

Dangerous Goods Safety Act 2004

## **Dangerous Goods Safety (Road and Rail Transport of Non-explosives) Amendment Regulations 2014**

Made by the Governor in Executive Council.

**1. Citation**

These regulations are the *Dangerous Goods Safety (Road and Rail Transport of Non-explosives) Amendment Regulations 2014*.

**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 July 2014.

**3. Regulations amended**

These regulations amend the *Dangerous Goods Safety (Road and Rail Transport of Non-explosives) Regulations 2007*.

**4. Regulation 4 amended**

- (1) In regulation 4 delete the definitions of:

*ADG Code*

*Australian Transport Council*

*ICAO approved*

*IMO approved*

***Dangerous Goods Safety (Road and Rail Transport of Non-explosives)  
Amendment Regulations 2014***

**r. 4**

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***model subordinate law***

***placard load***

***transport unit***

- (2) In regulation 4 insert in alphabetical order:

***ADG Code*** means the *Australian Code for the Transport of Dangerous Goods by Road and Rail*, Seventh edition, 2007, published by the National Transport Commission (ISBN 1 921168 57 9) (also called the Australian Dangerous Goods Code) including (for the avoidance of doubt) its appendices, and incorporating the amendments set out in the Transport of Dangerous Goods Laws Amendment Package No. 2 Schedules 3 and 4 approved by the Standing Council on Transport and Infrastructure on 15 November 2013;

***cargo transport unit*** means —

- (a) a road transport tank, or freight, vehicle; or
- (b) a railway transport tank, or freight, wagon; or
- (c) a portable tank; or
- (d) a bulk container; or
- (e) a freight container; or
- (f) an MEGC;

***ICAO approved*** means approved in accordance with the ICAO Technical Instructions;

***ICAO Technical Instructions*** means the *Technical Instructions for the Safe Transport of Dangerous Goods by Air* published by the International Civil Aviation Organisation;

***Dangerous Goods Safety (Road and Rail Transport of Non-explosives)  
Amendment Regulations 2014***

---

**r. 4**

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

***IMO approved*** means approved in accordance with the IMDG Code;

***model subordinate law*** means the Model Subordinate Law on the Transport of Dangerous Goods by Road or Rail set out in Schedule 2 to the *National Transport Commission (Model Legislation — Transport of Dangerous Goods by Road or Rail) Regulations 2007* (Commonwealth), as that Schedule is in force from time to time;

***placard load*** means a load that contains dangerous goods and that must be placarded under regulation 110;

***Standing Council on Transport and Infrastructure*** means the council of Commonwealth, New Zealand, State, Australian Capital Territory and Northern Territory Ministers, established on 11 June 1993 as the Australian Transport Council and subsequently restructured as the Standing Council on Transport and Infrastructure, but constituted so that it consists of only one Minister representing each of the Commonwealth, the States, the Australian Capital Territory and the Northern Territory;

- (3) In regulation 4 in the definition of ***Competent Authorities Panel*** delete paragraph (b) and insert:
- (b) is appointed by the Standing Council on Transport and Infrastructure;

***Dangerous Goods Safety (Road and Rail Transport of Non-explosives)  
Amendment Regulations 2014***

**r. 5**

---

**5. Regulation 12 amended**

In regulation 12(2) delete “of dangerous goods” (1<sup>st</sup> occurrence) and insert:

that contains dangerous goods

**6. Regulation 13 amended**

Delete regulation 13(a) and insert:

- (a) that are in a consignment where the aggregate quantity of dangerous goods is less than the quantity for which an inner package is required by the ADG Code to be marked with a proper shipping name or the technical name of the substance (ADG Code 5.2.1.8); or

**7. Regulation 14 amended**

After regulation 14(1)(d) insert:

- (da) handling fumigated cargo transport units;

**8. Regulation 18 amended**

In regulation 18(a) after “same” insert:

cargo

**9. Regulation 37 deleted**

Delete regulation 37.

***Dangerous Goods Safety (Road and Rail Transport of Non-explosives)  
Amendment Regulations 2014***

**r. 10**

**10. Regulation 38 amended**

In regulation 38(a) and (b) before “transport unit” insert:

cargo

**11. Regulation 106 amended**

(1) In regulation 106(1) before “transport unit” insert:

cargo

(2) Delete regulation 106(3) and insert:

- (3) An overpack is ***appropriately marked*** if it is marked and labelled in accordance with —
- (a) the ADG Code section 5.1.2; or
  - (b) if the overpack is transported only as part of a retail distribution load, the ADG Code section 7.3.3.

