

Version No. 002
Dangerous Goods (HCDG) Regulations 2005
S.R. No. 96/2005
Version as at 1 January 2006

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PART 1—PRELIMINARY

101. Objectives

The objectives of these Regulations are to—

- (a) regulate access to high consequence dangerous goods;
- (b) provide for the management of risks arising out of security concerns associated with explosives and high consequence dangerous goods;
- (c) make further provision for explosives;
- (d) make consequential amendments to other regulations made under the **Dangerous Goods Act 1985**.

102. Authorising provision

These Regulations are made under section 52 of the **Dangerous Goods Act 1985**.

103. Commencement

- (1) These Regulations, except regulation 201, Part 4, and regulation 709, come into operation on 1 October 2005.
- (2) Regulation 201, Part 4, and regulation 709 come into operation on 1 January 2006.

104. Definitions

In these Regulations—

"authorised person" means—

- (a) in relation to an HCDG licence—
 - (i) the licensee; and
 - (ii) if the Authority requires a security plan in relation to the licence, each person named in that security plan as an authorised person with unsupervised access to HCDG; and
- (b) in relation to a permit issued in accordance with Part 3, the person who holds the permit;

"constant surveillance", in relation to HCDG, means the presence of—

- (a) an authorised person who is monitoring the HCDG; or
- (b) monitored video or other electronic surveillance of the HCDG;

"known information" has the same meaning as in section 21A of the Act;

"secure" means secure from—

- (a) theft; and
- (b) unexplained loss; and
- (c) sabotage; and
- (d) access to HCDG by a person who is not an authorised person or is not under the supervision of an authorised person;

"secure store" or **"secure site"** mean a secure place where HCDG is kept under lock and key or is under constant surveillance, and where there are procedures for—

- (a) controlling access to the store or site; and
- (b) secure control of keys to the store or site; and
- (c) documenting the dispatching and receiving of measured quantities of HCDG;

"security assessment" means a security assessment issued by the Australian Security Intelligence Organisation under Part IV of the Australian Security Intelligence Organisation Act 1979 of the Commonwealth;

"security plan", in relation to an HCDG licence, means a plan to effectively manage all security risks relevant to the activities undertaken by the licensee with respect to HCDG;

"security risk", in relation to HCDG, means the likelihood of—

- (a) the theft of the HCDG; or
- (b) the unexplained loss of the HCDG; or
- (c) the sabotage of the HCDG; or
- (d) access to the HCDG by a person who is not an authorised person or is not under the supervision of an authorised person;

"specified proof of identity" has the same meaning as in section 21A of the Act;

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"supervised access", in relation to an HCDG licence, means access to HCDG by a person that occurs under the supervision of an authorised person or when working in an area described in a security plan in relation to the licence that has been specifically set aside and identified as a supervised area with appropriate controls and duties delegated to personnel operating in that area;

"the Act" means the **Dangerous Goods Act 1985**;

"under lock and key" includes—

- (a) in a secure building that is locked when not in use;
- (b) in a secure shed with entrances and windows that are locked or barred when not in use;
- (c) in a secure freight container, cabinet or cage that is locked when not in use;
- (d) in a compound with a security fence;
- (e) in the case of HCDG stored in the open for agricultural purposes, in a fertiliser field bin with a seal that indicates if it has been tampered with;
- (f) in the case of HCDG emulsions or liquids, a secure tank that is locked when not in use;
- (g) in the case of solid HCDG being transported in bulk, in a secure vehicle fitted with tamper-proof seals in all places from which HCDG could be removed;

"unexplained loss", in relation to HCDG, means any loss the cause of which cannot be explained by product density changes, spillage, calibration variances or the effects of humidity or other like things;

"unsupervised access", in relation to HCDG, includes access by a person who is not an authorised person (if no authorised person is present or has control over the HCDG)—

- (a) to a secure store or secure site; or
- (b) to the keys to a secure store or secure site; or
- (c) to HCDG while it is being transported.

105. Security assessments

The Australian Security Intelligence Organisation is a prescribed body for the purposes of section 21A(6)(c) of the Act.

PART 2—HCDG LICENCES

201. Who requires a licence?

- (1) A person must not import, export, manufacture, store, sell, supply, use, handle, transfer, transport or dispose of HCDG unless the person—
 - (a) holds a valid HCDG licence authorising the person to undertake those activities; or
 - (b) holds a valid permit under Part 3 to have unsupervised access to HCDG and is named in the security plan of the relevant HCDG licensee and is authorised by the licensee in relation to that activity; or
 - (c) is supervised by an authorised person.
 - (2) The requirement to hold a licence to store, use, handle, dispose of or transport HCDG does not apply to a person who stores, uses, handles, disposes of or transports HCDG on behalf of an educational or research institution or a laboratory if—
 - (a) the institution or laboratory is in a class of institution or laboratory approved in writing by the Authority for the purposes of this sub-regulation; and
 - (b) the person—
 - (i) stores, uses, handles, disposes of or transports not more than the approved quantity of HCDG that has been approved in writing by the Authority for the purposes of this sub-regulation; and
 - (ii) does so for the purposes of educational instruction or scientific research or testing.
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- (3) The requirement to hold a licence to transport HCDG does not apply to the transport of—
- (a) less than the quantity of an HCDG that has been approved in writing by the Authority for the purposes of this paragraph;
 - (b) less than the quantity of an HCDG that has been approved in writing by the Authority for the purposes of this paragraph in a non-stop journey if the transport is by a person who holds a primary producer licence for the HCDG;
 - (c) HCDG that has been approved in writing by the Authority for the purposes of this paragraph by a person who holds a primary producer licence if the person transports the HCDG to which the licence relates across a public highway which divides the property from one part of the property specified on the licence to another part;
 - (d) HCDG by a person within the boundaries of that person's property.
- (4) In sub-regulation (3) a reference to a "**non-stop journey**" is a reference to a journey undertaken on a public highway or waterway transporting HCDG from one secure store or secure site to another or to a site where it is to be used during which the HCDG is kept under constant surveillance.
- (5) An approval by the Authority under sub-regulation (2) or (3) that does not relate to a person or body named in the approval must be published in the Government Gazette and on the Internet on a website maintained by the Authority.
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202. Demonstrating a lawful need to have access to HCDG

- (1) A person who applies for an HCDG licence or renewal of an HCDG licence must provide sufficient information about the person's proposed activities to enable the Authority to determine whether the person has demonstrated a lawful need for access to HCDG declared under section 9B(1B) of the Act.
- (2) An applicant must provide information about the agricultural, commercial, industrial or other process or activity undertaken or proposed to be undertaken by the applicant that demonstrates that the applicant has a lawful need for access to HCDG declared under section 9B(1B) of the Act.

