

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 25

Issued by the authority of the Minister for Tertiary Education, Skills, Jobs and
Workplace Relations

Occupational Health and Safety Act 1991

*Occupational Health and Safety (Safety Standards) Amendment Regulations
2011 (No. 1)*

The *Occupational Health and Safety Act 1991* (the Act) establishes a statutory framework to secure the health and safety at work of employees of the Commonwealth, Commonwealth authorities and non-Commonwealth licensees.

Section 82 of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 23 of the Act provides that, subject to the Act, the regulations can provide for any matter affecting or likely to affect the occupational health and safety of employees or contractors or other persons at or near a workplace.

Part 8 of the *Occupational Health and Safety (Safety Standards) Regulations 1994* (the Principal Regulations) establishes a regime to regulate the storage and handling of dangerous goods in order to protect the health and safety of persons at workplaces covered by the Act.

The Principal Regulations refer to the Australian Code for the Transport of Explosives by Road and Rail (AE Code) and the Australian Code for the Transport of Dangerous Goods by Road and Rail (ADG Code). The ADG Code applies to the transport of dangerous goods other than explosives by road and rail. Currently, the second edition of the AE Code and the sixth edition of the ADG Code are referenced. However, new editions of both codes have been published.

The Regulations update references to the new editions of the AE Code and the ADG Code. Some additional housekeeping amendments are also included in the Regulations.

Details of the Regulations are included in the Attachment.

On the advice of the Office of Best Practice Regulation, a Regulation Impact Statement was not prepared.

On the matter of consultation, the Regulations were developed as a result of COAG agreeing to the national implementation of the seventh edition of the ADG Code and following endorsement by the Workplace Relations Ministers' Council (WRMC) in

April 2009 of the third edition of the AE Code. Consultation was undertaken as part of the COAG and WRMC processes.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Authority: Section 82 of the
Occupational Health and Safety Act 1991

ATTACHMENT

Details of the Occupational Health and Safety (Safety Standards) Amendment Regulations 2011 (No. 1)

Regulation 1 – Name of Regulations

Regulation 1 names the Regulations the *Occupational Health and Safety (Safety Standards) Amendment Regulations 2011 (No. 1)*.

Regulation 2 – Commencement

Regulation 2 provides that the Regulations commence the day after they are registered on the Federal Register of Legislative Instruments.

Regulation 3 – Amendment of Occupational Health and Safety (Safety Standards) Regulations 1994

Regulation 3 provides that Schedule 1 amends the *Occupational Health and Safety (Safety Standards) Regulations 1994* (the Principal Regulations).

Schedule 1 – Amendments

Item [1] Regulation 4.18, note

The note following regulation 4.18 currently refers to a definition of ‘relevant person’ in regulation 4.03 of the Principal Regulations. Regulation 4.03 was repealed by the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 2006 (No. 2)*. At that time it was decided that, because terms like ‘relevant person’ appeared in more than one Part of the Principal Regulations, they should be moved to a ‘definitions’ Part. The definition of ‘relevant person’ is currently found in Part 20 of the Principal Regulations. The note following regulation 4.18 is not correct nor is a note required. As a result, item [1] omits the note.

Item [2] Subregulation 4.22A(5)

Regulation 4.22A of the Principal Regulations deals with employers’ duties in relation to protective structures and restraining devices fitted to powered mobile plant. These duties may include a requirement that protective structures comply with specified Australian Standards - AS 1636 or AS 2294.

Subregulation 4.22A(5) currently defines AS 2294 with reference to Parts 1-4 of that Standard. However, Parts 2-4 have been withdrawn by Standards Australia. As a result, item [2] removes the references to Parts 2-4 of AS 2294.

Item [3] Paragraph 6.02(2)(a)

At present, the definition of ‘prescribed substance’ in paragraph 6.02(2)(a) refers to that term as defined in the *Environment Protection (Nuclear Codes) Act 1978*, which has been repealed.

Item [3] defines ‘prescribed substance’ with reference to the definition in the *Atomic Energy Act 1953*. The definition in the Atomic Energy Act is the same as that contained in the repealed Environment Protection (Nuclear Codes) Act.

Item [4] Regulation 6.03, definition of *hazardous substance*, paragraph (a) including the note

The Hazardous Substances Information System (HSIS) is a searchable online resource that provides information about substances that have been classified in accordance with the *Approved Criteria for Classifying Hazardous Substances* [NOHSC:1008(2004) 3rd Edition and/or have National Exposure Standards declared under the *NOHSC Adopted National Exposure Standards for Atmospheric Contaminants in the Occupational Environment* [NOHSC:1003(1995)]. In addition to its search features, the HSIS also provides direct access to a consolidated list of all the classified substances contained in the HSIS database.

The current ‘as in force’ date for the HSIS is 10 March 2005, the date when relevant amendments to regulation 6.03 were made by the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 2005 (No. 1)*. A specific ‘as in force’ date is used because section 14 of the *Legislative Instruments Act 2003* prevents references being made to instruments, like the HSIS, as in force ‘from time to time’.