**12. Regulation 107 amended**

(1) In regulation 107 delete the penalty.

(2) After regulation 107(3) insert:

- (3A) Subregulation (3) does not apply if the marking or labelling of the package complies with the requirements of the ICAO Technical Instructions or the IMDG Code with respect to the contents of the package.

***Dangerous Goods Safety (Road and Rail Transport of Non-explosives)  
Amendment Regulations 2014***

**r. 13**

---

- (3B) A reference to a label in this regulation includes a reference to a placard.

Penalty for an offence under this regulation:

- (a) for large packaging or overpack — a fine of \$5 000;
- (b) in any other case — a fine of \$1 500.

**13. Regulation 108 amended**

- (1) In regulation 108 delete the penalty.
- (2) After regulation 108(3) insert:
  - (4) Subregulation (3) does not apply if the marking or labelling of the package complies with the requirements of the ICAO Technical Instructions or the IMDG Code with respect to the contents of the package.
- (5) A reference to a label in this regulation includes a reference to a placard.

Penalty for an offence under this regulation:

  - (a) for large packaging or overpack — a fine of \$5 000;
  - (b) in any other case — a fine of \$1 500.

**14. Regulation 109 amended**

- (1) In regulation 109 delete the penalty.
- (2) After regulation 109(3) insert:
  - (4) Subregulation (3) does not apply if the marking or labelling of the package complies with the

***Dangerous Goods Safety (Road and Rail Transport of Non-explosives)  
Amendment Regulations 2014***

---

**r. 15**

requirements of the ICAO Technical Instructions or the IMDG Code with respect to the contents of the package.

- (5) A reference to a label in this regulation includes a reference to a placard.

Penalty for an offence under this regulation:

- (a) for large packaging or overpack — a fine of \$5 000;
- (b) in any other case — a fine of \$1 500.

**15. Regulation 110 amended**

In regulation 110(1) delete “of dangerous goods” (1<sup>st</sup> occurrence) and insert:

that contains dangerous goods

**16. Regulation 111 amended**

In regulation 111(1) delete “of dangerous goods” and insert:

that contains dangerous goods

**17. Regulation 112 amended**

- (1) In regulation 112(3) before “transport unit” insert:

cargo

- (2) In regulation 112 delete the penalty.

***Dangerous Goods Safety (Road and Rail Transport of Non-explosives)  
Amendment Regulations 2014***

**r. 18**

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- (3) After regulation 112(3) insert:
- (4) Subregulation (3) does not apply if the placarding of the cargo transport unit complies with the requirements of the ICAO Technical Instructions or the IMDG Code with respect to the contents of the cargo transport unit.  
Penalty for an offence under this regulation: a fine of \$10 000.

**18. Regulation 113 amended**

- (1) In regulation 113 delete the penalty.
- (2) After regulation 113(3) insert:
- (4) Subregulation (3) does not apply if the placarding of the load complies with the requirements of the ICAO Technical Instructions or the IMDG Code with respect to the contents of the load.  
Penalty for an offence under this regulation: a fine of \$10 000.

**19. Regulation 114 amended**

- (1) In regulation 114(3) before “transport unit” (each occurrence) insert:
- cargo
- (2) In regulation 114 delete the penalty.



***Dangerous Goods Safety (Road and Rail Transport of Non-explosives)  
Amendment Regulations 2014***

**r. 20**

---

(3) After regulation 114(3) insert:

(4) Subregulation (3) does not apply if the placarding of the cargo transport unit complies with the requirements of the ICAO Technical Instructions or the IMDG Code with respect to the contents of the cargo transport unit.

Penalty for an offence under this regulation: a fine of \$10 000.