203. Application for licence

- (1) A person may apply to the Authority for—
 - (a) a licence authorising the person to manufacture, store, use, dispose of, handle and supply HCDG;
 - (b) a licence authorising the person to import HCDG into Victoria from another country, to handle, supply, transfer and sell HCDG at any place specified in the licence and to store HCDG at any place specified in the licence;
 - (c) a licence authorising the person to export HCDG from Victoria to another country, to handle, supply, transfer and sell HCDG at any place specified in the licence and to store HCDG at any place specified in the licence;
 - (d) a licence authorising the person to handle or store HCDG at a place specified in the licence;
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- (e) a licence authorising the person to handle, supply, transfer, store and sell HCDG at any place specified in the licence;
 - (f) a licence authorising the person to transport HCDG and, for that purpose, to handle HCDG;
 - (g) a licence authorising the person to use, handle and dispose of HCDG and to store HCDG at any place specified in the licence;
 - (h) a licence authorising a person who is a primary producer to store, use, dispose of and handle HCDG that is used or intended to be used in connection with the business of the primary producer and not held by the primary producer for the purpose of transfer or sale.
- (2) An application for an HCDG licence must—
- (a) be in the form and manner required by the Authority; and
 - (b) be accompanied by the fee prescribed in Part 6.
- (3) The Authority may require an applicant to submit any information that the Authority considers necessary to assess the application including, but not limited to—
- (a) plans, drawings, specifications or calculations;
 - (b) details of management and operating procedures;
 - (c) results of hazard or risk studies.
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204. Proof of applicant's identity and consent required

- (1) An applicant who is a natural person must—
 - (a) provide specified proof of identity; and
 - (b) consent to the Authority obtaining, and provide sufficient information to enable the Authority to obtain, known information concerning the applicant to determine whether he or she has satisfied the requirements of regulation 205 to hold an HCDG licence.
 - (2) An applicant which is a body corporate must provide details of the incorporation of the body.
 - (3) An application by a body corporate, other than a body corporate that is a public company, must be accompanied by the nomination of at least one director or person concerned in the management of the body corporate who has consented to that nomination.
 - (4) The nominated person must—
 - (a) provide the Authority with his or her specified proof of identity; and
 - (b) consent to the Authority obtaining, and provide sufficient information to enable the Authority to obtain, known information concerning the person to determine whether he or she has satisfied the requirements of regulation 205 to be a director or person concerned in the management of a body corporate that holds an HCDG licence.
 - (5) An application from a body corporate for a licence must be accompanied by a nomination of a natural person who has consented to the nomination and who is to be responsible for the security of the goods under the licence (who may or may not be a nominated director).
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- (6) The person nominated under sub-regulation (5) must—
- (a) provide the Authority with his or her specified proof of identity; and
 - (b) consent to the Authority obtaining, and provide sufficient information to enable the Authority to obtain, known information concerning the person to determine whether the person has satisfied the requirements of regulation 205 to be responsible for the security of HCDG under an HCDG licence.

205. Requirements to be satisfied before licence can be issued

- (1) This regulation sets out the prescribed requirements for the purposes of the following provisions of the Act—
 - (a) section 21A(3)(a)(iii) (prescribed requirements for a natural person to hold an HCDG licence);
 - (b) section 21A(3)(b) (prescribed requirements for a person to be a director or person concerned in the management of a body corporate that holds an HCDG licence);
 - (c) section 21A(3)(c) (prescribed requirements for a person to be responsible for the security of HCDG under an HCDG licence);
 - (d) section 21A(3)(e) (other prescribed requirements for an applicant for licence).
- (2) The prescribed requirements are that—
 - (a) the applicant—
 - (i) in the case of a natural person, is a resident of Victoria; or

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- (ii) in the case of a body corporate, carries on a business in Victoria that relates to HCDG; and
- (b) a security assessment has been received about the person that is not an adverse security assessment within the meaning of the Australian Security Intelligence Organisation Act 1979 of the Commonwealth; and
- (c) a search of other known information about the person has been made and the Authority is satisfied that the person has not been convicted or found guilty of, or has a charge pending for, an offence relating to violence, weapons, terrorism, damage to property, illegal drugs or dishonesty within the last 10 years that in the opinion of the Authority would pose a security risk in relation to that person.
- (3) Nothing in these Regulations requires a person to undergo a security assessment if the person has, under the same name, previously undergone a security assessment under these Regulations or the Dangerous Goods (Explosives) Regulations 2000¹.

206. Prescribed particulars for security plans

For the purposes of section 21A(2)(b) of the Act the prescribed particulars for—

- (a) a licence that includes an authority to store HCDG are set out in Schedule 1; and
- (b) a licence that includes an authority to transport HCDG are set out in Schedule 2.

207. Licensee must review and revise security plans

- (1) It is a condition of an HCDG licence that, if the Authority requires the licensee to provide a security plan, the licensee must ensure that the security plan is reviewed and, if necessary, revised.
- (2) A security plan must be revised if the security plan no longer sufficiently addresses the particulars set out in Schedule 1 or Schedule 2.

208. Effect of licence and conditions

- (1) An HCDG licence authorises the licensee to engage in the activities specified in the licence, for the term specified in the licence, subject to any condition, limitation or restriction specified in the licence or set out in these Regulations.
 - (2) Without limiting sub-regulation (1), the Authority may impose a condition that measures to control security risks must be implemented by a specified date that is not later than 12 months after the licence is issued.
 - (3) An HCDG licence is valid only—
 - (a) for the period specified in the licence or 5 years from the date of issue of the licence (whichever occurs first);
 - (b) in respect of the person to whom it is issued;
 - (c) in the case of a licence held by a body corporate, while there continues to be a person nominated under the licence who has satisfied the requirements prescribed for the purposes of section 21A(3)(b) of the Act;
 - (d) while there continues to be a person nominated under the licence who is responsible for the security of the HCDG and who has satisfied the requirements
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- prescribed for the purposes of section 21A(3)(c) of the Act;
- (e) in the case of a licence held by a natural person, if the licensee continues to generally use and be known by the name specified in the licence;
 - (f) in respect of the HCDG specified in the licence;
 - (g) in respect of the lawful need or needs specified in the licence.
- (4) It is a condition of an HCDG licence that—
- (a) the licensee must not allow any person to have unsupervised access to HCDG in the possession or under the control of the licensee unless that person holds a permit under Part 3 to have the access and the person is nominated on the security plan in relation to the licence;
 - (b) a licensee who no longer has a lawful need for access to the HCDG specified in the licence must, as soon as practicable, notify the Authority in writing accordingly;
 - (c) the licensee must observe the requirements of, and the procedures specified in, any security plan in relation to the licence.

