



Error! Reference source not found..

Statutory Rules 2002 No. 92¹

I, PETER JOHN HOLLINGWORTH, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Explosives Act 1961*.

Dated 2 May 2002

PETER HOLLINGWORTH
Governor-General

By His Excellency's Command

WILSON TUCKEY
Minister for Regional Services, Territories and
Local Government
for the Minister for Transport and Regional Services

Contents

Part 1 Preliminary

1	Name of Regulations	4
2	Commencement	4
3	Objects	4
4	Explosives Regulations and Explosives Areas Regulations — repeal	5
5	Definitions	5
6	Terms defined in AE Code	6
7	References to involvement in the transport of Commonwealth explosives	7
8	References in AE Code to Competent Authority	9
9	Regulations not to apply in certain circumstances	9

Part 2 Administrative rules

Division 2.1 Appointment and powers of Competent Authority and compliance auditors

10	Competent Authority	12
11	Compliance auditors	12
12	Identity cards	13
13	Compliance audits	13

Division 2.2 Orders

14	Orders	14
----	--------	----

Division 2.3 Grant of exemptions by Competent Authority

15	Applications for exemptions	15
16	Competent Authority may grant exemptions	16
17	Carriage of exemptions in vehicles	18

Division 2.4 Miscellaneous

18	Delegation	18
19	AAT review of decisions	19

		Page
Part 3	Unauthorised Commonwealth explosives	
	20 Transport of unauthorised Commonwealth explosives prohibited	20
Part 4	Authorised Commonwealth explosives	
Division 4.1	Road and rail transport of authorised Commonwealth explosives	
	21 Division not to apply in certain circumstances	21
	22 Application of AE Code	22
	23 Certain persons not to be in vehicles etc	22
Division 4.2	Miscellaneous	
	24 Permission to transport certain authorised Commonwealth explosives	23
	25 Prohibition against smoking and other fire hazards	23
	26 What is an approved security plan	24
	27 Compliance with approved security plans	25
Part 5	Containers	
	28 Certificate that containers are free from explosives (Act s 5)	26
	29 Empty containers not certified as free from explosives	26
Schedule 1	Modifications of the AE Code in relation to Commonwealth explosives	27

Regulation 1

Part 1 Preliminary**1 Name of Regulations**

These Regulations are the *Error! Reference source not found.*

2 Commencement

These Regulations commence on gazettal.

3 Objects

The objects of these Regulations are as follows:

- (a) to reduce as far as practicable:
 - (i) the risks of personal injury, property damage and environmental harm arising from the transport of Commonwealth explosives by road or rail; and
 - (ii) the risk of that transport endangering public safety;
- (b) to give effect to the standards, requirements and procedures of the AE Code so far as it applies to the transport of Commonwealth explosives by road or rail;
- (c) to establish safeguards for ensuring the security of Commonwealth explosives that are being transported by road or rail.

Note 1 For the transport of Commonwealth explosives by air or sea, see the *Air Navigation Act 1920* and the *Civil Aviation Act 1988* or the *Navigation Act 1912*, respectively.

Note 2 The following State and Territory laws relating to dangerous goods apply to the transport of Commonwealth explosives so far as they may operate concurrently with the laws of the Commonwealth:

- (a) *Dangerous Goods Act 1975* (NSW);
- (b) **Dangerous Goods Act 1985** (Vic);
- (c) *Dangerous Goods (Transport) Act 1998* (WA);
- (d) *Dangerous Goods Act 1998* (Tas);
- (e) *Dangerous Goods Act 1975* (ACT);
- (f) *Dangerous Goods Act* (NT).

Regulation 5

4 Explosives Regulations and Explosives Areas Regulations — repeal

The following Statutory Rules are repealed:

- 1962 No. 64
- 1991 No. 329.

5 Definitions

In these Regulations, unless the contrary intention appears:

Act means the *Explosives Act 1961*.

AE Code or *Australian Explosives Code* means the second edition of the Australian Code for the Transport of Explosives by Road and Rail published by the Department of Transport and Regional Services in 2000.

Note The AE Code is available for purchase through AusInfo's national network of Government Info Shops.

approved security plan has the meaning given by regulation 26.

authorised Commonwealth explosive means a Commonwealth explosive, or a kind of Commonwealth explosive, included in the List of Authorised Commonwealth Explosives.

