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Dangerous Goods Safety Act 2004

**Dangerous Goods Safety (Explosives)
Amendment Regulations 2012**

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Dangerous Goods Safety (Explosives) Amendment Regulations 2012*.

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 the day after that day.

3. Regulations amended

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

4. Regulation 3 amended

- (1) In regulation 3 delete the definition of *UNMR*.

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- (2) In regulation 3 insert in alphabetical order:

aerial shell has the meaning given to that term by AS 2187.0;

AS 2187 has the meaning given to that term by regulation 7;

AS 2187.0 has the meaning given to that term by regulation 7;

ground display has the meaning given to that term by AS 2187.0;

- (3) In regulation 3 in the definition of *proper shipping name* delete “Code or the UNMR;” and insert:

Code;

5. Regulation 6 amended

In regulation 6(2)(a) delete “in relation to the explosive in relation” and insert:

from the explosive

6. Regulation 9 amended

- (1) In regulation 9(1) in the definition of *assigned* delete paragraph (a) and insert:

- (a) by using the tests and criteria in the ADG Code for classifying dangerous goods; or

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- (2) In regulation 9(5) delete “UNMR,” and insert:

ADG Code,

7. Regulation 14 amended

In regulation 14(2) delete “a person who passes the test, or completes” and insert:

individuals who pass the test, or complete

8. Regulation 15 amended

In regulation 15(2)(b) delete “UNMR,” and insert:

ADG Code,

9. Regulation 22 amended

In regulation 22(3) delete “to so so” and insert:

to do so

10. Regulation 30 amended

In regulation 30(2):

- (a) in paragraph (f)(i) delete “UNMR; and” and insert:

AE Code; and

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(b) in paragraph (f)(iii) delete “UNMR” and insert:

ADG Code

11. Regulation 31 amended

In regulation 31(5) delete “UNMR.” and insert:

ADG Code.

12. Regulation 32 amended

Before regulation 32(1)(a) insert:

(aa) the UN number under the AE Code of every authorised explosive; and

13. Regulation 34 amended

In regulation 34(2)(a) delete “clause 1 —” and insert:

clause 2 —

14. Regulation 42 amended

(1) In regulation 42(1) delete the Penalty and insert:

Penalty: a level 2 fine.

(2) In regulation 42(3) delete the Penalty and insert:

Penalty: a level 2 fine.

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r. 15**15. Regulation 44 amended**

After regulation 44(3)(f) insert:

- (ga) the measures taken to control any leak, spill or accidental escape of explosives, and any fire or explosion, arising out of the situation;

16. Regulation 48 amended

In regulation 48 delete the Penalty and insert:

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

17. Regulation 57 amended

At the beginning of regulation 57 insert:

- (1A) This regulation does not apply to a sparkler that is an authorised explosive.

18. Regulation 76 amended

Delete regulation 76(b) and insert:

- (b) the person holds a licence referred to in regulation 77, 78 or 79 and stores the explosive in accordance with that regulation; or
- (c) the person holds a fireworks event permit and stores the explosive at the site of the event in accordance with the permit and regulation 89.

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19. Regulation 80 deleted

Delete regulation 80.

20. Regulation 82A inserted

After regulation 81 insert:

82A. Sparklers

- (1) A person storing more than 1 000 kg of sparklers must ensure the sparklers are stored properly.

Penalty: a level 2 fine.

- (2) For the purposes of subregulation (1) sparklers are not stored properly unless —

- (a) they are in a building or container that is separate from and at least 5 m from other buildings and containers; and
- (b) the building or container does not contain anything other than the sparklers, or the sparklers and other explosives with a classification code of 1.4S or 1.4G; and
- (c) on the outside of the entrance to the building or container are the following —
 - (i) a Class 1 Label, Model No. 1.4, that complies with the AE Code Figure 3.1 and that is at least 250 mm square;
 - (ii) a sign that says “FIREWORKS (SPARKLERS)” in black letters at least 100 mm high on a white or silver background;

and

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- (d) there is a fire extinguisher containing at least 9 L of water on or close to the outside of the building or container; and
 - (e) there is no combustible material within 5 m of the outside of the building or container; and
 - (f) there is a “HAZCHEM” outer warning placard that complies with the *Dangerous Goods Safety (Storage and Handling of Non-explosives) Regulations 2007* regulation 71 and Schedule 4 clause 2 —
 - (i) at every entrance in the perimeter of the site where the building or container is situated; or
 - (ii) at a position or positions approved in writing by FESA;
- and
- (g) except when it needs to be opened to deal with sparklers in it, the building or container is kept closed and locked so as to prevent removal of or access to the sparklers by unauthorised people.

