion risk goods in port areas

135H. When special berth (non-explosives) required

- (1) If a vessel carrying more than 1 030 tonnes of explosion risk goods is moored at a berth that is not a special berth (non-explosives), the operator of the berth commits an offence.

Penalty: a level 1 fine.

- (2) If 30 tonnes or more of explosion risk goods are unloaded from or loaded on to a vessel at a berth that is not a special berth (non-explosives), the operator of the berth commits an offence.

Penalty: a level 1 fine.

- (3) If 30 tonnes or more of explosion risk goods are on a berth that is not a special berth (non-explosives), the operator of the berth commits an offence.

Penalty: a level 1 fine.

135I. Applying for declaration of special berth (non-explosives)

- (1) Only these persons may apply for a berth to be declared a special berth (non-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 (non-explosives) must —

- (a) be made to the Chief Officer; and
- (b) be in an approved form; and
- (c) specify the following —

- (i) the name of the berth operator;

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- (ii) the location and dimensions of the berth;
 - (iii) the UN Number and proper shipping name of the explosion risk goods that will be handled at the berth;
 - (iv) the maximum quantity of the explosion risk goods that will be at the berth and on any vessel at the berth, including any such goods on board that are not handled while the vessel is at the berth;
 - (v) the maximum quantity of the explosion risk goods that will be handled at the berth in respect of any one vessel;
 - (vi) any other matter required by the approved form;
- and
- (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 135J(1);
 - (iii) an implementation plan that complies with regulation 135J(2);
 - (iv) an emergency plan that complies with regulation 75;
 - (v) a fee of \$3 900.
- (3) One application may specify more than one kind of explosion risk goods.

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135J. Content of risk assessment and implementation plan

- (1) For the purposes of regulation 135I(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 explosion risk goods specified in the application and to handling them at the berth; 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 is reasonably practicable —
 - (i) the probability of the hazard causing a fire or explosion; and
 - (ii) the harm to people, property and the environment that is likely to result from any such 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 6.5.2.

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- (2) For the purposes of regulation 135I(2)(e)(iii), an implementation plan must —
 - (a) state which measures in the risk assessment have been taken at the time the application is made; and
 - (b) state which such measures have not been taken and when they will be taken; and
 - (c) state the procedures that will be followed by people when handling the explosion risk goods at the berth.

135K. Dealing with application under r. 135I

- (1) Any decision made by the Chief Officer under this regulation must be in writing.
- (2) The Chief Officer may ask a person who has made an application under regulation 135I for more information to enable the Chief Officer to decide it and may delay deciding it until the information is supplied.
- (3) A person who does not obey such a request within 21 days after the date on which it is made, or any longer period permitted by the Chief Officer, is taken to have withdrawn the application and is entitled to a refund of the fee.
- (4) On an application made under regulation 135I, the Chief Officer may declare the berth to be a special berth (non-explosives) for a period, not over 5 years, specified in the declaration.
- (5) Without limiting the matters the Chief Officer may consider before making a declaration under subregulation (4), 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

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- (b) the items listed in AS 3846 clause 6.5.2.
- (6) A declaration made under subregulation (4) must specify the following —
 - (a) the name of the berth operator;
 - (b) the berth to which it applies;
 - (c) the UN Number and proper shipping name of the explosion risk goods that can be handled at the berth.
- (7) A declaration made under subregulation (4) may specify more than one kind of explosion risk goods.
- (8) A declaration made under subregulation (4) may specify any of these requirements that the Chief Officer considers necessary to ensure the explosion risk goods are handled safely at the special berth (non-explosives) —
 - (a) the maximum quantity of the explosion risk goods that are permitted to be on any vessel at the berth, including any such goods on board that are not handled while the vessel is at the berth;
 - (b) the maximum quantity of the explosion risk goods that are permitted to be handled at the berth in respect of any one vessel;
 - (c) any requirements that must be obeyed when the explosion risk goods are handled at the berth.
- (9) The Chief Officer at any time may amend or cancel a declaration made under subregulation (4).
- (10) If the Chief Officer —
 - (a) refuses an application; or
 - (b) makes a declaration that includes a requirement,

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he or she must give reasons for the decision.

