

EPA Consultation Response: Public Consultation on Draft Dangerous Goods (Road and Rail Transport) Regulation 2022

Public consultation took place from 4 April 2022 until 13 May 2022 through the EPA “Have your say” portal. A notice was published in the Gazette on 8 April 2022, and letters were sent to key stakeholders. The EPA invited all licensed dangerous goods vehicle owners and drivers to comment on the proposed Regulation and sought feedback from industry organisations, SafeWork NSW, the Office of the National Rail Safety Regulator, Transport for NSW, and Fire and Rescue NSW.

A total of 26 submissions was received. The EPA has considered all feedback and prepared the following which summarises how the comments were considered.

Table 1: Stakeholders who make submissions

Name/Organisation	
Chemistry Australia	National Bulk Tanker Association (NBTA)
Gas Energy Australia (GEA)	Australia New Zealand Industrial Gas Association (ANZIGA)
22 survey respondents including: 10 dangerous goods drivers; 5 prime contractors; 3 training providers; a consignor; a company providing storage equipment; a community member; and a heavy commercial vehicle repairer	

Table 2: summary of stakeholder comments

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Roll stability systems are fitted, operational and maintained All tank trailers used to carry dangerous goods are required to be fitted with roll stability systems (RSS) to reduce the likelihood of rollover accidents, under Determinations made by the EPA in 2014. The proposed provision incorporating the requirement for RSS into the Regulation requires that RSS is not only fitted but must be maintained and operational.	<p>Most survey respondents expressed support for the compulsory fitting of RSS to tank trailers.</p> <p>Chemistry Australia, ANZIGA, NBTA and GEA, while supporting the requirement, suggested that because the transport of dangerous goods can involve cross border movements, this requirement should be mandated nationally for better compliance outcomes. ANZIGA suggested the National Transport Commission (NTC) and the National Heavy Vehicle Regulator are appropriate bodies to implement this requirement.</p> <p>Some respondents believe that the proposal introduces the requirement to have RSS fitted; a</p>	<p>The EPA attempted to gain national support for the compulsory retrofitting of RSS in 2014, following a multiple fatality involving a tanker rollover. Agreement could not be reached on a national approach, so the EPA made two Determinations under the Dangerous Goods (Road and Rail Transport) Regulation 2009, phasing in the requirement for RSS to be fitted to all dangerous goods tank trailers used in NSW.</p> <p>Embedding the Determinations in the Regulation does not change the requirement to have RSS fitted but is a more effective legislative instrument, enabling the EPA to enforce the requirement for RSS to be not only fitted but maintained and operational.</p>

Summary of comments on the Draft Dangerous Goods (Road and Rail) Transport Regulation 2022

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	<p>requirement which is already in place under earlier Determinations.</p> <p>One dangerous goods driver suggested this requirement would increase the price of fuel as transportation companies try to redeem the cost of RSS fitting and maintenance.</p>	<p>The latest edition of AS 2809 (<i>'Road tank vehicles for dangerous goods'</i>) makes RSS mandatory on new tank vehicles and has already been in active use for 2 years.</p> <p>The EPA continues to recommend that to NTC that the RSS retrofitting requirement be adopted by other jurisdictions, including as part of the Australian Dangerous Goods Code review.</p>
<p>Vehicles carrying dangerous goods prevented from using prohibited areas</p> <p>An accident or breakdown of a vehicle carrying dangerous goods poses an increased risk to people, property and the environment if it happens on certain roads and tunnels.</p> <p>The NSW Road Rules prohibit drivers of vehicles carrying certain dangerous goods from driving on certain roads or tunnels identified as "prohibited areas", but these rules are not readily enforceable by the EPA.</p> <p>The proposed provision:</p> <ul style="list-style-type: none"> - mirrors the "prohibited areas" in Road Rule 300-2 to enable the EPA to take action against both drivers and prime contractors to prevent prime contractors from ordering drivers to use prohibited areas - simplifies and clarifies an existing provision allowing the EPA to make Determinations prohibiting specified vehicles and loads from certain routes and areas (including roads and tunnels) and/or at specified times. This is not a new requirement but a rewording to strengthen an existing clause. 	<p>Most survey respondents supported this proposed amendment. Of the two dangerous goods drivers who were not supportive, one suggested that routes should be restricted based on the type of dangerous goods being transported and the other suggested the need for better signage to allow drivers time to change lanes to avoid these routes.</p> <p>Chemistry Australia stated that the Regulatory Impact Statement (RIS) failed to analyse the cost-benefit case addressing the need for the Regulation to mirror NSW Road Rule 300-2 and the extension of the obligation to the prime contractor.</p> <p>Chemistry Australia, NBTA, GEA and ANZIGA stated that by mirroring Road Rule 300-2 creates conflicting/competing functions or goals for regulators which could lead to duplication in prosecution for the same offence (double jeopardy).</p> <p>GEA suggested that a prime contractor could be prosecuted under the work health and safety laws and the Regulation.</p>	<p>The proposed change adds no regulatory burden.</p> <p>Regulations already exist prohibiting the carriage of certain dangerous goods in 'prohibited areas' under NSW Road Rule 300-2. There is also an existing offence under the Road Transport (General) Regulation 2021 that applies to a person who causes, permits or allows the use of a dangerous goods vehicle in a prohibited area.</p> <p>Mirroring these restrictions in the Regulation enables the EPA to enforce prohibited areas, as the regulator of 'on road' dangerous goods transport safety, while not creating any additional burden on the regulated community.</p> <p>The issue of similar offences in different legislation is not unique. Other offences in dangerous goods transport that may be enforced under more than one piece of legislation include load restraint and tank vehicle roadworthiness rules.</p> <p>The EPA can ensure, through administrative procedures, that no person is subject to being fined by two agencies for the same conduct.</p>