Commonwealth explosives means explosives to which Part II of the Act applies.

Note See sections 5 and 9 of the Act.

The definition of *explosives* in section 5 is as follows:

‘explosives means:

- (a) substances or articles capable of producing an explosive, incendiary or pyrotechnic effect;
- (b) substances or articles prescribed by the regulations to be explosives; or
- (c) containers that have contained a substance or article to which paragraph (a) or (b) applies and have not been certified, in accordance with the regulations, to be free from explosives.’

Section 9 is as follows:

‘This Part applies to explosives that:

- (a) are the property of, or are in the possession or control of, the Commonwealth;

Regulation 6

- (ab) have been manufactured by the Commonwealth and, in pursuance of an arrangement made with the Commonwealth, are intended to be, or are being, exported from the Commonwealth; or
- (b) are the property of, or are in the possession or control of, the government or the naval, military or air forces of another country and are in the Commonwealth or a Territory with the approval of the Commonwealth for the purposes of, or a purpose related to, the defence of the Commonwealth.’.

Commonwealth public official has the meaning given in the Dictionary to the *Criminal Code*.

Competent Authority means a person appointed under regulation 10 to be the Competent Authority for these Regulations.

compliance auditor means a person appointed under regulation 11 to be a compliance auditor for these Regulations.

List of Authorised Commonwealth Explosives means the document called ‘List of Authorised Commonwealth Explosives’ published by the Department of Defence on 1 February 2002.

officer of the Australian Defence Force means an officer within the meaning of the *Defence Act 1903*.

rail vehicle means a unit of rail rolling stock used for transporting goods on a railway.

road vehicle means a vehicle of a kind used for transporting goods on a road and includes a combination road vehicle.

unauthorised Commonwealth explosive means a Commonwealth explosive, or a kind of Commonwealth explosive, that is not included in the List of Authorised Commonwealth Explosives.

vehicle means a road vehicle or a rail vehicle.

6 Terms defined in AE Code

In these Regulations, each of the following terms has the meaning given to it in Chapter 1 of the AE Code:

- class
- classification code
- combination road vehicle
- compatibility group

Regulation 7

- division
- owner
- prime contractor
- rail operator
- United Nations (UN) number.

7 References to involvement in the transport of Commonwealth explosives

In these Regulations, a reference to *a person who is involved in the transport of Commonwealth explosives* or *authorised Commonwealth explosives* includes:

- (a) a person who does 1 or more of the following:
- (i) packs, or marks packages containing, Commonwealth explosives for transport by road or rail;
 - (ii) marks or placards freight containers and vehicles in which Commonwealth explosives are transported by road or rail;
 - (iii) consigns Commonwealth explosives for transport by road or rail, including preparing any documents and giving notices or other information required by or under the AE Code for the consignment of such explosives;
 - (iv) loads Commonwealth explosives onto a vehicle for transport by road or rail, including securing the explosives on the vehicle and doing anything to comply with any requirement of the AE Code limiting the quantity of such explosives that may be carried on the vehicle;
 - (v) unloads Commonwealth explosives that have been transported by road or rail;
 - (vi) undertakes a task that is required, in accordance with a security plan referred to in Division 4.2, to be undertaken for the security of Commonwealth explosives to which the security plan relates;

Regulation 7

- (vii) drives a road vehicle carrying Commonwealth explosives or acts as an attendant, within the meaning of the AE Code, for the transport of those explosives;
 - (viii) drives a rail vehicle carrying Commonwealth explosives or a train of which a rail vehicle carrying such explosives forms part;
 - (ix) undertakes maintenance on vehicles that are used to transport Commonwealth explosives by road or rail;
 - (x) undertakes a task in relation to the segregation of Commonwealth explosives from other Commonwealth explosives or other explosives including, if more than 2 rail vehicles are used to transport the explosives, a task in relation to the separation of the rail vehicles;
 - (xi) in the event of an emergency of a kind referred to in the AE Code involving Commonwealth explosives — anything that is required to be done by the Code in such an emergency;
 - (xii) provides training relating to Commonwealth explosives to drivers of vehicles transporting the explosives; and
- (b) the owner of a road vehicle that is being used to transport Commonwealth explosives; and
 - (c) a prime contractor having responsibility for the transport of Commonwealth explosives by road or rail; and
 - (d) a rail operator having responsibility for:
 - (i) the transport of Commonwealth explosives by rail; or
 - (ii) the condition of a rail vehicle transporting those explosives; and
 - (e) a person who:
 - (i) is, within the meaning of the AE Code, a supervisor or a person in charge; and
 - (ii) supervises, or is in charge of, an activity, or part of an activity, covered by this regulation; and

Regulation 9

- (f) a Commonwealth public official, not covered by another paragraph of this regulation, whose functions or duties include responsibility for the transport of Commonwealth explosives by road or rail.