209. Renewal of licences

- (1) A licensee may apply to the Authority for a renewal of the licence for a further term by providing the Authority with—
 - (a) a written application for renewal at least 1 month before the expiry of the licence; and
 - (b) the necessary consent and information required by sub-regulation (2); and
 - (c) the fee prescribed in Part 6.
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- (2) For the purpose of enabling the Authority to assess whether a licence should be renewed—
- (a) if the licensee is a natural person, he or she must—
 - (i) provide the Authority with his or her specified proof of identity (if not previously provided); and
 - (ii) consent to the Authority obtaining, and provide sufficient information to enable the Authority to obtain, known information concerning the licensee to determine whether he or she has satisfied the requirements of regulation 205 to hold an HCDG licence; and
 - (b) if the licensee is a body corporate, other than a public company—
 - (i) the application for renewal must be accompanied by the nomination of at least one director or person concerned in the management of the body corporate who has agreed to the nomination; and
 - (ii) that nominated person must provide the Authority with specified proof of his or her identity (if not previously provided); and
 - (iii) that nominated person must consent to the Authority obtaining, and provide sufficient information to enable the Authority to obtain, known information concerning the person to determine whether he or she has satisfied the requirements of regulation 205 to be a director or person concerned in the
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management of a body corporate that holds an HCDG licence; and

- (c) in the case of all bodies corporate—
- (i) the application must be accompanied by the nomination of a natural person who has agreed to the nomination and who is to be responsible for the security of the goods under the licence (who may or may not be the person nominated under paragraph (b)); and
 - (ii) the person nominated under subparagraph (i) must provide the Authority with his or her specified proof of identity (if not previously provided); and
 - (iii) the person nominated under subparagraph (i) must consent to the Authority obtaining, and provide sufficient information to enable the Authority to obtain, known information concerning the person to determine whether the person has satisfied the requirements of regulation 205 to be responsible for the security of the HCDG under an HCDG licence.
- (3) Nothing in this regulation requires a person to undergo a security assessment if the person has previously undergone a security assessment under the same name under these Regulations or the Dangerous Goods (Explosives) Regulations 2000.

210. Obligation to observe licence conditions and Regulations

- (1) A licensee must ensure that any person involved in an activity that is authorised under the HCDG licence—
 - (a) complies with the conditions, limitations or restrictions of the licence and the applicable requirements of these Regulations; and
 - (b) receives sufficient and appropriate information, instruction, training and supervision to be able to do so.
- (2) A person involved in an activity authorised under an HCDG licence must co-operate with the licensee in relation to any direction given, or action taken, by the licensee or by any person authorised by the licensee, to comply with sub-regulation (1).
- (3) For the purposes of this regulation, "**person**" includes a person at a site at which an activity authorised by an HCDG licence is occurring who is—
 - (a) employed under a contract of employment; or
 - (b) employed under a contract of training; or
 - (c) engaged under any other contract to perform a specific task; or
 - (d) authorised by the licensee to enter a site that is managed or occupied by the licensee.

211. Import and export of HCDG

- (1) A person who holds a licence to import HCDG must not import HCDG into Victoria from another country unless, at least 7 days before the date of a proposed importation, that person has notified the Authority of the proposed importation.

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- (2) A notice under sub-regulation (1) must include details of the following—
- (a) the type and quantity of HCDG being imported;
 - (b) a certificate of analysis for each batch of the HCDG;
 - (c) identification of the ship, boat or aircraft transporting the HCDG;
 - (d) the arrival location of the ship, boat or aircraft;
 - (e) the authorisation and contact details of the recipient of the HCDG;
 - (f) where the HCDG will be stored on arrival in Victoria;
 - (g) the authorisation and contact details of the person or agent who will transport the HCDG from the arrival location to its storage destination.
- (3) A person who holds a licence to export HCDG must not export HCDG from Victoria to another country unless, at least 7 days before the date of a proposed exportation, that person has notified the Authority of the proposed exportation.
- (4) A notice under sub-regulation (3) must include details of the following—
- (a) the type and quantity of HCDG being exported;
 - (b) the destination of the HCDG;
 - (c) identification of the ship, boat or aircraft transporting the HCDG;
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- (d) confirmation that the shipment of HCDG complies with any import regulations of the receiving country.
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**PART 3—PERMITS FOR UNSUPERVISED ACCESS TO
HCDG**

301. Applying for a permit

- (1) A natural person who is a resident of Victoria may apply to the Authority for a permit to have unsupervised access to HCDG.
- (2) An application for a permit must be—
 - (a) in the form and manner required by the Authority; and
 - (b) accompanied by the fee prescribed in Part 6.
- (3) An applicant must—
 - (a) provide the Authority with his or her specified proof of identity; and
 - (b) consent to the Authority obtaining, and provide sufficient information to enable the Authority to obtain, known information concerning the person to determine whether the person is suitable to have access to HCDG.
- (4) The Authority may require an applicant to submit any other information that the Authority considers necessary to assess the application.