135L. Explosion risk goods not to be in loose form

- (1) For the purposes of this regulation, explosion risk goods are in a loose form if they are to be handled while they are not in a container that itself can be loaded on to or unloaded from a vehicle.
- (2) The consignor of explosion risk goods in a port area for transport by sea commits an offence if the goods are consigned in a loose form.
Penalty: a level 1 fine.
- (3) A person who imports explosion risk goods into a port area by sea commits an offence if the goods are imported in a loose form.
Penalty: a level 1 fine.
- (4) The operator of a berth commits an offence if explosion risk goods in a loose form are handled at the berth.
Penalty: a level 1 fine.
- (5) It is a defence to a charge of an offence under subregulation (4) to prove the explosion risk goods were in a loose form because they had spilled as a result of a broken container.

135M. Ammonium nitrate (UN 1942 and 2067) not to be imported, consigned or handled without evidence of analysis and testing

- (1) In this regulation —
alleged, in relation to goods, means alleged in the documents accompanying the goods;

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designated AN means these dangerous goods of Division 5.1 —

- (a) ammonium nitrate, with not more than 0.2% total combustible material, including any organic substance, calculated as carbon to the exclusion of any other added substance;
- (b) ammonium nitrate based fertiliser;

sufficient evidence has the meaning given in subregulation (2).

- (2) For the purposes of this regulation, evidence is not sufficient evidence that goods are designated AN unless it includes these documents —
 - (a) written evidence that the goods have been chemically analysed;
 - (b) written evidence of the analysis stating, as percentages, each constituent, including organic carbon, of the goods;
 - (c) written evidence that the goods have undergone —
 - (i) the UN gap test, being test Type 2(a) in Test Series 2 described in section 12 of the UNTC, in accordance with that section 12; or
 - (ii) a test, approved by the Chief Officer, as to whether the goods have explosive properties;
 - (d) written evidence of the result of the test;
 - (e) written evidence that the classification code of the goods has been assigned to them in accordance with the IMDG Code,

and the documents confirm the goods are designated AN.

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- (3) A person must not import into a port area by sea 30 tonnes or more of goods that are alleged to be designated AN unless the goods are accompanied by sufficient evidence that the goods are designated AN.
Penalty: a level 1 fine and imprisonment for 10 months.
- (4) If 30 tonnes or more of goods alleged to be designated AN are unloaded from or loaded on to a vessel at a berth, the operator of the berth commits an offence if the goods are not accompanied by sufficient evidence that the goods are designated AN.
Penalty: a level 1 fine and imprisonment for 10 months.
- (5) If 30 tonnes or more of goods alleged to be designated AN are on a berth, the consignor of the goods commits an offence if the goods are not accompanied by sufficient evidence that the goods are designated AN.
Penalty: a level 1 fine and imprisonment for 10 months.

135N. Master's duties

- (1) This regulation applies when 30 tonnes or more of explosion risk goods are unloaded from or loaded on to a vessel at a berth.
- (2) The master of the vessel commits an offence if any of the following occurs in relation to the unloading or loading —
- (a) any of the requirements of AS 3846 clause 6.6.1(i) is contravened;
 - (b) any of the requirements of AS 3846 clause 6.6.1(b), (e), (f), (g), (j), (k) or (l) is contravened on board the vessel;

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- (c) any of the requirements of AS 3846 clause 6.6.2 is contravened.

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

- (3) The master of the vessel commits an offence if any of the following occurs in relation to the unloading or loading —
 - (a) any of the requirements of the IMDG Code clause 5.4.3 is contravened;
 - (b) any of the requirements of the IMDG Code Chapter 7.1 is contravened;
 - (c) any of the requirements of the IMDG Code Chapter 7.2 is contravened.

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

1350. Berth operator's duties

- (1) In this regulation —

damaged, in relation to a container, means damaged or defective to the extent that the container is not safe to use to transport explosion risk goods;

hot work means any use of a welding device, or of a tool or device that causes or might cause heat, sparks or a flame.
- (2) This regulation applies when —
 - (a) 30 tonnes or more of explosion risk goods are unloaded from or loaded on to a vessel at a berth; or
 - (b) 30 tonnes or more of explosion risk goods are on a berth.