8 References in AE Code to Competent Authority

For the purposes of these Regulations, a reference in the AE Code to the Competent Authority is to be read, in relation to any matter concerning Commonwealth explosives, as if it were a reference to the Competent Authority appointed under regulation 10.

9 Regulations not to apply in certain circumstances

- (1) These Regulations do not apply to:
 - (a) the packaging and marking, by the Australian Defence Force or the Department of Defence, of a Commonwealth explosive that has been recovered in an explosive ordnance disposal operation conducted by the Australian Defence Force or the Department of Defence; or
 - (b) a person who is involved in the transport of Commonwealth explosives during:
 - (i) an approved special activity carried on by the Australian Defence Force; or
 - (ii) any training or other activity carried on for that approved special activity; or
 - (c) the transport of an explosives demolition kit by the Australian Defence Force or the Australian Federal Police for the demolition of explosives; or
 - (d) a person who is involved in the transport of Commonwealth explosives during:
 - (i) an authorised covert operation carried on by the Australian Federal Police; or
 - (ii) any training or other activity carried on for that operation; or

Regulation 9

- (e) a person who is involved in the transport of Commonwealth explosives during:
 - (i) an operation carried on by that part of the Australian Federal Police known as the AFP special operations team; or
 - (ii) any training or other activity carried on by that team for that operation; or
- (f) explosives subject to the control of Customs under the *Customs Act 1901*, other than any of those explosives for which a permission to move under section 71E of that Act has been given; or
- (g) a person who is involved in the transport of Commonwealth explosives that have been detected and seized by a Commonwealth public official in circumstances in which it is reasonable to believe that there is a threat to national security or public safety; or
- (h) the transport of Commonwealth explosives on a light vehicle by a Commonwealth public official if:
 - (i) the explosives are authorised explosives within the meaning of the AE Code; and
 - (ii) the explosives do not include detonators; and
 - (iii) the NEQ of the explosives does not exceed 1 kilogram.

- (2) In this regulation:

approved special activity means an activity:

- (a) for the purposes of, or a purpose related to, the defence of the Commonwealth; or
- (b) for any utilisation of the Australian Defence Force under Part IIIAAA of the *Defence Act 1903*;

that is approved as a special activity by an authorised officer of the Australian Defence Force.

authorised covert operation means an operation within the functions of the Australian Federal Police that is authorised as a covert operation by a member of the Australian Federal Police at or above the rank of sergeant.

Regulation 9

authorised officer means an officer of the Australian Defence Force:

- (a) who holds a rank not lower than the rank of Lieutenant Commander, Major or Squadron Leader; and
- (b) who is authorised, or is included in a class of officers that is authorised, in writing, by the Chief of the Defence Force, or a service chief, to approve a special activity.

light vehicle means a vehicle that has a gross vehicle mass, within the meaning of the *Road Transport Reform (Heavy Vehicles Registration) Act 1997*, not greater than 4.5 tonnes.

Regulation 10

Part 2 Administrative rules

Division 2.1 Appointment and powers of Competent Authority and compliance auditors

10 Competent Authority

- (1) The Minister may, by instrument, appoint as the Competent Authority for the purposes of these Regulations:
 - (a) an officer of the Australian Defence Force who holds a rank not lower than the rank of Commodore, Brigadier or Air Commodore; or
 - (b) an SES employee of the Department of Defence.
- (2) The Competent Authority may exercise all the powers of a compliance auditor.
- (3) An appointment may be made subject to the conditions stated in the instrument of appointment.

11 Compliance auditors

- (1) The Competent Authority may, by instrument, appoint as a compliance auditor for the purposes of these Regulations a person who:
 - (a) is experienced and trained in the safe handling of explosives; and
 - (b) has practical knowledge of Commonwealth explosives and of the legislation relating to the transport of such explosives by road or rail.
- (2) An appointment may be made subject to the conditions stated in the instrument of appointment.