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<p>Maintenance, testing or inspection of licensed dangerous goods vehicles</p> <p>Vehicles used to transport dangerous goods need to be road safe and regular vehicle maintenance, testing and inspection are important to reduce incidents caused by mechanical failures. People who maintain these vehicles are not currently obliged to ensure maintenance, testing or inspection of the vehicle is carried out in accordance with the ADG Code and the Australian Standard (tankers).</p> <p>The proposed amendment requires people who maintain dangerous goods vehicles to:</p> <ul style="list-style-type: none"> - conduct the work in accordance with the ADG Code and Australian Standard - notify the vehicle owner if the vehicle is not compliant with the ADG Code and Australian Standard 	<p>Most survey respondents supported the inclusion of these requirements. A survey respondent suggested that it is critical that owners are notified of the faults in their vehicles and that these are repaired. Another suggested that a number of companies have their own workshops and employ untrained staff to service vehicles.</p> <p>The industry bodies had mixed opinions: ANZIGA suggested that if the Regulation states that the maintenance, testing or inspection on a dangerous goods vehicle should be done in accordance with the ADG Code, the inference is that the ADG Code will be followed and there is no need for the proposed offence of not reporting honestly.</p> <p>GEA in supporting the intent of this proposal, recommended it be tabled for consideration by the Heavy Vehicle National Law Review.</p> <p>NBTA did not support this amendment, suggesting that it fails to consider the way in which work is carried out in the industry with much work undertaken in-house. The NBTA state that maintenance, inspection and testing in accordance with the ADG Code and Australian Standard require a substantial education and training as they are complex documents.</p>	<p>Part 6 of the Regulation currently requires that owners of vehicles and prime contractors must inspect and maintain vehicles used for dangerous goods transport in accordance with the ADG Code and AS 2809. If such a vehicle is being inspected and maintained in accordance with these requirements, then no additional compliance is required.</p> <p>Clause 22(1)(i) of the Regulation already includes maintaining vehicles and equipment used in the transport of dangerous goods as an activity requiring persons to be trained, instructed and supervised to perform the maintenance in accordance with the Regulation, ADG Code and Australian Standard AS 2809.</p> <p>However, there is no equivalent obligation on persons who undertake maintenance, testing or inspections of such vehicles to ensure the vehicle complies with the ADG Code. Nor is there an obligation on such persons to notify the owner of the vehicle where the vehicle does not comply with the ADG Code.</p> <p>Specifying the maintenance requirements for dangerous goods vehicles in the Regulation creates an offence for those not maintaining, testing or inspecting vehicles in accordance with those requirements. As such, it ensures that the industry is aware of the requirements and the penalty for non-compliance.</p> <p>Prime contractors who are performing maintenance, testing and inspection “in-house”, already have an obligation to ensure their vehicles comply. This amendment does not create an additional burden on them.</p> <p>The EPA’s Dangerous Goods Tank Vehicle Inspection Manual provides guidance to vehicle owners and maintainers on how to comply and is being updated to meet AS 2809 requirements.</p>
<p>Packaging designs meet safety standards</p> <p>Dangerous goods need to be transported in packaging designed and approved to meet</p>	<p>All survey respondents supported this proposal.</p> <p>Of the industry bodies, GEA recommended that SafeWork be the sole authority to be resourced to approve packaging and tank designs, as this would</p>	<p>The Regulation provides for the EPA or SafeWork (as competent authorities) to authorise other persons or bodies to issue packaging and tank approvals on their behalf.</p>