21. Part 9 Division 4 heading replaced

Delete the heading to Part 9 Division 4 and insert:

Division 4 — Storage under licences and permits other than explosives storage licences

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22. Regulation 89 replaced

Delete regulation 89 and insert:

89. Fireworks event permit holders, storage by

- (1) This regulation applies to a person if —
 - (a) the person holds a fireworks event permit; and
 - (b) the person does not hold an explosives storage licence for the place where the event will be conducted; and
 - (c) the person stores at that place a firework that will be used at the event.
- (2) The requirements of this regulation are in addition to any condition included in the fireworks event permit that relates to the storage of any firework.
- (3) If the firework is an aerial shell and is stored —
 - (a) alone; or
 - (b) with another aerial shell; or
 - (c) with a ground display,
the person must store it in accordance with AS 2187.1 clauses 3.2.4.2 and 3.2.5.1 as if it were an explosive with a classification code of 1.1.
- (4) If the firework is a ground display, then, unless subregulation (3) applies, the person must store it in accordance with AS 2187.1 clauses 3.2.4.3 and 3.2.5.2 as if it were an explosive with a classification code of 1.3.
- (5) The person must ensure that the place where the firework is stored is at least 30 m from the place where any other firework is made ready for use or is ready for use or is used.

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- (6) The person must store the firework safely.
Penalty: a level 2 fine.

23. Regulation 90 amended

In regulation 90(7) delete the Penalty and insert:

Penalty: a level 2 fine.

24. Regulation 91 amended

- (1) In regulation 91(2) delete the Penalty and insert:

Penalty: a level 2 fine.

- (2) Delete regulation 91(3).

25. Regulation 97 amended

After regulation 97(2) insert:

- (3A) Despite subregulation (2), a prime contractor who transports an authorised explosive by road in a vehicle that is licensed under the *Road Traffic Act 1974* Part III must hold an explosives transport licence that authorises the transport of the explosive unless —
- (a) the explosive is named in and transported in accordance with Schedule 7; or
 - (b) the prime contractor holds a licence referred to in regulation 98, 99, 100 or 101 and transports the explosive under that regulation.

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26. Regulation 104 amended

In regulation 104(1) delete the Penalty and insert:

Penalty: a level 2 fine.

27. Regulation 109 amended

(1) Delete regulation 109(2) and insert:

(2) In the case of a road vehicle involved in such an incident —

(a) one of the accountable persons for the vehicle must notify an emergency service as soon as practicable —

(i) of the incident; and

(ii) of the required details of the explosive being transported;

and

(b) each accountable person for the vehicle must provide the reasonable assistance required by a DGO, or an officer of an emergency service, to deal with the situation.

(2) After regulation 109(7) insert:

(8) It is a defence to a charge of an offence under subregulation (5) or (6) to prove the accused had already complied with the Act section 9(2) in respect of a reportable situation that arose from the incident.

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r. 28**28. Regulation 110 amended**

(1) Delete regulation 110(1)(c) and insert:

- (c) section 8.3.6 (other than section 8.3.6(3)(b)) and, for the purposes of section 8.3.6(1) and (2), section 3.4;

(2) Delete regulation 110(2)(b) and insert:

- (b) sections 6.1.1, 6.2(1)(a), 6.2(2)(d)(i), 6.3, 6.4.2, 6.4.3 and 6.4.4.

29. Regulation 112 amended

In regulation 112(b), (d) and (f) after “regulation 113,” insert:

114A,

30. Regulation 113 amended

(1) In regulation 113 delete “The holder” and insert:

(1) The holder

(2) At the end of regulation 113 insert:

- (2) The holder of an explosives import/export licence is authorised, without holding an explosives supply licence, to supply to any person any explosive that the holder imports under the licence.

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31. Regulation 114A inserted

After regulation 113 insert:

114A. Explosives manufacture licence authorises limited supply

The holder of an explosives manufacture licence is authorised, without holding an explosives supply licence, to supply to any person any explosive that the holder manufactures under the licence.

32. Regulation 130 amended

In regulation 130(1) delete “require, or comply with alternative safety measures for blast plans.” and insert:

require.

33. Regulation 136 amended

In regulation 136 in the definition of *fireworks event* delete “the public or a section of the public,” and insert:

one or more people, whether at a public or private event or show,

34. Regulation 138 amended

In regulation 138(2):

(a) in paragraph (b)(iii) delete “circumstances,” and insert:

circumstances.