**20. Regulation 115 amended**

In regulation 115(3) before “transport unit” insert:

cargo

**21. Regulation 126 amended**

(1) In regulation 126(1) delete “of dangerous goods” and insert:

that contains dangerous goods and

(2) In regulation 126(2):

(a) delete “of dangerous goods” and insert:

that contains dangerous goods

(b) before “transport unit” (each occurrence) insert:

cargo

***Dangerous Goods Safety (Road and Rail Transport of Non-explosives)  
Amendment Regulations 2014***

**r. 22**

---

**22. Regulation 127 amended**

- (1) In regulation 127(1) delete “of dangerous goods” and insert:
- that contains dangerous goods and
- (2) In regulation 127(2) before “transport unit” (each occurrence) insert:
- cargo

**23. Regulation 128 amended**

- (1) In regulation 128(1) delete “of dangerous goods” and insert:
- that contains dangerous goods and
- (2) In regulation 128(2) before “transport unit” insert:
- cargo

**24. Regulation 129 amended**

- (1) In regulation 129(1) delete “of dangerous goods” and insert:
- that contains dangerous goods and
- (2) In regulation 129(2) before “transport unit” insert:
- cargo

***Dangerous Goods Safety (Road and Rail Transport of Non-explosives)  
Amendment Regulations 2014***

**r. 25**

**25. Regulation 130 amended**

In regulation 130(1)(b) delete “of dangerous goods” and insert:

that contains dangerous goods but

**26. Regulations 146 to 148 replaced**

Delete regulations 146 to 148 and insert:

**146. Duty on transferors**

- (1) A person who transfers dangerous goods by bulk transfer must ensure that —
  - (a) for dangerous goods of UN Class 2 that are not in the form of a refrigerated liquid, the quantity of the goods in the tank to which the goods are transferred does not exceed the maximum permitted filling ratio set out in the ADG Code section 10.3.2;
  - (b) in any other case, the ullage in the tank complies with the ADG Code section 10.3.1.
- (1A) If —
  - (a) a person is engaged in the bulk transfer of goods that are not dangerous goods to a tank (***tank A***); and
  - (b) tank A is on, or part of, a vehicle; and
  - (c) the person knows, or reasonably ought to know, that the vehicle —
    - (i) is carrying dangerous goods in another tank or in another compartment of tank A; or
    - (ii) is likely to carry dangerous goods in another tank, or in another compartment

***Dangerous Goods Safety (Road and Rail Transport of Non-explosives)  
Amendment Regulations 2014***

**r. 26**

---

of tank A, before tank A is emptied of  
the non-dangerous goods —

the person must ensure that the ullage in tank A in  
respect of the non-dangerous goods complies with the  
ADG Code section 10.3.1 as if the goods were  
dangerous goods.

Penalty for an offence under this regulation: a fine of  
\$5 000.

**147. Duty on prime contractors and rail operators**

- (1) A prime contractor or rail operator must not transport  
dangerous goods in a tank if —
- (a) for dangerous goods of UN Class 2 that are not  
in the form of a refrigerated liquid, the quantity  
of the goods in the tank exceeds the maximum  
permitted filling ratio set out in the ADG Code  
section 10.3.2;
  - (b) in any other case, the ullage in the tank does not  
comply with the ADG Code section 10.3.1.

(1A) If —

- (a) a prime contractor or rail operator uses a  
vehicle to transport a tank (***tank A***) containing  
goods that are not dangerous goods; and
- (b) at the same time uses the vehicle to also  
transport dangerous goods in another tank or in  
another compartment of tank A —

the prime contractor or rail operator must ensure that  
the ullage in tank A in respect of the non-dangerous  
goods complies with the ADG Code section 10.3.1 as if  
the goods were dangerous goods.

Penalty for an offence under this regulation: a fine of  
\$5 000.

***Dangerous Goods Safety (Road and Rail Transport of Non-explosives)  
Amendment Regulations 2014***

**r. 26**

**148. Duty on drivers**

- (1) A person must not drive a road tank vehicle transporting dangerous goods if the person knows, or ought reasonably to know, that —
  - (a) for dangerous goods of UN Class 2 that are not in the form of a refrigerated liquid, the quantity of the goods in the tank exceeds the maximum permitted filling ratio set out in the ADG Code section 10.3.2;
  - (b) in any other case, the ullage in the tank does not comply with the ADG Code section 10.3.1.
- (2) If —
  - (a) a road vehicle contains in a tank (*tank A*) goods that are not dangerous goods; and
  - (b) at the same time the vehicle contains dangerous goods in another tank or in another compartment of tank A —

a person must not drive the vehicle if the person knows, or reasonably ought to know, that the ullage in tank A in respect of the non-dangerous goods would not comply with the ADG Code section 10.3.1 if the goods in it were dangerous goods.

