

INTRODUCTION

Australian Industry Group (Ai Group) welcomed the opportunity to participate in the review of the Victorian Dangerous Goods (Storage and Handling) Regulations. As an invitee of WorkSafe Victoria we actively participated in the two tripartite stakeholder consultation meetings that preceded the public comment period.

The views expressed in this submission have been developed through:

- the knowledge of Ai Group's Safety and Workers' Compensation Advisers who have specific expertise and experience in working with dangerous goods;
- views of Ai Group members; and
- specific issues of concern raised through consultative mechanisms.

Our submission is in response to and refers to the two documents that were released for this period of public comment:

- Proposed Dangerous Goods (Storage and Handling) Regulations 2012; and
- Regulatory Impact Statement – Dangerous Goods (Storage and Handling) Regulations 2012

GENERAL COMMENT

Background

The Victorian government has stated publicly that they will not sign up to the current proposal for harmonised Work Health and Safety (WHS) legislation, therefore the national model WHS Regulations cannot be applied in Victoria. The WHS Regulations regulate the storage and handling of both dangerous goods and hazardous substances under the one regime and use classification/labelling under the Globally Harmonised System of Classification and Labelling of Chemicals (GHS).

Ai Group supports harmonised WHS legislation, and it is hoped that the government will reconsider its position once the harmonised laws have been reviewed in 2014. However, Ai Group recognises the immediate need in Victoria for alternative options. A non-regulatory option, such as a code of practice, was not considered since it was agreed that control of risks associated with the storage and handling of dangerous goods should continue to be regulated by regulations pertinent to dangerous goods. Following consultation two options were presented:

1. Remake the current regulations
2. Remake the current regulations with a number of changes (changes adopted if cost to business was decreased without impacting on the safety benefits of the regulations)

Preference by all stakeholders was given to remake the current regulations with changes (option 2). Ten changes to the regulations were originally put forward for discussion, eight of which have been included in the proposed regulations. The changes, referenced to the Regulatory Impact Statement (RIS), are summarised as follows:

SUMMARY OF KEY CHANGES TO PROPOSED REGULATIONS

1 Removal of risk assessment requirements

Conducting and recording of a formal risk assessment will no longer be required. Aligns with Victoria's OHS regulations and model WHS regulations.

Ai Group Comment: Change 1 supported by Ai Group. The alignment with other legislation is welcome as is the removal of the administrative burden of recording risk assessments which represents a potential cost reduction for occupiers.

2 Flexibility to use GHS or ADG Code for classification and labelling

Provides duty holders with ability to assign ADG Code classifications or classify according to GHS or other Australian jurisdictions' WHS legislation (which use an amended version of GHS). Labelling and preparation of SDS similarly flexible under this proposed change.

Ai Group Comment: Change 2 supported by Ai Group. Flexibility that streamlines regulation and allows Victorian storage and handling regulations to operate alongside the national WHS laws is welcome. However, it is Ai Group's view that Safety Data Sheet content, format and terminology should also be consistent to avoid confusion e.g. 'Safety Data Sheet' (SDS) instead of 'Material Data Sheet' (MSDS). Unfortunately, a change to the terminology in these regulations would cause an anomaly with the Hazardous Substances Regulations. A solution could possibly be provided via a review of the Hazardous Substances Regulations. Ai Group encourages WorkSafe to consider the opportunity for a subsequent review, as it would make sense for Victoria to be using the same terminology as other jurisdictions when describing the same thing.

3 Removal of explicit incident reporting requirements to emergency services

Removes the requirement to report to emergency services incidents that pose no risk. Replaces a prescriptive requirement with a risk based approach whereby notification to emergency services will remain a key part of incident management. A Code of Practice separate to the regulations will be amended to include recommended reporting triggers.

Ai Group Comment: Change 3 supported by Ai Group. The proposed change will reduce unnecessary regulatory burden for Victorian businesses. Clarity on when occupiers should notify emergency services will also be provided by making sure that the supporting amended Code contains adequate and appropriate information.

4 Increase notification period for manifest quantities

Occupiers with manifest quantities of dangerous goods will be required to notify WorkSafe every five years rather than two-yearly.

Ai Group Comment: Ai Group does not see the need for a regular reporting process, and would prefer the approach adopted in the WHS Regulation 348 whereby the regulator must be notified immediately the business “knows that there will be a significant change in the risk of using, handling or storing...” manifest quantities of dangerous goods. However, every 5 years is better than two-yearly so we support the change.

5 Removal of placarding requirements for retail petrol stations

Provides for an exclusion of HAZCHEM sign for retail petrol stations that store or handle dangerous goods that are a flammable gas or liquid and are used to refuel a vehicle, as it is obvious to emergency services that petrol, diesel or gas is on these premises.

Ai Group Comment: Change 5 supported by Ai Group. The proposed change provides cost savings and decrease in regulatory burden for retail petrol stations many of which are small businesses.

How this exemption applies must be made clear in the regulations as the term “retail petrol stations” used in the RIS is not used in the regulations. Regulation 47 (2) (a) refers to a “retail outlet” to which specified provisions apply.

6 Removal of requirement to record induction and training

Occupiers would no longer be required to make a record of induction or training activities as is the case under the current regulations. Removal of this requirement consequently removes the requirement to keep these records for 5 years.