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- (b) in paragraph (b) delete “and, if required by regulation 139 or 140, a permit or permits issued under those regulations.”.

35. Regulation 139 replaced

Delete regulation 139 and insert:

139. Using certain fireworks outdoors other than at fireworks events

- (1) This regulation does not apply to —
 - (a) the use of an unrestricted firework or a sparkler; or
 - (b) the use of a firework at a fireworks event under a fireworks event permit; or
 - (c) the use of a cracker chain under regulation 144 at a public ceremony; or
 - (d) the use of a firework by a person in an aircraft or by a skydiver; or
 - (e) the use of a firework to create a special effect for film or television at a place where the public are not present; or
 - (f) the use of a theatrical firework where people are present or proximate to create a theatrical effect for the purposes of a concert or theatrical performance.
- (2) A person must not use a firework outdoors unless, at least 14 days before the date of the proposed use of the firework, the person has given a fireworks notice signed by the person to —
 - (a) FESA; and

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- (b) the local government of the district in which the firework will be used.

Penalty: a level 2 fine.

- (3) A fireworks notice must be in an approved form and contain this information —
 - (a) the details of the fireworks operator licence that the person holds;
 - (b) a description of the proposed use of the fireworks including —
 - (i) the date, time and intended duration of the use of the fireworks; and
 - (ii) if any firework to be used is an aerial shell, the diameter of the largest shell;
 - (c) where the fireworks will be used;
 - (d) the purpose of using the fireworks.
- (4) On receiving a fireworks notice from a person, FESA or a local government may give the person —
 - (a) a written notice that prohibits the proposed use of the firework; or
 - (b) a written notice that prohibits the proposed use of the firework unless the person complies with conditions specified in the notice.
- (5) Under subregulation (4)(b) FESA or a local government may include in a notice any condition that is reasonably necessary for any of these purposes —
 - (i) to ensure the safety of people, property or the environment in the vicinity of where the firework will be used;
 - (ii) to ensure such people are notified of the proposed use of the firework;
 - (iii) to reduce any disturbance of such people.

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- (6) FESA or a local government may amend or cancel a notice it has given to a person under this regulation by advising the person in writing.
- (7) A person who is given a written notice under subregulation (4) must comply with it.
Penalty: a level 2 fine.

36. Regulation 140 deleted

Delete regulation 140.

37. Regulation 148 amended

In regulation 148(2) delete the passage that begins with “Before” and ends with “following —” and insert:

Before the holder of a fireworks contractor licence can apply for a fireworks event permit, the holder must sign a fireworks event notice and give it to the following —

38. Regulation 149 amended

In regulation 149(2):

- (a) delete “approved form” and insert:

application

- (b) delete paragraph (c)(iv) and insert:

- (iv) if any event firework is an aerial shell, the diameter of the largest shell;

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(c) delete paragraph (d) and insert:

(d) if the applicant proposes to store the event fireworks at the site of the event before the event and there is no explosives storage licence for the site, details of where, how and for how long they will be stored at the site;

39. Regulation 150 amended

After regulation 150(8)(b) insert:

(ca) a condition as to where, how and for how long any firework that will be used in the event may be stored at the place of the event before the event;

40. Regulation 157 amended

Delete regulation 157(3)(c) and insert:

(c) evidence that the applicant has reached the required age;

41. Regulation 161 amended

(1) After regulation 161(1) insert:

(2A) In subregulations (2) and (4) —
explosive includes a constituent of an explosive that is a security risk substance.

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(2) In regulation 161(2)(b) after “clauses 2,” insert:

3A,

(3) In regulation 161(3) delete “clauses 2” and insert:

clauses 2, 3A

(4) In regulation 161(4)(b) delete “clauses 2” and insert:

clauses 2, 3A

(5) In regulation 161(5)(a) delete “clauses 2” and insert:

clauses 2, 3A

(6) In regulation 161(6)(a) after “clauses 2,” insert:

3A,

42. Regulation 164 amended

(1) Delete regulation 164(2)(e)(i) and insert:

(i) has reached the required age; and

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- (2) Delete regulation 164(7) and insert:
- (7) As soon as practicable after making a decision under this regulation, the Chief Officer must give the applicant a written notice of —
- (a) the decision; and
 - (b) if the decision is to refuse an application, the reasons for the decision.

43. Regulation 165 amended

Delete regulation 165(4)(b)(i) and insert:

- (i) has reached the required age; and

44. Regulation 174 amended

In regulation 174(1)(d) delete “regulation 162.” and insert:

regulation 164.