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- (3) Subregulations (4), (5), (6), (10) and (11)(a) apply if a vessel carrying more than 1 030 tonnes of explosion risk goods is moored at a berth.
- (4) The operator of the berth commits an offence if any requirement specified in a declaration made under regulation 135K is contravened at the berth.
Penalty: a level 1 fine and imprisonment for 10 months.
- (5) The operator of the berth must ensure any handling of the explosion risk goods at the berth is completed as soon as practicable after the vessel berths at the berth or the goods arrive on the berth.
Penalty: a level 1 fine and imprisonment for 10 months.
- (6) The operator of the berth must ensure the vessel does not remain at the berth for any longer than is reasonably necessary to complete any handling of the explosion risk goods.
Penalty: a level 1 fine and imprisonment for 10 months.
- (7) The operator of the berth must not handle the explosion risk goods at the berth unless the operator has written procedures for controlling and managing the movement of road and rail vehicles on the berth.
Penalty: a level 1 fine and imprisonment for 10 months.
- (8) The operator of the berth must not handle the explosion risk goods at the berth unless the operator has written procedures that state the maximum quantity of the goods that can be on the berth at any one time.
Penalty: a level 1 fine and imprisonment for 10 months.

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- (9) The operator of the berth must ensure all people and vehicles are excluded from the berth and from a reasonable area surrounding the vessel other than these —
- (a) any member of the vessel's crew;
 - (b) any person who has a statutory duty to fulfil in respect of the berth, the vessel, its cargo or the explosion risk goods;
 - (c) any person whose presence is essential to enable the explosion risk goods to be handled at the berth;
 - (d) any person who is a member of an emergency service,
- and any vehicle carrying such a person.
- Penalty: a level 1 fine and imprisonment for 10 months.
- (10) The operator of the berth must ensure signs prohibiting hot work, smoking and the lighting of a flame or fire are displayed prominently on the vessel and the berth.
- Penalty: a level 1 fine and imprisonment for 10 months.
- (11) The operator of the berth commits an offence if any of the following occurs at the berth —
- (a) if a person on the berth does any hot work, smokes or lights a flame or fire;
 - (b) if there are any other dangerous goods or any explosives on the berth;
 - (c) if any substance that could contaminate the explosion risk goods, and any combustible dust or debris, is not cleaned from the berth before the explosion risk goods are handled;

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- (d) if any damaged container containing the explosion risk goods is not removed from the berth as soon as practicable after the damage is discovered;
- (e) if any damaged container containing the explosion risk goods is removed from the berth for any purpose other than to enable the explosion risk goods to be —
 - (i) repackaged; or
 - (ii) dealt with in some other way so that the explosion risk goods can be safely handled;
- (f) if any spillage of the explosion risk goods is not cleaned up immediately;
- (g) if any of the explosion risk goods are on the berth after the handling of them is completed.

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

- (12) For the purposes of subregulation (11), the berth includes the reasonable area surrounding the vessel from which subregulation (9) requires that all people (other than those specified in subregulation (9)(a) to (d)) be excluded.

135P. Berth operator to give Chief Officer report after handling explosion risk goods

- (1) This regulation applies if —
 - (a) explosion risk goods are handled at a special berth (non-explosives); and
 - (b) before, during or after the explosion risk goods are handled, any of the following occurs —
 - (i) a failure to comply with this Part;

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- (ii) a failure to comply with the procedures required by regulation 135O(7) and (8);
 - (iii) a failure to take a measure specified in the risk assessment required by regulation 135I(2)(e)(ii) for the berth.
- (2) If this regulation applies then, within 14 days after the explosion risk goods are handled at the special berth (non-explosives), the operator of the berth must give the Chief Officer a written report that complies with subregulation (3).
Penalty: a level 2 fine.
- (3) The report required by subregulation (2) must include the following —
 - (a) a description of the failure referred to in subregulation (1)(b) that gave rise to the report;
 - (b) a statement of whether or not the failure resulted in any adverse consequences, and (if it did) a description of those consequences and what measures were, are being or will be taken to remedy them;
 - (c) a description of what measures have been, are being or will be taken to ensure that the failure does not happen again;
 - (d) if any measures of the kind referred to in paragraph (c) have not been taken, when those measures will be taken.