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<p>strict standards to ensure they are leak proof and can withstand impacts.</p> <p>The EPA or SafeWork can authorise a person to approve packaging designs that comply with the requirements of the ADG Code and AS2809 (for tank vehicles). However, the current rules do not specify what type of person can be authorised.</p> <p>The proposed amendment requires that to be authorised, a person must be either a qualified mechanical engineer, a National Association of Testing Authorities (NATA) accredited laboratory, NSW government agency or statutory body acceptable to the EPA or SafeWork.</p>	<p>align to other jurisdictions and workplace health and safety laws.</p> <p>ANZIGA stated that having both the EPA and SafeWork approving packaging designs creates confusion and that creating additional requirements by one of these agencies only exacerbates this confusion.</p> <p>NBTA considers that this proposal will risk creating a bottleneck and push up costs, discouraging compliance.</p>	<p>This change is about specifying which qualified persons/bodies the EPA (or SafeWork) can authorise to issue a packaging approval which meets certain safety standards.</p> <p>At this time, neither the EPA nor SafeWork intend to utilise this provision, so approvals will remain with the EPA and SafeWork as the competent authorities for now.</p> <p>In terms of both the EPA and SafeWork approving packaging, this reflects our different responsibilities as competent authorities: SafeWork approves packaging, whereas the EPA approves tank vehicles. A tank vehicle is fundamentally a vehicle designed by an engineer, while a packaging is a serially manufactured product.</p>
<p>The EPA to be notified of an incident resulting in a dangerous situation with sufficient time to respond</p> <p>Under the Dangerous Goods (Road and Rail Transport) Regulation 2014 (2014 Regulation), the driver of a dangerous goods vehicle is required to notify emergency services, the prime contractor and the EPA of an incident resulting in a dangerous situation 'as soon as practicable'. The 2014 Regulation requires both the driver and the prime contractor to notify the EPA.</p> <p>Under the Regulation, the driver will need to notify the prime contractor and emergency services of an incident resulting in a dangerous situation as soon as practicable, and the prime contractor will need to notify the EPA no later than 1 hour after becoming aware of the incident.</p>	<p>Several dangerous goods drivers did not support this proposal. They stated that:</p> <ul style="list-style-type: none"> - it is inappropriate for the EPA to attend as HAZMAT usually handle - emergency services should notify the EPA as contacting government agencies is often difficult - the minimum time to notify should be 4 hours not 1 hour - the notification period should be within 12 hours to allow time to focus on the incident <p>Chemistry Australia stated that that the RIS did not identify a current failure and if a change is warranted and that because dangerous goods incidents can be variable in nature, the current requirements provide the flexibility needed for them to be managed under differing risk circumstances. They suggested that setting a prescriptive timeframe can divert attention away from the first response and may be at times difficult to satisfy.</p> <p>GEA suggested that triggering two lead agencies in an emergency response incident/process is likely</p>	<p>Many of the comments received on this proposal showed an incomplete understanding of the role of the EPA in incident response.</p> <p>The EPA has specialist knowledge on how to contain, control and recover dangerous goods, which can be flammable, corrosive, explosive, spontaneously combustible, toxic, or water-reactive, and can provide advice to the Police and Fire and Rescue where incidents threaten public health or the environment.</p> <p>When an incident occurs, Fire and Rescue are responsible for rendering the incident impacted site safe for subsequent clean-up. The EPA's role is to coordinate advice to first responders during the response phase and then to ensure the site is appropriately cleaned up once rendered safe. The EPA offers specialist scientific and chemical expertise and maintains a 24-hour 7 days/week phone number that can be used to notify the EPA of incidents.</p> <p>The proposed requirement provides a clear timeframe for prime contractors to notify the EPA. Given that this is a phone call it is unlikely to "divert attention away from first response". To support this, the EPA has removed the</p>