Regulation 13

12 Identity cards

- (1) The Competent Authority must issue to a compliance auditor an identity card that:
 - (a) shows a recent photograph of the compliance auditor; and
 - (b) includes:
 - (i) the signature of the compliance auditor; and
 - (ii) the name and office of the compliance auditor; and
 - (iii) the date that the card expires.
- (2) A person who ceases to be a compliance auditor must, as soon as practicable, return the person's identity card to the Competent Authority.

Note Penalties for a failure to comply with subregulation (1) or (2) are set by section 20 of the Act.

13 Compliance audits

- (1) For the purpose of finding out if the appropriate legislation is being complied with, a compliance auditor may:
 - (a) enter premises connected with, or used for the purposes of, activities carried on in relation to, or in relation to any matter incidental to, the transport of Commonwealth explosives by road or rail, or where any documents relating to those activities are kept; and
 - (b) conduct an audit by way of an examination or review of any aspect of those activities.
- (2) However, a compliance auditor is only authorised to enter premises with the consent of, and after producing the auditor's identity card for inspection by, the occupier of the premises.
- (3) In conducting the audit, the compliance auditor may do any or all of the following:
 - (a) inspect the premises or anything found there that is connected with, or has been, is being or is likely to be used for the purposes of, the transport of Commonwealth explosives by road or rail;
 - (b) take copies of or extracts from any documents inspected under paragraph (a);

Regulation 14

- (c) take measurements of anything in or on the premises concerning the explosives;
 - (d) make sketches or take photographs of anything in or on the premises concerning the explosives.
- (4) Nothing in this regulation authorises a compliance auditor:
- (a) to use force to any extent for the purpose of conducting the audit; or
 - (b) to conduct the audit against the expressed wishes of the occupier.
- (5) A compliance auditor must, within 14 days after completing an audit, give to the Competent Authority a written report of the audit setting out the results of the audit.
- (6) In this regulation:
- appropriate legislation* means these Regulations and orders made under these Regulations.
- occupier*, in relation to a vehicle, means the person in charge or apparently in charge of the vehicle.
- premises* includes any place, whether enclosed, built on or not, any vehicle and any part of premises.

Note Penalties for a failure to comply with subregulation (2), (4) or (5) are set by section 20 of the Act.

Division 2.2 Orders

14 Orders

- (1) If the Minister is satisfied that there are circumstances requiring special provision to be made under this regulation, the Minister may make provision, by order:
- (a) in relation to, or in relation to any matter incidental to, the handling of Commonwealth explosives; and
 - (b) in relation to safety measures to be observed at, in or on a place, vehicle, aircraft or vessel at, in, on or in the vicinity of which there are Commonwealth explosives.

- (2) If an order is expressed to take effect on a day that is later than the day on which the order is notified in the *Gazette*, the order takes effect on that later day.
- (3) If there is an inconsistency between a provision of these Regulations and a provision of an order made by the Minister under this regulation, the order prevails to the extent of the inconsistency.
- (4) An order under this regulation ceases to have effect at the end of 12 months after the day on which it takes effect or at the end of any shorter period that is specified in the order, unless sooner revoked.

Note 1 Penalties for a failure to comply with an order are set by section 20 of the Act.

Note 2 Orders made under this regulation are disallowable instruments under the Act for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Division 2.3 Grant of exemptions by Competent Authority

15 Applications for exemptions

- (1) A person may apply to the Competent Authority for an exemption from compliance with a provision of these Regulations.
- (2) An application for an exemption must:
 - (a) be in writing; and
 - (b) state the applicant's name and address; and
 - (c) specify the provision, or each provision, of these Regulations, and, if applicable, of the AE Code, to which the application relates; and
 - (d) state whether the exemption is to apply only to a specified person or to every person included in a class of persons who might otherwise be bound to comply with the provision or provisions; and
 - (e) specify the Commonwealth explosives to which the application relates; and

Regulation 16

- (f) state the reasons why the applicant thinks that the exemption is necessary; and
 - (g) set out details of how the applicant proposes to ensure that the explosives will be handled in a way that:
 - (i) reduces as far as practicable the risks of personal injury, property damage and environmental harm arising from the transport of Commonwealth explosives by road or rail and the risk of that transport endangering public safety; and
 - (ii) ensures their security; and
 - (h) if the application relates to a vehicle, equipment, packaging or other thing — describe the thing; and
 - (i) state the period for which the exemption is sought; and
 - (j) state the geographical area within which the exemption is to apply.
- (3) If the Competent Authority reasonably needs more information or another document to allow the Competent Authority to consider the application, the Competent Authority may, in writing, request the applicant to give the Competent Authority the information, the document or a copy of the document, specified in the request.
- (4) If the Competent Authority asks for information, or a document, under subregulation (3), the Competent Authority need not begin to consider, or may stop considering, the application until the applicant gives to the Competent Authority the information, document or copy.