Penalty for an offence under this regulation: a fine of \$5 000.

***Dangerous Goods Safety (Road and Rail Transport of Non-explosives)  
Amendment Regulations 2014***

**r. 27**

---

**27. Regulation 152 replaced**

Delete regulation 152 and insert:

**152. Duty on prime contractors**

A prime contractor must ensure that a person does not drive a road vehicle used by the prime contractor to transport dangerous goods if —

- (a) the person has not been given transport documentation that complies with the ADG Code Chapter 1.1 for the goods; and
- (b) the documentation is not readily able to be located in the vehicle in accordance with the ADG Code Chapter 11.1.

Penalty: a fine of \$5 000.

**28. Regulation 154 amended**

Delete regulation 154(1) and insert:

- (1) The driver of a road vehicle transporting dangerous goods —
  - (a) must carry transport documentation for the goods; and
  - (b) must ensure that the documentation is located in the vehicle in accordance with the ADG Code Chapter 11.1.

***Dangerous Goods Safety (Road and Rail Transport of Non-explosives)  
Amendment Regulations 2014***

**r. 29**

**29. Regulation 156A inserted**

After regulation 155 insert:

**156A. Prime contractor's duties: retention of documents**

- (1) This regulation applies if these regulations or the ADG Code require a prime contractor to create or use a document in relation to the transport of dangerous goods.
- (2) The prime contractor must retain the document, or a copy of the document, for at least 3 months after the transport of the dangerous goods by the prime contractor finishes.  
Penalty: a fine of \$5 000.
- (3) It is not a failure to comply with subregulation (2) if —
  - (a) a document, or a copy of a document, is retained in a form other than paper; and
  - (b) a readily legible paper copy of the document or copy can be readily created at any time during the 3 months at the request of a DGO.

**30. Regulation 159 amended**

In regulation 159(1) before “transport unit” insert:

cargo

**31. Regulation 167 amended**

- (1) In regulation 167 delete the penalty.

***Dangerous Goods Safety (Road and Rail Transport of Non-explosives)  
Amendment Regulations 2014***

**r. 32**

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- (2) After regulation 167(2) insert:
- (3) If the road vehicle is towed while still carrying dangerous goods that would require the driver of the vehicle to hold a dangerous goods driver licence, the prime contractor must ensure that the driver of the tow truck towing the vehicle —
- (a) holds a dangerous goods driver licence that would authorise him or her to drive a vehicle with those dangerous goods; or
  - (b) is accompanied in the cabin of the tow truck by a person who holds a dangerous goods driver licence that would authorise him or her to drive a vehicle with those dangerous goods.

Penalty for an offence under this regulation: a fine of \$5 000.

**32. Regulation 180 amended**

In regulation 180(2)(c) delete “Australian Transport Council.” and insert:

Standing Council on Transport and Infrastructure.

**33. Regulation 190 amended**

In regulation 190(1) delete “exemption” (1<sup>st</sup> occurrence) and insert:

exemption, or an exemption that the Chief Officer has granted,



***Dangerous Goods Safety (Road and Rail Transport of Non-explosives)  
Amendment Regulations 2014***

---

**r. 34**

**34. Regulation 191 amended**

In regulation 191(1)(a) delete “exemption” and insert:

exemption, or an exemption,

Note: The heading to amended regulation 191 is to read:

**Effect of CAP decisions about exemptions**

**35. Regulation 204 amended**

In regulation 204(1) delete “ approval” (1<sup>st</sup> occurrence) and insert:

approval, or an approval that the Chief Officer has given,

**36. Regulation 205 amended**

In regulation 205(1)(a) delete “approval” and insert:

approval, or an approval,

Note: The heading to amended regulation 205 is to read:

**Effect of CAP decisions about approvals**

**37. Part 17A inserted**

After regulation 212 insert:

**Part 17A — Determinations**

**213A. Reference of determinations to CAP**

- (1) The Chief Officer must refer an application for a determination, or a determination that the Chief Officer

***Dangerous Goods Safety (Road and Rail Transport of Non-explosives)  
Amendment Regulations 2014***

**r. 37**

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has made, to CAP if the Chief Officer considers that the determination should have effect in all participating jurisdictions or participating jurisdictions including this State.