302. Issue of permits

- (1) The Authority may issue a permit to an applicant if—
 - (a) a security assessment has been received concerning the applicant that is not an adverse security assessment within the meaning of the Australian Security Intelligence Organisation Act 1979 of the Commonwealth; and

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- (b) a search of any other known information concerning the applicant has been made and the Authority is satisfied that the applicant has not been convicted or found guilty of, or has a charge pending for, an offence relating to violence, weapons, terrorism, damage to property, illegal drugs or dishonesty within the last 10 years that in the opinion of the Authority would pose a security risk in relation to that person; and
- (c) the Authority is satisfied that the applicant is a suitable person to hold a permit.
- (2) A permit only authorises the person to whom it is issued to have unsupervised access to HCDG if that person is nominated as an authorised person in the security plan of a person who holds an HCDG licence.
- (3) A permit authorises the person to whom it is issued to undertake any activity authorised by the HCDG licence and set out in the relevant security plan including access to HCDG—
- (a) at a secure store or a secure site; or
- (b) in the course of the transport of HCDG; or
- (c) in the course of the use, handling or disposal of HCDG.
- (4) A permit continues in operation for the term of no more than 5 years specified in the permit and subject to any condition, limitation or restriction specified in the permit.
- (5) Nothing in this regulation requires a person to undergo a security assessment if the person has, under the same name, previously undergone a security assessment under these Regulations or the Dangerous Goods (Explosives) Regulations 2000.
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303. Renewal of permit

- (1) The holder of a permit may apply for the renewal of the permit for a further term not exceeding 5 years.
- (2) An application for the renewal of a permit must be made to the Authority in the form and manner required by the Authority.
- (3) The Authority may renew the permit if—
 - (a) the applicant consents to the Authority obtaining, and provides sufficient information to enable the Authority to obtain, a search of any known information concerning the applicant; and
 - (b) as a result of the search, the Authority is satisfied that the applicant has not been convicted or found guilty of, or has a charge pending for, an offence relating to violence, weapons, terrorism, damage to property, illegal drugs or dishonesty within the last 10 years that in the opinion of the Authority would pose a security risk in relation to that person; and
 - (c) the Authority is satisfied that the applicant is still a suitable person to hold a permit.
- (4) Nothing in this regulation requires a person to undergo a security assessment if the person has, under the same name, previously undergone a security assessment under these Regulations or the Dangerous Goods (Explosives) Regulations 2000.

304. Refusal of permit

- (1) If the Authority refuses to issue or renew a permit, the Authority must send by post to the applicant written notice of the refusal setting out the reasons for the refusal.

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- (2) If the Authority refuses to renew a permit, it must send the written notice to the applicant at least 2 months before the permit expires unless the application for renewal is received by the Authority less than 2 months before the permit expired.

305. Authority may amend, suspend or revoke permit

- (1) The Authority may amend, suspend or revoke a permit.
- (2) If a document evidencing a permit has been issued by the Authority and that permit is amended, suspended or revoked, the permit holder must surrender the document to the Authority on demand.
- (3) A permit must not be suspended for longer than six months.
- (4) The Authority must not amend, suspend or revoke a permit, unless it has—
- (a) notified the holder of the permit that the Authority is proposing to amend, suspend or revoke (as the case may be) the permit; and
 - (b) provided the holder of the permit with written reasons for the proposed course of action; and
 - (c) invited the holder of the permit to make a submission within a specified time on the proposed course of action including a submission on the appropriate amendment (if any) to be made; and
 - (d) considered any submissions that are made in response to the invitation within the specified time.
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Part 3—Permits for Unsupervised Access to HCDG

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- (5) A decision of the Authority to amend, suspend or revoke a permit does not take effect until the end of one month's notice by the Authority to the holder of the permit unless sub-regulation (6) applies.
- (6) If, in the opinion of the Authority, there exists a significant danger to persons or property the amendment, suspension or revocation of the permit takes effect on the date the Authority notifies the holder of the permit of its decision.
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PART 4—SALE OR SUPPLY OF HCDG

401. Prohibitions on sale or supply of HCDG

- (1) A person must not must not sell or supply HCDG unless the person holds a licence to supply the HCDG.
- (2) A person must not sell or supply HCDG to another person unless the person to whom the HCDG is supplied has provided appropriate identification and proof that he or she—
 - (a) holds an HCDG licence authorising the person to store, use, sell or supply HCDG; or
 - (b) holds a permit under Part 3 and is acting for a person who holds an HCDG licence authorising the person store, use, sell or supply HCDG; or
 - (c) is exempt under regulation 502 from the requirement to hold an HCDG licence authorising the person to store, use, sell or supply HCDG; or
 - (d) is employed by and acting for an exempt person referred to in paragraph (c); or
 - (e) is employed by or acting for an educational or research institution or laboratory referred to in regulation 201(2).
- (3) A person who sells or supplies an HCDG to another person must ensure that—
 - (a) the information required by regulation 402(1) has been recorded in the supply or sales record; and
 - (b) the person to whom the HCDG is sold or supplied to has signed the supply or sales record.

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- (4) A person seeking to purchase or be supplied with HCDG must not provide false or misleading information in connection with the purchase or supply.
 - (5) A person must not sell or supply to another person in one day an amount of HCDG that exceeds the amount (if any) that the other person is authorised to purchase or be supplied with.

402. Sales and supply records

- (1) A person who holds an HCDG licence that authorises the person to sell or supply HCDG must make written sales or supply records that contain the following information—
 - (a) the types and quantities of all HCDG received by the licensee and the date on which it was received; and
 - (b) for each sale of HCDG by the licensee—
 - (i) the date of the sale or supply; and
 - (ii) the name, signature, address and telephone number of the person to whom the HCDG was sold or supplied; and
 - (iii) details of the licence or exemption referred to in regulation 401(2) authorising the person to be sold or supplied with the HCDG; and
 - (iv) the type and quantity of HCDG sold or supplied.
- (2) A licensee who is required to maintain a sales or supply record must—
 - (a) retain the record for at least 5 years after the date of the transaction which it records; and

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- (b) make the record available for examination by an inspector or member of the police force at the place, or at one of the places, at which sales or supplies are made.
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PART 5—EXEMPTIONS

501. Exemption from these Regulations

- (1) A person may apply to the Authority for an exemption in whole or part from compliance with any requirement in these Regulations, except a requirement to hold an HCDG licence.
- (2) An application for an exemption must—
 - (a) state the regulation or regulations from which exemption is sought; and
 - (b) explain the method by which the applicant intends to ensure that there is a level of security of HCDG that is at least equivalent to that which would be achieved by complying with that regulation or regulations.
- (3) The Authority may—
 - (a) grant an exemption in whole or in part; or
 - (b) refuse an exemption.
- (4) The Authority must not grant an exemption unless it is satisfied that the method proposed in sub-regulation (2)(b) is capable of achieving a level of security of HCDG that is at least equivalent to the level that would be achieved if the relevant regulation or regulations were complied with.
- (5) An exemption granted by the Authority must be in writing.
- (6) The Authority may impose conditions on an exemption in relation to one or more of the following—
 - (a) the commencement and duration of the exemption;