16 Competent Authority may grant exemptions

- (1) The Competent Authority may, on application under regulation 15, by instrument grant an exemption from compliance with a provision of these Regulations.

Regulation 16

- (2) In deciding whether to grant the exemption, the Competent Authority must have regard to whether the explosives proposed to be covered by the exemption will be handled in a way that:
- (a) reduces as far as practicable:
 - (i) the risks of personal injury, property damage and environmental harm arising from the transport of those explosives by road or rail; and
 - (ii) the risk of that transport endangering public safety; and
 - (b) ensures their security.
- (3) An exemption is granted subject to the person, or each person in the class, exempted complying with any conditions applicable to the person that the Competent Authority specifies, in the notice under subregulation (4), as being necessary:
- (a) to reduce as far as practicable:
 - (i) the risks of personal injury, property damage and environmental harm arising from the transport of the explosives to which the exemption relates by road or rail; and
 - (ii) the risk of that transport endangering public safety; and
 - (b) to ensure the security of those explosives.
- (4) After making a decision on an application for an exemption, the Competent Authority must notify the applicant in writing as soon as practicable of the decision.

Note A decision to refuse an exemption is reviewable by the Administrative Appeals Tribunal — see regulation 19. Under section 27A of the *Administrative Appeals Tribunal Act 1975*, the Competent Authority must give to any person whose interests are affected by the decision notice, in writing or otherwise, of the making of the decision and of the person's right to have the decision reviewed. In giving that notice, the Competent Authority must have regard to the Code of Practice determined under section 27B of that Act (*Gazette* No. S 432, 7 December 1994), accessible on the Internet at:

<http://scaleplus.law.gov.au/html/instruments/0/14/0/IN000020.htm>.

- (5) If the decision is to grant the exemption, the notice:
- (a) must state the provision or provisions of these Regulations that are the subject of the exemption; and

Regulation 17

- (b) must specify the person, or describe the class of persons, to whom the exemption applies; and
 - (c) must specify the Commonwealth explosives to which the exemption relates; and
 - (d) must state the period (which must be not longer than 12 months) for which the exemption is to remain in force; and
 - (e) must state the conditions (if any) to which the exemption is subject; and
 - (f) must specify the geographical area to which the exemption applies.
- (6) Unless sooner revoked, the exemption remains in force for the period specified in the notice.
- (7) The Competent Authority must retain a copy of each exemption granted for 2 years after the day when it was given.

Note Penalties for a failure to comply with subregulation (7) are set by section 20 of the Act.

17 Carriage of exemptions in vehicles

Sections 8.2.7 and 8.2.8 of Chapter 8 of the AE Code apply in relation to an exemption under regulation 16 as if a reference to a shipping document in those sections were a reference to the exemption.

Division 2.4 Miscellaneous

18 Delegation

- (1) The Minister may, in writing, delegate to the Competent Authority all or any of the functions and powers of the Minister under these Regulations, other than:
- (a) the power to make orders under regulation 14; and
 - (b) this power of delegation.

Regulation 19

- (2) The Competent Authority may, in writing, delegate to a person referred to in subregulation (3) all or any of the functions and powers of the Competent Authority under these Regulations other than:
- (a) the power to appoint a person to be a compliance auditor under regulation 11; and
 - (b) the power to grant exemptions under regulation 16; and
 - (c) this power of delegation.
- (3) For subregulation (2), the following are the persons:
- (a) an officer of the Australian Defence Force who holds a rank not lower than the rank of Captain (RAN), Colonel or Group Captain;
 - (b) an employee of the Department of Defence who is classified at or above Executive Level 2.

19 AAT review of decisions

Application may be made to the Administrative Appeals Tribunal for review of a decision of the Competent Authority:

- (a) refusing to grant an exemption under regulation 16; or
- (b) granting an exemption under regulation 16 on terms not sought by the applicant; or
- (c) imposing a particular condition on an exemption under regulation 16.