- (2) The Chief Officer must refer to CAP a determination having effect in this jurisdiction and one or more other participating jurisdictions, if —
  - (a) the Chief Officer considers that the determination should be revoked or varied; or
  - (b) a corresponding authority recommends to the Chief Officer in writing that the determination should be revoked or varied.

**213B. Effect of CAP decisions about determinations**

- (1) This regulation applies if —
  - (a) an application for a determination, or a determination, is referred to CAP under regulation 213A(1); and
  - (b) CAP decides —
    - (i) that the determination should be made, what the terms of the determination should be, and that the determination should have effect in all participating jurisdictions or participating jurisdictions including this State; or
    - (ii) that the determination should not have effect in this State.
- (2) The Chief Officer must have regard to CAP's decision.

***Dangerous Goods Safety (Road and Rail Transport of Non-explosives)  
Amendment Regulations 2014***

**r. 38**

**213C. Effect of CAP decisions about revoking or varying determinations**

- (1) This regulation applies if —
  - (a) a determination is referred to CAP under regulation 213A(2); and
  - (b) CAP decides that the determination —
    - (i) should, or should not, be revoked; or
    - (ii) should be varied (whether or not CAP’s decision is the same as the variation proposed by the Chief Officer), and should have effect as varied in all participating jurisdictions or participating jurisdictions including this State; or
    - (iii) should not be varied.
- (2) The Chief Officer must have regard to CAP’s decision.

**38. Regulation 215 amended**

- (1) In regulation 215(2) delete “subregulation (4),” and insert:  
  
subregulations (4) and (5),
- (2) After regulation 215(4) insert:
  - (5) A road vehicle used to transport dangerous goods need not be licensed under this Part if a determination made under regulation 19 permits a road vehicle that is not licensed under this Part to be used to transport the particular dangerous goods.

***Dangerous Goods Safety (Road and Rail Transport of Non-explosives)  
Amendment Regulations 2014***

**r. 39**

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**39. Regulation 257 amended**

Delete regulation 257(2) and insert:

- (2) Each load bearing vehicle, whether or not a motor vehicle and whether or not it is being used in combination with another vehicle, is a vehicle for the purposes of subregulation (1).

Note: Under regulation 4, **vehicle** is defined as including a combination. It is not the purpose of subregulation (2) to require insurance in respect of each individual component of a combination being used in a combination. In the case of a combination, subregulation (1) only requires that there be insurance for the combination as a whole.

**40. Regulation 258 amended**

Delete regulation 258(2) and insert:

- (2) Each load bearing vehicle, whether or not a motor vehicle and whether or not it is being used in combination with another vehicle, is a vehicle for the purposes of subregulation (1).

Note: Under regulation 4, **vehicle** is defined as including a combination. It is not the purpose of subregulation (2) to require insurance in respect of each individual component of a combination being used in a combination. In the case of a combination, subregulation (1) only requires that there be insurance for the combination as a whole.

***Dangerous Goods Safety (Road and Rail Transport of Non-explosives)  
Amendment Regulations 2014***

---

**r. 41**

**41. Part 23 Division 3 inserted**

At the end of Part 23 insert:

***Division 3 — Provision for Dangerous Goods Safety  
(Road and Rail Transport of Non-explosives) Amendment  
Regulations 2014***

**284. Transitional provision for offence involving  
compliance with ADG Code**

A person does not commit an offence against the Act or these regulations in relation to the transport of dangerous goods by road or rail if —

- (a) the offence relates to non-compliance with the ADG Code; and
- (b) the transport takes place before 1 July 2015; and
- (c) the person transports the goods in accordance with the ADG Code as it was defined in regulation 4 immediately before the *Dangerous Goods Safety (Road and Rail Transport of Non-explosives) Amendment Regulations 2014* regulation 4 came into operation.

**42. Schedule 1 amended**

In Schedule 1:

- (a) delete item 35 and insert:

35. Regulation 146(1)      300      —

***Dangerous Goods Safety (Road and Rail Transport of Non-explosives)  
Amendment Regulations 2014***

**r. 42**

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(b) after item 42 insert:

43A	Regulation 156A(2)	300	1 500
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N. HAGLEY, Clerk of the Executive Council.

***Dangerous Goods Safety (Road and Rail Transport of Non-explosives)  
Amendment Regulations 2014***

**r. 42**

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