45. Regulation 182 amended

- (1) In regulation 182(1) delete the Penalty and insert:

Penalty:

- (a) if the condition is that imposed by regulation 194(2), a level 2 fine;
 - (b) otherwise, a level 1 fine and imprisonment for 10 months.
- (2) Delete regulation 182(3).

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r. 46**46. Regulation 195 amended**

(1) Delete regulation 195(1)(c), (d) and (e) and insert:

(c) a permit issued under regulation 131,

(2) Delete regulation 195(2).

47. Schedule 1 amended

In Schedule 1 item 4(a) delete “ground fireworks” and insert:

fireworks that are a ground display

48. Schedule 2 amended

After Schedule 2 clause 2(2)(c) insert:

(da) a sparkler the combustible part of which is more than 300 mm long;

49. Schedule 4 amended

(1) Delete Schedule 4 clause 1 and insert:

1. Sparklers

A person may possess a sparkler.

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(2) Delete Schedule 4 clause 4 and insert:

4. Emergency devices

A person may possess an emergency device if in the circumstances the person has a reasonable reason to possess it.

(3) Delete Schedule 4 clause 5 and insert:

5. Ammunition, ammunition propellant and black powder

A person may possess ammunition, ammunition propellant or black powder if authorised under the *Firearms Act 1973* to do so.

(4) At the end of Schedule 4 insert:

6. Model rocket motors

A person may possess a model rocket motor if the NEQ in the motor is not more than 62.5 g.

50. Schedule 6 amended

(1) Delete Schedule 6 clause 1 and insert:

1. Sparklers

A person may store a sparkler at any place.

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(2) At the end of Schedule 6 insert:

6. Model rocket motors

A person may store a model rocket motor at any place if the NEQ in the motor is not more than 62.5 g.

51. Schedule 7 amended

(1) In Schedule 7 clause 4(b) delete “code of 1.4G” and insert:

code of 1.4

(2) In Schedule 7 clause 5(2)(a) delete “15 kg; and” and insert:

50 kg; and

(3) At the end of Schedule 7 insert:

6. Model rocket motors

A person may transport any quantity of model rocket motors if the NEQ in each motor is not more than 62.5 g.

52. Schedule 8 amended

Delete Schedule 8 clause 5 and insert:

5. Ammunition, ammunition propellant and black powder

A person may supply ammunition, ammunition propellant or black powder if authorised under the *Firearms Act 1973* to do so.

Dangerous Goods Safety (Explosives) Amendment Regulations 2012**r. 53**

53. Schedule 9 amended

- (1) In Schedule 9 clause 4:
 - (a) in paragraph (b) delete “device.” and insert:

device; or
 - (b) after paragraph (b) insert:

(c) while skydiving for the purposes of public entertainment.
- (2) At the end of Schedule 9 insert:

6. Model rocket motors

A person may use a model rocket motor if the NEQ in the motor is not more than 62.5 g.

54. Schedule 10 amended

Delete Schedule 10 clause 2 and insert:

2. General matters

If a required plan is required to contain the matters in this clause it must contain the following —

- (a) the measures that will be taken to ensure any dangerous goods incident involving an explosive is reported to the Chief Officer as soon as practicable;
- (b) the measures that will be taken to ensure that people who may have access to an explosive are instructed about and comply with these regulations;

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- (c) the measures that will be taken to ensure that people who may have access to an explosive are instructed about and comply with the plan;
- (d) the measures that will be taken to monitor and ensure compliance with the plan;
- (e) the measures that will be taken to ensure the plan and its effectiveness are reviewed regularly and that the plan is revised if necessary;
- (f) the measures that will be taken to ensure a record is kept of measures taken under the plan.

3A. Emergency management plans

If a required plan is required to contain the matters in this clause it must contain an emergency management plan to deal with any dangerous goods incident, or any dangerous situation, involving an explosive that might occur that includes these matters —

- (a) the equipment and facilities that will be available;
- (b) the procedures that will be followed and the measures that will be taken, including matters such as sounding alarms and evacuating people;
- (c) the measures that will be taken to investigate why the incident or situation occurred;
- (d) the individuals who will be responsible for implementing the emergency management plan;
- (e) the measures that will be taken to train people to execute the emergency management plan;
- (f) which emergency services and other people will be given a copy of the emergency management plan.

Dangerous Goods Safety (Explosives) Amendment Regulations 2012**r. 55**

55. Schedule 11 amended

In Schedule 11 clause 1 delete “westerly and north westerly” and insert:

easterly and north easterly

By Command of the Governor,

G. MOORE, Clerk of the Executive Council.