Regulation 20

**Part 3 Unauthorised Commonwealth
explosives****20 Transport of unauthorised Commonwealth
explosives prohibited**

A person must not transport unauthorised Commonwealth explosives, or permit unauthorised Commonwealth explosives to be transported, by road or rail.

Note Penalties for a contravention of this regulation are set by section 20 of the Act.

Part 4 Authorised Commonwealth explosives

Division 4.1 Road and rail transport of authorised Commonwealth explosives

21 Division not to apply in certain circumstances

- (1) This Division does not apply to:
 - (a) a person who is involved in the transport of authorised Commonwealth explosives in a place:
 - (i) that is occupied or controlled by the Defence Force or a part of the Defence Force; or
 - (ii) that is declared, under regulation 49 of the *Defence Force Regulations 1952*, to be a defence practice area; or
 - (iii) where Commonwealth explosives are manufactured or tested; or
 - (b) the transport, between a place that is occupied or controlled by a part of the Defence Force and a nearby place where a particular training exercise is being, or is to be, carried out by that part of the Defence Force, on a vehicle forming part of the equipment of that part of the Defence Force, of authorised Commonwealth explosives to be used for the purposes of that training exercise.

- (2) In this regulation:

Defence Force means the Australian Defence Force and includes the naval, military or air forces of another country that are in the Commonwealth or an external Territory with the approval of the Commonwealth for the purposes of, or a purpose related to, the defence of the Commonwealth.

Note For exemptions included in the AE Code, see Chapter 1 of the AE Code.

Regulation 22

22 Application of AE Code

- (1) A person who is involved in the transport of authorised Commonwealth explosives must comply with any requirement of the AE Code, as modified by Schedule 1 of these Regulations, that is applicable to the person.
- (2) Strict liability applies to the physical element in subregulation (1) that a requirement of the AE Code is modified by Schedule 1 of these Regulations.

Note 1 For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2 Penalties for a failure to comply with this regulation are set by section 20 of the Act.

23 Certain persons not to be in vehicles etc

- (1) If authorised Commonwealth explosives are being loaded onto, or unloaded from, a vehicle, a person who is not:
 - (a) the driver of the vehicle; or
 - (b) a person involved in loading or unloading the vehicle; or
 - (c) a member of a State or Territory fire brigade; or
 - (d) a police officer;

must not be in, on or in the vicinity of the vehicle without the consent of the person in charge of the vehicle.

Note 1 Penalties for a contravention of this regulation are set by section 20 of the Act.

Note 2 See the provisions of the AE Code about persons riding in vehicles that are carrying explosives.

- (2) In this regulation:

police officer means:

- (a) a member or special member of the Australian Federal Police; or
- (b) an officer of the Police of a State or Territory.

State or Territory fire brigade means a fire brigade established by or under a law of a State or Territory.

Division 4.2 Miscellaneous

24 Permission to transport certain authorised Commonwealth explosives

- (1) This regulation applies to authorised Commonwealth explosives that:
- (a) are not stable; or
 - (b) are not capable of passing the tests, or meeting the criteria, applicable to the explosives set out or referred to in the manual called 'UN Recommendations: Manual of Tests and Criteria' that is referred to in Chapter 1 of the AE Code; or
 - (c) are explosives of a kind that are included in class 1.1A.
- (2) A person may transport, by road or rail, authorised Commonwealth explosives to which this regulation applies only with the written permission of the Competent Authority and in accordance with any conditions specified in the permission.

Note 1 Penalties for a contravention of this regulation are set by section 20 of the Act.

Note 2 The manual, 'UN Recommendations: Manual of Tests and Criteria' is available from the United Nations Sales Section in Geneva.

25 Prohibition against smoking and other fire hazards

A person must not:

- (a) within 6 metres of a vehicle on which authorised Commonwealth explosives are loaded:
 - (i) smoke; or
 - (ii) be in possession of, or create or use, any fire or naked light; or

Regulation 26

- (b) engage in any other conduct that is likely, having regard to the person's proximity to the vehicle at the time, to result in a fire or explosion affecting the explosives on the vehicle.

Note 1 Penalties for a contravention of this regulation are set by section 20 of the Act.