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- (b) the activities or other things in respect of which the exemption is granted;
 - (c) the person or class of person to whom the exemption is granted;
 - (d) the premises or class of premises in respect of which the exemption is granted;
 - (e) the provisions of these Regulations in respect of which the exemption is granted;
 - (f) the provision of information relevant to the exemption that may reasonably be required by the Authority;
 - (g) the monitoring or recording of systems of work or processes used at the premises exempted or by the person exempted;
 - (h) a requirement that the person exempted give notice of the exemption and of the terms and conditions of the exemption to any specified person or body who may be affected;
 - (i) any other conditions that the Authority considers appropriate in the circumstances.
- (7) A person to whom an exemption under this regulation is granted must comply with a condition of the exemption.

502. Authority may grant class exemptions on its own motion

- (1) The Authority may grant on its own motion an exemption from compliance with a requirement in these Regulations including a requirement to hold an HCDG licence in respect of a class of licensee person, premises or activity.
 - (2) The Authority must not grant an exemption under this regulation unless it is satisfied that the exemption will achieve a level of security of HCDG that is at least equivalent to that which
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would be achieved by complying with the regulation or regulations from which the exemption is granted.

- (3) An exemption under this regulation must be in writing and published in the Government Gazette and on the Internet on a website maintained by the Authority.
- (4) The Authority may impose one or more of the conditions listed in regulation 501(6) on an exemption under this regulation.
- (5) A person to whom an exemption under this regulation has been granted must comply with a condition of the exemption.

503. Power of Authority to amend, suspend or revoke exemptions

- (1) The Authority may at any time amend, suspend or revoke an exemption granted under regulation 501 or 502, either at the request of the holder of the exemption or on its own initiative.
- (2) The Authority must not amend, suspend or revoke an exemption granted under regulation 501 on its own initiative unless it has—
 - (a) notified the holder of the exemption that the Authority is proposing to amend, suspend or revoke (as the case may be) the exemption; and
 - (b) provided the holder of the exemption with written reasons for the proposed course of action; and
 - (c) invited the holder of the exemption to make a submission within a specified time on the proposed course of action including a submission on the appropriate amendment (if any) to be made; and

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- (d) considered any submissions that are made in response to the invitation within the specified time.
 - (3) If the Authority decides to suspend an exemption granted under regulation 502 it must publish a notice in the Government Gazette and on the Internet on a website maintained by the Authority that sets out—
 - (a) the date and time from which the suspension takes effect; and
 - (b) the date and time at which the suspension ceases to operate.
 - (4) If the Authority decides to revoke an exemption granted under regulation 502 it must publish a notice in the Government Gazette and on the Internet on a website maintained by the Authority that sets out the date and time from which the revocation takes effect.

504. Refusal of request for exemption

The Authority must not refuse a request to grant or amend an exemption, unless it has—

- (a) provided notice in writing to the person making the request that—
 - (i) states that on the basis of the information it has available, it intends to refuse to grant or amend the exemption; and
 - (ii) sets out the reasons why it has formed that intention; and
- (b) invited the person making the request to provide a written submission to the Authority within a specified time on the intended refusal; and

- (c) considered any submission that is made in response to the notice within the specified time.

505. Mutual recognition—licence to transport HCDG

- (1) This regulation applies to a person who holds a licence to transport HCDG granted by any other State or Territory if—
- (a) that licence is granted under a provision of the law of that State or Territory corresponding to the requirement in regulation 201 that a person must not transport HCDG unless the person holds an HCDG licence for that activity; and
 - (b) the licence is currently in force in that State or Territory; and
 - (c) the Authority is satisfied that the contents of the security plan for the licence sufficiently address the prescribed particulars contained in Schedule 2.
- (2) A person who holds a licence that complies with the requirements set out in sub-regulation (1) is deemed to hold a licence to transport HCDG subject to the condition that before the transport of any HCDG into Victoria that person must provide the Authority with a copy of the security plan relating to the licence.

506. Mutual recognition—other HCDG licences

If an applicant for an HCDG licence (other than a licence to transport HCDG) holds a corresponding licence from another State or Territory then the applicant is deemed to have satisfied the requirements under regulation 205(2)(b) and (c) in relation to the issue of the licence applied for.

507. Mutual recognition—permits for unsupervised access to HCDG

- (1) This regulation applies to a person who holds a permit granted by any other State or Territory if—
 - (a) that permit is granted under a provision of the law of that State or Territory, corresponding to Part 3 enabling a person to have unsupervised access to HCDG; and
 - (b) the permit is in force in that State or Territory.
- (2) A person who holds a permit that complies with the requirements of sub-regulation (1) is deemed to hold a permit under Part 3.

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Part 6—Fees

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PART 6—FEES

601. Fees for licences

The fees for the issue or renewal of an HCDG licence or the issue of a duplicate licence are set out in the following Table.

Table 601

<i>Licence Issue or renewal</i>	<i>Fee</i>
Licence to manufacture HCDG under regulation 203(1)(a)	\$80
Licence to import HCDG under regulation 203(1)(b)	\$80
Licence to export HCDG under regulation 203(1)(c)	\$80
Licence to store HCDG under regulation 203(1)(d)	\$80
Licence to supply HCDG under regulation 203(1)(e)	\$80
Licence to transport HCDG under regulation 203(1)(f)	\$80
Licence to use HCDG under regulation 203(1)(g)	\$80
Primary producer licence under regulation 203(1)(h)	\$80
Duplicate licence	\$50

602. Fees for security assessments and searches

(1) An applicant for the issue or renewal of an HCDG licence or a permit must also pay the fees to enable the Authority to obtain a security assessment or search of other known information in relation to—

(a) the applicant; and

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- (b) in relation to each person who has consented under regulation 204(4) or (6) or 209(2)(b) or (c) to the Authority obtaining known information about that person.
- (2) The fee for a security assessment is \$19.
- (3) The fee for a search of any other known information about a person is \$40.