The HSIS has been updated on a number of occasions since 2005. The amendment makes 23 November 2010 the ‘as in force’ date for the HSIS. This date corresponds to a recent update of the HSIS.

This item also replaces the existing note following paragraph (a) of the definition of ‘hazardous substance’. The existing note refers to an outdated website address for the HSIS. The new note refers to the Safe Work Australia website, which now provides the online access point for the HSIS.

Item [5] Regulation 6.03, definition of *substance name*, paragraph (b)

The National Drugs and Poisons Schedule Committee, not the National Health and Medical Research Council, is currently the publisher of the Standard for the Uniform Scheduling of Drugs and Poisons.

Item [5] replaces a reference to the latter with a reference to the former in paragraph (b) of the definition of ‘substance name’.

Item [6] Paragraph 6.04(1)(a), including the note

This amendment updates the ‘as in force’ date for the HSIS to 23 November 2010.

Item [6] replaces the existing note that follows paragraph 6.04(1)(a) of the Principal Regulations. That note refers to an outdated website address for the HSIS. The new note refers to the Safe Work Australia website, which now provides the online access point for the HSIS.

Item [7] Paragraph 6.04(1)(b)

Item [7] replaces an outdated reference to a ‘List’ with a reference to the HSIS. The ‘List’ was the List of Designated Hazardous Substances, which has been replaced by the HSIS as the source of information about hazardous substances for employers and employees.

Item [8] Subregulation 6.04(1A)

Like the amendments contained in items [4] and [6], item [7] changes the ‘as in force’ date for the HSIS in subregulation 6.04(1A) of the Principal Regulations from 10 March 2005 to 23 November 2010.

Item [9] Subparagraph 8.02A(3)(d)(i)

Item [9] replaces a reference to the second edition of the AE Code with a reference to ‘the AE Code’. This term will be defined in Part 20 as the third edition of that Code (see item [39]).

Item [10] Subregulation 8.04(1), definition of *Class label*

This item replaces a reference relating to the sixth edition of the ADG Code with a reference to the relevant provision in the seventh edition of that Code.

Item [11] Subregulation 8.04(1), definition of *Competent Authority*

Competent Authorities presently operate in each State, the Northern Territory and the ACT. They enforce dangerous goods legislation and, among other things, determine what is and what is not a dangerous good.

The Principal Regulations contain a number of references to Competent Authorities. For example, regulation 8.04(3) provides that ‘dangerous goods’ include goods that are determined by a relevant Competent Authority to be dangerous goods. Further, failure to placard correctly when a Competent Authority has determined that goods are too dangerous to be transported will be a breach of regulation 8.53. In these ways, determinations by Competent Authorities are given effect by the Principal Regulations.

The expression ‘Competent Authority’ is defined in subregulation 8.04(1) with reference to the Commonwealth, State and Northern Territory legislation under which ‘Competent Authorities’ are constituted. Some of these statutes have been repealed, some references to provisions need to be changed and ‘as in force’ dates need to be updated. Additionally, the ACT now has its own dangerous goods statute, which needs to be cited.

The amendments of the definition of ‘Competent Authority’ take account of these changes.

Item [12] Subregulation 8.04(1), definition of *explosive*

Item [12] amends the definition of ‘explosive’ in regulation 8.04(1) to align it with new editions of the AE Code and the ADG Code.

Item [13] Subregulation 8.04(1), definition of *goods too dangerous to be transported*, paragraph (a)**Item [14] Subregulation 8.04(1), definition of *Hazchem code* including the note**

Items [13] and [14] amend references relating to the sixth edition of ADG Code and replace them with references to relevant provisions in the seventh edition of that Code.

Item [15] Subregulation 8.04(1), definitions of *product name* and *proper shipping name* including the note

Item [15] changes the definition of ‘product name’ so that it aligns with the definition of ‘product name’ found in regulation 6.03 of the Principal Regulations.

Item [15] also simplifies the current provisions that define ‘proper shipping name’ and update the definition by substituting a reference to the relevant provision in the seventh edition of the ADG Code.

Item [16] Subregulation 8.04(1), definition of *relevant Competent Authority*

Item [16] amends the definition of ‘relevant Competent Authority’ by removing the reference to a Competent Authority within the meaning of the *Road Transport Reform (Dangerous Goods) Act 1995*. This Commonwealth Act, which was enacted on behalf of the Australian Capital Territory, has been repealed.

Item [17] Subregulation 8.04(1), definition of *Subsidiary Risk label*

Item [18] Subregulation 8.04(1), definition of *UN number*

Item [19] Paragraph 8.04(3)(a)

Item [20] Paragraph 8.04(3)(b)

These items replace references relating to the sixth edition of the ADG Code with references to the relevant provisions in the seventh edition of that Code.