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	<p>leading to confusion, delay and inefficiency at a time when clarity, timeliness and precision of effort is paramount, and it would be more beneficial and appropriate to upskill the NSW Police Force (Police and Fire and Rescue NSW (Fire and Rescue) on how to manage dangerous goods that pose a risk to human health and the environment, rather than add another link in the chain</p> <p>NBTA's submission stated that mandating a time frame is complex and potentially unworkable, for example, because the definition of an incident is unclear.</p>	<p>requirement for drivers to notify the EPA; they only need to contact the prime contractor and emergency services.</p> <p>The EPA expects that prime contractors include notification 'as soon as practicable' to the EPA in their emergency plans for dangerous situations, as required by the Regulation.</p> <p>A dangerous situation is defined in the Regulation to mean "a situation that is causing or is likely to cause imminent risk of serious injury to a person, significant harm to the environment or significant damage to property". The EPA will issue guidance on incident reporting later in 2022.</p>																								
<p>Licence fees are indexed consistent with other regulatory regimes</p> <p>Dangerous goods licence and other fees have not changed since 2009. However, the costs of running the licensing system have increased.</p> <p>Under the 2014 Regulation, the EPA determines and adjusts licence and other fees.</p> <p>Under the Regulation, from 2023-24, licence and other fees will be adjusted every year in line with changes in the cost of living based on the Consumer Price Index (CPI).</p>	<p>Four dangerous goods drivers indicated their concerns about increasing licence fees stating that:</p> <ul style="list-style-type: none"> - the licence simply allows an individual to drive or own a vehicle for transporting dangerous goods - unlike a car licence where there is a moving scale of licence fees according to a range of factors including usage and the impact on road infrastructure - licence fees are already expensive in addition to training course fees - the industry is always targeted for fee increases - there is no demonstrated link between increasing fees and increasing the overall safety of dangerous goods transport unlike a one-off initial cost recovery for vehicle approvals - having automated licence renewals might keep ongoing administrative costs down <p>Industry bodies that provided submissions opposed licence fee increases:</p> <p>Chemistry Australia argued that businesses have done it tough throughout the pandemic and limiting government cost charges where possible would allow</p>	<p>Driver, vehicle licence and transfer fees have not increased since 2009, whereas the costs of administering the licencing system have increased.</p> <p>Currently NSW has the lowest driver licence fee of all jurisdictions and the vehicle licence fee is in the mid-range compared to other jurisdictions.</p> <table> <tr> <th>Jurisdiction</th><th>Driver licence (5-year equivalent)</th><th>Vehicle licence fee (1-year equivalent)</th></tr> <tr> <td>NSW</td><td>\$57</td><td>\$87</td></tr> <tr> <td>Victoria</td><td>\$86.70</td><td>\$14.70</td></tr> <tr> <td>Queensland</td><td>\$101.50</td><td>\$155.95</td></tr> <tr> <td>South Australia</td><td>\$142.50</td><td>\$171</td></tr> <tr> <td>Western Australia</td><td>\$130</td><td>\$163</td></tr> <tr> <td>Tasmania</td><td>\$82.50</td><td>\$165</td></tr> <tr> <td>Northern Territory</td><td>\$60</td><td>\$86</td></tr> </table>	Jurisdiction	Driver licence (5-year equivalent)	Vehicle licence fee (1-year equivalent)	NSW	\$57	\$87	Victoria	\$86.70	\$14.70	Queensland	\$101.50	\$155.95	South Australia	\$142.50	\$171	Western Australia	\$130	\$163	Tasmania	\$82.50	\$165	Northern Territory	\$60	\$86
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	<p>businesses to divert more money to meet their compliance and safety obligations.</p> <p>GEA and ANZIGA do not support automatic increases in fees without the ability to review through consultation to ensure any increases are appropriate and justifiable.</p> <p>NBTA suggested the fees variations across jurisdictions encourages jurisdictional shopping and that given high inflation, chronic supply shortages driven by COVID, this is not the time to seek an increase.</p>	<div> <div>ACT</div> <div>\$86</div> <div>\$230</div> </div> <p>The proposed adjustment of fees for inflation in NSW legislation is in accordance with the CPI will provides a modest fee increase, with no catch-up for period since 2009. With these increases, driver and vehicles licence fees will still be lower than in many other jurisdictions.</p>