603. Fee for amendment of a licence

The fee for the amendment of a licence (other than to record a change of information describing the licensee or when the licence is renewed) is \$20.

**PART 7—DANGEROUS GOODS (EXPLOSIVES)
REGULATIONS 2000**

701. Objectives of Regulations

After regulation 101(a) of the Dangerous Goods (Explosives) Regulations 2000² **insert**—

"(ab) to provide for the management of risks arising out of security concerns associated with explosives; and".

702. Definitions

In regulation 106 of the Dangerous Goods (Explosives) Regulations 2000 **insert** the following definitions—

' "**known information**" has the same meaning as in section 21A of the Act;

"**security assessment**" means a security assessment issued by the Australian Security Intelligence Organisation under Part IV of the Australian Security Intelligence Organisation Act 1979 of the Commonwealth;

"**specified proof of identity**" has the same meaning as in section 21A of the Act;

"**the Act**" means the **Dangerous Goods Act 1985**;

703. Requirements applying to licences generally

(1) In regulation 123(1)(c)(iv) of the Dangerous Goods (Explosives) Regulations 2000 for "licence." **substitute** "licence; and".

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(2) After regulation 123(1)(c)(iv) of the Dangerous Goods (Explosives) Regulations 2000 **insert**—

"(v) is valid only if there continues to be a person nominated under the licence who is responsible for the security of the explosives and who has satisfied the prescribed requirements for the purposes of section 21A(4) of the Act; and

(vi) in the case of a licence held by a body corporate, is valid only if there continues to be a person nominated under the licence who has satisfied the prescribed requirements for the purposes of section 21A(4) of the Act; and

(vii) in the case of a licence held by a natural person, is valid only if the licensee continues to generally use and be known by the name specified in the licence."

(3) After regulation 123(4) of the Dangerous Goods (Explosives) Regulations 2000 **insert**—

"(5) The requirements of sub-regulation (1)(c)(v), (vi) and (vii) only apply to a licence issued on or after 1 October 2005."

704. New regulations 123A, 123B, 123C, 123D, 123E and 123F inserted

After regulation 123 of the Dangerous Goods (Explosives) Regulations 2000 **insert**—

"123A. Proof of identity and consent required

- (1) An applicant for a licence under these Regulations who is a natural person must—
- (a) provide specified proof of identity; and
 - (b) consent to the Authority obtaining, and provide sufficient information for the Authority to obtain, known information

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concerning the applicant to determine whether he or she has satisfied the requirements of regulation 123B to hold a licence under these Regulations.

- (2) An applicant who is a body corporate must provide details of the incorporation of the body.
- (3) An application by a body corporate, other than a public company, must be accompanied by a nomination of at least one director or person concerned in the management of the body corporate who has agreed to the nomination.
- (4) The nominated person must—
 - (a) provide the Authority with specified proof of his or her identity; and
 - (b) consent to the Authority obtaining, and provide sufficient information to enable the Authority to obtain, known information concerning the person to determine whether he or she has satisfied the requirements of regulation 123B to be a director or person concerned in the management of a body corporate that holds a licence under these Regulations.
- (5) An application by a body corporate for a licence must be accompanied by a nomination of a natural person who has agreed to the nomination and who is to be responsible for the security of the explosives under the licence (who may or may not be a nominated director).

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- (6) The person nominated under sub-regulation (5) must—
- (a) provide the Authority with his or her specified proof of identity; and
 - (b) consent to the Authority obtaining, and provide sufficient information to enable the Authority to obtain, known information concerning the person to determine whether the person has satisfied the requirements of regulation 123B to be responsible for the security of the explosives under the licence under these Regulations.
- (7) Nothing in this regulation requires a person to undergo a security assessment if the person has previously undergone a security assessment under the same name for the purposes of these Regulations or the Dangerous Goods (HCDG) Regulations 2005.

123B. Requirements to be satisfied before person can hold a licence

- (1) This regulation sets out the prescribed requirements for the purposes of section 21A(4) of the Act.
 - (2) The prescribed requirements are—
 - (a) a security assessment has been received about the person that is not an adverse security assessment within the meaning of the Australian Security Intelligence Organisation Act 1979 of the Commonwealth; and
 - (b) a search of other known information about the person has been made and the Authority is satisfied that the person has not been convicted or found guilty
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of, or has a charge pending for, an offence relating to violence, weapons, terrorism, damage to property, illegal drugs or dishonesty within the last 10 years that in the opinion of the Authority would pose a security risk in relation to that person.

- (3) This regulation does not apply to a single occasion licence under regulation 808(2)(b) or 808(3)(b).

123C. Prescribed particulars for security plans

For the purposes of section 21A(2)(b) of the Act, the prescribed particulars are set out in Schedule 4.

123D. Duty to review and revise security plan

- (1) It is a condition of an explosives licence that, if the Authority requires a licence holder to provide a security plan, the licence holder must ensure that the security plan is reviewed and, if necessary, revised.
- (2) A security plan must be revised if there is evidence to indicate that the security plan no longer adequately addresses the prescribed particulars set out in Schedule 4.

123E. Renewal of licences

- (1) Nothing in this regulation limits the power of the Authority to require an applicant for renewal of a licence to satisfy all the original requirements for the grant of the licence.
- (2) A licence may be renewed by the Authority for a further term after receiving a written application for renewal and on payment of the prescribed fee.

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- (3) For the purpose of enabling the Authority to assess whether a licence should be renewed—
- (a) if the licence holder is a natural person, he or she must—
 - (i) provide the Authority with his or her specified proof of identity (if not previously provided); and
 - (ii) consent to the Authority obtaining, and provide sufficient information to enable the Authority to obtain, known information concerning the applicant to determine whether he or she has satisfied the requirements of regulation 123B to hold a licence under these Regulations;
 - (b) if the licence holder is a body corporate, other than a public company, the application for renewal must be accompanied by a nomination of at least one director or person concerned in the management of the body corporate who has agreed to the nomination.
 - (c) the person nominated under paragraph (b) must—
 - (i) provide the Authority with specified proof of his or her identity (if not previously provided); and
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- (ii) consent to the Authority obtaining, and provide sufficient information to enable the Authority to obtain, known information concerning the person to determine whether he or she has satisfied the requirements of regulation 123B to be a director or person concerned in the management of a body corporate that holds a licence under these Regulations;
 - (d) if the licence holder is a body corporate, the application must be accompanied by the nomination of a natural person who has agreed to the nomination and who is to be responsible for the security of the explosives under the licence (who may or may not be a nominated director);
 - (e) the person nominated under paragraph (d) must—
 - (i) provide the Authority with his or her specified proof of identity (if not previously provided); and
 - (ii) consent to the Authority obtaining, and provide sufficient information to enable the Authority to obtain, known information concerning the person to determine whether the person has satisfied the requirements of regulation 123B to be responsible for the security of the explosives under a licence under these Regulations.
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- (4) Nothing in this regulation requires a person to undergo a security assessment if the person has previously undergone a security assessment under the same name for the purposes of these Regulations or the Dangerous Goods (HCDG) Regulations 2005.