Note 2 See the provisions of the AE Code about smoking and other fire hazards near vehicles that are carrying explosives.

26 What is an approved security plan

- (1) An approved security plan of a Commonwealth agency is a security plan that:
 - (a) is in accordance with subregulation (2); and
 - (b) is approved by the Competent Authority.
- (2) For paragraph (1) (a), a security plan of a Commonwealth agency must cover the arrangements and procedures for the transport of Commonwealth explosives by road or rail by or for the agency and include at least the following:
 - (a) a description of the measures for preventing the theft of Commonwealth explosives being transported by road or rail and for preventing unauthorised people from having access to those explosives;
 - (b) a statement setting out the vehicle design requirements for vehicles used to transport Commonwealth explosives, and the load securing requirements for securing and protecting those explosives;
 - (c) a description of the arrangements for emergency communications in the event of an emergency involving those explosives;
 - (d) a statement setting out the requirements for training for persons involved in the transport of Commonwealth explosives by road or rail;
 - (e) a statement setting out the requirements for ensuring that vehicles transporting Commonwealth explosives travel by the safest practicable route, including the procedures for planning transport routes;

(f) a statement setting out the requirements for consultation with State and Territory bodies concerned with the transport of explosives by road or rail.

(3) In this regulation:

Commonwealth agency means:

- (a) the Australian Customs Service; or
- (b) the Australian Defence Force; or
- (c) the Australian Federal Police; or
- (d) the Department of Defence.

27 Compliance with approved security plans

- (1) A person who transports authorised Commonwealth explosives for a Commonwealth agency (within the meaning of regulation 26) must comply with any requirement of an approved security plan that:
 - (a) is applicable to the person; and
 - (b) the agency has expressly made known to the person.
- (2) However, if there is an inconsistency between a requirement of an approved security plan, as it applies to the person, and a requirement of these Regulations, or of an order made under these Regulations, as it applies to the person, the requirement of these Regulations, or of the order, prevails to the extent of the inconsistency.

Note 1 Penalties for a failure to comply with this regulation are set by section 20 of the Act.

Note 2 Subsection 13.3 (3) of the *Criminal Code* provides that a defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence bears an evidential burden in relation to that matter.

Note 3 A security plan of the Australian Customs Service, the Defence Force, the Australian Federal Police or the Department of Defence may be subject to national security classification and may be made available only to security-assessed persons.

Regulation 28

Part 5 Containers**28 Certificate that containers are free from explosives (Act s 5)**

- (1) A consignor who consigns a container that has previously contained Commonwealth explosives must, if the container is free from explosives, give a certificate to that effect for the container.
- (2) If the consignor gives a certificate for the container, the consignor must remove from it, or deface or cover, a label or marking on it that specifies a classification code or United Nations (UN) number.

Note Penalties for a contravention of a provision of subregulation (1) or (2) are set by section 20 of the Act.

29 Empty containers not certified as free from explosives

- (1) A container or package that has contained Commonwealth explosives, or purports to have contained Commonwealth explosives, and has not been certified as free from explosives in accordance with regulation 28, must be handled as if it contains explosives.
- (2) If a label that is affixed to, or any marking on, the container or package specifies a classification code or United Nations (UN) number, the label or marking must be left intact and kept unobscured.

Note Penalties for a contravention of this regulation are set by section 20 of the Act.

Schedule 1 Modifications of the AE Code in relation to Commonwealth explosives

(regulation 22)

1 Chapter 3, after section 3.6 (2)

insert

- (3) However, a Class label for Commonwealth explosives that:
- (a) are included in Division 1.4, 1.5 or 1.6; and
 - (b) were manufactured before the commencement of the *Explosives Transport Regulations 2002*;
- may also display the symbol depicting a bursting bomb that is depicted on the label for explosives included in Division 1.1, 1.2 or 1.3 in Table 3.2.

2 Chapter 6, section 6.2 (4)

omit everything after

transported

insert

in or on a Commonwealth vehicle, within the meaning of the *Commonwealth Vehicles (Registration and Exemption from Taxation) Act 1997*, that displays registration plates issued for the Australian Defence Force.

3 Chapter 6, after section 6.2 (4)

insert

- (5) Despite anything else in this Chapter, a load of Commonwealth explosives may be transported in or on a vehicle that is approved for that purpose by the Competent Authority if it is impracticable to transport the load in an enclosed vehicle body that meets the applicable requirements of this Chapter because of the size or shape of the load or the way in which the vehicle is to be loaded or unloaded.