24. Regulation 139 amended

In regulation 139:

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

regulations; or

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(b) after paragraph (c) insert:

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

25. Schedule 2 deleted

Delete Schedule 2.

26. Schedule 5 Division 1 amended

(1) In Schedule 5 Division 1 clause 1(1) delete “Tables to clauses 2 and 3,” and insert:

Table to clause 2,

(2) In Schedule 5 Division 1 delete clause 3.

27. Schedule 6 Divisions 3 and 4 inserted

After Schedule 6 Division 2 insert:

**Division 3 — Provisions relating to *Dangerous Goods Safety
(Storage and Handling of Non-explosives) Amendment
Regulations 2013***

6. Term used: commencement day

In this Division —

commencement day means the day on which the *Dangerous Goods Safety (Storage and Handling of Non-explosives) Amendment Regulations 2013*, other than regulations 1 and 2, come into operation.

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7. Emergency plans

If, immediately before commencement day, the operator of a dangerous goods site has an emergency plan for the site that complies with the *Dangerous Goods Sites — Emergency Planning code* ISBN 978-1-921163-09-7 published by the Department, then on and after commencement day the plan is taken to be an emergency plan for the purposes of regulation 75.

8. Special risk plans deemed FES emergency response guides

If, immediately before commencement day, the operator of a dangerous goods site has a special risk plan prepared in accordance with the *Dangerous Goods Sites — Emergency Planning code* ISBN 978-1-921163-09-7 published by the Department, then on and after commencement day the plan is taken to be an agreed FES emergency response guide for the purposes of regulation 76B.

9. Deferral of licensing requirement for unlicensed dangerous goods site in port area

- (1) If a dangerous goods site in a port area (as defined in regulation 134) is not licensed under Part 4 immediately before commencement day, regulation 25 does not apply to the site until the day after the period of 6 months beginning on commencement day.
- (2) Subclause (1) does not prevent the application for or grant of a licence under Part 4 for such a dangerous goods site on and after commencement day.

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**Division 4 — Provisions relating to *Dangerous Goods Safety
(Goods in Ports) Repeal Regulations 2013***

10. Term used: commencement day

In this Division —

commencement day means the day on which the *Dangerous Goods Safety (Goods in Ports) Repeal Regulations 2013* regulation 3 comes into operation.

11. Special berth declarations

If, immediately before commencement day, a declaration made under the *Dangerous Goods Safety (Goods in Ports) Regulations 2007* regulation 33 is in force in relation to a berth, then on and after commencement day —

- (a) the declaration is taken to be a declaration made under regulation 135K(4) for the same period and with the same terms and requirements; and
- (b) the berth is taken to be a special berth (non-explosives) for the purposes of Part 8A.

12. Application of Part 8A to certain cargoes

- (1) If a term is given a meaning in Part 8A, it has the same meaning in this clause.
- (2) In this clause —

threshold amount, of explosion risk goods, means —

 - (a) if the goods are in —
 - (i) a freight container (as defined in the *Dangerous Goods Safety (Road and Rail Transport of Non-explosives) Regulations 2007* regulation 4); or
 - (ii) a portable tank (as defined in that regulation); or
 - (iii) a combination of those,
400 tonnes; or

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- (b) if the goods are in an IBC (as defined in regulation 34 of those regulations), 150 tonnes.
- (3) Regulations 135H(2) and (3), 135O(4), (7) and (8) and 135P do not apply in the 6 months after commencement day if 30 tonnes or more of explosion risk goods but less than the threshold amount of the goods are —
 - (a) unloaded from or loaded on to a vessel at a berth that is not a special berth (non-explosives); or
 - (b) at a berth that is not a special berth (non-explosives).

R. KENNEDY, Clerk of the Executive Council.