123F. Security assessments

The Australian Security Intelligence Organisation is a prescribed body for the purposes of section 21A(6)(c) of the Act."

705. New regulation 513 substituted

For regulation 513 of the Dangerous Goods (Explosives) Regulations 2000 **substitute—**

"513. Savings for permits to use blasting explosives

A permit that was issued under regulation 513 as in force before 1 October 2005 remains in force until the date of expiry in the permit or 31 December 2005, whichever occurs first."

706. Waiver of licence fees for blasting explosives

After regulation 1211(2) of the Dangerous Goods (Explosives) Regulations 2000 **insert—**

- "(3) The Authority may waive, in whole or in part, the payment of the fee prescribed by sub-regulation (1) if—
- (a) the applicant is also applying for or holds a licence under the Dangerous Goods (HCDG) Regulations 2005 and has not previously held a licence to use blasting explosives; and

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- (b) the Authority is satisfied that the applicant—
- (i) has, on or after 1 January 2000, held a valid permit to purchase blasting explosives; and
 - (ii) will only use the blasting explosives on that applicant's property."

707. New regulation 1213A inserted

After regulation 1213 of the Dangerous Goods (Explosives) Regulations 2000 **insert—**

"1213A. Additional fee for security assessments and searches

- (1) An applicant for the issue or renewal of an explosives licence must pay an additional fee to enable the Authority to obtain a security assessment or search of other known information in relation to—
 - (a) the applicant; and
 - (b) each person who has consented under regulation 123A(4) or (6) or 123E(3)(c) or (e) to the Authority obtaining known information about that person.
- (2) The fee for a security assessment is \$19.
- (3) The fee for a search of any other known information about a person is \$40."

708. New Schedule 4 inserted

After Schedule 3 to the Dangerous Goods
(Explosives) Regulations 2000 **insert—**

SCHEDULE 4

Regulation 123C

**PARTICULARS FOR SECURITY PLANS REQUIRED
BY THE AUTHORITY**

The prescribed particulars are—

- (a) precautions to ensure explosives are secure for the entire duration of any journey;
- (b) the names of all persons licensed under Division 2, who are employed, allowed or whose services are engaged, to drive a road vehicle to transport explosives ("drivers");
- (c) the procedures for amending the security plan by the addition of names of new drivers or the removal of the names of existing drivers;
- (d) the procedures for instructing persons who have access to, or who use or handle, explosives on the security plan;
- (e) designating a person who is responsible for maintaining the security plan;
- (f) the system for recording details and reconciling incoming and outgoing quantities of explosives;
- (g) the procedures for reporting to authorities any theft, attempted theft or unexplained loss of explosives or any other security incident involving explosives;
- (h) the name and contact details of any sub-contractor;
- (i) the precautions in place to ensure that explosives are only loaded from a person who holds a licence to sell the explosives and that they are delivered to a person who is licensed under these Regulations;

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- (j) the precautions in place to ensure that if explosives are temporarily stored during the loading or transport process they are kept in a secure store identified in the security plan;
 - (k) the precautions in place to ensure that explosives are transported at all times under lock and key or under constant surveillance by electronic means or by a licensed person;
 - (l) procedures for undertaking sealing of explosives if required by the security plan and for regular assessments of sealing procedures to monitor their effectiveness;
 - (m) the system to monitor the location of the consignment during transportation and to instruct workers in emergency procedures;
 - (n) systems and procedures in place to record—
 - (i) persons authorised to drive vehicles transporting explosives by road;
 - (ii) the vehicles used for transporting explosives by road or rail, on which seals can be fitted to detect entry to the vehicle;
 - (iii) explosives are only delivered to licensed persons;
 - (iv) details of consignments by road or rail including—
 - (A) seal numbers and any changes in seals necessary for part deliveries; and
 - (B) accurate weight measurement or other reconciliation (for example, the number of bags) of all explosives at loading and unloading; and
 - (C) confirmation on a load-by-load basis of whether the load was delivered with all seals and locks intact; and
 - (D) a system to ensure that both returns of explosives of merchantable quality and spillage recovery are accurately documented and appropriately accounted for;
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- (o) protocols that are in place to refuse loading of any vehicle that is not included in the record of vehicles under item (n)(ii);
 - (p) when explosives are being transported by road the procedures in place to ensure that the vehicle is not left unattended unless—
 - (i) the vehicle is left in a secure site; and
 - (ii) the explosives are under lock and key; and
 - (iii) the relevant locks are sealed with numbered seals to assist in the detection of theft or attempted theft;
 - (q) when explosives are being transported by rail the procedures in place to ensure that unless the explosives are under constant supervision—
 - (i) they are transported in locked container units or in locked rail cars;
 - (ii) all openings to the containers or cars are sealed with substantial tamper-proof seals that require forceful breakage to enter the container or car;
 - (iii) consignments have a schedule so that the location of the container or car is continually monitored for the duration of the transport;
 - (r) when explosives are being transported by rail the procedures in place to ensure that unless explosives are under constant supervision, a licensed person is present at the dispatch and receipt of explosives, and at any time when containers need to be opened before they reach their destination.'

709. Revocation of primary producers' exemptions

Regulations 602(6) and 703(2)(b) of the Dangerous Goods (Explosives) Regulations 2000 are **revoked**.

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Part 8—Consequential Amendments to Other Regulations

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PART 8—CONSEQUENTIAL AMENDMENTS TO OTHER REGULATIONS

**801. Dangerous Goods (Transport by Rail)
Regulations 1998**

After regulation 4(2)(a) of the Dangerous Goods (Transport By Rail) Regulations 1998³ **insert—**

"(ab) the transport of dangerous goods that are declared under section 9B of the Act to be HCDG and which have no UN Number; or".