Ai Group Comment: Change 6 supported by Ai Group. Records of induction and training are not risk control measures. The change will reduce the cost of compliance for occupiers.

7 Insertion of ‘reasonably practicable’ into consultation provision

Occupiers currently are required to consult with all persons engaged by the occupier to work at the premises involved in the handling and storage of dangerous goods. To align with the approach taken under the OHS Act, it is proposed that this consultation requirement should be qualified by ‘reasonably practicable’.

Ai Group Comment: Change 7 supported by Ai Group.

8 Redefine C1 combustible liquid

Victoria currently defines a ‘C1 combustible liquid’ as “liquid dangerous goods that have a flash point higher than 60°C but no higher than 150°C.” The Victorian definition is unique and inconsistent with the GHS as, nationally and internationally these goods are not regulated for transport. The proposed change would align with the approach taken in GHS by a redefinition to capture goods that have a flash point higher than 60°C but no higher than 93°C.

Ai Group Comment: Change 8 supported by Ai Group as it is important to have as much consistency across jurisdictions as possible.

CHANGES NOT INCLUDED IN PROPOSED REGULATIONS

9 Referencing third party documents

Worksafe considered moving references to technical documents e.g. Australian Standards into a Code of Practice to be used as guidance. This was not done as the third party references would then not be legally binding. Retaining reference to third party documents in the regulations with a six month transition period for new obligations was considered more appropriate.

Ai Group Comment: Technical standards rapidly become outdated. If continued referencing of standards is to remain then Ai Group supports a transition period of at least 6 months, to give businesses time to achieve compliance.

10 Mandatory emergency services advice

The MFB put forward a proposed amendment in relation to fire protection systems and emergency plans in which a duty holder would be compelled to implement the advice of emergency services rather than the current requirement to have regard to that advice. WorkSafe Victoria's view was that no additional safety benefits would result from making the advice mandatory and the proposed amendment was not supported.

Ai Group Comment: Businesses tend to implement the advice of the emergency services, so the current requirement to 'have regard to' advice is generally given their full consideration. Therefore, Ai Group does not support mandating that advice.

COMMENT ON SPECIFIC PROPOSED REGULATIONS

The comments in this section of our submission refer specifically to the Consultation Draft of the Dangerous Goods (Storage and Handling) Regulations 2012.

Section/Page Number	Comment
Definitions	
Page 2 Bulk definition (a)	"...packaged dangerous goods of that type" The definition differs from the National Transport Commission (NTC) Model Transport Regulations. We recommend that it should be the same.
Page 4 Emergency (b)	"the escape, spillage or leakage of any dangerous goods;" This requires clarification as it is not linked to volume. That is it does not make clear what volume constitutes an emergency.
Page 7 IBC	The definition should refer to the NTC Model Regulations
Page 8 Packing Group	"has the same meaning" The reader has to refer to another document Dangerous Goods (Transport by Road or Rail) Regulations 2008, although it states that the definition has the same meaning. We suggest that the definition is included in full rather than having to reference another document.

Section/Page Number	Comment
Definitions	
Page 9 Pool Chlorine	Calcium hypochlorite is a bleaching agent with many uses. Not all calcium hypochlorite is pool chlorine. Further information e.g. concentration is required if defining pool chlorine in this way.
Application	
Pages 11-13	The drafting of these pages is confusing. Regulation 6 states when the regulations do not apply in a list (a) to (k) on page 11. Page 12 lists (i) to (ix) as subsets of (k) on page 12. Page 13 then has (l) as a continuation of the (a) to (k) list on page 12. The fact that it is the letter 'L' is not immediately clear and can be mistaken for the number '1'. It would make it easier for the reader if the order of (k) and (l) were swapped over so that (k) becomes "dangerous...HCDG and which have no UN Number" and (l) becomes the following dangerous goods at premises that are not a workplace-" followed by the related list (i) to (ix)
Page 17 Reg 11 (2) (c)	Class 2 dangerous goods. The regulation states that the "quantity is to be determined by the total capacity" but it doesn't specify in what units the capacity is being measured..
Page 26 – 27 Preparation of MSDS	Regulation 19(2)(i) Class and Division need to be mentioned. Lack of consistency again arises here e.g. will an MSDS prepared as indicated on page 27 be recognised in other jurisdictions? Consider aligning with GHS approach.
Page 30 22 (2) (a)	"dangerous goods are supplied in consumer packages..." How are consumer packages defined? "limited quantities" should be used instead of "consumer packages" for consistency with the ADG Code.
Page 50 Placards Reg 47 (2) (a) (b)	This regulation is written to exempt retail petrol stations from having to display a HAZCHEM outer placard. It does this by stating that the regulation does not apply to a "retail outlet" to which specified provisions apply. It would make it more obvious that this regulation refers to a petrol station if regulation 47 (2) (b) had an additional word included to read, "the Schedule 2 dangerous goods are used <u>only</u> to refuel a vehicle..."
Page 50 Placarding requirements Reg 48 (1) (b)	"any storage.." should be replaced by "each individual storage of packaged dangerous goods that exceeds the relevant quantity..."
Page 60 Duties of Occupier Reg 56 (3)	"the occupier does not possess a current MSDS...must ensure alternative information is readily accessible... This requires more information. For example does this mean that the occupier should seek the information on the internet?"

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