Item [21] Subregulation 8.04(3), note

Item [21] omits the note. It is not needed. The definition of ‘dangerous goods’ provides that, in addition to goods specified in the ADG Code, C1 and C2 combustible liquids are also dangerous goods. In other words, the definition itself makes clear that combustible liquids are included in the definition of ‘dangerous goods’ only for the purposes of Part 8 of the Principal Regulations.

Item [22] Paragraphs 8.04(7)(a) and (c)

Item [23] Paragraphs 8.04(8)(a) and (c)

Item [25] Regulation 8.05, note

Items [22], [23] and [25] remove references relating to the sixth edition of the ADG Code and replace them with references to relevant provisions in the seventh edition of that Code.

Item [24] Subregulation 8.04(8), note

This amendment changes an incorrect reference to the general definitions part of the Principal Regulations. Originally numbered as ‘Part 10’ this part was renumbered as ‘Part 20’ by the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 2007 (No. 1)*. Item [24] replaces the reference in the note to Part 10 with a reference to Part 20.

Item [26] Regulation 8.07

Regulation 8.07 of the Principal Regulations provides that dangerous goods determinations made by Competent Authorities are taken to be Part 8 regulations.

Item [26] omits regulation 8.07 because it is not needed. Competent Authority determinations are given effect by other provisions found in Part 8.

Item [27] Paragraph 8.09(2)(a)

Item [28] Paragraph 8.09(6)(a)

Item [29] Paragraph 8.09(6)(b)

Item [30] Subregulation 8.11(1), note

Items [27] – [30] remove references relating to the sixth edition of the ADG Code and replace them with references to relevant provisions in the seventh edition of that Code.

Item [31] Paragraph 8.11(5)(a)

This item replaces the words ‘cylinder, disposable container or aerosol container’ with ‘cylinder or container’. ‘Cylinder’ and ‘container’ are general terms that are more in keeping with the seventh edition of the ADG Code and with the National Standard for the Storage and Handling of Workplace Dangerous Goods.

Item [32] Subregulation 8.11(5), note

This item omits the note at the end of subregulation 8.11(5). The note is not needed.

Item [33] Subregulation 8.39(4), note

Item [33] removes a reference relating to the sixth edition of the ADG Code and replaces it with a reference to the relevant provision in the seventh edition of that Code.

Item [34] Subparagraph 8.44A(2)(b)(iii)

Item [35] Subregulation 8.44A(3)

These items remove references to terminology used in the second edition of the AE Code and substitute terminology employed by the third edition of that Code.

Item [36] Subregulation 8.45(2), note

Item [37] Subregulation 8.48(2), note

Item [39] Subregulation 8.59(2), note

These items substitute references to the relevant provisions in the seventh edition of the ADG Code.

Item [38] Paragraph 8.54(1)(a)

This item corrects an error in paragraph 8.54(1)(a) by replacing a reference to items 25, 26 or 27 of Schedule 7 to the Principal Regulations with a reference to items 24, 25 or 26 of that Schedule.

Item [40] Subregulation 20.01(1), definition of *ADG Code*, including the note

Part 20 of the Principal Regulations contains definitions of terms found in more than one Part of the Regulations. At present, the expression ‘ADG Code’ is defined with reference to the sixth edition of the Code as published by the Federal Office of Road Safety in 1998. Item [40] replaces this definition with one that refers to the new edition of the Code (seventh edition) as published by the National Transport Commission in 2007.

Item [40] also amends the note following the definition of ‘ADG Code’ to advise the reader of the new website address at which information about that Code can be obtained.

Lastly, item [40] inserts a definition of ‘AE Code’ to mean the third edition of that Code endorsed by the Workplace Relations Ministers’ Council in April 2009.

Item [41] Schedule 5, after item 3

Item [42] Schedule 5, after item 4

These items insert references to AS 1636 and AS 2294 into Schedule 5 to the Principal Regulations. AS 1636 is the Australian Standard relating to roll-over protective structures on tractors. AS 2294 is the Australian Standard relating to protective structures on earth-moving machinery.

Items [41] and [42] ensure that all the Australian Standards referenced in the Principal Regulations as relevant to the design and manufacture of plant are listed in Schedule 5.

Schedule 5 is referenced in subregulation 4.51(4) of the Principal Regulations. Subregulation 4.51(4) requires an employer who wishes to register a plant design to ensure that its design has been verified as complying with each relevant standard specified in Schedule 5.

Item [43] Schedule 8, paragraph 1(4)(a)

Item [44] Schedule 8, paragraph 1(5)(a)

Item [45] Schedule 8, paragraph 3(1)(b)

Item [46] Schedule 9, Part 2, items 60 and 62, column 2

These items omit references relating to the sixth edition of the ADG Code and replace them with references to the relevant provisions in the seventh edition of that Code.

Item [47] Schedule 9A, clause 212

This item replaces an incorrect reference to ‘subregulation 9.429.43(2)’ with the correct reference – ‘subregulation 9.46(2)’.