**802. Dangerous Goods (Storage and Handling)
Regulations 2000**

In regulation 106 of the Dangerous Goods (Storage and Handling) Regulations 2000⁴, after paragraph (a) **insert—**

"(ab) dangerous goods that are declared to be HCDG and which have no UN Number; or".

SCHEDULES

SCHEDULE 1

**PRESCRIBED PARTICULARS FOR SECURITY PLANS FOR
LICENCES AUTHORISING A PERSON TO STORE HCDG**

The prescribed particulars are—

- (a) the location and details (including a plan) of the facility in which HCDG are to be stored;
- (b) the precautions in place to ensure HCDG are kept in a secure store, and the details of any secure store including the type and dimensions of the structure and the number and type of doors, windows and locks;
- (c) the names of all authorised persons holding a permit under Part 3 that authorises unsupervised access to HCDG;
- (d) the procedures for amending the security plan by the addition of the names of new authorised persons or the removal of the names of existing authorised persons;
- (e) the procedures for controlling access to the secure store by authorised persons;
- (f) the procedures for supervising access to the secure store by persons not authorised to have unsupervised access to HCDG;
- (g) the procedures for instructing persons who have access to, or who use or handle, HCDG on the security plan procedures;
- (h) designating a person who is responsible for maintaining the security plan;
- (i) the procedures to ensure that HCDG is obtained only from a licensee or person authorised to sell, transfer or dispose of HCDG and is removed only by a licensee or authorised person;
- (j) the system for recording details and reconciling incoming and outgoing quantities of HCDG;
- (k) the procedures for reporting to authorities any theft, attempted theft or unexplained loss of HCDG or any other security incident involving HCDG.

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SCHEDULE 2

**PRESCRIBED PARTICULARS FOR SECURITY PLANS FOR
LICENCES AUTHORISING A PERSON TO TRANSPORT HCDG**

The prescribed particulars are—

- (a) precautions to ensure HCDG is secure for the entire duration of the journey;
- (b) the names of all authorised persons holding a permit under Part 3 that authorises unsupervised access to HCDG;
- (c) the procedures for amending the security plan by the addition of names of new authorised persons or the removal of the names of existing authorised persons;
- (d) the procedures for instructing persons who have access to, or who use or handle, HCDG on the security plan procedures;
- (e) designating a person who is responsible for maintaining the security plan;
- (f) the system for recording details and reconciling incoming and outgoing quantities of HCDG;
- (g) the procedures for reporting to authorities any theft, attempted theft or unexplained loss of HCDG or any other security incident involving HCDG;
- (h) the name and contact details of any sub-contractor;
- (i) the precautions in place to ensure that HCDG is only loaded from a person who is authorised to supply the HCDG and that it is delivered to a person who is authorised to be supplied with the HCDG;
- (j) the precautions in place to ensure that if HCDG is temporarily stored during the loading or transport process it is kept in a secure store identified in the security plan;
- (k) the precautions in place to ensure to ensure that HCDG is transported at all times under lock and key or under constant surveillance;
- (l) procedures for undertaking sealing of HCDG if required by the security plan and for regular assessments of sealing procedures to monitor their effectiveness;
- (m) the system to monitor the location of the consignment during transportation and to instruct workers in emergency procedures;

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- (n) systems and procedures in place to record—
- (i) persons authorised to drive vehicles transporting HCDG by road;
 - (ii) the vehicles used for transporting HCDG by road or rail on which seals can be fitted to detect entry to the vehicle;
 - (iii) that HCDG is only delivered to authorised persons;
 - (iv) details of consignments by road or rail including—
 - (A) seal numbers and any changes in seals necessary for part deliveries;
 - (B) accurate weight measurement or other reconciliation (for example, the number of bags) of all HCDG at loading and unloading;
 - (C) confirmation on a load-by-load basis of whether the load was delivered with all seals and locks intact;
 - (D) a system to ensure that both returns of HCDG of merchantable quality and spillage recovery are accurately documented and appropriately accounted for;
- (o) protocols that are in place to refuse loading of any vehicle that is not included in the record of vehicles under item (n)(ii);
- (p) when HCDG is being transported by road the procedures in place to ensure that the vehicle is not left unattended unless—
- (i) the vehicle is left in a secure site; and
 - (ii) the HCDG is under lock and key; and
 - (iii) the relevant locks are sealed with numbered seals to assist in the detection of theft or attempted theft;
- (q) when HCDG is being transported by rail the procedures in place to ensure that unless HCDG are under constant supervision—
- (i) they are transported in locked container units or in locked rail cars; and
 - (ii) all openings to the containers or cars are sealed with substantial tamper-proof seals that require forceful breakage to enter the container or car; and
 - (iii) consignments have a schedule whereby the location of the container or car is continually monitored for the duration of the transport; and
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- (r) when HCDG is being transported by rail the procedures in place to ensure that unless the HCDG are under constant supervision, an authorised person is present at the dispatch and receipt of HCDG, and at any time when containers need to be opened before they reach their destination.
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Endnotes

ENDNOTES

1. General Information

The Dangerous Goods (HCDG) Regulations 2005, S.R. No. 96/2005 were made on 2 August 2005 by the Governor in Council under section 52 of the **Dangerous Goods Act 1985**, No. 10189/1985 and came into operation as follows:

Regulations 101–105, 202–305, 501–708, 801, 802, Schedules 1, 2 on 1 October 2005: regulation 103(1); regulations 201, 401, 402, 709 on 1 January 2006: regulation 103(2).

The Dangerous Goods (HCDG) Regulations 2005 will sunset 10 years after the day of making on 2 August 2015 (see section 5 of the **Subordinate Legislation Act 1994**).

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Endnotes

2. Table of Amendments

There are no amendments made to the Dangerous Goods (HCDG) Regulations 2005 by statutory rules, subordinate instruments and Acts.

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Endnotes

3. Explanatory Details

¹ Reg. 205: S.R. No. 61/2000 as amended by S.R. Nos 82/2000 and 85/2001.

² Reg. 701: See Note 1.

³ Reg. 801: S.R. No. 153/1998.

⁴ Reg. 802: S.R. No.127/2000.