4 Chapter 7, section 7.3.2 (6)*omit***5 Chapter 7, Table 7.2***substitute***TABLE 7.2****Permitted mixed transport for Commonwealth Explosives**

		Compatibility Group												
		A ^(a)	B ^{(b)(c)(j)}	C ^(j)	D ^(j)	E ^(j)	F ^(j)	G ^(j)	H	J	K ^(g)	L ^(h)	N ^(j)	S ^{(j)(i)}
Compatibility Group	A ^(a)	(a)												
	B ^{(b)(c)(j)}		X	X ^{(b)(c)}						X				
	C ^(j)		X ^{(b)(c)}	X	X	X	X ^(d)	X ^{(f)(e)}					X ^{(d)(e)}	X
	D ^(j)		X ^{(b)(c)}	X	X	X	X ^(d)	X ^{(f)(e)}					X ^{(d)(e)}	X
	E ^(j)		X ^{(b)(c)}	X	X	X	X ^(d)	X ^(e)					X ^{(d)(e)}	X
	F ^(j)		X ^{(b)(c)}	X ^(d)	X ^(d)	X ^(d)	X	X ^(d)					X ^(d)	X
	G ^(j)		X ^{(b)(c)}	X ^{(f)(e)}	X ^{(f)(e)}	X ^(e)	X ^(d)	X					X ^(e)	X
	H								X					X
	J									X				X
	K ^(g)										X ^(g)			
	L ^(h)											(h)		
	N ^(j)			X ^{(d)(e)}	X ^{(d)(e)}	X ^{(d)(e)}	X ^(d)	X ^(e)					X	X
	S ^{(j)(i)}		X	X	X	X	X	X	X	X			X	X

Legend: An 'X' indicates that explosives of the corresponding compatibility groups may be transported in the same compartment, carry box, freight container or vehicle (see 7.3.2(3)).

Notes:

- (a) Substances that are included in compatibility group A must not form mixed loads with substances or articles that are included in another compatibility group and may be transported only with the written approval of the Competent Authority and in accordance with any conditions specified in the approval.

-
- (b) Articles that are included in compatibility group B must not be transported in or on the same vehicle on which there are explosives that are included in another compatibility group, but fuzes that are included in compatibility group B may be carried with the articles to which the fuzes are designed to be attached. In this case, the NEQ of the fuzes is to be aggregated with that of the articles and the combined load is to be treated as a load of explosives that are included in compatibility group F.
 - (c) Detonators that are included in compatibility group B and packed in a manner approved by a Competent Authority as being effective to prevent propagation may be mixed in transport with explosives that are included in compatibility group C, D, E or F or with articles included in compatibility group G that are not liable to give rise to loose explosive powder. The combined load is to be treated as a load of explosives that are included in compatibility group F.
 - (d) Articles that are included in compatibility group F may be mixed in transport with articles that are included in compatibility group C, D, E or N or with articles included in compatibility group G that are not liable to give rise to loose explosive powder. The combined load is to be treated as a load of explosives that are included in compatibility group F.
 - (e) Articles that are included in compatibility group C, D, E or N and articles included in compatibility group G that are not liable to give rise to loose explosive powder may be mixed in transport. However, when articles that are included in compatibility group C, D or E are mixed with articles that are included in compatibility group N, the articles that are included in compatibility group N should be treated as articles that are included in compatibility group D.
 - (f) Substances included in compatibility group C, D or G that are packaged so as not to give rise to loose powder, and that are less sensitive to mechanical stimuli than dry RDX, may be mixed in transport. The combined load is to be treated as a single group.
 - (g) Articles that are included in compatibility group K must not be transported in or on the same vehicle as explosives that are included in any other compatibility group.
 - (h) Substances and articles that are included in compatibility group L may only be transported in or on the same vehicle as other articles and substances of the same kind and must not be mixed with other substances or articles.
 - (i) Inert items, and substances and articles that are included in compatibility group S, may be transported on the same vehicle as substances and articles that are included in another compatibility group, except compatibility group A, K or L.
 - (j) Articles of HD 1.4 may be mixed in transport with articles of compatibility group B, C, D, E, F, G, N or S.

Note

1. Notified in the *Commonwealth of Australia Gazette* on 9 May 2002.